



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

THIRD SECTION

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

(Application no. 15056/02)

JUDGMENT

STRASBOURG

20 April 2006

FINAL

20/07/2006

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 Milošević 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,

Mrs M. TSATSA-NIKOLOVSKA,

Mr V. ZAGREBELSKY,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. ZIEMELE

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 30 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 15056/02) 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 national of the former Yugoslav Republic of Macedonia, Ms Suzana Milošević (“the applicant”), on 12 March 2002.

2. The applicant was represented by Ms L. Vanevska, a lawyer practising in Skopje. The Macedonian Government (“the Government”) were represented by their Agent, Mrs R. Lazareska-Gerovska.

3. On 19 March 2004 the Court decided to communicate the application. 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

4. The applicant was born in 1968 in Kumanovo, the former Yugoslav Republic of Macedonia.

5. On 13 May 1993 the applicant instituted civil proceedings before the Skopje I Municipal Court (*Општински Суд Скопје I*) for annulment of a care agreement (“the agreement”) concluded on 25 February 1993 between her sister and their late aunt (the latter had also been the applicant’s adoptive mother). The applicant claimed that her adoptive mother had lacked legal capacity to enter into the agreement, which had been signed two months before her death, as she had not been in a fit condition to make

rational decisions. Under the agreement, the applicant's sister had been granted ownership of the flat at issue in return for caring for her adoptive mother.

6. Following enactment of the Courts Act in 1995, the Skopje I Municipal Court became the Skopje Court of First Instance (*Основен Суд Скопје I*).

7. Of the seventeen hearings held between 13 May 1993 and 4 February 1998 before the Skopje Court of First Instance, five were adjourned (the proceedings were stayed for three months by the trial judge owing to the applicant's absence from the hearing of 29 November 1993).

8. On 4 February 1998 the Skopje Court of First Instance granted the applicant's application and annulled the 1993 agreement. The decision was reportedly served on the parties on 11 September 1998.

9. On 28 September 1998 the applicant's sister appealed against the lower court's decision before the Skopje Court of Appeal (*Апелационен Суд Скопје*).

10. On 25 March 1999 the Court of Appeal dismissed the appeal.

11. On 13 May 1999 the applicant's sister lodged an appeal on points of law (*ревизија*) with the Supreme Court (*Врховен Суд*).

12. On 21 September 2000 the Supreme Court quashed the lower courts' decisions and referred the case back to the Court of First Instance. It found that the courts had based their decisions on insufficient evidence. The Supreme Court instructed the Court of First Instance to obtain new evidence and to examine other witnesses, in order to shed light on the state of health of the applicant's adoptive mother at the time the agreement had been concluded.

13. Of the sixteen hearings held between 1 December 2000 and 19 March 2004 before the Skopje Court of First Instance, six were adjourned (the applicant attended all the hearings except the hearing of 1 April 2002).

14. On 11 June 2003 the President of the Court of First Instance dismissed the trial judge's request to be removed from the case on account of the applicant's sister's inappropriate behaviour during the proceedings and the doubts she had expressed concerning the judge's impartiality.

15. After the case had been referred back to the Court of First Instance, two expert opinions were ordered for the purpose of determining the state of the adoptive mother's health at the time the agreement had been concluded.

16. On 11 March 2005 the Court of First Instance upheld the applicant's claim and declared the agreement null and void.

17. On 1 December 2005 the Court of Appeal upheld the applicant's sister's appeal and referred the case back for a retrial. The case is pending before the Court of First Instance.

THE LAW

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

18. The applicant complained that the length of the proceedings had been incompatible with the “reasonable-time” requirement laid down in Article 6 § 1 of the Convention, which reads:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Admissibility

19. The Court notes that the application 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.

20. The Court notes that the civil proceedings started on 13 May 1993 when the applicant lodged her application with the Skopje I Municipal Court for annulment of the agreement. 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. As the proceedings are still pending, the period in question has not yet ended. The Court notes that the proceedings have already lasted more than twelve years, including nearly eight years and ten months since ratification of the Convention by the former Yugoslav Republic of Macedonia.

21. 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, and *Styranowski v. Poland*, no. 28616/95, § 46, ECHR 1998-VIII). In this connection, the Court notes that at the time of entry into force of the Convention in respect of the former Yugoslav Republic of Macedonia, the proceedings had lasted about four years for one level of jurisdiction.

B. Merits

22. 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 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, and *Philis v. Greece (no. 2)*, judgment of 27 June 1997, *Reports of Judgments and Decisions* 1997-IV, § 35).

23. The Government accepted that the proceedings had lasted an extremely long time. However, they argued that the courts had proceeded with the case with due diligence and in accordance with domestic law; in particular, the scheduled hearings had been held without any interruption and delays and the Court of Appeal and the Supreme Court had decided with reasonable expeditiousness. They pointed out that the courts had been restricted in their decision-making by the demands and conduct of the parties, who had insisted on having some of the witnesses re-examined and had repeatedly challenged the validity of the expert opinions concerning the state of health of the applicant's adoptive mother at the time the agreement had been concluded. They also noted that the applicant should have submitted all the evidence at the initial stage of the proceedings. The Government also referred to the number of remedies used by the parties throughout the proceedings (stating that the applicant had lodged the appeal on points of law before the Supreme Court), which had affected their length. They observed that the case had been of a complex nature requiring determination of the state of health of the applicant's adoptive mother, who had died in 1993.

24. The applicant contested the assertion that she had lodged the appeal on points of law with the Supreme Court, pointing out that it had been lodged by her sister. She argued that the protracted length of the proceedings had been wholly attributable to the State, as it had failed properly to summon the parties and the witnesses. She also denied that she had contributed to the inordinate length of the proceedings by failing in good time to put forward her claims and evidence and to propose examination of the witnesses on her behalf, arguing that it had been her sister who had abused her procedural rights, a practice which had been tolerated by the courts. The applicant disagreed with the Government's argument concerning the complexity of the case, as the experts had been called upon to determine the state of health of her late adoptive mother on the basis of written medical reports produced during her lifetime. Nothing new had been submitted by the parties in that respect.

25. 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, and *Horvat v. Croatia*, no. 51585/99, § 59, ECHR 2001-VIII).

26. Since the proceedings are still pending, the period in question has not yet ended. The proceedings have already lasted about twelve years and

eight months, including more than eight years and ten months since ratification of the Convention by the former Yugoslav Republic of Macedonia. Moreover, the Court observes that it took about five years for the Skopje Court of First Instance to decide the applicant's claim after the Supreme Court had referred it back for re-examination in September 2000. The Court therefore considers that responsibility for the protracted length of the proceedings falls on the domestic authorities.

27. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable-time" requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed 100,000 euros (EUR) as just satisfaction. She requested pecuniary damage on account of having being prevented from using the flat (as one of the heirs) throughout the proceedings; paying the rent for another flat; being forced to leave her home and family in Pristina, Kosovo and travel to Skopje to attend the hearings; lawyer's fees. The applicant's claims were not supported by any particulars.

31. The Government did not express an opinion on the matter given in the applicant's reply to their observations.

32. The Court finds that the applicant failed to provide any supporting documents in respect of her claim for pecuniary damage; it therefore rejects this claim.

33. Ruling on an equitable basis, the Court awards the applicant EUR 2,000 for non-pecuniary damage.

B. Costs and expenses

34. The applicant did not seek reimbursement of the costs and expenses incurred in the proceedings before the Court. Even assuming that she asked reimbursement of the costs incurred in the proceedings before domestic courts, the Court notes that such costs had not been incurred in order to seek

through the domestic legal order prevention and redress of the alleged violation complained of before the Court. Moreover, the applicant failed to support her claim by any particulars and supporting documents. Accordingly, the Court does not award any sum under this head.

C. Default interest

35. The Court considers it appropriate that the default interest 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 UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
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, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (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 20 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President