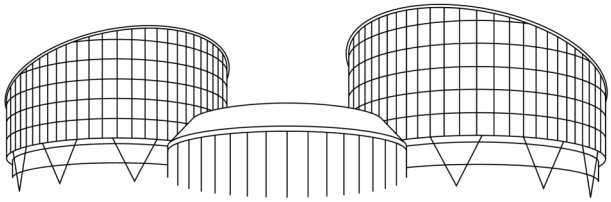

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

**CASE OF IVANOVI v. BULGARIA**

*(Application no. 14226/04)*

JUDGMENT

STRASBOURG

7 January 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 Ivanovi v. Bulgaria,**

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

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

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 1 December 2009,

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

## PROCEDURE

1. The case originated in an application (no. 14226/04) 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 two Bulgarian nationals, Mrs Margarita Todorova Ivanova and Mr Robert Petrov Ivanov ("the applicants"), on 14 April 2004.

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

3. On 16 September 2008 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).

4. 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 Mrs Pavlina Panova as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1 of the Rules of Court).

## THE FACTS

5. The applicants were born in 1936 and 1960 respectively and live in Sofia. The first applicant is the second applicant's mother.

6. In 1969 the first applicant and her husband bought from the Sofia municipality an apartment which had become State property by virtue of the nationalisations carried out by the communist regime in Bulgaria after 1947.

7. On 22 February 1993 the heir of the pre-nationalisation owner of the apartment brought proceedings against the first applicant and her husband, alleging that their title to the apartment was null and void and seeking the restoration of his own title.

8. The case was examined by the Sofia District Court, which dismissed the action in a judgment of 17 July 1995. On an appeal by the former owner's heir, on 10 June 1996 the Sofia City Court reversed and allowed the claim.

9. On an unspecified date in the summer of 1996 the first applicant and her husband filed a petition for review (cassation). While the case was pending before the Supreme Court of Cassation, on an unspecified date, most likely in 1998, they also sought the reopening of the proceedings. Under domestic law at the time, they were entitled to do so in view of the fact that the judgment of the Sofia City Court was formally considered to be final. The first applicant and her husband sought reopening on the basis of newly-discovered evidence, namely an instruction of the Ministry of Architecture and Public Works of 1968 concerning the sale of State-owned apartments.

10. The Supreme Court of Cassation held a hearing on 10 November 1998 and dealt both with the petition for review (cassation) submitted in 1996 and the request for reopening submitted in 1998. In a judgment of 2 March 1999 it reopened the proceedings, finding that the first applicant and her husband could not have been aware of the newly-discovered document earlier. It quashed the judgment of the Sofia City Court of 10 June 1996 and remitted the case. Accordingly, it held that it would not examine the petition for review (cassation).

11. The case was remitted to the Sofia City Court, which held its only hearing on 21 June 2001. Although it took into account the 1968 instruction of the Ministry of Architecture and Public Works on the basis of which the proceedings had been reopened, the domestic court reached again the conclusion that the title of the first applicant and her husband was null and void. In a judgment of 3 August 2001 it allowed the claim against them.

12. On 29 October 2001 the first applicant and her husband appealed against that judgment in cassation.

13. On 9 March 2002 the first applicant's husband passed away and was succeeded by the two applicants. The second applicant joined the proceedings.

14. The Supreme Court of Cassation held two hearings on 18 March and 4 November 2003. In a final judgment of 9 December 2003 it upheld the Sofia City Court's judgment of 3 August 2001 whereby the title of the first applicant and her husband had been found to be null and void.

# THE LAW

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

15. The applicants complained that the length of the civil proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

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

16. The Government did not comment.

### A. Period to be taken into consideration

17. The proceedings in the case at hand began on 22 February 1993, when the former owner of the apartment brought an action against the first applicant and her husband (see paragraph 7 above), and ended with the final judgment of the Supreme Court of Cassation of 9 December 2003 (see paragraph 14 above). The Court notes that the proceedings were pending without interruption during that period, including in the interval 1996-98, when the case awaited examination at the review (cassation) stage before the Supreme Court of Cassation (see paragraphs 9-10 above). Thus, the proceedings lasted ten years, nine months and seventeen days, during which the case was examined at three levels of jurisdiction.

### B. Admissibility

18. The Court notes that the 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.

### C. Merits

19. The Court reiterates that 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).

20. 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 and does not see here a reason to reach a different conclusion. In particular, it notes that the claim examined by the domestic courts does not appear to

have been of any particular complexity and that its examination was delayed by the reopening of the proceedings in 1999, following the discovery of new evidence (see paragraph 10 above). Moreover, there were long periods of inactivity on the part of the authorities. For a period of approximately two years the Supreme Court of Cassation left unexamined the petition for review (cassation), lodged by the first applicant and her husband in 1996 (see paragraphs 9-10 above). It remained inactive once again, for a period of more than a year and four months (from 29 October 2001 to 18 March 2003), when the case reached it for a second time (see paragraphs 12 and 14 above).

21. The Court thus concludes that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement under Article 6 § 1 of the Convention. There has accordingly been a breach of that provision.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The first applicant claimed 9,000 euros (EUR) and the second applicant EUR 5,000 in respect of non-pecuniary damage. The applicants submitted that they had suffered anguish and frustration for many years.

24. The Government considered these claims to be excessive.

25. The Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards jointly to the two of them EUR 3,200 under that head.

### B. Costs and expenses

26. The applicants claimed 600.25 Bulgarian levs (BGN), the equivalent of EUR 310, for the costs and expenses incurred before the domestic courts. They also claimed EUR 1,140 for the fees charged by their lawyer and BGN 424.70, the equivalent of EUR 220, for other costs and expenses incurred in the proceedings before the Court. In support of these claims they presented the relevant receipts and a contract for legal representation with their lawyer.

27. The Government considered the claim for legal fees to be excessive.

28. 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 are reasonable as to quantum.

29. 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 covering costs under all heads.

### C. Default interest

30. 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 on account of the excessive length of the civil proceedings;

3. *Holds*
   (a) that the respondent State is to pay jointly to the two 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, to be converted into Bulgarian levs at the rate applicable at the date of settlement:
      (i) EUR 3,200 (three thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 600 (six hundred euros), plus any tax that may be chargeable to the applicants, 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 7 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President