



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

FIRST SECTION

**CASE OF OGRAŽDEN AD AND OTHERS v. THE FORMER
YUGOSLAV REPUBLIC OF MACEDONIA**

(Applications nos. 35630/04, 53442/07 and 42580/09)

JUDGMENT

STRASBOURG

29 May 2012

FINAL

29/08/2012

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

In the case of Ogražden Ad and Others v. the former Yugoslav Republic of Macedonia,

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

Nina Vajić, *President*,
Peer Lorenzen,
Khanlar Hajiyeu,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 10 May 2012,

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

PROCEDURE

1. The case originated in three applications (nos. 35630/04, 53442/07 and 42580/09) 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 Ogražden A.D. (“the first applicant”), Ms Cvetanka Milčevska (“the second applicant”) and Ms Elena Davidovska (“the third applicant”) on 16 September 2004, 23 November 2007 and 18 July 2009 respectively. The first applicant is a company in the respondent State and the second and third applicants are both Macedonian nationals. The second and third applicants were born in 1940 and 1968 and live in Veles and Skopje respectively.

2. The second applicant was represented by the “Helsinki Committee for Human Rights of the Republic of Macedonia” and the third applicant by Ms M. Jovanovska, a lawyer practising in Skopje. The Macedonian Government (“the Government”) were represented by their former Agent, Mrs R. Lazareska Gerovska, succeeded subsequently by their present Agent, Mr K. Bogdanov.

3. On 10 June 2009, in respect of the first applicant, and 10 November 2010, in respect of the second and third applicants, the applications were communicated to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

4. On 1 February 2011, the Court changed the composition of its Sections (Rule 25 § 1) and this case was assigned to the newly composed First Section (Rule 52 § 1).

THE FACTS

A. As to the first applicant

1. The enforcement proceedings

5. On 16 July 1999 the Strumica Court of First Instance ordered a certain Mr I.A. to pay a debt established in the first applicant's favour. On 22 March 2010 the first-instance court stayed the enforcement proceedings since the debtor had died. The applicant did not appeal against this decision.

2. Length proceedings before the Supreme Court

6. In the meantime, on 30 April 2009, the first applicant lodged a length complaint with the Supreme Court. On 3 July 2009 the court established that the enforcement proceedings, at that moment, had been pending for ten years before the first-instance court and had not yet ended. The court found that there was a violation of the first applicant's right to a hearing within a reasonable time. It set a six-month time-limit for the first-instance court to bring the enforcement proceedings to a conclusion and awarded the first applicant the equivalent of 325 euros (EUR) by way of just satisfaction. In the absence of an appeal, this decision became final on 22 October 2009.

B. As to the second applicant

1. Administrative proceedings for a disability pension

7. On 30 September 1998 the second applicant sought that the Pension and Disability Insurance Fund ("the Fund") recognise her right to a disability pension. After several remittals ordered by the Government Appeal Commission and the Supreme and Administrative Courts, on 25 November 2009 the Fund accepted the second applicant's request and acknowledged her right to a disability pension.

2. Length proceedings before the Supreme Court

8. In the meantime, on 27 January 2009, the second applicant complained to the Supreme Court that the administrative proceedings had lasted too long and requested compensation. On 23 March 2010 the Supreme Court established that the impugned proceedings, at that time, had lasted for over ten years and awarded her the equivalent of EUR 410 by way of just satisfaction. On 31 May 2010 the second-instance panel of the Supreme Court allowed the second applicant's appeal and awarded her a

higher compensation, the equivalent of which was EUR 980. This sum was paid on 15 September 2010.

C. As to the third applicant

1. Labour proceedings concerning the third applicant's dismissal

9. On 12 April 2001 the third applicant requested annulment of her dismissal. On 18 September 2007 the Skopje Court of Appeal overturned the lower court's decision and dismissed her claim. On 22 January 2009 the Supreme Court dismissed on the merits the third applicant's appeal on points of law (*pevuzija*).

2. Length proceedings before the Supreme Court

10. In the meantime, on 8 July 2009, the third applicant complained to the Supreme Court about the length of the labour proceedings. On 29 September 2009 the Supreme Court rejected (*omphila*) her claim as having been submitted outside the statutory six-month time-limit, which, in her case, started to run on 18 September 2007. The second-instance panel of the Supreme Court confirmed this decision.

THE LAW

I. JOINDER OF THE APPLICATIONS

11. The Court notes that all applicants complained about the inordinate length of the impugned proceedings. Having regard to the similarity of their main grievance, the Court considers that, pursuant to Rule 42 § 1 of the Rules of Court, the applications should be joined.

II. ALLEGED VIOLATION OF "THE REASONABLE-TIME" REQUIREMENT UNDER ARTICLE 6 § 1 OF THE CONVENTION

12. The applicants complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

1. *The parties' submissions*

13. As regards the first and second applicants, the Government submitted that the Supreme Court's decisions adopted in the length proceedings (see paragraphs 6 and 8 above) had removed the applicants' victim status under Article 34 of the Convention. Furthermore, the first applicant's failure to appeal suggested that it had agreed with the decision taken at first instance. As regards the third applicant, they stated that she had failed to exhaust the domestic remedies since she had not used the length remedy in compliance with the formal requirements laid down in domestic law.

14. The applicants contested the Government's arguments. The first and second applicants further argued that the amount of compensation awarded to them had been insufficient to remedy the situation complained of before the Court.

2. *The Court's assessment*

15. The Court observes that in the present case the applicants' victim status within the meaning of the Convention depends on whether the redress afforded to them at the domestic level was adequate and sufficient having regard to Article 41 of the Convention. This issue falls to be determined in the light of the principles established under the Court's case-law (see *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98 and *Arvanitaki-Roboti and Others v. Greece* [GC], no. 27278/03, § 29, 15 February 2008).

16. The Court notes that the Supreme Court, after having acknowledged that there had been a violation of the "reasonable time" requirement in respect of the enforcement and administrative proceedings complained of (see paragraphs 5 and 7 above), awarded the first applicant the equivalent of EUR 325 and the second applicant the equivalent of EUR 980, by way of just satisfaction. These amounts are manifestly unreasonable having regard to what the Court would have been likely to award her under Article 41 of the Convention. It therefore cannot be regarded as adequate in the circumstances of the case (see the principles established under the Court's case-law in *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 65-107, ECHR 2006-V; see also *Parlov-Tkalčić v. Croatia*, no. 24810/06, § 62, 22 December 2009) and leads to the conclusion that the redress provided to them at domestic level was insufficient (see *Kaić and Others v. Croatia*, no. 22014/04, § 20, 17 July 2008).

17. The Government further appeared to link the issue of victim status of the first applicant to the question of exhaustion of domestic remedies. Furthermore, they explicitly claimed non-exhaustion in respect of the third applicant. In this connection the Court recalls that the exhaustion

requirement in respect of the length remedy provided for in the Courts Act of 2008 concerns applications that post-date the Adži-Spirkoska and Others case. There is no such requirement in respect of cases already pending before it unless the impugned proceedings have not ended yet and the applicants can use the length remedy before the Supreme Court. The Court reaffirms that as regards length cases pending before it where applicants have used the length remedy, such as the first and third applicants, any redress provided by the Supreme Court shall be assessed through the prism of whether the applicants can still be considered to be victims within the meaning of Article 34 of the Convention (see *Adži-Spirkoska and others v. the former Yugoslav Republic of Macedonia* (dec.), nos. 38914/05 and 17879/05, 3 November 2011). Consequently, that the first applicant did not challenge the decision of the first-instance panel of the Supreme Court and that the third applicant's length remedy was rejected on procedural grounds do not have any bearing on their victim status in respect of the alleged violation complained of before the Court. The applicants can accordingly still claim to be "victims" of a breach of their right to a hearing within a reasonable time. Consequently, the Government's objections must be dismissed.

18. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

19. The applicants reaffirmed that the impugned proceedings had been unduly prolonged.

20. The Government did not comment as regards the merits of the application of the first applicant. As regards the second and third applicants, they accepted that the impugned proceedings had lasted unreasonably long.

2. The Court's assessment

21. 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 *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

22. The Court takes note of the Supreme Court's findings and the Government's acknowledgment that the impugned proceedings were

excessive and failed to meet the “reasonable time “ requirement and sees no reason to hold otherwise as it has frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues as the present one (see *Pakom Slobodan Dooel v. the former Yugoslav Republic of Macedonia*, no. 33262/03, § 23, 21 January 2010; *Docevski v. the former Yugoslav Republic of Macedonia*, no. 66907/01, § 28, 1 March 2007 and *Markoski v. the former Yugoslav Republic of Macedonia*, no. 22928/03, § 31, 2 November 2006). As regards the first applicant, the proceedings necessarily retained that character throughout the subsequent period that was not susceptible to the Supreme Court’s scrutiny.

23. In the light of the foregoing, the Court considers that there has been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

24. The second applicant further complained that there had been no effective remedy for the excessive length of proceedings. She relied on Article 13 of the Convention, which 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.”

A. Admissibility

25. The Government did not raise any objection as regards the admissibility of this complaint.

26. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

27. The Government submitted that the length remedy before the Supreme Court was to be regarded effective for the reasons detailed in the *Adži-Spirkoska and Others* case (see *Adži-Spirkoska and Others (dec.)*, cited above).

28. The second applicant did no comment.

29. The Court recalls that before the improvements, noted in the *Adži-Spirkoska and Others* case, had been made it did not accept the length remedy as effective. Consequently, it sees no reason to depart from its earlier case-law in which it found a violation of Article 13, taken in

conjunction with Article 6, due to lack of an effective remedy concerning length cases that pre-dated the *Adži-Spirkoska and Others* case (see *Krsto Nikolov v. the former Yugoslav Republic of Macedonia*, no. 13904/02, §§ 29-33, 23 October 2008).

30. In view of the above considerations, the Court concludes that there has been a breach of Article 13, taken in conjunction with Article 6 of the Convention.

III. OTHER ALLEGED VIOLATION OF THE CONVENTION

31. Lastly, the third applicant complained under Article 6 of the Convention that the domestic courts had erred as to the facts and law.

32. The Court has examined this complaint. However, in the light of all the material in its possession, and in so far as the matter complained of is within its competence, the Court finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

33. 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.

IV. 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 EUR 3,520 in respect of pecuniary damage. This sum concerned the judgment debt together with interest that was subject of enforcement in the impugned proceedings. It did not claim non-pecuniary damage.

36. The second applicant claimed EUR 2,500 in respect of pecuniary damage for medical expenses related to her poor health. She further claimed EUR 4,000 in respect of non-pecuniary damage for the emotional suffering due to “lack of subsistence funds”.

37. The third applicant claimed EUR 2,000 for non-pecuniary damage sustained due to the inordinate length of the proceedings.

38. The Government contested these claims as unsubstantiated. They also stated that there had been no causal link between the pecuniary damage claimed and the alleged violation.

39. The Court does not discern any causal link between the violation found and the pecuniary damage claimed by the first and second applicants; it therefore rejects this claim. On the other hand, it awards the second applicant EUR 3,700 and the third applicant, EUR 1,700 in respect of non-pecuniary damage, plus any tax that may be chargeable. In the absence of any such claim, the Court makes no award under this head in respect of the first applicant.

B. Costs and expenses

40. As regards the costs and expenses incurred in the proceedings before the Court, the first applicant claimed EUR 80 for the mailing and translation expenses. In support it submitted a copy of payment slips. The second applicant claimed, under this head, EUR 2,620, which included the lawyer's fees for 106 hours of legal work and expenses for mailing and copying. A fee note based on the scale rates of the Macedonian Bar was produced. No payment slip or other supporting document was provided for the mailing and copying expenses. The third applicant claimed EUR 300 under this head. She did not produce any supporting documents. Lastly, she claimed EUR 1,500 for the costs and expenses incurred in the labour proceedings (see paragraph 9 above).

41. The Government argued that the costs and expenses claimed by the applicants had been either unnecessarily incurred or had been excessive.

42. 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 *Gjozev v. the former Yugoslav Republic of Macedonia*, no. 14260/03, § 63, 19 June 2008). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers that the sum claimed by the first applicant in respect of costs and expenses incurred in the proceedings before it should be awarded in full, plus any tax that may be chargeable to it. It further finds the amount claimed by the second applicant under this head to be excessive and partly unsubstantiated, and awards instead the sum of EUR 1,000, plus any tax that may be chargeable to her (see *Spasovski v. the former Yugoslav Republic of Macedonia*, no. 45150/05, § 45, 10 June 2010). Lastly, it rejects the third applicant's claim under this head since she did not submit any supporting documents or particulars. It also makes no award in respect of her claim for the costs and expenses incurred in the domestic proceedings since they were not incurred in seeking the prevention and redress through the domestic legal order of the alleged violation complained of before the Court (see *Milošević v. the former Yugoslav Republic of Macedonia*, no. 15056/02, § 34, 20 April 2006).

C. Default interest

43. 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. *Decides* to join the applications;
2. *Declares* the length complaint in respect of all applications and the Article 13 complaint in respect of the second applicant admissible and the remainder of the applications 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* that there has been a violation of Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from 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 at the date of settlement:
 - (i) in respect of non-pecuniary damage:
 - (α) EUR 3,700 (three thousand and seven hundred euros), plus any tax that may be chargeable, in respect of the second applicant and
 - (β) EUR 1,700 (one thousand and seven hundred euros), plus any tax that may be chargeable, in respect of the third applicant;
 - (ii) in respect of costs and expenses:
 - (α) EUR 80 (eighty euros), plus any tax that may be chargeable to it, in respect of the first applicant;
 - (β) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to her, in respect of the second applicant to be paid into the bank account of the second applicant's representative;
 - (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 29 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President