CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF VATEVI v. BULGARIA

(Application no. 55956/00)

JUDGMENT

STRASBOURG

28 September 2006

FINAL

28/12/2006

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 Vatevi 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,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 4 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 55956/00) 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 the Bulgarian nationals, Mrs Daniela Kostadinova Vateva ("the first applicant") and Mr Nikolai Kostadinov Vatev ("the second applicant" and, jointly, "the applicants"), on 3 December 1999.

2. The applicants were represented by Mrs I. Trendafilova Chambova, a lawyer practising in Plovdiv.

3. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Karadjova, of the Ministry of Justice.

4. On 8 December 2004 the Court decided to communicate 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.

5. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant was born in 1973 and the second applicant in 1966. Both of them live in Plovdiv.

A. First phase of the partition-of-property proceedings

7. On 17 February 1992 the applicants initiated an action against Mr and Mrs T. ('the defendants") for partitioning a jointly inherited real estate consisting of two apartments ("the real estate").

8. Due to the fact that the defendants lived in Canada at the time, they were summoned to participate in the proceedings through a notice published in the State Gazette on 1 September 1992.

9. The Plovdiv District Court conducted eleven hearings between 13 October 1992 and 6 June 1995, scheduled three to five months apart. During this period, the court obtained an expert's report, sought the consent of the Ministry of Finance for terminating the joint ownership and questioned witnesses. The defendants failed to appear at the hearing of 13 October 1992 so it was adjourned to 23 March 1993 in order to allow the court to appoint a special representative to act on their behalf. The appointment was undertaken in spite of the presence at the hearing of the mother of one of the defendants who had a power of attorney to act on their behalf and had retained a lawyer to represent them in the proceedings. The next hearing of 23 March 1993 was adjourned to 1 June 1993 due to the defective summoning of the applicants. The hearing of 1 June 1993 was also not conducted due to the failure of the applicants to appear and was postponed to 22 September 1993. Finally, the hearing of 22 September 1993 was adjourned to 25 February 1994 due to another defective summoning of the applicants.

10. In a judgment of 27 June 1995 the Plovdiv District Court found partly in favour of the applicants, allowed the partitioning of one of the apartments to proceed ("the property") and dismissed the action in respect of the other apartment. The judgment entered into force on an unspecified date.

B. Second phase of the partition-of-property proceedings

1. Plovdiv District Court

11. At the second phase of the proceedings, the applicants petitioned the courts to assign the property to them against payment of compensation to the defendants, who, in turn, made a counterclaim to the same effect.

12. The Plovdiv District Court conducted nine hearings between 9 November 1995 and 24 February 1998, scheduled one to nine months apart. During this period, witnesses were questioned, two experts' opinions were obtained and the approval of the local municipality was sought on two occasions for the plans for reconstructing the property into two separate apartments. Of the hearings conducted, one was postponed from 23 January to 1 April 1996, because the experts failed to present their report on time.

13. In a judgment of 19 March 1998 the Plovdiv District Court found in favour of the applicants, assigned to each of them one of two apartments to be created following the reconstruction of the property and ordered them to pay compensation to the defendants for their share of the property. The latter filed an appeal against the judgment on an unspecified date.

14. On 1 April 1998 a number of amendments to the Code of Civil Procedure entered into force, which related, among other things, to partition-of-property proceedings and provided for the annulment of all judgments rendered by the courts of first instance in partition-of-property proceedings (see, below, Relevant domestic law).

2. Plovdiv Regional Court

15. The appeal proceedings before the Plovdiv Regional Court started with a hearing on 12 January 1999 at which the court instructed the defendants to deposit additional court fees. It considered that the fees due for the appeal proceedings were in the amount of 161,678 Bulgarian levs (BGL) rather than the BGL 5,000 which the defendants had deposited. The defendants disagreed with the court's calculation of the said fees and did not deposit any additional such.

16. In a decision of 15 January 1999 the Plovdiv Regional Court discontinued the proceedings due to the failure of the defendants to deposit the full amount of the court fees required by the court. On 31 March 1999 the defendants appealed against this decision. The Plovdiv Court of Appeals upheld their appeal on 20 May 1999 and, agreeing with the defendants' arguments, found the calculations of the Plovdiv Regional Court to be erroneous and quashed the decision of 15 January 1999. The case was then remitted to the Plovdiv Regional Court.

17. At a hearing of 20 October 1999, the Plovdiv Regional Court declared the case ready for decision.

18. In a judgment of 25 November 1999 the Plovdiv Regional Court upheld the judgment of 19 March 1998 of the Plovdiv District Court in favour of the applicants.

19. On an unspecified date, the defendants filed a cassation appeal.

3. Supreme Court of Cassation

20. It is unclear how many hearings were conducted before the Supreme Court of Cassation.

21. In a judgment of 30 October 2000 the Supreme Court of Cassation annulled the judgment of the Plovdiv Regional Court of 25 November 1999 and remitted the case to the Plovdiv District Court. It found that following the entry into force on 1 April 1998 of paragraph 151 of the Amendment to the Code of Civil Procedure Act of 23 December 1997, the Plovdiv Regional Court could not rule on the appeal filed by the defendants because

the property did not fall under any of the exceptions provided in the said paragraph. Instead, it considered that the Plovdiv Regional Court should have immediately terminated the proceedings before it and remitted the case to the District Court in order to allow that court to annul its judgment of 19 March 1998 and to re-examine the case.

4. Retrial before the Plovdiv District Court

22. The case was then sent back to the Plovdiv District Court which in a judgment of 5 February 2001 annulled its previous judgment of 19 March 1998.

23. It is unclear how many hearings were thereafter conducted before the Plovdiv District Court.

24. In a judgment of 12 October 2001 the Plovdiv District Court, examining anew the action for partitioning, found that none of the parties could be assigned the property and ordered that it be sold at public auction.

25. On an unspecified date, the parties to the proceedings concluded an out-of-court settlement and petitioned the Plovdiv District Court to annul its judgment on that basis.

26. In a decision of 7 December 2001 the Plovdiv District Court approved the parties' out-of-court settlement and annulled its judgment of 12 October 2001, thereby bringing the proceedings to a close.

II. RELEVANT DOMESTIC LAW

27. The relevant provisions of the Code of Civil Procedure in respect of partition-of-property proceedings are summarised in the recent Court's judgment in the case of *Hadjibakalov v. Bulgaria* (no. 58497/00, §§ 38-40, 8 June 2006).

28. In addition, paragraph 151 of the Amendment to the Code of Civil Procedure Act of 23 December 1997, as in force from 1 April 1998, provided for the annulment of all judgments of the courts of first instance in partition-of-property proceedings except those that had already entered into force or concerned community property assigned to the surviving spouse of a deceased individual.

THE LAW

I. THE SCOPE OF THE CASE

29. Following communication of the application to the respondent Government, the applicants, in their observations in reply of 6 June 2005,

raised new complaints. Relying on Articles 13 and 34 of the Convention they complained that they lacked an effective remedy for the excessive length of the proceedings and that the authorities had interfered with the effective exercise of their right of application by restricting access, from 30 May to 5 June 2005, to the court files relating to the proceedings.

Article 13 of the Convention provides as follows:

> "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."

Article 34 of the Convention provides as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

30. The Court recalls that the institutions set up under the Convention have jurisdiction to review, in the light of the entirety of the Convention's requirements, the circumstances complained of by an applicant. In the performance of their task, the Convention institutions are, notably, free to attribute to the facts of the case, as found to be established on the evidence before them, a characterisation in law different from that given by the applicant or, if need be, to view the facts in a different manner. Furthermore, they have to take into account not only the original application but also the additional documents intended to complete the latter by eliminating initial omissions or obscurities (see *Melnik v. Ukraine*, no. 72286/01, § 61, 28 March 2006).

31. The Court notes that in the instant case the applicants introduced their new complaints after the communication of the case to the respondent Government. In the Court's view, these complaints are not an elaboration of their original complaint to the Court lodged five-and-a-half years earlier and on which the parties have been given the opportunity to comment. The Court considers, therefore, that it is not appropriate now to take these matters up separately at this stage (see *Melnik*, cited above, § 63, *Skubenko v. Ukraine* (dec.), no. 41152/98, 6 April 2004, and *Nuray Şen v. Turkey (no. 2)*, no. 25354/94, §§ 199-200, 30 March 2004).

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

32. The applicants complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, provided 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..."

33. The Government did not submit observations on the admissibility and merits of this complaint. The applicants reiterated their complaints.

A. Period to be taken into consideration

34. The applicants argued that the period to be taken into consideration began on 17 February 1992, when they initiated the action for partitioning of the real estate, and ended on 7 December 2001, with the approval of the out-of-court settlement by the Plovdiv District Court.

35. In respect of the starting date, the Court finds that that period began not on 17 February 1992, as claimed by the applicants, but only on 7 September 1992 when the Convention entered into force in respect of Bulgaria. However, in order to determine whether the time which elapsed following this date was reasonable, it is necessary to take account of the stage which the proceedings had reached at that point (see *Proszak v. Poland*, judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2772, § 31). The Court notes in this respect, that on 7 September 1992 the proceedings had been pending before the court of first instance for six months and twenty days, no hearings had been conducted thus far and only the defendants had been summoned to participate in the proceedings through a notice published in the State Gazette on 1 September 1992 (see paragraphs 7-8 above).

36. As regards the end of the period under consideration, the Court finds that to be 7 December 2001 when the Plovdiv District Court approved the out-of-court settlement reached by the parties, thereby bringing an end to the proceedings (see paragraph 26 above).

37. In view of the above, the overall length of the proceedings was nine years, nine months and twenty-two days, of which nine years, three months and two days fall within the Court's competence *ratione temporis*. During this period, the case passed through a two-phase partition-of-property proceeding and was examined five times at four levels of jurisdiction.

B. Admissibility

38. 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.

C. Merits

39. 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).

40. The Court notes at the outset that the present case relates to partition-of-property proceedings, which in Bulgaria have the distinctive feature of consisting of two phases. During the first phase the courts have to ascertain the identity and the number of the co-owners, the number of property items which are to be divided and the share of each of the co-owners. During the second phase the courts effect the partition. It seems therefore that by the way they are fashioned partition-of-property proceedings are apt to consume more time than an ordinary civil action. However, this does not justify the overall duration of the proceedings, as the States have a general obligation to organise their legal systems so as to ensure compliance with the requirements of that provision, including that of trial within a reasonable time (see the recent judgment in *Hadjibakalov*, cited above, § 50).

41. The Court considers that the case was somewhat complex as it involved the completion of various experts' reports and receipt of the consent of the Ministry of Finance and the local municipality for effecting the partitioning of the real estate and for the reconstruction of the property, even though this solution was eventually not retained.

42. In respect of the conduct of the applicants and the defendants, the Court finds that there were certain minor delays for which they were responsible (see paragraph 9 above), but does not find that they contributed significantly to the overall length of the proceedings.

43. As to the conduct of the authorities, the Court notes that the domestic courts conducted some of the hearings at intervals of five to nine months apart (see paragraphs 9 and 12 above). In addition, two hearings were adjourned due to defective summoning of the applicants (see paragraph 9 above), there was a delay by experts' appointed by the court in presenting a report (see paragraph 12 above) and a further delay resulted from the Plovdiv Regional Court wrongly calculating the court fees due by the defendants in the appeal proceedings (see paragraphs 15-16 above).

44. The most significant delay, however, resulted from the amendments to the Code of Civil Procedure of 1 April 1998 and the continuation of the appeal proceedings by the Plovdiv Regional Court following these amendments (see paragraphs 14-18 above). As subsequently established by the Supreme Court of Cassation, the Plovdiv Regional Court should have immediately terminated the appeal proceedings before it and should have remitted the case to the Plovdiv District Court (see paragraph 21 above). Instead, it continued the proceedings, examined in substance the grounds of the defendants' appeal and delivered a judgment (see paragraphs 15-18 above), against which a cassation appeal was then lodged. The Supreme Court of Cassation then annulled the judgment of the Plovdiv Regional

Court and remitted the case to the Plovdiv District Court (see paragraphs 19-21 above), which, in turn, annulled its own previous judgment of 19 March 1998 and started a retrial (see paragraphs 22-24 above). The above developments alone resulted in a prolongation of the proceedings by over two and a half years and entailed a repetition of the second phase of the partition-of-property proceedings.

45. Considering the above, the Court is of the opinion that the "reasonable time" requirement of Article 6 § 1 of the Convention was breached in the present case on account of the civil proceedings initiated by the applicants having lasted nine years, nine months and twenty-two days, of which nine years, three months and two days fall within the Court's competence *ratione temporis*.

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

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

46. The applicants alleged that the excessive length of the proceedings resulted in an interference with their right to peaceful enjoyment of their possessions. They relied on Article 1 of Protocol No. 1 to the Convention, 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."

47. The Government did not submit observations on the admissibility and merits of this complaint. The applicants reiterated their complaints.

48. Noting its finding of a violation in relation to Article 6 § 1 of the Convention (see paragraph 45 above), the Court, while finding this complaint to be admissible, considers that it is not necessary to examine whether, in this case, there has also been a violation of Article 1 of Protocol No. 1 to the Convention (see *Kroenitz v. Poland*, no. 77746/01, §§ 36-37, 25 February 2003).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicants claimed 10,000 euros (EUR) as compensation for the non-pecuniary damage arising out of the excessive length of the proceedings and claimed to have felt frustration, anguish and despair as a result of their length.

51. The Government stated that the claim was excessive and did not correspond to the size of the awards made by the Court in previous similar cases.

52. The Court, taking into account the circumstances of the case, and making its assessment on an equitable basis, awards the applicants the sum of EUR 1,000 as compensation for the non-pecuniary damage arising out of the excessive length of the proceedings.

B. Costs and expenses

53. The applicants claimed EUR 1,680 for 24 hours of legal work by their lawyer on the proceedings before the Court, at the hourly rate of EUR 70. In addition, they claimed EUR 26 for postal and stationery expenses. They submitted a legal fees agreement between them and their lawyer and a timesheet. The applicants requested that the costs and expenses incurred should be paid directly to their lawyer, Mrs I. Trendafilova Chambova.

54. The Government stated that the claim was excessive, that the hourly rate of EUR 70 for the work performed by the applicants' lawyer was determined arbitrarily, that the timesheet included hours for non-legal work performed by the said lawyer at the above stated rate and that not all of the claimed expenses had been shown to have been incurred. In conclusion, they stated that the overall size of the claimed costs and expenses did not correspond to previous such awarded by the Court in similar cases.

55. 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 instant case, the Court considers that the hourly rate of EUR 70 is excessive and that a reduction of the same is appropriate (see, *a contrario*, *Anguelova v. Bulgaria*, no. 38361/97, § 176 *in fine*,

ECHR 2002-IV, *Nikolov v. Bulgaria*, no. 38884/97, § 111, 30 January 2003; *Toteva v. Bulgaria*, no. 42027/98, § 75, 19 May 2004, and *Rachevi v. Bulgaria*, no. 47877/99, § 111, 23 September 2004, where the Court found an hourly rate of EUR 50 reasonable). In addition, the Court finds that the number of hours claimed seems excessive and that a reduction is also necessary on that basis. Finally, it notes that no receipts have been presented as proof of the claimed postal expenses. Accordingly, having regard to all relevant factors, the Court considers it reasonable to award the sum of EUR 750 covering costs and expenses for the proceedings before the Court, plus any tax that may be chargeable on that amount.

C. Default interest

56. 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 alleged excessive length of the civil proceedings and the alleged interference with the applicants' right to peaceful enjoyment of their possessions;

2. *Holds* that 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 there is no need to separately examine the complaint under Article 1 of Protocol No. 1 to the Convention;

4. *Holds*
   (a) that the respondent State is to pay to 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 on the date of settlement:
      (i) EUR 1,000 (one thousand euros) in respect of non-pecuniary damage, payable to the applicants themselves;
      (ii) EUR 750 (seven hundred and fifty euros) in respect of costs and expenses, payable to the applicants' lawyer 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 28 September 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President