FIFTH SECTION

CASE OF KOVACHEVA AND HADJIILIEVA v. BULGARIA

(Application no. 57641/00)

JUDGMENT

STRASBOURG

29 March 2007

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 Kovacheva and Hadjiilieva 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 M. VILLIGER, *judges*,
and Mr J.S. PHILLIPS, *Deputy Section Registrar*,

Having deliberated in private on 6 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 57641/00) 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 two Bulgarian nationals, Mrs Lili Georgieva Kovacheva and Mrs Petya Georgieva Hadjiilieva ("the applicants"), on 8 September 1999

2. The applicants were represented by Mr Y. Grozev, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Mrs M. Karadjova, of the Ministry of Justice.

3. On 8 November 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 the admissibility and merits of the application at the same time.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. On 18 May 1990, the applicants, who are sisters, filed with the Sofia District Court a civil action against Hydrostroy'82 Apartment Construction Cooperative ("HACC"), claiming sums allegedly owed to their late father under a 1988 agreement between him and HACC.

5. Under the 1988 agreement the applicants' late father had undertaken to manage and supervise construction works against the payment of fees. He

had worked until his death in July 1989 but had not been paid in full. The applicants thus considered that, as his heirs, they were entitled to 24,132 old Bulgarian levs ("BGL") (the equivalent of approximately 6,000 US dollars (USD) at the relevant time) and submitted a partial claim for BGL 4,333, as is customary in legal practice.

6. Between July and October 1990 the case could not proceed because of defective summons. In November 1990 an adjournment was necessary as the applicants had not clarified their claims. Between January 1991 and June 1992 the District Court held nine hearings. The adjournments were ordered because of defective summons, delays in the presentation of expert opinions, withdrawal of experts and alleged dilatory behaviour of the respondent party.

7. The hearing listed for 8 October 1992 was adjourned until 16 November 1992 as HACC had not been validly summoned.

8. On 9 November 1992 the judge decided to adjourn the hearing until 19 November 1992.

9. On 19 November 1992 the hearing was adjourned owing to an anonymous telephone call warning that an explosive device had been installed in the court's building. Such calls were made on each of the next three dates for which the adjourned hearing was listed: 28 January, 23 March and 15 April 1993, which caused additional delay.

10. On 17 June 1993 the hearing was adjourned as only one witness had appeared. Witnesses had been called by both parties with a view to establishing the work done on the construction site.

11. The hearings listed for 13 October and 24 November 1993 were adjourned as witnesses and expert-witnesses had not appeared. The court fined two of them for their failure to appear without cause.

12. At the hearing on 21 February 1994 the court replaced the expert who had failed to appear repeatedly. The case was adjourned.

13. The hearing held on 25 April 1994 was adjourned as the court granted the applicants' disclosure order against HACC.

14. The hearing listed for 13 June 1994 was adjourned as one of the experts did not appear.

15. On 24 October 1994 the court, having heard the experts' opinion, accepted the applicants' request for an additional question to the experts and adjourned the examination of the case until 5 December 1994.

16. In view of the experts' opinion who gave an estimate on the value of the construction works and the inflation, at the hearing on 5 December 1994 the applicants sought to increase their claim. The court considered that it was necessary to give them seven days to file such a request in writing and adjourned the hearing until 6 March 1995. The applicants filed a written request increasing their claim to BGL 100,000, the value of the national currency having dropped significantly since 1990.

17. On 6 May 1995 the hearing could not proceed owing to defective summons. The final hearing was held on 17 May 1995.

18. On 22 May 1995 the District Court delivered its judgment, served on 16 June 1995. It awarded the applicants BGL 15,851 plus interest since 18 May 1990. The court noted that the inflation and depreciation of the national currency could not be taken into account as the relevant law did not allow the revalorisation of monetary claims.

19. On 19 June 1995 the applicants filed an appeal. The file was transmitted to the higher court with a delay of two months.

20. The Sofia City Court held a hearing in November 1995 and dismissed the appeal by judgment of 29 December 1995. On that date the judgment awarding the applicants BGL 15,851 plus interest became enforceable. As of December 1995 the amount awarded plus interest did not exceed the equivalent of approximately USD 350.

21. On 26 February 1996 the applicants filed a petition for review (cassation) with the Supreme Court. They argued that the lower courts' refusal to accept the revalorisation of their claim had resulted in unjust enrichment for HACC. They considered that the value of the construction work done should be evaluated on the basis of current prices.

22. On 21 May 1997 the applicants, noting that their petition for review (cassation) must have been misfiled in the Supreme Court's registry, requested a speedy examination of their case.

23. In 1998 the Supreme Court was divided into a Supreme Court of Cassation and a Supreme Administrative Court.

24. A hearing before the Supreme Court of Cassation was eventually held on 10 February 1999.

25. On 8 March 1999 the Supreme Court of Cassation dismissed the petition for review stating succinctly that it endorsed the reasoning of the lower courts.

26. As of March 1999 the amount awarded to the applicants plus interest did not exceed the equivalent of approximately USD 25.

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 did not submit written observations on the admissibility and merits of the case within the relevant time-limit.

A. Admissibility

29. The Court notes that the application 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

30. The period to be taken into consideration began only on 7 September 1992, the date of the Convention's entry into force for Bulgaria and ended on 8 March 1999, when the Supreme Court of Cassation delivered its final judgment in the case. It thus lasted six years and six months for three levels of jurisdiction.

31. The Court must also have regard to the fact that as of the date of the Convention's entry into force for Bulgaria the proceedings had already been pending before the first instance court for two years and almost four months (see paragraphs 4 and 6 above).

32. 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).

33. 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 – for a detailed analysis of the relevant issues in a recent case concerning Bulgaria – *Vatevi v. Bulgaria*, no. 55956/00, 28 September 2006).

34. Having examined all the material submitted to it and 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. In reaching this conclusion, the Court takes into account that the case was not complex (see paragraphs 4 and 5 above) and that the applicants were not responsible for any significant delay, the adjournments requested by them having been necessary for the collection of evidence (see paragraphs 13 and 15 above). Moreover, numerous adjournments and other delays were imputable to the authorities: the failure to secure the presence of experts appointed by the court and of witnesses (see paragraphs 10, 11, 12 and 14 above), the failure to undertake efficient measures to avoid delays caused by false security alerts (see paragraph 9 above), defective summons

(see paragraphs 7 and 17 above), inactivity periods (see paragraphs 19 and 21-24 above) and a formalistic approach to procedural requirements (see paragraph 16 above). Finally, in the particular circumstances of rampant inflation the courts failed to display diligence in conducting the proceedings despite the fact that the value of the applicants' claim was bound to diminish significantly with the passage of time (see paragraphs 5, 16, 18, 20 and 26 above).

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

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

35. The applicants complained that the length of the proceedings complained of had infringed their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1.

36. The Government did not reply within the relevant time-limit.

37. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

38. Having regard to its finding under Article 6 § 1 (see paragraph 35 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 1 of Protocol No. 1 (see *Zanghì v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicants claimed jointly 8,000 euros (EUR) in respect of non-pecuniary damage, referring to the Court's case-law. They stated that the anxiety suffered by them had been exacerbated by the fact that at the relevant time inflation had run high and with the passage of time the applicants had practically lost the value of their claim. In the applicants' view, where a State had chosen – as Bulgaria had done – to apply, in court judgments, low interest rates fixed by law in disregard of the inflation, the judicial authorities of such a State must undertake special measures to

secure the right to a trial within a reasonable time as any failure to do so undermined the very essence of the right to a court.

41. The Government contested the amount claimed, considering it excessive. The Government referred to other Bulgarian cases decided recently (*Kiurkchian v. Bulgaria*, no. 44626/98, 24 March 2005 and *Todorov v. Bulgaria*, no. 39832/98, 18 January 2005).

42. The Court considers that the applicants must have sustained non-pecuniary damage as a result of the excessive length of the civil proceedings in their case. In determining the amount, the Court also finds it appropriate to take into consideration the fact that with the accumulation of delays in the proceedings the applicants must have experienced a growing frustration, witnessing those delays contributing to the loss of value of their claim, during a period of high inflation not compensated by the applicable interest rates (see paragraphs 5, 16, 18, 20 and 26 above). Ruling on an equitable basis, the Court awards to each of the applicants the sum of EUR 1,200 plus any tax that may be chargeable (EUR 2,400 in total).

B. Costs and expenses

43. The applicants also claimed EUR 1,500 in respect of legal fees. They submitted a legal-fees agreement between them and their representative. The claim concerned thirty-two hours of legal work on the case. The applicants asked that any sums awarded in respect of costs and expenses be paid directly into their lawyer's bank account.

44. The Government asked the Court to reject the claim for costs and expenses. They stated that the claim was not supported by details as to the type of work done (for example, research, drafting or other work). Also, no proof of expenses made, such as postal expenses for example, had been submitted.

45. The Court finds that in the present case the claim for reimbursement of expenses other than legal fees is fully unsubstantiated and must be rejected. In so far as legal fees are concerned, the Court notes that the applicants have submitted a copy of the legal-fees agreement they had signed with their lawyer and have specified the number of hours of legal work claimed. In the absence of details, such as a time sheet, the Court cannot accept the claim as proven in full but finds it established that the applicants have actually and necessarily incurred certain costs in respect of legal fees for the proceedings before it. It considers it reasonable to award the applicants jointly the sum of EUR 500 under this head.

C. Default interest

46. 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 separately the complaint under Article 1 of Protocol No. 1 to the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to 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) in respect of non-pecuniary damage, EUR 1,200 (one thousand two hundred euros) to the first applicant and EUR 1,200 (one thousand two hundred euros) to the second applicant;
      (ii) EUR 500 (five hundred euros) in respect of costs and expenses, payable into the bank account of the applicants' lawyer 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 29 March 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen PHILLIPS
Deputy Registrar

Peer LORENZEN
President