CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF RACHEVI v. BULGARIA

(Application no. 47877/99)

JUDGMENT

STRASBOURG

23 September 2004

FINAL

23/12/2004

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 Rachevi v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mr G. BONELLO,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 2 September 2004,

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

PROCEDURE

1. The case originated in an application (no. 47877/99) 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 Ms Irina Vasileva Racheva and her daughter Ms Nadezhda Teodosieva Racheva, Bulgarian nationals born in 1955 and 1979 respectively and living in Sofia, on 30 July 1998.

2. The applicants were represented by Mr Y. Grozev, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agents, Ms G. Samaras and Ms M. Dimova, of the Ministry of Justice.

3. The applicants alleged that the length of the proceedings concerning their claims for damages had been excessive and that they had not had an effective remedy in that respect.

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 8 July 2003 the Court (First Section) decided to join to the merits the question of the exhaustion of domestic remedies in respect of the applicants' complaint about the allegedly unreasonable length of the proceedings and declared the application admissible.

7. The applicants, but not the Government, filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants were born in 1955 and 1979 respectively and live in Sofia.

A. Events giving rise to the applicants' tort action

9. On 1 July 1988 the applicants were hit by a taxi driven by a Mr V.G. The first applicant's injuries, although serious, were not life-threatening, whereas the second applicant, who was at the time nine years old, sustained life-threatening injuries. Subsequently her spleen had to be surgically removed. Apparently her health is still seriously affected by the aftermath of the accident.

10. Criminal proceedings were brought against Mr V.G**.** By a judgment of the competent criminal court of 8 December 1988 he was found guilty of negligently causing serious bodily injury to the second applicant and sentenced to one year's imprisonment, suspended. The first applicant took part in these criminal proceedings, but only as a private prosecutor on behalf of the second applicant and not as a civil claimant, which would have been possible under the applicable law.

B. Proceedings before the Sofia City Court

11. On 17 June 1991 the first applicant filed with the Sofia City Court a tort action against Mr V.G. and the taxi enterprise where the latter had been employed at the time of the accident. She was acting on her own behalf and on behalf of the second applicant who was at the time still a minor. Both applicants claimed pecuniary and non-pecuniary damages.

12. On 12 August 1991 Mr V.G. filed third-party claims against another person involved in the accident, Ms V.B., and against the State Insurance Company. These claims were based on Mr V.G.'s assertions that Ms V.B.'s improper crossing of the street had been the cause of the accident and that the State Insurance Company was liable to indemnify the damage under his road accident insurance.

13. The first hearing was held on 4 October 1991. Finding that the applicants had not paid the requisite fee for filing the action, the court

directed them to do so or to make a request to be exempted from payment of the fee. It also instructed Mr V.G. to provide the exact names and addresses of the third-party defendants. The court suspended the proceedings pending compliance with its instructions.

14. The proceedings resumed on 21 October 1991 after the applicants had successfully filed a request for exemption from fees and Mr V.G. had provided the names and addresses of the third-party defendants. A hearing was listed for 10 December 1991.

15. On 10 December 1991 the case had to be adjourned until 28 February 1992 as the taxi enterprise employing Mr V.G. at the time of the accident had in the meantime been reorganised into a commercial company[1] and had not received a copy of the applicants' complaint. The applicants were instructed by the court to produce evidence that the taxi company listed as a defendant – Taxi Express – was the successor of the taxi enterprise, and to provide an additional copy of the complaint for it.

16. At the hearing on 28 February 1992 the court noted that there was no evidence as to identify of the successor of the taxi enterprise. It requested Taxi Express to provide information on whether it was the successor. At that hearing the State Insurance Company intervened in the initial action in support of Mr V.G.

17. At the next hearing, held on 21 April 1992, the court ruled on the successor of the taxi enterprise. It found that the successor was not the company listed as a defendant, Taxi Express, but another company, Softaxi. Accordingly, the court excluded the first defendant from the proceedings and constituted the second as a defendant, ordering that a copy of the applicants' complaint be served on Softaxi. The case was adjourned.

18. At the next hearing, which took place on 12 June 1992, the court agreed to examine Mr V.G.'s third-party claims together with the original tort action and admitted certain documents in evidence. It also ordered a medical expert report to be drawn up on the injuries sustained by the applicants and a technical expert report to be prepared on the cause of the accident. Both reports were to be drafted by court-appointed experts. Finally, the court directed Mr V.G. to pay the requisite fee for his third-party claims, instructed the applicants to provide a breakdown of the pecuniary damages claimed, and gave the parties leave to call witnesses.

19. The next hearing was held on 27 October 1992. The court noted that the medical expert report submitted had not been dated, with the result that it was impossible to establish whether it had been brought to the attention of Softaxi, which defendant had not appeared at the hearing. The court also noted that the technical expert who had been commissioned to draw up the

1. During the early 1990s most State enterprises in Bulgaria were reorganised into commercial companies.

report on the cause of the accident was absent. Accordingly, the court adjourned the case. It gave Mr V.G. leave to call one witness.

20. On 5 February 1993 the court admitted in evidence the newly submitted medical expert report and questioned the medical expert who had prepared it. The court requested the applicants to specify and itemise, in the light of the medical expert's report, the amount of compensation for pecuniary damages sought. The technical expert, Softaxi and Mr V.G.'s witness did not appear at the hearing, although they had been duly summoned. The court adjourned the case and fined the witness but not the technical expert.

21. At the hearing held on 30 March 1993 the court questioned Mr V.G.'s witness. It then adjourned the case as Softaxi, despite having been duly summoned, did not appear and as the technical expert arrived at the hearing too late to be questioned.

22. At the next hearing, which took place on 28 September 1993, the applicants increased their claims for non-pecuniary damages in order to take account of inflation. Softaxi and the technical expert did not appear, although they had been duly summoned. On the motion of Mr V.G.'s lawyer the court ordered the technical expert to answer an additional question regarding the causal link between Ms V.B.'s conduct and the accident. It adjourned the case with a view to receiving the technical expert's report.

23. A hearing listed for 10 December 1993 was adjourned as the technical expert, although having been duly subpoenaed, did not show up.

24. On 25 February 1994 the technical expert finally showed up and was questioned. His report was admitted in evidence. As the expert had apparently not provided an answer to the additional question put to him on 28 September 1993, the court ordered him to supplement his report. The court also authorised Mr V.G. to increase his third-party claims against Ms V.B. and the State Insurance Company.

25. A hearing listed for 20 May 1994 was adjourned as Softaxi had not been duly summoned and did not appear. The technical expert was also absent.

26. A hearing fixed for 7 October 1994 was adjourned because the applicants' lawyer, having had a road accident on 25 September, was ill and could not attend.

27. At the hearing which took place on 20 December 1994 the court again gave the applicants leave to increase their claims for non-pecuniary damages, ordering that a copy of their request be served on Softaxi, which had failed to appear at the hearing. It noted that the supplementary technical expert report, ordered on 25 February 1994, had not yet been drawn up and adjourned the case.

28. The next hearing was held on 17 March 1995. Despite having been duly summoned, the applicants, Softaxi, Ms V.B. and the State Insurance

Company failed to appear. The technical expert was also absent. The court gave Mr V.G. leave to increase his third-party claims for a second time. The court adjourned the case. It ordered that the subpoena to be served on the technical expert should expressly mention that the case had had to be adjourned many times and that the court's request for the presentation of his supplementary report had been made a long time ago.

29. The next hearing took place on 19 June 1995. Softaxi and the State Insurance Company, despite having been duly summoned, did not appear. The technical expert was also absent. Ms V.B.'s lawyer submitted that Mr V.G.'s third-party claims had been made after the first hearing and for that reason should not have been examined jointly with the applicants' tort action. Mr V.G.'s lawyer objected, stating that the claim had been presented prior to the first hearing. The court ruled that it would determine the point later in private. It adjourned the case, holding that this was necessary because of the technical expert's absence and his failure to draw up his supplementary report, which was essential for the determination of the facts of the case. It fined the expert.

30. The next hearing was held on 5 November 1995. Softaxi did not appear and the technical expert was also absent. Ms V.B.'s, Mr V.G.'s and the State Insurance Company's lawyers all insisted that the technical expert report was needed so as to enable the facts of the case to be established properly. The court agreed. Noting that the technical expert had repeatedly failed to show up, the court replaced him with another expert.

31. The new expert's report on the cause of the accident was ready on 10 January 1996.

32. The next hearing was held on 26 January 1996. Softaxi and Ms V.B. did not appear. The newly-appointed technical expert presented his report and was questioned. The applicants increased their claims for non-pecuniary damages for a third time. Mr V.G. also increased his third-party claims. The court ordered that copies of the requests to increase the claims be served on the absent parties and adjourned the case.

33. The next hearing took place on 27 September 1996. Softaxi and Ms V.B. did not appear. The applicants increased their claims for non-pecuniary damages for a fourth time. As a result, Mr V.G. increased his third-party claims as well. The court adjourned the case, ordering that copies of the requests for leave to increase the claims be served on the absent parties. It also requested that a copy of Softaxi's certificate of company registration be produced by the parties.

34. The next hearing was held on 11 February 1997. The applicants' lawyer informed the court that Softaxi had been transformed into a joint-stock company under the name of Softaxi EAD. The court listed Softaxi EAD as a defendant in the place of Softaxi but requested the applicants to produce certified copies of its registration documents. It also

instructed them to provide a detailed breakdown of their claims for pecuniary damages and adjourned the case.

35. The hearing listed for 11 March 1997 failed to take place. Despite having been duly summoned, the second applicant and Softaxi EAD did not appear. The court adjourned the case to allow the second applicant to countersign the complaint, since she had already turned eighteen and had thus obtained the capacity to sue on her own behalf.

36. At the hearing which took place on 11 April 1997 the second applicant countersigned the complaint. The applicants tried to increase their claims for non-pecuniary damages for a fifth time. The court rejected their request, holding that they had not paid the requisite fee for increasing the claims. It instructed them to pay the fee or to request an exemption. The court also found that the applicants had failed to provide a detailed breakdown of their claims for pecuniary damages. It directed them to do so within seven days, warning them that non-compliance could result in the dismissal of the claims.

37. The next hearing took place on 31 October 1997. Softaxi EAD, Ms V.B. and the State Insurance Company, despite having been duly summoned, did not appear. Finding that the applicants had not complied with its instructions to provide a detailed breakdown of their claims for pecuniary damages, the court dismissed the claims. It gave the applicants leave to increase their claims for non-pecuniary damages and acceded to Mr V.G.'s follow-up request to increase his third-party claims. The court ordered that copies of the requests be served on the absent parties. The applicants' request for a new medical expert report was rejected. The court issued the applicants a certificate enabling them to obtain a copy of Softaxi EAD's registration documents. The case was adjourned.

38. The last hearing was held on 31 March 1998. Although duly summoned, Softaxi EAD and the State Insurance Company did not appear. The court rejected the applicants' request to be allowed once again to increase their claims for non-pecuniary damages, holding that this would further complicate the examination of the case. The court heard the parties' closing arguments.

39. The Sofia City Court gave judgment on 15 April 1998. It allowed in part the applicants' claims for non-pecuniary damages against Mr V.G. and Softaxi EAD, holding them jointly and severally liable. The court also found that Ms V.B. had contributed to the accident and ordered her to pay Mr V.G. one third of the amount he had to pay the applicants. Finally, it held that Mr V.G.'s third-party claim against the State Insurance Company was statute-barred and, in any event, ill-founded because only the owner of the insured vehicle – Mr V.G.'s employer – could make such a claim.

C. Proceedings before the Sofia Court of Appeals

40. The second applicant was notified of the Sofia City Court's judgment on 28 June 1999 and on 5 July 1999 she appealed against it to the Sofia Court of Appeals. She demanded that her claim for non-pecuniary damages be granted in full. She requested a new expert report on her medical condition.

41. The first applicant was notified of the Sofia City Court's judgment on 26 July 1999 and appealed against it the same day. She demanded that her claim for non-pecuniary damages be granted in full. She requested that a new expert report be prepared on her medical condition and sought leave to be allowed to call two witnesses.

42. On 26 November 1999 the Sofia Court of Appeals, sitting in private, declared the appeals admissible. Finding the applicants' requests for the gathering of additional evidence well-founded, it ordered a new medical expert report to determine the applicants' present state of health, whether their health had deteriorated since the accident and what their health prospects were. The court also gave the first applicant leave to call the requested witnesses. It listed a hearing for 3 February 2000.

43. The first hearing took place on 3 February 2000. Despite having been duly summoned, Mr V.G. and the State Insurance Company did not appear. The medical expert appointed by the court on 26 November 1999 was also absent. The applicants' lawyer stated that she had spoken to the expert and had found that his field of expertise was different from the one needed for the preparation of an opinion on the applicants' injuries. The court agreed and replaced the expert. It also questioned the two witnesses called by the applicants. It adjourned the case.

44. The hearing listed for 23 March 2000 could not take place because the State Insurance Company had not been duly summoned.

45. The next hearing was held on 18 May 2000. The court questioned the medical expert and admitted his report in evidence. Softaxi EAD's lawyer presented a document purporting to prove that the taxi enterprise where Mr V.G. had been employed at the time of the accident had been split into two commercial companies following its reorganisation in 1991, and that Softaxi was only one of the two companies. The court adjourned the case to allow Softaxi EAD to produce the court decision on the reorganisation of its predecessor.

46. The last hearing was held on 20 September 2000. The court admitted in evidence documents presented by Softaxi EAD on the strength of which it tried to prove that it was not the successor of the taxi enterprise where Mr V.G. had been employed at the time of the accident. The court heard the parties' closing arguments. The parties presented written observations. In its observations Softaxi EAD argued that the applicants' increased claims for non-pecuniary damages were time-barred because the increases had been

made at various times during the proceedings but more than five years (the relevant limitation period) after the accident.

47. The Sofia Court of Appeals gave judgment on 29 September 2000. It held that Softaxi EAD was indeed the successor of Mr V.G.'s employer at the time of the accident. It also held that the applicants' increased claims for non-pecuniary damages were not time-barred. It found that the pain and suffering sustained by the first and especially by the second applicant warranted a higher amount of compensation for non-pecuniary damages and, accordingly, awarded them such, but not the full amount claimed by the applicants. Finally, the court ordered Ms V.B. to pay Mr V.G. one third of the increased amount of compensation he had to pay the applicants.

D. Proceedings before the Supreme Court of Cassation

48. The applicants, Ms V.B. and Softaxi EAD lodged appeals on points of law with the Supreme Court of Cassation.

49. The Supreme Court of Cassation held a hearing on 4 December 2001, at which it heard oral argument.

50. The Supreme Court of Cassation gave judgment on 2 January 2002. It found that the applicants' appeals were out of time. It proceeded to examine Softaxi EAD's and Ms V.B.'s appeals on the merits. It dismissed Ms V.B.'s appeal but held, pursuant to Softaxi EAD's appeal, that the Sofia Court of Appeals had erred in holding that the applicants' increased claims for non-pecuniary damages had not been time-barred. In fact, any increase in a claim was tantamount to the bringing of a new claim representing the difference between the original claim and the increased one. Accordingly, it remitted the case to a different panel of the Sofia Court of Appeals with instructions to analyse the dates of the increases in the applicants' claims for non-pecuniary damages and to determine which had been made in good time and which had not.

E. Proceedings on remittal before the Sofia Court of Appeals and execution of the award of compensation

51. The Sofia Court of Appeals listed a hearing for 7 June 2002. At the hearing the court heard the parties' arguments and reserved judgment.

52. The Sofia Court of Appeals gave judgment on 17 October 2002. It held that the limitation period for claiming damages for the accident of 1 July 1988 had been five years and had expired on 1 July 1993, whereas all increases of the applicants' claims for non-pecuniary damages had been made after the latter date. Therefore, only the original claims could be allowed. Accordingly, the court upheld the Sofia City Court's judgment of 15 April 1998.

53. The applicants did not lodge an appeal on points of law with the Supreme Court of Cassation and the Sofia Court of Appeals' judgment became final on an unspecified date in December 2002 or January 2003.

54. On 24 January 2003 the Sofia Court of Appeals issued to the applicants writs of execution against Mr V.G. and Softaxi EAD. The two were ordered to pay jointly and severally 400 new Bulgarian levs ("BGN") plus interest from 1 July 1988 until settlement to the first applicant and BGN 2,500 plus interest from 1 July 1988 until settlement to the second applicant, plus costs and expenses for the proceedings.

55. On 21 April 2003 the applicants entered into an agreement with Softaxi whereby the company agreed to pay BGN 2,817.60 and BGN 17,608.80, which represented the sum of the award of damages and the interest from 1 July 1988 until 15 April 2005, to the first and the second applicant respectively. Thereafter Softaxi started paying the amounts due in monthly instalments of BGN 117 to the first applicant and BGN 734 to the second applicant.

II. RELEVANT DOMESTIC LAW

56. Article 5 § 4 of the Constitution provides that all international treaties which have been ratified, promulgated and have come into force with respect to Bulgaria are considered as part of the domestic law of the country and supersede any domestic legislation stipulating otherwise.

57. The relevant provisions of the Code of Civil Procedure ("CCP") are:

Article 71

"If a witness or an expert who has been duly subpoenaed fails to show up without good cause, the court shall fine him or her ... and shall order that he or she be brought to the next hearing by force."

Article 116

"1. The plaintiff may ... increase ... his claim [at any point of the proceedings before the first-instance court]...

2. If the plaintiff amends his claim in the absence of the defendant, he must do so through a written request, a copy of which shall be served on the defendant."

Article 175 § 2

"A party which wants to make a third-party claim to be examined together with the original action may do so not later than the first hearing."

Article 217a (adopted in July 1999)

"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 lodged.

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."

Article 222

"The findings contained in a final judgment of a criminal court and concerning the issue whether the act in question has been committed, its unlawfulness and the perpetrator's guilt are binding on the civil court when it examines the civil consequences of the criminal act."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

58. At the admissibility stage the Government raised a objection, claiming that the applicants had not exhausted domestic remedies in respect of their complaint under Article 6 § 1 of the Convention about the length of the proceedings. The Government firstly submitted that the applicants could have complained about the length of the proceedings by relying on the relevant provisions of the Convention, which was incorporated in domestic law and was directly applicable in Bulgaria. Secondly, they argued that following the introduction of Article 217a of the CCP in July 1999 the applicants could have filed a "complaint about delays", thus obtaining an acceleration of the proceedings.

59. The applicants replied that the "complaint about delays" was not an effective remedy. They considered, firstly, that it was not effective in principle: the Government had not provided any example or statistical

information in support of their contention that it could in practice serve to reduce delays. Secondly, even if it could be considered an effective remedy in principle, it had been introduced too late to serve any useful purpose since most of the delays in the case had occurred before July 1999. The applicants further referred to their arguments in support of their complaint under Article 13 of the Convention.

60. In its admissibility decision of 8 July 2003 the Court noted that the question of the exhaustion of domestic remedies in respect of the complaint about the length of the proceedings was closely related to the merits of the applicants' complaint under Article 13 of the Convention about the lack of effective remedies in this respect. Accordingly, it decided to join this objection to the merits of the case (see paragraph 6 above) and will examine it now.

61. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring their case against the State before the Court to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering for their acts before they have had an opportunity to put matters right through their own legal system. That rule is based on the assumption – reflected in Article 13 of the Convention, with which it has a close affinity – that there is an effective remedy available in respect of the alleged breach in the domestic system. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights.

62. Under Article 35 § 1, normal recourse should be had by an applicant to remedies that are available and sufficient to afford redress in respect of the breaches alleged. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness.

63. Furthermore, in the area of exhaustion of domestic remedies, Article 35 § 1 apportions the burden of proof. It is incumbent on the Government claiming non-exhaustion to convince the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Horvat v. Croatia*, no. 51585/99, §§ 37-39, ECHR 2001-VIII).

64. As regards the first remedy put forward by the Government – a complaint against the excessive length of the proceedings based on the direct applicability of the Convention in domestic law – the Court notes that indeed the Convention is incorporated in Bulgarian law and is directly applicable in Bulgaria (see paragraph 56 above). However, the Court notes that the Government have not furnished any example of a litigant having successfully relied on the Convention to apply to a domestic authority in order to obtain the acceleration of the examination of his or her civil action.

This absence of any case-law indicates the uncertainty of this theoretical remedy in practice (see, *mutatis mutandis*, *Sakık and Others v. Turkey*, judgment of 26 November 1997, *Reports* 1997-VII, p. 2625, § 53). Moreover, it is unclear – and the Government have not explained – to which authority the litigant would have had to apply, what procedure would have been followed and what would have been the legal effect of such a complaint. The Court thus considers that a request based on the direct applicability of the Convention in Bulgarian law cannot be regarded with a sufficient degree of certainty as an effective remedy.

65. The Court further notes that the second remedy advanced by the Government – the "complaint about delays" – was introduced with the adoption of the new Article 217a of the CCP 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 57 above).

66. However, the Court considers that it is not necessary in the present case to examine the question whether a "complaint about delays" under Article 217a of the CCP has to be used in respect of complaints about the length of court proceedings, as even assuming that it might be an effective remedy in this respect, the effectiveness of such 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).

67. In the present case the proceedings started on 17 June 1991 and ended in December 2002 or January 2003 (see paragraphs 11 and 53 above and 71 below). Article 217a of the CCP entered into force in July 1999. It was from that moment on that the applicants could have made a complaint under this provision. On that date, however, the proceedings had already lasted for some eight years, out of which six years and ten months fall within the Court's temporal jurisdiction. This period, during which the applicants had no remedy at their disposal against unreasonable delay, was substantial. Even if the applicants had filed a complaint under Article 217a of the CCP after July 1999, any decision given under this provision which might have speeded up the proceedings could not have made up for the delays which had already occurred (see *Rajak*, cited above, § 34).

68. In sum, the Court finds that a request based on the direct applicability of the Convention in Bulgarian law cannot be regarded with a sufficient degree of certainty as an effective remedy and that in the particular circumstances of the present case a "complaint about delays" under Article 217a of the CCP cannot be considered as an effective remedy either. The Government's objection must therefore be dismissed.

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

69. The applicants alleged that the length of the civil proceedings for damages had been unreasonable, in breach of Article 6 § 1 of the Convention.

Article 6 § 1 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. Period to be taken into consideration

70. The period to be taken into consideration did not begin to run on 17 June 1991, when the first applicant filed the tort action on her and on the second applicant's behalf (see paragraph 11 above), 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 has elapsed following this date is 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). On 7 September 1992 the proceedings had been pending before the first-instance court for nearly fifteen months and five hearings had been held.

71. As regards the end of the period under consideration, the Court notes that the proceedings ended in December 2002 or January 2003, when the Sofia Court of Appeals' judgment became final (see paragraph 53 above). It further notes that in January 2003 the applicants applied for and were issued a writ of execution and that on 21 April 2003 they entered into an agreement with Softaxi in which they specified the manner of execution of the judgment debt (see paragraphs 54 and 55 above). The applicants suggested that the time between the judgment's entry into force and 21 April 2003 should be included in the period under consideration. However, the Court notes that, unlike the position in the cases of *Martins Moreira v. Portugal* (judgment of 26 October 1988, Series A no. 143, p. 16, § 44) and *Silva Pontes v. Portugal* (judgment of 23 March 1994, Series A no. 286-A, p. 13, § 30), in its judgment of 17 October 2002 the Sofia Court of Appeals ruled on the applicants' entitlement to compensation and determined as well the amount of compensation due, thereby bringing the domestic proceedings to an end (see *Pailot v. France*, judgment of 22 April 1998, *Reports* 1998-II, p. 802, § 59). It is true that subsequently the applicants were issued a writ of execution and entered into an agreement with Softaxi, but no enforcement proceedings, whose length could be taken into account for the purposes of the present case, were brought. The Court therefore finds that the period

under consideration ended in December 2002 or January 2003, when the Sofia Court of Appeals' judgment became final.

72. The total length of the proceedings was thus approximately eleven and a half years and the period to be taken into consideration was approximately ten years and three or four months for four levels of court.

B. Reasonableness of the length of the proceedings

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

1. Complexity of the case

74. The applicants argued that their tort action was not complex, as almost all relevant facts had been established during the prior criminal proceedings against Mr V.G. Thus, the civil courts had only had to gather evidence about the nature and extent of their injuries and to assess the amount of compensation to be awarded. Admittedly, Mr V.G.'s third-party claims had introduced a degree of complexity into the proceedings in view of the need to question additional witnesses and to consider a technical expert report. However, these difficulties were no more than average. Moreover, the courts could have severed the third-party claims from the applicants' action.

75. While agreeing that the applicants' tort action was not complex, the Government argued that the proceedings had been complicated by Mr V.G.'s third party-claims, which had brought to five the number of parties to the proceedings. A further complicating factor had been the numerous reorganisations which the taxi enterprise where Mr V.G. had been employed at the time of the accident had undergone. Inflation had been another such factor, given that the applicants had had to increase continuously their claims for non-pecuniary damages in order to keep the claims in line with inflation. This in turn had prompted Mr V.G. to increase his third-party claims.

76. The Court considers that the applicants' tort action was relatively straightforward. Most of the facts had been established in the framework of the criminal proceedings against Mr V.G., the taxi driver who had injured them (see paragraph 10 above), and the civil courts were bound by the findings of the criminal court (see Article 222 of the CCP – paragraph 57 above). Therefore, the applicants needed only to produce evidence of the

pecuniary and non-pecuniary damage they had suffered and of the causal link between that damage and the accident.[1] The reorganisation of the second defendant, the taxi enterprise where Mr V.G. was employed at the time of the accident, was a complicating factor as the courts had to establish who the proper defendant was (see paragraphs 15-17 and 34 above).

77. The proceedings were also somewhat complicated by Mr V.G.'s third-party claims against Ms V.B. and the State Insurance Company (see paragraph 12 above), since their subject-matter, although related to the subject-matter of the original tort action, to some extent differed. The third-party claims also gave rise to evidentiary difficulties, as additional witnesses had to be heard and a technical expert report had to be drawn up (see paragraph 18 above). However, while in principle the joint examination of all claims arising out of the same event serves the interests of procedural economy, the Sofia City Court could have severed the third-party claims from the applicants' action when it became aware of the fact that the evidentiary difficulties created by these claims were giving rise to undue delay in the conduct of the proceedings (see, *mutatis mutandis*, *Hentrich v. France*, judgment of 22 September 1994, Series A no. 296-A, p. 23, § 61 *in fine*).

2. Conduct of the applicants

78. The applicants protested against the allegation that they had substantially contributed to the length of the proceedings. The fact that they had chosen to file a separate tort action instead of lodging a civil claim within the framework of the 1988 criminal proceedings had not been unreasonable. There was no indication that criminal proceedings were in principle faster than civil ones, and the civil courts were better equipped to assess their claims for damages. The applicants conceded that they had failed to pay the fee for filing their tort action in 1991 and had caused the adjournment of the hearings on 7 October 1994 and 11 March 1997. However, they argued that this had given rise to only minor delay. They maintained that they had had to increase their claims for non-pecuniary damages because of the inflation in the country (between 30% and 70% per annum during the period 1991-96 and approximately 300% per annum in the early months of 1997). The statutory rate of default interest which the court could award on top of their original claims had always been lagging behind inflation. They had thus been forced to increase the nominal amount of their claims so as to preserve their value. The applicants also disputed the Government's assertion that the need to serve the requests for leave to increase their claims on the absent parties had led to delays. In fact, it had been the courts' choice to have Mr V.G.'s third-party claims examined

1. After the dismissal of the claims for pecuniary damages on 31 October 1997 the scope of the applicants' action was limited to their claims for non-pecuniary damages.

together with their tort action, thus increasing to five the number of parties to the case. The joint examination of all claims had also resulted in delays occasioned by the third-party defendants.

79. The Government submitted that the delays had been mainly due to the applicants' inactivity and lack of diligence. After the reform of the CCP in 1997 civil proceedings were governed by the principle that the parties had responsibility for the conduct of their litigation, and the courts were under no obligation to assist them in performing their procedural actions. Moreover, the applicants had not made a civil claim against Mr V.G. in the framework of the 1988 criminal proceedings, which would in all likelihood have been dealt with expeditiously. They had waited until 1991 to do so in separate proceedings. Upon the filing of their action in 1991 the applicants had failed to pay the requisite fee. They had also repeatedly failed to comply with the Sofia City Court's instructions to provide a breakdown of their claims for pecuniary damages, which had eventually led the court to dismiss the claims. The applicants had also been responsible for the adjournment of the hearings on 7 October 1994, 17 March 1995 and 11 March 1997. Finally, the applicants had made many requests to be allowed to increase their claims for non-pecuniary damages. Copies of these requests had to be served on the parties which had not appeared at the hearings at which the requests had been made. This had resulted in delays.

80. The Court considers that the fact that the applicants filed a separate tort action in 1991 instead of making a civil claim in the framework of the 1988 criminal proceedings against Mr V.G. cannot be held against them. The authorities were under a duty to examine the applicants' action within a reasonable time regardless of when and how it was submitted.

81. The applicants increased their claims for non-pecuniary damages five times (see paragraphs 22, 27, 32, 33 and 37 above). This resulted in adjournments, because copies of the requests had to be served on the absent parties, most frequently the second defendant, Softaxi. Therefore, the applicants' argument that the severing of Mr V.G.'s third-party claims would have altogether obviated the need for adjournments does not appear convincing. The authorities were not responsible for Softaxi's failures to appear: it was invariably summoned in proper and due form. However, the applicants were not to blame either. Nor does it seem that the applicants can be blamed for having used a procedural device to try to prevent the erosion of the value of their claims as a result of the high inflation rate, even though by so doing they prolonged the proceedings (see *Lobarzewski v. Poland*, no. 77757/01, § 41, 25 November 2003).

82. Three hearings failed to take place solely as a result of the applicants' conduct: on 7 October 1994, when their lawyer was ill (see paragraph 26 above), on 11 March 1997, when the second applicant, who had turned eighteen and had to countersign the complaint, was absent (see paragraph 35 above), and on 11 April 1997, when the applicants tried to

increase their claims for non-pecuniary damages without paying the requisite fee or requesting exemption from it (see paragraph 36 above).

83. Another instance of lack of diligence on the part of the applicants was their failure to provide a breakdown of their claims for pecuniary damages despite the court's four requests to do so – on 12 June 1992, 5 February 1993, 11 February and 11 April 1997 (see paragraphs 18, 20, 34 and 36 above) –, which eventually resulted in the dismissal of their claims on 31 October 1997 (see paragraph 37 above).

84. Nevertheless, the applicants' conduct cannot be regarded as the main reason for the length of the proceedings.

3. Conduct of the authorities

85. The applicants submitted that a number of hearings had been scheduled at long intervals, apparently due to the courts' heavy workload. Moreover, substantial delays had occurred in the proceedings before the Sofia City Court on account of that court's failure to ensure the timely preparation of the technical expert report.

86. The Government were of the view that the authorities had acted diligently at all times. The courts had held twenty-nine hearings, all scheduled at reasonable intervals. Furthermore, the courts had ruled in good time on all of the various requests made by the parties to the case. Any request which could have resulted in undue delay had been rejected. The first proceedings before the Sofia Court of Appeals had been concluded in less than a year.

87. The Court notes at the outset that, as the Government stressed, under the Bulgarian CCP as amended in 1997 it is for the parties to take the initiative with regard to the progress of proceedings. However, this does not absolve the courts from ensuring compliance with the requirement of Article 6 concerning reasonable time (see *Buchholz v. Germany*, judgment of 6 May 1981, Series A no. 42, p. 16, § 50).

88. The longest single period of inactivity – more than one year and two, respectively three, months – occurred between the date on which the Sofia City Court gave judgment – 15 April 1998 – and the dates on which the applicants were notified of the judgment: 28 June and 26 July 1999 (see paragraphs 39-41 above). The Government have not provided any explanation for this gap.

89. There were also long intervals between certain hearings before the Sofia City Court: 30 March – 28 September 1993 (see paragraphs 21 and 22 above), 20 May – 7 October 1994 (see paragraphs 25 and 26 above), 26 January – 27 September 1996 (see paragraph 32 and 33 above) and 11 April – 31 October 1997 (see paragraph 36 and 37 above), which were apparently due to that court's heavy workload.

90. Although the various delays noted above together account for approximately three years and four months, they do not in themselves

explain the overall length of the proceedings before the Sofia City Court. This was due above all to the difficulties encountered in obtaining the original and the supplementary technical expert reports. Many hearings had to be adjourned solely or mainly because of the expert's failure to draw up these reports (see paragraphs 19, 20, 21, 22, 23, 27, 28, 29 and 30 above). Significantly, once the court replaced the expert, the report was drawn up by the new expert in approximately two months, from 5 November 1995 until 10 January 1996 (see paragraphs 30 and 31 above). Having regard to the fact that the first expert was appointed and could be – and indeed was, but only after substantial delays had already accumulated – replaced by the court, the responsibility for the delay in the presentation of the expert opinion may be considered to lie with the authorities (see *Capuano v. Italy*, judgment of 25 June 1988, Series A no. 119, p. 14, § 32 and *Nibbio v. Italy*, judgment of 26 February 1992, Series A no. 228 A, p. 10, § 18). Moreover, the expert opinion was not necessary for the examination of the applicants' action, but only for the examination of Mr V.G.'s third-party claim against Ms V.B.

91. Finally, it should be noted that in processing the case the authorities apparently did not take into account that what was at stake for the applicants – especially the second applicant – was payment of compensation for grave injures sustained in a road accident (see *Martins Moreira*, cited above, p. 20, § 59 and *Silva Pontes*, cited above, p. 15, § 39 *in fine*).

3. Conclusion

92. In the light of the criteria laid down in its case-law and having regard to the overall amount of time taken by the proceedings and the delays attributable to the authorities, the Court considers that the length of the proceedings failed to satisfy the reasonable time requirement.

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

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

93. The applicants also maintained, relying on Article 13 of the Convention, that they had not had an effective remedy in respect of the length of the proceedings.

Article 13 reads 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."

94. The applicants considered that throughout the proceedings they had not had an effective remedy. The complaints which they could file with the Ministry of Justice and the Supreme Judicial Council prior to July 1999

were not regulated by any specific procedure and could not be described as a remedy. On the other hand, the "complaint about delays" introduced in July 1999 came too late to allow them to use it to tackle the delays which had already accumulated. Moreover, that remedy was not an effective one as it could not result in compensation for the delays which had built up.

95. The Government maintained that since 1999 the applicants had had at their disposal an effective remedy against the alleged infringement of their right to a speedy trial. In July 1999 the CCP had been amended to provide for a "complaint against delays" whose very purpose was to protect the right of litigants to a determination of their civil disputes within a reasonable time.

96. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an arguable complaint under the Convention and to grant appropriate relief.

97. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicants' complaints. However, the remedy required by Article 13 must be "effective" in practice as well as in law (see *Kudła v. Poland*, [GC], no. 30210/96, § 157, ECHR 2000-XI).

98. 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).

99. Having regard to its conclusion in respect of the applicants' complaint under Article 6 § 1 (see paragraph 92 above), the Court is of the view that the complaint was arguable. It must therefore 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.

100. In this connection, the Court refers to its conclusions above that a complaint based on the direct applicability of the Convention in Bulgarian law is not an effective remedy and that in the particular circumstances of the present case a "complaint about delays" under Article 217a of the CCP is not an effective remedy either (see paragraph 68 above).

101. Furthermore, it does not appear that Bulgarian law provides any other means of redress whereby a litigant could obtain the speeding up of

civil proceedings. In particular, the possibility for the applicants to make informal complaints to the Ministry of Justice or the Supreme Judicial Council cannot be described as a remedy. The possibility to appeal to various authorities in the absence of a specific procedure cannot be regarded as an effective remedy, because such appeals aim to urge the authorities to utilise their discretion and do not give litigants a personal right to compel the State to exercise its supervisory powers (see *Gibas v. Poland*, no. 24559/94, Commission decision of 6 September 1995, Decisions and Reports 82, p. 76, at p. 82, *Kuchař and Štis v. the Czech Republic* (dec.), 37527/97, 23 May 2000, *Horvat*, cited above, §§ 47 and 64 and *Hartman v. the Czech Republic*, no. 53341/99, § 66, ECHR 2003-VIII (extracts)).

102. In sum, the Court finds that in the particular circumstances of the present case the applicants did not have at their disposal any effective domestic remedies whereby they could have expedited the examination of their civil action.

103. Furthermore, as regards compensatory remedies, the Court has not found it established that in Bulgarian law there exists the possibility to obtain compensation or other redress for excessively lengthy proceedings.

104. Accordingly, there has been a violation of Article 13 of the Convention in that the applicants had no domestic remedy whereby they could enforce their right to a "hearing within a reasonable time" as guaranteed by Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

105. 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

106. The first applicant claimed 6,000 euros ("EUR") and the second applicant claimed EUR 10,000 as compensation for the non-pecuniary damage arising out of the excessive length of the proceedings and the lack of effective remedies in this respect. They submitted that they had relied on the amounts which the domestic courts had eventually awarded them to cover the expenses for the medical treatment of the second applicant, who had suffered very serious injuries in the 1988 accident and still had to struggle with the consequences for her health (see paragraph 9 above). As the first applicant was the second applicant's mother, she had also suffered emotionally. Finally, the applicants claimed that they had experienced

further frustration on account of the lack of remedies against the unreasonable length of the proceedings.

107. The Government submitted that the amounts claimed were overly elevated and that the award of compensation should not be in excess of those made in similar cases. Moreover, it had to be borne in mind that the applicants had contributed to the length of the proceedings through the not very organised manner in which they had prosecuted their action. In the Government's view, the amount awarded by the Court under this head should be commensurate to the principles of justice and take into account the living standards in Bulgaria.

108. 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 proceedings and the lack of any remedies in this respect. Moreover, the proceedings took on a special importance for the applicants, because what was at stake for them – especially for the second applicant – was the payment of compensation for grave injures sustained in a road accident. Taking into account the circumstances of the case, and making its assessment on an equitable basis, the Court awards the first applicant the sum of EUR 3,000 and the second applicant the sum of EUR 6,000.

B. Costs and expenses

109. The applicants claimed EUR 3,625 for 72.5 hours of legal work on the Strasbourg proceedings, at the hourly rate of EUR 50. They submitted a fees' agreement between them and their lawyer and a time-sheet.

110. The Government submitted that the work on the case could have been completed in half the time claimed by the applicants and that the hourly rate of EUR 50 was several times higher than usual lawyers' fees in Bulgaria.

111. According to the Court's case-law, costs and expenses are reimbursable in so far as it has been shown that they have been actually and necessarily incurred and were reasonable as to quantum. In the instant case, the Court does not consider that the hourly rate of EUR 50 is excessive (see *Anguelova v. Bulgaria*, no. 38361/97, § 176 *in fine*, ECHR 2002-IV, *Nikolov v. Bulgaria*, no. 38884/97, § 111, 30 January 2003 and *Toteva v. Bulgaria*, no. 42027/98, § 75, 19 May 2004). However, it considers that the number of hours claimed seems excessive and that a reduction is necessary on that basis. Having regard to all relevant factors, the Court considers it reasonable to award the applicants EUR 1,500 in respect of costs and expenses.

C. Default interest

112. 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. *Dismisses* the Government's preliminary objection;

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

3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay, 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 3,000 (three thousand euros) in respect of non-pecuniary damage to the first applicant, Ms Irina Vasileva Racheva;
      (ii) EUR 6,000 (six thousand euros) in respect of non-pecuniary damage to the second applicant, Ms Nadezhda Teodosieva Racheva;
      (iii) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, jointly to both applicants;
      (iv) 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 23 September 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President