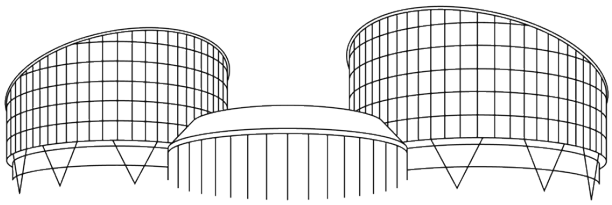

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF BASHIKAROVA AND OTHERS v. BULGARIA

(Application no. 53988/07)

JUDGMENT

STRASBOURG

5 February 2013

This judgment is final but it may be subject to editorial revision.

In the case of Bashikarova and Others v. Bulgaria,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

David Thór Björgvinsson, *President,*
Vincent A. De Gaetano,
Krzysztof Wojtyczek, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 15 January 2013,

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

PROCEDURE

1. The case originated in an application (no. 53988/07) 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 three Bulgarian nationals, Ms Zinaida Georgieva Bashikarova, Mr Konstantin Ivanov Dokov and Ms Dimitrina Stoyanova Dzhogleva-Dokova ("the applicants"), on 30 November 2007.

2. The applicants were represented by Ms S. Margaritova-Vuchkova, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms R. Nikolova, of the Ministry of Justice.

3. On 22 September 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1936, 1964 and 1969 respectively and live in Sofia.

5. In 1969 the first applicant's father bought from the Sofia municipality a four-room flat of 132 square metres, which had become State property by virtue of the nationalisations carried out by the communist regime in Bulgaria after 1946.

6. In 1983 the first applicant's parents conveyed to her the title to that property.

7. On an unspecified date in the beginning of 1993 Ms V., heir of the former pre-nationalisation owner of the property, brought proceedings against the first applicant under section 7 of the Restitution Law, seeking to establish that the contract whereby the first applicant's father had acquired

the flat was null and void. Ms V. also brought a *rei vindicatio* action against the first applicant and her son, the second applicant. At the time, he was also living in the flat, together with his wife – the third applicant – and her two children.

8. On 3 October 1995 the Sofia District Court discontinued the proceedings. On 7 February 1996 the Sofia City Court declared inadmissible an appeal against that decision lodged by Ms V. On 9 April 1997 the Supreme Court of Cassation quashed the Sofia City Court's decision, finding that the lower court had breached the procedural rules. Subsequently, the Sofia City Court remitted the case to the Sofia District Court for examination on the merits.

9. On 27 October 1999 the Sofia District Court gave a judgment. It found that the contract whereby the first applicant's father had acquired the disputed property was null and void because the administrative authorities' decision to sell the flat had not been approved by the Minister of Architecture and Public Works, as required by law at the time, but by another official. Accordingly, the domestic court concluded that the first applicant had not herself acquired ownership and was occupying the flat on an invalid legal ground; on this basis it allowed Ms V.'s *rei vindicatio* claim and ordered the first and second applicants to vacate the property.

10. On an unspecified date in the beginning of 2000 the applicants lodged an appeal. On 22 April 2005 the Sofia City Court upheld the above judgment.

11. Although the City Court's judgment was not final, it was enforceable and Ms V. instituted enforcement proceedings. In November 2005 the applicants vacated the flat.

12. In the proceedings under section 7 of the Restitution Law and for *rei vindicatio*, on 1 June 2007 the Supreme Court of Cassation gave a final judgment, upholding the lower courts' findings.

13. In April 2007 the second applicant and his family were granted the tenancy of a municipally-owned apartment at a regulated price. The first applicant also applied for municipal housing, which was refused. Therefore, she moved in with her son's family.

14. Soon after the Supreme Court of Cassation' judgment of 1 June 2007 the first applicant applied to receive compensation bonds. In February 2009 she received bonds for 81,200 Bulgarian levs (BGN), the equivalent of approximately 42,000 euros (EUR), in accordance with a valuation of the property of August 2008 by a certified expert. In July 2009 the first applicant received in cash from the Ministry of Finance the full value of the bonds.

II. RELEVANT BACKGROUND FACTS, DOMESTIC LAW AND PRACTICE

15. The relevant background facts and domestic law and practice concerning the effect of restitution on third parties and the application of section 7 of the Restitution Law have been summarised in the Court's judgment in the case of *Velikovi and Others v. Bulgaria*, nos. 43278/98, 45437/99, 48014/99, 48380/99, 51362/99, 53367/99, 60036/00, 73465/01, and 194/02, 15 March 2007.

16. The relevant domestic law and practice on remedies aimed at accelerating civil proceedings have been summarised in the Court's judgment in the case of *Finger v. Bulgaria*, no. 37346/05, §§ 43 and 55, 10 May 2011.

THE LAW

I. PRELIMINARY POINT

17. The applicants urged the Court to exclude from examination the Government's observations on the admissibility and merits of the application, considering that they had been received by the Court on 18 April 2011, whereas the relevant time-limit to submit observations had expired on 25 February 2011.

18. The Court notes that, indeed, at the time of communication of the present application it indicated to the Government that they had to submit their observations on the admissibility and merits of the case by 25 February 2011. However, the Government's observations in Bulgarian were postmarked with exactly that date. In fact, it was the translation of these observations into English which was received on 18 April 2011, as seen from the Court's receipt stamp.

19. Accordingly, the Court finds that the Government's observations were submitted in time and that there is no reason to exclude them from the case-file.

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

20. Relying on Articles 6 § 1, 8 and 13 of the Convention and Article 1 of Protocol No. 1, the first applicant complained that she had been deprived of the property of her flat arbitrarily, through no fault of her own and without adequate compensation.

21. The Court is of the view that this complaint, which is of the type examined in the case of *Velikovi and Others*, cited above, and a series of follow-up cases (see, for example, *Simova and Georgiev v. Bulgaria*, no. 55722/00, 12 February 2009; *Panayotova v. Bulgaria*, no. 27636/04, 2 July 2009; *Madzharov v. Bulgaria*, no. 40149/05, 2 September 2010; *Dzhagarova and Others v. Bulgaria* (dec.), no. 5191/05, 3 March 2009), is most appropriately examined under Article 1 of Protocol No. 1 alone, which reads as follows:

> "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."

Admissibility

22. Applying the approach developed in *Velikovi and Others* (cited above, §§ 159-192), the Court considers that the events complained of constituted interference with the first applicant's property rights, because the courts found that she had not validly acquired property and was living in the flat on no valid legal ground; accordingly, they ordered her to vacate it (see paragraphs 9-12 above).

23. The interference was based on a provision of the Restitution Law which pursued an important aim in the public interest – to restore justice and respect for the rule of law. As in *Velikovi and Others* (cited above, § 167), in the particular circumstances the question whether the relevant law was sufficiently clear and foreseeable cannot be separated from the issue of proportionality.

24. The Court notes further that the first applicant's title was challenged within the relevant one-year time-limit after the adoption of the Restitution Law in 1992. The present case, therefore, did not involve a deviation from the transitional nature of the restitution legislation.

25. The domestic courts found the contract whereby the first applicant's father had acquired the property of the flat in 1969 to be null and void on the sole ground that a document related to the sale had not been signed by the official with whom the relevant power had been vested (see paragraph 9 above). This deficiency is clearly attributable to the authorities, not the first applicant or her father (see *Velikovi and Others*, §§ 218 and 223, and *Madzharov*, § 23, both cited above; *Peshevi v. Bulgaria*, no. 29722/04, § 20, 2 July 2009). In cases like this the fair balance required by Article 1 of

Protocol No. 1 could not be achieved without adequate compensation. In the assessment whether adequate compensation was available to the first applicant, the Court must have regard to the particular circumstances of each case (see *Velikovi and Others*, cited above, § 231, and *Georgievi v. Bulgaria*, no. 10913/04, § 36, 7 January 2010).

26. In the present case, in February 2009 the first applicant obtained compensation bonds for BGN 81,200, in accordance with an assessment of her flat's value carried out in August 2008 by a certified expert. Several months later she received from the Ministry of Finance the bonds' full value in cash. Therefore, having regard to importance of the legitimate aims pursued by the Restitution Law and the particular complexity involved in regulating the restitution of nationalised property after decades of totalitarian rule, the interference with the first applicant's property rights does not appear disproportionate or otherwise contrary to Article 1 of Protocol No. 1 to the Convention (see *Velikovi and Others*, § 234, and *Dzhagarova and Others* (dec.), both cited above; *Bornazovi v. Bulgaria* (dec.), no. 59993/00, 18 September 2007; *Ivanovi v. Bulgaria* (dec.), no. 14226/04, 16 September 2008; *Yakimovi v. Bulgaria* (dec.), no. 26560/05, 3 February 2009).

27. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATIONS OF THE CONVENTION IN RELATION WITH THE LENGTH OF THE CIVIL PROCEEDINGS

28. The first and second applicants, who were parties to the civil proceedings described in paragraphs 7-12 above, complained in addition of the length of those proceedings and the lack of effective remedies in that regard, under Articles 6 § 1 and 13 of the Convention, which read as follows:

Article 6 § 1

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

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

29. The Government submitted that the first and second applicants had failed to exhaust domestic remedies in relation to their complaint under Article 6 § 1 of the Convention, because they had not availed themselves of the procedure for "complaints about delays" provided for in Article 217a of the 1952 Code of Civil Procedure, in force at the time.

30. The applicants contended that the procedure would not have represented an effective remedy in their case, because it had been introduced in July 1999, only several months before the first-instance judgment in their case (see paragraph 9 above). In addition, the remedy was not applicable before the Supreme Court of Cassation.

31. The Court considers that the question of exhaustion of domestic remedies is closely linked with the substance of the first and second applicants' complaint under Article 13 of the Convention. It should therefore be joined to the merits (see *Finger*, cited above, § 64).

32. The Court notes in addition that the present complaints are not manifestly ill-founded within the meaning of Article 35 § 3(a) of the Convention, nor inadmissible on any other ground. They must therefore be declared admissible.

B. Merits

1. Complaint under Article 13

33. The parties did not make submissions on the merits of this complaint.

34. Article 13 of the Convention 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. Remedies available to a litigant at domestic level 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 v. Poland* [GC], no. 30210/96, § 156-7, ECHR 2000-XI).

35. The Court considers, without anticipating the examination of whether the reasonable-time requirement in Article 6 § 1 of the Convention was complied with, that the first and second applicants' complaint concerning the length of the proceedings was prima facie "arguable". They were therefore entitled to an effective domestic remedy in that regard.

36. At the relevant time, the only acceleratory remedy under Bulgarian law was the "complaint about delays" under Article 217a of the 1952 Code of Civil Procedure. However, as it was introduced in July 1999, in the present case it could not have brought about the speeding up of the proceedings before the Sofia District Court, which ended in October 1999.

Moreover, the remedy appears to have been inapplicable in the proceedings before the Supreme Court of Cassation (see *Pavlova v. Bulgaria*, no. 39855/03, § 31, 14 January 2010; *Maria Ivanova v. Bulgaria*, no. 10905/04, § 35; *Finger*, cited above, § 87).

37. The proceedings in the present case were pending before the second-instance Sofia City Court from 2000 to 2005 (see paragraph 10 above). The Court recalls that it has held that in a number of occasions, for instance where the delays were due to the courts' failure to organise the proper examination of the case or where the proceedings had lasted too long without there being identifiable periods of inactivity, even though in principle applicable, the remedy under Article 217a of the Code of Civil Procedure could not provide effective redress (see *Finger*, cited above, § 87). The Court has not been informed in the present case of the course of the proceedings before the Sofia City Court and the reasons for the delays incurred and cannot reach a conclusion as to whether the remedy at issue could have effectively accelerated the proceedings.

38. Nevertheless, it notes that by 2000 when the case reached the Sofia City Court the delays accumulated were already substantial, given that the proceedings had been brought in the beginning of 1993 (see paragraph 7 above). Moreover, once the case reached the Supreme Court of Cassation, a further delay of two years was accrued (see paragraphs 10 and 12 above). The Court thus considers that even though it might have, in principle, reduced to some extent the period of examination of the present case by the Sofia City Court, the remedy at issue would not have had an important effect on the duration of the proceedings as a whole.

39. At the relevant time Bulgarian law did not provide for any other remedies in respect of the length of proceedings, whether acceleratory or compensatory (see *Finger*, cited above, § 89).

40. The Court therefore finds that there has been a violation of Article 13 of the Convention.

41. Accordingly, it dismisses the Government's objection that the first and second applicants failed to exhaust domestic remedies, which it joined to the merits under Article 13 (see paragraph 31 above).

2. Complaint under Article 6 § 1

42. The Government considered that the first and second applicants were themselves to blame for some of the delays in the proceedings, because, in the first place, they had on several occasions between 1994 and 1997 requested the adjournment of the court hearings and, in the second place, had raised unsubstantiated arguments which the courts had had to deal with. In any event, the Government were of the view that the proceedings had not been too lengthy, given their complexity, and that what was at stake for the first and second applicants had not been of particular importance.

43. The applicants contested these arguments.

44. The Court notes that the period to be taken into consideration began on an unspecified date in the beginning of 1993 and ended on 1 June 2007 (see paragraphs 7 and 12 above). It thus lasted for more than fourteen years for three levels of jurisdiction.

45. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

46. 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), including against Bulgaria (see, among many others, *Finger*, cited above; *Marinova and Radeva v. Bulgaria*, no. 20568/02, 2 July 2009; *Dzhagarova and Others v. Bulgaria*, no. 5191/05, 2 September 2010). Having examined all the material submitted to it, the Court considers that the Government have not put forward sufficient arguments capable of persuading it to reach a different conclusion in the present case. It notes, in particular, that even though, as indicated by the Government, some hearings between 1994 and 1997 were adjourned, arguably because of the applicants, during that period the case was being transferred between different levels of jurisdiction which were deciding on its admissibility (see paragraph 8 above) and the adjournment of specific hearings could not have caused any important delay. Nor can the Court accept the Government's argument that the applicants caused undue delays by raising allegedly unsubstantiated arguments; it does not appear that the applicants did anything but attempt to actively defend against the plaintiff's claims against them.

47. Lastly, the Court notes that the case does not appear to have been of particular complexity (see, for similar claims against the applicants, *Dzhagarova and Others*, cited above, § 16).

48. 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.

49. There has accordingly been a breach of Article 6 § 1 of the Convention in respect of the first and second applicants.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

50. Lastly, the second and third applicants complained under Articles 8 (right to home) and 13 of the Convention that they had been evicted from the first applicant's flat after the Sofia City Court's judgment of 22 April 2005 and had not immediately been provided with municipal housing (see paragraphs 11 and 13 above). In addition, the second applicant complained

under Article 6 § 1 that the civil proceedings against him and his mother had been unfair.

51. However, in the light of all the material in its possession, and in so far as the 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 this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3(a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicants claimed, in respect of non-pecuniary damage arising from the length of proceedings, EUR 10,000 for the first applicant and EUR 5,000 jointly for the second and third applicants.

54. The Government contested the claims.

55. The Court notes that it found violations of Articles 6 § 1 and 13 of the Convention only in respect of the first and second applicants. It considers that they must have sustained non-pecuniary damage and, ruling on an equitable basis, awards the first applicant EUR 4,800 under that head. As to the second applicant, the Court, considering that he claims for himself EUR 2,500, awards him that sum in full.

B. Costs and expenses

56. In respect of cost and expenses, the applicants claimed EUR 1,530 for their lawyers' work for the proceedings before the Court and BGN 229.50 for postage and translation.

57. The Government contested these claims.

58. Regard being had to the documents in its possession, its case-law and the fact that it only found violations of the Convention in respect of the length of the proceedings, the Court considers it reasonable to award the sum of EUR 600 covering costs under all heads.

C. Default interest

59. The Court considers it appropriate that the default interest rate 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. *Joins* the Government's objection of non-exhaustion of domestic remedies to the merits;

2. *Declares* the first and second applicants' complaints under Articles 6 § 1 and 13 of the Convention concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

3. *Dismisses* the Government's objection of non-exhaustion of domestic remedies and *holds* that there has been a violation of Article 13 of the Convention;

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

5. *Holds*
   (a) that the respondent State is to pay, within three months, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:
      (i) EUR 4,800 (four thousand eight hundred euros) to the first applicant, Ms Zinaida Georgieva Bashikarova, and EUR 2,500 (two thousand five hundred euros) to the second applicant, Mr Konstantin Ivanov Dokov, in respect of non-pecuniary damage, plus any tax that may be chargeable;
      (ii) EUR 600 (six hundred euros) to the first and second applicants in respect of costs and expenses, plus any tax that may be chargeable to those two applicants;
   (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 claims for just satisfaction.

Done in English, and notified in writing on 5 February 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı

David Thór Björgvinsson
President