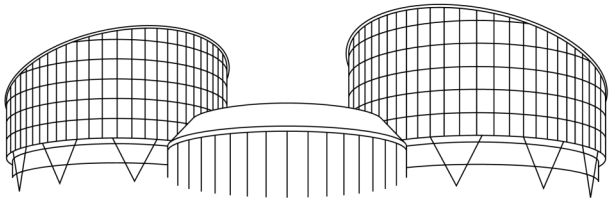

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF DZHAGAROVA AND OTHERS v. BULGARIA

(Application no. 5191/05)

JUDGMENT

STRASBOURG

2 September 2010

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 Dzhagarova and Others v. Bulgaria,

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

Peer Lorenzen, *President,*
Karel Jungwiert,
Rait Maruste,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Ganna Yudkivska, *judges,*
Pavlina Panova, ad hoc *judge,*

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 6 July 2010,

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

PROCEDURE

1. The case originated in an application (no. 5191/05) 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 four Bulgarian nationals, Ms Tsvetana Petkova Dzhagarova, Mr Martin Georgiev Dzhagarov, Ms Rositsa Georgieva Kirova and Mr Georgi Georgiev Dzhagarov, ("the applicants"), on 25 January 2005

2. The applicants were represented by Ms S. Margaritova-Vuchkova, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms R. Nikolova, of the Ministry of Justice.

3. Judge Kalaydjieva, the judge elected in respect of Bulgaria, withdrew from sitting in the case. On 30 January 2009 the Government appointed in her stead Ms Pavlina Panova as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1 of the Rules of Court).

4. On 3 March 2009 the Court declared the application partly inadmissible and decided to communicate to the Government the complaint concerning the length of the civil proceedings. It also decided to rule on the admissibility and merits of the remainder of the application at the same time (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1935, 1956, 1963 and 1973 respectively. The first, third and fourth applicants live in Sofia and the second applicant lives in Adelaide, Australia.

6. In 1977 the first applicant and her husband, who are the parents of the second, third and fourth applicants, bought from the Sofia municipality a flat of 261 square metres which had become State property by virtue of the nationalisations carried out by the communist regime in Bulgaria in 1947 and the following years.

7. On 18 August 1992 the heirs of the pre-nationalisation owner of the flat brought proceedings under section 7 of the 1992 Law on the Restitution of Ownership of Nationalised Real Property against the first applicant and her husband, seeking to establish that their title was null and void. They also sought a *rei vindicatio* order.

8. On 30 November 1995 the first applicant's husband died and the second, third and fourth applicants joined the proceedings as his heirs.

9. On 17 April 1997 the Sofia District Court allowed the claimants' actions. On an appeal by the applicants, on 24 September 2002 its judgment was upheld by the Sofia City Court. On further appeal, the Supreme Court of Cassation upheld the lower courts' judgments on 28 July 2004. The courts found that in 1977 the first applicant and her husband had purchased the flat in breach of the law and their title had therefore been null and void.

THE LAW

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

10. The applicants complained that the length of the proceedings in their case had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which, in so far as relevant, reads:

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

11. The Government considered that the length of the proceedings had not been excessive, in view, in particular, of the complexity of the case and the conduct of the applicants. The applicants contested these arguments.

12. The Court notes that the action against the first applicant and her husband was brought on 18 August 1992 (see paragraph 7 above). However, the period to be taken into consideration began on 7 September 1992, when the Convention entered into force in respect of Bulgaria. The period in question ended on 28 July 2004, when the Supreme Court of Cassation gave a final judgment (see paragraph 9 above). It thus lasted eleven years, ten months and twenty-one days for three levels of jurisdiction.

A. Admissibility

13. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

14. The reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

15. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

16. Having examined all the material submitted to it, the Court does not see a reason to reach a different conclusion in the present case. It notes that the case was examined by the domestic courts with substantial delays. In particular, the Sofia District Court examined those actions over more than four and a half years, from 7 September 1992 to 17 April 1997 (see paragraphs 9 and 12 above). It then took the Sofia City Court more than five years, from 17 April 1997 to 24 September 2002, to examine the applicants' appeal against the District Court's judgment (see paragraph 9 above). The Court does not consider that the case was of particular complexity, or that the applicants were responsible for any substantial delay.

17. The Court therefore concludes that the length of the proceedings failed to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. 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

19. For non-pecuniary damage, the first applicant claimed 9,000 euros (EUR) and the other three applicants claimed EUR 5,000 each.

20. The Government considered these claims to be excessive.

21. The Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards the first applicant, Ms Tsvetana Petkova Dzhagarova, who was a party to the impugned proceedings from their beginning, EUR 4,000 under this head, plus any taxes that may be chargeable.

22. As to the remaining applicants, Mr Martin Georgiev Dzhagarov, Ms Rositsa Georgieva Kirova and Mr Georgi Georgiev Dzhagarov, the Court refers to its recent finding in the case of *Ergül and Others v. Turkey* (no. 22492/02, § 45, 20 October 2009) that whenever, in a case concerning length of proceedings, there were multiple applicants who had inherited one single party to the impugned proceedings, it would award non-pecuniary damages as for one single applicant because the increase of the number of applicants could not be imputable to the respondent Government. On this basis, and noting that the second, third and fourth applicants in the case inherited from their father against whom the proceedings had initially been brought (see paragraphs 7-8 above), the Court awards jointly to those three applicants EUR 4,000, plus any taxes that may be chargeable.

B. Costs and expenses

23. The applicants also claimed EUR 1,680 and 850 Bulgarian levs (the equivalent of approximately EUR 440) for the costs and expenses incurred before the Court. They presented a time-sheet for the work performed by their legal representative, a contract for legal representation and several receipts.

24. The Government contested these claims.

25. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the circumstances of the case and the above criteria, the Court considers it reasonable to award, jointly to the four applicants, the sum of EUR 600 covering costs under all heads, plus any charges that may be chargeable on the applicants.

C. Default interest

26. 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. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:
      (i) to the first applicant, Ms Tsvetana Petkova Dzhagarova, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) jointly to the remaining three applicants, Mr Martin Georgiev Dzhagarov, Ms Rositsa Georgieva Kirova and Mr Georgi Georgiev Dzhagarov, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) to the four applicants jointly, EUR 600 (six hundred euros), plus any tax that may be chargeable to them, in respect of costs and expenses;
   (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 applicants' claims for just satisfaction.

Done in English, and notified in writing on 2 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Deputy Registrar	Peer Lorenzen President