CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF SIMIZOV v. BULGARIA

(Application no. 59523/00)

JUDGMENT

STRASBOURG

18 October 2007

FINAL

18/01/2008

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 Simizov v. Bulgaria,

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

Mr P. LORENZEN, *President,*
Mrs S. BOTOUCHAROVA,
Mr V. BUTKEVYCH,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER,
Mr M. VILLIGER, *judges,*
Mr K. JUNGWIERT, *substitute judge,*
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 25 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 59523/00) 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 a Bulgarian national, Mr Kroum Stefanov Simizov ("the applicant"), on 24 March 2000.

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

3. On 30 August 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 merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1930 and lives in Plovdiv.

5. On 23 July 1984 the applicant and his wife divorced. Thereafter, the applicant's former wife issued proceedings against him, requesting the partition of their common property, which included a flat, a garage, a car, and several pieces of jewellery and numerous other chattels.

6. In accordance with the relevant law, partition proceedings have two stages. During the first phase the court has to establish the co-owners, identify the items of common property which are to be partitioned and determine the share of each co-owner. During the second phase the court effects the partition.

1. The first phase of the partition proceedings

7. The partition claim was submitted to the Plovdiv District Court in December 1984. On 8 May 1985 its examination was stayed to await the outcome of a separate suit between the applicant and his former wife concerning their shares in their common property. Those proceedings ended in 1987 by final judgment establishing that the applicant's share was 9/16 of the joint marital property and his former wife's - 7/16.

8. The partition proceedings resumed in March 1988. The court held three hearings and gave judgment on 15 June 1988, allowing the partition of the flat, the car, the jewellery and the other chattels. The court determined the parties' shares as established in the 1985-1987 proceedings (see the preceding paragraph). On 5 December 1988 the District Court rectified its judgment noting that the partition also concerned the garage.

9. The applicant's former wife appealed. By judgment of 6 September 1988 the Plovdiv Regional Court quashed the lower court's judgment in so far as it concerned several chattels. On 30 January 1989 the applicant requested the reopening of the first phase of the partition proceedings. On 4 May 1989 the Supreme Court partially granted the request. It is unclear whether the Regional Court eventually examined the remitted part of the matter, which concerned the partition of an iron, an alarm clock, four blankets, two bed sheets, two pillows and three cotton curtains.

2. The second phase of the partition proceedings

10. Without awaiting the outcome of the appeals that concerned the first phase of the partition proceedings, the Plovdiv District Court commenced their second phase. Between October 1988 and April 1991 the Plovdiv District Court held nine hearings. Several adjournments were caused by defective summonses.

11. In a judgment of 22 April 1991 the Plovdiv District Court allotted the flat, part of the jewellery and of the other chattels to the applicant and allotted the car, the garage and the rest of the jewellery and the chattels to the applicant's former wife. Each party was ordered to make payments to the other in respect of levelling away differences in their shares and also for improvements and expenses.

12. On 24 May 1991 the applicant lodged an appeal with the Plovdiv Regional Court. He challenged the evaluation of the flat and the jewellery and the amounts he and his former wife had been ordered to pay to each

other. The court delivered its judgment on 10 December 1991. It granted the appeal partly, reducing the amount owed by the applicant.

13. Upon the applicant's petition for review, on 31 December 1992 the Supreme Court quashed parts of the lower courts' judgments and remitted the case for a fresh examination.

14. The case was transmitted to the Plovdiv District Court. On 4 March 1993 the applicant sought to bring in the same proceedings claims for damages against his former wife. On 15 May 1993 the District Court, sitting in private, refused to accept them for examination. The applicant's ensuing appeal was dismissed by the Plovdiv Regional Court on 6 October 1993.

15. On 4 May 1993, the Plovdiv District Court appointed an expert for the evaluation of the flat and adjourned the hearing until 17 August 1993.

16. On 3 December 1993 the applicant requested the withdrawal of the judge by a letter containing offensive remarks and gratuitous accusations against judges and staff of the District Court. Between 13 and 20 December 1993 all judges of the Plovdiv District Court withdrew, apparently in reaction to the applicant's improper behaviour.

17. On an unspecified date in 1994 the applicant submitted to the Supreme Court a request for rectification of its judgment of 31 December 1992 (see paragraph 13 above) pointing to the fact that the Supreme Court had not specified the name of the court to which the case was to be remitted for fresh examination.

18. On 7 June 1994 the Supreme Court supplemented its judgment of 31 December 1992. It held that the case should be referred for a fresh examination to the Plovdiv Regional Court.

19. The second phase of the partition proceedings thus resumed before the Plovdiv Regional Court, which held a hearing in October 1994. The court admitted written evidence and appointed an expert.

20. On 10 January 1995 the applicant's former wife died. On 17 April 1995 the court, sitting in private, held that her daughter (who was also the applicant's daughter), should become party to the proceedings.

21. A hearing took place on 8 May 1995, at which the Regional Court appointed new experts.

22. Between 1995 and 2000, the Regional Court listed numerous hearings which were adjourned. Three adjournments causing delay of several months were ordered as a court-appointed expert had failed to appear. Another delay of several months was caused by the fact that judges to whom the case had been assigned in 1997 had previously dealt with the matter as District Court judges. The judges concerned had not noted this problem of incompatibility prior to the date of the respective hearing and ordered adjournments to allow the re-allocation of the case to other judges.

23. All other adjournments during the period 1995-2000 were the result of the authorities' failure to secure proper service of summons on the applicant's daughter.

24. Following several such adjournments, on 23 October 1996 the Regional Court ordered an inquiry into the reasons for the defective summoning. As the problem persisted, on 6 March 1998 the Regional Court ordered the mayor of Bankya, where the applicant's daughter resided, to explain why the summons had not been served. On 13 September 1998 the mayor replied that summonses for residents of Bankya had to be processed through the Sofia municipality. The mayor also stated that the applicant's daughter had been notified but had not turned up to receive the summons.

25. As the summons sent kept returning not served, the court ordered the summons to be served on the lawyer of the applicant's daughter but in September 1998 he informed the court that he did not represent her. Following several additional adjournments caused by the same problem, on 26 January 2000 the court imposed a fine on the mayor of Bankya for having failed to ensure the serving of summonses.

26. On 28 October 1999 the applicant submitted a complaint against the delays in the proceedings under Article 217a of the Code of Civil Procedure. It is unclear whether the request was examined.

27. On 28 March 2000 the Plovdiv Regional Court received a letter by the Sofia Municipality – Region Bankya, stating that the applicant's daughter did not reside at the address she had given. The court concluded that she had failed to notify it of a change of address and considered her to be henceforth duly summoned, which allowed the continuation of the proceedings.

28. A hearing was held on 11 May 2000. An expert failed to show up. The court admitted written evidence adduced by the applicant. The next hearing was listed for 12 October 2000 in order to allow the applicant's daughter to get acquainted with the new evidence. The court also ordered the expert to appear at the next hearing on pain of being fined.

29. On 23 May 2000 the applicant requested the Plovdiv Regional Court to schedule the hearing for an earlier date. On 25 May 2000 the court refused, holding that pursuant to the provisions of the Code of Civil Procedure the case did not call for an expedited examination. The last hearing was held on 12 October 2000.

30. The Plovdiv Regional Court gave judgment on 5 January 2001. The court determined that the value of the various objects to be partitioned and ordered the applicant to pay a sum of money to his daughter. Since the court relied on the objects' value as of 22 April 1991, the date of their allotment to the parties, since when high inflation and the depreciation of the Bulgarian currency had devalued pecuniary claims, the applicant was ordered to pay 43 new Bulgarian levs (“BGN”) (the equivalent of approximately EUR 24).

31. On 1 February 2001 the applicant lodged a petition for review (cassation) with the Supreme Court of Cassation. He challenged in essence the value of the flat and the jewellery as determined by the Plovdiv Regional Court.

32. A hearing scheduled for 15 October 2001 failed to take place because the parties had not been duly summoned. The court held a hearing on 18 February 2002.

33. In a final judgment of 1 March 2002 the Supreme Court of Cassation, sitting as a three-member panel, reversed the Plovdiv Regional Court's judgment in part, allowing the applicant a longer time-limit – one year – for the payment of BGN 43 to his daughter. The remainder of the judgment was upheld.

34. On 12 July 2002 the applicant requested the reopening of the proceedings, arguing that several persons had committed criminal offences in relation to the examination of the case. In a judgment of 5 June 2003 the Supreme Court of Cassation, sitting as a five-member panel, refused to reopen the proceeding.

II. RELEVANT DOMESTIC LAW AND PRACTICE

35. Article 217a of the Code of Civil Procedure, adopted in July 1999, provides:

> "1. Each party may lodge a complaint about delays at every stage of the case, including after oral argument, when the examination of the case, the delivery of judgment or the transmitting of an appeal against a judgment is unduly delayed.
>
> 2. The complaint about delays shall be lodged directly with the higher court, no copies shall be served on the other party, and no State fee shall be due. The lodging of a complaint about delays shall not be limited by time.
>
> 3. The chairperson of the court with which the complaint has been lodged shall request the case file and shall immediately examine the complaint in private. His instructions as to the acts to be performed by the court shall be mandatory. His order shall not be subject to appeal and shall be sent immediately together with the case file to the court against which the complaint has been filed.
>
> 4. In case he determines that there has been [undue delay], the chairperson of the higher court may make a proposal to the disciplinary panel of the Supreme Judicial Council for the taking of disciplinary action."

THE LAW

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

36. 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..."

37. The Government contested that argument.

38. The period to be taken into consideration began only on 7 September 1992, when the recognition by Bulgaria of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the fact that at that time the proceedings had already been pending for seven years and nine months (see paragraphs 7-13 above) (see *Vatevi v. Bulgaria*, no. 55956/00, § 35, 28 September 2006).

39. The period in question ended on 1 March 2002, when the Supreme Court of Cassation gave a final judgment. It thus lasted approximately nine years and six months.

A. Admissibility

40. 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

41. 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).

42. 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*, cited above).

43. 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 does not overlook the fact that the applicant's behaviour was at the origin of at least several adjournments (see paragraphs 14 and 16 above). His systematic use of all possible appeal procedures, even where what was at stake for him was of minimal value, undoubtedly prolonged the proceedings. The Court notes, however, that very significant delays, exceeding by far the delays caused by the applicant, were imputable to the authorities. In particular, for a period of approximately five years the authorities were incapable of securing that

summons be served on one of the parties, which practically blocked the proceedings (see paragraphs 23-27 and 32 above). Also, failure on the part of judges to prepare for the hearings in good time and non-appearance of court-appointed experts caused additional adjournments that could have been avoided (see paragraphs 22 and 28 above). Finally, the Court also has regard to the global length of the proceedings, which is excessive in itself, in view of the low level of complexity of the case.

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

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

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

45. The Government contested that argument.

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

47. Having regard to its finding under Article 6 § 1 (see paragraph 43 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. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

48. The applicant further complained of the fact that he did not have effective remedies in respect of the excessive length of the proceedings. He relied on Article 13 of the Convention.

49. The Government contested that argument, stating that the applicant could have submitted a complaint against delays under Article 217a of the Code of Civil Procedure.

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

51. 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). Remedies available to a litigant at domestic level for raising a complaint about the length of proceedings are "effective", within the meaning of Article 13, if they "[prevent] the alleged violation or its continuation, or [provide] adequate redress for any violation that [has] already occurred" (see *Kudła*, cited above, § 158). Article 13 therefore offers an alternative: a remedy will be considered "effective" if it can be used either to expedite a decision by the

courts dealing with the case, or to provide the litigant with adequate redress for delays that have already occurred (see *Mifsud v. France* (dec.)[GC], no. 57220/00, ECHR 2002-VIII).

52. The Court must determine whether, in the particular circumstances of the present case, there existed in Bulgarian law any means for obtaining redress in respect of the length of the proceedings.

53. It notes that a possibility to file a "complaint about delays" was introduced in Bulgarian law with the adoption of Article 217a of the Code of Civil Procedure in July 1999. This procedure allows a litigant to apply to the chairperson of the higher court when the examination of the case, the delivery of judgment or the transmitting of an appeal against judgment is unduly delayed. The chairperson has the power to issue binding instructions to the court examining the case (see paragraph 35 above).

54. However, by the time this remedy was introduced in July 1999, very significant delays had already accumulated during the period 1995-99. In this connection, the Court notes that the effectiveness of a remedy may depend on whether it has a significant effect on the length of the proceedings as a whole (see *Holzinger v. Austria (No. 1)*, no. 23459/94, § 22, ECHR 2001-I, *Holzinger v. Austria (No. 2)*, no. 28898/95, § 21, 30 January 2001, and *Rajak v. Croatia*, no. 49706/99, §§ 33-35, 28 June 2001).

55. Moreover, the Court notes that the applicant submitted a complaint against delays in October 1999 which, apparently, was never examined and that his request for shorter intervals between hearings was refused in May 2000 (see paragraphs 26 and 29 above). In any event, it is doubtful whether that remedy could have had any useful effect in respect of the authorities' inability to effect valid service of summonses – which was the major cause of delays.

56. The Court concludes, therefore, that in the particular circumstances of the present case a "complaint about delays" cannot be considered an effective remedy irrespective of its possible effectiveness in principle. The Government have not referred to other remedies and the Court has not found it established that effective compensatory of other remedies existed in Bulgarian law at the relevant time.

57. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby, at the relevant time when major delays accumulated (see paragraphs 22-30 above), the applicant could have secured his right to have his case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

IV. OTHER COMPLAINTS

58. By letter of August 2003 the applicant also complained, relying on various provisions of the Convention, about the alleged unfairness of the

proceedings, stating that the courts decided wrongly. He also stated that due to judicial errors he had been ordered to pay sums he did not owe.

59. In the light of all the material in its possession, and in so far as the above matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that the remainder of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed EUR 35,000 in respect of non-pecuniary damage.

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

63. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards award him EUR 1,000 under that head.

B. Costs and expenses

64. The applicant also claimed EUR 3,640 in respect of 52 hours of legal work on the proceedings before the Court and EUR 254 in respect of translation, postage and overhead expenses. He asked the Court to award these amounts to be paid directly into his lawyers' bank account.

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

66. 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 covering costs under all heads.

C. Default interest

67. 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* admissible, the complaints concerning the excessive length of the proceedings, the alleged lack of effective remedies in this respect and the ensuing alleged interference with the applicant's property rights and declares the remainder of the application inadmissible;

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

3. *Holds* that it is not necessary to examine whether, in this case, there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds* that there has been a violation of Article 13 in conjunction with Article 6 § 1 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 1,000 (one thousand euros) in respect of non-pecuniary damage and EUR 1,000 (one thousand euros) in respect of costs and expenses, the latter amount being payable directly into the bank account of one of the applicant's legal representatives, plus any tax that may be chargeable;
   (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 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President