



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

FIRST SECTION

**CASE OF NAUMOSKI v. THE FORMER YUGOSLAV REPUBLIC
OF MACEDONIA**

(Application no. 25248/05)

JUDGMENT

*This judgment was revised in accordance with Rule 80 of the Rules of the Court in
a judgment of 5 December 2013.*

STRASBOURG

27 November 2012

FINAL

14/04/2014

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

In the case of Naumoski v. the former Yugoslav Republic of Macedonia,

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

Isabelle Berro-Lefèvre, *President*,

Elisabeth Steiner,

Nina Vajić,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Linos-Alexandre Sicilianos,

Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 November 2012,

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

PROCEDURE

1. The case originated in an application (no. 25248/05) 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 a Macedonian national, Mr Velko Naumoski (“the applicant”), on 14 June 2004.

2. The Macedonian Government (“the Government”) were represented by their former Agent, Mrs R. Lazareska Gerovska, succeeded by Mr K. Bogdanov, who was appointed Agent in October 2011.

3. The applicant alleged, in particular, that the defendant’s observations submitted in reply to his appeals had not been communicated to him and that the impugned proceedings had been too long.

4. On 5 January 2011 these complaints were communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1948 and lives in Skopje.

7. The applicant worked as a teacher in a high school in Skopje. In December 2000 he was declared redundant and assigned to work partly in the school library, under threat of being dismissed if he did not comply with this decision. On 15 December 2000 the applicant signed an agreement, which specified his duties in the school library. Since the applicant failed to comply with the agreement, on 20 February 2001 the director of the school adopted another decision under which the applicant was assigned, again, to work in the school library. The applicant expressly refused to comply with that decision.

8. On 23 February 2001 the applicant was laid off for non-fulfilment of duties and failure to comply with working hours. On 7 March 2001 another decision was rendered, acknowledging that the applicant had abused the right to sick leave. On 29 March 2001 the school's board dismissed the applicant's objection to the decision of 23 February 2001 ("the dismissal decisions").

9. On 18 April 2001 the applicant brought a civil action before the Skopje Court of First Instance ("the first-instance court") seeking revocation of the dismissal decisions. He further sought that the defendant be ordered to launch redundancy proceedings (*постанка за прогласување на технолошки вишок*) and to pay him certain work-related allowances.

10. After three adjournments, on 28 September 2001 the first-instance court rendered a partial decision (*делумна пресуда*) dismissing the applicant's claim for revocation of the dismissal decisions and initiation of redundancy proceedings. Having regard to the facts of the case described above, the court found that the applicant's dismissal had been lawful and that the request for redundancy proceedings was outside the jurisdiction of the courts. The question of payment of certain work-related allowances was to be decided later. On 8 April 2002 the first-instance court rendered another decision, by which it rectified typographical error in its decision of 28 September 2001, namely the date of adoption of the dismissal decision.

11. On 13 December 2001 and 22 April 2002 respectively the applicant lodged two separate appeals against the first-instance court's decisions. The appeals were forwarded to the defendant on 25 January and 5 June 2002 respectively. On 12 February and 11 June 2002 respectively the defendant submitted two separate observations, the first regarding the first-instance court's decision of 28 September 2001, and the second regarding the rectifying decision of 8 April 2002, in which it summarised the relevant facts and requested that the Court of Appeal uphold the first-instance court's decision. It further consented to the court's decision to correct the technical errors made in its decision of 28 September 2001. Both submissions were forwarded to the Skopje Court of Appeal for consideration, but not to the applicant.

12. On 13 November 2002 the Skopje Court of Appeal dismissed the applicant's appeals and upheld the first-instance court's decisions.

Paraphrasing the version of events established as fact by the first-instance court, the Court of Appeal found no errors of fact or law. The court did not make any reference to the defendant's written observations submitted in reply to the applicant's appeals, apart from stating that:

"In the observations submitted in reply the defendant requested that the [applicant's] appeal be dismissed as ill-founded".

13. On 23 December 2002 the applicant lodged an appeal with the Supreme Court on points of law in which he complained, *inter alia*, about the first-instance court's failure to communicate to him the defendant's reply to his appeals.

14. By a decision of 27 March 2003, which was served on the applicant on 23 December 2003, the Supreme Court dismissed the applicant's appeal on points of law, finding no grounds to depart from the established facts and reasons given by the lower courts. It further stated:

"This court examined the other complaints raised in the appeal and finds that they do no constitute grounds for the court to make a different decision."

15. In the meantime, the proceedings before the first-instance court concerning the payment of allowances had continued (see paragraph 10 above). Nine hearings were fixed between 24 February 2004 and 7 November 2005 of which none was postponed at the request of the applicant. On the latter date, the first-instance court ruled partly in favour of the applicant ordering the defendant to pay some of the allowances claimed. On 22 June 2006 the Skopje Court of Appeal upheld this decision. The decision was served on the applicant on 15 July 2006.

16. On 12 August 2006 the applicant lodged an appeal on points of law, which the Supreme Court, by a decision of 23 January 2008, rejected as inadmissible. The court held that the claim concerned payment of pecuniary allowances to which the statutory threshold specified in section 368 (2) of the then valid Civil Proceedings Act (see paragraph 18 below) applied. It found that the applicant had not specified the claim value in the lawsuit and that the amount of court fees paid by him had corresponded to a claim value lower than the statutory threshold. On 29 February 2009 this decision was served on the applicant.

II. RELEVANT DOMESTIC LAW

17. Under section 345 of the Civil Proceedings Act of 1998 ("the 1998 Act"), the first-instance court communicated a copy of a timely, complete and admissible appeal to the opposing party. The latter could, within eight days from the service of the appeal, submit observations in reply. A copy of the observations was to be communicated to the appellant, without the right to reply to them. Belated observations were not to be rejected, but forwarded to the second-instance court for consideration, if possible. The

Civil Proceedings Act of 2005 provides for the same provision (section 348).

18. Section 368 (1) and (2) of the 1998 Act provided that parties concerned could lodge an appeal on points of law against a second-instance final decision within thirty days of service of that decision. An appeal would be inadmissible in a property-related dispute which concerned a pecuniary claim if the claim value of the dispute set out in the final judgment challenged by the appeal did not exceed 1,000,000 Macedonian denars (MKD).

19. Section 408 provided, *inter alia*, that the court should take into consideration the need to settle employment disputes as a matter of urgency.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

20. The applicant complained under Article 6 of the Convention that he had been denied the right to a fair trial since the defendant's observations in reply to his appeals had not been communicated to him, and since the courts had not considered his arguments and had decided solely on the basis of evidence submitted by the defendant. He further complained that they had not provided sufficient reasons for their decisions, that they had been biased and that the proceedings had not complied with the "reasonable time" requirement. 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 an independent and impartial tribunal established by law."

A. The non-communication to the applicant of the defendant's observations submitted in reply to the applicant's appeals

1. Admissibility

21. The Government did not raise any objection as to the admissibility of this complaint.

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

2. *Merits*

a) **The parties' submissions**

23. The applicant argued that due to a fault imputable solely to the domestic courts, he had been denied the opportunity to have knowledge of, and comment on, the defendant's submissions. The right to an adversarial trial had been violated by the mere fact that those observations had not been communicated to him.

24. The Government argued that the first-instance court had not been required to communicate to the applicant the observations of 12 February 2002, since they had been submitted beyond the statutory time-limit. The observations of 11 June 2002 had concerned the rectifying judgment and accordingly were irrelevant to the applicant's claim. Furthermore, the Court of Appeal's judgment of 13 November 2002 had not been based on the defendant's submissions.

b) **The Court's consideration**

25. The Court reiterates that the concept of a fair trial, of which the right to an adversarial trial is one aspect, implies the right of the parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations filed, with a view to influencing the court's decision (see *Lobo Machado v. Portugal*, 20 February 1996, § 31, *Reports of Judgments and Decisions* 1996-I and *Grozdanoski v. the former Yugoslav Republic of Macedonia*, no. 21510/03, § 36, 31 May 2007).

26. In the present case, the Court notes that the applicant's appeals of 13 December 2001 and 22 April 2002 were communicated to the defendant for comments. The latter, in reply, submitted observations on 12 February and 11 June 2002 respectively. The former concerned the applicant's appeal against the judgment of 28 September 2001. In those observations, the defendant referred to the relevant issues that the first-instance court had already established as fact and advocated that the appeal should be dismissed. The observations of 11 June 2002 concerned the rectifying judgment.

27. The defendant's observations were forwarded, together with the case file, to the Court of Appeal for consideration. The latter noted in its judgment that the defendant had claimed that the applicant's appeal be dismissed. Both submissions were not, however, communicated to the applicant.

28. The Court notes that under the relevant domestic law the applicant did not have the right to submit a further reply. It further observes that in any event he was denied the opportunity to get acquainted with the defendant's opinion. In this connection it is noteworthy that the Court of Appeal had full jurisdiction to examine the applicant's case as to the facts

and the law. Regard being had to what was at stake for the applicant in those proceedings the fact that it was impossible for him to obtain a copy of the defendant's observations before judgment was given infringed his right to adversarial proceedings. The problem resulted from the provisions of section 345 of the 1998 Act (see paragraph 17 above), which did not require that belated observations of the respondent party, which were included in the case file and submitted to the Court of Appeal for consideration, be served on the appellant (see paragraph 24 above).

29. Consequently, there has been a violation of Article 6 § 1 of the Convention.

B. The length of proceedings

1. Admissibility

30. The Government did not raise any objection as to the admissibility of this complaint.

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

2. Merits

a) The parties' submissions

32. The applicant reiterated his arguments that the length of the impugned proceedings had been excessive.

33. The Government submitted that the national courts had conducted the proceedings without major delays and adjournments. There had been no period of inactivity that could be attributed to them.

b) The Court's consideration

34. The Court notes that the proceedings started on 18 April 2001 and ended on 15 July 2006, when the Court of Appeal's decision was served on the applicant. The subsequent proceedings before the Supreme Court which ended by rejecting the applicant's appeal on points of law should not be taken into consideration, since they concerned a remedy which was not effective and should not therefore have been used (see *Kostovska v. the former Yugoslav Republic of Macedonia*, no. 44353/02, § 36, 15 June 2006 and *Kocarova v. the former Yugoslav Republic of Macedonia* (dec.), no. 37018/03, 13 November 2006). The proceedings therefore lasted about five years and three months at three levels of jurisdiction.

35. 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 applicant and the relevant authorities and what was at stake for the applicant in the dispute (see *Markoski v. the former Yugoslav Republic of Macedonia*, no. 22928/03, § 32, 2 November 2006).

36. The Court does not consider that the case required examination of complex issues.

37. It further finds that no delays were attributable to the applicant.

38. As regards the conduct of the domestic courts, the Court observes that the intervals between the decisions at different levels of jurisdiction were not unacceptably lengthy. However, it notes that the Court's jurisprudence (see *Ziberi v. the former Yugoslav Republic of Macedonia*, no. 27866/02, § 47, 5 July 2007) require employment-related disputes to be conducted with special diligence. In this connection it notes that after the partial decision, the proceedings before the first-instance court concerning the payment of work-related benefits laid dormant for nearly two years and five months (see paragraphs 10 and 15 above). During this time, the first-instance court took no action as regards the remainder of the applicant's claim. Furthermore, the Court notes that it took nearly nine months for the Supreme Court's decision of 27 March 2003 to be served on the applicant. This time cannot be regarded as reasonable (see paragraph 14 above). Having regard to what was at stake for the applicant, the Court concludes that the national courts did not display the requisite vigilance when deciding the applicant's case.

39. Having examined all the material submitted to it, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the reasonable-time requirement of Article 6 § 1 of the Convention.

40. There has accordingly been a breach of that provision.

C. Remaining complaints under Article 6 of the Convention

41. The applicant further complained under this head that the domestic courts had ignored his arguments, had been biased and had rendered decisions without giving any reasoning.

42. The Court has examined these complaints. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

44. The applicant also complained under Article 4 § 2 and Article 1 of Protocol No. 1 to the Convention. He further alleged violation of Article 13 of the Convention since the Supreme Court did not examine the merits of his appeal on points of law of 12 August 2006. Lastly, in submissions dated 23 August 2008, he complained that the courts' decisions given in his case violated his rights under Article 8 of the Convention.

45. The Court has examined these complaints. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed 18,250 euros (EUR) in compensation for non-pecuniary damage, for mental suffering related to the alleged violations.

49. The Government contested this claim as unsubstantiated. They stated that there was no causal link between the alleged violation and the damage claimed.

50. The Court considers that the applicant must have sustained some inconvenience as a result of the domestic courts' failure to communicate to him the defendant's submissions and the excessive length of the proceedings. However, the amount claimed by the applicant appears to be excessive. Making its assessment on an equitable basis, it awards him EUR 2,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

51. The applicant also claimed MKD 37,700 (approximately EUR 610) for costs and expenses incurred before the domestic courts and EUR 1,130 for those incurred before the Court. This latter figure included EUR 850 for legal fees and EUR 280 for copying, mailing and translating expenses. Evidence was provided for some of these latter costs.

52. The Government contested these claims as unsubstantiated and unnecessary in view of the alleged violations.

53. 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 *Kostovska*, cited above, § 62). The Court considers that some costs and expenses related to the proceedings before the domestic courts were undoubtedly expended with a view to their failure to forward to the applicant the defendant's observations submitted in reply to his appeals. However, in the absence of any supporting document the Court is unable to assess which costs were incurred in order to seek prevention or redress before the national courts of the violation found on that ground (see, *a contrario*, *Stoimenov v. the former Yugoslav Republic of Macedonia*, no. 17995/02, § 56, 5 April 2007). The same concerns the applicant's claim concerning the reimbursement of legal fees in respect of the proceedings before the Court. Accordingly, the Court makes no award in this respect (see *Petkoski and Others v. the former Yugoslav Republic of Macedonia*, no. 27736/03, § 56, 8 January 2009). On the other hand and in view of the supporting documents submitted, the Court awards EUR 120 for mailing and copying expenses incurred in the proceedings before it.

C. Default interest

54. 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. *Declares* the complaints concerning the non-communication to the applicant of the defendant's observations submitted in reply to the applicant's appeals and the length of the proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the domestic courts' failure to forward to the applicant the defendant's observations in reply to the applicant's appeals;
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 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 2,500 (two thousand and five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 120 (a hundred and twenty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses incurred in the proceedings before the Court;
 - (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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President