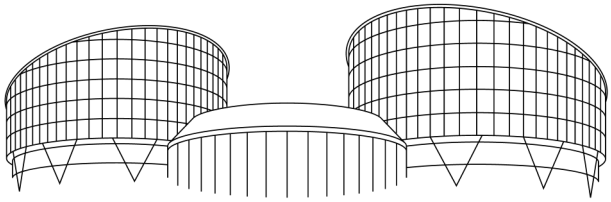

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIFTH SECTION

CASE OF MARINOVA AND RADEVA v. BULGARIA

(Application no. 20568/02)

JUDGMENT

STRASBOURG

2 July 2009

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 Marinova and Radeva v. Bulgaria,

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

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

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 9 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 20568/02) 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 Rayna Vasileva Marinova and Mrs Maria Stefanova Radeva ("the applicants"), on 23 May 2002.

2. The applicants were represented by Mr N. Runevski, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agents, Mrs M. Dimova and Mrs S. Atanasova of the Ministry of Justice.

3. On 25 September 2007 the Court declared the application partly inadmissible and decided to communicate to the Government the complaints concerning the length of the civil proceedings and the lack of remedies in that respect. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

4. Mrs Kalaydjieva, the judge elected in respect of Bulgaria, withdrew from sitting in the case (Rule 28). The Government subsequently appointed Mrs Pavlina Panova to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1925 and 1946 respectively and live in Sofia.

6. In 1959 Mr M., the husband of the first applicant and father of the second applicant, purchased from the Sofia municipality a four-room flat which had been nationalised in 1948.

7. On 22 February 1993 the heirs of the pre-nationalisation owner of the flat brought proceedings under section 7 of the 1992 Law on the Restitution of Ownership of Nationalised Real Property (the Restitution Law) seeking the annulment of the applicants' title. Initially, however, their action was directed against the first applicant and Mr M. Finding that this did not represent a valid claim against the second applicant, and in view of the fact that no such claim had been brought within the time-limit indicated in the Restitution Law, in a final decision of 22 September 1997 the courts terminated the proceedings against the second applicant.

8. The Sofia District Court held its first hearing on 23 February 1994. The first applicant had been duly summoned on 29 November 1993 but did not attend.

9. The Sofia District Court held seventeen more hearings, eight of which, held between 15 February 1995 and 7 October 1996, were adjourned because the first applicant had not been found at her address to be summoned. For the first time a representative of the first applicant attended a hearing on 12 March 1997.

10. In a judgment of 11 November 1997 the Sofia District Court dismissed the plaintiffs' action. On 19 January 1999 the Sofia City Court upheld the lower court's judgment.

11. The plaintiffs appealed. In a judgment of 19 October 1999 the Supreme Court of Cassation reversed that decision and referred the case back to the Sofia City Court, holding that the latter had applied the law wrongly.

12. On 30 June 2000 the Sofia City Court gave a judgment finding against the first applicant and ordering her to surrender possession of the flat to the plaintiffs.

13. The first applicant appealed to the Supreme Court of Cassation. In a final judgment of 27 November 2001 the latter court upheld the Sofia City Court's judgment.

II. RELEVANT DOMESTIC LAW

14. Until July 1999 Bulgarian law did not provide any remedies capable of accelerating civil proceedings.

15. A "complaint about delays" was created in July 1999, by virtue of the new Article 217a of the Code of Civil Procedure 1952, in force until 2007. In such a complaint a litigant aggrieved by the slow examination of the case could request the president of the higher court to issue mandatory instructions for faster processing of the case.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 AND ARTICLE 13 OF THE CONVENTION

16. 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..."

The applicants also 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

1. Complaints of the second applicant

17. The Court observes that in respect of the second applicant the proceedings were terminated on 22 September 1997 whereas the present application was lodged on 23 May 2002. It follows that the second applicant's complaints have been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. Complaints of the first applicant

18. In respect of this applicant, the Court notes that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the

Convention. It further notes that they are not inadmissible on any other grounds and must therefore be declared admissible.

B. Period to be taken into consideration

19. The Government argued that the period to be taken into consideration only started on 12 March 1997, when a representative of the first applicant attended a hearing before the Sofia District Court.

20. The Court does not accept this argument. It recalls that the period to be taken into consideration starts to run from the moment an action was instituted (see *Erkner and Hofauer v. Austria*, 23 April 1987, § 64, Series A no. 117). The Court sees no reason to depart from that rule in the instant case. Moreover, it notes that on 29 November 1993 the first applicant was summoned for the Sofia District Court's first hearing (see paragraph 8 above) and was therefore aware that an action had been lodged against her.

21. The Court thus finds that the period to be taken into consideration began on 22 February 1993, when the plaintiffs lodged an action against the first applicant. It ended on 27 November 2001 when the Supreme Court of Cassation gave a final judgment in the case. It thus lasted eight years, nine months and six days for three levels of jurisdiction.

C. Merits

1. Alleged violation of Article 6 § 1 of the Convention

22. The Government contended that the length of the proceedings had been reasonable. They also argued that the first applicant had been partially responsible for the delay incurred as several hearings between 15 February 1995 and 7 October 1996 had been adjourned because of her failure to notify the Sofia District Court of a change of her address.

23. The first applicant contested these arguments.

24. 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 applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

25. The Court observes that the civil proceedings in the case at hand continued for more than eight years and nine months.

26. The Court accepts the Government's argument that the first applicant was responsible for part of the delay incurred before the Sofia District Court in so far as between 15 February 1995 and 7 October 1996 – a period of approximately one year and eight months – she apparently failed to notify

the domestic court of a change of her address (see paragraph 9 above). However, the applicant's behaviour cannot account for all the delays in the proceedings. Concerning the conduct of the authorities, the Court notes, for instance, that a delay of more than two years (from 19 October 1999 to 27 November 2001) occurred when the Supreme Court of Cassation remitted the case because the Sofia City Court had failed to correctly apply the law (see paragraph 11 above).

27. Taking into account the fact that the case does not appear to have been complex, and also having regard to its case-law on the subject, the Court is of the view 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.

2. Alleged violation of Article 13 of the Convention

28. The Government argued that the first applicant could have used the "complaint about delays" under Article 217a of the Code of Civil Procedure of 1952 (see paragraph 15 above).

29. The first applicant replied that such a complaint did not represent an effective remedy within the meaning of Article 13 of the Convention.

30. 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).

31. The Court notes that in similar cases against Bulgaria it has found that a "complaint about delays" under Article 217a of the Code of Civil Procedure is not an effective remedy. In addition, it does not appear that Bulgarian law provides any 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*, no. 47877/99, §§ 96-104, 23 September 2004). The Court sees no reason to reach a different conclusion in the present case.

32. Accordingly, there has been a violation of Article 13 of the Convention in that the first applicant had no domestic remedy whereby she could enforce her right to a "hearing within a reasonable time" as guaranteed by Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The first applicant claimed 120,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

35. The Government considered this claim to be excessive.

36. The Court considers that the first applicant must have sustained non-pecuniary damage. Ruling on an equitable basis and taking into account all the circumstances of the case, including the overall length of the proceedings and the fact that the first applicant was responsible for a delay of one year and eight months, it awards her EUR 800 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

37. The first applicant claimed EUR 400 for costs and expenses incurred before the domestic courts. She submitted the relevant invoices.

38. For the proceedings before the Court, she claimed EUR 800 for legal work by her lawyer and EUR 128 for translation and postage. In support of this claim she presented a time sheet and the relevant invoices.

39. The Government considered these claims excessive.

40. 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.

41. In the present case, regard being had to the information in its possession and the above criteria, the Court finds it reasonable to award EUR 400.

C. Default interest

42. 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 complaints of the first applicant admissible and those of the second applicant inadmissible;

2. *Holds* that in respect of the first applicant 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 in respect of the first applicant 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 the first applicant, 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 800 (eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 400 (four hundred euros), plus any tax that may be chargeable to the applicant, 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;

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

Done in English, and notified in writing on 2 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President