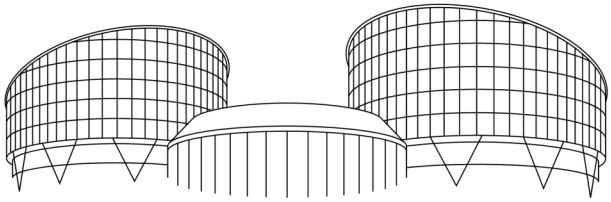

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KABAKCHIEVI v. BULGARIA

(Application no. 8812/07)

JUDGMENT

STRASBOURG

6 May 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 Kabakchievi 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,
Mark Villiger,
Isabelle Berro-Lefèvre,
Zdravka Kalaydjieva, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 30 March 2010,

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

PROCEDURE

1. The case originated in complaints 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 a Russian national, Mrs Olga Timofeeva Kabakchieva ("the first applicant"), on 2 September 2003. In November 2006 her sons Mr Alexander Kabakchiev ("the second applicant") and Mr Hristo Kabakchiev ("the third applicant"), both Bulgarian nationals, joined the proceedings before the Court.

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, Mrs M. Dimova, of the Ministry of Justice.

3. On 26 March 2007 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

4. The first applicant being of Russian nationality, by letter of 12 April 2007 the Russian Government were invited to state whether they wished to intervene in accordance with Article 36 of the Convention. They did not avail themselves of that possibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1917, 1947 and 1957 respectively and live in Sofia.

6. In 1993 the heirs of the pre-nationalisation owners of an apartment, purchased by the first applicant's husband from the State in 1968, brought an action for restitution against the latter, seeking a declaration that the 1968 transaction had been null and void and that therefore the apartment should be restored to its original owners before the nationalisation.

7. On 18 October 1995 the Sofia District Court granted the restitution claim.

8. On appeal, on 14 July 1997 the Sofia City Court quashed the District Court's judgment and dismissed the claim of the pre-nationalisation owners' heirs.

9. The heirs of the pre-nationalisation owners submitted a petition for review (cassation).

10. By a final judgment of 22 February 1999 the Supreme Court of Cassation quashed the Sofia City Court's judgment and upheld the District Court's judgment. As a result, the title of the first applicant's husband to the apartment at issue was declared null and void.

11. The number of hearings held in the course of the proceedings is not clear.

12. On 6 May 1999 the first applicant's husband died. The first applicant and her two sons (the second and third applicants) were his heirs.

13. On 20 May 1999 the first applicant, who had not been a party to the 1993-1999 proceedings, submitted a request for reopening, stating that in accordance with the Code of Civil Procedure she should have been cited as a party since she was the owner of one half of the apartment at issue and the judgment of 22 February 1999 was binding on her.

14. The second and third applicants also became parties to these proceedings as they replaced their deceased father, being his heirs.

15. By a judgment of 30 January 2001 the Supreme Court of Cassation quashed the judgment of 22 February 1999, reopened the case and remitted it to another panel of the Supreme Court of Cassation. The court found that, in violation of the relevant provisions of the Code of Civil Procedure, the first applicant had not taken part in the 1993-1999 proceedings.

16. At least two hearings were held before the Supreme Court of Cassation - one on 15 May 2001 and one on 6 November 2001, the first of them was adjourned upon the first applicant's request.

17. By a judgment of 13 November 2001 the Supreme Court of Cassation quashed the judgment of 14 July 1997 and remitted the case to the Sofia City Court for new examination.

18. The first hearing before the City Court was scheduled for 27 May 2002 and was adjourned upon the first applicant's request. The following hearing was held on 6 February 2003. At least three more hearings were held - on 13 March 2003, 20 November 2003 and 9 February 2004, the first of which was adjourned because the third applicant had not been properly summoned as his address had changed.

19. On 1 March 2004 the Sofia City Court quashed the Sofia District Court's judgment of 18 October 1995 and decided to refer the case for renewed examination by the Sofia District Court.

20. On an unspecified date in March or in April 2004 the heirs of the pre-nationalisation owners appealed before the Supreme Court of Cassation, which held a hearing on 11 March 2005. By judgment of 24 March 2005 the Supreme Court of Cassation quashed the lower court's judgment, as the reopened case fell to be examined by the Sofia City Court.

21. The Sofia City Court held a hearing on 14 November 2005.

22. On 9 January 2006 the Sofia City Court found that the 1968 transaction was null and void, having regard to the fact that the apartment at issue had largely exceeded the applicants' family's needs as determined by the relevant housing regulations.

23. On 21 February 2006 the applicants appealed. The first hearing was scheduled for 18 April 2007 but was adjourned upon the first applicant's request. Another hearing was held on 20 June 2007.

24. By a judgment of 9 July 2007 the Supreme Court of Cassation upheld the previous court's judgment.

II. RELEVANT DOMESTIC LAW

25. Until July 1999 Bulgarian law did not provide for any remedies in respect of length of civil proceedings.

26. A new procedure, "complaint about delays", was introduced in July 1999, by virtue of Article 217a of the Code of Civil Procedure 1952, in force until 2007. Pursuant to this procedure, a litigant aggrieved by the slow examination of the case could file a complaint before the president of the higher court. The latter had the power to issue mandatory instructions for faster processing of the case.

THE LAW

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

27. The applicants complained that the length of the 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..."

28. The Government contested that argument.

29. The Court notes that in similar cases where reopening has been granted and as a result the same issue has been examined again and finally determined in the reopened proceedings, for the purposes of determining the period to be taken in consideration, it has taken into account the period before and after the reopening (see, among others, *Pavlyulynets v. Ukraine*, no. 70767/01, § 41-42, 6 September 2005). However, from this period the Court has discounted the periods between the adoption of final and binding judgments and their revocation in the course of extraordinary proceedings, since during these periods no dispute concerning the determination of civil rights and obligations has been pending (see, among other authorities, *Pavlyulynets v. Ukraine*, cited above, § 41 and *Yaroslavtsev v. Russia*, no. 42138/02, § 22, 2 December 2004).

30. In the present case the proceedings began on 16 February 1993 when the claim against the first applicant's husband was brought and ended in a judgment of the Supreme Court of Cassation of 22 February 1999. On 20 May 1999 the first applicant requested reopening, which was granted on 30 January 2001. The reopened proceedings ended on 9 July 2007 when the issue was finally determined by a judgment of the Supreme Court of Cassation. Thus, applying its case-law in respect of the period to be taken into account, the Court considers that the period between 20 May 1999 and 30 January 2001 should be discounted from the global length of the proceedings since during this period the issue pending before the domestic courts was not a dispute concerning the determination of the applicants' civil rights and obligations but whether or not to grant reopening.

31. Accordingly, the period goes from 16 February 1993 to 22 February 1999 and from 30 January 2001 to 9 July 2007.

32. The Court, however, observes that in the present case none of the applicants was a party to the 1993-1999 proceedings but they intervened in them after the reopening. In this connection, it notes that its case-law on the intervention of third parties in civil proceedings makes the following distinction: where the applicant has intervened in domestic proceedings only on his or her own behalf the period to be taken into consideration begins to

run from that date, whereas if the applicant has declared his or her intention to continue the proceedings as heir he or she can complain of the entire length of the proceedings (see, among others, *Sadik Amet and Others v. Greece*, no. 64756/01, §§ 18-20, 3 February 2005, and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 220, ECHR 2006-V).

33. In the present case all the applicants were heirs of the first applicant's husband, against whom the proceedings had been initiated. The second and third applicants intervened in the reopened proceedings as heirs of their deceased father, whereas the first applicant participated in them on her own behalf as a co-owner of the disputed property and as an heir (see paragraphs 12 and 13 above). This is sufficient for the Court to consider that all three applicants can complain of the entire length of the proceedings.

34. Thus, the period to be taken into account amounts to approximately twelve years and six months, during which the case was examined by three levels of jurisdiction.

A. Admissibility

35. The Government argued that the applicants had failed to exhaust the available domestic remedies because they had not filed a "complaint about delays" (see paragraph 26 above).

36. The applicants replied that such a complaint did not represent an effective remedy as most of the delays occurred while the case was pending before the Supreme Court of Cassation.

37. The Court has already found that the "complaint about delays" can be effective, but that regard must be had to the specific circumstances of each case (see *Stefanova v. Bulgaria*, no. 58828/00, § 69, 11 January 2007) and to the impact that its use may have on the overall duration of the proceedings (see *Kuncheva v. Bulgaria*, no. 9161/02, § 40, 3 July 2008 and *Tzvyatkov v. Bulgaria*, no. 2380/03, §§ 30 and 31, 22 October 2009).

38. In the present case, the Court observes that the "complaint about delays" was introduced only in July 1999. Therefore, its use could not have made up for the delays which had occurred prior to this date (see, among others, *Djangozov v. Bulgaria*, no. 45950/99, § 52, 8 July 2004 and *Rachevi v. Bulgaria*, no. 47877/99, § 67, 23 September 2004).

39. In respect of the period after July 1999, the Court notes that the case was pending before the Sofia City Court between 13 November 2001 and 1 March 2004 for a period of about two years and four months, during which time two of the hearings were scheduled at intervals of eight and nine months (see paragraphs 17-19 above). It is true that, in order to seek more expedient examination in these circumstances, the applicants could have used the "complaint about delays". However, the Court is not convinced that this remedy would have been effective with regard to its impact on the overall duration of the proceedings for the following reasons.

40. First, the proceedings would have been accelerated at best with a few months only, which does not account for all delays.

41. Second, the Court notes that apart from the delay before the Sofia City Court, considerable delays occurred at two other occasions when the case was pending before the Supreme Court of Cassation (see paragraphs 20 and 23 above). In view of the fact that there was no court higher than the latter and a "complaint about delays" is to be made to the president of the "higher court" (see paragraph 26 above), it is questionable whether this avenue of redress was available to the applicants in respect of these delays before the Supreme Court of Cassation. The Government have not provided any example of its being used with success in such circumstances.

42. Third, a delay of approximately three years occurred as a result of the Sofia City Court's decision to remit the case to the Sofia District Court – a decision which was found unjustified and quashed by the Supreme Court of Cassation (see paragraphs 19 and 20 above). In respect of the above period the "complaint about delays" could not be considered as effective remedy (see paragraph 25 above and, *mutatis mutandis*, *Givezov v. Bulgaria*, no. 15154/02, § 38, 22 May 2008).

43. In view of the above, in the particular circumstances of the case, a "complaint about delays" did not represent an effective remedy to be exhausted within the meaning of Article 35 § 1 of the Convention. The Government's objection is therefore dismissed.

44. The Court further finds that the applicants' complaint about the length of the proceedings is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

45. 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).

46. 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 and *Rachevi v. Bulgaria*, cited above). Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. In particular, the Court has regard to the global duration of the proceedings of more than twelve years, which is excessive in itself. It further observes other delays attributable to the authorities such as that of about three years due to

the fact that the Sofia City Court erroneously decided that it was not competent to examine the case (see paragraphs 19 and 20 above) and the delay of one year and five months within which the Supreme Court of Cassation examined the applicants' cassation appeal (see paragraphs 23 and 24 above). In respect of the applicants' conduct, although several hearings were adjourned upon their request, this accounts for a delay of not more than ten months.

47. In view of the above, having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

48. The applicants complained under Article 13 of the Convention that they did not have an effective domestic remedy for the length of the proceedings. Article 13 reads:

> "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

49. 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

50. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). A remedy is effective if it prevents the alleged violation or its continuation or provides adequate redress for any breach that has already occurred (ibid., § 158, and *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

51. The Court must, therefore, determine whether, in the particular circumstances of the present case, there existed in Bulgarian law effective remedies in respect of the length of the proceedings.

52. The Court refers to its finding that in the particular circumstances of the present case a "complaint about delays" did not represent a remedy to be exhausted (see paragraph 43 above). It follows that it cannot be considered

as an effective remedy within the meaning of Article 13 of the Convention. In addition, the Government has not shown that Bulgarian law provides other means of redress whereby a litigant could obtain the speeding up of civil proceedings. Finally, as regards compensatory remedies, the Court has also not found it established that in Bulgarian law there exists the possibility to obtain compensation or other redress for excessively lengthy proceedings (see, for example, *Rachevi v. Bulgaria*, cited above §§ 96-104). The Court sees no reason to reach a different conclusion in the present case.

53. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicants could have obtained a ruling upholding their right to have their case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The first applicant claimed 17,000 euros (EUR) in respect of non-pecuniary damage. The second and third applicants claimed EUR 6,000 and EUR 3,000 respectively.

56. The Government did not express an opinion on the matter.

57. The Court observes that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis and taking into account all the circumstances of the case, it awards jointly to the three of them EUR 5,000 under this head.

B. Costs and expenses

58. The applicants also claimed EUR 3,000 in lawyers' fees for the proceedings before the Court. They further claimed 315 Bulgarian levs (BGN), the equivalent of EUR 161, in costs for the translation of their observations and BGN 60, the equivalent of EUR 30.70, in postage. In support of this claim they presented a fees' agreement with their lawyer, a translation contract and postage receipts for the amount of BGN 21.69, the equivalent of EUR 11.12. The applicants requested that the amount awarded

for legal fees under this head be paid directly to their lawyer, Mrs Margaritova-Vuchkova.

59. The Government did not express an opinion on the matter.

60. 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 documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 600, covering costs under all heads, of which EUR 500 to be paid directly into the bank account of the applicants' legal representative.

C. Default interest

61. 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* that there has been a violation of Article 13, in conjunction with Article 6 § 1 of the Convention, on account of the lack of an effective remedy for the excessive length of the civil proceedings;

4. *Holds*

a) that the respondent State is to pay jointly to the three 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 5,000 (five thousand 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, EUR 500 (five hundred euros) of which to be paid directly into the bank account of the applicants' legal representative, Mrs Margaritova-Vuchkova;

(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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 6 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President