



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

FIFTH SECTION

**CASE OF IVANOV AND DIMITROV v. THE FORMER YUGOSLAV
REPUBLIC OF MACEDONIA**
(Application no. 46881/06)

JUDGMENT

STRASBOURG

21 October 2010

FINAL

21/01/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ivanov and Dimitrov v. the former Yugoslav Republic of Macedonia,

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

Peer Lorenzen, *President*,
Renate Jaeger,
Rait Maruste,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva,
Ganna Yudkivska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 28 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 46881/06) against the former Yugoslav Republic of Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Macedonian nationals, Mr Vasko Ivanov (“the first applicant”) and Mr Lazo Dimitrov (“the second applicant”), on 6 November 2006. In a letter of 12 January 2007 the second applicant informed the Court that he wished to withdraw from the application.

2. The applicants were represented by Mr N. Radovik and Mr V. Žežov, lawyers practising in Štip. The Macedonian Government (“the Government”) were represented by their Agent, Mrs R. Lazareska Gerovska.

3. The applicants alleged, in particular, that the Štip Court of Appeal had decided their case in contradiction of its already established case-law and that the proceedings in question had been excessively lengthy.

4. On 2 February 2009 the President of the Fifth Section decided to give notice of the application, in respect of the first applicant, to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1960 and 1962 and live in Karbinci and Štip respectively.

6. They worked as wardens at a weekend retreat run by the Ministry of Labour and Social Policy (“the employer”).

7. On 2 April 2001 the applicants lodged a civil claim against the employer, seeking payment of the following employment-related benefits: an overtime allowance (*надоместок за прекувремена работа*), night-work allowance (*надоместок за ноќна работа*) and family separation allowance (*надоместок за одвоен живот*). They also claimed compensation in respect of annual leave in 2000 (*надомест на штета поради неискористен годишен одмор*) (“the compensation claim”).

8. On 20 November 2001 the Štip Court of First Instance (“the first-instance court”) appointed an expert who, by a letter of 12 December 2001, requested to be excluded from the case. On 6 February 2002 another expert was appointed. He drew up a report on 6 April 2002, which was supplemented on three occasions, namely 24 October 2003, 25 November 2003 and 9 January 2004.

9. Hearings fixed for 26 June 2002, 18 December 2002, 12 and 27 February 2003 and 25 November 2003 were adjourned because of the absence of the employer, which was represented by the Attorney-General (*Јавен Правобранител*). On 30 January 2004 the first-instance court granted the applicants' claims. This decision was quashed by the Štip Court of Appeal on 1 September 2004. The parties did not provide a copy of the latter decision.

10. At a hearing on 17 November 2004 the applicants supplemented their claims. On that date the employer was asked to submit documentation on the benefits claimed by the applicants, which it did on 6 July 2005. On 24 October and 16 November 2005 the expert submitted additional expert reports in view of the applicants' amended claims.

11. On 3 February 2006 the first-instance court ruled partly in favour of the applicants and ordered the payment of the employment benefits. It relied, *inter alia*, on the expert reports, the employer's Rules on Salary and Other Allowances (“the Rules”), and a court decision in case *П.бп.1262/97* (see paragraph 16 below). It established that the applicants' residence had been 40 km away from their place of work, that they had carried out their working duties for one week at a time without interruption, and that during that time they had been separated from their families. The employer did not have special rules regarding the payment of employment-related benefits for such employees. The applicants' salary had been calculated as if they had

worked full-time despite the fact that they had actually worked fewer hours. The shortfall in the regular working hours (*редовно работно време*) had been compensated for by night work, for which the employer had not paid any allowance to the applicants. The court did not award the applicants the night-work allowance, but only a 35% increase, as specified in the Rules. On the other hand, it awarded them the allowances for overtime and family separation, plus the increase set forth in the Rules. The court dismissed the applicants' compensation claim.

12. On 15 March 2006 the employer appealed. On 13 April 2006 the Štip Court of Appeal allowed the appeal and overturned the lower court's decision in respect of the benefits claimed. It endorsed the statement of facts, but found that the substantive law had been applied incorrectly. It held that the applicants had not been entitled to receive the benefits claimed since they had obtained the same salary as if they had worked full-time, although they had actually worked fewer hours. Relying on a Government Decree on the calculation of allowances for employees of administrative bodies ("the Decree"), the court stated that the applicants had not been entitled to a family separation allowance since their place of residence had been adjacent to the employer's seat.

13. The applicants were served with this decision on 8 May 2006.

14. On 4 July 2006 the applicants filed a request with the public prosecutor for the protection of legality in which they alleged that the substantive law had been applied incorrectly. They further complained that the courts, including the Štip Court of Appeal, had granted identical claims in other cases filed by them. According to the applicants, the public prosecutor rejected their request.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. Section 400 of the Civil Proceedings Act provides that a case may be reopened if the European Court of Human Rights has given a final judgment finding a violation of the Convention or its Protocols ratified by the respondent State.

16. Between July 1999 and September 2001, the Štip first- and second-instance courts had delivered four judgments in which they had ruled in favour of the applicants and Mr G.P. (a warden at the same weekend retreat), awarding them the same employment-related benefits, including the increase, as those claimed by the applicants in the present case (*Гж.бп.1746/2000*, *Гж.бп.993/2001*, *Гж.бп. 1269/97* and *П.бп.1262/1997*). In those cases, the courts had established that the claimants had carried out their working duties for one week at a time without interruption; that during that time they had been separated from their families; that they had received the same salary as if they had worked full-time; and that the employer had no special rules regarding the payment

of employment-related benefits for wardens. In their decisions, the courts had referred, *inter alia*, to the Rules and the Decree. As to the latter, the Štip Court of Appeal had established that in May 2000 the Constitutional Court had declared it unconstitutional since it concerned issues that could be regulated only by law (*U.br.29/2000* of 17 May 2000). It had found therefore that the Decree was inapplicable to the applicants' case (*Гжс.бп.1746/2000*).

THE LAW

I. THE SECOND APPLICANT

17. The Court notes that, by a letter of 12 January 2007, the second applicant expressed his wish to withdraw his application. Thus the Court considers that the second applicant may be regarded as no longer intending to pursue his application within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds that there are no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of his case. In view of the above, it is appropriate to continue the examination of the application only in so far as it concerns the first applicant (see *Oršuš and Others v. Croatia*, no. 15766/03, § 33, 17 July 2008).

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

18. The first applicant complained under Article 6 of the Convention that the length of the proceedings had been excessive. He further alleged lack of impartiality since the courts had rejected his claim notwithstanding the fact that identical claims had been accepted in previous cases. The Court considers that this complaint concerns, in substance, an alleged inconsistency in the domestic case-law and should be analysed accordingly. Article 6 § 1 of the Convention, in so far as relevant, reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by independent and impartial tribunal established by law”

A. Admissibility

19. The Government did not raise any objection as to the admissibility of the application.

20. The Court notes that the application, in respect of the first applicant, 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.

B. Merits

1. Length-of-proceedings complaint

21. The Government submitted that there had been complex circumstances involved in the case, including the number of expert examinations and the volume of material evidence. They further argued that the first applicant had contributed to the length of the proceedings by supplementing his initial claim. They stated that the proceedings, taken as a whole, had not been excessive and that no significant delays could be attributed to the domestic courts.

22. The first applicant reiterated his complaint that the proceedings in question had been excessively lengthy.

23. The Court notes that the proceedings began on 2 April 2001 when the applicants brought their claim before the first-instance court. They ended on 8 May 2006 when the Court of Appeal's decision of 15 March 2006 was served on them. The time taken for the subsequent proceedings before the public prosecutor cannot be taken into consideration since the applicants were not required to exhaust this remedy for the reasons detailed in the *Dimitrovska* case (see *Dimitrovska v. the former Yugoslav Republic of Macedonia* (dec.), no. 21466/03, 30 September 2008). The relevant period therefore lasted just over five years and one month at two levels of jurisdiction.

24. 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 and the conduct of the applicants and the relevant authorities (see *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

25. The Court considers that the case was not legally complex given the already established case-law of the same courts (see paragraph 16 above). Some factual complexity arose because of the need to determine the amount of the first applicant's claim, but that cannot in itself justify the length of the proceedings.

26. The Court also observes that there were no delays attributable to the first applicant. The amendment to his claim did not add much to the length of the proceedings.

27. On the other hand, the Court considers that there were a number of delays imputable to the State. In this connection, it notes that the first-instance court was unable to secure the attendance of the employer, a

State body, between 26 June 2002 and 30 January 2004 (see paragraph 9 above). In addition, it took over eight months for the employer to comply with the court's order to submit the required documentary evidence (see paragraph 10 above). Furthermore, the time taken for the expert examinations can be attributed solely to the State (see *Stojanov v. the former Yugoslav Republic of Macedonia*, no. 34215/02, § 60, 31 May 2007). In view of the foregoing, the Court considers that the length of the proceedings cannot be regarded as reasonable.

28. There has accordingly been a breach of Article 6 § 1 of the Convention in respect of the length of the proceedings.

2. Alleged inconsistency in the domestic case-law

29. The Government admitted that the Štip Court of Appeal had deviated from the case-law that it had already established, but considered that it had provided sufficient reasons for its decision. That departure had been due to the fact that the first-instance court had erred on the facts and law and that in all previous cases concerning the same issues of fact and law, the courts had failed to take into consideration 1) the absence of special employer's rules concerning the payment of employment-related benefits to wardens; 2) the fact that the first applicant had received the same salary as if he had worked full-time and 3) the Decree. Lastly, they submitted that case-law could develop according to the circumstances of each case.

30. The first applicant contested the Government's arguments.

31. The Court notes that the present case reflects the development of the domestic jurisprudence as to whether the first applicant was entitled to receive the employment-related benefits specified in paragraph 7 above. In this connection, the Court observes that the initial case-law on the matter was in favour of the first applicant (see paragraph 16 above). In the present case, the first-instance court also applied this jurisprudence by having relied on a previous court decision (see paragraph 11 above). It was the Court of Appeal which departed, as conceded by the Government, from the previous case-law established before several years regarding identical claims submitted by the applicants and Mr G.P. (see paragraph 16 above). In the absence of any evidence to the contrary, it appears that no other similar case has been brought before the domestic courts since the present one (see, *a contrario*, *Atanasovski v. the former Yugoslav Republic of Macedonia*, no. 36815/03, §§ 20 and 37, 14 January 2010).

32. In such circumstances, the Court does not consider that this jurisprudential development, which was manifested after several years and only in this one instance, has created a state of judicial uncertainty capable of depriving the first applicant of a fair hearing. In this connection it recalls that the requirement of judicial certainty and the protection of legitimate expectations do not involve the right to an established jurisprudence (see *Unédic v. France*, no. 20153/04, § 74, 18 December 2008). As to whether

the Court of Appeal's approach was wrong, the Court reiterates that it has a limited role regarding the interpretation and application of the domestic law, which is primarily within the jurisdiction of the domestic courts (see, *mutatis mutandis*, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). In the absence of an explicit complaint by the first applicant, the Court need not assess whether the Court of Appeal's decision was sufficiently reasoned (see, *a contrario*, *Atanasovski*, cited above).

33. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The first applicant claimed 16,250 euros (EUR) in respect of pecuniary damage, representing the sum, plus interest, sought in his claim against the employer, and EUR 8,200 in respect of non-pecuniary damage for the stress suffered in relation to the alleged violations of the Convention.

36. The Government contested these claims, arguing that there was no causal link between the alleged violation and the damages claimed. In addition, they submitted that finding a violation should in itself constitute sufficient just satisfaction for the first applicant, who would ultimately be able to request the reopening of the proceedings on the basis of the Court's judgment and seek a new decision in his favour (see paragraph 15 above).

37. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. It considers however that the non-pecuniary damage would not be adequately compensated by the finding of a violation. Consequently, ruling on an equitable basis, it awards the first applicant EUR 1,600 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

38. The first applicant also claimed EUR 4,000 for the costs and expenses incurred before the Court and the domestic courts. In support of this claim he submitted an itemised list of costs.

39. The Government contested the claim as excessive and unsubstantiated. They further argued that the costs and expenses incurred domestically could be recovered before the domestic courts should the proceedings be reopened under section 400 of the Civil Proceedings Act.

40. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Editions Plon v. France*, no. 58148/00, § 64, ECHR 2004-IV). In the present case, regard being had to the documents in its possession and the above criteria, the Court finds the amount claimed by the first applicant in respect of the costs and expenses incurred in the proceedings before it to be excessive and partly unsubstantiated, and awards him instead the sum of EUR 250, plus any tax that may be chargeable to him.

41. Concerning the first applicant's request for reimbursement of the costs incurred in the domestic proceedings, the Court reiterates that legal costs are only recoverable in so far as they relate to the violation found (see *Ernestina Zullo v. Italy* [GC], no. 64897/01, § 153, 29 March 2006; *Belvedere Alberghiera S.r.l. v. Italy* (just satisfaction), no. 31524/96, § 45, 30 October 2003; and *Van de Hurk v. the Netherlands*, § 66, 19 April 1994, Series A no. 288). As such costs were not incurred in seeking the prevention and redress through the domestic legal order of the alleged violations complained of, the Court does not award any sum under this head (see *Milošević v. the former Yugoslav Republic of Macedonia*, no. 15056/02, § 34, 20 April 2006).

C. Default interest

42. 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. *Decides* to discontinue the examination of the application in so far as it concerns the second applicant;
2. *Declares* the length complaint admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the proceedings;

4. *Holds*

(a) that the respondent State is to pay the first applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into the national currency of the respondent State at the rate applicable on the date of settlement:

(i) EUR 1,600 (one thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 250 (two hundred and fifty euros), plus any tax that may be chargeable to him, in respect of costs and expenses;

(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 first applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President