



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

FIRST SECTION

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

(Application no. 31154/07)

JUDGMENT

STRASBOURG

21 May 2015

FINAL

26/08/2015

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

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

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

Isabelle Berro, *President*,
Khanlar Hajiyeu,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 21 April 2015,

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

PROCEDURE

1. The case originated in an application (no. 31154/07) 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, Ms Ljubica Nikolova (“the applicant”), on 10 July 2007.

2. The applicant was represented by Mr K. Čadijev, a lawyer practising in Veles. The Macedonian Government (“the Government”) were represented by their Agent, Mr K. Bogdanov.

3. The applicant alleged, in particular, that the length of the impugned proceedings for determination of the amount of compensation for expropriated plot of land was in violation of Article 6 of the Convention.

4. On 10 April 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1931 and lives in Veles.

6. The applicant was the owner of a plot of undeveloped land, the total surface area of which was 558 sq. m (“the land”). On 30 June 1987 the Council of the Municipality of Kavadarci (“the Municipality”) expropriated the land. As stated in the expropriation order, the expropriation was carried

out for the benefit of the Municipality and in the interest of the then socially owned company K. (*во корист на општина Кавадарци, а за потребите на ООЗТ „К.“*) in order to construct a storehouse (*стопариште*).

A. The first set of non-contentious proceedings for determination of the amount of compensation for the expropriated land

7. On 25 July 1989 the Municipality requested, in non-contentious proceedings, that the Kavadarci Court of First Instance (“the first-instance court”) determine the amount of compensation to be paid to the applicant. The request was submitted after the parties (the applicant and the Municipality) had failed to reach an agreement on the issue.

8. On 20 August 1997 the first-instance court ordered the State to pay the applicant the equivalent of 11,500 euros (EUR) in compensation for the land. On 23 April 1998 the Skopje Court of Appeal quashed that judgment and remitted the case for fresh consideration because of substantial procedural flaws.

9. On 29 December 1999 the first-instance court awarded the applicant the equivalent of EUR 8,000 in compensation for the expropriated land (558 sq. m). It ordered that the compensation was to be paid by a company, M.K., the successor to the company K., and by the State. The former was ordered to pay compensation for the part of the land it had used, and the latter to pay compensation for the remainder, which had been reserved for the construction of a public road. The court further dismissed the claim against the Municipality, finding that it had no requisite standing to be sued (*недостаток на пасивна легитимација*). On 20 April 2000 the Skopje Court of Appeal allowed the appeals lodged by the State and the company M.K. and remitted the case for renewed examination. It held that insolvency proceedings were pending against the company M.K. and that any claims should be established in those proceedings. It further found that the lower court had incorrectly established that the State should pay compensation.

10. On 11 December 2001 the first-instance court ordered that the Municipality was to pay compensation, which amount was set at approximately EUR 9,000, since the 1987 expropriation order had identified it as the beneficiary of the expropriation. It dismissed the claim as regards the State and the company M.K. for lack of requisite standing to be sued. On 27 February 2003 that judgment was quashed by the Skopje Court of Appeal, which held that, *inter alia*, the lower court had not identified the final beneficiary of the land.

11. On 27 May 2004 the first-instance court held that the company M.K.2000, the legal successor of the company M.K., and the Public Road Fund (*Фонд за магистрални и регионални патишта Скопје*), should pay compensation in an amount equivalent to approximately EUR 8,650, which corresponded to the market value of the land. It dismissed the claim as

regards the State and the Municipality for lack of requisite standing to be sued in the proceedings. It further held that each party to the proceedings should pay their own costs.

12. On 16 November 2005 the Skopje Court of Appeal upheld the lower court's judgment, with the exception of the costs, which matter was remitted for fresh consideration.

13. On 10 February 2006 the first-instance court ordered the company M.K.2000 and the Public Road Fund to pay the trial costs incurred by the applicant.

14. On 25 April 2007 the Supreme Court accepted a legality review request (*барање за заштита на законитоста*) in which the public prosecutor complained about the lower courts' judgments. The Supreme Court overturned the first- and second-instance courts' judgments and dismissed the order for compensation to be paid to the applicant. The court held that the company M.K.2000 and the Public Road Fund could not be held responsible for the payment of any compensation for the land expropriated in the interest of the company K., which had ceased to exist. The land had been State-owned developed land. The company M.K.2000 and the Public Road Fund did not therefore have the requisite standing to be sued in the proceedings.

B. The second set of non-contentious proceedings for determination of the amount of compensation for the expropriated land

15. On 2 July 2007 the applicant lodged a request with the first-instance court against the Municipality, seeking determination of the amount of compensation for the land.

16. On 11 September 2007 the first-instance court held that the Municipality should pay compensation to the applicant for 558 sq.m of land in the amount equivalent to approximately EUR 8,650.

17. On 17 October 2007 the Municipality appealed against the first-instance court's decision. The applicant lodged observations in reply claiming that the compensation had been correctly set and that the Municipality's appeal should be dismissed.

18. On 25 January 2008 the Skopje Court of Appeal dismissed the Municipality's appeal and upheld the first-instance court's decision. On 31 March 2009 the Supreme Court rejected as inadmissible the Municipality's appeal on points of law.

II. RELEVANT DOMESTIC LAW

A. Expropriation Act (Official Gazette 33/95 with the subsequent amendments)

19. Section 24 of the Expropriation Act foresaw that a land or a pecuniary award shall be given in compensation of an expropriated plot of land.

B. Non-contentious Proceedings Act (Official Gazette 19/79)

20. Sections 238-247 of the Non-contentious Proceedings Act regulated the court proceedings for determination of the amount of compensation to be given in case of expropriation. According to section 242, these proceedings are urgent.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 OF THE CONVENTION

21. In the application form the applicant complained that she was not awarded compensation for her expropriated land in violation of Article 1 of Protocol No. 1 of the Convention, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

22. In their observations, the Government informed about the second set of proceedings. They submitted that the applicant had abused the right to individual petition because she had not informed the Court about the second set that she had initiated eight days before the introduction of her application to the Court. They further argued that the applicant had not appealed against the first-instance court’s decision of 11 September 2007 and that she had explicitly accepted the amount of compensation awarded to her (see paragraph 17 above). Accordingly, she had lost her victim status in respect to her complaint under Article 1 of Protocol No. 1.

23. The applicant replied that she had not been legally represented when she had applied to the Court and that she had not been familiar with the Court's procedural rules. She also argued that she had had no intention of concealing the second set of proceedings and that her property right had been violated given the time it had taken for the domestic courts to award her compensation.

24. The Court reiterates that according to Rule 47 § 6 of the Rules of Court, applicants must keep the Court informed of all circumstances relevant to their application and that incomplete and therefore misleading information may also amount to abuse of the right of application, especially if the information concerns the very core of the case (see *Červeňáková v. Czech Republic* (dec.), no. 26852/09, §§ 25-27, 23 October 2012, *Lukarev v. the former Yugoslav Republic of Macedonia* (dec.), no. 3172/07, ECHR 15 January 2013). In the present case, however, the Court does not find that the applicant, in the circumstances, acted in such a manner that this would amount to an abuse of the right of petition. Thus, it rejects the Government's objection in this respect.

25. As regards the complaint under Article 1 of Protocol No. 1 the Court reiterates that in the second set of proceedings, the applicant was awarded compensation for her land, the amount of which, as the Government argued, she had not contested. Accordingly, the Court concludes that the applicant can no longer claim to be a victim of the alleged violation of Article 1 of Protocol No. 1.

26. It therefore follows that this part of the application should be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

27. The applicant complained of a violation of the "reasonable-time" requirement under Article 6 of the Convention, which, in so far as relevant, 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

28. The Government did not raise any objection as regards the admissibility of this complaint. They further accepted that the length of the proceedings had not complied with the "reasonable-time" requirement.

29. The Court concludes 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.

B. Merits

30. The Court notes that the proceedings started in July 1989 and eventually came to an end in March 2009. The proceedings therefore lasted nearly twenty years at three levels of jurisdiction, of which twelve years fall within the Court's temporal jurisdiction (after 10 April 1997, the date of ratification of the Convention by the respondent State).

31. Having regard to the criteria laid down in the Court's case-law for assessing the reasonable time requirement contained in Article 6 § 1 of the Convention, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, as well as what was at stake for the applicant (see, among many other authorities, *Philis v. Greece* (no. 2), judgment of 27 June 1997, Reports 1997-IV, § 35; *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; and *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, ECHR 2000-IV), the Court considers that the proceedings were unduly prolonged, for which the respondent State bears sole responsibility.

32. There has accordingly been a violation of Article 6 of the Convention as regards the length of the non-contentious proceedings for determination of the amount of compensation.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed EUR 50,000 for the non-pecuniary damage suffered in respect of the length of the proceedings.

35. The Government contested this claim as excessive and unsubstantiated.

36. The Court considers that the applicant must have sustained non-pecuniary damage, which cannot be compensated solely by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,600 under this head, plus any tax that may be chargeable.

B. Costs and expenses

37. The applicant did not specify any claim for costs and expenses.

38. Accordingly, the Court considers that there is no call to award her any sum on that account.

C. Default interest

39. 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,

1. *Declares* the length complaint under Article 6 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention in respect of the length of the proceedings;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the amount of EUR 3,600, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 May 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro
President