



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

THIRD SECTION

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

(Application no. 13898/02)

JUDGMENT

STRASBOURG

8 December 2005

FINAL

03/07/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

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

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

Mr B.M. ZUPANČIČ, *President*,

Mr L. CAFLISCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr V. ZAGREBELSKY,

Mrs A. GYULUMYAN,

Mr DAVID THÓR BJÖRGVINSSON,

Ms I. ZIEMELE, *judges*,

and Mr M. VILLIGER, *Deputy Section Registrar*,

Having deliberated in private on 17 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 13898/02) 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 Trajko Dumanovski (“the applicant”), on 27 February 2002.

2. The Macedonian Government (“the Government”) were represented by their Agent, Mrs R.Lazareska-Gerovska.

3. On 10 March 2004 the Court decided to communicate the complaint concerning the length of the proceedings. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1944 and lives in Kumanovo.

5. On 4 August 1995 the Kumanovo Employment Bureau (“the Bureau”) (*Републичкиот завод за вработување - Биро за вработување Куманово*) granted the applicant, who had been laid off, a monthly unemployment compensation, the amount of which equalled the minimum salary reduced by 20%.

6 On 28 August 1995 the applicant appealed the decision before the Ministry of Labour and Social Policy (“the Ministry”) (*Министерство за труд и социјална политика*), alleging that his compensation had been miscalculated. He claimed that the amount of compensation should be based on the average of his last three monthly salaries reduced by 50%.

7. As the Ministry remained inactive, the applicant instituted administrative contentious proceedings before the Supreme Court (*Врховен суд на Република Македонија*).

8. On 24 April 1997 the Supreme Court rejected his appeal as he had failed to re-introduce his complaint with the Ministry before instituting the administrative contentious proceedings.

9. On 21 July 1997 the applicant re-introduced his complaint with the Ministry.

10. On 27 August 1997 the Bureau, which transmits administrative complaints to the Ministry, rejected his complaint finding that he had already appealed the first-instance decision and that the Supreme Court’s decision of 24 April 1997 had not provided instructions for further remedies.

11. On 15 December 1997 the applicant filed a new appeal with the Supreme Court, complaining about the Ministry’s inactivity and the rejection of his prior complaint. The Ministry did not reply to the applicant’s pleadings nor did it provide the Supreme Court with the requested documents.

12. On 28 April 1999 the Supreme Court granted the applicant’s appeal and ordered the Ministry to decide upon his complaint of 28 August 1995 within 30 days from the serving of its decision. The Supreme Court also held that the Bureau had unjustifiably rejected the applicant’s appeal instead of transmitting it to the Ministry for consideration.

13. As the Ministry remained inactive, the applicant took another action before the Supreme Court to decide on the merits.

14. On 6 October 1999 the Supreme Court annulled the Bureau’s decision from 1995 and remitted the case for re-examination.

15. On 26 November 1999 the Bureau dismissed the applicant’s claims.

16. On 2 December 1999 the applicant appealed to the Ministry.

17. As it remained inactive, on 7 February 2000 the applicant re-introduced his claim before the Ministry.

18. It appears that the applicant instituted administrative contentious proceedings before the Supreme Court on account of the inactivity of the Ministry.

19. In the meantime, on an unspecified date prior to 15 August 2000, the Ministry upheld the Bureau’s decision of 26 November 1999. This decision was allegedly served on the applicant on 18 August 2000.

20. On 27 June 2001 the Supreme Court upheld the Ministry’s decision, finding that the applicant’s unemployment benefit had been calculated in accordance with the law.

21. The decision was served on the applicant on 17 September 2001.

II. RELEVANT DOMESTIC LAW

22. The relevant provisions of the Law on Administrative Disputes (*Закон за управните спорови*), provide as follows:

23. Section 7, paragraph 1, provides that administrative contentious proceedings can be initiated [before the Supreme Court] against an administrative decision adopted by a second instance administrative body.

24. Section 26, paragraph 1, provides that if the second instance administrative body does not decide within 60 days (or in a shorter period, should that be provided by a special regulation) upon an appeal lodged against the first-instance administrative decision, and still does not do so within the following seven days after the appeal has been re-introduced, the party concerned can initiate administrative contentious proceedings [before the Supreme Court] as if the appeal had been rejected.

25. Section 42, paragraph 1, provides that the [Supreme] Court shall settle the dispute by a judgment.

26. Section 42, paragraph 2, provides that a complaint may be upheld or dismissed as ill-founded. If the complaint is upheld, the Court shall annul the disputed administrative act.

27. Section 42, paragraph 3, provides that if the Court finds that the disputed administrative act should be annulled and the very nature of the subject-matter at issue and the factual information available are sufficient to allow the Court to reach a final decision on its own, the Court can settle the administrative dispute by a judgment. Such a judgment shall replace the disputed act.

28. Paragraph 4 of Section 42 prescribes that in case of sufficient information, the Court by the decision to annul the disputed administrative act, shall also decide upon the complainant's request to refer the case back for re-examination or for damages. Otherwise, the Court shall instruct the complainant to pursue his claim in civil proceedings.

29. Paragraph 5 of Section 42 provides that if a complaint is lodged under Section 26 of this law, and if the Court finds it well-founded, the Court shall uphold the complaint by a judgment and provide the relevant administrative body with instructions.

30. Section 62 provides that when the Court sets aside an administrative decision against which administrative contentious proceedings were instituted, the matter shall be restored to the state of affairs that existed prior to that decision. If the very nature of the subject-matter at issue in these proceedings requires a new decision to be made to replace the decision which has been set aside, the administrative body shall render such a decision without delay or within 30 days of the delivery of the judgment at the latest. The administrative body is thus bound by the legal reasoning of the Court and its instructions in respect of the proceedings.

31. Section 63 governs situations where the administrative body, whose decision has been set aside, renders a decision contrary to the legal reasoning of the Court or to the instructions given by the Court in respect of the proceedings. If the party concerned lodges a further complaint, the Court shall quash the challenged decision and shall resolve the subject-matter itself by rendering a judgment to that effect. Such a judgment shall replace the decision of the relevant administrative body. The Court shall notify the relevant supervisory body accordingly.

32. Section 64 provides that if the administrative body whose decision was set aside does not give promptly or within 30 days a new administrative decision or a decision by which the Court judgment is to be enforced, the party concerned may request such a decision in his or her submission before it. If the administrative body remains inactive for seven days from the date of receipt of the party's submission, it may apply to the Court that delivered judgment at first instance.

33. Paragraph 2 of Section 64 imposes an obligation on the Court to demand an explanation of the reasons why the administrative body remained silent. The relevant administrative body is required to furnish the Court with its justification within seven days. If no explanation whatever is provided, or if, in the Court's opinion, the reasons provided do not justify non-enforcement of the judgment, the Court shall render a decision entirely replacing the decision of the administrative body.

THE LAW

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

34. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement provided 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..."

35. The Court notes that the proceedings started on 28 August 1995, when the applicant appealed the decision of the Bureau concerning the amount of the unemployment compensation. They ended on 17 September 2001, when the Supreme Court decision was served on the applicant. They have thus lasted more than six years.

36. The period which falls within the Court's jurisdiction did not begin on 28 August 1995, but on 10 April 1997, when the recognition by the former Yugoslav Republic of Macedonia of the right of individual petition took effect (see *Horvat v. Croatia*, no. 51585/99, § 50, ECHR 2001-VIII).

37. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings on 10 April 1997 (see, among other authorities, *Foti and Others v. Italy* judgment of 10 December 1982, Series A no. 56, p. 18, § 53; *Styranowski v. Poland*, no. 28616/95, § 46, ECHR 1998-VIII). In this connection the Court notes that at the time of the entry into force of the Convention in respect of the former Yugoslav Republic of Macedonia the proceedings had lasted about one year and seven months.

38. Accordingly, the relevant period which falls within the Court's competence was four years, five months and seven days.

A. Admissibility

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

B. Merits

40. 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, among other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Humen v. Poland* [GC], no. 26614/95, § 60, *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, ECHR 2000-IV; *Philis v. Greece (no. 2)*, judgment of 27 June 1997, *Reports of Judgments and Decisions* 1997-IV, § 35).

41. The Government submitted that the proceedings complained of should not be considered as a single one, but as three distinct sets of proceedings conducted before the Supreme Court. They argued that the applicant was entirely responsible for the length of the first set of proceedings as he appealed to the Supreme Court instead of re-introducing his claim before the Ministry. They asserted that the remaining two sets of proceedings lasted for about four years which could not be considered unreasonable.

42. The Government also noted the excessive workload of the Supreme Court for the respective period and its proceedings regarding complaints related to the local elections of 2000.

43. The applicant contested the Government's arguments that the proceedings should not be considered as a single one as the authorities dealt with the same subject-matter throughout the proceedings from their inception in 1995. Apart from the period when the proceedings continued before the Supreme Court when he should have re-introduced his claim before the

Ministry, the applicant argued that the unreasonableness of the length of proceedings was entirely attributable to the State, in particular as the case was not of a complex nature.

44. The Court is not persuaded by the Government's argument that the proceedings complained of should be considered as three distinct sets of proceedings. The mere fact that the case was several times referred to the Supreme Court for adjudication after the administrative bodies remained inactive or decided on the merits did not split the proceedings into separate sets, as the content of dispute was the same throughout the proceedings before the administrative bodies and the Supreme Court. Moreover, the proceedings before the Supreme Court were initiated under the applicant's right to judicial review of the individual administrative decisions and resulted therefrom. After the Supreme Court's decision of 6 October 1999, the case was referred back to the administrative bodies for decision-making until the court finally dismissed the applicant's claim.

45. As the Court has consistently held in its case-law (see, *mutatis mutandis*, *Hentrich v. France*, judgment of 22 September 1994, Series A no. 296-A, § 61), the workload in the national courts cannot be considered as a factor that can excuse the protracted length of the proceedings. The same applies to the Supreme Court's having to deal with the appeals related to the 2000 local elections.

46. The Court reiterates that only delays for which the State can be held responsible may justify a finding that a "reasonable time" has been exceeded (see, among many other authorities, *Monnet v. France* judgment of 27 October 1993, Series A no. 273-A, p. 12, § 30; *Papageorgiou v. Greece*, judgment of 22 October 1997, *Reports of Judgments and Decisions* 1997-VI, § 46).

47. The Court observes that during the time which falls within its competence *ratione temporis*, i.e. somewhat more than four years, the Supreme Court gave four decisions of which one concerned admissibility grounds; the Bureau gave two decisions of which one related to admissibility grounds, and the Ministry adopted one decision after the applicant had challenged its inactivity before the Supreme Court. Although the proceedings before the Supreme Court proceeded with reasonable expediency, the Court notes that the conduct and the inactivity of the administrative bodies, especially of the Ministry, contributed significantly to the length of the proceedings in a case which was simple. Thus, the Court emphasises that after the applicant had re-introduced his complaint on 21 July 1997 with the Ministry following the Supreme Court's instructions, the Bureau rejected it on admissibility grounds instead of transmitting it to the Ministry for consideration. The case was decided nearly two years later by the Supreme Court which instructed the Ministry to decide upon the applicant's appeal. The Court is also struck by the failure of the Ministry to decide upon the applicant's complaint despite being instructed to do so by the Supreme

Court's judgment of 28 April 1999. The Ministry also failed to decide upon the applicant's appeal of 2 December 1999 and his second referral of 7 February 2000. It dismissed the appeal on or about on 15 August 2000, only after the applicant raised the issue of its inactivity before the Supreme Court.

48. The Court is of the view that what was at stake for the applicant, who lost his means of subsistence after being dismissed from work, called for special expediency (see, *mutatis mutandis*, *Duclos v. France*, judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, § 77).

49. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument showing that the applicant's claim was decided with due expediency. Having regard to the circumstances of the instant case and to what was at stake for the applicant, the Court considers that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

50. There has accordingly been a breach of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

51. The applicant complained under Article 1 of Protocol No.1 that he was denied the right to the peaceful enjoyment of his possessions as the national authorities had wrongfully calculated his unemployment benefits. He also alleged violations of Articles 1, 14 and 17 of the Convention.

52. The Court considers that the applicant's complaints under Article 1 of Protocol No. 1 relate to the outcome of the proceedings and the amount of unemployment benefit awarded. It observes that the right to unemployment benefits, in so far as provided for in the applicable legislation, is a pecuniary right within the meaning of Article 1 of Protocol No.1 (see, *mutatis mutandis*, *Gaygusuz v. Austria*, judgment of 16 September 1996, *Reports* 1996-IV, § 41). However, it cannot be interpreted as entitling that person to compensation of a particular amount (see, *mutatis mutandis*, *Müller v. Austria*, 5849/72, Commission Report of 1 October 1975, DR 43, pp. 25, 31). In the circumstances of the present case, the calculation of the applicant's unemployment benefits was primarily to the domestic courts to assess and there is no indication that in their application of domestic law or assessment of the evidence there was any arbitrariness capable of raising an issue under Article 1 of Protocol No. 1.

53. As to the complaint under Article 14 in conjunction with Article 1 of Protocol No. 1, the Court points out that Article 14 complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not necessarily presuppose a breach of those provisions - and to this extent it has an autonomous meaning - there can be no room for its application unless the facts at issue fall within the ambit of one or

more of the latter (see, among many any authorities, the *Rasmussen v. Denmark*, judgment of 28 November 1984, Series A no. 87, § 29). Moreover, the applicant failed to raise the issue of discrimination before the Constitutional Court (see *Sijakova and others v. the former Yugoslav Republic of Macedonia*, (dec) 6 March 2003, no. 67914/01).

54. The Court considers that the present case raises no issue under any of the above Articles of the Convention.

55. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicant claimed 1,628 Macedonian denars, calculating on a monthly basis from 27 June 1995, and the default interest. This amount corresponded to the difference between the unemployment benefits claimed and those actually paid to the applicant.

58. The Government contested the claim. They invited the Court to consider that the finding of a violation would constitute in itself sufficient compensation for any damage in the present case. As an alternative, they asked the Court to assess the amount of just satisfaction to be awarded on the basis of its case-law and the economic situation of the State.

59. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

B. Costs and expenses

60. The applicants did not seek reimbursement for costs and expenses. Accordingly, the Court does not award any sum in this respect.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning 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;
3. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Mark VILLIGER
Deputy Registrar

Boštjan M. ZUPANČIČ
President