CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIFTH SECTION

CASE OF VELIKOVI AND OTHERS v. BULGARIA

(Applications nos. 43278/98, 45437/99, 48014/99, 48380/99, 51362/99, 53367/99, 60036/00, 73465/01, and 194/02)

JUDGMENT

STRASBOURG

15 March 2007

FINAL

09/07/2007

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 Velikovi and Others 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,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr M. VILLIGER, *judges*,
and Ms C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 20 February 2007,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in nine applications against the Republic of Bulgaria lodged by Bulgarian nationals under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") as follows: application no. 43278/98, *Velikovi*, on 10 April 1998[1]; application no. 45437/99, *Wulpe*, on 11 December 1998; application no. 48014/99, *Cholakovi*, on 12 March 1999; application no. 48380/99, *Todorova*, on 4 February 1999; application no. 51362/99, *Eneva and Dobrev*, on 13 May 1999, application no. 53367/99, *Stoyanova and Ivanov*, on 2 November 1999; application no. 60036/00, *Bogdanovi*, on 4 January 2000; application no. 73465/01, *Tzilevi*, on 11 May 2001; and application no. 194/02, *Nikolovi*, on 29 September 2001.

2. The representatives of the applicants are indicated below. The applicants in all cases with the exception of *Eneva and Dobrev* (no. 51362/99) and *Tzilevi* (no. 73465/01) were granted legal aid. The Bulgarian Government ("the Government") were represented by their agents, Mrs M. Dimova and Mrs M. Karadjova.

3. All the applicants alleged, *inter alia*, that they had been deprived of their property in violation of Article 1 of Protocol No. 1 to the Convention.

4. By separate decisions of 12 May 2005 in each case, the Court declared some of the applications admissible and others partly admissible.

5. The applicants and the Government each filed further written observations (Rule 59 § 1).

[1] Lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention and 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).

THE FACTS

I. THE CIRCUMSTANCES OF EACH CASE

A. The case of *Velikovi* (application no. 43278/98)

6. Mr Ilia Velikov ("the first applicant") was born in 1923. He passed away on 27 April 2002. His sons, the second and the third applicants, stated that they maintained the application. Mr Atanas Velikov ("the second applicant") was born in 1944. Mr Rossen Atanassov ("the third applicant") was born in 1947. They were represented before the Court by Mr B. Voinov and Mr R. Raykovski, lawyers practising in Sofia

7. On 27 May 1968 the applicants bought jointly from the Sofia municipality a five/six-room apartment which had been nationalised in 1949. They made a 20% down-payment and reimbursed the remainder within the following years. During the relevant period the prices of apartments in big cities were fixed by legislation in amounts equal to at least several years' worth of an average salary.

8. In 1978 the apartment was divided into two apartments which became the ownership of the second and the third applicants respectively. In 1991 the second applicant transferred his title to his two sons, Alexander and Ilia Velikov.

9. In February 1993 the heirs of the pre-nationalisation owner of the whole apartment brought an action against the applicants under section 7 of the Restitution Law (see paragraphs 117-120 below explaining the relevant law and practice). In the proceedings that followed, the courts collected documentary evidence and also heard several witnesses.

10. On 17 February 1995 the Sofia District Court declared the 1968 contract null and void as contrary to the law and restored the plaintiffs' ownership rights.

11. The District Court found that the 1968 contract had not been signed by the relevant official – the mayor of the relevant district (председател на ИК на общински НС). In the applicants' case the decisions approving the contract had been issued by the deputy mayor of the region of Sofia (председател на ИК на Окръжен/Градски НС), the superior of the competent mayor of the relevant district. However, a superior administrative body could not validly usurp the powers vested in their subordinates in matters that were not subject to appeal. Also, the regional mayor's power to approve sales of apartments had only been introduced by an amendment that had entered into force in 1969, several months after the relevant dates.

12. On a final point, the District Court dismissed as unproven the allegation that the first applicant, who had been registered as an "anti-fascist

and anti-capitalist veteran" – a registration which at the relevant time carried a number of privileges guaranteed by law – had abused his position to obtain the apartment at issue.

13. On 20 January 1997 the Sofia City Court dismissed the applicants' ensuing appeal.

14. Upon the applicants' petition for review (cassation), on 27 October 1997 the Supreme Court of Cassation upheld the lower courts' judgments while adding that there was sufficient circumstantial evidence of abuse: information that the first applicant might have been given priority, that he had made statements against persons who had applied to buy the same apartment and that when applying to purchase the apartment in 1968 he had stated that he should be "given his due" as a veteran.

15. On 25 November 1997 the restored owners brought an action for *rei vindicatio*. On an unspecified date in the beginning of 2000 the applicants and their sons vacated the two apartments and the pre-nationalisation owners took possession thereof.

16. Since October 2000 the sons of the second applicant have been renting an apartment at the monthly rate of 100 Euros ("EUR"). The applicants' families unsuccessfully requested the Sofia municipality to provide them with municipal apartments at fixed rental rates.

17. On an unspecified date the applicants and their sons requested compensation by bonds under the Compensation Law (for an explanation about that compensation scheme and the fluctuations in bond prices, see paragraphs 133-139 below). The market value of the two apartments was assessed in the beginning of 2000 by a certified expert at 84,756 Bulgarian levs ("BGN"), the equivalent of approximately EUR 42,900. The applicants received compensation bonds of that amount.

18. Some of the applicants or their sons sold their bonds in November 2004, when such bonds were traded at about 68% of their face value. One of the applicants sold his bonds at a moment when the market reached a peak, bonds trading at 110% of face value. In total, the applicants and their sons obtained the equivalent of approximately EUR 30,500 as compensation.

B. The case of *Wulpe* (application no. 45437/99)

19. The applicant, Mrs Nadejda Wulpe, is a Bulgarian national, who was born in 1929 and lives in Sofia. Before the Court she was represented by Mrs S. Marguaritova-Voutchkova, a legal adviser practising in Sofia.

20. In 1969 the applicant's husband was granted the tenancy of a three-room, 95-square-metres' state-owned apartment. The applicant's family moved in. The applicant had two daughters.

21. In 1982 the applicant, who had divorced and had obtained the tenancy of the apartment, purchased it and reimbursed the price within the following years.

22. In 1993 the heirs of the pre-nationalisation owners of the apartment, which had been nationalised in 1949 without compensation, brought an action against the applicant under section 7 of the Restitution Law.

23. It appears that at that time the applicant no longer lived in Burgas. She had moved to Sofia on an unspecified date.

24. By judgment of 24 March 1995 the Burgas District Court declared the 1982 purchase null and void. The court noted that the tenancy of the apartment had been obtained in 1969 in breach of the law as, according to the applicable rules, a four-member family – as the applicant's – had only been entitled to a two-room apartment. Furthermore, upon her divorce the applicant had been granted the tenancy of the apartment in breach of the law as it had largely exceeded her and her two daughters' needs. In any event, at that time the applicant should have been treated as a "one-member" family, her daughters having moved to Sofia. Moreover, at the moment of the 1982 transaction the applicant had not yet been a resident of Burgas (which was a pre-condition to buy an apartment there) and, since her daughters had attained majority, they could not be counted as members of the family to justify a right to buy a three-room apartment. Finally, the 1982 sale-purchase contract had not been signed by the mayor personally.

25. The applicant's ensuing appeal was dismissed in January 1996 by the Burgas Regional Court. On 17 September 1997 the applicant's petition for review (cassation) was dismissed by the Supreme Court of Cassation. The courts upheld the conclusions of the District Court and stated that each of the breaches of the law found by that court had been sufficient to warrant a finding that the applicant's title was void.

26. On 2 October 1997 the applicant wrote to the mayor requesting market-value compensation in accordance with the June 1996 amendment of the Restitution Law (see paragraphs 129-132 below). She received a reply by the regional governor explaining that such compensation would only be payable after the adoption by the Council of Ministers of regulations on the implementation of the June 1996 amendment.

27. On 20 May 1998 the Burgas Regional Court ordered the applicant to vacate the apartment and to pay to the restored owners damages for having continued to use the apartment since the judgments declaring her title void. The court rejected the applicant's argument that she should not be required to leave until receipt of the market-value compensation provided for by the June 1996 amendment. The court found that her right to compensation from the State could not be invoked against the restored owners who were entitled to enter into possession of their property.

28. On an unspecified date the restored owners took possession of the apartment.

29. Following several unsuccessful applications of 1997 and 1998, on 30 September 1999 the applicant was granted the tenancy of a one-room municipal apartment in Burgas. At that time she lived in Sofia with her

daughter and grand-daughter, still a minor. The applicant's daughter was ill and the applicant helped looking after her grand-daughter.

30. On 21 March 2000 the applicant filed a request with the regional governor for compensation through bonds. On 11 October 2000 the regional governor recognised the applicant's right to compensation bonds and on 12 June 2001 appointed an expert to assess the market value of the apartment. On 4 July 2001 the governor approved the expert's report and ordered the issuance of compensation bonds for face value BGN 39,600 (the equivalent of approximately EUR 20,000).

31. On 18 July 2001 the applicant appealed, contesting the assessment. The appeal was dismissed on 5 February 2002 by the Bourgas Regional Court which, after having appointed another expert who arrived at the same figure as the expert appointed by the regional governor, concluded that the method of calculation used by the two experts had been in conformity with the law. The applicant's ensuing cassation appeal was dismissed on 19 November 2002 by the Supreme Administrative Court.

32. On 2 January 2003 the applicant applied to receive the compensation bonds issued pursuant to the governor's order of 4 July 2001. She received them on 21 April 2003.

33. The applicant sold her bonds in instalments. In September and October 2003 she sold in two parts approximately half of her bonds, at an average rate of 22.6 % of face value. In September 2004 she sold part of her remaining bonds for 25% of their face value. When the bond prices started to rise in November 2004, she sold the remainder she had at 50% of face value. As a final result, the applicant obtained a total of BGN 11,923 (approximately EUR 6,050) as compensation for her apartment.

C. The case of *Cholakovi* (application no. 48014/99)

34. The applicants, Mr Bojko Cholakov and Mrs Milka Cholakova, both Bulgarian nationals, were born in 1914 and 1916 respectively. Mr Cholakov passed away in March 2005. His wife (the second applicant) and her daughter and son, Mr Cholakov's heirs, stated that they wished to continue the proceedings before the Court. The applicants were represented before the Court by Mrs Z. Kalaidjieva, a lawyer practising in Sofia.

35. In 1967 the applicants became tenants in a state-owned apartment of three rooms covering 126 square metres, in the centre of Sofia. In 1969 they purchased the apartment.

36. In 1993 Mr M., the heir of the pre-nationalisation owners of the apartment, brought an action against the applicants under section 7 of the Restitution Law. By judgment of 19 April 1994 the Sofia District Court dismissed the claim finding that that the 1969 transaction had been in conformity with the relevant law and that the allegations of abuse of official

position had not been proven. On 17 June 1996 these findings were upheld on appeal by the Sofia City Court.

37. Mr M. filed a petition for review (cassation). On 17 September 1997 the Supreme Court of Cassation quashed the lower courts' judgments and declared the applicants' title to their apartment null and void. The court found that in 1967 the applicants had obtained the tenancy of the apartment in breach of the law as it had not been shown that they had been registered as persons in need of housing. Furthermore, the apartment had exceeded in size the applicants' housing needs as defined in the applicable law in force at the time. Moreover, assessing all circumstantial evidence, such as that the first applicant had been at the relevant time head of the finance department of the region of Sofia, that the tenancy had been granted pursuant to a letter emanating from the regional administration and that the apartment at issue had been located nearby the applicants' previous residence, the court concluded that the only possible explanation was that the apartment had been obtained through abuse of power and *contra bonas mores*.

38. On 12 October 1998 the applicants were ordered by the Sofia District Court to vacate the apartment. They sought unsuccessfully a postponement, invoking their age and poor health and the lack of compensation, and appealed. It appears that eventually, not earlier than September 2000, the applicants vacated the apartment.

39. On several occasions in 1997 and 1998 the applicants asked the municipal authorities to provide them with a state-owned apartment for rent. They were put on the waiting list. In November 1999 they obtained the tenancy of a 56-square-metres' two-room apartment in the suburbs of Sofia.

40. In the meantime, in July 1998 the applicants had applied for compensation bonds. In 1999 or 2000 the market value of the apartment was assessed by an expert at BGN 113,600 (the equivalent of approximately EUR 57,000) and on 11 August 2000 the applicants obtained compensation bonds for that amount.

41. In 2001 the applicants applied to purchase the two-room municipal apartment they had been renting since 1999. The municipality agreed. On 16 June 2003 the applicants purchased the apartment for BGN 12,550 (the equivalent of approximately EUR 6,500). The applicants paid in cash as their request to pay in compensation bonds had been refused.

42. The applicants sold their bonds on 26 January 2005 at 110% of face value, at a moment when the market had reached a peak, and thus obtained BGN 124,960 (the equivalent of approximately EUR 63,000).

D. The case of *Todorova* (application no. 48380/99)

43. The applicant, Mrs Lubomira Nedkova Todorova, is a Bulgarian national who lives in Plovdiv. She was represented before the Court by Mr M. Ekimdjiev, a lawyer practising in Plovdiv.

44. In 1953 the applicant's grandparents' plot of land and small house in the centre of Stara Zagora were expropriated for the construction of an administrative building. The expropriation was undertaken outside the scope of the nationalisation laws of that period (it was not punitive or redistributive in nature) but concerned building plans in the town. On an unspecified date the house was demolished and an office building was erected on its place.

45. The applicant's grandparents received in compensation ownership of another plot of land and small house in the centre of Stara Zagora. The plot covered 352 square metres and the house 86 square metres. That property had been nationalised in 1949.

46. In 1992 the heirs of the pre-nationalisation owners brought an action against the applicant relying on section 7 of the Restitution Law and also on the general *rei vindicatio* provision of the relevant property law.

47. On 15 February 1994 the District Court dismissed the claim as there had been no breaches of the law in 1953. On appeal, on 28 December 1994 the District Court's judgment was quashed by the Regional Court and the case remitted for renewed examination.

48. By judgment of 12 April 1996 the District Court declared null and void the 1953 expropriation and compensation order, relying on section 7 of the Restitution Law. The court found that at the relevant time an expropriation could only be effected by decision of the Council of Ministers whereas the property of the applicant's grandparents had been expropriated – and they had been given another property in compensation – by decision of the regional authority. As a result, neither the applicant's grandparents nor the applicant, their heir, had ever become owners of the property provided in compensation. The District Court also granted the *rei vindicatio* claim and ordered the applicant to vacate the property.

49. On appeal, on 14 March 1997 the Regional Court upheld the District Court's judgment adding that the fact that the applicant's grandparents had not been responsible for any omission was irrelevant.

50. On 18 December 1998 the Supreme Court of Cassation dismissed the applicant's ensuing petition for review (cassation). It noted that section 7 of the Restitution Law did not apply – it only concerned property obtained through transactions whereas the applicant's title had been based on an administrative decision. Nevertheless, the lower courts' findings that the 1953 order was null and void had been correct. In these circumstances, the applicant's grandparents had never become owners of the plot of land and the building they had received as compensation in 1953. That estate had thus remained State property until 1992 (acquisition through adverse possession against the State was not possible) and in 1992 the pre-nationalisation owners had acquired it back *ex lege*, under the general rule of the Restitution Law, its section 1, providing for the return of certain categories of State properties to their former owners.

51. The court therefore modified the characterisation of the claim in law and upheld the lower courts' judgments insofar as they granted the *rei vindicatio* claim and ordered the applicant to vacate the property at issue. However, insofar as they declared null and void the 1953 order also in its expropriation part, the lower courts had acted beyond their jurisdiction as circumscribed by the pre-nationalisation owners' claim. That part of the judgments had to be quashed.

52. The applicant did not apply for bonds since compensation by bonds was only applicable for persons having lost cases under section 7 of the Restitution Law, whereas in her case the Supreme Court of Cassation had found that provision inapplicable.

E. The case of *Eneva and Dobrev* (application no. 51362/99)

53. The applicants, Mrs Anka Ivanova Eneva and Mr Dobromir Enchev Dobrev, are Bulgarian nationals, who were born in 1932 and 1953 respectively and live in Varna. Before the Court they were represented by Mrs S. Margaritova-Voutchkova, a legal adviser practising in Sofia.

54. The property at issue in the present case, a three-room apartment in Varna of about 93 square metres, was nationalised in 1951 without compensation. Between 1951 and 1959 the local municipal housing fund rented the apartment to several different tenants. In 1961 a Ms G., who had been living in the apartment since 1959, purchased it from the local municipality. In 1964, Ms G., having obtained the necessary authorisation, sold the apartment to the applicants' family.

55. In 1992 the pre-nationalisation owners brought an action under section 7 of the Restitution Law against the applicants and Ms G. They also sought a *rei vindicatio* order.

56. In 1994 the competent District Court dismissed the claim. On appeal its judgment was quashed on 9 January 1996 by the Regional Court which proceeded with an examination on the merits. .

57. By judgment of 24 June 1996 the Regional Court granted the claim. It noted that no trace of a tenancy agreement of 1959 between the municipality and Ms G. had been found in the archives. It found that, therefore, Ms G. had not been a tenant in the apartment at issue and that she had not been entitled to buy it. Furthermore, the 1961 sale-purchase contract between Ms G. and the municipality had not been signed by the mayor personally – a comma was visible before the signature, which meant that someone had signed in the mayor's stead. It followed that Ms G.'s title had been void and that the applicants – who had purchased the apartment from her in 1964 – had not become owners either. The applicants were ordered to vacate the apartment.

58. On 3 December 1998 the Regional Court's judgment was upheld by the Supreme Court of Cassation. The applicants' objection that they had been in good faith and had acquired the apartment through adverse possession was dismissed on the basis of the reasoning that the law excluded acquisitive prescription in respect of State property.

59. The applicants vacated the apartment in April 1999. In August 2001, following an assessment of the market value of the apartment by a certified expert, the applicants obtained compensation bonds in the amount of BGN 71,800 (the equivalent of approximately EUR 36,500).

60. In October and November 2002 the applicants requested the municipal and regional authorities in Varna to sell them an apartment against compensation bonds. The regional governor refused by letter of 7 October 2002. The municipality of Varna, by letter of 16 December 2002, informed the applicants that they could only buy a municipal apartment if they were tenants in such an apartment. Furthermore, in accordance with the relevant municipal regulations, not more than 25 % of the apartment's price could be paid in compensation bonds. The remainder had to be paid in cash.

61. The applicants sold their bonds in instalments. One part was sold in June and August 2004 (at approximately 24.8% of face value) and the remainder in December 2004, when the market rates surged (at 82% of face value). The net amount the applicants obtained, after deduction of the brokers' fees, was BGN 36,961 (the equivalent of approximately EUR 18,800), approximately 50% of the value of the apartment as assessed in 2001.

F. The case of *Stoyanova and Ivanov* (application no. 53367/99)

62. The applicants, Mrs Snejana Avramova Stoyanova and her husband Mr Kosta Kanchev Ivanov, are Bulgarian nationals, who were born in 1927 and 1926 respectively and live in Sofia. They were represented before the Court by Mrs Z. Kalaidjieva, a lawyer practising in Sofia.

63. Since the mid-1950s the first applicant's mother and later the applicants were tenants in a state-owned five-room 197-square-metres' apartment in Sofia. In 1971 the applicants and the first applicant's mother purchased the apartment. After the first applicant's mother's death, the applicants became the joint owners of the apartment.

64. In 1992 the pre-nationalisation owner from whom the apartment had been expropriated without compensation in 1949 brought an action against the applicants under section 7 of the Restitution Law. The proceedings were later continued by the heirs of the pre-nationalisation owner.

65. On 15 September 1994 the District Court dismissed the claim, noting that at the relevant time the applicants' family had consisted of five persons which entitled them to a three-room apartment, that the first applicant, who was a researcher in philosophy, had been entitled to an additional room for

her study, and that the apartment consisted in fact of four rooms, the fifth room being a connecting hall. The court further noted that the first applicant's mother had been registered as an "anti-fascist and anti-capitalist veteran" – a registration that had carried privileges provided by law – and that this fact had been mentioned in the papers relating to the 1971 purchase. However, at the relevant time the right of a registered veteran to purchase a dwelling with priority had been provided for by law. Therefore, it could not be considered that there had been abuse of office or of a position in the communist party.

66. Following a decision terminating the proceedings and another decision ordering their continuation, the plaintiffs' ensuing appeal was eventually decided by the Sofia City Court by judgment of 6 April 1998 which upheld the District Court's judgment.

67. Upon the plaintiff's cassation appeal, on 16 June 1999 the Supreme Court of Cassation quashed the lower courts' judgments and granted the claim, declaring the applicants' title null and void. The Supreme Court of Cassation agreed with the lower courts that there had not been abuse. However, the conclusions as regards the fifth room of the apartment had been wrong. In reality, the apartment had exceeded by one room the family's needs, as determined by the relevant regulations.

68. On 30 June 1999 the restored owners invited the applicants to vacate the apartment and requested monthly payments of 500 US dollars. The applicants refused to leave but were eventually evicted in June 2002 pursuant to an eviction court order.

69. Between 1999 and 2002 the restored owners sued the applicants and obtained judgments ordering them to pay damages for their failure to vacate the property. Thus, as of October 2003 the applicants owed to the restored owners approximately BGN 28,000 (the equivalent of approximately EUR 14,000) which they refused to pay. The applicants also owed at least BGN 3,000 in costs.

70. The applicants never applied for compensation bonds considering that useless. On 19 October 1999 they requested the mayor to provide them a municipal apartment for rent. They were placed on the waiting list but never received an offer.

71. On an unspecified date the applicants purchased a small apartment for an unspecified sum of money and moved there. Shortly thereafter, the restored owners applied for and obtained an attachment of the applicants' new apartment to secure the payment of their claims. On 8 April 2005 the enforcement judge undertook steps to put the applicants' new apartment on sale with a view to satisfying the restored owners' claims. In addition, monthly deductions are applied to the applicants' pensions to cover their debt.

G. The case of *Bogdanovi* (application no. 60036/00)

72. The applicants, Mr Stoiko Bogdanov and Mrs Maria Bogdanova, both Bulgarian nationals and residents of Burgas, were born in 1920 and 1924 respectively. Mrs Bogdanova passed away in August 2004. Her heirs, the first applicant and the applicants' two daughters, born in 1949 and 1955, stated that they wished to continue the proceedings. The applicants are represented before the Court by Mrs S. Margaritova-Voutchkova, a legal adviser practising in Sofia.

73. In 1960 the applicants obtained a tenancy order for a State-owned two-room 92-square-metres' apartment in Burgas. The applicants, their two minor daughters and the elderly mother of one of the applicants lived in the apartment.

74. On 8 May 1967 the applicants filed with the Burgas municipal authorities a written request to buy the apartment under the relevant regulations. As required, they enclosed a declaration of means and family status.

75. The Burgas municipality instituted an administrative procedure. On 15 October 1967 the relevant expert committee assessed the value of the apartment.

76. On 17 November 1967 the Burgas municipal council submitted the file for approval by the Minister of Building Planning, as required by the regulations. By letter of 23 December 1967, the Deputy Minister of Building Planning approved the sale. In accordance with the relevant procedure, on 31 December 1967 a sale-purchase contract was signed between the applicants and the Burgas municipality. The applicants contracted a loan to pay the price of the apartment and reimbursed it in monthly instalments for twenty years.

77. In February 1993 the heirs of the pre-nationalisation owners of the apartment from whom it had been expropriated without compensation in 1949 brought an action against the applicants under section 7 of the Restitution Law. The plaintiffs claimed that the applicants had obtained the apartment in breach of the law. By judgments of 20 January 1995 and 2 May 1996 the District Court and the Regional Court dismissed the claim.

78. Upon the plaintiffs' petition for review (cassation), on 12 October 1998 the Supreme Court of Cassation quashed the lower courts' judgments and, deciding on the merits, declared the applicants' title null and void.

79. The Supreme Court of Cassation noted that the regulations in force in 1967 had required approval of the sale by the Minister of Building Planning, whereas in the applicants' case the document containing that approval had been signed by a Deputy Minister. The Supreme Court of Cassation did not accept the reasoning of the lower courts according to which the approval had been valid since the Deputy Minister who had signed it had been in charge of the sale of housing and had thus been

empowered to sign in the Minister's stead. That reasoning was incorrect because the housing regulations as in force at the time only mentioned the Minister as the official in whom the relevant power was vested.

80. On 4 August 1999 the restored owners invited the applicants to leave the apartment and to pay rent for the time since the judgment of the Supreme Court of Cassation. On 16 October 1999 the applicants signed a rent contract with the restored owners and started paying monthly rent of BGN 150 (the equivalent of approximately EUR 80). The contract was renewed in December 2000.

81. On 5 March 1999 the applicants requested the mayor of Burgas to provide them with municipal housing. They reiterated their request in January 2000. No response was received.

82. On 20 June 1999 the applicants requested compensation in bonds. In February 2001 the regional governor approved the assessment of the apartment's value, made by an expert, and determined that the applicants were entitled to compensation bonds in the amount of BGN 64,200 (the equivalent of approximately EUR 32,500).

83. On 16 November 2001 the applicants wrote to the mayor of Burgas asking to buy a municipal apartment and to pay for it in bonds. On 29 November 2001 the mayor replied that for the moment the municipality did not envisage selling apartments for bonds.

84. On 23 November 2001 the applicants sold their compensation bonds at 17.5 % of their face value. They thus obtained BGN 11,335 (the equivalent of approximately EUR 5,800).

85. In November 2001 the restored owners invited the applicants to leave. The applicants did not have the resources necessary to buy an apartment and refused. By judgment of 14 March 2003 of the Bourgas District Court the applicants were ordered to vacate the property. Their objection that they should be entitled to withhold possession of the apartment until payment of the improvements they had made in the property was dismissed. The applicants appealed. By judgment of 28 July 2005 the Supreme Court of Cassation upheld the eviction order. The applicants rented an apartment and moved there on 14 November 2005.

H. The case of *Tzilevi* (application no. 73465/01)

86. The applicants, Mrs Regina Tzileva and Mr Konstantin Tzilev, are Bulgarian nationals, who were born in 1949 and 1942 respectively and live in Sofia. They were represented before the Court by Mr Y. Grozev, a lawyer practising in Sofia.

87. In 1970 the first applicant became a tenant in a state-owned two-room 60-square-metres' apartment in Sofia. The applicants had two children together, born in 1974 and 1975.

88. In 1977 the applicants applied to purchase the apartment in accordance with the relevant procedure for the sale of State housing to tenants. After having obtained the relevant authorisations, the applicants purchased the apartment from the local municipality and reimbursed the full price within the following years.

89. In February 1993 Mr N., the pre-nationalisation owner of the apartment from whom it had been nationalised without compensation in 1949, brought an action against the applicants under section 7 of the Restitution Law. In his claim Mr N. relied on all possible grounds under section 7. On 6 June 1994 the Sofia District Court dismissed the claim.

90. Upon the plaintiff's appeal, on 15 July 1998 the Sofia City Court quashed the lower court's judgment and granted the claim as the administrative decision authorising the 1977 sale-purchase contract had been signed by the deputy mayor and not by the mayor personally. The court dismissed as unproven the plaintiff's allegation that there had been abuse on the part of the applicants.

91. The applicants filed a cassation appeal. They argued that even if the administrative decision authorising the transaction had been signed by a deputy mayor, the sale-purchase contract itself had been signed by the mayor. On 28 November 2000 the Supreme Court of Cassation dismissed the appeal and upheld the Sofia City Court's judgment. It held, *inter alia*, that the relevant procedure had required an administrative authorisation as a separate step and that therefore the nullity of that authorisation could not be redressed by the fact that the sale-purchase contract that followed it had been executed properly.

92. Between 1999 and 2001 the applicants addressed numerous unsuccessful requests to the local municipality asking to be provided tenancy of a municipal dwelling.

93. In 2001 the heirs of the pre-nationalisation owner brought a *rei vindicatio* action against the applicants. As the applicants had no place to live, they decided to oppose the claim and gain time. As of February 2006 the proceedings were still pending before the Sofia District Court.

94. In 2001 the applicants requested compensation by bonds. On an unspecified date an expert assessed the value of their apartment at BGN 45,000 (the equivalent of about EUR 23,000). Weighing their options, the applicants decided, however, not to seek bonds as compensation. They considered that, having regard to the rates at which bonds were traded at that time, 15-25% of face value, such compensation would offer no realistic perspective of finding a place to live. By refusing to accept such partial compensation, the applicants also wished to express their protest against the injustice visited on them.

I. The case of *Nikolovi* (application no. 194/02)

95. The applicants, Mr Dimitar Georgiev Nikolov and his daughter Zvezda Dimitrova Nikolova, are Bulgarian nationals, who were born in 1934 and 1960 respectively and live in Russe. Before the Court they were represented by Mrs S. Margaritova-Voutchkova, a legal adviser practising in Sofia.

96. In 1970 the first applicant and his wife bought a three-room 96-square-metres' apartment from the local municipality.

97. In 1992 the pre-nationalisation owner, from whom the property had been expropriated in 1949, brought an action against the applicants under section 7 of the Restitution Law. By judgments of 19 December 1994 of the Ruse District Court, 15 May 1996 of the Regional Court and 24 June 1998 of the Supreme Court of Cassation, the courts granted the claim.

98. They found, in particular, that the 1970 administrative decision for the sale of the apartment had been signed by the secretary to the Municipal Council whereas it should have been signed by the mayor. The courts noted that in January 1970 the municipal council had issued a decision delegating to its secretary matters related to the sale of municipal housing but considered that that delegation had been null and void since in accordance with the relevant law as in force at the time the vice-president of the municipal council replaced the president in his absence.

99. The courts also noted a second shortcoming. The law at the relevant time provided that the municipality's decision to sell the apartment had to be approved by the mayor of the respective region. In the applicants' case, a comma was visible in front of the signature placed on the document containing the approval. In Bulgaria it was customary to "sign with a comma" when the person who signed was replacing. In these circumstances, since the applicants had failed to adduce evidence demonstrating that the signature on the relevant document was that of the mayor, the courts found that the approval must have been signed by another person and was therefore invalid.

100. The courts concluded that the applicants' title was null and void and ordered them to vacate the apartment. They did so on 27 October 1998.

101. In 1998 the applicants requested compensation by bonds. In April 1999 they received bonds for BGN 47,800 (the equivalent of approximately EUR 24,200), in accordance with the valuation of the property by an expert appointed by the regional governor.

102. On 31 March 1999 the applicants were granted the tenancy of a municipal apartment. They applied to purchase it by bonds.

103. In March 2000 the municipal council in Russe decided that as a matter of principle applications to purchase an apartment by persons who had lost cases under section 7 of the Restitution Law should be granted. In

accordance with the relevant law, however, the power to sell municipal property was vested with the mayor.

104. On 3 May 2000 the mayor of Russe wrote to the Ministry of Finance inquiring whether the municipality would be able to make use of the bonds it would acquire if it were to sell municipal apartments to individuals in the applicants' position. On 26 July 2000 the Ministry replied negatively. On 19 January 2001 the mayor informed the applicants that the municipality was not under an obligation to sell an apartment to them.

105. On 8 February 2001 the applicants brought an action against the mayor challenging his refusal to sell an apartment. The Russe Regional Court rejected the claim as inadmissible. On 17 April 2001 the Supreme Administrative Court upheld the rejection of the claim. It noted that in accordance with the provisions of the Compensation Law, compensation bonds could be used for the purchase of municipal dwellings and persons who had lost cases under section 7 could do so with priority. Nonetheless, those provisions did not give rise to rights for the applicants and duties for the municipality. The decision of the municipal council of March 2000 did not create such rights and duties either. Municipal property sales were regulated by the Municipal Property Law. The sale of an apartment being a civil transaction to which the parties are at an equal footing, the mayor's refusal was nothing more than a refusal to enter into a transaction, not an administrative decision affecting rights. Therefore, the mayor's refusal did not affect any right of the applicants. It followed that the refusal was not amenable to judicial review.

106. On 29 March 2002 the mayor of Russe refused the applicants' renewed request to sell them an apartment for bonds.

107. In 2001 the applicants brought an action against the State and the local municipality, seeking damages for the fact that they had been deprived of their apartment owing to an administrative omission imputable to municipal clerks.

108. By judgments of the Russe District Court of 7 June 2002 and the Russe Regional Court of 9 May 2003 the applicants' claims were dismissed. The courts found that the State Responsibility For Damage Act only applied in respect of facts that occurred after its entry into force in 1988. The courts also stated that the alleged omissions had occurred in the context of a civil transaction, whereas the State Responsibility For Damage Act concerned State liability occasioned by acts in the exercise of State power.

109. On 25 January 2005, at a moment when the market for compensation bonds was reaching a peak, the applicants sold their bonds at 105% of their face value. They thus obtained BGN 49,660 (the equivalent of approximately EUR 25,400).

II. THE RELEVANT BACKGROUND AND LEGAL AND PRACTICAL DEVELOPMENTS

A. The nationalisation of real property by the communist regime

110. After 1945 the communist regime in Bulgaria introduced a series of nationalisation laws of a punitive or redistributive nature. As regards housing, the policy was to limit private real estate ownership to one dwelling per family and to take away from their owners apartments allegedly exceeding their needs. All city apartments "in excess" were nationalised. In some cases the owners received State bonds in compensation. Owing to regulations modifying the conditions of payment on these bonds, in practice compensation was never received by the owners.

B. Renting and buying a State-owned apartment in Bulgaria before 1990: legal regulation and practice

111. The nationalised apartments were allocated to municipal housing funds which managed them and rented them out at fixed rates. Special legislation established a system of categorisation of those in need of housing and provided for detailed rules on the basis of which municipalities rented out and sold apartments. The rules, which changed many times during the relevant period, provided for, *inter alia*, precedence rights for various groups ("anti-fascist and anti-capitalist" veterans, large families, etc), limitations on the number of rooms and on the size of the apartments candidates could rent or buy (on the basis of factors such as number of children, profession, health problems, etc) and special procedures for renting or buying apartments belonging to State enterprises. Most of these rules were also applicable where newly built State apartments were rented out or sold.

112. A large number of nationalised apartments were sold to tenants in the 1960s and 1970s pursuant to a new housing policy whose purpose was the accumulation of financial resources for the construction of new dwellings.

113. In practice, during the communist period and until 1990 an individual in need of housing could only buy an apartment by applying to a competent State body. The procedure was administrative, followed by the signing of a contract prepared by the administration. Candidates had to fill out the relevant forms and submit the required documents. The relevant municipal authority would then issue a decision and present to the candidate for signature the sale-purchase contract.

C. Consequences of a breach of the housing regulations at the relevant time

114. Until 1970, the courts had no power to review administrative decisions. According to the Supreme Court, the courts had no jurisdiction to examine an action for a declaration that the sale of a State-owned apartment to an individual had been null and void. The decision which apartment to sell and to whom belonged to the administration. The courts had no power to examine whether or not there had been a breach of the relevant rules such as those concerning precedence (реш. 1706 от 17.11.1962 по гр.д. 1435/62; ТР No. 47 от 1.3.1967 по гр.д. 2045/67).

115. The law and practice changed after the adoption of the Administrative Procedure Act 1970. In 1973 the Supreme Court held that the courts, without repealing an administrative decision – which they had no power to do –, could take note that it was null and void and draw the ensuing civil-law conclusions such as that an individual concerned was not the owner of a disputed property (ОСГК, реш. No 78 от 12.7.1973, гр.д. 58/73).

116. At all relevant times, Bulgarian civil law distinguished between possessing property in bad faith and doing so in good faith. According to section 70 of the Property Act 1951, still in force, an individual is considered to have acted in good faith if, unaware of a procedural defect in his title, he entered into possession of a piece of property. A *bona fide* possessor may acquire ownership rights (over private property) after five years of acquisitive prescription or, if evicted, claim the value of improvements made in the property (реш. No. 1051 от 25.3.1960 по гр.д. 1060/60; Interpretative Decree No. 6 of 1974 of the Supreme Court; реш. No. 507 от 1.7.1994 по гр.д. 381/94).

D. The process of restitution of property after the fall of the communist regime; sections 1 and 7 of the Restitution Law

117. After the fall of the communist regime in 1990, Parliament enacted legislation aiming at restoring justice for those whose property had been nationalised without compensation, or for their heirs. A number of denationalisation laws covering different types of property (industrial plants, shops, dwellings, agricultural land, etc.) were adopted.

118. Section 1 of the Law on the Restitution of Ownership of Nationalised Real Property ("the Restitution Law"), which entered into force in February 1992, provided that the former owners, or their heirs, of certain types of real property nationalised by virtue of several specific laws dating from the period between 1947 and 1952, became *ex lege* the owners of their nationalised property if it still existed, if it was still owned by the

State and if no adequate compensation had been received at the time of the nationalisation.

119. Section 7 provided for an exception to the requirement that the real property be still owned by the State. It provided that even if certain property had been acquired by third persons after the nationalisation, the former owners or their heirs could still recover it if the third persons in question had become owners in breach of the law, by virtue of their position in the Communist party or through abuse of power. According to the Government this provision was necessary since during the communist period there had been many cases in which the privileged of the day had obtained apartments unlawfully. The former pre-nationalisation owners had to bring an action before the courts against the post-nationalisation owners within a one-year time limit. If the courts established that the title of the post-nationalisation owners involved breaches of the law or was tainted by abuse they declared it null and void and restored the property to the pre-nationalisation owners.

120. In 1997 former pre-nationalisation owners who had missed the initial one-year period under section 7 of the Restitution Law for bringing an action against post-nationalisation owners were given a second chance through a legislative amendment renewing the one-year time-limit. On 11 March 1998 the Constitutional Court struck down the amendment as it encroached on the principle of protection of property and legal certainty (реш. 4 от 11.3.1998 по к.д. 16/97). Nevertheless, as the judgments of the Constitutional Court have no retroactive effect, the courts, in accordance with their established practice, were bound to examine claims under section 7 brought in the interval between the entry into force of the 1997 law renewing the time-limit and the 1998 Constitutional Court's judgment quashing that law (опр. 1280, 22.10.1998 по гр.д. 1539/98 г., ВКС-IV).

E. The Restitution Law's scope and manner of application – judicial practice, public debates and amendments

121. In practice, in some cases the ground for annulment was a finding that there had been abuse of office or of a position in the Communist party. In other cases the relevant files retrieved from the archives did not contain proof of approval by an administrative authority, as required by regulations in force at the relevant time. Other grounds on which the courts granted section 7 claims included breaches of regulations dating from the 1950s and the 1960s establishing a link between the number of family members and the number of rooms they were entitled to, breaches of requirements such as that the buyer should be a tenant or an employee of the State agency or enterprise using the apartment, etc.

122. In a large number of cases under section 7, the omission identified by the courts as decisive was the fact that the sale contract, or another relevant document, such as, for example, a tenancy order or a relevant

approval, had been signed by the deputy to, or the superior of, the official in whom the relevant power was vested (i.e. deputy mayor instead of the mayor, deputy minister instead of the minister, regional governor instead of district governor). After an initial period of uncertain practice, the courts adopted the view that such defects had the automatic effect of rendering the transactions null and void *ab initio*. The outcome was the same even where the relevant minister or mayor had authorised a deputy to sign, since the housing regulations did not mention expressly a possibility to delegate (реш. No. 762/ 21.06.2000 по гр.д. 2026/99, ВКС – IV). The argument that the individuals concerned bore no responsibility for such omissions by the administration and had never had any legal means to seek their rectification was considered as irrelevant (ТР 1/95, ОСГК, Бюл. ВС кн. 4/95; реш. No. 1623/ 10.03.1994 по гр.д. No. 186/1993, ВС-IV; реш. No. 1036 от 13.07.1994 по гр.д. No. 9/1994, ВС-IV).

123. In reaction to post-nationalisation owners' argument that they had acquired the property through adverse possession, even if there had been a minor omission in the relevant transaction, the courts relied on section 86 of the Property Act, which provided that State property could not be acquired through adverse possession.

124. The application of section 7 has been the object of heated public debate, including in the Parliament. One of the central issues has been the question whether or not it was justified to allow the nullification of decades-old property titles for minor administrative omissions that had been the responsibility of the administration, not the individual concerned. In 1995 and 1996 the Parliament adopted amendments to the Restitution Law repealing section 7 or limiting its scope to cases involving substantial breaches of the law committed in bad faith or abuse of power. All those amendments were declared anti-constitutional by the Constitutional Court on the basis that they purported to modify already acquired civil rights to restitution (реш. No. 9 по к.д. No. 4/95, Д.В. бр.66/95; реш. No. 20 по к.д. No. 24/95, Д.В. бр. 94/95; реш. No. 11 по к.д. 10/96, Д.В. бр. 61/96, попр. Д.В. бр.87/96).

125. In some cases the courts allowed claims by pre-nationalisation owners against post-nationalisation owners who had purchased the property from an individual, not from the State (see the case of Eneva and Dobrev, paragraphs 53-58 above). Also, in cases where section 7 did not apply, the courts nevertheless granted restitution claims, without limitation in time, by reference to the general provisions of civil law concerning nullity of transactions combined with section 1 of the Restitution Law (реш. N: 2109, 25.1.99 г. по гр. д. N: 1754/97 г., ВКС-IV – see paragraphs 50 and 51 above, concerning the case of Todorova; but see, by contrast, реш. N: 1623, 10.3.94 г. по гр. д. N: 186/93 г., ВКС-IV).

F. The issue of State liability for administrative omissions

126. In its judgment of 18 January 1996, refusing a motion to declare section 7 unconstitutional, the Constitutional Court dealt with the argument that the law affected disproportionately the rights of the post-nationalisation owners many of whom had not done anything unlawful. It stated:

> "The Constitutional Court shares the [petitioners'] concern that there may be many cases where the breaches of the law ... resulted from [acts of] the administration... That fact, however, does not concern the nullity of the transactions ... The transaction[s] remain null and void regardless of which party had breached the law. The question of responsibility for damages in such cases is a separate issue. The Constitutional Court considers that section 7 of the [Restitution Law] does not exclude claims for damages against State bodies or State officials who have breached the law when effecting the transactions. The possible legislative elaboration of that responsibility in cases under section 7 falls within the competence of Parliament."

127. Parliament has not adopted a law elaborating on possible civil liability of officials or State bodies responsible for a breach of the law that led to nullification of a property title. As confirmed by the courts (see paragraphs 107 and 108 above about the case of *Nikolovi* and, also, реш. 1893 от 1.12.2004 по гр.д. 1518/2003 на ВКС), such claims by persons in the applicants' position are not possible either under the State Responsibility for Damage Act 1988 (as it did not apply with regards to damage occasioned before its entry into force) or under general civil law.

G. Compensation and other pecuniary consequences for the post-nationalisation owners

1. Developments until 2000

128. The initial text of the Restitution Law of 1992 did not provide for any compensation for persons ordered to vacate their property under section 7. For several years, the question whether such compensation should be paid by the State was the subject matter of heated debates. In 1995 and 1996 Parliament adopted amendments to the Restitution Law concerning the issue of compensation (Д.В. броеве 40/1995, 87/1995, 51/1996). Most of these amendments were thereafter declared unconstitutional by the Constitutional Court on various grounds (see the decisions cited in paragraph 124 above).

129. An amendment introduced in June 1996 (paragraph 3 of the supplementary provisions to the Restitution Law, State Gazette no. 51/96, "the June 1996 amendment") was not struck down by the Constitutional Court and remained in force until its repeal by Parliament in January 2000. It provided that persons who had been ordered to vacate their apartments under section 7 were to be paid by the State full market value cash

indemnity. Also, until this payment was effected, they were entitled to rent temporarily State-owned apartments, or to receive a rent allowance. The above obligations of the State were to be governed by regulations to be issued by the Council of Ministers.

130. The Council of Ministers did not adopt the regulations necessary to put in practice the June 1996 amendment to the Restitution Law. Former owners who lost their apartments in cases under section 7 of the Restitution Law did not receive market-value cash indemnity or any rent allowance. In some cases, the evicted post-nationalisation owners were able to rent municipal apartments at fixed rates. In a large number of cases, however, the requests made were unsuccessful because of lack of availability or because the competent authorities interpreted the relevant law as allowing discretion and refused the requests.

131. In November 1997 a new law, the Law on Compensation for Owners of Nationalised Real Property ("the Compensation Law") – whose main purpose was providing compensation for property taken under several laws of punitive or redistributive nature and which could not be returned physically – introduced a provision (section 5 § 3) which stated that persons who had lost their dwellings pursuant to section 7 of the Restitution Law should "receive housing compensation bonds, if they [had] not received the indemnity provided for in [the June 1996 amendment]" (see paragraphs 133-139 below).

132. In January 2000, the June 1996 amendment was repealed. The bill repealing the amendment was introduced in Parliament with the explanation that the State did not have the resources necessary to pay in cash.

2. Compensation by bonds

133. After January 2000, the former owners whose title had been declared null and void could apply for bonds under section 5 § 3 of the Compensation Law (see paragraph 131 above) within three months of January 2000 or within two months of the final judgment in their case.

134. The requests are examined by the relevant ministry or regional governor. Experts assess the market value of the property. The face value of the bonds to be issued is equal to the full market value of the dwelling. The decisions are subject to appeal before the Supreme Administrative Court.

135. Compensation bonds are not exchangeable for cash. No interest accrues. They can only be used for participation in privatisation tenders and their value thus largely depends on the availability of privatisation offers.

136. A secondary market for compensation bonds developed in Bulgaria. Until November 2004, they were traded at between 15 and 25 % of their face value. As bond prices remained low over a long time, many persons in the applicants' situation sold their bonds during that period and obtained between 15 and 25% of their face value.

137. In the beginning of November 2004, there was a sudden surge in the price of compensation bonds at the secondary stock market in connection with the privatisation of several major enterprises. Within several weeks, in January 2005 bond rates reached 100 % and more of face value. In the end of January 2005 housing bond prices fell again and later stabilised at around 70 % of their face value.

138. In accordance with section 5 § 2 of the Compensation Law, as in force between November 1997 and November 2004, housing compensation bonds could also be used to purchase, "with priority", State or municipal dwellings. However, municipalities had no interest in parting with their real property in exchange of compensation bonds and prefer to sell for cash. Some municipalities adopted rules according to which not more than 20 or 30% of the price of a dwelling could be paid by compensation bonds. The Supreme Administrative Court, when examining an appeal against a refusal of a mayor to sell an apartment for bonds, held that persons who had lost cases under section 7 did not have a right to buy an apartment, the matter being within the discretion of the municipality (опр. 2571/17.04.2001 по адм. д. 2065/01, ВАС-III, see paragraph 105 above, concerning the case of *Nikolovi v. Bulgaria*). In November 2004, by virtue of an amendment to section 41 of the Municipal Property Act, the sale of apartments for bonds was prohibited.

139. In June 2006 the Parliament amended again section 7 of the Restitution Law, introducing new paragraphs 2 and 3. The amendment only concerns persons who had not yet sold the compensation bonds they had received. New paragraph 2 provided that persons who had lost their property under section 7 should have priority when applying to buy municipal apartments and should be entitled to pay in bonds, at face value. The new provision was not accompanied by an amendment to section 41 of the Municipal Property Act, which prohibits the sale of apartments for bonds. Also, the new paragraph 2 does not affect the established case-law according to which municipalities are under no duty to sell apartments (see the preceding paragraph). New paragraph 3 provided that if no apartment was offered by the relevant municipality within three months, the person concerned was entitled to receive in cash the face value of his or her bonds from the Ministry of Finance. The realisation of this right is conditioned by the adoption by the Council of Ministers of implementing regulations.

3. Other consequences

140. A person whose title has been declared null and void could in principle claim the price that he, she or their ancestors had paid when buying the apartment (usually decades ago). However, owing to the depreciation of the national currency and the established practice of the Bulgarian courts refusing re-valorisation, such claims can only lead to recovery of minimal amounts.

141. In accordance with interpretative decision No. 1 of 1995 of the Supreme Court, persons who lost cases under section 7 of the Restitution Law are not entitled to claim compensation for improvements they had made in the property. To reach that conclusion and thus establish an exception from the general rule, the Supreme Court referred to the fact that the aim of the Restitution Law had been to give back to their owners property confiscated without compensation. Justice required that they should not bear the burden to pay for improvements and maintenance expenses. Also, section 8 § 1 of the Restitution Law provided that persons who had obtained restitution of their nationalised property could not claim compensation for the fact that their property had been used by others after the nationalisation. It followed that the post-nationalisation owners whose titles had been nullified under section 7 should not be entitled to compensation for maintenance expenses and improvements in the property.

THE LAW

I. JOINDER OF THE APPLICATIONS

142. The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applications should be joined, given their common factual and legal background.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

143. The applicants complained that they had been deprived of their property in violation of Article 1 of Protocol No. 1 to the Convention. Article 1 of Protocol No. 1 provides:

> "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."

A. The parties' submissions

1. The applicants

144. Several applicants stated that they (or persons whom they inherited) had done nothing more than apply, in the 1950s, 1960s or 1970s, to rent or purchase housing, as many others had. The relevant procedure had been purely administrative and the applicants had had no control. Until 1957 applications for housing had been satisfied exclusively through the grant of tenancy rights – in private and State-owned apartments alike. At that time and also in the 1960s most of the apartments owned by the State had been nationalised apartments. Persons in housing need had been granted tenancies in such apartments. Later the authorities had launched a new policy and started selling State apartments in order to fund the construction of new dwellings. Nothing more than a fortuity had led to the fact that in the process the applicants had ended up with formerly nationalised apartments, not newly built ones. Therefore, there was no reason why they – and not society as a whole – should bear the burden of the restitution laws.

145. The applicants stressed that they did not wish to call into question the entire restitution process in Bulgaria since 1989. In their view, while the restitution of State-owned property was in the public interest and thus pursued a legitimate aim, the same could not be said of section 7 of the Restitution Law, which sought to satisfy the restitution claims of certain individuals by depriving others. In any event, section 7 as applied in practice had resulted in an unlawful and disproportionate interference with property rights. In order to correct an injustice committed in the past, in 1992 and the following years the State had committed another injustice.

146. The applicants maintained that they had never had any reason to doubt the lawfulness of the transactions whereby they or persons from whom they had inherited had become owners in good faith. The initial idea underlying section 7 of the Restitution Law had been to sanction those who had obtained property by abusing their position of power during the communist past. However, the open-ended language of section 7 and its interpretation by the courts had resulted in depriving individuals of their property for nothing more than a trivial administrative omission on the part of municipal clerks. Such a situation did not meet the Convention requirements for lawfulness as the applicable law opened the door to arbitrariness.

147. In particular, by allowing the nullification of titles to property for any breach of the law, without distinction between material breaches and trivial ones, section 7 had set the scene for heated judicial battles over details in transactions dating from decades ago. In the applicants' view, the large majority of real estate transactions effected in Bulgaria during the communist period involved omissions of some nature. Disrespect for the

law had been common in the communist bureaucracy where arbitrariness had reigned. Most importantly, trivial omissions had not, in accordance with the case-law of the Bulgarian courts at the relevant time, served as grounds for nullification of contracts for the sale of State housing and until 1970 the courts had not even had the power to review such contracts. Allowing their nullification decades later was absurd. The open-ended language of section 7 and its judicial interpretation had led to a situation where almost every transaction might at any time be nullified. A number of essential legal principles embedded in Bulgarian law such as the prohibition against retrospective application of the law and the provisions on acquisitive prescription for undisturbed possession in good faith had been misapplied.

148. As to proportionality, the applicants submitted that the relevant law and practice after 1992 had favoured the pre-nationalisation owners and had not been based on a considered attempt to strike a fair balance. When the Restitution Law had been passed, the burden it had placed on the post-nationalisation owners had not been taken into account. Initially, in 1992, the Restitution Law had not provided for any compensation. Although in 1996 it had been amended and provided for full compensation in cash, the Government had never paid such compensation and in 2000 the Parliament had abolished the relevant provisions. The applicants stressed that that constituted a retroactive deprivation of possessions, as they must be deemed to have acquired pecuniary claims to full compensation in cash. After 2000, compensation by bonds had been inadequate and clearly insufficient in view of the time-consuming procedure and the fact that for several years the amount that could be obtained had not exceeded 15 – 25 % of the value of the apartment. Moreover, no compensation had been provided for improvements to the properties and some applicants owed damages for having used their own apartments after 1992.

149. Summing up their position, the applicants stated that after 1992 without any fault on their part they had seen themselves implicated in lengthy judicial battles to preserve their own apartments and eventually lost them owing to an unclear and unjust restitution law and decades-old administrative omissions on the part of municipal officials. After further proceedings they could only obtain in compensation a portion of the value of their property and no redress for the moral suffering they had endured in the process.

2. The Government

150. The Government stated that the legislation on the restitution of nationalised property pursued important legitimate aims in the public interest: providing justice and moral satisfaction for all those whose property had been nationalised without compensation in the past and launching the foundations of a modern social and economic system, based on democracy and a market economy. In choosing the means to achieve

those aims, the national authorities enjoyed a wide margin of appreciation in accordance with Article 1 of Protocol No. 1.

151. The Government maintained that the restitution laws were sufficiently clear. They provided for judicial examination of disputes between pre-nationalisation owners and those who had purchased the nationalised properties after the nationalisation. The applicants' cases had been dealt with by three levels of jurisdiction. Thus, the conclusions that their titles were null and void had been reached on the basis of the examination of all pertinent material in accordance with the applicable rules of evidence.

152. Citing the Constitutional Court (judgment No. 1 of 18 January 1996 in case no. 29/1995), the Government emphasised that nullity was an adequate sanction in respect of abusive transactions or transactions concluded in breach of the law, regardless of the origin and "seriousness" of that breach. Any other solution would run contrary to the principles of legal certainty and the rule of law.

153. In particular, in some cases the courts had established that there had been abuse of power. In other cases the breach of the law identified by the courts consisted in the fact that the apartment exceeded in size the relevant limits. In all those cases, the applicants' claim that they had not known that the transaction violated the law was preposterous.

154. Restitution was equally justified in cases where the sole ground for nullification had been the fact that a deputy mayor or a deputy minister had signed instead of the relevant mayor or minister. In the Government's view it had always been an established law in Bulgaria that administrative decisions issued by a body or a State agent in whom no power to do so was vested were null and void. The fact that the irregularities had occurred long ago was irrelevant as nullity could be invoked without limitation in time and, according to Bulgarian law, State property could not be acquired through adverse possession, whether in good or bad faith.

155. In so far as the applicants had alleged that arbitrariness and omissions had been common in the communist bureaucracy and that they had had no control over oversights imputable to the administration, the Government was of the view that those allegations were too general and thus unproven. One could very well reply, in the same general manner, that it was a notorious fact that only the privileged of the day could obtain, during the communist period, large apartments in the central parts of the cities. In any event, the Court was not competent *ratione temporis* to analyse events dating from the communist period and assess the justification for the rules on the sale of housing then in force. During the communist period there had been strict rules on the distribution of housing and it was not unjustified to nullify titles to property acquired in breach thereof.

156. In the Government's view, the present case was different from *Pincová and Pinc v. the Czech Republic* (no. 36548/97, § 51,

ECHR 2002-VIII) where in somewhat similar circumstances the Court had found that the proportionality requirement had not been complied with. The main difference lied in the fact that, unlike the applicants in *Pincová and Pinc*, the applicants in the Bulgarian cases (or the persons whom they had inherited) had been aware that the apartments they had purchased had been nationalised apartments, taken from others. The applicants had applied to purchase them of their own will.

157. The Government also considered that the relevant law and practice had not imposed on the applicants an excessive burden. While it was true that the modalities of compensation changed several times, that was the reflection of State policy priorities and the availability of State resources. Compensation by bonds was a normal practice in a number of countries from Central and Eastern Europe. In Bulgaria, bonds could be traded in accordance with the relevant stock exchange rules and in July 2005, for example, they were traded at 70 % of their face value. The Government also referred to the fact that in accordance with the relevant law and practice the pre-nationalisation owners were entitled to restitution but could not claim compensation for damage or changes in the property since the nationalisation in the 1940s. It was therefore justified that the post-nationalisation owners, who had to return the apartments they had possessed on the strength of a void title, could not claim compensation for improvements they had made. In the Government's view, this solution struck a fair balance between all interests involved.

158. In sum, the Government considered that the restitution legislation was based on the principles of the rule of law, justice and equality before the law. It struck a balance between the interests of those whose property had been confiscated without compensation in the past and the persons who had lost cases brought against them under section 7 of the Restitution Law. Therefore, as the former Commission had found in the case of *Panikian v. Bulgaria* (no. 29583/96, Commission decision of 10 July 1997), the national authorities had not acted beyond their margin of appreciation. In that case, examining under Article 1 of Protocol No. 1 the complaints of three persons who had been deprived of their apartment pursuant to a judgment under section 7 of the Restitution Law, the former Commission had accepted that the Bulgarian authorities had acted within their margin of appreciation, having regard to the particular background, the transitional character of the impugned measures and the fact that the applicants had been entitled to full market-value compensation (under the June 1996 amendment - see paragraphs 129-132 above).

B. The Court's assessment

1. Has there been interference

159. It is not disputed that the applicants were deprived of their respective property as a consequence of the adoption by Parliament and application by the courts of the Restitution Law. By virtue of that law as implemented by the courts, the authorities allowed the nullification of titles of property acquired during the communist period, to satisfy the restitution claims of persons from whom the property had been expropriated without compensation in the 1940s.

160. The Court finds, therefore, that there was a deprivation of property within the meaning of the second sentence of Article 1 of Protocol No. 1 to the Convention. Such deprivation of property must be lawful, in the public interest and must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

161. In so far as the applicants alleged that the authorities' failure to pay them the market-value cash indemnity provided for under the June 1996 amendment (see paragraphs 129-132 above) constituted a separate deprivation of possessions, the Court considers that the restitution and compensation legislation affecting the applicants must be seen as a whole. The interference with the applicants' rights under Article 1 of Protocol No. 1 can only be examined in the light of the multitude of measures applied in their cases and related to the process of restitution of nationalised property, including compensation schemes.

2. Lawfulness

162. The applicants' property titles were declared null and void in application of the Restitution Law, the relevant provisions of Bulgarian civil law on property and contracts and Bulgarian administrative law. The Court accepts, therefore, that the interference with the applicants' property rights was provided for by Bulgarian law.

163. Much argument was devoted by the parties to the relevant law's clarity and foreseeability, or lack thereof (see paragraphs 155, 156 and 160-164 above).

164. As the former Commission noted in its decision in the case of *Panikian and Others v. Bulgaria* (cited above), the Restitution Law introduced a novelty in Bulgarian law in that it gave third persons *locus standi* to challenge in court the validity of transactions between the State and another individual. It is also true that the terms used by section 7 to define the grounds on which a title to property could be declared null and void were broad. One of those grounds, "breaches of the law", was interpreted as referring to laws, decrees and various other enactments dating

from the communist period and regulating matters as diverse as State housing policy, the functioning of the State administrative apparatus, real estate and civil transactions. Those rules – which the courts had to apply through section 7 – had often changed and had previously been part of a system that had not been governed by the rule of law (see paragraphs 111-115 and 121-125 above). The above inevitably engendered uncertainty, as illustrated by the frequency with which the present cases involved reversals by a higher court of lower courts' judgments (see paragraphs 36, 37, 47, 56, 65-67, 77, 78, 89 and 90 above).

165. The Court would also note that for years there was uncertainty in the interpretation of the Restitution Law and its consequences on a number of issues (for example, as regards the consequences of various defects in the transactions, the position of *bona fide* third persons, State liability for administrative omissions and compensation for improvements – see paragraphs 122-127 and 141 above). Furthermore, the Bulgarian legislature's approach to compensation for persons who had been deprived of property under section 7 changed several times in contradictory directions. Although in 1996 the law provided for full market value compensation, the Council of Ministers failed to adopt implementing regulations and no such compensation was paid. After 2000, the modalities for obtaining and using compensation bonds changed several times (see paragraphs 128-139 above).

166. The present cases concern, however, a unique period of social and legal transition in Bulgaria. The legal reform after the fall of communism, in particular with regard to the restitution of nationalised property, was the product of a difficult political compromise. The law underwent modifications reflecting a heated public debate and a search for a balanced solution. The Court cannot disregard the ensuing difficulties and would not adopt a purist approach to legal predictability. A measure of uncertainty was inevitable in respect of legislation aiming at undoing decades-old injustices. While legal uncertainty may not satisfy the Convention requirements of clarity and foreseeability and may contravene the prohibition of arbitrariness, in the assessment whether such a situation obtained in the present case and whether, consequently, there was an unjustified State interference contrary to Article 1 of Protocol No. 1 to the Convention, due account must be taken of the special transitional period at the relevant time and the individual circumstances of each case (see application no. 40064/98, *Credit Bank and Others v. Bulgaria* (dec.), 30 April 2002).

167. The Court considers, therefore, that the issues raised by the applicants with respect to the quality of the relevant law are intertwined and undissociable from the question whether or not the interference with their property rights had a legitimate aim and was necessary in a democratic society for the achievement of such an aim. It will examine these questions below.

3. Legitimate aim

168. The Court reiterates that, because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures of deprivation of property. Here, as in other fields to which the safeguards of the Convention extend, the national authorities, accordingly, enjoy a certain margin of appreciation.

169. Furthermore, the notion of "public interest" is necessarily extensive. In particular, the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues. The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation. The same applies necessarily, if not *a fortiori*, to radical social changes as those occurring in Central and Eastern Europe after 1989 (see *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 91, 30 June 2005).

170. In the cases under examination the Court has no doubt that the Restitution Law, which provided that the State should restore the property it had expropriated without compensation during the communist regime, pursued an important aim in the public interest. Indeed, that was not disputed by the applicants. It is obvious that compensating the victims of those arbitrary expropriations was an important step in the restoration of democracy in Bulgaria, after several decades of totalitarian rule.

171. As to the goal pursued by section 7 specifically, the Court notes that that provision authorised persons whose property had been expropriated by the State in the 1940s without compensation to claim it back not only from the State but also from private individuals, whenever the latter's title had been tainted by abuse of power or breaches of the law.

172. The Court accepts, in view of the specific context of the transition from a totalitarian to democratic society and the wide margin of appreciation enjoyed by the respondent State in these matters, that such an approach cannot be considered as illegitimate or not in the public interest, despite the fact that it consisted in providing private property as compensation for wrongs committed by the State decades earlier. Persons who have taken advantage of their privileged position or have otherwise acted unlawfully to acquire property in a totalitarian regime, as well as their heirs, cannot expect to keep their gain in a society governed democratically through the rule of law. The underlying public interest in such cases is to restore justice and respect for the rule of law (see *Pincová and Pinc*

v. the Czech Republic, cited above, § 51 and *Mohylová v. the Czech Republic* (dec.), no. 75115/01, 6 September 2005).

173. It is true that section 7, as its text indicates and as implemented by the courts, affected adversely not only individuals who had acquired property through abuse of power or other unlawful acts but also, more generally, persons whose title to their apartment was found defective – often decades after its acquisition – as it involved one or more administrative omissions (see paragraphs 122-125 above).

174. In their submissions the Government suggested that the presence of omissions or irregularities in a given case could be seen as an indication that it concerned unlawful profiting by the privileged of the day. Thus, in the Government's view, section 7 pursued the legitimate aim of correcting past injustice in all cases in which it applied.

175. The applicants offered a different view. They alleged that section 7, as applied in practice by the courts, went beyond its original aim. They argued that the interference with their property rights had no legitimate aim as their cases did not concern any profiteering or unlawful act on their part but only omissions on the part of the authorities. The applicants stated that disorder and lack of respect for law and procedure had been common during the communist period and that, therefore, thousands of transactions had involved some sort of omission, without there having been any unlawful act or profiteering on the part of the person purchasing the apartment.

176. The Court considers that the applicants' arguments do not affect its finding that the Restitution Law in general pursued a legitimate aim in the public interest. They concern in essence another issue - the question whether or not a "fair balance" was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

4. Proportionality

(a) The Court's approach

177. The concern to achieve "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions (see *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, p. 23, § 38). In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of

the law in question (see *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 75, ECHR 1999-III). Nevertheless, the Court cannot abdicate its power of review and must determine whether the requisite balance was maintained in a manner consonant with the applicants' right to "the peaceful enjoyment of [their] possessions", within the meaning of the first sentence of Article 1 of Protocol No. 1 (see *Jahn and Others v. Germany* [GC], cited above, § 93).

178. The present nine cases bear resemblance to a group of Czech cases that also concerned the proportionality of measures which – with the aim to compensate persons from whom property had been arbitrarily taken by the communist regime – had deprived other individuals of property they had purchased from the State (see *Pincová and Pinc v. the Czech Republic*, cited above, *Bečvář and Bečvářová v. the Czech Republic*, no. 58358/00, 14 December 2004, *Netolický and Netolická v. the Czech Republic* (dec.), no. 55727/00, 25 May 2004 and *Mohylová v. the Czech Republic* (dec.), cited above). The Court's general approach in the Czech cases was expressed in *Pincová and Pinc* as follows:

> "The Court accepts that the general objective of the restitution laws, namely to attenuate the consequences of certain infringements of property rights caused by the communist regime, is a legitimate aim and a means of safeguarding the lawfulness of legal transactions and protecting the country's socio-economic development. However, it considers it necessary to ensure that the attenuation of those old injuries does not create disproportionate new wrongs. To that end, the legislation should make it possible to take into account the particular circumstances of each case, so that persons who acquired their possessions in good faith are not made to bear the burden of responsibility which is rightfully that of the State which once confiscated those possessions."

179. The Court is mindful that in the present cases, as in the Czech cases cited above, the impugned measures were the result of difficult decisions the authorities had to make in the conditions of transition from a totalitarian regime to a democratic society. The legislative history of section 7 and the developments in its application testify of a continuing effort on the part of the authorities to take into account the relevant interests and achieve a better balance between them (see paragraphs 124, 126, and 128-139 above).

180. In keeping with the wide margin of appreciation afforded to States in such matters and the subsidiary nature of the Court's control under the Convention, the proportionality of the impugned measures must be assessed with due regard to the concerns and factors that guided the national authorities in their policy in the relevant area and shaped the national public debate.

181. In the Czech cases cited above, in deciding whether or not the requisite fair balance under Article 1 of Protocol No. 1 had been respected, the Court took into account the specificity of the transition in the Czech Republic and based its analysis on mainly three groups of factors: (i) whether or not the applicants had acquired the property from the State in

good faith and without being able to influence the terms of the transaction (see *Pincová and Pinc*, cited above, § 59); (ii) the amount of the compensation paid compared to the value of the property (ibid., § 61); and (iii) "social" factors, such as whether the property at issue was the applicants' only housing available and their chances to purchase another dwelling (ibid., § 62).

182. The Court considers that a similar approach is appropriate in the present cases. It is not convinced by the Government's argument that the present cases are substantially different from the Czech cases cited above in that unlike those cases the Bulgarian applicants or persons from whom they inherited had known that they had obtained formerly nationalised property. The Government have not argued that the applicants bore responsibility for the nationalisations in the 1940s. The Government have not disproved the applicants' assertion that at least some of them did nothing more than apply for housing and ended up with formerly nationalised apartments. The question whether or not the applicants or persons from whom they inherited had acted in good or bad faith can only be answered with reference to the manner in which they had obtained the disputed properties.

183. In these circumstances the Court considers that the first factor to be taken into consideration in the proportionality analysis in the present cases must be the importance of the Restitution Law's aim – to restore justice for persons whose property had been taken away by the communist regime arbitrarily and without any compensation –, and the underlying rationale of section 7 – to sanction those who had profited from their position in the communist regime or had acted unlawfully to acquire property.

184. In addition, the Court notes that it is not disputed between the parties – and the Government in their submissions emphasise this point – that through successive legislative amendments adopted between 1995 and 2006 the national authorities tried to alleviate the burden the Restitution Law placed on the post-nationalisation owners. Several amendments, albeit often contradictory, concerned the right to compensation for persons in the applicants' position and other provisions sought to ensure that evicted persons did not remain homeless (see paragraphs 128-139 above). While many of these amendments were never applied in practice, it is highly significant that the adequacy of the compensation received and the possibilities to buy a new dwelling were seen, at the national level, as relevant elements in the balance the restitution legislation had to achieve.

185. Furthermore, when in 1996 the Constitutional Court struck down a law amending section 7, it acknowledged that that provision might result in an individual losing his or her property through the fault of the State administration and through no fault of his or her own and stated that it was for Parliament to legislate and provide a possibility for additional compensation in such cases. The applicants' position that section 7 deprived of their property not only those who had abused their power or had acted

unlawfully but also ordinary individuals whose title happened to involve administrative omissions, was recognised as valid by the Constitutional Court (see paragraphs 124, 126, 127 and 144-146 above).

186. Therefore, the question whether, in a particular case of deprivation of property under the Restitution Law, the property was taken owing to a material breach of substantive provisions of the law or abuse of power on the one hand or, on the other hand, as a result of an administrative omission of a minor nature for which the administration, not the individual, had been responsible, must be seen as highly relevant to the assessment of proportionality under Article 1 of Protocol No. 1 to the Convention.

187. It is true that the Government suggested that, in general, the presence of irregularities in a sale-purchase transaction from the communist period could be seen as an indication that the case concerned profiteering by the privileged of the day – the persons who at that time could obtain valuable properties by virtue of their position. The Government added, however, that this was impossible to prove.

188. The Court recalls that one of the grounds for nullity under section 7 of the Restitution Law was abuse of office or of a position in the Communist Party. It was for the domestic courts to establish, on the basis of evidence adduced by the parties to the civil proceedings, whether or not there had been unlawful profiteering in a particular case. Where the domestic courts have not made such a finding, the respondent Government cannot rely before the Court on suppositions in the opposite sense. Such an approach would run contrary to the principle of rule of law inherent in the Convention.

189. In addition, the Court considers, like the Bulgarian Constitutional Court (see paragraph 120 above) and the former Commission in the *Panikian and Others* decision cited above, that departures from the transitory nature of the impugned Bulgarian legislation are difficult to reconcile with the requirements of legal certainty. Therefore, cases where the legal process against the applicants was put in motion after the expiry of the one-year time limit provided for in the Restitution Law 1992 are to be seen as a separate category (see paragraphs 120 and 125 above).

190. In sum, having regard to the relevant law, its application in practice, the parties' submissions and the concerns and factors that guided the national authorities in their policy in the relevant area and shaped the national public debate, the Court considers that the proportionality issue must be decided with reference to the following factors: (i) whether or not the case falls clearly within the scope of the legitimate aims of the Restitution Law, having regard to the factual and legal basis of the applicants' title and the findings of the national courts in their judgments declaring it null and void (abuse of power, substantive unlawfulness or minor omissions attributable to the administration) and (ii) the hardship suffered by the applicants and the adequacy of the compensation actually

obtained or the compensation which could be obtained through a normal use of the procedures and possibilities available to the applicants at the relevant time, including the bonds compensation scheme and the possibilities for the applicants to secure a new home for themselves.

191. In respect of amounts obtained through the sale of compensation bonds, the Court will take into account the amounts actually received by the applicants, having regard to the fact that the rise in bond prices in the end of 2004 could not be foreseen and that, in general, the legislation on compensation for persons in the applicants' position changed frequently and cannot be characterised as foreseeable.

192. The Court will therefore analyse the concrete circumstances of each of the applicants' cases with reference to the above factors. It will not regard as disproportionate every imbalance between the public interest pursued by the Restitution Law and its effects on the particular individual concerned. For, example, the Court is not prepared to attach weight to the issue of compensation for improvements made by the post-nationalisation owners (see paragraph 141 above), unless in exceptional circumstances. In complex cases as the present one, which involve difficult questions in the conditions of transition from a totalitarian regime to democracy and rule of law, a certain "threshold of hardship" must have been crossed for the Court to find a breach of the applicants' Article 1 Protocol No. 1 rights.

(b) Application of the Court's approach to the facts of each case

193. On the basis of the criteria it summarised above (see paragraph 190 above), the Court considers that the nine applications under examination may be seen as falling in four categories (see the subheadings below). Therefore, for the sake of clarity, it will deal with them in four groups.

(i) Cases in which there had been abuse

(α) The case of *Velikovi*

194. The heirs of the persons from whom the apartment at issue had been nationalised without compensation in 1949 challenged the applicants' property rights within the relevant one-year time limit after the adoption of the Restitution Law in 1992 (see paragraph 9 above). The *Velikovi* case, therefore, did not involve a deviation from the transitory nature of the restitution legislation.

195. The applicants' title to their property was declared null and void on the ground that the contract whereby they acquired it in 1968 had not been signed by the mayor of the relevant district but by the mayor of the region in which that district had been located (see paragraph 11 above). This was an omission which could have been the result of administrative error or negligence on the part of the authorities.

196. In its judgment of 27 October 1997, however, the Supreme Court of Cassation noted that the first applicant had abused his position of an "anti-fascist and anti-capitalist veteran". This finding was based on an analysis of documentary evidence and the testimony of witnesses heard by the national courts (see paragraph 14 above).

197. In these circumstances, the Court does not consider that the *Velikovi* case is one in which the applicants can be said to have lost their property owing to an excessively extensive interpretation of section 7 of the Restitution Law, having regard to its aims and the context in which it was adopted (see paragraphs 117-119 above). The impugned deprivation of property clearly fell within the scope of the legitimate aims pursued by the restitution legislation. In the Court's view, this carries a particularly significant weight in the proportionality analysis.

198. The Court also notes that the applicants and their sons obtained the equivalent of approximately EUR 30,500 as compensation for the property at issue, nearly 73% of its value as assessed by a certified expert in 2000 (see paragraphs 17 and 18 above). The Court notes, furthermore, that the applicants had benefited from the use of the property for thirty-two years (1968-2000).

199. The above suffices, in the Court's view, to conclude that in the applicants' case the authorities did not act beyond their margin of appreciation. The interference with the applicants' rights under Article 1 of Protocol No. 1 did not breach that provision's requirement that a fair balance must be struck between the individual's Convention rights and the public interest. The public interest at stake here was not only to restore a piece of property to its owner, from whom it had been taken arbitrarily in 1949 without any compensation, but also, more generally, to restore justice and the rule of law.

200. It follows that there has been no violation of Article 1 of Protocol No. 1.

(β) The case of *Cholakovi*

201. In the case of *Cholakovi*, which did not involve any departure from the transitory nature of the measures under the Restitution Law, the national courts found a violation of the substantive provisions of the relevant housing legislation: the applicants had purchased an apartment bigger than permitted by law. Furthermore, there was sufficient evidence, albeit circumstantial, that the apartment had been obtained through abuse of power and *contra bonas mores* (see paragraph 37 above).

202. The Court further notes that in compensation for the apartment they had to surrender the applicants obtained BGN 124,960 (the equivalent of approximately EUR 63,000) and that in 2003 the Sofia municipality sold them a two-room apartment for the equivalent of EUR 6,500 (see paragraphs 40-42 above).

203. Like in the *Velikovi* case, the above is largely sufficient to conclude that the applicants have not suffered a disproportionate interference with their Convention rights. It follows that there has been no violation of Article 1 of Protocol No. 1 in their case.

(ii) Cases in which material violations of substantive provisions of the relevant housing regulations were found

(α) The case of *Wulpe*

204. Mrs Wulpe's title was challenged in 1993, within the one-year time-limit under section 7 of the Restitution Law. The grounds on which the applicant's title was declared null and void included at least two violations of substantive provisions of the relevant housing legislation: (i) the apartment exceeded the relevant size limit for a four-member family, as applicable in 1969, when the applicant's four-member family obtained tenancy rights, and (ii) contrary to the applicable requirements the applicant was not a resident of Burgas when she purchased the apartment in 1982 (see paragraphs 24 and 25 above).

205. In these circumstances, the Court does not consider that the present case is one in which the applicant can be said to have lost her property owing to an excessively extensive interpretation of section 7 of the Restitution Law, having regard to its aims and the context in which it was adopted (see paragraphs 117-119 above). In the Court's view, that finding carries a particularly significant weight in the proportionality analysis.

206. The Court also notes that the applicant did not live in the apartment at issue at the time when she was ordered to vacate it. She had moved to Sofia, some 400 km away, and lived with her daughter. In addition, in 1999 the applicant obtained the tenancy of a small municipal apartment in Burgas (see paragraphs 23 and 29 above). Therefore, the impugned measures against the applicant did not result in depriving her of a place to live.

207. It is true that the pecuniary compensation received by the applicant was the equivalent of approximately EUR 6,050, an amount that did not exceed 30% of the apartment's value as assessed by experts in 2001 and 2002 (see paragraphs 30 and 33 above). That amount was clearly insufficient for the purchase of a dwelling at market prices. Housing prices increased between 2002, when the expert assessment was made, and 2003 and 2004, when the applicant sold her compensation bonds.

208. The Court considers decisive, however, the fact that the applicant's title had involved substantive breaches of the law. Her case fell clearly within the scope of the Restitution Law's legitimate aims. The Court notes, furthermore, that the applicant had benefited from the use of the property at issue for approximately thirty years (1969-1999).

209. On the basis of the above considerations and having regard to the wide margin of appreciation the national authorities enjoyed, the Court finds

that the interference with the applicants' rights under Article 1 of Protocol No. 1 cannot be seen as failing to strike a fair balance between the applicants' Convention rights and the public interest. The public interest at stake here was not only to restore the property to its owner from whom it had been taken arbitrarily in 1949 without any compensation, but also, more generally, to restore justice and the rule of law.

210. It follows that there has been no violation of Article 1 of Protocol No. 1.

(β) The case of *Stoyanova and Ivanov*

211. In the case of *Stoyanova and Ivanov*, which did not involve any departure from the transitory nature of the measures under the Restitution Law, the national courts found a violation of the substantive provisions of the relevant housing legislation: the applicants had purchased a five-room, 197 square metres apartment which exceeded the relevant size limits for the purchase of an apartment by a five-member family, as the applicants' at the time (see paragraphs 63, 64 and 67 above). It follows from the nature of the violation found that it cannot be maintained that the applicants were unaware that they had purchased an apartment in breach of the law or that it was the result of omissions on the part of the State administration. The present case, therefore, is one which clearly fell within the scope of section 7 of the Restitution Law and its legitimate aim in the public interest.

212. The Court also notes that the applicants did not apply for compensation bonds. Had they done so, they could have recovered at least between 15 and 25% of the value of the apartment, as that was the rate at which bonds were traded until the end of 2004 (see paragraphs 70 and 133-139 above).

213. As to the liability the applicants incurred as a consequence of their refusal to abide by the judicial order of June 1999 requiring them to vacate the apartment, the Court notes that there is no indication that the applicants risked to become homeless and had no choice but to oppose the eviction order. In particular, on a date they have not communicated to the Court, the applicants purchased an apartment (see paragraphs 68-71 above). The respondent Government cannot be held responsible for the consequences of the applicants' refusal to vacate the apartment and to apply for compensation bonds.

214. The Court also notes that the applicants benefited from the use of the property at issue for many years (from the mid-1950s until 1971 as tenants and after 1971 as owners) (see paragraphs 63 and 68 above).

215. On the basis of the above considerations and having regard to the wide margin of appreciation the national authorities enjoyed, the Court finds that the interference with the applicants' rights under Article 1 of Protocol No. 1 cannot be seen as failing to strike a fair balance between the applicants' Convention rights and the public interest. The public interest at

stake here was not only to restore the property to its owner from whom it had been taken arbitrarily in 1949 without any compensation, but also, more generally, to restore justice and the rule of law.

216. It follows that there has been no violation of Article 1 of Protocol No. 1.

(iii) Cases in which the State administration was responsible for the irregularities that led to nullification of titles

(α) The case of *Bogdanovi*

217. In this case, which did not involve a deviation from the transitory nature of the impugned measures under the Restitution Law (see paragraph 77 above), the applicants' title to their property was declared null and void on the ground that a relevant document in the file concerning the purchase of their apartment in 1967 had been signed by the Deputy Minister of Building Planning, not by the Minister personally. The Supreme Court of Cassation adopted the view that the Deputy Minister had no power to sign in the Minister's stead and that therefore the applicants' title was null and void (see paragraph 79 above).

218. The Court observes that it has not been claimed by the respondent Government that the applicants were responsible for the irregularity or that in 1967 or later they could have undertaken steps to ensure that the relevant approval be signed by the Minister personally, not by the Deputy Minister. It is not disputed that the applicants applied to purchase the apartment under the relevant procedure, that the file was sent by the Burgas municipality to the Ministry of Building Planning for approval and that it was later returned accompanied by a letter approving the sale, signed by the Deputy Minister (see paragraphs 74-76 above). It follows that in the *Bogdanovi* case the State administration was responsible for the deficiency that led to the nullification of the applicants' title some forty years later.

219. The Bulgarian Constitutional Court recognised that an issue of State liability might arise where an individual had lost a property under the Restitution Law owing to a deficiency imputable to the State administration. However, the Parliament did not legislate on this issue, as suggested by the Constitutional Court and it was not possible to obtain damages in court (see paragraphs 126 and 127 above).

220. As stated above (see the summary of the Court's approach in paragraphs 177-192 above), the Court considers as highly relevant in the proportionality analysis the fact that the applicants' title did not involve breaches of the substantive requirements of the housing legislation and was annulled on the sole ground that in 1967 the State authorities had not complied with the letter of an administrative rule of procedural nature. In the Court's view, absent other relevant circumstances, in such cases the fair balance required by Article 1 of Protocol No. 1 could not be achieved

without adequate compensation. The applicants undertook all necessary steps under the bonds compensation scheme as it operated but only obtained the equivalent of approximately EUR 5,800 – less than 18% of the value of the apartment as of February 2001, when it was assessed by a certified expert. The respondent Government have not shown convincingly that such an outcome was justified in the case of *Bogdanovi*.

221. Despite the wide margin of appreciation enjoyed by the respondent State, the Court is not convinced that it was not possible to devise the relevant legislation in such a manner as to take into account the fact that omissions occurred through the fault of the State administration in cases of individuals who had applied for housing and obtained an apartment in good faith. Indeed, the necessity to adjust the legislation on this issue had been recognised by the Bulgarian Constitutional Court.

222. The Court thus finds that in the *Bogdanovi* case there were no circumstances justifying the inadequate compensation received by the applicants. It follows that the interference with their property rights failed to strike a fair balance between the public interest and the applicants' rights. There has been therefore a violation of Article 1 of Protocol No. 1.

(β) The case of *Tzilevi*

223. In this case too, there was no deviation from the transitory nature of the impugned measures. Similarly to the case of *Bogdanovi*, the title of Mrs Tzileva and Mr Tzilev to their property was declared null and void on the sole ground that a relevant document in the file concerning the purchase of their apartment had been signed by the deputy mayor, not by the mayor personally (see paragraphs 89-91 above). It follows that in the particular circumstances the State administration was responsible for the deficiency that led to the nullification of the applicants' title. In the *Tzilevi* case that is borne out, moreover, by the fact that the domestic courts examined and dismissed the allegation that the applicants had obtained their apartment through abuse (see paragraph 90 above).

224. Absent other relevant circumstances, in such cases the fair balance required by Article 1 of Protocol No. 1 could not be achieved without adequate compensation. In the assessment whether adequate compensation was available to the applicants, the Court must have regard to the particular circumstances of each case, including the amounts received and losses incurred and, as the case may be, the availability of compensation and the practical realities in which the applicants found themselves (see paragraphs 190 and 191 above about the Court's general approach).

225. No special circumstances justifying less than adequate compensation exist in the *Tzilevi* case. The Court notes, moreover, that the applicants had no other place to live and endured additional hardship after having lost their property under section 7 of the Restitution Law (see

paragraphs 92 and 93 above). This is a relevant factor in the proportionality analysis.

226. Turning to the question whether adequate compensation was available to the applicants, the Court notes that Mrs Tzileva and Mr Tzilev could have received compensation bonds in 2001 but renounced their right (see paragraph 94 above). The respondent State cannot be held responsible for the consequences of the applicants' choice. It can be said with certainty that as a result of their failure to take advantage of the bonds compensation scheme, the applicants forewent a possibility to obtain at least between 15 and 25% of the value of the apartment, as that was the rate at which bonds were traded until the end of 2004 (see paragraphs 135-137 above). The fact that bond prices rose in the end of 2004 cannot lead to the conclusion that the authorities would have secured adequate compensation to the applicants but for their refusal to receive their bonds. The applicants could not have foreseen bond prices and the Court cannot speculate whether they would have waited three or more years before cashing their bonds. Indeed, the legislation on compensation for persons in the applicants' position changed frequently and cannot be characterised as foreseeable. In so far as the law was amended again in June 2006, the Court notes that the Government have not shown that the amendment was applicable in the applicants' case (see paragraph 139 above). In any event, the time that elapsed since the applicants lost their apartment must be taken into account.

227. In these circumstances, for purposes of the proportionality analysis under Article 1 of Protocol No. 1 the Court finds that no clear and foreseeable possibility to obtain adequate compensation was secured to the applicants. The applicants' failure to use the bonds compensation scheme will have to be taken in consideration under Article 41 of the Convention but for the reasons stated above it cannot affect decisively the Court's conclusion under Article 1 of Protocol No. 1.

228. It follows that the interference with the applicants' property rights failed to strike a fair balance between the public interest and their Convention rights. There has been therefore a violation of Article 1 of Protocol No. 1.

(γ) The case of *Nikolovi*

229. In the case of *Nikolovi*, which did not involve any deviation from the transitory nature of the measures under Restitution Law, the applicants' title to their property was declared null and void on the sole ground that two relevant documents in the file concerning the purchase of their apartment had not been signed by the officials in whom the appropriate power had been vested (see paragraphs 98-100 above). It follows that in the particular circumstances of the present case the State administration was responsible for the deficiency that led to the nullification of the applicants' title. It is noteworthy in this regard that in 2002 and 2003 the courts examining the

applicants' action for damages against the State did not reject their allegation that the relevant omissions had been imputable to State bodies (see paragraphs 107 and 108 above).

230. Despite the wide margin of appreciation enjoyed by the respondent State, the Court is not convinced that it was not possible to devise the relevant legislation in such a manner as to take into account the fact that omissions occurred through the fault of the State administration in cases of individuals who had applied for housing and obtained an apartment in good faith. Indeed, the necessity to adjust the legislation on this issue had been recognised by the Bulgarian Constitutional Court (see paragraph 126 above).

231. Absent other relevant circumstances, in such cases the fair balance required by Article 1 of Protocol No. 1 to the Convention could not be achieved without adequate compensation. In the assessment whether adequate compensation was available to the applicants, the Court must have regard to the particular circumstances of each case, including the amounts received and losses incurred and, as the case may be, the availability of compensation and the practical realities in which the applicants found themselves.

232. The Court notes that in 2005 the applicants obtained BGN 49,660 (the equivalent of approximately EUR 25,400) as compensation, which was a little more than the value of their apartment as assessed by a certified expert in 1999 (see paragraphs 101 and 109 above).

233. The applicants thus obtained full compensation for the value of the apartment as it stood in 1999, shortly after they vacated it. They suffered a loss, however, because they were able to obtain that amount only in 2005, whereas housing prices had increased significantly since 1999. The Court notes, however, that shortly after they vacated the apartment in 1998 the applicants were granted the tenancy of a municipal apartment. They have benefited from its use ever since 1999 and there is no reason to consider that they may lose it.

234. As the Court stated earlier on (see the summary of the Court's approach in paragraphs 177-192 above), being mindful of the importance of the legitimate aims pursued by the Restitution Law and the particular difficulties involved in regulating the restitution of nationalised property after decades of totalitarian rule, the Court would not regard as disproportionate every imbalance between the relevant public interest and the Restitution Law's effects on the particular individual concerned. A certain “threshold” of hardship must have been crossed for the Court to find a breach of the applicants' Article 1 Protocol No.1 rights.

235. Despite the authorities' failure to take into account the responsibility of the State administration for the defect in the applicants' title, the Court does not consider that the threshold of hardship has been

reached. It finds, therefore, that there has been no violation of Article 1 of Protocol No. 1.

(iv) Cases of excessively extensive interpretation of the Restitution Law's scope of application

(α) The case of *Todorova*

236. The *Todorova* case stands out in that Mrs Todorova's title was nullified on the basis of section 1 of the Restitution Law, not its section 7 (see paragraphs 50 and 51 above). The property at issue here had been acquired by the applicant's grandparents in 1953 as compensation for the expropriation of their own plot of land and their house. In 1996-98 the courts noted that the 1953 expropriation decision had been taken by an administrative body which had lacked the relevant power and drew the conclusion that the apartment provided in compensation for that expropriation had not been validly acquired (see paragraphs 44-51 above).

237. The respondent State obviously enjoyed a wide margin of appreciation when regulating the consequences of a judicial decision establishing that a particular legal act was null and void.

238. The Court observes, however, that the applicant's title did not derive from a transaction to which she or her family had become parties, but from an order issued by the authorities irrespective of the applicant's or her family's will. It follows that the State was fully responsible for all the consequences of the defective order it had issued. The Court considers that in such cases, the principle of proportionality required that compensation reasonably related to the market value of the proparty be paid.

239. In Mrs Todorova's case, the solution the relevant legal regime produced was the opposite – no compensation. The respondent Government failed to furnish a single argument demonstrating that some kind of compensation was available to the applicant or justifying the absence of redress. The Court considers, however, that in the circumstances the State was under a duty to provide a clearly regulated and effective redress procedure. That was not done. The bonds compensation scheme was not applicable since it only concerned persons having lost cases under section 7 of the Restitution Law – a provision which was not applied in Mrs Todorova's case. The Government have not disputed that the applicant could not seek the restitution of her grandparents' property on which an office building had been constructed in the meantime. Finally, she was not entitled to compensation for her grandparents' plot under the Compensation Law because it only concerned property expropriated under several specific pieces of nationalisation legislation of punitive and redistributive nature, whereas her grandparents' property had been expropriated under building planning legislation (see paragraphs 44, 51, 131 and 133 above).

240. By depriving the applicant of the apartment her family had received in compensation for the expropriation of their property, the courts effectively placed her in the very situation the Restitution Law intended to remedy – expropriation without compensation. Her grandparents' property remained in State hands and through no fault of her own she lost the property received in compensation. In the Court's view, to accept that such consequences of the application of the Restitution Law were foreseeable and struck a fair balance between the public interest and the individual's rights under Article 1 of Protocol No. 1 would be to stretch beyond limits the margin of appreciation left to the national authorities.

241. The authorities' failure to set clear boundaries on the restitution of property from *bona fide* post-nationalisation owners, in disregard of the principle of proportionality, generated legal uncertainty and disrupted the balance between the public interest pursued by the Restitution Law and the individual's rights.

242. It follows that the deprivation of property without compensation in the *Todorova* case was a clearly disproportionate measure that was not necessary in a democratic society. It follows that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

(β) The case of *Eneva and Dobrev*

243. Ms Eneva and Mr Dobrev lost their apartment not because their title was defective – it was valid – but as a consequence of defects found to exist in the title of the individual from whom they had purchased the property some forty years before the implementation of the Restitution Law against them (see paragraphs 54-58 above).

244. The domestic courts applied a principle of Bulgarian property law, according to which a sale-purchase contract – albeit valid as a source of contractual obligations – does not effectively transfer ownership if the seller was not the owner of the property. It follows from this principle that a *bona fide* buyer may have to restore the property to its original owner seeking *rei vindicatio* if it is established that the person with whom the *bona fide* buyer entered into a transaction was not the owner. In theory, a *rei vindicatio* claim by the original owner can be brought even after a long chain of transactions, since none of those would generate ownership rights for the successive buyer. Nonetheless, the provisions on acquisitive prescription (five years for a *bona fide* buyer) curtailed the danger of prolonged legal uncertainty in most circumstances (see paragraphs 54-58, 116 and 123 above).

245. After the adoption of the Restitution Law, however, the courts, relying on section 86 of the Property Act, according to which State property cannot be obtained through acquisitive prescription, adopted the view that a formerly nationalised piece of property, if it was sold by the State to an individual under a defective transaction, could be recovered by the

pre-nationalisation owner regardless of the passage of time and from any successive buyer who happened to purchase it lawfully and in good faith. In the case of *Eneva and Dobrev*, the fact that a relevant document had not been found in the archives concerning the sale of the apartment by the State to a Ms G. and that that sale was found to have been signed by a replacement for the relevant mayor sufficed to deprive the applicants from the property they had acquired from Ms G. in good faith and in due form forty years before the adoption of the Restitution Law. Furthermore, the compensation the applicants obtained, five years after they had to vacate the apartment, amounted to approximately 50% of the value the property as it stood in 2001 (see paragraphs 54-59 and 61 above).

246. The Court is mindful of the exceptional nature of the Restitution Law and accepts that in the difficult conditions of transition from a totalitarian regime to a democratic society its aims could not be realised without affecting third parties in certain circumstances. Even so, it should have been possible to devise the restitution legislation in such a manner so as to avoid dispossessions of *bona fide* third persons who had acquired a nationalised property through a valid transaction or at least to compensate them.

247. The approach applied in the applicants' case meant that anyone who had purchased in good faith a formerly nationalised property from an individual could not be certain about his or her ownership rights and may lose the property without compensation reasonably related to its market value. As in the case of Mrs Todorova (see paragraph 241 above), the Court considers that the authorities' failure to set clear limits on the restitution of property from *bona fide* third parties and to have regard to the principle of proportionality, generated legal uncertainty.

248. As regards compensation, there was nothing to justify placing *bona fide* third persons, such as the applicants, in the same position as persons who had acquired property from the State in breach of substantive provisions of the relevant housing regulations or through abuse of power (see paragraphs 186 and 190 above). The Government have not offered any convincing argument in this respect. In the Court's view, nothing short of compensation reasonably related to the market value of the applicants' apartment could have maintained the requisite fair balance under Article 1 of Protocol No. 1 in their case. However, by availing themselves of the bonds compensation scheme as it operated, the applicants did not obtain such compensation and it has not been alleged by the Government that other possibilities existed (see paragraphs 59-61 above).

249. It follows that the taking of the applicant's property was a clearly disproportionate measure that was not necessary in a democratic society and that there has been, therefore, a violation of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATIONS OF ARTICLES 13 AND 14 OF THE CONVENTION

250. In some of the nine cases under examination the applicants also relied on Articles 13 and 14 of the Convention, alleging that they had no effective remedy against the alleged violations of Article 1 of Protocol No. 1 in their cases and that they had been discriminated against in that the Restitution Law favoured pre-nationalisation owners to the detriment of post-nationalisation owners and produced arbitrary results. In support of these complaints, the applicants made submissions related to the deficiencies of the bonds compensation scheme, the impossibility to seek damages from the State for administrative omissions or from the pre-nationalisation owners for improvements. The applicants also stressed that the Restitution Law had resulted in arbitrary outcomes for persons who happened to have purchased a formerly nationalised apartment in good faith.

251. The Court notes that the issues raised by the applicants under Articles 13 and 14 are intrinsically linked to the question whether a fair balance was achieved under Article 1 of Protocol No. 1 and were dealt with by the Court under the latter provision.

252. The Court finds, therefore, that it is not necessary to examine the same questions separately under Articles 13 and 14 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION IN THE CASE OF NIKOLOVI

253. In the case of *Nikolovi*, the applicants, referring to the 2001 judicial proceedings between them and the Russe municipality (see paragraph 105 above), complained under Article 6 of the Convention that they had been denied access to a court for the determination of their right to buy an apartment. The relevant part of Article 6 § 1 of the Convention reads:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing ... by [a] ... tribunal..."

254. The applicants considered that the mayor of Russe had been under an obligation to sell an apartment, pursuant to the municipal council's decision of March 2000 directing that persons who had lost cases under section 7 of the Restitution Law should be allowed to purchase municipal apartments (see paragraph 104 above).

255. The Government stated that the impugned refusal of the mayor had not been a legal act but a simple refusal to enter into a transaction. The municipality had been free to decide whether or not they wished to sell an apartment to the applicants. That was not a question to be decided by the courts.

256. As to the applicability of Article 6 § 1 of the Convention, the Court considers that in 2001, at the time when the applicants instituted proceedings against the mayor's refusal to sell them an apartment, their arguments that they had a right under Bulgarian law to purchase a municipal apartment were at least arguable. In particular, the wording of section 5 § 2 of the Compensation Law, which spoke of "priority", could be understood as providing for such a right and the respondent Government have not claimed that at that time there existed established case-law in the opposite sense. The fact that the Supreme Administrative Court later adopted the view that there was no "right" to purchase a municipal apartment under section 5 § 2 of the Compensation Law did not remove, retrospectively, the arguability of the applicant's claim at the time it was submitted for adjudication (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 89, ECHR 2001-V and *Yanakiev v. Bulgaria*, no. 40476/98, § 58, 10 August 2006).

257. It is not disputed that the alleged right the applicants sought to enforce was civil in nature and that the 2001 proceedings were decisive for its determination. It follows that Article 6 § 1 of the Convention applied.

258. That provision secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. 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 *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, pp. 13-18, §§ 28-36; *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3166, § 136, and p. 3169, § 147; and *Kutić v. Croatia*, no. 48778/99, § 25, ECHR 2002-II).

259. In the present case the Bulgarian courts declared inadmissible the applicants' appeal against the mayor's refusal to sell them an apartment. This does not mean, however, that the applicants were denied access to a court, provided that the dispute which they 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). The decisive issue is whether or not the courts determined the substance of the dispute between the applicants and the municipality.

260. The applicants had asked the courts to recognise that the municipality had been under a duty under Bulgarian law to sell them an apartment and that therefore the mayor's refusal to do so had been unlawful. In their decisions, the courts ruled that the municipality was not under a duty to sell an apartment to the applicants. That conclusion was based on analysis of all relevant arguments of the applicants and the provisions of domestic law (see paragraph 105 above). The dispute submitted for adjudication was thus the subject of a genuine examination and was decided by a legally binding decision. In this respect the present case differs from the case of *Yanakiev v. Bulgaria*, where the Supreme Administrative Court

"did not touch upon the substance of the applicant's claim and the main thrust of his argument" and thus violated the right of access to a court (*Yanakiev v. Bulgaria*, cited above, § 70). In these circumstances the fact that the courts ruled by way of an admissibility decision, not a judgment, is irrelevant for purposes of the applicants' Article 6 complaint.

261. Finally, in so far as the applicants alleged that the findings of the Bulgarian courts in their case were erroneous, the Court reiterates that it is not a court of appeal from the decisions of domestic courts and that, as a general rule, it is for those courts to interpret domestic law and assess the evidence before them (see *Kern v. Austria*, no. 4206/02, § 61, 4 February 2005 and *Wittek v. Germany*, no. 37290/97, § 49, ECHR 2000-XI).

262. The Court thus finds that there has been no violation of Article 6 of the Convention in the case of *Nikolovi*.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

263. 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."

264. The Court is required to rule on the applicants' just satisfaction claims in the cases in which it found a violation of the Convention: *Todorova*, *Eneva and Dobrev*, *Bogdanovi* and *Tzilevi*.

A. Damage

265. The applicants' claims in those four applications were as follows:

a) in the case of *Todorova*, EUR 160,500 in respect of pecuniary damage (supported by a valuation report of the market value of the property) and EUR 10,000 in non-pecuniary damages;

b) in the case of *Eneva and Dobrev* – EUR 98,280 in respect of the apartment (being the difference between EUR 117,080, the apartment's market value as assessed in a valuation report commissioned by the applicants, and EUR 18,800 obtained by the applicants in 2004 through the sale of their compensation bonds), EUR 35,900 in respect of improvements, loss of gains and damaged furniture and EUR 20,000 in respect of non-pecuniary damage;

c) in the case of *Bogdanovi*, EUR 52,200 in respect of the apartment (being the difference between EUR 58,000, the market value as assessed in by an expert commissioned by the applicants, and EUR 5,800 obtained in compensation), EUR 14,000 in respect of improvements, losses and liabilities and EUR 25,000 in non-pecuniary damages; and

d) in the case of *Tzilevi*, EUR 56,470 in respect of the market value of the apartment (supported by a valuation report by an expert appointed by them), EUR 4,893 in respect of liabilities incurred and EUR 30,000 for the pain and suffering endured.

266. The Government did not comment.

267. In the circumstances, the Court considers that the question of the application of Article 41 is not ready for decision in so far as it concerns the claims in respect of damage and reserves it, due regard being had to the possibility that an agreement between the respondent State and the applicants will be reached (Rule 75 § 1 of the Rules of Court).

B. Costs and expenses

1. In the case of Todorova

268. The applicant claimed EUR 4,730 for approximately 68 hours of legal work on the case at the hourly rate of EUR 70. She also claimed EUR 331 in respect of translation, mailing and copying costs. The applicant submitted a legal fees' agreement between her and their lawyer, a time-sheet and receipts. She requested that the above amounts – EUR 5,061 in total – be paid directly into their lawyer's bank account, after deduction of the legal aid received from the Council of Europe. Finally, the applicant also claimed EUR 128 for the cost of the report on the value of the property. The Government did not comment.

269. The Court considers that the expenses for translation, mailing, copying and a valuation report have been necessarily incurred and are reasonable in quantum. As regards legal fees, the Court notes the complexity of the present case but also the fact that the applicant's representative acted for several applicants in similar cases the issues in which overlapped. Taking into account EUR 685 paid in legal aid by the Council of Europe, it awards the applicant EUR 2,000 in respect of all costs and expenses, to be paid directly into her lawyer's bank account, and dismisses the remainder of the claim under this head.

2. In the case of Eneva and Dobrev

270. The applicants claimed EUR 2,100 in respect of legal fees charged by their lawyer for work done after the communication of the application to the respondent Government. They submitted a copy of a legal fees' agreement and asked that the above amount be paid directly into their lawyer's bank account. The applicants also claimed the equivalent of approximately EUR 240 in respect of translation, postal and other expenses and the cost of the valuation report they submitted. The Government did not comment.

271. The Court considers that the expenses for translation, mailing and a valuation report have been necessarily incurred and are reasonable in quantum. As regards legal fees, the Court notes the complexity of the present case but also that the applicants' representative was not involved in the initial stage of the proceedings and represented several applicants in similar cases the issues in which overlapped. Taking into account EUR 398 paid in legal aid by the Council of Europe, it awards the applicants EUR 1,500 in respect of all costs and expenses, to be paid directly into their lawyer's bank account, and dismisses the remainder of the claim under this head.

3. In the case of Bogdanovi

272. The applicants claimed EUR 5,100 for legal fees charged by their lawyer under a contract between them. They submitted a copy of a legal fees' agreement and asked that the above amount be paid directly into their lawyer's bank account. The applicants also claimed approximately EUR 450 in respect of translation, postal and travel expenses and the cost of the valuation report. The Government did not comment.

273. The Court considers that the expenses for translation, mailing and a valuation report have been necessarily incurred and are reasonable in quantum. As regards legal fees, the Court notes the complexity of the present case but also that the applicants' representative acted for several applicants in similar cases the issues in which overlapped. Taking into account EUR 685 paid in legal aid by the Council of Europe, it awards the applicants EUR 2,000 in respect of all costs and expenses, to be paid directly into their lawyer's bank account, and dismisses the remainder of the claim under this head.

4. In the case of Tzilevi

274. The applicants claimed EUR 3,430 in legal fees for 49 hours at the hourly rate of EUR 70. They submitted copies of a legal fees' agreement and a time sheet and asked that the above amount be paid directly into their lawyer's bank account. The Government did not comment.

275. The Court considers that the number of hours claimed is excessive. In view thereof, but also having regard to the complexity of the case, the Court awards EUR 2,500 in respect of costs and expenses.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the applications;

2. *Holds* that there has been no violation of Article 1 of Protocol No. 1 in the applications of *Velikovi* (application no. 43278/98), *Wulpe* (no. 45437/99), *Cholakovi* (no. 48014/99), *Stoyanova and Ivanov* (no. 53367/99) and *Nikolovi* (no. 194/02);

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 in the applications of *Todorova* (application no. 48380/99), *Eneva and Dobrev* (no. 51362/99), *Bogdanovi* (no. 60036/00) and *Tzilevi* (no. 73465/01);

4. *Holds* that it is not necessary to examine separately the applicants' complaints under Articles 13 and 14 of the Convention;

5. *Holds* that there has been no violation of Article 6 of the Convention in the application of *Nikolovi* (no. 194/02);

6. *Holds* that the question of the application of Article 41, which arises in respect of the applications of *Todorova* (application no. 48380/99), *Eneva and Dobrev* (no. 51362/99), *Bogdanovi* (no. 60036/00) and *Tzilevi* (no. 73465/01), is not ready for decision in so far as it concerns the claims in respect of damage;
   accordingly,
   (a) *reserves* the said question;
   (b) *invites* the Government and the applicants in the above mentioned four applications to submit, within two months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
   (c) *reserves* the further procedure in the applications of *Todorova* (application no. 48380/99), *Eneva and Dobrev* (no. 51362/99), *Bogdanovi* (no. 60036/00) and *Tzilevi* (no. 73465/01) and *delegates* to the President of the Chamber the power to fix the same if need be.

7. *Holds*
   (a) that the respondent State is to pay the respective applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts in respect of costs and expenses, payable directly into the respective lawyer's bank account:
      (i) in the case of *Todorova* (application no. 48380/99) – EUR 2,000 (two thousand euros);
      (ii) in the case of *Eneva and Dobrev* (application no. 51362/99) – EUR 1,500 (one thousand five hundred euros);
      (iii) in the case of *Bogdanovi* (application no. 60036/00) – EUR 2,000 (two thousand euros);

(iv) in the case of *Tzilevi* (application no. 73465/01) – EUR 2,500 (two thousand five hundred euros);

(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;

8. *Dismisses* the remainder of the applicants' claims for costs and expenses.

Done in English, and notified in writing on 15 March 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President