CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 43232/98
by Miroslav Georgiev MARINTCHEV
against Bulgaria

The European Court of Human Rights (First Section), sitting on 13 December 2001 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mr G. BONELLO,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mrs E. STEINER, *judges*,
Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 6 May 1998 and registered on 1 September 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Miroslav Marintchev, is a Bulgarian national, born in 1954 and living in Plovdiv. He is represented before the Court by Mr M. Ekimdjiev, a lawyer practising in Plovdiv.

The facts of the case, as submitted by the applicant, may be summarised as follows:

On 30 January 1990 the applicant's former wife instituted civil proceedings against him before Plovdiv District Court (Районен Съд). She grounded her claim on Article 105 of the Family Code seeking the annulment of a donation, which she had allegedly made in favour of her former husband during their matrimony. The initial claim was for the amount of 1,000 convertible levs (валутен лев), a special currency unit. At the relevant time 1,000 convertible levs were the equivalent of about 2,000 German marks ("DEM").

The applicant's former wife also requested the attachment of his bank accounts. That was granted on an unspecified date by the Plovdiv District Court. Thus the applicant's bank accounts, allegedly worth DEM 7,500, were attached. He appealed stating that the attached sums exceeded several times the amount of the claim. On an unspecified date in 1990 the appeal was dismissed.

In the course of the proceedings before the Plovdiv District Court the applicant's former wife increased the amount of her claim to 4,657 convertible levs (equivalent to about DEM 9,300).

By judgement of 25 February 1992 of the Plovdiv District Court the donation of 4,657 convertible levs was declared null and void and the applicant was ordered to pay back its value in German marks.

By judgement of 6 July 1992 of the Plovdiv Regional Court (Окръжен Съд) the judgement of the Plovdiv District Court was quashed insofar as it concerned the claim of the applicant's former wife (a counter claim which had been filed by the applicant was at that stage separated). The court found that in view of the amount of the donation, which was the subject matter of the dispute, the case fell within the jurisdiction of a Regional Court as a first instance court.

By judgement of 19 February 1993 the Plovdiv Regional Court, re-examining the case as a first instance court, granted the claim of the applicant's former wife. On 23 March 1993 the applicant lodged an appeal.

On 25 April 1994 the Supreme Court (Върховен Съд) quashed the judgement and transferred the case for a new examination to the Plovdiv Regional Court. The Supreme Court found that there had been a breach of the procedural rules, as the Plovdiv Regional Court had not adjourned the closing hearing although the applicant's lawyer had lodged a well-founded request for adjournment, demonstrating that he could not attend. The court further noted that the lower court should collect additional evidence in order

to clarify the origin of the received sum with a view of the rules on matrimonial property and the applicant's former wife's *animus donandi.*

In the meantime, in January 1995, the applicant's lawyer lodged an appeal with the Supreme Court (Върховен Съд) challenging the Plovdiv District Court's and the Plovdiv Regional Court's refusals to lift the attachment of his bank accounts for any sum above 1,000 convertible levs. The appeal was apparently dismissed.

On 4 July 1995 the Plovdiv Regional Court, having re-examined the case, again granted the claim of the applicant's former wife. The applicant appealed.

By judgement of 2 July 1997 the Supreme Court of Cassation (Върховен Касационен Съд), acting as a court of appeal, partly reversed the judgement of the Plovdiv Regional Court and decided on the merits of the claim dismissing it as ill-founded for the sum over 1,101.85 convertible levs. The court found that the applicant's former wife had failed to prove her *animus donandi* in respect of the remainder up to 4,657 convertible levs. The judgement entered into force on 2 July 1997, the date on which it was delivered.

On 1 September 1997 the applicant's former wife lodged a petition for review (cassation).

On 23 December 1997, on the applicant's request, the Plovdiv District Court reduced the attachment of his bank accounts limiting it to the amount of 1,101.85 convertible levs.

On 5 May 1998 the Supreme Court of Cassation, having noted that the petition for review (cassation) submitted by a lawyer had not been accompanied by a power of attorney and that that omission had not been rectified after notification, terminated the proceedings. At that moment the judgement of 2 July 1997 became final.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention that the civil proceedings lasted unreasonably long (eight years and three months), although the case was not particularly complex.

2. The applicant complains under Article 1 of Protocol No.1 to the Convention that he was deprived for an unreasonably long period of the possibility to dispose of his bank accounts despite the fact that their total value significantly exceeded the amount of the initial claim.

THE LAW

1. The applicant complains under Article 6 § 1 of the Convention that the civil proceedings against him lasted unreasonably long.

The Court considers that it cannot, on the basis of the file, determine the admissibility of the above complaint and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of the Court, to give notice thereof to the respondent Government.

2. The applicant complains under Article 1 of Protocol No.1 to the Convention that he was deprived for an unreasonably long period of the possibility to dispose of his bank accounts.

In the light of all the material in its possession, and in so far as this complaint falls within its competence *ratione temporis*, the Court finds that it does not disclose any appearance of a violation. It follows that this part of the application must be rejected, in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint under Article 6 § 1 of the Convention about the length of the civil proceedings against him;

Declares inadmissible the remainder of the application.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President