FIFTH SECTION

CASE OF HADJIBAKALOV v. BULGARIA

(Application no. 58497/00)

JUDGMENT

STRASBOURG

8 June 2006

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

In the case of Hadjibakalov 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 J. BORREGO BORREGO, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 15 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 58497/00) 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 Ivan Samuilov Hadjibakalov, a Bulgarian national who was born in 1922 and lives in Plovdiv ("the applicant"), on 7 April 2000.

2. The applicant was represented by Mr M. Ekimdjiev and Ms S. Stefanova, lawyers practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Karadjova, of the Ministry of Justice.

3. On 8 December 2004 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on its admissibility and merits at the same time.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. On 25 November 1993 the applicant's brother filed with the Plovdiv District Court a petition requesting the partition of three golden coins inherited by him and the applicant from their late mother. The court opened

a case file on 5 April 1994 and apparently served a copy of the petition on the applicant around that date.

6. The first hearing was held on 15 June 1994. The court heard the applicant and the petitioner, admitted certain documents in evidence and gave the petitioner leave to call two witnesses.

7. A hearing listed for 24 October 1994 was adjourned because the petitioner's witnesses did not show up, one of them being ill and the other busy.

8. The next hearing took place on 19 January 1995. The court heard the applicant, the petitioner and two witnesses called by the petitioner. The applicant asked for leave to call two witnesses. The court granted such leave, but fined the applicant for protracting the proceedings.

9. The last hearing was held on 28 March 1995. The court heard two witnesses called by the applicant and admitted a document in evidence. It also heard the parties' closing arguments.

10. In a judgment of 11 July 1995 the Plovdiv District Court allowed the partition of the three coins in two equal shares. It ordered an expert report on the value of the coins. The court held that the applicant's mother had owned three gold coins, which she had left in his possession, as evidenced by the testimony of two witnesses.

11. On 20 October 1995 the applicant appealed against the judgment to the Plovdiv Regional Court.

12. The Plovdiv Regional Court held a hearing on 9 January 1996. It did not gather new evidence, heard the parties' closing arguments and reserved judgment.

13. In a judgment of 24 January 1996 the Plovdiv Regional Court quashed the Plovdiv District Court's judgment and dismissed the request for the partition of the coins. It held that the lower court's findings of fact had been based on insufficient evidence.

14. On 23 February 1996 the applicant's brother lodged a petition for review with the Supreme Court.

15. The Supreme Court held a hearing on 12 September 1996. It noted that both the applicant and the petitioner had been duly summoned, but had failed to show up, and reserved judgment.

16. In a judgment of 24 September 1996 the Supreme Court quashed the Plovdiv Regional Court's judgment and remitted the case for retrial. It held that by quashing the Plovdiv District Court's judgment for evidentiary insufficiency and then dismissing the request for the partition of the coins outright, without gathering further evidence, the Plovdiv Regional Court had made a serious breach of Article 208 § 2 of the Code of Civil Procedure (see paragraph 41 below).

17. Following the remittal, the Plovdiv Regional Court listed a hearing for 22 January 1997. The hearing had to be adjourned, because the applicant had fallen ill and could not attend.

18. The Plovdiv Regional Court held a hearing on 16 April 1997. It heard the parties' closing arguments and reserved judgment.

19. In a judgment of 10 June 1997 the Plovdiv Regional Court quashed the Plovdiv District Court's judgment of 11 July 1995 and decided to proceed to examine the case on the merits, as provided by Article 208 § 2 of the Code of Civil Procedure (see paragraph 41 below).

20. Two hearings listed for 8 October 1997 and 21 January 1998 had to be adjourned because the applicant had not been properly summoned.

21. A hearing was held on 15 May 1998. The court noted that two of the members of the panel examining the case had participated in the proceedings before the remittal by the Supreme Court. Accordingly, it decided that they should be replaced and adjourned the case.

22. The next hearing took place on 6 July 1998. The petitioner failed to show up. The court heard the applicant's closing statement and reserved judgment.

23. By an order of 10 July 1998 the Plovdiv Regional Court reopened the oral proceedings on the motion of the petitioner, finding that, having been ill, the latter had had a good cause to be absent at the hearing on 6 July 1998. The court also gave the parties leave to call additional witnesses.

24. The court held a hearing on 23 October 1998. It questioned one witness called by the petitioner and one witness called by the applicant, and heard the parties' closing arguments.

25. In a judgment of 1 December 1998 the Plovdiv Regional Court dismissed the request for the partition of the coins.

26. On 1 February 1999 the applicant's brother lodged a petition for review with the Supreme Court of Cassation. (In 1997 the former Supreme Court was divided into a Supreme Court of Cassation and a Supreme Administrative Court).

27. The Supreme Court of Cassation held a hearing on 15 November 1999. It noted that despite being duly summoned, the applicant and the petitioner had failed to appear, and reserved judgment.

28. In a judgment of 9 December 1999 the Supreme Court of Cassation reversed the Plovdiv Regional Court's judgment and allowed the partition of the coins.

29. The proceedings continued before the Plovdiv District Court. A hearing took place on 29 May 2000. The court noted that the applicant's brother had deceased and constituted his three heirs as a party to the proceedings. It questioned an expert on the value of the coins and admitted his report in evidence. It then proceeded to draw up a draft proposal for the partition of the coins between the applicant and his brother's heirs and reserved judgment.

30. In a judgment of 2 June 2000 the Plovdiv District Court finalised the proposal for the partition of the coins, deciding to allot two coins to one party of the proceedings and one coin to the other party. The party getting

two coins was to pay the other party an amount of money equalling the difference in value between the shares. The question of attributing the said shares to the parties was to be decided by drawing of lots.

31. On 27 June 2000 the applicant appealed to the Plovdiv Regional Court. He filed the appeal with the Plovdiv District Court, as required by the relevant rules of civil procedure. On 30 June 2000 the Plovdiv District Court instructed the applicant to specify his grounds of appeal, and on 5 September 2000 declared the appeal inadmissible, holding that the applicant had failed to do so. The applicant appealed against this decision on 20 November 2000. In a decision of 21 December 2000 the Plovdiv Regional Court rejected the appeal as inadmissible. The applicant then appealed to the Supreme Court of Cassation. On 19 April 2001 the Supreme Court of Cassation allowed the appeal and remitted the case to the Plovdiv Regional Court, instructing it to examine the merits of the appeal against the Plovdiv District Court's decision of 5 September 2000. Having done so, the Plovdiv Regional Court allowed the appeal and held that the appeal against the Plovdiv District Court's judgment of 2 June 2000 was valid. It thereupon proceeded to examine the merits of the case.

32. The Plovdiv Regional Court held a hearing on 22 October 2001. On the motion of the applicant it ordered an additional expert report on the value of the coins.

33. The next hearing was held on 4 December 2001. The court questioned the expert and admitted his report in evidence. It heard the parties' closing arguments.

34. In a judgment of 4 January 2002 the Plovdiv Regional Court upheld the Plovdiv District Court's judgment of 2 June 2000.

35. On 15 February 2002 the applicant appealed on points of law to the Supreme Court of Cassation. He filed the appeal with the Plovdiv Regional Court, as required by the relevant rules of civil procedure. On 20 February 2002 the Plovdiv Regional Court instructed him to pay the requisite fee. The applicant failed to do so and in a decision of 22 March 2002 the Plovdiv Regional Court declared the appeal inadmissible.

36. The proceedings then continued before the Plovdiv District Court. At a hearing held on 21 May 2002 the parties to the case drew lots, whereby it was determined that the applicant was to get one coin, and his brother's heirs were to get two coins. The court confirmed the allocation of the shares.

37. The applicant appealed against the drawing of the lots, but on 10 July 2002 the Plovdiv Regional Court instructed him to specify the judgment or decision against which he was appealing. The applicant failed to do so and on 30 September 2002 the Plovdiv District Court declared his appeal inadmissible. The applicant did not appeal further.

II. RELEVANT DOMESTIC LAW

38. Partition-of-property proceedings are governed by Articles 278 to 293a of the Code of Civil Procedure. They have two phases.

39. During the first phase the court has to ascertain the number and the identity of the co-owners and of the items of common property which are to be partitioned, as well as the share of each co-owner (Article 282 § 1).

40. During the second phase the court effects the partition, which can be done either by specifying which item of property goes to which co-owner (Articles 287 and 289), or by auctioning off an undividable piece of property and distributing the proceeds among the co-owners (Article 288). During the second phase of the proceedings the court may also have cognisance of a number of ancillary matters, such as the reimbursement of expenses that the co-owners have incurred with regard to the partitioned property, indemnification for the exclusive use of the property by one or more of the co-owners pending its partition (Article 286 § 1), or the provisional use of the property during the pendency of the proceedings (Article 282 § 2).

41. The other relevant provisions of the Code of Civil Procedure read as follows:

Article 208 (as in force at the material time)

"The second-instance court shall examine the appeal at an open hearing, shall hear the parties and, if the [lower court's] judgment is to be quashed, shall quash it and shall deliver a new judgment on the merits of the case.

If the grounds for quashing [the lower court's judgment] require the gathering of evidence, the second-instance court shall quash the judgment and deliver a new judgment on the merits of the case after having gathered such evidence.

..."

Article 217a (introduced in July 1999)

"1. Each party may lodge a complaint about delays at every stage of the proceedings, 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 steps to be carried out 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 propose to the disciplinary panel of the Supreme Judicial Council to take disciplinary action."

THE LAW

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

42. The applicant alleged that the length of the proceedings had been incompatible with the reasonable-time requirement of Article 6 § 1 of the Convention, which reads, as relevant:

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

43. The Government contested that averment.

A. Admissibility

44. 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

1. Period to be taken into consideration

45. The Government were of the view that the proceedings had started on 5 April 1994, when the Plovdiv District Court had opened the case file, and had ended on 21 May 2002, when the parties to the case had drawn lots to determine the allocation of the disputed coins.

46. According to the applicant, the proceedings had started on 25 November 1993, when the petitioner had filed his petition. He agreed that they had ended on 21 May 2002.

47. The Court reiterates that in civil proceedings, the reasonable time referred to in Article 6 § 1 normally begins to run from the moment the action was instituted before the tribunal (see, among many other authorities, *Poiss v. Austria*, judgment of 23 April 1987, Series A no. 117, p. 102, § 50 *in limine*). However, noting that the applicant was a defendant in the proceedings in issue and that it is unclear on what date he was served a copy of the petition and thus became aware of them, in the instant case the Court will proceed on the assumption that the beginning of the period to be taken into consideration was 5 April 1994 (see paragraph 5 above). The Court further notes that the applicant appealed against the decision of 21 May 2002 and that it did not come into force until 30 September 2002, when that appeal was declared inadmissible. It accordingly concludes that the period to be taken into account came to a close on that latter date (see paragraphs 36 and 37 above). That period therefore lasted almost eight and a half years.

2. Reasonableness of the length of the proceedings

48. 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 applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Goc v. Poland*, no. 48001/99, § 33, 16 April 2002).

49. The parties presented arguments as to the way in which the various criteria employed by the Court in this context should apply in the present case.

50. The Court notes at the outset that a distinctive feature of the instant case is that partition-of-property proceedings in Bulgaria consist of two phases. During the first phase the courts have to ascertain the identity and the number of the co-owners, the number of property items which are to be divided and the share of each of the co-owners. During the second phase the courts effect the partition (see paragraphs 38-40 above). It seems therefore that by the way they are fashioned partition-of-property proceedings are apt to consume more time than an ordinary civil action. However, this does not justify the overall duration of the proceedings (see, *mutatis mutandis*, *Goc*, cited above, § 36), as the States have a general obligation to organise their legal systems so as to ensure compliance with the requirements of that provision, including that of trial within a reasonable time (see, as recent authorities, *Kitov v. Bulgaria*, no. 37104/97, § 73, 3 April 2003; and *Krastanov v. Bulgaria*, no. 50222/99, § 74, 30 September 2004).

51. The litigation in the case at hand was not factually or legally complex. The proceedings did not concern numerous pieces of movable or immovable property or a large number of co-owners. On the contrary, they related solely to three golden coins, whereas the parties to the case – unlike

the situation obtaining in typical partition-of-property proceedings – were just two: the applicant and his brother. There were, furthermore, no side or preliminary issues to be decided by the courts – such as kinship, unjust enrichment, invalidation of will clauses, etc. –, as is the case in many partition-of-property proceedings. The only element lending a certain amount of factual complexity to the case was the need for an expert opinion on the value of the coins (see paragraphs 10 and 29 above).

52. The applicant was responsible for some delays, such as those stemming from his belated request for leave to call witnesses made on 19 January 1995, his failure to show up at the hearing on 22 January 1997, his failure to pay the requisite fee for lodging his petition for review of the Plovdiv Regional Court's judgment of 4 January 2002, and his failure to specify the judgment or decision which he was challenging in his appeal of 10 July 2002 (see paragraphs 8, 17, 35 and 37 above). In total, these accounted for approximately nine months of delay. On the other hand, the Court considers that even if the proceedings lasted longer because of the applicant's appeals (see paragraphs 11, 14, 26, 31, 35 and 37 above), this delay resulted from the justified exercise of his procedural rights rather than from any desire on his part to thwart the speedy determination of the dispute. In any event, the Court is not convinced that these delays were such as to explain the overall duration of the proceedings (see *Goc*, cited above, § 39).

53. The authorities were responsible for various delays. For instance, during the first proceedings for review the Supreme Court listed a hearing more than six months after the lodging of the petition. Two hearings listed by the Plovdiv Regional Court for 8 October 1997 and 21 January 1998 had to be adjourned because the applicant had not been properly summoned, which resulted in seven months of delay. A hearing listed by the same court for 15 May 1998 had to be adjourned due to the need to replace two judges to avoid impartiality concerns. During the second proceedings for review the Supreme Court of Cassation held a hearing more than nine months after the petition had been lodged. The unjustified refusal of the Plovdiv District and Regional courts to examine the applicant's appeal against the former's judgment of 2 June 2000 consumed another fifteen months (see paragraphs 20, 21, 27 and 31 above).

54. Another source of delay was the erroneous approach of the Plovdiv Regional Court during the first second-instance proceedings. As noted by the Supreme Court, that court disregarded the relevant rules of procedure and, after quashing the lower court's judgment for evidentiary insufficiency, did not proceed to examine the case on the merits. This necessitated remitting the case to it with instructions to do so, which resulted in a further eight months of delay (see paragraphs 16 and 41 above).

55. Having regard to the above, and noting that the national courts took more than eight years to finally dispose of a relatively simple case, the Court concludes that the length of the proceedings failed to satisfy the reasonable-time requirement of Article 6 § 1.

56. There has therefore been a violation of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 THE CONVENTION

57. The applicant complained under Article 13 of the Convention about the lack of effective remedies against the allegedly excessive length of the proceedings. Article 13 provides:

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

A. Admissibility

58. 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

59. The Government submitted that no issue arose under Article 13, as the applicant's complaint under Article 6 § 1 was not arguable. In the alternative, they pleaded that the "complaint about delays" under the new Article 217a of the Code of Civil Procedure provided a remedy in this respect.

60. The applicant submitted that even assuming that the "complaint about delays" could have expedited the proceedings after 1999, which was quite dubious, it could not have remedied the delays already accumulated by that time. In any event, there was no possibility to obtain compensation for these delays.

61. Having regard to is conclusion in paragraph 55 above, the Court is of the view that the complaint under Article 6 § 1 is arguable. It follows that Article 13 is applicable. It notes that in several cases (see *Djangozov v. Bulgaria*, no. 45950/99, § 51, 8 July 2004, *Rachevi v. Bulgaria*, no. 47877/99, § 65, 23 September 2004; and *Dimitrov v. Bulgaria*, no. 47829/99, § 77, 23 September 2004) it found that until July 1999 – more than five years after the commencement of the proceedings at issue – Bulgarian law did not provide any remedies against the excessive length of civil proceedings. The Court does not consider it necessary to examine

whether a "complaint about delays" under Article 217a of the Code of Civil Procedure, enacted in July 1999 (see paragraph 41 above), is an effective remedy in principle. Even assuming that it is one, any decision given under this provision which might have speeded up the examination of the case could not have made up for the delays which had occurred prior to its introduction and had already had a significant impact on the overall duration of the proceedings (see *Djangozov*, § 52; *Rachevi*, § 67; and *Dimitrov*, § 78, all cited above). The Court also notes that under Bulgarian law there exists no possibility to obtain compensation for excessively lengthy civil proceedings (see *Djangozov*, § 58; *Rachevi*, § 103; and *Dimitrov*, § 82, all cited above).

62. There has therefore been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed 10,000 euros (EUR) as compensation for non-pecuniary damage on account of the violations found in the present case.

65. The Government contested this claim.

66. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards award him EUR 600, plus any tax that may be chargeable on this amount.

B. Costs and expenses

67. The applicant also claimed EUR 1,993 for the costs and expenses incurred in the proceedings before the Court. He requested that any amount awarded under this head be paid directly into the bank accounts of his lawyers.

68. The Government contested this claim.

69. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 600, plus any tax that may be chargeable. This amount is to

be paid into the bank account of the applicant's lawyers, Mr M. Ekimdjiev and Ms S. Stefanova, in Bulgaria.

C. Default interest

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

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable on the date of settlement:
      (i) EUR 600 (six hundred euros) in respect of non-pecuniary damage;
      (ii) EUR 600 (six hundred euros) in respect of costs and expenses, to be paid into the bank account of the applicant's lawyers, Mr M. Ekimdjiev and Ms S. Stefanova, in Bulgaria;
      (iii) any tax that may be chargeable on the above amounts;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 8 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President