



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

THIRD SECTION

**CASE OF ATANASOVIC AND OTHERS v. THE FORMER
YUGOSLAV REPUBLIC OF MACEDONIA**

(Application no. 13886/02)

JUDGMENT

STRASBOURG

22 December 2005

FINAL

12/04/2006

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 Atanasovic and Others 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 J. HEDIGAN,
Mr C. BÎRSAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs R. JAEGER,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 1 December 2005,

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

PROCEDURE

1. The case originated in an application (no. 13886/02) 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 three Macedonian nationals, Mr Mihajlo Atanasovic, Mr Slavko Atanaskovski and Mrs Savka Milanovska (“the applicants”), on 16 January 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 complaints concerning the length of the proceedings and the lack of remedies in that respect to the Government. 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 applicants, Mihajlo Atanasovic, Slavko Atanasovski and Savka Milanovska, are nationals of the former Yugoslav Republic of Macedonia, who were born in 1937, 1945 and 1926 respectively, and live in Kumanovo, the former Yugoslav Republic of Macedonia.

5. By judgments of the then Kumanovo Municipal Court (*Општински суд во Куманово*) of 7 December 1988 and 17 May 1989, the applicants obtained parts of the movable and immovable property of Mr S.A., the father of the first and the second applicants.

6. In 1989 the applicants instituted proceedings to divide the property of Mr S.A. On 22 November 1990 the Kumanovo Municipal Court decided the applicants' claim and divided the property at issue. Mr S.A. was also ordered to pay certain amounts to each of the applicants, in compensation for the movable property that was awarded only to him.

7. As Mr S.A. did not comply, the applicants instituted enforcement proceedings before the Kumanovo Municipal Court.

8. On 20 March 1991 the Kumanovo Municipal Court ordered public sale of certain items belonging to Mr S.A. to satisfy the applicants' claims.

9. On 17 September 1991 the Kumanovo Municipal Court accepted Mr S.A.'s objection that the interest had been miscalculated and ordered a new calculation.

10. On 15 December 1991 Mr S.A. passed away. On 10 March 1992 the court stayed the enforcement proceedings pending the decision as to the succession to Mr S.A.'s estate.

11. By a decision of 21 May 1993, delivered in separate succession proceedings, the Kumanovo Municipal Court determined five heirs of Mr S.A.'s estate: the first and second applicants and their three brothers – Mr S.K., Mr K.I. and Mr C.I. Each of the heirs obtained equal parts of their late father's estate.

12. On 22 December 1993 the applicants asked the Kumanovo Municipal Court to continue the enforcement proceedings against one of their brothers, Mr C.I. The applicants argued that Mr C.I. should take over his late father's debts towards them as he had allegedly been in possession of Mr. S.A.'s estate before his death and had benefited from it.

13. On 20 March 1994 the court granted the applicants' request and approved the enforcement of their claims against Mr C.I.

14. On 9 May 1994 the Kumanovo Municipal Court upheld Mr C.I.'s challenge and stayed the enforcement proceedings. The court decided to continue the proceedings against all five heirs for the execution of the third applicant's claims only. The first and the second applicants were thus named debtors and the third applicant - the sole creditor.

15. On 14 December 1995 the then Skopje District Court (*Окружен суд во Скопје*) upheld the applicants' and Mr C.I.'s complaints. It quashed the lower court's decision and ordered a retrial. It, *inter alia*, instructed the lower court to examine the case on the basis of section 144 of the Law on inheritance whether and, if so, to what extent, Mr C.I. owed sums of money to the applicants. It also instructed the lower court to establish whether the amount of the debt was correctly calculated.

16. No further actions were taken by the Municipal Court of Kumanovo.

17. On 9 December 1998 the applicants requested the Kumanovo Municipal Court to resume the enforcement proceedings and to re-evaluate their original claims. They received no reply to their request.

II. RELEVANT DOMESTIC LAW

A. The Constitution (*Устав на Република Македонија*)

18. Section 99 § 3, in so far as relevant, provides that a judge shall be discharged: with regard to a serious disciplinary offence as defined by law, making him/her unsuitable to perform the office of a judge as decided by the Republican Judicial Council; with regard to the unprofessional and unethical conduct of a judge, as described by the Republican Judicial Council in a procedure set forth by law.

19. Section 105 provides that the Republican Judicial Council proposes to the [National] Assembly the election and discharge of judges and determines proposals for the discharge of a judge in cases set forth in the Constitution; decides on the disciplinary responsibility of judges; assesses the competence and ethical behaviour of judges in the performance of their office.

B. Law on Courts (*Закон за судовите*)

20. According to Section 76 § 1, the Ministry of Justice carries out tasks related to the judiciary's administration.

21. Section 76 § 2 provides that the Ministry of Justice communicates with the Presidents of Courts with regard to the court's administration.

22. Section 77 provides, *inter alia*, that the following matters fall within the court's administration: the examination of the petitions and complaints of citizens concerning the work of the courts in respect to postponement of the proceedings or the work of the court services; the supervision of the court's efficiency.

23. According to Section 81 the President of the Court represents the latter, organises its work and takes measures with regard to the prompt and regular enforcement of the court's affairs.

C. The Law on the Republican Judicial Council (*Закон за Републичкиот Судски Совет*)

24. Section 32 provides, *inter alia*, that the Council assesses the ability and moral character of the judges when the information concerning the results achieved, the number of the cases resolved, the quality and

promptness of their work indicate that the office of a judge has been performed unprofessionally, unethically and incompetently in general.

THE LAW

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

25. The applicants 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...”

26. The Court notes that the enforcement proceedings started on 20 March 1991 when the Municipal Court of Kumanovo upheld the applicants’ request and ordered the execution in the applicants’ favour. However, the period which falls within the Court’s jurisdiction did not begin on that date, but on 10 April 1997, after the Convention entered into force in respect of the former Yugoslav Republic of Macedonia (see *Horvat v. Croatia*, no. 51585/99, § 50, ECHR - 2001-VIII).

27. In this respect, the Court recalls that Article 6 § 1 of the Convention requires that all stages of legal proceedings for the “determination of ... civil rights and obligations”, not excluding stages subsequent to judgment on the merits, be resolved within a reasonable time (see *Estima Jorge v. Portugal*, judgment of 21 April 1998, *Reports of Judgments and Decisions* 1998-II, § 35; *Robins v. the United Kingdom*, judgment of 23 September 1997, *Reports* 1997-V, p. 1809 § 28). Moreover, the Court considers that the enforcement proceedings must be regarded as the second stage of the proceedings which began in 1989 when the proceedings for division of the property were instituted (see *Zappia v. Italy*, judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 20; *Di Pede v. Italy*, judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 24). As the enforcement proceedings are still pending, the period in question has not yet ended. However, the Court notes that the enforcement proceedings have already lasted more than fourteen years, of which almost eight and a half years after the ratification of the Convention by the former Yugoslav Republic of Macedonia.

28. The Court reiterates that in order to determine the reasonableness of the length of time in question, regard must be had to the state of the case 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; *Styrkowski 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 enforcement proceedings had lasted about six years.

A. Admissibility

29. The Government argued that the applicants did not avail themselves of any remedy in respect of the length of proceedings complaint and that they failed to undertake any action to speed up the procedure. They contended that the applicants could have, under the Law on the Courts (“the Law”), requested the President of the Kumanovo Municipal Court and the Ministry of Justice to speed up the proceedings. They also asserted that the applicants could have addressed the Republican Judicial Council (*Републички Судски Совет*) with the same request. They pointed out that if the applicants undertook some of those actions before the said authorities the proceedings would not have lain dormant. They also denied the applicants’ application for speeding up the proceedings lodged with the Municipal Court in December 1998.

30. The applicants contested the Government’s objection pointing out that it was the responsibility of the courts to take the necessary steps for ensuring the efficient administration of justice. They argued that the proceedings are taken *ex officio* and that the Presidents of the courts are vested with responsibility for judges’ efficiency and the way the proceedings are conducted. They also reaffirmed the validity of their letter of 9 December 1998 requesting the national courts to resume the proceedings.

31. The Court notes that the remedies cited by the Government, that is a request to the President of the Kumanovo Municipal Court, the Ministry of Justice and the Republican Judicial Council to speed up the proceedings, effectively consist of submitting a complaint to a supervisory organ with the suggestion that it make use of its powers if it sees fit to do so. If such an appeal is made, the supervisory organ might or might not take up the matter with the official against whom the complaint is directed if it considers that the complaint is not manifestly ill-founded. Otherwise, it will take no action whatsoever. If action is taken, they would exclusively involve the supervisory organ and the officials concerned. The applicants would not be a party to any proceedings and would only be informed of the way in which the supervisory organ has dealt with their complaint (see, *mutatis mutandis*, *Horvat v. Croatia*, no. 51585/99, § 47, ECHR 2001-VIII).

32. The Court finds, therefore, that the remedies referred to by the Government were not of an adequate and effective nature which the applicants were required to exhaust for the purposes of Article 35 of the Convention. Accordingly, the Government’s objection must be rejected. It

further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

33. 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, among many 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).

34. The applicants reiterated their complaints about the length of the enforcement proceedings.

35. The Government stated that it was mainly the trial judge's inactivity in proceeding with the case which caused the delays in the proceedings. They emphasised that for unknown reasons the Kumanovo Basic Court did not proceed with the case from 1995 when it was referred back by the then District Court. They alleged that the applicants had also contributed to the length of the proceedings by failing to request the relevant authorities to speed up the proceedings.

36. The Court recalls that it is for the Contracting States to organise their legal systems in such a way that their courts can guarantee everyone's right to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time (see, among other authorities, *Muti v. Italy*, judgment of 23 March 1994, Series A no. 281-C, § 15; *Horvat*, cited above, § 59).

37. As regards the conduct of the authorities, the Court observes that the Government did not claim that the domestic courts showed diligence in the conduct of the proceedings. Moreover, they did not attempt to justify the long period of inactivity of the Kumanovo Municipal Court in the enforcement proceedings after the case was referred back for a retrial.

38. Since the enforcement proceedings are still pending, the period in question has not yet ended. The proceedings have already lasted about fourteen years and six months, more than eight and a half years of which after the ratification of the Convention by the former Yugoslav Republic of Macedonia. The proceedings lay dormant before the Kumanovo Municipal Court since 1995 when the District Court remitted the case for re-examination. As no further steps have been taken since, the Court considers that the responsibility for such a long duration of the proceedings falls on the domestic authorities.

39. As regards the conduct of the applicants, the Court considers that the Government have not shown that there was any real possibility afforded to them to speed up the proceedings. Despite the information provided by the Government, the Court does not find it established that any of the motions indicated would have had any prospects of success, regard being had in addition to the discretionary power of the competent authorities. In these circumstances, it would not appear that the applicants' alleged passivity contributed to slowing down the proceedings.

40. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the Court considers that the length of the proceedings complained of, which are still pending, failed to satisfy the reasonable time requirement. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

41. The applicants also submitted that they had no effective remedy whereby they could raise the issue of the excessive length of the proceedings in their case. They alleged that there had accordingly been a violation of Article 13 of the Convention, which provides:

“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.”

42. The Government admitted that the national legal system did not provide for an effective remedy in respect of the length of proceedings complaints. They also stated that the right to a hearing within a reasonable time was not explicitly enshrined in the Constitution and as such it could not be invoked before the national authorities.

43. The applicants did not comment.

44. The Court recalls that Article 13 of the Convention guarantees an effective remedy before a national authority for an alleged violation of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

45. As established in its case-law, it reiterates that the remedies available to a litigant at domestic level for raising a complaint about the length of proceedings are “effective”, within the meaning of Article 13 of the Convention if they “[prevent] the alleged violation or its continuation, or [provide] adequate redress for any violation that [has] already occurred” (see *Kudla* cited above § 158). Article 13 therefore offers an alternative: a remedy is “effective” if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigant with adequate redress for delays that have already occurred (see *Kudla*, cited above § 159).

46. The Court notes that the Government acknowledged the lack of an effective remedy in respect of the length of proceedings in the domestic legal system. Moreover, it reiterates that the requests for speeding up the proceedings to supervisory organs cannot be considered as a remedy in respect of the complaints of delay (see paragraph 31 above).

47. Accordingly, the Court finds that in the present case there has been a violation of Article 13 of the Convention in so far as the applicants had no domestic remedy whereby they could enforce their right to a "hearing within a reasonable time", as guaranteed by Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

48. The applicants complained that they were discriminated against as other creditors in general had obtained enforcement of their claims at that time. Article 14 of the Convention, in so far as relevant, provides as follows:

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

49. As established in the Court's case-law, for a claim of violation of Article 14 to succeed, it has therefore to be established, *inter alia*, that the situation of the alleged victim can be considered similar to that of persons who have been better treated (see, *mutatis mutandis*, *Fredin v. Sweden* (no. 1), judgment of 18 February 1991, Series A no. 192, p. 19, § 60). Such a difference in treatment is discriminatory in the absence of an "objective and reasonable justification", that is, if it is not justified by a "legitimate aim" and if there is no "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see *Hoffmann v. Austria*, judgment of 23 June 1993, Series A no. 255-C, § 31; *Darby v. Sweden*, judgment of 23 October 1990, Series A no. 187, § 31).

50. The Court considers that the applicants could not be considered to be in analogous situation with other creditors in general who had managed to enforce their claims at that time as the status of a creditor in the enforcement proceedings and its prospect of success depends on the circumstances of each particular case.

51. Therefore, it follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicants claimed 96,693.56 euros (EUR) in respect of pecuniary damage; they did not claim non-pecuniary damage.

54. The Government contested these claims as unsubstantiated. They invited the Court to consider that the eventual finding of a violation constituted 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.

55. 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

56. 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

1. *Declares* unanimously the complaints concerning the excessive length of the proceedings and the lack of remedies in that respect admissible and the remainder of the application inadmissible;
2. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* unanimously that there has been a violation of Article 13 of the Convention;
4. *Dismisses* unanimously the applicant’s claim for just satisfaction.

10 ATANASOVIC AND OTHERS v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA
JUDGMENT

Done in English, and notified in writing on 22 December 2005, pursuant
to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President