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

FIFTH SECTION

CASE OF KAMBOUROV v. BULGARIA

(Application no. 55350/00)

JUDGMENT

STRASBOURG

14 February 2008

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 Kambourov v. Bulgaria,

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

Peer Lorenzen, *President*,
Snejana Botoucharova,
Karel Jungwiert,
Rait Maruste,
Javier Borrego Borrego,
Renate Jaeger,
Mark Villiger, *judges*,
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 55350/00) 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 Dimitar Kostadinov Kambourov, a Bulgarian national who was born in 1926 and lives in Plovdiv ("the applicant"), on 3 November 1999.

2. The applicant was represented by Ms E. Nedeva, a lawyer practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Kotseva, of the Ministry of Justice.

3. On 20 May 2005 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and the merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. Until 1987 the applicant occupied a flat with his wife. In that year he moved out. On 28 June 1989 they divorced. On 16 September 1989 the applicant's former wife died.

A. The first phase of the partition proceedings

5. On 12 February 1990 the applicant issued proceedings against his son and daughter in the Plovdiv District Court. He requested partition of his deceased former wife's estate. The estate allegedly consisted of the above-mentioned flat, a garage, a car and a number of chattels.

6. On 7 March 1990 the proceedings were stayed to await the outcome of an already pending suit between the applicant and his former wife. This suit, in which, after her death, the applicant's former wife had been replaced by their son and daughter, concerned her claim to exclusive title to the flat. The suit ended in July 1991 with a ruling that the flat was joint marital property of the applicant and of his former wife. Accordingly, in August 1991 the partition proceedings were resumed.

7. At the invitation of the court, in September and November 1991 the applicant gave further particulars of his claims.

8. Out of seven hearings listed for various dates between December 1991 and September 1992, three were adjourned on account of improper summoning of the respondents and a further two because of their absence.

9. The Plovdiv District Court gave judgment on 16 September 1992, allowing the partition of the flat and of a number of chattels, but refusing the partition of the car and of certain other chattels. The court also determined the share of each of the co-owners.

10. All three litigants appealed to the Plovdiv Regional Court.

11. In a judgment of 25 January 1993 the Plovdiv Regional Court allowed the applicant's appeal, additionally allowing the partition of the car and of certain other chattels. It dismissed the respondents' appeal in so far as it concerned the flat, but allowed it in respect of certain chattels, excluding them from the partition. It decided to proceed on the merits and determine each party's share of the car and of the chattels whose partition it had additionally allowed.

12. After holding a hearing on 10 March 1993, in a judgment of 17 March 1993 the Plovdiv Regional Court allowed the partition of the car, but not of the additional chattels. It determined the parties' shares of the car and ordered an expert report on its value.

B. The second phase of the partition proceedings

13. The Plovdiv District Court listed a hearing for 9 June 1993. However, the applicant's son was absent and the expert report had not been filed in due time before the hearing. The court accordingly only took note of the applicant's and his daughter's requests to be allotted the entire flat and of the applicant's claims for indemnification for the exclusive use of the flat and of the car by his son and daughter, as well as for wear of the car, and adjourned the case.

14. A hearing was held on 19 October 1993. The court admitted two expert reports in evidence. The applicant's son challenged the reports and requested a fresh one. The court agreed and adjourned the case.

15. The next hearing took place on 9 December 1993. The applicant's son was absent; so was one expert.

16. On 11 March 1994 the applicant asked the court to provisionally allow him to use the flat, arguing that because of his low income it was very hard for him to pay the rent for a flat which he was leasing.

17. The court held a hearing on 22 March 1994. The applicant's son did not show up. The court admitted the new expert report in evidence. The applicant repeated his request to be allowed to provisionally use the flat. The court directed that the applicant's son be notified about the applicant's request and adjourned the case.

18. A hearing took place on 13 April 1994, despite a request by the applicant's son for an adjournment.

19. In a judgment of 21 April 1994 the Plovdiv District Court allotted the flat to the applicant, and ordered him to pay his son and his daughter certain amounts for their shares of it. The court allotted the garage to the applicant's daughter and ordered her to pay the applicant's son a certain amount for his share. It also allotted the car to the applicant's son and made a scheme for the repartition of the remainder of the chattels. The court went on to disallow the applicant's and his daughter's claims for indemnification for the use of the flat and of the car. Finally, it discontinued the examination of the applicant's claim for wear of the car, holding that it was not sufficiently connected with the main subject-matter of the case.

20. Both the applicant and his son appealed.

21. After holding a hearing on 27 June 1994, in a decision of 4 July 1994 the Plovdiv Regional Court held that the Plovdiv District Court had erred by discontinuing the examination of the claim for wear of the car. It remitted the case to that court with instructions to supplement its judgment by ruling on this claim and then re-send the case to the Plovdiv Regional Court for examination of the appeals against the other parts of the judgment.

22. After holding two hearings on 14 September and 15 December 1994, in a judgment of 21 December 1994 the Plovdiv District Court found that by discontinuing the examination of the claim for wear of the car, it had in fact ruled on it. There was therefore no need for it to supplement its judgment of 21 April 1994.

23. The applicant appealed against this latter judgment. The applicant's son again appealed against the judgment of 21 April 1994.

24. The Plovdiv Regional Court held a hearing on 3 April 1995 and in a judgment of 10 April 1995 reversed the Plovdiv District Court's ruling concerning the applicant's claim for indemnification for the use of the flat and the car. It ordered his son and daughter to pay him certain amounts under this head. It then examined the claim for wear of the car on the merits

and dismissed it. It also quashed the lower court's ruling concerning the valuation of the flat, and said that it would determine the flat's value – and thus the sums due by the applicant to his son and daughter – after conducting proceedings on the merits and receiving an expert's opinion on the issue.

25. The expert report was not ready until February 1996 because in September and December 1995 two experts appointed by the court withdrew from the case and had to be replaced. The report was admitted in evidence on 28 February 1996.

26. In a judgment of 3 May 1996 the Plovdiv Regional Court assessed the value of the flat and determined the amounts which the applicant had to pay his son and his daughter for their respective shares of it.

27. On 29 May 1996 the applicant was issued a writ of execution on the basis of the Plovdiv District Court's judgment of 21 April 1994 whereby the flat had been allotted to him (see paragraph 19 above). After several unsuccessful attempts, the writ was executed by an enforcement judge on 20 October 1997. However, as the flat was in very bad repair, the applicant continued to live elsewhere and decided to lease it out.

28. In early 1998 the applicant's son asked the Plovdiv District Court to annul the writ of execution and set its enforcement aside. His request was rejected on 7 March 1998 and his ensuing appeal was dismissed by the Plovdiv Regional Court in a final decision of 10 June 1998.

29. Meanwhile, the proceedings concerning the chattels were continuing in the Plovdiv District Court.

30. On 19 September 1996 the court ordered an expert report on the chattels' value. However, the report proved impossible to draw up, as during the following year the applicant's son was refusing the experts access to the chattels. The court repeatedly ordered him to give them such access, under pain of a fine, but apparently did not fine him. In June and September 1997 the experts eventually managed to prepare two reports without inspecting the chattels. The court admitted them in evidence. On 24 September 1997 the court instructed an expert to propose how to allocate the chattels to each of the litigants in proportion to their shares.

31. In the meantime, two hearings listed for 7 November 1996 and 20 May 1997 failed to take place because the applicant's son had not been duly summoned.

32. At a hearing held on 14 October 1997 the court admitted the expert's proposal in evidence. However, it adjourned the case to allow the newly retained lawyer of the applicant's son to acquaint herself with it.

33. After hearing the parties on 20 October 1997, in a judgment of 29 October 1997 the Plovdiv District Court finally determined the repartition of the chattels in four lots, in line with the expert's proposal.

34. The applicant's son lodged two appeals. He challenged all prior judgments of the Plovdiv District Court and of the Plovdiv Regional Court.

The Plovdiv District Court apparently did not process one of the appeals. Upon the appeal of the applicant's son, on 4 November 1998 the Plovdiv Regional Court remitted the case to the Plovdiv District Court with instructions to send copies of all appeals to the parties to the case, and, having received their replies, re-send the case to it.

35. After holding on a hearing on 29 March 1999, in a judgment of 2 June 1999 the Plovdiv Regional Court found the applicant's son's appeals partly inadmissible and partly ill-founded.

36. On 6 July 1999 the applicant's son appealed on points of law. The Supreme Court of Cassation heard the appeal on 5 December 2000 and on 4 June 2001 upheld the Plovdiv Regional Court's judgment. The case was then transmitted to the Plovdiv District Court for effecting the partition of the chattels by drawing lots.

37. A hearing listed for 15 October 2001 failed to take place because applicant's son, not having been properly summoned, did not appear.

38. At a hearing on 28 November 2001 the parties drew lots to determine which of the partitioned chattels should go to which co-owner. In a judgment of the same date the Plovdiv District Court confirmed the repartition and concluded the proceedings.

C. The enforcement proceedings concerning the chattels

39. On an unspecified date in the first half of 2002 the applicant issued enforcement proceedings against his son and daughter.

40. On 24 June 2002 an enforcement judge seized from the applicant's son a number of the chattels allotted to the applicant and delivered them to him. Noting that the remainder were missing, she attached a number of other chattels belonging to the applicant's son with a view to selling them and paying the applicant the monetary equivalent of the missing chattels. On 9 September 2002 the same judge attached a number of chattels belonging to the applicant's daughter and her husband with a view to selling them and satisfying the applicant's claim in respect of the chattels allotted to him.

41. The parties do not provide further information about the unfolding of the enforcement proceedings.

42. The applicant said that between April 2003 and October 2006 no steps had been taken for enforcing the Plovdiv District Court's judgment of 28 November 2001. In corroboration of his allegation he produced a certificate in which the enforcement judge stated that during that time the case file had been sent to the Plovdiv District Court, as it had been needed for the examination of a civil action pending before that court.

43. At the time of the latest information from the parties (12 November 2006) the enforcement proceedings were still pending.

II. RELEVANT DOMESTIC LAW

A. Partition-of-property proceedings

44. At the relevant time partition-of-property proceedings were governed by Articles 278 to 293a of the Code of Civil Procedure of 1952. They had two phases.

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

46. During the second phase the court carried out the partition, which could be done either by specifying which item of property went 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 § 1). If one of the partitioned items was a flat which used to be a family dwelling, the surviving spouse could request that it be allotted exclusively to him or her (Article 288 § 2, as in force at the relevant time). During that phase the court could also have cognisance of certain ancillary matters, such as the reimbursement of expenses incurred in relation with 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 use of the property during the pendency of the proceedings (Article 282 § 2).

B. Other relevant provisions of the Code of Civil Procedure of 1952

47. Article 217a of the Code, added in July 1999, created a "complaint about delays". In such a complaint a litigant aggrieved by the slow examination of the case, delivery of judgment or transmitting of an appeal against a judgment could request the chairperson of the higher court to give mandatory instructions for faster processing of the case.

48. Article 332 § 1 of the Code provided that the parties to enforcement proceedings could complain of the failure to of the enforcement judge to undertake an action which they had requested of him or her. Until November 2002 these complaints were examined by the district courts, and after that – by the regional courts (Article 333 § 1). A copy of the complaint was served on the other party (Article 333 § 2), which had the opportunity of replying in writing (Article 333 § 3). The court examined the matter in private, unless it was necessary to hear witnesses or experts (Article 334 § 1), and had to rule within thirty days after receiving the complaint (Article 334 § 4). Until 12 November 2002 the district courts' decisions on such complaints were appealable before the regional courts (Article 335 § 2, as in force before 12 November 2002); after that date they were final (Article 334 § 4, as in force after 12 November 2002).

THE LAW

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

49. The applicant alleged that the length of the proceedings was in breach 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..."

50. The Government contested that allegation.

A. Admissibility

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

B. Merits

1. Period to be taken into consideration

52. The proceedings started on 12 February 1990. However, the period to be considered did not begin to run until 7 September 1992, when the Convention entered into force in respect of Bulgaria. Nevertheless, to determine whether the time which has elapsed since this date is reasonable, the Court has to take account of the stage which the proceedings had reached at that point (see, among many other authorities, *Rachevi v. Bulgaria*, no. 47877/99, § 70, 23 September 2004).

53. The judicial stage of the proceedings ended on 28 November 2001. However, in 2002 the applicant issued enforcement proceedings. At the time of the latest information from the parties (12 November 2006) these proceedings were still pending. The Court has previously said that the enforcement proceedings are the second stage of the proceedings and that the right asserted does not actually become effective until enforcement (see *Di Pede v. Italy and Zappia v. Italy*, judgments of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1384-85, §§ 22, 24 and 26, and pp. 1411-12, §§ 18, 20 and 22). This is even more so in partition-of-property cases, where the proceedings are issued with the sole aim of allowing the joint owners of an estate to effectively exercise their individual property rights. The relevant period has therefore not ended yet.

54. The overall length of the proceedings has thus been at least sixteen years and nine months, and the duration of the period to be considered has been no less than fourteen years and two months.

2. Reasonableness of the length of the proceedings

55. 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 litigation (see, among many other authorities, *Hadjibakalov v. Bulgaria*, no. 58497/00, § 48, 8 June 2006).

56. The parties presented arguments as to the way in which these criteria should apply in the present case.

57. The Court observes that the distinctive feature of the case is that the judicial stage of partition-of-property proceedings in Bulgaria has two phases, during which the courts must, as a rule, deal with more issues than in an ordinary civil action (see paragraphs 44, 45 and 46 above). It thus seems that by their very nature such proceedings are apt to consume more time than a typical civil case. However, this cannot absolve the authorities from their duty to dispose of the case within a reasonable time, as States have a general obligation to organise their legal systems so as to ensure compliance with all the requirements of Article 6 § 1, including that of trial within a reasonable time (ibid., § 50).

58. The case was not very complicated legally, but had a certain amount of factual complexity, due to the number of partitioned items and the parties' ancillary claims. A number of issues, such as the value of the flat, of the garage, of the car and of the chattels, required expert opinions. However, these elements cannot explain all of the accumulated delays.

59. Concerning what was at stake for the applicant, the Court notes that the proceedings related, among others, to a flat where he had lived until 1987. It should however be observed that in May 1996 the applicant obtained a writ of execution in respect of that flat and that in October 1997 it was delivered into his possession (see paragraph 27 above). After that the proceedings concerned only the car and certain chattels.

60. The Court does not consider that the applicant was to blame for any significant delays.

61. As to the conduct of the authorities, the Court observes that, apart from the adjournment of three hearings due to improper summoning of the respondents (see paragraph 8 above), no major unjustified delays attributable to them may be discerned during the first phase of the partition proceedings. In any event, this period lies mostly outside its temporal jurisdiction. However, the fact remains that on 7 September 1992, the beginning of the period under consideration, the proceedings had already been pending for more than two and a half years.

62. As regards the period after 7 September 1992, the Court notes the following elements.

63. The absence of the applicant's son, most often due to the authorities' failure to properly summon him, triggered the adjournment of a number of hearings (see paragraphs 13, 17, 31 and 37 above).

64. The applicant's son was also at the origin of the gap between September 1996 and September 1997, when he was refusing the experts access to the chattels in his possession (see paragraph 30 above). A large part of that gap could have been avoided if the courts had adopted a more proactive approach in processing the case. However, they did not adequately try to avert the dilatory behaviour of the applicant's son and may thus be considered responsible for the resulting delay (see *Kuśmierek v. Poland*, no. 10675/02, § 65, 21 September 2004; *Sokolov v. Russia*, no. 3734/02, § 40, 22 September 2005; and *Kesyan v. Russia*, no. 36496/02, § 58, 19 October 2006).

65. Meanwhile, five months were wasted in the proceedings concerning the flat between September 1995 and February 1996 because of the need to replace two experts (see paragraph 25 above). Bearing in mind that they had been appointed by the court, responsibility for the belated presentation of their report may be considered to lie with the authorities (see *Rachevi*, cited above, § 90, with further references).

66. The Court also notes that, while the proceedings concerning the flat were pending before the Plovdiv Regional Court, the Plovdiv District Court made no progress in the proceedings concerning the car and the chattels. It does not appear from the documents in file that the determination of this latter part of the case required awaiting the outcome of the controversy concerning the former, which was finally determined by the Plovdiv Regional Court on 3 May 1996 (see paragraph 26 above). Therefore, the delay in the proceedings concerning the chattels between April 1995 and September 1996 does not appear justified.

67. The courts' incoherent approach in processing the appeals against the Plovdiv District Court's judgments of 21 April 1994 and 29 October 1997, coupled with the drawing out of the examination of the appeal on points of law by the Supreme Court of Cassation (see paragraphs 19-22 and 33-36 above) caused more than two years of delay.

68. Concerning the enforcement proceedings, the Court notes that in June and September 2002 the enforcement judge seized and attached a number of chattels with a view to satisfying the applicant's claim (see paragraph 40 above). The applicant did not specify whether he requested further steps to be taken and whether the enforcement judge refused or failed to act. The Court is not persuaded that this was rendered wholly impossible by the sending of the case file to the Plovdiv District Court for use in other proceedings (see paragraph 42 above). However, even assuming that the length of the enforcement proceedings is not attributable to the

authorities, the fact remains that by 2006 the case had been pending for sixteen years, which appears excessive.

69. Having regard to the delays identified above and the overall length of the proceedings, the Court concludes that the applicant's case was not determined within a "reasonable time", as required by under Article 6 § 1 of the Convention. There has therefore been a violation of that provision.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

70. The applicant complained that because of the excessive length of the proceedings he had been unable to peacefully use the partitioned flat, had incurred expenses for repairing it, and had had to lease another flat where to live during the pendency of the proceedings. He relied on Article 1 of Protocol No. 1, which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

71. The Government said that this complaint was out of time, as the part of the case relating to the flat had been finally determined on 3 May 1996, whereas the application had been lodged on 3 November 1999. As regards the part of the complaint relating to the incurred expenses, the applicant had failed to exhaust domestic remedies, as he had not requested indemnification under Article 286 of the Code of Civil Procedure of 1952 (see paragraph 46 above) or under the general law of tort.

72. The applicant replied that at the time when his application had been lodged the overall dispute between him and his son and daughter had not been finally determined. The Government's reliance on Article 286 was misplaced, as it did not apply to claims for deterioration of property, which were tortuous in nature. It was therefore not open to him to claim compensation for the flat's deterioration in the context of the partition proceedings. He finally said that as a result of the length of the proceedings he had been unable to recover most of the chattels allotted to him, because in the meantime the respondents had disposed of them.

73. The Court finds that this complaint is closely linked to the one about the length of the proceedings and must, therefore, be declared admissible. However, having regard to its conclusion under Article 6 § 1 (see paragraph 69 above), it does not consider it necessary to examine it separately (see

Zanghì v. Italy, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23; and *Di Pede*, cited above, p. 1395, § 42).

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

74. The applicant complained under Article 13 of the Convention about the lack of effective remedies in respect of the 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."

75. The Government said that the applicant could have used the "complaint about delays" under Article 217a of the Code of Civil Procedure of 1952.

76. The applicant replied that this remedy came to late to be able to impact on the global length of the proceedings and was not effective. Moreover, in Bulgarian law there existed no compensatory remedies for the length of civil proceedings.

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

78. Having regard to its conclusion under Article 6 § 1 (see paragraph 69 above), the Court considers that the complaint is arguable and that Article 13 is applicable.

79. The Court notes that the proceedings had two stages: judicial (consisting of two phases) and enforcement. It considers it appropriate to examine the availability of remedies in each of those stages separately.

80. Concerning the judicial stage, which started on 12 February 1990 and ended on 28 November 2001, the Court notes that in several judgments against Bulgaria it has found that until July 1999 – more than nine years after the beginning of the proceedings in issue and slightly less than seven years after the beginning of the period to be considered – Bulgarian law did not provide any remedies capable of accelerating civil proceedings (see *Djangozov v. Bulgaria*, no. 45950/99, § 51, 8 July 2004; *Rachevi*, cited above, §§ 64, 65 and 101; *Dimitrov v. Bulgaria*, no. 47829/99, § 77, 23 September 2004; and *Todorov v. Bulgaria*, no. 39832/98, § 59, 18 January 2005). Even assuming that the "complaint about delays" under Article 217a of the Code of Civil Procedure of 1952 (see paragraph 47 above) could have speeded up the examination of the case after that date, it came too late to have a significant effect on the length of the proceedings as a whole (see *Djangozov*, § 52; *Rachevi*, §§ 66 and 67; *Dimitrov*, §§ 78 and

79; and *Todorov*, § 60, all cited above; as well as *Holzinger v. Austria (no. 2)*, no. 28898/95, §§ 20 and 21, 30 January 2001).

81. As regards the enforcement stage, which started in 2002 and has apparently still not ended, the Court notes that the applicant had the possibility of challenging the inaction of the enforcement judge before a court (see paragraph 48 above). This procedure does not appear *prima facie* ineffective, but the Court must have regard to the specific circumstances of each case (see, *mutatis mutandis*, *Stefanova v. Bulgaria*, no. 58828/00, § 69, 11 January 2007). It observes that it is not clear whether after September 2002 the applicant requested the enforcement judge to take further steps to execute the final judgment in his favour and, if so, whether he challenged her inaction before the competent court. In these circumstances, the Court does not consider that the remedy available to the applicant was not effective as such. However, having regard to overall delay accumulated by September 2002, it does not consider that its use could have had a significant impact of the length of the proceedings as a whole (see the cases cited in paragraph 80 *in fine* above).

82. The Court finally notes that, as already found in the judgments mentioned above, Bulgarian law does not presently provide any remedies capable of leading to the award of compensation for excessive delays in civil proceedings (see *Djangozov*, § 58; *Rachevi*, § 103; *Dimitrov*, § 82; *Todorov*, § 65; and *Stefanova*, § 73 *in fine*, all cited above).

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

IV. 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 21,400 euros (EUR) in respect of pecuniary damage sustained on account of the excessive length of the proceedings. This damage consisted of the rent which he had had to pay as a result of his not being able to live in the partitioned flat, of the loan which he had had to take to make repairs to the flat, and of the value of the chattels which had been allotted to him but were still not in his possession. The applicant also claimed EUR 6,000 in respect of non-pecuniary damage.

86. The Government did not comment.

87. In the Court's view, it is reasonable to conclude that, as a result of the long delay, in breach of Article 6 § 1, the applicant suffered a loss of opportunities which warrants an award of just satisfaction in respect of pecuniary damage. However, the various components of this damage cannot be calculated precisely (see, *mutatis mutandis*, *Martins Moreira v. Portugal*, judgment of 26 October 1988, Series A no. 143, pp. 22-23, §§ 65 and 67). Making an assessment on an equitable basis, the Court awards under this head EUR 1,000, plus any tax that may be chargeable. The Court also considers that the applicant has sustained non-pecuniary damage on account of the violation of Article 6 § 1 and awards him under this head EUR 3,000, plus any tax that may be chargeable.

B. Costs and expenses

88. The applicant sought the reimbursement of EUR 4,645 for the costs and expenses incurred before the Court.

89. The Government did not comment.

90. 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 1,000, plus any tax that may be chargeable.

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. *Declares* the application admissible;

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

3. *Holds* that it is not necessary to examine the complaint under Article 1 of Protocol No. 1 to the Convention;

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

5. *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, EUR 5,000 (five thousand euros) in respect of pecuniary and non-pecuniary damage and costs and expenses, plus any tax that may be chargeable to the applicant, the said amount to be converted into Bulgarian levs at the rate applicable on the date of settlement;

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

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

Done in English, and notified in writing on 14 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Peer Lorenzen
Registrar	President