FIFTH SECTION

CASE OF YANAKIEV v. BULGARIA

(Application no. 40476/98)

JUDGMENT

STRASBOURG

10 August 2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Yanakiev v. Bulgaria,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 10 July 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 40476/98) against the Republic of Bulgaria lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Konstantin Argirov Yanakiev, a Bulgarian national who was born in 1944 and lives in Varna ("the applicant"), on 6 January 1998.

2. The applicant was represented by Mr N. Rounevski, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. The applicant alleged that he had been denied the opportunity to challenge a mayor's tacit refusal to approve the sale of a flat to him and that the proceedings in which the Supreme Administrative Court had ruled that this refusal was not subject to judicial review had been unfair. He also alleged that the mayor's failure to approve the sale had deprived him of the possibility, enshrined by national law, to obtain the flat at a preferential price.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 6 May 2004 the Court (First Section) declared the application admissible.

7. The applicant, but not the Government, filed further written observations on the merits (Rule 59 § 1).

8. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. By an order of 13 October 1983 the applicant was settled as a tenant, together with his family, in a flat which the State had assigned in 1980 for "use and management" to the State enterprise by which he was employed. He moved in the flat in 1986.

10. In a decision of 20 September 1991 the Council of Ministers transformed the enterprise employing the applicant into a State-owned single-member limited liability company. On 28 January 1992 the Varna Regional Court ordered the entry of the newly formed company into the register of companies. In a decision of 5 August 1992 the Minister of Industry, acting as a representative of the sole shareholder – the State – transformed the company into a State-owned single-shareholder joint-stock company. The transformation was entered into the register of companies kept at the Varna Regional Court on 15 September 1992.

11. In late 1992, after the entry into force, on 3 August 1992, of certain amendments to the Act to Settle the Housing Problems of Long-Standing Home Purchase Savings Depositors of 1991 („Закон за уреждане на жилищните въпроси на граждани с многогодишни жилищно-спестовни влогове" – "the Housing Act of 1991" – see paragraphs 24-27 below), the applicant applied to purchase the flat. He considered that paragraph 4 of the additional provisions of the Act entitled him to buy the flat at a preferential price. It appears that many of his colleagues had purchased the flats they were renting from their employer under this provision. On 28 December 1992 the board of directors of the applicant's employer assented to the sale.

12. On 4 January 1993 the applicant requested the mayor of Varna to approve the sale, enclosing declarations and documents purporting to establish that he met all the conditions laid down in section 2 of the Act (see paragraph 27 below). In addition, he submitted a letter from his employer's board of directors, in which it informed the mayor that it had assented to the sale and asked him to validate it. The letter expressly mentioned that the sale was to be effected under paragraph 4 of the additional provisions of the Housing Act of 1991, and indicated the company's bank account to which

the municipality was to transfer the sale proceeds once the applicant had made the payment.

13. The mayor failed to reply and on an unspecified date in 1993 the applicant filed with the Varna Regional Court an application for judicial review of his tacit refusal.

14. In a judgment dated 30 November 1994 and entered in the court's register on 5 December 1994, the Varna Regional Court quashed the refusal and instructed the mayor to issue, within one month, an order validating the sale. It held as follows:

> "According to section 111 of the [State Property Regulations of 1975 („Наредба за държавните имоти" – see paragraphs 33-36 below)], the sale of State-entity-owned [„ведомствени"] housing units is effected by the municipal councils under the conditions laid down in section 111(4) of the [Regulations], that is, pursuant to a proposal by the respective State entity, indicating the buyer. In such case, under section 120 of the [Regulations], the municipal council effects the sale on the basis of an order issued by it.
>
> The text of section 120 of the [Regulations] is categorical on the point that, provided all conditions for execution of the transaction have been met, the municipal council has no discretion whether or not to do so, but must issue the respective order. Such an order undoubtedly constitutes an individual administrative decision and is, like the tacit refusal to issue it, subject to review under the [Administrative Procedure Act of 1979 („Закон за административното производство" – "the APA" – see paragraph 41 below)].
>
> The facts of the case indicate beyond doubt that the applicant was a tenant in the flat [in issue] on the basis of a[n] ... order ... of 13 October 1983. As such, he has the right to buy it according to the procedure laid down in the [Regulations].
>
> It is also beyond doubt that this flat is the property of [the applicant's employer].
>
> In a decision of [28 December 1992] the board of directors of the [applicant's employer] allowed the applicant to purchase the State-entity-owned housing unit he was living in.
>
> In execution of this decision [the applicant's employer] addressed a request to the chairperson of the Executive Committee of the Varna Municipal Council [i.e. the mayor – see paragraph 35 below], in which it had also indicated the buyer. Thus, all requirements of section 111 of the [Regulations] were complied with.
>
> In view of this state of affairs the Municipal Council should have discharged its duty under section 120 of the [Regulations], finalising in due form the consent already achieved between the parties and issuing the respective order.
>
> The Municipal Council is in effect not a party to the sale agreement. The parties are the State entity-owner [of the flat] and the tenant. The Municipal Council acts as an administrative authority which only approves the already concluded contract.
>
> The tacit refusal to do so was unlawful."

15. The mayor refused to comply and on 3 February 1995 submitted a petition for review (see paragraphs 43-45 below) to the Supreme Court, arguing that such an order – or the refusal to issue it – was not an individual administrative decision and was hence not subject to judicial review under the APA.

16. The applicant filed a counter-pleading, arguing, *inter alia*, that the dispute did not concern an ordinary sale of a State-owned housing unit but a sale of a housing unit subject to the special provisions of paragraph 4 of the additional provisions of the Housing Act of 1991. The mayor's role was thus not that of a contracting party, as it would have been in the general case, but that of a supervising administrative authority. Once the prerequisites for effecting the sale had been met, the mayor had no discretion but to approve it. He or she could refuse to do so only if the applicant did not meet the conditions laid down by the Act.

17. The Supreme Court held a hearing on 7 October 1996. The applicant's counsel argued that the mayor's petition for review had been submitted out of time. The participating prosecutor also maintained that the petition was untimely and stated that the mayor should be allowed to present evidence to prove when the Varna Regional Court's judgment had been entered in the register. The merits of the case were not pleaded during the hearing.

18. On 9 October 1996 the Supreme Court sent a letter to the Varna Regional Court, enquiring about the date on which the latter's judgment had been entered in the court's register. The Varna Regional Court replied that its judgment had been entered on 5 December 1994.

19. In December 1996 the Supreme Court was divided into a Supreme Court of Cassation and a Supreme Administrative Court. The newly formed Supreme Administrative Court took over cases, such as the applicant's, in which petitions for review in administrative proceedings had been pending before the former Supreme Court.

20. A three-member panel of the Supreme Administrative Court gave judgment on 14 January 1997. It held that the petition for review had been submitted within the two-month statutory time-limit and was thus admissible and continued:

> "... The petition for review is well-founded.
>
> In the judgment under review the Varna Regional Court quashed the tacit refusal of the mayor ... of Varna to enter into a contract for the sale of a State-entity-owned housing unit ... to its tenant...
>
> The mayor's decisions to enter into contracts for the sale of State-owned housing units under the State Property Regulations [of 1975] or the refusals to do so, including where the housing units have been given, for management, to ministries, other State entities, State commercial enterprises and institutions, are not administrative decisions within the meaning of section 2 of the [APA]. These decisions precede the execution of the bilateral transaction for transferring title to the respective property from the

State to the individual purchaser and denote the assent of the mayor ... to the future execution of such a deal. [The mayor] does not, however, act as an administrative authority; he is placed on equal footing with the private individual contracting with him. For this reason his acts in such cases fall out of the ambit of the [APA] and are not subject to review under it. ...

Moreover, in view of the terms of section 117 of the State Property Regulations [of 1975], it could not be accepted that the municipalities are bound to sell State-entity-owned housing units to the tenants settled therein. This provision sets out only the manner in which these housing units are sold and the persons who are entitled to purchase them in the event of a decision to that effect by the competent body. There is no legal obligation for the mayor to approve the sale of a State-entity-owned flat. This lack of a legal duty excludes administrative or judicial review under the [APA].

...

In examining the application [for judicial review] the [Varna] Regional Court overstepped its jurisdiction. Its judgment therefore is to be quashed, the application is to be left without examination, and the proceedings are to be discontinued. ..."

21. On 24 February 1997 the applicant filed a petition for review, expounding all his arguments, including those relating to the merits of the case. Later he filed additional observations. A hearing was held on 19 June 1997, at which the applicant's counsel argued the case and made reference to his earlier written pleadings.

22. On 10 July 1997 a five-member panel of the Supreme Administrative Court found the applicant's petition timely, but dismissed it in the following terms:

"The three-member panel's judgment is well-founded. The proceedings before the Varna Regional Court related to the refusal of the mayor of Varna to enter into a contract for the sale of a State-entity-owned housing unit. The holding that the decisions to enter into a contract for the sale of State-owned housing units in the manner prescribed in the State Property Regulations [of 1975] or the refusals to do so, including where [such housing units] have been assigned to State entities, as in the case at hand, are not individual administrative decisions within the meaning of section 2 of the APA is correct. [These decisions] precede the execution of a bilateral transaction transferring title to the property from the State to the [individual], and denote the assent of the mayor ... to the future execution of this transaction. [The mayor] does not act as an administrative authority; he is placed on an equal footing vis-à-vis the private person. Therefore, his acts in such cases are not encompassed by the [APA]. Acts which relate to civil-law relations, where the administrative authority and the [person concerned] are on an equal footing, are not individual administrative decisions within the meaning of the APA.

The three-member panel correctly found that in view of section 117 et seq. of the State Property Regulations [of 1975] it could not be accepted that the municipalities are bound to sell State-entity-owned housing units to their occupants. This provision sets forth only the manner of selling such units, which could be purchased in the event of a decision to this effect by the competent body. There is however no legal duty for the mayor ... to assent to the sale of a State-entity-owned housing unit, and in the

absence of such a legal obligation administrative or judicial review under the APA is inadmissible."

23. Neither the three-member panel, nor the five-member one mentioned the Housing Act of 1991 in their reasons.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Housing Act of 1991

24. This Act concerns mainly persons who have deposited money in special housing bank accounts prior to 1991 (the applicant does not fall into this category).

25. Separately, paragraph 4 of the additional provisions of the Act, dealing with the housing needs of employees of State entities („ведомства"), provided, as enacted in October 1991:

"State entities which own residential buildings may sell existing housing units to their employees ... provided the persons willing to purchase them meet the requirements of section 2(1)."

26. Effective 3 August 1992, that text was amended to read:

"1. State entities ... shall, by decisions adopted by their managements after 4 March 1991 and not later than six moths after the entry into force of this amendment of the Act, sell the existing housing units to their employees under the following terms:

(1) employees who have applied to purchase State-entity-owned housing units not later than 4 March 1991 or were tenants therein before that date and who meet the requirements of section 2(1)(1), (3) and (4) of the Act may purchase the units at prices set in accordance with [previous, more favourable pricing rules].

(2) employees who were settled as tenants after 4 March 1991, but before the entry of this amendment of the Act into force, and, as of the date of issuing of the settlement order, met the requirements of section 2(1)(1), (3) and (4) of the Act, may purchase the housing units at prices set in accordance with [the then current pricing rules].

2. The difference between the price at which the housing units are acquired under subparagraph 1 and their real value shall be borne by the [respective State entity]."

27. Points 1, 3, and 4 of section 2(1) of the Act, as in force at the relevant time, laid down certain conditions for the persons concerned to come within its purview: (i) that they did not own homes or country houses fit for permanent use whose value, when added to the value of the remainder of their assets, was above 150,000 old Bulgarian levs (BGL), (ii) that they had not conveyed title to homes to third parties after 1 January 1981, except in cases of partition of property, and that (iii) the total amount of their movable and immovable assets, other than their homes and country

houses, valued in accordance with the Regulations for the implementation of the Act, was below BGL 150,000.

B. Regulations for the implementation of the Housing Act of 1991

28. Section 2 of the Regulations („Правилник за прилагане на Закона за уреждане на жилищните въпроси на граждани с многогодишни жилищно-спестовни влогове“), which were enacted in October 1992, reads:

> "The persons eligible within the meaning of the Act are:
>
> ...
>
> (3) tenants in housing units owned by [State entities] whose tenancies commenced before 3 August 1992; ..."

29. Paragraph 2(1) of the of the additional provisions of the Regulations defines "existing housing units" (the expression used in paragraph 4 of the additional provisions of the Act – see paragraphs 25 and 26 above) as units which have been completed not later than 4 March 1991 (in the cases falling under subparagraph 1(1) of paragraph 4) or 3 August 1992 (in the cases falling under subparagraph 1(2) of paragraph 4).

30. Paragraph 2(2) of the additional provisions of the Regulations provides that paragraph 4 of the additional provisions of the Act does not apply to housing units which have been assigned by the municipalities to State entities for use and management.

31. By paragraph 2(3) of the additional provisions of the Regulations, the decisions to sell State-entity-owned housing units are valid if they are adopted by their collective management bodies, or by the respective government minister or an official authorised by him or her.

32. Paragraph 18(1) of the transitional and concluding provisions of the Regulations (added in March 1995) provides that if the housing units under paragraph 4 of the additional provisions of the Act have been listed as long-term assets of State-owned commercial companies, the difference between the price at which they were sold and their book value has to be noted down as a reduction of these companies' capital.

C. The State Property Regulations of 1975

33. The State Property Regulations of 1975 (repealed in September 1996) were adopted by the Council of Ministers under section 21 of the Property Act of 1951 („Закон за собствеността“) – which empowered it to make regulations for the "management, use, and disposition" of State property – and governed, *inter alia*, the procedure for selling housing units owned by the State (section 109(1)).

34. Their section 111(2) provided that where housing units, given for "use and management" to, *inter alia*, State entities or State commercial enterprises and institutions, were put up for sale, they had to be turned over to the municipality on the territory of which they were situated for effectuating the transaction.

35. Section 120(1) provided that the sale was effected on the basis of an order of the chairperson of the executive committee of the municipal council (after the adoption of the Constitution of 1991 that was the mayor).

36. Section 117 dealt with the conditions for and the manner of selling of State-owned housing units to tenants.

D. Legal regime of the assets of State enterprises

37. Before 1989, under the communist regime, State enterprises did not enjoy an independent right of property over their assets; these assets were the property of the State and were only made available to them for "use and management".

38. Under the Trade Act of 1991 („Търговски закон") and other reform legislation adopted in 1991 and 1992, State enterprises had to be transformed, by decision of the relevant ministry and upon registration at the competent court, into single-member limited liability companies or single-shareholder joint-stock companies whose sole member or shareholder was the State.

39. The question whether the transformed enterprises became full owners of their assets or continued to be only beneficiaries of a right to "use and manage" them on behalf of the State was unclear and was still discussed in the legal theory after 1991. It was finally settled with the adoption, in May 1996, of the State Property and the Municipal Property Acts of 1996 („Закон за държавната собственост" и „Закон за общинската собственост"). Sections 2(4) of both Acts provided that the assets of State- or municipality-owned commercial companies were not the property of the State or, respectively, of the municipalities, even if they were the sole shareholder or member of such companies. In December 1999 the Supreme Administrative Court confirmed that this provision applied to flats previously made available for "use and management" to State enterprises which had later been transformed into commercial companies (реш. № 7376 от 30 декември 1999 г. по адм.д. № 4277/1999 г., ВАС, III о.).

E. Judicial review of administrative action

1. Relevant constitutional and statutory provisions

40. Article 120 of the Constitution of 1991 provides:

"1. The courts shall review the lawfulness of the administrative authorities' acts and decisions.

2. Natural and juristic persons shall have the right to seek judicial review of any administrative act or decision which affects them, save as expressly specified by statute."

41. The APA governs the procedure for issuing administrative decisions and for judicial review of such decisions. Section 2(1) of the APA defines "individual administrative decisions" as "decisions issued [by public authorities], which create rights or obligations for, or affect the rights or the legitimate interests of, individuals or juristic persons, as well as the refusals to issue such decisions". By sections 33 and 34 of the APA, all "administrative decisions", save those relating to the national security or specifically enumerated by statute, are subject to judicial review.

2. Judgment no. 21 of 1995 of the Constitutional Court

42. In this interpretative judgment no. 21 of 26 October 1995 in constitutional case no. 18/1995 (реш. № 21 от 26 октомври 1995 г. по к.д. № 18 от 1995 г., обн. ДВ, бр. 99 от 10 ноември 1995 г.) the Constitutional Court gave a binding interpretation of Article 120 § 2 of the Constitution. It held, *inter alia*, that this provision encompassed all administrative decisions regardless of their character or theoretical qualification. The exclusion of a given administrative decision from judicial review could only be done by statute. "All administrative decisions" meant "without exception". Only internal decisions which did not affect in any way physical or juristic persons outside the respective administration were not covered by the constitutional provision.

F. Review proceedings before the former Supreme Court

43. Until December 1997 section 44 of the APA provided that the regional courts' judgments on applications for judicial review of administrative decisions were final and could be set aside only in accordance with Article 225 et seq. of the Code of Civil Procedure of 1952 ("the CCP").

44. Articles 225-30 of the CCP, repealed with effect from 1 April 1998, governed review proceedings before the former Supreme Court. Prior to 1990 these texts stipulated that review proceedings were initiated on the proposal of the Chief Prosecutor or the chairperson of the Supreme Court, which was not, as a rule, limited by time, and was examined in private by a section of the Supreme Court or its Plenary.

45. However, these texts were fully reshuffled with effect from 21 April 1990 and henceforth provided that review proceedings were initiated upon the petition of a party to the case (Article 225 § 1), lodged within two

months after the entry into force of the lower court's judgment (Article 226 § 1), or the proposal of the Chief Prosecutor (Article 225 § 2), lodged within one year after the judgment's entry into force (Article 226 § 1). A petition for review did not have suspensive effect, but the Supreme Court could, on the application of the petitioning party, order a stay of the enforcement of the lower court's judgment in case such enforcement would cause irreparable harm to the petitioning party (Article 225 § 4). The petition was examined by the Supreme Court at a public hearing in the presence of the parties to the case (Article 227 § 2). The Supreme Court had the power to set the judgment aside wholly or in part, whenever (i) it was "contrary to the law", (ii) "substantial breaches of procedural law [had] occurred during the proceedings or in connection with the delivery of the judgment", or (iii) it was "ill-founded" (Article 225 § 3 in conjunction with Article 207). If the Supreme Court set the lower court's judgment aside, it could either decide the case itself, or exceptionally remit it to the lower court for re-examination (Article 229 § 2).

G. The possibility to reopen civil proceedings as a result of a judgment of the European Court of Human Rights

46. Article 231 § 1 (h) of the CCP, adopted in 1997 and in force since 1 April 1998, provides that an interested party may request the reopening of civil proceedings in case a "judgment of the European Court of Human Rights has found a violation of the [Convention]". By section 45 of the APA and section 41(1) of the Supreme Administrative Court Act of 1997 („Закон за върховния административен съд"), this provision is applicable to proceedings in administrative cases as well. The Supreme Administrative Court has already had occasion to use it to reopen proceedings resulting in a ruling that the courts had no jurisdiction to examine an application for judicial review of an administrative decision (see *Al-Nashif v. Bulgaria*, no. 50963/99, 20 June 2002; and реш. № 4332 от 8 май 2003 г. по адм.д. № 11004/2002 г., ВАС, петчленен състав).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

47. The applicant complained that he had been denied access to a court in respect of his application for judicial review of the tacit refusal of the mayor to proceed with the sale of the flat. He also complained that the

proceedings before the Supreme Administrative Court had not been fair. He relied on Article 6 § 1 of the Convention, which provides, as relevant:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ..."

A. The parties' submissions

1. The applicant

48. The applicant submitted that he had been denied effective access to a court in respect of the tacit refusal of the mayor to approve the purchase of the flat. He maintained that the proceedings which he had instituted had been intended to vindicate his civil right, in the Convention meaning of the term, to buy the flat.

49. As regards the question whether the mayor's approval had been needed and whether, therefore, the proceedings which the applicant had instituted had been determinative of a right, he argued that the sales of flats owned by State entities had always been effected in the manner provided by the State Property Regulations of 1975. This had also been the opinion of the Varna Regional Court, the only court which had in fact examined the issue. Under the Regulations, the board of directors of the applicant's employer did not have any other course of action but to request the permission of the mayor. This had not been disputed by the Government.

50. The applicant stated that the question whether the mayor's refusal had been an "individual administrative decision" within the meaning of domestic law was immaterial for the purposes of Article 6 § 1 of the Convention. What mattered was that he had had a right, which had been infringed, to buy the flat. However, the Supreme Administrative Court, relying on the obsolete theory of the "individual administrative decision" and disregarding Article 120 § 2 of the Constitution, had denied the courts jurisdiction to examine his application for judicial review on the merits. In any event, the Supreme Administrative Court had erred in its analysis of domestic law. It was true that, as a rule, the mayor's acts relating to the sale of State property were not "administrative decisions". However, in the case at hand the mayor had not been a contracting party and had enjoyed no discretion, because the sale had been mandated by the Housing Act of 1991. All the mayor had to do was to verify whether the conditions of the Act had been met by the applicant.

51. The applicant further argued that the Supreme Administrative Court had not given any reasons in respect of his arguments stemming from the Housing Act of 1991, although this issue was of crucial importance for the outcome of the case. That court had not mentioned Article 120 § 2 of the Constitution either, despite its fundamental importance.

52. Finally, the applicant submitted that the proceedings in the Supreme Administrative Court had been unfair because that court had verified of its own motion whether the mayor's petition for review had been timely. It had thus shown its bias in favour of the mayor and had infringed the equality-of-arms principle. In addition, the proceedings had been unfair in that during the hearing on 7 October 1996 the parties had only had time to present arguments on the issue whether the mayor's petition for review had been timely, while the merits of the case had remained untouched.

2. The Government

53. The Government stated that the State Property Regulations of 1975 had set out in detail the manner and conditions for selling State-owned flats, including flats owned by State entities. The sale of State property to private persons was a complex transaction, comprising both administrative and civil-law elements. Under Bulgarian administrative law the parties to a legal relationship were not equal; the administrative authority was in a dominant position vis-à-vis the private person. Therefore, the administrative authority could act unilaterally, without obtaining the consent of the other parties concerned. By contrast, civil-law relations were characterised by the equality of the parties.

54. The Government explained that the reasons on which the Supreme Administrative Court had relied to hold that the mayor's refusal had not been an "administrative decision" within the meaning of section 2(1) of the APA were that when it came to the selling of State-owned property, the mayor's assent preceded the execution of the contract. The mayor did not act as an administrative authority issuing binding orders, but was at an equal footing vis-à-vis the contracting private party. He or she could not be bound by another authority or by the private party to give such assent. The private party's right of property did not arise immediately after the mayor's act, but only after all elements of the transaction had been completed. Thus, as they were not "individual administrative decisions", the mayor's acts relating to the sale of State property fell outside the ambit of the APA and were not subject to judicial review.

55. The Government further argued that the Supreme Administrative Court's judgments had been lawful and well-founded. In view of that court's finding that the application for judicial review was inadmissible, it would have been superfluous to discuss the relevance of the Housing Act of 1991 or, indeed, any issues going to the merits of the case.

56. Finally, the Government maintained that the proceedings had been fair and that the Supreme Administrative Court had been impartial. The applicant's allegation that that court had showed bias by inquiring of its own motion about the date when the Varna Regional Court's judgment had been entered in the register was ill-founded. The transcript of the hearing indicated that the prosecutor who had participated in the proceedings had

made a request to the court to establish the starting point of the time-limit for the lodging of the petition for review.

B. The Court's assessment

1. Applicability of Article 6 § 1

57. Under the Court's well-established case-law, Article 6 § 1 extends only to "contestations" (disputes) over civil rights and obligations which can be said, at least on arguable grounds, to be recognised under domestic law; it does not itself guarantee any particular content for these rights and obligations in the substantive law of the Contracting States (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 87, ECHR 2001-V, with further references). The "contestation" (dispute), which may concern both questions of fact and questions of law, may relate not only to the actual existence of a right, but also to its scope or the manner in which it may be exercised. The result of the proceedings must be directly decisive for such a right (see, among many other authorities, *Le Compte, Van Leuven and De Meyere v. Belgium*, judgment of 23 June 1981, Series A no. 43, p. 21, § 47; and *Benthem v. the Netherlands*, judgment of 23 October 1985, Series A no. 97, pp. 14-15, § 32).

58. The Court will first address the question whether a right, in the autonomous meaning of Article 6 § 1 of the Convention (see, *mutatis mutandis*, *König v. Germany*, judgment of 28 June 1978, Series A no. 27, pp. 29-30, § 88), to buy the flat at a preferential price could arguably be said to be recognised under national law. To ascertain whether this was the case, it must only verify whether the applicant's arguments on this point were sufficiently tenable; it does not have to decide whether they were well-founded in terms of Bulgarian law (see *Le Calvez v. France*, judgment of 29 July 1998, *Reports of Judgments and Decisions* 1998-V, pp. 1899-900, § 56). In so doing it must have regard to the wording of the relevant legal provisions and to their construction, if any, by the domestic courts. This point must be determined by reference to the time when the applicant instituted the proceedings in issue, as the Supreme Administrative Court's later holdings to the effect that under domestic law there was no duty for the municipality to sell, did not remove, retrospectively, the arguability of the applicant's claim (see *Z and Others*, cited above, § 89).

59. The applicant alleged that the text of paragraph 4 of the additional provisions of the Housing Act of 1991, as amended on 3 August 1992 – that State entities "shall ... sell the existing housing units to their employees" – entitled him to purchase the flat, provided he satisfied certain conditions, which he claimed he did. In the opinion of the Court, that provision could be read as creating such an entitlement; moreover, its implementing regulations spoke of "eligible" persons (see paragraphs 26 and 28 above).

60. There could be some doubt whether the term "State entities" („ведомства") – the meaning of which was not entirely clear during the transition from a wholly State-owned to a market economy in the 1990s – encompassed the newly formed State-owned commercial companies and, accordingly, whether the applicant's employer had to comply with the obligation flowing from this provision. However, it appears that paragraph 18(1) of the transitional and concluding provisions of the implementing regulations of the Act – which provides that if the housing units under paragraph 4 of the additional provisions of the Act have been listed as long-term assets of State-owned commercial companies, the difference between the price at which they were sold and their book value has to be noted down as a reduction of these companies' capital (see paragraph 32 above) – supplies the answer to that question. Moreover, the domestic courts – as well as the applicant's employer itself – had no doubts that, although transformed into a joint-stock company, it continued to be a "State entity" within the meaning of domestic law and that the flat in issue, although part of the assets of a State-owned joint-stock company, was a State-entity-owned („ведомствен") one (see paragraphs 11, 14, 20 and 22 above).

61. The parties did not point to any domestic case-law interpreting paragraph 4 of the additional provisions of the Act. However, having regard to the above considerations, the Court is of the view that the applicant's construction of the law was at least arguable. This was confirmed by the judgment of the Varna Regional Court, which found in his favour and specifically held that he had a right to purchase the flat occupied by him (see paragraph 14 above).

62. The Court is thus satisfied that at the outset of the proceedings there was a serious and genuine dispute about the existence of a right asserted by the applicant under domestic law.

63. It remains to be determined whether the result of the proceedings was decisive for that right (see *Le Compte, Van Leuven and De Meyere*, cited above, p. 21, § 46 *in limine*; and *Balmer-Schafroth and Others v. Switzerland*, judgment of 26 August 1997, *Reports* 1997-IV, p. 1359, § 39). The Court observes on this point that, as noted above, the domestic courts in the present case had no doubt that the applicant's employer, although transformed into a State-owned commercial company, continued to be a "State entity" within the meaning of the State Property Regulations of 1975 and had to follow the procedure laid down therein to sell a flat to one of its employees, i.e. turn it over to the municipality for the effectuation of the transaction (see paragraphs 14, 20 and 22 above). This also seems to have been the procedure followed in many cases analogous to the applicant's. The Court is thus satisfied that at the material time the mayor's assent to the sale was needed under domestic law and, accordingly, that the proceedings relating to his refusal to give such assent were determinative of

the applicant's alleged right to purchase the flat (see, *mutatis mutandis*, *Ringeisen v. Austria*, judgment of 16 July 1971, Series A no. 13, p. 39, § 94 *in fine*).

64. Having regard to the foregoing considerations, and noting that the alleged right to acquire the flat was individual and economic in nature and thus "civil" within the meaning of Article 6 § 1 of the Convention, the Court concludes that that provision is applicable.

2. Compliance with Article 6 § 1

65. The Court notes at the outset that, unlike the cases of *Brumărescu v. Romania* ([GC], no. 28342/95, ECHR 1999-VII), *Sovtransavto Holding v. Ukraine* (no. 48553/99, ECHR 2002-VII) and *Ryabykh v. Russia* (no. 52854/99, ECHR 2003-IX), and their progeny, the present case does not concern a situation in which a final and binding judgment was overturned in extraordinary proceedings. This is because, unlike the situations obtaining in all these cases, and in spite of the terminological similarity, review proceedings before the former Bulgarian Supreme Court were, after the reform of the CCP of 21 April 1990, not extraordinary proceedings, but part of the normal three-instance proceedings (see *Stoitchkov and Shindarov v. Bulgaria*, nos. 24571/94 and 24572/94, Commission decision of 28 June 1995, Decisions and Reports 82, p. 85, at p. 94; *Petrov v. Bulgaria*, no. 24140/94, Commission decision of 22 February 1995, unreported; *Stankov and the United Macedonian Organisation Ilinden*, nos. 29221/95 and 29225/95, Commission decision of 29 June 1998, unreported; *Marintchev v. Bulgaria* (dec.), no. 43232/98, 8 July 2003; and *Raichinov v. Bulgaria* (dec.), no. 47579/99, 1 February 2005). This was so because (i) they were directly accessible to the litigants, (ii) were, as a rule, initiated, as in the case at hand, by the parties to the case, not by a third-party State official, (iii) the possibility of instituting them was subject to a relatively short time-limit, and (iv) in these proceedings the Supreme Court could, much as a court of cassation, examine whether the judgments of the courts below were contrary to the law or ill-founded, or whether there had been a substantial breach of procedure, and had the power to quash them (see paragraphs 43-45 above). Thus, although the Varna Regional Court's judgment was technically regarded as final, it was in effect not such, as it could be, and, indeed, was overturned in the review proceedings.

66. The Court must nonetheless examine whether the judgments delivered by the Supreme Administrative Court in these proceedings violated the applicant's right under Article 6 § 1 of the Convention to obtain a judicial determination of his alleged right to acquire the flat in issue in the present case.

67. It reiterates on this point that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought

before a court or tribunal; in this way it embodies the "right to a court", of which the right of access constitutes one aspect (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, pp. 13-18, §§ 28-36; and *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3166, § 136, and p. 3169, § 147).

68. While it is clear that in the instant case the applicant was not prevented from commencing judicial review proceedings, that does not suffice, as the right of access to a court includes not only the right to institute proceedings but also the right to obtain a determination of the dispute by a court (see *Kutić v. Croatia*, no. 48778/99, § 25, ECHR 2002-II; and *Lungoci v. Romania*, no. 62710/00, § 35, 26 January 2006).

69. The Court must therefore establish whether the Supreme Administrative Court in fact determined the dispute, as the mere fact that the application for judicial review was held to be inadmissible does not mean that the applicant was denied access to a court, always provided that the dispute which he submitted for adjudication was the subject of a genuine examination (see, *mutatis mutandis*, *Obermeier v. Austria*, judgment of 28 June 1990, Series A no. 179, p. 21, § 68).

70. The Court notes in this connection that the *ratio decidendi* of the three-member and the five-member panels of the Supreme Administrative Court was that no judicial review was available, because the mayor's tacit refusal was not an "individual administrative decision" within the meaning of the APA, as he was not acting as an administrative authority, but as a party to a prospective contract and was thus placed on an equal footing with the applicant (see paragraphs 20 and 22 above). It is true that they also held *obiter* that the State Property Regulations of 1975 did not create an entitlement to acquire State-owned flats. However, they did not touch upon the substance of the applicant's claim and the main thrust of his argument, namely that that he had a specific right to a acquire the flat by virtue of paragraph 4 of the additional provisions of the Housing Act of 1991, as amended on 3 August 1992, provided, of course, that he met the conditions laid down in section 2(1) of the Act.

71. The Court cannot subscribe to the Government's suggestion that this submission was so clearly unfounded that it was unnecessary for the Supreme Administrative Court to refer to it. The fact that the Varna Regional Court based the crux of its reasoning on it suggests the contrary (see paragraph 14 above). It is therefore necessary to establish whether the silence of the Supreme Administrative Court can reasonably be construed as an implied rejection. The Court notes on this point that the provision in issue was a special enactment, adopted more than fifteen years after the State Property Regulations of 1975 and at a time of wide-sweeping reform in the country. It dealt not with the sale of State property in general, but with the much narrower issue of the possibility for the employees of "State entities" to purchase flats in which they had been settled as tenants (see

paragraphs 24-27 above). Its impact thus appears to have been decisive for the outcome of the case and therefore required a specific and express reply. However, it was not even mentioned, let alone discussed, in the reasoning of the two panels of the Supreme Administrative Court (see paragraph 23 above). In these circumstances, it is impossible to ascertain whether they simply neglected to deal with that question or whether they intended to dismiss it and, if that were their intention, what were their reasons for so deciding (see *Higgins and Others v. France*, judgment of 19 February 1998, *Reports* 1998-I, p. 61, § 43).

72. It is not for the Court to determine the legal effects of this provision on the applicant's position. This is a question of Bulgarian law, which falls within the exclusive jurisdiction of the Bulgarian courts. It nevertheless reiterates that, while Article 6 § 1 does not lay down specific rules on how to draft and present judicial opinions and cannot be understood as requiring a detailed answer to every argument raised by a litigant, it obliges the courts to give adequate reasons for their judgments (see *Ruiz Torija and Hiro Balani v. Spain*, judgments of 9 December 1994, Series A nos. 303-A and 303-B, p. 12, §§ 29 and 30, and pp. 29 and 30, §§ 27 and 28; and *Albina v. Romania*, no. 57808/00, § 33, 28 April 2005). As a result of the lacuna in the Supreme Administrative Court's reasoning in the instant case the proceedings resulted in a holding that the domestic courts had no jurisdiction to examine the applicant's claim. The applicant was thus not able to obtain a final judicial determination of his alleged entitlement to acquire the flat. The Court observes that no justification has been offered for the obtaining situation. In particular, neither the Supreme Administrative Court nor the Government have sought to justify this denial of access to a court as pursuing a legitimate aim and being in a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. On the other hand, it must be noted that it impaired the very essence of the applicant's right, as it does not appear that he could resort to any other avenue of redress (see, *mutatis mutandis*, *Osman*, cited above, p. 3171, § 153).

73. Having found that the applicant was unjustifiably deprived of effective access to a court, the Court does not consider it necessary to examine separately his complaints about particular aspects of the alleged unfairness of the proceedings before the Supreme Administrative Court which led to that result (see, *mutatis mutandis*, *Ryabykh*, cited above, § 59).

74. There has therefore been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

75. In the view of the applicant, the facts underlying his complaint under Article 6 § 1 of the Convention also gave rise to a violation of Article 13 thereof, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

76. The Court does not consider it necessary to rule on this submission, because, where the right claimed is a civil one, the requirements of Article 13 are less strict than, and are absorbed by, those of Article 6 § 1 (see, among many other authorities, *British-American Tobacco Company Ltd v. the Netherlands*, judgment of 20 November 1995, Series A no. 331, p. 29, § 89; *Baumann v. France*, no. 33592/96, § 39, 22 May 2001; *Crişan v. Romania*, no. 42930/98, § 32, 27 May 2003; and *Capital Bank AD v. Bulgaria*, no. 49429/99, § 121, 24 November 2005).

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

77. The applicant complained that the mayor had failed to approve the purchase of the flat and had thus deprived him of his right to acquire it at a preferential price. He relied on Article 1 of Protocol No. 1 to the Convention, which provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

78. According to the applicant, paragraph 4 of the additional provisions of the Housing Act of 1991, as amended with effect from 3 August 1992, gave him an entitlement to purchase the flat at a preferential price in his capacity of a tenant, and obliged the authorities to approve this sale. While the initial wording of paragraph 4 had been that the "State entities ... may sell existing housing units", it had been amended to provide that "State entities ... shall ... sell the existing housing units". Therefore, after 3 August 1992 State entities, such as his employer, were under an obligation to sell the existing flats, provided of course that the persons willing to buy them up met the requirements of the Act. The Act had been adopted many years after the State Property Regulations of 1975 and, moreover, constituted *lex specialis* in relation to their more general provisions.

79. The applicant submitted that, while it was true that it was only the competent authorities who could conclusively rule on the existence of the prerequisites for the right to buy the flat or the lack thereof, these authorities had refused to do exactly that. The applicant had provided to the municipality all necessary items purporting to establish that he had met the requirements of the Act, but it had failed to examine the matter. The owner of the flat – the applicant's employer – had agreed to the sale. In these circumstances, the mayor could not revisit the issue, but could only verify whether the applicant conformed to the requirements of the Act.

80. The applicant further maintained that the Government apparently admitted that he had the right to buy the flat. The existence of the prerequisites for buying it, even though not part of the subject-matter of the proceedings before the Court, could be considered established by the assent to the purchase given by the board of directors of the applicant's employer. The only reason for the non-completion of the transaction had been the refusal of the mayor to issue the requisite order. The need for this order existed because of the outdated provisions of the State Property Regulations of 1975. In these circumstances, the applicant was placed in the absurd situation of having the right to buy the flat at a preferential price, of having obtained the assent of the flat's owner – his employer –, but not being able to acquire it because of the unwillingness of the municipal authorities to examine his case.

81. The Government submitted that the right to buy a flat under paragraph 4 of the additional provisions of the Housing Act of 1991 was subject to a number of requirements: that the person concerned had a proven housing need, that the total amount of his household wealth, calculated using special methods, was below a certain threshold, that he had not disposed of dwellings owned by him after a certain critical date, etc. While the applicant averred that he met these requirements, it was only the competent authorities who could conclusively rule on the issue.

82. The Court notes that the complaint under Article 1 of Protocol No. 1 is directly connected with the one examined under Article 6 § 1 of the Convention. Having regard to its conclusions under that Article and its finding that the applicant was unduly prevented from obtaining a determination of his alleged entitlement to acquire the flat, the Court considers that it cannot speculate as to what the situation would have been if the applicant had had effective access to a court. Consequently, it does not consider it necessary to rule on the question whether the applicant had a possession within the meaning of Article 1 of Protocol No. 1, and accordingly, on the complaint based on that Article (see *Glod v. Romania*, no. 41134/98, § 46, 16 September 2003; *Albina*, cited above, § 43; and *Lungoci*, cited above, § 48).

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

83. The applicant also claimed to be the victim of discrimination in breach of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention because, unlike many of his co-workers, he had been unable to purchase the flat he was leasing and his case had not been examined on the merits. Article 14 provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

84. The Court considers that the complaint under Article 14 is tantamount to a restatement of the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. There is therefore no need to examine the same issues again in the context of Article 14 (see *Hentrich v. France*, judgment of 22 September 1994, Series A no. 296-A, p. 24, § 66; and *OGIS-Institut Stanislas, OGEC Saint-Pie X and Blanche de Castille and Others v. France*, nos. 42219/98 and 54563/00, § 90, 27 May 2004).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

86. The applicant claimed 20,000 euros (EUR) as compensation for the pecuniary damage which he had suffered on account of the impossibility to purchase the flat at a reduced price. He further claimed EUR 5,000 for the non-pecuniary damage sustained as a result of the lack of effective access to a court and the prolonged uncertainty of his legal situation.

87. The Government did not comment.

88. The Court notes that in the present case an award of just satisfaction can only be based on the fact that the applicant did not have the benefit of the guarantees of Article 6 § 1 of the Convention. Whilst the Court cannot speculate as to the outcome of the proceedings had the position been otherwise, it does not find it unreasonable to regard the applicant as having suffered a loss of real opportunities. To this has to be added the non-pecuniary damage which the finding of a violation of the Convention in the present judgment does not suffice to remedy (see *Crişan*, § 36; *Glod*,

§ 50; and *Albina*, § 49, all cited above). Ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards him EUR 3,000, plus any tax that may be chargeable, for all heads of damage taken together.

89. The Court also considers it necessary to point out that a judgment in which it finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and make all feasible reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Lungoci*, cited above, § 55, citing *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 487, ECHR 2004-VII). In the case of a violation of Article 6 of the Convention, the applicant should as far as possible be put in the position he would have been in had the requirements of this provision not been disregarded (see *Lungoci*, cited above, § 55; and, *mutatis mutandis*, *Sejdovic v. Italy* [GC], no. 56581/00, § 127, ECHR 2006-...).

90. The Court notes in this connection that Article 231 § 1 (h) of the CCP, which applies to proceedings in administrative cases such as the ones at issue here (see paragraph 46 above), allows the reopening of the domestic proceedings if the Court has found a violation of the Convention or its Protocols. The Court is in any event of the view that the most appropriate form of redress in cases where it finds that an applicant has not had access to a tribunal in breach of Article 6 § 1 of the Convention would, as a rule, be to reopen the proceedings in due course and re-examine the case in keeping with all the requirements of a fair trial (see *Lungoci*, cited above, § 56, with further references).

B. Costs and expenses

91. The applicant sought the reimbursement of EUR 2,240 incurred in legal fees for the proceedings before the Court. He also claimed EUR 30 for postage and EUR 296 for the translation of thirty-seven pages.

92. The Government did not comment.

93. According to the Court's case-law, applicants are entitled to the reimbursement of their costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500, plus any tax that may be chargeable.

C. Default interest

94. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds* that it is not necessary to rule on the allegation of a violation of Article 13 of the Convention;

3. *Holds* that it is not necessary to rule on the allegation of a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds* that it is not necessary to rule on the allegation of a violation of Article 14 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable on the date of settlement:
      (i) EUR 3,000 (three thousand euros) in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses;
      (iii) any tax that may be chargeable on the above amounts;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President