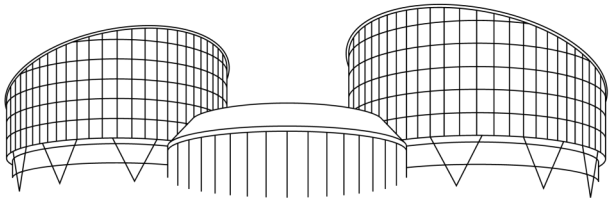

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF MARIA IVANOVA v. BULGARIA

(Application no. 10905/04)

JUDGMENT

STRASBOURG

18 March 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 Maria Ivanova v. Bulgaria,

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

Peer Lorenzen, *President*,
Renate Jaeger,
Karel Jungwiert,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 23 February 2010,

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

PROCEDURE

1. The case originated in an application (no. 10905/04) 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 a Bulgarian national, Ms Maria Hristova Ivanova ("the applicant"), on 10 March 2004.

2. The applicant was represented by Mr M. Ekimdzhiev and Ms K. Boncheva, lawyers practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agents, Ms N. Nikolova and Ms R. Nikolova, of the Ministry of Justice.

3. On 9 July 2008 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 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1940 and lives in Plovdiv.

5. On 20 July 1997 she brought proceedings before the Madan District Court against her five siblings for the division of a piece of real property. Between January and April 1998 the court held three hearings and admitted two expert reports in evidence. On 30 April 1998 it allowed the division of only part of the property.

6. The applicant appealed to the Smolyan Regional Court, claiming that the lower court should have allowed the division of the whole property. A hearing listed for 30 June 1998 was adjourned owing to improper summoning of one of the respondents. The court held two hearings, in May and October 1998, and on 30 April 1999 upheld the lower court's judgment.

7. The applicant appealed on points of law. A hearing listed for 28 February 2000 was adjourned owing to improper summoning of four of the respondents. It was held on 25 September 2000. On 7 November 2000 the Supreme Court of Cassation, finding, *inter alia*, that the Smolyan Regional Court had seriously breached basic rules of procedure, quashed its judgment and remitted the case back to that court.

8. Between December 2000 and March 2002 eight hearings were listed. Medical and financial expert reports were prepared. The case was adjourned once because the applicant and some of the respondents had not been summoned in due time. Another adjournment was ordered because an expert report had not been filed in due time, and another because an expert could not attend the hearing. Two adjournments were ordered because the applicant requested additional tasks to be assigned to the experts.

9. On 28 March 2002 the Smolyan Regional Court partly reversed the Madan District Court's judgment of 30 April 1998. The applicant appealed on points of law. After hearing the appeal on 10 February 2003, on 4 March 2003 the Supreme Court of Cassation upheld the lower court's judgment.

10. After that the second phase of the proceedings, during which the court was due to carry out the division of the property (see paragraph 14 below), began before the Madan District Court. The court held hearings on 14 April and on 2 June 2003. At the hearing on 2 June 2003 it ordered the case to be sent to the Smolyan Regional Court for the correction of two obvious factual errors in the operative provisions of the judgment of 28 March 2002. That entailed the suspension of the proceedings before the Madan District Court.

11. On 21 July 2003 the Smolyan Regional Court agreed to make one of the requested corrections but refused to make the other one. One of the respondents appealed. After hearing the appeal on 13 April 2004, on 29 April 2004 the Supreme Court of Cassation upheld the ruling of the Smolyan Regional Court.

12. The proceedings then resumed before the Madan District Court. The court held two hearings at which it admitted in evidence a technical expert report and a number of documents. On 1 December 2004 it allocated the property to one of the respondents. None of the parties appealed against that judgment and it became final.

13. As the Madan District Court omitted to award costs, on an unspecified date the parties lodged requests seeking a costs order. In additional decisions of 10 and 14 January 2005 the court ordered the respondents to reimburse part of the applicant's costs. After that, there were

appeal proceedings and proceedings for correction of obvious factual errors in the two decisions. Those proceedings ended on 5 July 2005.

II. RELEVANT DOMESTIC LAW

14. The provisions of the 1952 Code of Civil Procedure governing property division proceedings have been summarised in the Court's judgment in the case of *Hadjibakalov v. Bulgaria* (no. 58497/00, §§ 38-40, 8 June 2006).

15. Article 217a of the Code, added in July 1999, created a provision for a "complaint about delays". In such a complaint, a litigant aggrieved by the slow examination of a case, delivery of a 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.

THE LAW

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

16. The applicant 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..."

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

18. The period to be taken into consideration began on 20 July 1997 and ended on 5 July 2005, when the issue of costs was determined with final effect (see *Robins v. the United Kingdom*, 23 September 1997, §§ 28 and 29, *Reports of Judgments and Decisions* 1997-V). It thus lasted almost eight years.

19. 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, *Hadjibakalov*, cited above, § 48).

20. The parties presented arguments as to how the various criteria employed by the Court in this context should be applied in the present case.

21. The Court observes that the distinctive feature of this case is that property division proceedings in Bulgaria have two phases during which the

courts must, as a rule, deal with more issues than in an ordinary civil action (see paragraph 14 above). It thus seems that such proceedings are likely to consume more time than an average civil case. However, that did not absolve the courts from their duty to dispose of the case within a reasonable time, because 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).

22. The Court considers that, although it required the submission of various expert reports and involved certain side issues, the case was not particularly complex.

23. The applicant seems partly responsible for certain adjournments (see paragraph 8 above). However, the Court does not find that the resulting delays contributed significantly to the overall length of the proceedings.

24. As to the conduct of the authorities, the Court first notes that during its first examination of the case on appeal the Smolyan Regional Court apparently disregarded basic rules of procedure. This led to the quashing of its judgment and the remittal of the case for a fresh examination, which seriously prolonged the proceedings (see paragraphs 6 and 7 above). Additional delays were caused by the adjournment of several hearings owing to defective summoning of the applicant or other parties, by the late presentation of an expert report, and by the need to correct obvious factual errors in the Smolyan Regional Court's judgment of 28 March 2002 (see paragraphs 7, 8 and 10 above). Lastly, the Madan District Court's omission to rule on the issue of costs in its judgment caused a further prolongation of the proceedings (see paragraph 13 above).

25. In view of those delays, the Court finds that the proceedings exceeded a "reasonable time". There has therefore been a violation of Article 6 § 1 of the Convention.

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

26. The applicant complained that the length of the proceedings had infringed her right to the peaceful enjoyment of her possessions, as guaranteed by Article 1 of Protocol No. 1.

27. The Government contested that claim.

28. The Court finds that this complaint is linked to the one examined above and must thus likewise be declared admissible. However, having regard to its finding under Article 6 § 1, it considers that it is not necessary to examine whether there has been a violation of Article 1 of Protocol No. 1 (see *Zanghì v. Italy*, 19 February 1991, § 23, Series A no. 194-C).

III. ALLEGED VIOLATION OF ARTICLE 13 THE CONVENTION

29. Lastly, the applicant complained under Article 13 of the Convention that she did not have an effective remedy 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."

30. The Government submitted that the applicant could have lodged a "complaint about delays".

31. The applicant replied that that remedy was not effective and that Bulgarian law did not provide for any other remedies.

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

33. The most recent case against Bulgaria in which the relevant principles have been restated is *Yankov and Manchev v. Bulgaria* (nos. 27207/04 and 15614/05, § 30, 22 October 2009).

34. Having regard to its conclusions in paragraph 25 above, the Court is satisfied that the applicant's complaints were arguable.

35. The Court notes that the major delays stemmed from the erroneous manner in which the Smolyan Regional Court examined the case the first time on appeal, from the need to correct obvious factual errors in its second judgment, and from the omission of the Madan District Court to deal with the issue of costs. It does not seem that any of those matters could have been addressed through a "complaint about delays", which was designed to prevent the slow examination of a case or delays in delivery of a judgment or in transmitting of an appeal (see paragraph 15 above). It is also questionable whether that avenue of redress was available to the applicant when the case was pending before the Supreme Court of Cassation, given that there was no higher court, whereas a "complaint about delays" is to be made to the president of the higher court. No other acceleratory remedies seem to exist under Bulgarian law, nor remedies allowing litigants to obtain compensation for excessively lengthy civil proceedings (see, among other authorities, *Hadjibakalov*, cited above, § 60).

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 17,000 euros (EUR) in respect of non-pecuniary damage.

39. The Government contested the claim.

40. The Court considers that the applicant must have sustained certain non-pecuniary damage on account of the violations found. Ruling on an equitable basis, it awards her under that head EUR 500, plus any tax that may be chargeable.

B. Costs and expenses

41. The applicant sought the reimbursement of EUR 2,240 incurred in legal fees for the proceedings before the Court and of EUR 43 for other expenses. She requested that any amount awarded under this head be made payable to her legal representatives.

42. The Government contested the claim.

43. According to the Court's case-law, applicants are entitled to the reimbursement of their 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. 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 500, plus any tax that may be chargeable to the applicant. That sum is to be paid into the bank account of the applicant's representatives, Mr M. Ekimdzhiev and Ms K. Boncheva.

C. Default interest

44. 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 is no need to examine separately the complaint under Article 1 of Protocol No. 1;

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 of 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 500 (five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
      (ii) EUR 500 (five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, to be paid into the bank account of the applicant's legal representatives, Mr M. Ekimdzhiev and Ms K. Boncheva, in Bulgaria;
   (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;

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

Done in English, and notified in writing on 18 March 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Peer Lorenzen
Registrar	President