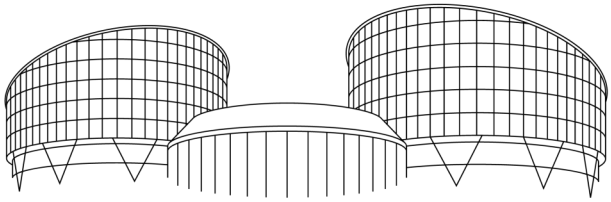

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ROSEN PETKOV v. BULGARIA

(Application no. 65417/01)

JUDGMENT

STRASBOURG

2 September 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 Rosen Petkov v. Bulgaria,

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

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

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 6 July 2010,

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

PROCEDURE

1. The case originated in an application (no. 65417/01) 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, Mr Rosen Yordanov Petkov ("the applicant"), on 2 October 2000.

2. The applicant was represented by Mr M. Neikov, a lawyer practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Mrs S. Atanasova, of the Ministry of Justice.

3. On 2 September 2008 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 of the Convention).

4. Judge Kalaydjieva, the judge elected in respect of Bulgaria, withdrew from sitting in the case. On 30 January 2009 the Government appointed in her stead Mrs Pavlina Panova as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1 of the Rules of Court as in force at the time).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963 and lives in Plovdiv.

6. On 30 November 1992 the heirs of the pre-nationalisation owners of a dwelling, purchased by the applicant's father form a subsidiary of the Ministry of Defence in 1967, brought an action for restitution against the applicant and Ms P.P., as heirs of the applicant's father, seeking restitution and a declaration that the 1967 transaction was null and void.

7. Between February 1993 and January 1997 at least sixteen hearings were held. At least four of them were adjourned due to improper summoning and one upon the applicant's request.

8. In a judgment of 15 May 1997 the Plovdiv District Court dismissed the claim.

9. On appeal, at least six hearings were held before the Plovdiv Regional Court. One hearing was adjourned because the expert opinion had not been obtained in time, one was adjourned due to improper summoning, and one upon the applicant's request.

10. In a judgment of 28 December 1999 the Regional Court upheld the previous court's judgement.

11. On further appeal, on 10 January 2001 the Supreme Court of Cassation quashed the Regional Court's judgment and remitted the case for fresh examination due to unspecified procedural breaches.

12. By a judgment of 30 November 2001 the Plovdiv Regional Court set aside the judgment of 1997 and declared the plaintiffs owners of the disputed real estate.

13. On 23 April 2003 the Supreme Court of Cassation upheld the lower court's judgment.

14. On an unspecified date the Executive Agency "Management of the Private State Property of the Ministry of Defence" filed a request for reopening, claiming that under the relevant legislation it should have been a party to the proceedings as a successor of the relevant subsidiary of the Ministry of Defence.

15. On 14 May 2004 the Supreme Court of Cassation granted reopening, set aside the judgment of 23 April 2003 and remitted the case to the Plovdiv Regional Court for new examination. The court held that in February 2000 the Executive Agency "Management of the Private State Property of the Ministry of Defence" had succeeded the subsidiary of the Ministry of Defence, which had been constituted as a party in the proceedings in 1993, and therefore should have been summoned in its stead.

16. By a judgment of 16 December 2005 the Plovdiv Regional Court again declared the plaintiffs owners of the real estate. On 17 April 2006 the applicant appealed.

17. By a final judgment of 13 April 2007 the Supreme Court of Cassation quashed the lower court's judgment and rejected the plaintiffs' claims, thus deciding the case in favour of the applicant.

18. The number of hearings held between December 1999 and April 2003 and between May 2004 and April 2007 is not clear.

19. On 6 June 2007 the plaintiffs filed a request for reopening.

20. By a judgment of 6 November 2007 the Supreme Court of Cassation rejected the request.

II. RELEVANT DOMESTIC LAW

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

22. 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

23. 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..."

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

25. The period to be taken into consideration began on 30 November 1992 when the civil claim was brought against the applicant (see paragraph 6 above). It ended on 13 April 2007, when the Supreme Court of Cassation gave a final judgment in the case (see paragraph 17 above). However, in determining the duration of the period to be taken into consideration the Court must discount the period when no proceedings were pending, i.e. in the instant case, the time between 23 April 2003, when the Supreme Court of Cassation gave its first judgment on the merits of the case, and 14 May 2004 when the latter court decided to set this judgment aside and reopen the proceedings (see paragraphs 13 and 15 above). The period to be taken into account is therefore about thirteen years and four months for three levels of jurisdiction.

A. Admissibility

26. 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

27. 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 applicant 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).

28. 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*, no. 47877/99, 23 September 2004). Having examined all the material submitted to it, the Court sees no reason to reach a different conclusion in the present case. In particular, it observes that the proceedings lasted more than thirteen years, which is excessive in itself. The applicant contended that the delay in the proceedings was attributable to the authorities. The Government have not put forward any fact or argument capable of persuading the Court in the opposite.

29. In view of the above and having regard to its case-law on the subject and the global length of the proceedings, 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

30. The applicant complained under Article 13 of the Convention that he 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."

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

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

33. 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).

34. The Court notes its case-law that a "complaint about delays" (see paragraphs 21 and 22 above), can in principal be regarded as an effective remedy for the speeding up of the proceedings, 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 *Tzvyatkov v. Bulgaria*, no. 2380/03, §§ 30 and 31, 22 October 2009) 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).

35. In the present case, the Court observes that before the introduction of the "complaint about delays" in July 1999 the case had already been pending for about seven years, during which time it had been examined only by two levels of jurisdiction (see paragraphs 6-10 above). Therefore, the use of the "complaint about delays" procedure might have speeded up the examination of the case but could not have made up for the delays which had occurred prior to its introduction and had already had a significant impact on the overall duration of the proceedings (see, among others, *Djangozov v. Bulgaria*, no. 45950/99, § 52, 8 July 2004 and *Rachevi v. Bulgaria*, cited above, § 67). Furthermore, after the delivery of the Plovdiv Regional Court's judgment in December 1999 the main delay in the proceedings was due to the remittal of the case in 2001 and the reopening (see paragraphs 11 and 14-17 above), in respect of which the "complaint about delays" cannot be considered an effective remedy (see *mutatis mutandis*, *Givezov v. Bulgaria*, no. 15154/02, § 38, 22 May 2008).

36. In view of the above "the complaint about delays" cannot be considered as an effective remedy in the circumstances of the present case. In addition, the Government has not shown that Bulgarian law provides for 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.

37. Accordingly, there has been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant claimed pecuniary and non-pecuniary damage, submitting that as a result of the lengthy proceedings he suffered distress, anxiety and fear of losing his home. However, he did not specify the exact amount of the claimed damage. In a correspondence submitted outside the relevant time-limits he stated that the claimed amount was 6,500 euros (EUR).

40. The Government submitted that in case a violation is found, this would constitute a sufficient just satisfaction within the meaning of Article 41 of the Convention.

41. The Court observes that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis and taking into account all the circumstances of the case, it awards him EUR 6,000 under this head.

B. Costs and expenses

42. The applicant also claimed EUR 3,000 in lawyers' fees for the proceedings before the Court. He further claimed 20.68 Bulgarian levs (BGN), the equivalent of EUR 10.42, in copy services and postage. In support of his claim he presented a fees' agreement with his legal representative and copy services and postage receipts for the amount of BGN 42.58, the equivalent of EUR 21.70. The applicant requested that the amount awarded for costs and expenses under this head be paid directly to his legal representative, Mr M. Neikov.

43. The Government contested the claim for lawyer's fees as excessive.

44. 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 1,000, covering costs under all heads, payable directly into the bank account of the applicant's legal representative.

C. Default interest

45. 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 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 proceedings;

4. *Holds*
   a) that the respondent State is to pay to the 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 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, payable directly into the bank account of the applicant's legal representative;
   (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 applicant's claim for just satisfaction.

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

Stephen Phillips Deputy Registrar	Peer Lorenzen President