



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

FIRST SECTION

CASE OF ADILOVSKA v. NORTH MACEDONIA

(Application no. 42895/14)

JUDGMENT

Art 6 § 1 (civil) • Access to court • Examination of applicant's property claim on the merits made conditional on participation of all numerous potential heirs of his late father • Disproportionate burden

STRASBOURG

23 January 2020

FINAL

22/06/2020

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

In the case of Adilovska v. North Macedonia,

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

Ksenija Turković, *President*,

Krzysztof Wojtyczek,

Aleš Pejchal,

Pauliine Koskelo,

Tim Eicke,

Jovan Ilievski,

Raffaele Sabato, *judges*,

and Abel Campos, *Section Registrar*,

Having deliberated in private on 17 December 2019,

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

PROCEDURE

1. The case originated in an application (no. 42895/14) against the Republic of North 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/citizen of the Republic of North Macedonia, Ms Ajše Adilovska (“the applicant”), on 3 June 2014.

2. The applicant was represented by Ms N. Dimitrova, a lawyer practising in Skopje. The Government of North Macedonia (“the Government”) were represented by their former Agent, Mr K. Bogdanov, and then by their current Agent, Ms D. Djonova.

3. The applicant complained that her civil claim had not been examined on the merits owing to the domestic courts’ finding that she had lacked standing to sue. She relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

4. On 24 August 2016 notice of the application was given to the Government.

5. On 1 June 2018 the President of the Section decided, in accordance with Rule 38 § 1 of the Rules of Court, to admit the applicant’s belated observations of 4 April 2018 to the file.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1963 and lives in Skopje.

7. On 27 May 2004 the applicant, through her lawyer, lodged a claim against N.S. for establishment of title to a plot of land that the applicant's late father (Ib.O., who died in 1994) had allegedly bought from his brother (the opponent's late father-in-law) in about 1965. Soon thereafter, the applicant's two sisters joined the proceedings as co-claimants.

8. After one remittal, on 22 March 2011 the applicant amended her claim, seeking in addition the annulment of a sale contract for the plot of land in issue, concluded in 2010 between N.S., as the seller, and I.O. and B.O., as the buyers. She also sought an injunction preventing any disposal of the property in dispute.

9. On 19 March 2012 the Skopje Court of First Instance (*Основен суд Скопје* – “the first-instance court”) granted the applicant's claim, declared the sale contract null and void, and established title to the plot of land in favour of the applicant and her sisters. No decision was made on the applicant's application for an injunction.

10. At a public hearing held on 4 October 2013, the Skopje Court of Appeal (*Апелационен суд Скопје* – “the Court of Appeal”) overturned the first-instance judgment and dismissed the applicant's claim. It established that Ib.O. had eight children from his two marriages; they included the three claimants, but also the father of the second and third defendants (I.O. and B.O.) in the proceedings, and four other heirs who were not among the claimants. Since the civil action lodged by the applicant and her two sisters had only three of Ib.O.'s legal heirs (*законски наследници*) on the side of the claimants, the court considered that the applicant and her sisters did not have full legal standing in the proceedings (*нема целосна активна легитимација*) to claim recognition of title to the entire plot of land, and that they consequently had no legal interest (*немаат правен интерес*) to seek that the impugned sale contract be declared null and void. The court did not take into consideration the arguments raised by the applicant's lawyer at the hearing to the effect that the other heirs, although aware of the proceedings, had expressed no intention to join the proceedings. That was also corroborated by B.O., Ib.O.'s son, who gave an oral statement on that account before the first-instance court.

11. The applicant received a copy of that judgment on 16 December 2013.

II. RELEVANT DOMESTIC LAW AND PRACTICE

Relevant domestic law

1. *Ownership and Other Property Rights Act of 2001* (Закон за сопственост и други стварни права, *Official Gazette nos. 18/2001, 92/2008, 139/2009, 35/2010*)

12. Under section 31(3) of this Act, there is a presumption of equal individual shares for the co-owners (*сосопственички делови*) when their individual shares of an undivided object have not been determined.

2. *Inheritance Act of 1996* (Закон за наследувањето, *Official Gazette no. 47/1996*)

13. Section 13 of this Act provides that the deceased's children and spouse, forming the first line of succession (*прв наследен ред*), are to inherit equal portions of his or her estate (*оставина*).

3. *Civil Proceedings Act of 1998 (with subsequent amendments)*

14. According to section 2 of this Act the domestic courts shall decide within the limit of the claims as put forward by the parties. Sections 143, 314, 380, 381 and 422 stipulate various procedural rules which apply in cases when domestic courts partially uphold a claim.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

15. The applicant complained that her civil action had been dismissed by the domestic courts, without examination on the merits, for lack of standing in the proceedings, contrary to the relevant domestic law and practice. She relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention. These Articles, in so far as relevant, read as follows:

Article 6

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ...”

Article 1 of Protocol No. 1

“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.”

A. Admissibility

1. Alleged lack of interest of the applicant in pursuing her case

16. The Government asked the Court to strike the application out of the list of cases, arguing that the applicant had lost interest in her case in view of the fact that she had refused to settle the case and had failed to submit her observations within the set time-limit.

17. The Court notes that accepting the terms of a friendly settlement is the applicant’s right rather than an obligation, and a refusal of such a proposal cannot, by itself, be construed as a lack of intention to pursue the application (see *Fedotova v. Russia*, no. 73225/01, § 26, 13 April 2006). It further notes the President’s decision admitting the applicant’s belated observations to the file (see paragraph 5 above).

18. In view of the above, the Court is of the opinion that the Government’s request must be rejected since the applicant clearly indicated her wish to pursue her application before the Court (see, by contrast, *Skerlevska v. the former Yugoslav Republic of Macedonia* (dec.), no. 54372/15, 25 September 2018).

2. Incompatibility ratione personae

19. The Government objected that the application was incompatible *ratione personae* with the provisions of the Convention owing to the finding in the domestic proceedings that the applicant had lacked standing to sue.

20. The applicant contested that objection.

21. The Court considers that the Government’s objection is closely linked to the substance of the applicant’s complaints and that it should therefore be joined to the merits.

3. Non-exhaustion of domestic remedies

22. The Government submitted that the applicant’s complaint under Article 1 of Protocol No. 1 was inadmissible for failure to exhaust domestic remedies because she had failed to seek an injunction in 2004, when she had lodged her civil action, but had only availed herself of that opportunity in 2011 (see paragraph 8 above). By applying only belatedly for an injunction, the applicant had deprived herself of an effective legal remedy for the protection of her property rights.

23. The applicant contested that objection.

24. The Court recalls the relevant Convention principles as summarised in the case of *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

25. In the circumstances of the present case, the Court is of the opinion that the application for an injunction was not determinative for the applicant's civil action. In the absence of any arguments to the contrary, there is nothing to suggest that the civil proceedings in question were not an adequate avenue for the protection of any rights the applicant claimed to have. Furthermore, the Court reiterates that when a remedy has been attempted, use of another remedy which has essentially the same objective is not required (see, among others, *Moreira Barbosa v. Portugal* (dec.), no. 65681/01, ECHR 2004-V (extracts) and *Syngelidis v. Greece*, no. 24895/07, § 32, 11 February 2010).

26. It follows that the Government's objection of non-exhaustion of domestic remedies should be dismissed.

4. Conclusion

27. The Court notes that the application 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.

B. Merits

1. Complaint under Article 6 § 1

28. The applicant argued that she had been entitled to initiate court proceedings and that it had been unreasonable to make her standing before the domestic courts conditional on the participation of all her late father's potential heirs since no one could be compelled to join a civil action as a claimant. Moreover, under the relevant domestic law, each co-owner could have recourse to court proceedings for protection of the entire property in respect of third parties. The domestic courts should have established the relevant facts and decided on the merits of her claim by granting the claim either in its entirety or only in part, depending on the assessment of the individual shares of the parties forming the legal community. Other legal heirs who had not participated in the proceedings were entitled to assert their rights against her and the other claimants in separate proceedings.

29. The Government submitted that the participation of all the legal heirs had been necessary in the proceedings, considering the statutory presumption of equal shares for the co-owners (see paragraph 12 above). They further argued that the issue of a party's standing was a matter of substantive law arising from the established relationship between the parties

and the subject matter of the dispute and should be judged on the basis of the individual facts of the case. Since the Court of Appeal had established that not all the potential legal heirs of the applicant's late father had joined the proceedings on the claimants' side, the applicant's civil action could not be examined on the merits. This interpretation of the procedural rules had sought to protect the heirs who had not taken part in the proceedings and whose rights could be affected. It would have been too burdensome and contrary to the principle of procedural efficiency to expect the other potential heirs to initiate separate proceedings against the applicant and her sisters.

30. The applicable general principles concerning the right of access to a court have been summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-79, 5 April 2018).

31. In the instant case the applicant's civil action was granted by the first-instance court. However, that judgment was overturned by the Court of Appeal and the applicant's claim was dismissed for lack of standing to sue since she and her two sisters had not been the only legal heirs of their late father, who also had other children (see paragraph 10 above). As a result, the applicant's civil action was dismissed on purely procedural grounds.

32. The Court considers that what is at stake in the present case is a procedural obstacle relating to the applicant's legal standing that prevented the domestic courts from examining the merits of her claim, and not a substantive limitation on a right existing under domestic law (see, by contrast, *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 99, 29 November 2016). Accordingly, the Court will examine whether the Court of Appeal's refusal to determine the substance of the applicant's civil claim unjustifiably restricted her right of access to a court (see, *mutatis mutandis*, *Centre for the Development of Analytical Psychology v. the former Yugoslav Republic of Macedonia*, nos. 29545/10 and 32961/10, § 45, 15 June 2017).

33. In so doing, it will examine whether by requiring the participation of all potential heirs of the applicant's late father, the courts imposed a disproportionate burden on the applicant, upsetting the fair balance between the legitimate concern to protect the rights of all the potential heirs (see *Lupaş and Others v. Romania*, nos. 1434/02 and 2 others, § 69, ECHR 2006-XV (extracts)) and the applicant's right of access to a court.

34. The Court observes that the issue concerning the applicant's standing first arose during the hearing held before the Court of Appeal, which was when the applicant's lawyer stated that the other potential legal heirs to her late father had expressed no intention to join the proceedings. These arguments, which were corroborated by witness testimony, were not considered by the Court of Appeal (see paragraph 10 above).

35. In the Court's opinion, by making the examination of the applicant's action on the merits conditional on the participation of all potential legal

heirs, who were numerous and involved close relatives (father and sons) who should have appeared on opposite sides, the Court of Appeal imposed a disproportionate burden on the applicant in her attempt to secure the determination of her civil claim. Moreover, it was not brought to the Court's attention that this interpretation was the subject of a well-established domestic practice (see, by contrast, *Lupaş and Others*, cited above, § 69). On the contrary, according to domestic law a possibility for a court to uphold a claim only in part, and dismiss the remainder clearly existed (see paragraph 14 above).

36. The Court further notes that both parties argued that it had been open to any of the heirs who had not participated in the proceedings to assert their property claims in separate proceedings, should the applicant and her sisters have been successful in their civil action. In such circumstances, any arguments of procedural efficiency cannot outweigh the applicant's right to have the courts determine her civil claim. In this respect the Court would lastly note that this finding is without prejudice to the outcome of the domestic proceedings on the merits.

37. Consequently, the Court dismisses the Government's preliminary objection of incompatibility *ratione personae* with the provisions of the Convention and finds a violation of Article 6 § 1 of the Convention.

2. Complaint under Article 1 of Protocol No. 1

38. The Court considers that the applicant's complaint under Article 1 of Protocol No. 1 is directly connected with that examined under Article 6 § 1 of the Convention (see paragraphs 30-37 above) and that it cannot speculate on the outcome of the proceedings had it not been for the violation it has found. Having regard to its conclusion under Article 6 that the applicant was unduly prevented from securing the determination of her civil claim, and without prejudice to the question whether the applicant had a possession within the meaning of Article of Protocol No. 1, the Court considers that it is not necessary to rule on her complaint under this Article (see *Petko Petkov v. Bulgaria*, no. 2834/06, § 38, 19 February 2013, and *Fetaovski v. the former Yugoslav Republic of Macedonia*, no. 10649/03, § 60, 19 June 2008).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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."

40. The applicant did not submit a valid claim for just satisfaction. In the absence of any exceptional circumstances (see *Nagmetov v. Russia* [GC], no. 35589/08, § 92, 30 March 2017), the Court makes no award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the applicant's right of access to a court;
3. *Holds* that it is not necessary to rule on the alleged violation of Article 1 of Protocol No. 1 to the Convention;

Done in English, and notified in writing on 23 January 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Section Registrar

Ksenija Turković
President