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

FIRST SECTION

CASE OF DIMITROV v. BULGARIA

(Application no. 47829/99)

STRASBOURG

23 September 2004

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 Dimitrov v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mr G. BONELLO,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 2 September 2004,

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

PROCEDURE

1. The case originated in an application (no. 47829/99) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Anton Stoyanov Dimitrov, a Bulgarian national born in 1934 and living in Sofia, on 30 April 1999.

2. The applicant was represented by Mr Y. Grozev, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms G. Samaras, of the Ministry of Justice.

3. The applicant alleged that the proceedings concerning his claim for restitution of agricultural land had lasted unreasonably long and that he had not had an effective remedy against the excessive length of the proceedings.

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

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

6. By a decision of 19 June 2003 the Court (First Section) declared the application admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1934 and lives in Sofia.

9. In March 1991 a statute providing for the restitution of agricultural lands collectivised during the communist regime, the Agricultural Lands Act of 1991, entered into force (see paragraphs 45-47 below).

10. Between 19 November 1991 and 2 June 1992 the applicant filed seven applications with the competent agricultural lands' commission, requesting the restitution of certain plots of agricultural land allegedly owned by his wife's grandfather.

11. On 16 September 1992 the commission refused to restitute 492.3 decares claimed by the applicant. Apparently by mistake in the text of its decision the commission referred to a non-existing application by the applicant. The applicant was informed of the decision by a letter dated 16 February 1993.

12. On 11 March 1993 the applicant lodged an application for judicial review of the refusal with the Tervel District Court, arguing that he was entitled to the restitution of the 492.3 decares.

13. The court held its first hearing on 26 September 1994. Counsel for the applicant presented certain written evidence and requested an adjournment, so as to be able to adduce further written evidence and call certain witnesses. The court granted the request and adjourned the case.

14. The second hearing, listed for 14 November 1994, was adjourned by request of the counsel for the applicant who stated that he was encountering difficulties with the gathering of certain written evidence.

15. The third hearing was held on 13 March 1995. Counsel for the applicant presented certain written evidence. The court heard two witnesses called by the applicant and the parties' closing argument.

16. The Tervel District Court dismissed the application for judicial review in a judgment of 15 March 1995, holding that there was insufficient evidence that the applicant's ancestor had owned the land. The applicant was notified of the judgment in writing on 11 April 1995.

17. On 12 May 1995 the applicant filed a petition for review with the Supreme Court, arguing that the Tervel District Court had erred in assessing the evidence and that his ancestor had owned the land in issue.

18. At the end of 1996 the Supreme Court was divided into a Supreme Court of Cassation and a Supreme Administrative Court. The applicant's case was taken up by the Supreme Administrative Court.

19. The Supreme Administrative Court held a hearing on 13 March 1997. At the hearing counsel for the applicant presented additional written observations in which he pointed out that the agricultural lands'

commission's file had not been appended to the court case file and that the Tervel District Court had hence decided the case without acquainting itself with all relevant documents.

20. On 25 March 1997 the Supreme Administrative Court quashed the Tervel District Court's judgement and remitted the case, holding that the non-appending of the commission's file to the court's case file had entailed a serious breach of the rules of procedure.

21. On remittal the Tervel District Court examined the case in three hearings.

22. The first hearing, listed for 22 May 1997, was adjourned because of the applicant's request to adduce additional evidence and the agricultural lands' commission's failure to produce its file.

23. The second hearing, listed for 18 July 1997, was adjourned due to the failure of the lands' commission to produce its file.

24. On 14 August 1997 the applicant complained to the Supreme Administrative Court about the delay in the proceedings.

25. The third hearing was held on 2 October 1997. The court examined all evidence, heard the parties' closing argument and reserved judgment.

26. On 19 October 1998 the applicant complained to the Ministry of Justice about the delay in the delivery of judgment. The Ministry of Justice notified the chairperson of the Dobrich Regional Court (in whose region the Tervel District Court was) about the complaint. The chairperson of the Dobrich Regional Court eventually sent a letter to the applicant, stating that his complaint was well-founded and that following his intervention the district court judge had promptly completed the case.

27. Indeed, on 10 November 1998 judgement was delivered. The Tervel District Court dismissed the application for judicial review, holding that 492.3 decares of the applicant's ancestor's land had been confiscated in 1923 by the Romanian State after the Romanian occupation of the northern part of Bulgaria (the so-called South Dobrudja). Thereafter, in 1942, pursuant to an international treaty concluded between Bulgaria and Romania („Крайовска спогодба"), a statute providing for the restitution of these lands had been adopted. The court noted that the applicant had not produced evidence that in 1942 his ancestor had requested the restitution of the land in accordance with the procedure set forth in that statute. The court therefore found that the applicant had not proved that his ancestor had been the owner of the land which had been collectivised after 1944.

28. On 30 November 1998 the applicant lodged an appeal on points of law with the Dobrich Regional Court.

29. The Dobrich Regional Court held one hearing on 14 May 1999. At the hearing counsel for the applicant presented written observations in which she pointed out, *inter alia*, that the agricultural lands' commission had issued a decision pursuant to a non-existent application by the applicant. The applicant had filed several applications for restitution, none

of which had borne the number or had related to the quantity of land mentioned in the commission's decision. The decision was thus invalid. Accordingly, counsel invited the court to quash the lower court's judgment and remit the case to the agricultural lands' commission for a fresh examination of the applicant's applications for restitution.

30. In a judgment of 3 July 1999 the Dobrich Regional Court quashed the Tervel District Court's judgment and remitted the case to the agricultural lands' commission. It held that the commission's decision had not been issued pursuant to the applicant's applications and was thus void.

31. On unspecified dates in 1999 and 2000 the commission issued six separate decisions pursuant to the respective applications of the applicant. The applicant was notified of the decisions by a letter dated 26 April 2000.

32. On an unspecified date the applicant lodged applications for judicial review of all six decisions with the Tervel District Court.

33. The court fixed a hearing for 7 July 2000. At that hearing it ordered the lands' commission to produce copies of the decisions and adjourned the case.

34. Two hearings listed for 27 October and 24 November 2000 were adjourned, because counsel for the applicant could not attend.

35. The next hearing took place on 18 December 2000. On the motion of the lands' commission the court decided to hold separate proceedings in respect of each of the commission's decisions. It instructed the applicant to provide separate applications for judicial review of each decision and adjourned the case.

36. On an unspecified date in December 2000 the applicant complied with the instructions of the court. Thereafter the court opened six new case files in respect of each of the applications for judicial review.

37. The court held two further hearings on 9 and 23 March 2001.

38. On 20 August 2002 the Tervel District Court delivered six judgments, granting the applicant's restitution claims.

39. The agricultural lands' commission lodged appeals on points of law against all six judgments with the Dobrich Regional Court.

40. The Dobrich Regional Court opened six separate case files and held two hearings on 19 and 26 February 2003.

41. On 10 March 2003 the Dobrich Regional Court delivered a judgment pursuant to the first appeal. It held that the first judgment of the Tervel District Court had been delivered with respect to the agricultural lands' commission's decision of 16 September 1992, which had already been declared void by the Dobrich Regional Court in July 1999 (see paragraph 30 above). It therefore vacated the Tervel District Court's judgment and discontinued the proceedings.

42. On 17 March 2003 the Dobrich Regional Court delivered five judgments pursuant to the remainder of the appeals. It held that the Tervel District Court had made material breaches of the rules of procedure. It

therefore quashed its judgments and remitted the cases for a fresh examination.

43. In April 2003 the applicant requested the Tervel District Court to join the proceedings in the five remitted cases. However, in May 2003 he withdrew his request and thereafter withdrew his applications for judicial review, thereby terminating the proceedings.

44. On an unspecified date, probably in May 2003, the applicant instituted separate proceedings for a declaratory judgment under section 11(2) of the Agricultural Lands Act of 1991. He sought a declaration against the agricultural lands' commission that he was entitled to restitution. The Tervel District Court held a hearing on 16 June 2003. At the time of the latest information from the parties (5 September 2003) the court had scheduled a hearing for 29 September 2003 and the proceedings were still pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. The Agricultural Lands Act of 1991

45. The Agricultural Lands Act of 1991 („Закон за собствеността и ползването на земеделските земи") provides that persons whose land had been collectivised during the communist regime or their heirs may request restoration of their ownership rights under certain conditions (section 10).

46. As a rule, the procedure for obtaining restitution is to apply to the local agricultural lands' commission (section 11(1)). The commissions are state bodies whose members are appointed by the Minister of Agriculture (section 33). Their task, after a person applies for restitution under section 11(1) of the Act, is to establish whether the relevant statutory conditions are met and, if so, to issue a decision restoring ownership.

The commissions' decisions are subject to judicial review by the competent district courts (section 14(3)). Until August 1997 the district courts' judgments were reviewable by the Supreme (Administrative) Court. After August 1997 they are appealable on points of law before the regional courts.

47. Persons claiming restitution of agricultural land who have not applied to the agricultural lands' commissions within the statutory time-limit may bring an action for a declaratory judgment against the local agricultural lands' commission (section 11(2)). In these proceedings the courts determine whether or not the claimant has the right to restitution. In civil proceedings under section 11(2), if the courts decide in favour of the claimant, the lands' commission must comply and issue the necessary decision restoring ownership.

2. The Administrative Procedure Act ("APA")

48. By section 38 of the APA, an application for judicial review of an administrative act must be filed with the administrative authority which has issued the act. Section 39(1) of the APA provides that within three days after the filing of the application the administrative authority has to transmit it to the competent court together with the entire file. If the application and the file are not transmitted to the court, the applicant may file a copy of the application directly with the court. The court is then obliged to request the file from the administrative authority (section 39(2)).

Section 41(3) of the APA provides that the court must verify whether the administrative act is issued by a competent authority and in the proper form, whether the rules of procedure and the substantive law have been complied with and whether the act is consistent with the aims of the law.

3. The Code of Civil Procedure ("CCP")

49. Article 190 of the CCP provides that judgment with reasons must be delivered within thirty days after the final hearing in a case.

50. The new Article 217a of the CCP, adopted in July 1999, provides:

> "1. Each party may lodge a complaint about delays at every stage of the case, including after oral argument, when the examination of the case, the delivery of judgment or the transmitting of an appeal against a judgment is unduly delayed.
>
> 2. The complaint about delays shall be lodged directly with the higher court, no copies shall be served on the other party, and no State fee shall be due. The lodging of a complaint about delays shall not be limited by time.
>
> 3. The chairperson of the court with which the complaint has been lodged shall request the case file and shall immediately examine the complaint in private. His instructions as to the acts to be performed by the court shall be mandatory. His order shall not be subject to appeal and shall be sent immediately together with the case file to the court against which the complaint has been filed.
>
> 4. In case he determines that there has been [undue delay], the chairperson of the higher court may make a proposal to the disciplinary panel of the Supreme Judicial Council for the taking of disciplinary action."

THE LAW

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

51. The applicant alleged that the length of the proceedings at issue in the present case had been unreasonable, in breach of Article 6 § 1 of the Convention.

Article 6 § 1 provides, as relevant:

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

A. Period to be taken into consideration

52. Regarding the question of the beginning of the proceedings, the Court notes that when under the national legislation an applicant has to exhaust a preliminary administrative procedure before having recourse to a court, the proceedings before the administrative body are to be included when calculating the length of the civil proceedings for the purposes of Article 6 (see *König v. Germany*, judgment of 28 June 1978, Series A no. 27, pp. 33-34, § 98, *Schouten and Meldrum v. the Netherlands*, judgment of 9 December 1994, Series A no. 304, p. 25, § 62 and *Vallée v. France*, judgment of 26 April 1994, Series A no. 289-A, p. 17, § 33).

53. In the present case, prior to the court proceedings, the applicant filed his claims for restitution with the competent agricultural lands' commission. The latter is an administrative body whose task is to restitute collectivised agricultural land to its former owners or their heirs (see paragraph 46 above). It may hence be considered that the proceedings commenced when the applicant lodged his claims for restitution between 19 November 1991 and 2 June 1992.

54. Since the Convention entered into force for Bulgaria on 7 September 1992, the Court is competent *ratione temporis* to examine only the period after that date. However, it must take into account the stage the proceedings had reached at that point (see *Proszak v. Poland*, judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2772, § 31).

55. The Court must also determine the end of the period under consideration. In this connection, the Court notes that the proceedings against the agricultural lands' commission's refusals to restitute certain amounts of land to the applicant ended in May 2003, when the applicant withdrew his appeals (see paragraph 43 above). However, at that point the applicant also instituted separate proceedings against the commission under section 11(2) of the Agricultural Lands Act of 1991 (see paragraph 44 above), which he claims should be included when calculating the period

under consideration in the present case. The purpose of these proceedings was the same as that of the proceedings before the lands' commission and the ensuing appeals, i.e. to determine whether the applicant was entitled to restitution. However, the Court does not consider that the mere fact that two separate sets of proceedings have the same purpose automatically means that they must be considered as a whole for the purposes of Article 6. The Court is therefore of the view that the end of the period under consideration was May 2003, when the applicant withdrew his appeals.

56. The overall length of the proceedings was thus eleven years and five months, of which ten years and eight months can be taken into consideration *ratione temporis*.

B. Reasonableness of the length of the proceedings

57. The Court will assess the reasonableness of the length of the proceedings in the light of the circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, among many other authorities, *Süßmann v. Germany*, judgment of 16 September 1996, *Reports* 1996-IV, pp. 1172-73, § 48 and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

1. Complexity of the case

58. The applicant submitted that the case had not been particularly complex in fact or in law. The sole subject-matter of the dispute had been whether his ancestor had owned certain plots of land before the collectivisation. This had not necessitated the gathering of vast amounts of evidence. Moreover, the applicant had presented most of the evidence at the very beginning of the proceedings. As to the legal issues raised by the case, it was true that they involved an international treaty and a piece of legislation from the 1940s, but it had to be borne in mind that, since the applicant's case was far from being unique, the courts in the region had quite often had occasion to deal with these texts.

59. The Government submitted that the complexity of the case should be assessed in view of the intricacy of the restitution process in Bulgaria and the difficulties encountered by the authorities in dealing with the claims of a high number of persons applying for restitution.

60. The Court considers that the case bore a certain degree of factual and legal complexity. The agricultural lands' commission and the courts had to gather evidence about facts which had occurred fifty years ago, which inevitably caused difficulties. Also, the applicant's claims related to various pieces of land which had to identified. As to the legal issues, despite the applicant's contention that the problems raised by the case were routine for the courts in the region, the Court considers that the degree of complexity,

while not excessive, went beyond that of an ordinary civil case. It involved, aside from the Agricultural Lands Act of 1991, the application of an 1942 international treaty and a special restitution statute adopted pursuant to that treaty in 1942. However, the dispute's complexity alone is not sufficient to justify such lengthy delays as occurred in the present case.

2. Conduct of the applicant

61. The applicant protested against the allegation that he had been responsible for most delays. In particular, the fact that the lands' commission's file had not been appended to the court case file had not been his fault, but a responsibility of the authorities. The applicant conceded that he had raised arguments relating the nullity of the commission's decision only in 1999, but stressed that by law it was the courts' duty to verify the validity of this decision from the very beginning of the judicial proceedings. The applicant finally emphasised that although he lived 450 km away from the venue of the proceedings before the Tervel District and the Dobrich Regional Courts, he had attended all hearings.

62. According to the Government, the disorganised manner in which the applicant had conducted his case had contributed to a great extent to the delay. Specifically, during the first examination of the case by the Tervel District Court the applicant's counsel had requested one adjournment and had failed to ask the court to append the lands' commission's file to its case file. He had raised this point only before the Supreme Administrative Court. Also, the applicant had raised the novel argument that the lands' commission had ruled on a non-existent application and that its decision was hence void only in 1999, before the Dobrich Regional Court, while being able to do so six years before that, in 1993. Finally, the applicant had complained about the delay only once.

63. The Court notes that two adjournments during the first examination of the case by the Tervel District Court were due to the applicant's counsel's requests (see paragraphs 13 and 14 above). It also notes that during the third examination of the case by the Tervel District Court two hearings were adjourned because of the absence of counsel for the applicant (see paragraph 34 above). In total, these caused a delay of seven months.

It does not appear that the applicant is responsible for any other delays. As regards the Government's contention that the applicant had raised his arguments in respect of the non-appending of the lands' commission's file to the court's case file and the validity of the commission's decision too late in the proceedings, the Court notes that both were matters which under domestic law the courts should have verified of their own motion, without waiting for the applicant to raise them (see paragraphs 20 and 48 above). Thus, it cannot be considered that the applicant's alleged negligence in presenting these arguments was the source of the delay.

3. Conduct of the authorities

64. The applicant considered that the courts and the agricultural lands' commission had been responsible for most of the delays. In particular, he pointed out that the lands' commission had taken more than a year to rule on his applications, that the Tervel District Court had listed his appeal against the commission's decision for hearing approximately a year and a half after its filing, that there had been long intervals between the hearings before that court during both the first and the second examination of the case, that the Supreme (Administrative) Court had listed the case for hearing a year and ten months after the filing of the petition for review, that during its second examination of the case the Tervel District Court had delayed the delivery of judgment for more than a year, and that the Dobrich Regional Court had not proceeded with the appeal on points of law for more than four months. In the applicant's view, the overall length of the proceedings was essentially due to the fact that the agricultural lands' commission had failed to issue valid decisions pursuant to his applications for restitution. This had been the cause for all the appeals before the courts, which had consumed years to examine and had in the end become meaningless, and had also made necessary the institution of fresh restitution proceedings pursuant to section 11(2) of the Agricultural Lands Act. Finally, the applicant submitted that numerous delays had accumulated because of the poor summoning system and the manner of gathering of evidence.

65. The Government contended that the authorities had displayed the utmost diligence possible under the circumstances. They pointed out that the Agricultural Lands Act of 1991 had created a new and complex procedure for the restitution of vast amounts of land. The restitution process had involved novel issues and a huge number of individual applicants. During the first years after the adoption of the Act the number of cases before the district courts had surged, and a few years later these cases had created backlogs at the Supreme Court. For this reason the legislature had amended the Act, providing for review of the district courts' judgments by the regional courts, which had greatly streamlined the procedures and reduced the delays. As regards the particular circumstances of the applicant, his case had been examined twice by the lands' commission and by four levels of court, which had held a substantial number of hearings.

66. As regards the specific periods of inactivity attributable to the authorities, the Court notes that more than one and a half years were allowed to pass between the lodging of the applicant's appeal against the agricultural lands' commission's decision on 11 March 1993 (see paragraph 12 above) and the first hearing before the Tervel District Court on 26 September 1994 (see paragraph 13 above), after which it took the Supreme (Administrative) Court a further year and ten months, from 12 May 1995 until 13 March 1997, to examine the applicant's petition for review (see paragraphs 17-19 above). Also, on 18 July 1997 the Tervel

District Court had to adjourn the case solely because of the lands' commission's failure to produce its file (see paragraph 23 above). The Court further notes that during its second examination of the case the Tervel District Court took more than thirteen months, from 2 October 1997 until 10 November 1998, to deliver judgment after its last hearing (see paragraphs 25 and 27 above). Finally, it took another year and almost five months for the Tervel District Court to deliver its six judgments after its third examination of the case (see paragraphs 37 and 38 above).

67. The Court further observes that the length of the proceedings as whole was to a large extent a consequence of the manner in which the authorities proceeded with the case. In particular, the Court notes that an apparent clerical mistake made by the agricultural lands' commission in September 1992 (see paragraph 11 above) was allowed to thwart the normal unfolding of the proceedings at least until July 1999 (see paragraph 30 above). Also, the first examination of the case by the Tervel District Court was vitiated by the commission's failure to produce its file with the result that the proceedings had to start anew (see paragraph 20 above). As noted above (see paragraph 63 above), the appending of the commission's file to the court's case file was a responsibility of the authorities (see paragraph 48 above).

68. The Court does not overlook the fact that the proceedings in issue were part of a complex scheme for the restitution of vast amounts of agricultural land to its former owners, which by its very nature necessitated time. However, the introduction of a reform of this nature cannot justify such lengthy delays as those which occurred in the present case, since States are under a duty to organise the entry into force and implementation of such measures in a way that avoids undue delay.

4. Conclusion

69. In the light of the criteria laid down in its case-law and having regard to the overall length of time taken by the proceedings and the delays attributable to the authorities, the Court considers that the length of the proceedings failed to satisfy the reasonable time requirement.

There has, accordingly, been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

70. The applicant also maintained, relying on Article 13 of the Convention, that he had not had an effective remedy in respect of the length of the proceedings.

Article 13 reads as follows:

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

71. The applicant submitted that prior to July 1999 in Bulgaria there had not existed any formal remedies against the unreasonable length of civil proceedings. He further submitted that the remedy created in July 1999 – the "complaint about delays" – was not an effective one. In particular, the applicant argued that for a remedy to be effective, it had to be able to lead to a finding that the length of the proceedings had been unreasonable and to result in an award of compensation for delays which had already occurred. Measured by this yardstick, the procedures available under Bulgarian law did not constitute effective remedies for the purposes of Article 13. Prior to July 1999 the applicant could address the Ministry of Justice and the Supreme Judicial Council. However, those were unregulated hierarchical appeals which could not lead to binding remedial action. As regards the "complaint about delays", it did not lead to a finding that Article 6 of the Convention had been breached and could not result in compensation; therefore it was likewise not effective.

72. The Government limited their comments on this complaint to referring to the text of Article 217a of the CCP and stating that it provided an effective remedy against delays.

73. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an arguable complaint under the Convention and to grant appropriate relief.

74. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint. However, the remedy required by Article 13 must be "effective" in practice as well as in law (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

75. Remedies available to a litigant at domestic level for raising a complaint about the length of proceedings are "effective", within the meaning of Article 13, if they "[prevent] the alleged violation or its continuation, or [provide] adequate redress for any violation that [has] already occurred" (see *Kudła*, cited above, § 158). Article 13 therefore offers an alternative: a remedy will be considered "effective" if it can be used either to expedite a decision by the courts dealing with the case, or to

provide the litigant with adequate redress for delays that have already occurred (see *Mifsud v. France* (dec.)[GC], no. 57220/00, ECHR 2002-VIII).

76. Having regard to its conclusion in respect of the applicant's complaint under Article 6 § 1 (see paragraph 69 above), the Court is of the view that the complaint was arguable. It must therefore determine whether, in the particular circumstances of the present case, there existed in Bulgarian law any means for obtaining redress in respect of the length of the proceedings.

77. The Court notes that the only apparent remedy against the excessive length of civil proceedings in Bulgaria is the "complaint about delays" introduced with the adoption of the new Article 217a of the CCP in July 1999. This procedure allows a litigant to apply to the chairperson of the higher court when the examination of the case, the delivery of judgment or the transmitting of an appeal against judgment is unduly delayed. The chairperson has the power to issue binding instructions to the court examining the case (see paragraph 50 above).

78. However, having regard to the particular circumstances of the present case, the Court does not consider it necessary to rule in the abstract whether the "complaint about delays" is an effective remedy for the purposes of Article 13 of the Convention. Even if it is accepted that after its introduction in July 1999 the applicant could have effectively fought against the further delays by filing such complaints, that could not have made up for the delay already accumulated during the period 1992-99. In this connection, the Court notes that the effectiveness of a remedy may depend on whether it has a significant effect on the length of the proceedings as a whole (see *Holzinger v. Austria (No. 1)*, no. 23459/94, § 22, ECHR 2001-I, *Holzinger v. Austria (No. 2)*, no. 28898/95, § 21, 30 January 2001 and *Rajak v. Croatia*, no. 49706/99, §§ 33-35, 28 June 2001).

79. The Court concludes, therefore, that in the particular circumstances of the present case a "complaint about delays" cannot be considered an effective remedy irrespective of its possible effectiveness in principle.

80. As regards the informal complaints which the applicant made to the Supreme Administrative Court and to the Ministry of Justice (see paragraphs 24 and 26 above), the Court does not consider that these may described as a remedy. The possibility to appeal to various authorities in the absence of a specific procedure cannot be regarded as an effective remedy, because such appeals aim to urge the authorities to utilise their discretion and do not give litigants a personal right to compel the State to exercise its supervisory powers (see *Gibas v. Poland*, no. 24559/94, Commission decision of 6 September 1995, Decisions and Reports 82, p. 76, at p. 82, *Kuchař and Štis v. the Czech Republic* (dec.), 37527/97, 23 May 2000, *Horvat v. Croatia*, no. 51585/99, §§ 47 and 64, ECHR 2001-VIII and

Hartman v. the Czech Republic, no. 53341/99, § 66, ECHR 2003-VIII (extracts)).

81. In sum, the Court finds that in the particular circumstances of the present case the applicant did not have at his disposal any effective domestic remedies whereby he could have expedited the examination of his civil action.

82. Furthermore, as regards compensatory remedies, the Court has not found it established that in Bulgarian law there exists the possibility to obtain compensation or other redress for excessively lengthy proceedings.

83. Accordingly, there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby he could enforce his right to a "hearing within a reasonable time" as guaranteed by Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. Article 41 of the Convention provides:

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

A. Damage

85. The applicant claimed 8,000 euros ("EUR") in compensation for non-pecuniary damage. He submitted that he had suffered distress on account of the length of the proceedings. He maintained that while what was at stake in the proceedings was not his livelihood, the dispute was of a particular emotional importance for him. He was sixty-nine years old and it was particularly painful for him to think that he might not live to see the restitution of ownership rights over property nationalised by the communist regime. His feelings of frustration were further aggravated by the lack of effective remedies against the length of the proceedings.

86. The Government did not comment on the applicant's claim.

87. In the Court's view, it is reasonable to assume that the applicant has suffered some distress and frustration on account of the unreasonable length of the proceedings and the lack of any remedies in this respect. Taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant the sum of EUR 2,500.

B. Costs and expenses

88. The applicant claimed EUR 2,620 for 65 hours and 30 minutes of work on the Strasbourg proceedings, at the hourly rate of EUR 40. He submitted an agreement between him and his lawyer and a time-sheet.

89. The Government did not comment on the applicant's claim.

90. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses insofar as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Having regard to all relevant factors, the Court considers it reasonable to award the sum of EUR 1,500.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Holds* that there has been a violation of Article 13 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:

(i) EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses;

(iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 23 September 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President