CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF KIURKCHIAN v. BULGARIA

(Application no. 44626/98)

JUDGMENT

STRASBOURG

24 March 2005

FINAL

24/06/2005

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 Kiurkchian v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 3 March 2005,

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

PROCEDURE

1. The case originated in an application (no. 44626/98) against the Republic of Bulgaria lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Onnik Arshavir Kiurkchian and Mrs Nuritza Haik Kiurkchian, Bulgarian nationals who were born in 1937 and 1947 respectively and live in Plovdiv ("the applicants"), on 9 July 1998.

2. The applicants, who were granted legal aid, were represented before the Court initially by Mr K. Petrov, a lawyer practising in Sofia, and as from 9 April 2001 by Mr M. Ekimdjiev, a lawyer practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agents, Ms M. Pasheva and Ms M. Dimova, of the Ministry of Justice.

3. The applicants alleged, in particular, that the proceedings they had issued against the municipality and against their neighbours had lasted unreasonably long and that the excessive length of the proceedings had allowed their neighbours to finish the construction of a building which prevented the access of sunlight to their house.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 22 January 2004 the Court (First Section) declared the application admissible.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

8. Neither the applicants, nor the Government filed observations on the merits.

THE FACTS

9. The applicants were born in 1937 and 1947 respectively and live in Plovdiv.

10. The applicants own the first floor of a house with a yard in Plovdiv. In May 1992 the owners of a neighbouring building started reconstructing it without obtaining the necessary permission from the building control authorities. The works were presented as a reconstruction of an existing house, but it seems that in fact the old building was pulled down and replaced by a higher and larger structure.

I. PROCEEDINGS CONCERNING THE LEGALITY OF THE CONSTRUCTION UNDER THE TERRITORIAL AND URBAN PLANNING ACT

11. In May and June 1992 the applicants filed complaints with the mayor and the chief architect of the municipality. They alleged that their consent for the construction had not been obtained and that the plan of the new building did not meet the relevant legal requirements.

12. On an unspecified date the municipal authorities ordered the suspension of the construction. The building plan was modified and the modifications were communicated to the applicants.

13. On 7 September 1992 the applicants submitted objections against their neighbours' request for legalisation of the construction.

14. On 19 January 1993 the municipal authorities dismissed the applicants' objections.

15. By a decision of 18 March 1993 the construction was legalised.

16. On 14 June 1993 the applicants appealed against the 18 March 1993 legalisation decision to the Plovdiv Regional Court.

17. At the first hearing, which took place on 15 July 1993, the applicants requested the court to constitute their neighbours as defendants, alongside the municipality of Plovdiv. The court acceded to their request and adjourned the case.

18. The second hearing was held on 23 August 1993. Pursuant to a request by the applicants the court ordered a technical expert report on the

question whether the construction had been effected in compliance with the relevant technical rules.

19. The third hearing took place on 29 December 1993. One of the defendants stated that he had not received a copy of the applicants' appeal and requested an adjournment. The first applicant requested a graphological expert report to determine whether a signature appearing in the municipal records, relating to the construction, was in fact his. The court acceded to the parties' requests and adjourned the case.

20. The next hearing was held on 11 April 1994. The court admitted in evidence the technical and the graphological experts' reports and questioned the experts. The applicants' neighbours requested a new technical expert report to be drawn up by three experts. The court agreed and adjourned the case.

21. A hearing listed for 30 June 1994 failed to take place because one of the defendants could not attend.

22. At the next hearing, which took place on 26 October 1994, the three experts presented their report. Finding that they had failed to examine certain relevant documents, the court instructed them to do so and also asked them an additional question, as requested by the defendants. The case was adjourned.

23. The last hearing before the Plovdiv Regional Court took place on 25 January 1995. The court admitted the three experts' report and certain other documents in evidence. It also heard the parties' closing arguments and reserved judgment.

24. In a judgment of 30 June 1995 the Plovdiv Regional Court dismissed the applicants' appeal.

25. On 24 August 1995 the applicants lodged a petition for review with the Supreme Court.

26. Noting that the applicants had not paid the requisite fee, the court instructed them to do so. They paid the fee on 11 September 1995.

27. On unspecified dates in September and October 1995 copies of the petition for review were served on the other parties and on 20 October 1995 the case was forwarded to the Supreme Court.

28. In 1997, following a restructuring of the judicial system in Bulgaria, all administrative cases falling within the jurisdiction of the Supreme Court were transmitted to the newly established Supreme Administrative Court.

29. A hearing listed by the Supreme Administrative Court for 3 November 1997 failed to take place because the applicants' neighbours had not been duly summoned.

30. On 12 January 1998 the Supreme Administrative Court held a hearing. It heard the parties' arguments and reserved judgment.

31. In a final judgment of 30 March 1998 Supreme Administrative Court reversed the Plovdiv Regional Court's judgment and declared the 18 March

1993 legalisation decision void, as it had not been made by the competent officer.

32. In March 1998 the construction in the neighbouring estate had already been completed.

II. THE PROCEEDINGS UNDER SECTION 109 OF THE PROPERTY ACT

33. On 28 April 1993 the applicants issued proceedings against their neighbours at the Plovdiv District Court. They argued that the construction in the neighbouring estate had intruded into their yard and impeded the normal use of their house as it prevented the access of sunlight. The applicants sought a permanent injunction under section 109 of the Property Act requiring their neighbours to restore the situation to what it had formerly been.

34. On 11 October 1993 the Plovdiv District Court, acting pursuant to the motion of the applicants, stayed the proceedings pending the outcome of the proceedings under the Territorial and Urban Planning Act. In 1998, after their completion, the proceedings between the applicants and their neighbours resumed.

35. In a judgment of 11 January 1999 the Plovdiv District Court dismissed the applicants' action.

36. The applicants appealed to the Plovdiv Regional Court.

37. The first hearing before that court took place on 7 June 2000. The court admitted certain documents in evidence and pursuant to the motion of the applicants ordered an expert report to determine the extent to which the construction in their neighbours' plot was interfering with their property.

38. A hearing listed for 27 September 2000 did not take place because the expert was unavailable.

39. The next hearing was held on 4 December 2000. The court heard the expert and admitted his report in evidence. One of the defendants requested the court to ask the expert an additional question. The court acceded to the request over the objection of the applicants, but fined the defendant for having failed to make it in due time.

40. A hearing took place on 1 March 2001. The court heard the expert and admitted his additional report in evidence. One of the defendants requested the court to ask the expert an additional question. The court acceded to the request over the objection of the applicants and adjourned the case.

41. The last hearing before the Plovdiv Regional Court took place on 9 May 2001. The court heard the expert and admitted his additional report in evidence. After hearing the parties' argument, the court reserved judgment.

42. In a judgment of 11 August 2001 the Plovdiv Regional Court reversed the lower court's judgment and allowed the applicants' action.

43. On 18 October 2001 the applicants' neighbours appealed on points of law to the Supreme Court of Cassation.

44. A hearing was held on 12 December 2002. The court heard the parties' argument and reserved judgment.

45. In a judgment of 16 July 2003 the Supreme Court of Cassation quashed the Plovdiv Regional Court's judgment and remitted the case for a fresh examination.

46. A hearing listed by the Plovdiv Regional Court for 24 November 2003 was adjourned because one of the defendants was ill and could not attend.

47. Another hearing, fixed for 16 February 2004, was also adjourned because another defendant was ill and did not show up.

48. At the time of the latest information from the parties (15 March 2004) the proceedings were still pending before the Plovdiv Regional Court. A hearing was listed for 19 April 2004.

III. PROCEEDINGS AGAINST THE MUNICIPALITY UNDER THE STATE RESPONSIBILITY FOR DAMAGE ACT

49. Following the Supreme Administrative Court's holding that the order legalising the construction of the applicants' neighbours' house was void (see paragraph 31 above), on 11 January 1999 the applicants issued proceedings against, *inter alia*, the municipality of Plovdiv, claiming damages for the unlawful actions and omissions of the municipality with regard to their neighbours' construction. The Plovdiv Regional Court dismissed the applicants' action, but on appeal, in a judgment of 3 April 2002 the Plovdiv Court of Appeals allowed their claims in full, awarding them 5,000 Bulgarian levs (BGN) each, with interest as from 11 January 1999. The municipality appealed against the judgment to the Supreme Court of Cassation. However, under the relevant rule of the Code of Civil Procedure, that judgment, although subject to appeal, was enforceable. On 20 May 2002 the applicants' lawyer requested the issuing of a writ of execution pursuant to the judgment and on 28 May 2002 such a writ was issued. The writ was presented to the municipality, but as of March 2004 the amount had remained still unpaid. On 5 April 2004 the Supreme Court of Cassation quashed the Plovdiv Court of Appeals' judgment and remitted the case to that court. The proceedings are still pending.

THE LAW

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

50. The applicants complained that the length of the proceedings under the Territorial and Urban Planning Act and the proceedings for a permanent injunction under section 109 of the Property Act had exceeded a reasonable time. They relied on Article 6 § 1 of the Convention, which provides, as relevant:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

A. Length of the proceedings under the Territorial and Urban Planning Act

1. Period to be taken into consideration

51. Regarding the question of the beginning of the proceedings, the Court notes that when under the national legislation an applicant has to exhaust a preliminary administrative procedure before having recourse to a court, the proceedings before the administrative body are to be included when calculating the length of the civil proceedings for the purposes of Article 6 (see *König v. Germany*, judgment of 28 June 1978, Series A no. 27, pp. 33-34, § 98, *Schouten and Meldrum v. the Netherlands*, judgment of 9 December 1994, Series A no. 304, p. 25, § 62, and *Vallée v. France*, judgment of 26 April 1994, Series A no. 289-A, p. 17, § 33).

52. In the present case, prior to the court proceedings, the applicants submitted objections against their neighbours' request for legalisation of the construction with competent municipal authorities on 7 September 1992 (see paragraph 13 above). The Court finds that the period to be taken into consideration started to run on that date. The proceedings ended on 30 March 1998 (see paragraph 32 above). The period to be taken into consideration was thus five years, six months and twenty-three days, which comprised the proceedings before the municipal authorities and two levels of court.

2. Reasonableness of the length of the proceedings

53. The Court will assess the reasonableness of the length of the proceedings in the light of the circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicants and of the relevant authorities. What

was at stake for the applicants in the litigation has also to be taken into account (see, among many other authorities, *Süßmann v. Germany*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1172-73, § 48, and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

54. Concerning the conduct of the authorities, the Government argued that the proceedings before the Plovdiv Regional Court had not been unduly delayed. All adjournments had been done in order to allow the parties to better present their case. As regards the proceedings before the Supreme (Administrative) Court, they had taken a longer time because that court had just been established, following the restructuring of the judicial system. Having regard to the high number of cases before that court, the time taken to examine the applicants' petition for review had not been unreasonable.

55. As regards the applicants' conduct, the Government submitted that they had significantly contributed to the delay. In particular, the hearings before the Plovdiv Regional Court on 15 July, 23 August and 29 December 1993 had been adjourned because of their requests to the court to constitute their neighbours as defendants, alongside the municipality of Plovdiv, and to order expert reports. The new defendants – the applicants' neighbours – had caused the adjourning of the hearings on 11 April, 30 June and 26 October 1994.

56. The applicants maintained that the case was not complex at all. In their view, the authorities had been entirely responsible for the delay. In particular, the proceedings before the Plovdiv Regional Court had taken more than two years and three months, which had been largely due to that court's tolerance of the unwarranted requests of the defendants. The proceedings before the Supreme Administrative Court had taken more than two years and five months.

57. The Court, noting in particular the grounds on which the Supreme Administrative Court declared the 18 March 1993 legalisation decision void (see paragraph 31 above), does not consider that the case was characterised by any exceptional factual or legal difficulties.

58. Concerning the applicants' conduct, the Court notes that they may be considered responsible for the adjournment of the hearing on 15 July 1993, when they requested the court to constitute new defendants (approximately one month of delay)(see paragraph 17 above). They are also responsible for failing to pay on time the fee for lodging a petition for review (three weeks of delay)(see paragraph 26 above). It does not seem that any other periods of delay are imputable to the applicants. In particular, their requests for expert reports were not untimely and appear relevant for the examination of the case (see paragraphs 18 and 19 above). Nor can the applicants be blamed for the procedural conduct of the defendants.

59. As to the conduct of the competent authorities, the Court considers that the proceedings before the Plovdiv Regional Court went at a good pace.

By contrast, a lengthy gap appeared in the proceedings before the Supreme (Administrative) Court. The applicants paid the fee for lodging the petition for review on 11 September 1995, thus bringing their petition into line with relevant requirements, whereas the first hearing took place on 12 January 1998 (see paragraphs 26-30 above). The bulk of this interval was no doubt due to the restructuring of the judicial system, but the Court, while not disregarding the inevitable delay stemming from this reform, notes that the States have a general obligation to organise their legal systems so as to ensure compliance with the requirements of Article 6 § 1, including that of trial within a reasonable time (see *Guincho v. Portugal*, judgment of 10 July 1984, Series A no. 81, p. 16, § 38, and, as a recent authority, *Krastanov v. Bulgaria*, no. 50222/99, § 74, 30 September 2004).

60. In conclusion, the Court considers that while the overall length of the proceedings does not seem excessive *per se*, a major gap occurred in the proceedings before the Supreme (Administrative) Court. In these circumstances, it would be appropriate to take into account what was at stake for the applicants (see *Hadjikostova v. Bulgaria*, no. 36843/97, § 35, 4 December 2003). Noting that the proceedings concerned the legality of a construction which seriously interfered with the applicants' use of their home, the Court is of the view that the authorities should have shown more diligence in examining their case (see, as an example to the contrary, *Hadjikostova*, cited above, § 36).

61. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

B. Length of the proceedings under section 109 of the Property Act

1. Period to be taken into consideration

62. The proceedings started on 28 April 1993 (see paragraph 33 above). On 15 March 2004, date of the latest information from the parties, they were pending before the Plovdiv Regional Court (see paragraph 48 above). The proceedings had at that moment in time lasted ten years, ten months and seventeen days for four levels of court.

2. Reasonableness of the length of the proceedings

63. The relevant criteria for assessing the reasonableness of the length of the proceedings have been set out in paragraph 53 above.

64. The Government did not make any submissions with regard to these proceedings.

65. The applicants did not submit further comments.

66. The Court does not find that the case is characterised by any exceptional legal complexity. It bore a certain degree of factual complexity,

as the courts had to establish, through expert reports, the extent to which the construction erected by the applicants' neighbours interfered with the peaceful enjoyment of their property. However, it does not seem that the complexity of the case can fully explain the delays in its processing.

67. It does not appear from the information in the case-file that the applicants were responsible for any delays.

68. Concerning the conduct of the authorities, the Court notes that between 1993 and 1998 the proceedings were stayed to await the outcome of the proceedings under the Territorial and Urban Planning Act, which was apparently determinative for their outcome (see paragraph 34 above). It is not the Court's task to determine whether there existed a sufficient link between the two sets of proceedings and whether the proceedings at issue were thus properly stayed, because, as a general rule, it is for the domestic courts to establish the facts and to interpret and apply national law. The Court will not interfere with their rulings, unless the applicants succeed in demonstrating that they acted arbitrarily. Nor can the Court find that a system providing for the dependence of one set of civil proceedings on another one, when they concern the same or related facts, goes *per se* against the requirements of Article 6 of the Convention (see, *mutatis mutandis*, *Djangozov v. Bulgaria*, no. 45950/99, § 38, 8 July 2004, and *Todorov v. Bulgaria*, no. 39832/98, § 48, 18 January 2005). However, the Court notes that after the proceedings at issue were stayed, undue delays occurred in the concurrent proceedings (see paragraph 59 above). This, in turn, led to a delay in the proceedings at hand.

69. Later, when the proceedings resumed, a lengthy gap occurred between 11 January 1999, when the Plovdiv District Court delivered its judgment (see paragraph 35 above), and 7 June 2000, when the Plovdiv Regional Court held its first hearing (see paragraph 37 above). The ensuing hearings held by the Plovdiv Regional Court took place at regular intervals (see paragraphs 37-41 above). However, the Court notes that on two occasions the Plovdiv Regional Court posed additional questions to the expert, which led to the adjourning of two hearings (see paragraphs 39 and 40 above). This could have been avoided if the court had, from the outset, requested the parties to formulate their questions to the expert comprehensively and with sufficient precision. Furthermore, the Court notes that there was a gap of more than a year before the case was set down for hearing by the Supreme Court of Cassation (see paragraphs 43 and 44 above).

70. Finally, the Court recalls that the Plovdiv Regional Court's judgment was quashed and that the case is still pending before the national courts.

71. In the light of the criteria laid down in its case-law and having regard in particular to the overall duration of the proceedings, to what is at stake for the applicants, and to the delays attributable to the authorities, the Court

finds that the length of the proceedings fails to satisfy the reasonable time requirement.

72. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

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

73. The applicants also complained that the length of the two sets of proceedings had allowed their neighbours to finish the construction and thus prevent the access of sunlight to the applicants' house. They relied on Article 1 of Protocol No. 1, which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

74. In view of the circumstances of the case, the Court considers it unnecessary to determine also the complaint based on Article 1 of Protocol No. 1 (see *Znaghì v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23, *Schreder v. Austria*, no. 38536/97, § 24, 13 December 2001, and *Kroenitz v. Poland*, no. 77746/01, § 37, 25 February 2003).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. 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

76. The applicants claimed 10,000 euros (EUR) each as compensation for non-pecuniary damage. They submitted that the excessive length of the proceedings had occasioned them anguish, which had been further intensified by the fact that, owing to the length of the proceedings, their neighbours had been able to finish the construction intruding in their property. Furthermore, the second applicant alleged that she had developed a depression as a result of the proceedings which had lasted for many years.

The applicants made detailed references to the awards of just satisfaction in a number of recent length-of-proceedings cases.

77. Referring to the Court's practice in previous length-of-proceedings cases against Bulgaria, the Government submitted that the claim was exaggerated and excessive. They were of the view that the amount of the compensation should be commensurate to the living standards in Bulgaria. They also submitted that the length of the proceedings complained of had no causal connection with the second applicant's state of health.

78. The Court considers that it is reasonable to assume that the applicants have suffered distress and frustration on account of the unreasonable length of the two sets of proceedings complained of. Taking into account the circumstances of the case, and making its assessment on an equitable basis, the Court awards to each of the applicants the sum of EUR 3,500, plus any tax that may be chargeable on that amount.

B. Costs and expenses

79. The applicants claimed EUR 369.43 for lawyers' fees and expenses incurred in the domestic proceedings and EUR 1,204 for lawyers' fees and expenses incurred in the Strasbourg proceedings. They submitted agreements between them and their lawyers outlining the lawyers' fees, a time-sheet for the work done on the Strasbourg proceedings, postal receipts, bank receipts for court fees and contracts for translation services. They requested that part of the amount claimed by them for their representation after 9 April 2001 (EUR 976) be paid directly to the lawyer they retained on that date, Mr M. Ekimdjiev.

80. The Government submitted that they will provide to the Court a copy of the final judgment in the proceedings under the State Responsibility for Damage Act once it is delivered.

81. The Court notes that the lawyer's fees and the expenses claimed with regard to the domestic proceedings concern the applicants' representation in these proceedings. These fees and expenses do not constitute expenses necessarily incurred in seeking redress for the violations of the Convention found in the present case (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II, and *E.M.K. v. Bulgaria*, no. 43231/98, § 153, 18 January 2005).

82. Concerning the amounts claimed for the Strasbourg proceedings, having regard to all relevant factors and deducting EUR 685 received in legal aid from the Council of Europe, the Court awards EUR 500 in respect of costs and expenses, plus any tax that may be chargeable on that amount. Of this amount EUR 200 is to be paid to the applicants themselves and EUR 300 to their lawyer, Mr M. Ekimdjiev.

C. Default interest

83. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings under the Territorial and Urban Planning Act;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings under section 109 of the Property Act;

3. *Holds* that it is unnecessary to rule on the complaint under Article 1 of Protocol No. 1;

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) EUR 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage to the first applicant and EUR 3,500 (three thousand five hundred euros) to the second applicant;
      (ii) EUR 500 (five hundred euros) in respect of costs and expenses, of which EUR 200 (two hundred euros) are payable into the bank account of the applicants and EUR 300 (three hundred euros) are payable into the bank account of the applicants' lawyer, Mr M. Ekimdjiev, 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 24 March 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President