



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

FIRST SECTION

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

(Application no. 30721/15)

JUDGMENT

STRASBOURG

22 June 2017

FINAL

22/09/2017

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

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

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

Linós-Alexandre Sicilianos, *President*,

Kristina Pardalos,

Aleš Pejchal,

Ksenija Turković,

Armen Harutyunyan,

Pauliine Koskelo,

Tim Eicke, *judges*,

and Abel Campos, *Section Registrar*,

Having deliberated in private on 30 May 2017,

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

PROCEDURE

1. The case originated in an application (no. 30721/15) 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 and Serbian national, Mr Dušan Petrović (“the applicant”), on 18 June 2015.

2. The applicant was represented by Mr A. Bosijoković, a lawyer practising in Belgrade. The applicant died on 29 March 2016. His sons, Mr Žika Petrović and Mr Aleksandar Petrović, applied to continue the application in his name and designated the same counsel to represent them. The Macedonian Government were represented by their Agent, Mr K. Bogdanov.

3. Jovan Ilievski, the judge elected in respect of the former Yugoslav Republic of Macedonia, was unable to sit in the case (Rule 28). On 6 April 2017 the President of the Chamber decided to appoint Pauliine Koskelo to sit as an *ad hoc* judge (Rule 29 § 2 (a)).

4. On 25 August 2015 the complaints concerning the length of proceedings and the lack of an effective remedy in that regard were communicated to the respondent Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court. It was also decided that priority should be granted to the application under Rule 41 of the Rules of Court.

5. The Serbian Government did not make use of their right to intervene in the proceedings (Article 36 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Restitution proceedings

6. On 11 December 2002 the applicant instituted proceedings for restitution of a hotel in Skopje which had been confiscated from his predecessor in 1948. On 7 June 2004 a commission responsible for such matters within the Ministry of Finance dismissed the applicant's claim. On 27 July 2004 he appealed. On 16 November 2004 a second-instance commission set up within the Government dismissed his appeal. Subsequently, the case went back and forth several times between the administrative bodies and courts at two levels of jurisdiction. The proceedings are currently pending before the Higher Administrative Court, awaiting a decision on an appeal by the applicant of 26 January 2016 against a judgment of the Administrative Court.

B. Proceedings in which the applicant complained about the length of the restitution proceedings ("length proceedings")

7. On 3 July 2014 the applicant applied to the Supreme Court for a ruling that the length of the restitution proceedings had been excessive, to award him compensation and set a three-month time-limit for the court dealing with his case to decide on his restitution claim.

8. By letters dispatched between 8 July 2014 (received on 3 September 2014) and 20 January 2015, the Supreme Court requested the case file from the Administrative Court. The case file, which was with the administrative bodies, was forwarded to the Supreme Court on 13 February 2015.

9. On 28 April 2015 the first-instance panel of the Supreme Court found that the relevant period to be taken into consideration had started to run on 16 November 2004 (see paragraph 6 above). It further established that the case had not been complex and that there had been no delays attributable to the applicant. It concluded that there had been a violation of the applicant's right to a hearing within a reasonable time and awarded him the equivalent of 810 euros (EUR) in compensation.

10. By a letter of 3 June 2015 (received on 10 August 2015), the Supreme Court asked the Ministry of Justice to provide assistance in delivering its decision because the applicant lived in Serbia. Between 25 August and 21 December 2015, the Ministry of Justice of the respondent State asked, on three occasions, that the relevant Ministry in Serbia serve the Supreme Court's decision on the applicant. By a letter of 28 December 2015 (received on 10 March 2016), the Ministry of Justice of Serbia

informed the relevant Ministry of the respondent State about the date of service of the Supreme Court's decision to the applicant.

11. In an appeal against the Supreme Court's decision of 28 April 2015, the applicant complained that it had taken too long for that court to decide on his application. He referred to section 36(4) of the Courts Act, which required the Supreme Court to decide on a length of proceedings remedy within six months (see paragraph 14 below). He also complained that the amount of compensation awarded to him had been too low.

12. On 21 March 2016 the second-instance panel of the Supreme Court ruled partly in favour of the applicant. It endorsed the findings of the first-instance panel regarding the complexity of the case and that no delays were attributable to the applicant, found that the proceedings had lasted for ten years, five months and twelve days and set compensation at the equivalent of EUR 1,050.

II. RELEVANT DOMESTIC LAW

13. Under section 35(6) of the Courts Act (*Закон за судовите*), the Supreme Court is competent to decide on length complaints in proceedings specified by law and in accordance with the rules and principles set out in the European Convention and the Court's case-law.

14. Section 36(4) provides that the Supreme Court decides a length complaint within six months of it being lodged. If it finds a violation of the right to a hearing within a reasonable time, it can set a time-limit for a decision by the court where the impugned proceedings are still pending and award under section 36(5) compensation for the violation.

THE LAW

I. PRELIMINARY ISSUE

15. The Court notes that the applicant has died and that his heirs applied to continue the application in his name. When, as in the present case, a person claiming to be the victim of a violation of one of his or her own rights under the Convention lodges an application with the Court, that person makes a personal and clear choice to exercise his or her personal right of individual application under Article 34 of the Convention and, thus, to activate the jurisdiction of the Court. According to the Court's case-law, even in cases where the applicant dies after lodging his or her application, the Court may be called upon to determine whether, as alleged by the deceased applicant in his or her application, the Contracting State violated his or her rights, when the heirs of the deceased applicant have expressed

their wish to continue the proceedings or when the Court considers it appropriate to continue the examination of the application under Article 37 § 1 in fine of the Convention. In such cases, the decisive point is not whether or not the rights in question are transferable to the heirs wishing to pursue the procedure, but whether the heirs can in principle claim a legitimate interest in requesting the Court to deal with the case on the basis of the applicant's wish to exercise his or her individual and personal right to lodge an application with the Court (see *Singh and Others v. Greece*, no. 60041/13, § 26, 19 January 2017 and *Ergezen v. Turkey*, no. 73359/10, § 29, 8 April 2014).

16. In the circumstances of the present case, the Court considers that the sons of the applicant, as his next of kin, have a legitimate interest in pursuing the application on his behalf. Accordingly, it accepts that they have the requisite *locus standi* under Article 34 of the Convention in respect of the applicant's complaint about the length of the proceedings (see *Stojkovic v. the former Yugoslav Republic of Macedonia*, no. 14818/02, § 26, 8 November 2007).

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

17. The applicant complained that the length of the restitution 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*

18. The Government submitted that the Supreme Court's decision of 21 March 2016 meant the applicant could no longer claim to be a victim of a violation under Article 34 of the Convention. That was because the amount of compensation awarded to him had provided adequate and sufficient redress for the alleged violation of the "reasonable time" requirement.

19. The applicant contested the Government's arguments.

2. *The Court's assessment*

20. The Court observes that the applicant's "victim" status within the meaning of the Convention depends on whether the redress afforded to him 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).

21. In the present case, the Supreme Court, after acknowledging that there had been a violation of the “reasonable time” requirement in the restitution proceedings complained of, awarded the applicant the equivalent of EUR 1,050 in compensation. It did not set a time-limit for the court in question to decide on the applicant’s restitution claim. The amount covered the period between 16 November 2004 and 28 April 2015, when the first-instance panel of the Supreme Court had rendered its decision. The Court recalls that according to established case-law, the reasonable time in civil matters may begin to run, in some circumstances, even before the dispute is submitted for adjudication by a court, namely where a court cannot be seized without prior recourse to a remedy before a non-judicial organ (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 65, ECHR 2007-II; *Janssen v. Germany*, no. 23959/94, § 40, 20 December 2001; and *Božić v. Croatia*, no. 22457/02, § 26, 29 June 2006). The Court therefore considers that in the present case, the time to be taken into account began on 27 July 2004, when the applicant brought an appeal before the appeals commission against the decision by which his restitution claim had been dismissed (see § 6 above). As regards the level of the compensation awarded on non-pecuniary grounds, the Court notes that the amount is approximately 35% of what the Court generally awards for non-pecuniary damage in similar cases against the respondent State. The Court thus finds that the compensation awarded to the applicant by the domestic court is manifestly inadequate having regard to what the Court would have been likely to award the applicant under Article 41 of the Convention in respect of non-pecuniary damage. The award therefore cannot be regarded as sufficient in the circumstances of the case to remove the applicant’s “victim” status under Article 34 of the Convention (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 202, ECHR 2006-V). Consequently, the Government’s objection must be dismissed.

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

B. Merits

1. The parties’ submissions

23. The applicant reiterated that the restitution proceedings had been too long and, moreover, had not yet finished.

24. The Government accepted that the impugned proceedings had lasted for an unreasonably long time.

2. *The Court's assessment*

25. 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).

26. It takes note of the Supreme Court's findings and the Government's acknowledgment that the length of the impugned proceedings was excessive and failed to meet the "reasonable time" requirement. It sees no reason to hold otherwise as it has frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues (see *Mitkova v. the former Yugoslav Republic of Macedonia*, no. 48386/09, § 51, 15 October 2015). The proceedings necessarily retained that character throughout the subsequent period that was not susceptible to the Supreme Court's scrutiny.

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

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

28. The applicant complained that he had not had an effective remedy for the undue length of the restitution proceedings because it had taken too long for the Supreme Court to decide on his length complaint. The Court, being the master of the characterisation to be given in law to the facts of a case (see *Tarakhel v. Switzerland* [GC], no. 29217/12, § 55, ECHR 2014 (extracts)), considers that the applicant's submissions should be analysed under 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. *The parties' submissions*

29. The Government argued that the length complaint procedure set out in the Courts Act was an effective remedy as it had already been recognised as such by the Court. They submitted that the Supreme Court had decided on the applicant's complaint in good time and that any delays regarding the transfer of the case file or the delivery of its decision could not be attributed to the national courts.

30. The applicant maintained that his length complaint had not been decided within the six-month time-limit specified in section 36(4) of the Courts Act. For that reason, and given the fact that his claim in the restitution proceedings had still not been decided, despite the Supreme

Court's finding, the applicant submitted that the length complaint procedure had not been effective in his case.

B. The Court's assessment

31. The relevant Convention principles have been summarised in the Court's judgment in the case of *Dimitrov and Hamanov* (see *Dimitrov and Hamanov v. Bulgaria*, nos. 48059/06 and 2708/09, § 90, 10 May 2011).

32. The Court notes that it has already found that a length complaint under section 35(6) of the Courts Act represents an effective remedy as regards the length of proceedings (see *Adži-Spirkoska and others v. the former Yugoslav Republic of Macedonia* (dec.), nos. 38914/05 and 17879/05, 3 November 2011). In so far as the applicant's submissions mentioned in paragraph 30 above may be understood to concern the acceleratory aspect of the remedy, the Court notes that he did not properly challenge that aspect before the domestic courts as he failed to raise it in his appeal against the decision of the first-instance panel of the Supreme Court (see paragraph 11 above). Therefore, the Court will not assess the impact of the length remedy on the pending restitution proceedings for the purposes of the Article 13 complaint (see, *mutatis mutandis*, *Golha v. the Czech Republic*, no. 7051/06, § 72, 26 May 2011).

33. As to the duration of the length complaint proceedings before the Supreme Court, the Court reiterates that particular attention should be paid to the speediness of the remedial action, it not being excluded that an otherwise adequate remedy could be undermined by its excessive duration (see *McFarlane v. Ireland* [GC], no. 31333/06, § 123, 10 September 2010). The Court notes that the proceedings related to the applicant's complaint about the length of the restitution proceedings started on 3 July 2014 and ended on 21 March 2016. Accordingly, they lasted one year, eight months and eighteen days at two levels of jurisdiction (see paragraphs 7 and 12 above). The Court takes note of the delays related to the transfer of the case file (see paragraph 8 above) and the exchange between the Supreme Court and the Ministry of Justice of the respondent State, on the one hand, and between the Macedonian and Serbian Ministries, on the other (see paragraph 10 above), which affected the duration of the proceedings before that court. Although the overall duration of the proceedings related to the applicant's length complaint exceeded the statutory six-month period prescribed by section 36(4) of the Courts Act (see paragraph 14 above), the Court does not consider that in the circumstances of the case such a period of time was incompatible with the requirement of speediness (see *CE.DI.SA Fortore S.N.C. Diagnostica Medica Chirurgica v. Italy*, nos. 41107/02 and 22405/03, § 39, 27 September 2011, in which the Court stated that, in principle, such proceedings should not exceed two years for two court instances, and in contrast, *Vidas v. Croatia*, no. 40383/04, § 37,

3 July 2008, where proceedings before the Constitutional Court about a length complaint lasted over three years at one level of jurisdiction).

34. The Court is therefore of the view that the duration of the length proceedings before the Supreme Court in the present case did not render the remedy under the Courts Act incompatible with Article 13 of the Convention.

35. Accordingly, 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

36. 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

1. *Pecuniary damage*

37. The applicant claimed 70,200 euros (EUR) in respect of pecuniary damage. The figure concerned loss of income from not being able to rent out the property that was the subject of his restitution claim.

38. The Government contested the claim as unsubstantiated and excessive. They further submitted that there was no causal link between the damage claimed and the alleged violations.

39. The Court notes that the applicant’s claim under this head concerns rent that he would allegedly have obtained from the property that was the subject of his restitution claim. In the Court’s view, an examination of such a claim presupposes that the applicant obtained, on the basis of a final and irrevocable judgment, a title to the property in question and that there is a causal link between the excessive length of the restitution proceedings and the damage claimed. The Court notes that none of these conditions are met in the present case; it therefore rejects the claim under this head.

2. *Non-pecuniary damage*

40. The applicant did not claim any non-pecuniary damages for the inordinate length of the restitution proceedings (see, conversely, *Ogražden Ad and Others v. the former Yugoslav Republic of Macedonia*, nos. 35630/04 and 2 others, §§ 36 and 37, 29 May 2012).

41. For this reason, notwithstanding its findings that the restitution proceedings did not comply with the “reasonable time” requirement (see paragraph 27 above), the Court makes no award under this head (see *Dika*

v. the former Yugoslav Republic of Macedonia, no. 13270/02, § 65, 31 May 2007).

B. Costs and expenses

42. The applicant also claimed EUR 3,000 for the costs and expenses incurred in the restitution and length proceedings. He neither provided a breakdown of this figure nor submitted any supporting documents. He also claimed EUR 1,000 for legal fees for his representation before the Court.

43. The Government contested the claims as unsubstantiated and excessive.

44. 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 *Spasovski v. the former Yugoslav Republic of Macedonia*, no. 45150/05, § 45, 10 June 2010). The Court makes no award in respect of the applicant's claim for the costs and expenses incurred in the restitution proceedings since they were not incurred in the domestic legal process in seeking the prevention of and redress for the alleged violation complained of before the Court (see *Milošević v. the former Yugoslav Republic of Macedonia*, no. 15056/02, § 34, 20 April 2006). As to his claim regarding costs and expenses related to the length of proceedings before the Supreme Court and to the proceedings before the Court, it notes that the applicant did not submit any supporting documents or particulars. In such circumstances, the Court makes no award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the length of the restitution proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 June 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Linos-Alexandre Sicilianos
President