



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

FIFTH SECTION

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

(Application no. 44353/02)

JUDGMENT

STRASBOURG

15 June 2006

FINAL

15/09/2006

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 Kostovska v. the former Yugoslav Republic of Macedonia,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOCHAROVA,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 22 May 2006,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 44353/02) 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, Ms Nada Kostovska (“the applicant”), on 2 November 2002.

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

3. The applicant alleged that contrary to Article 6 § 1 of the Convention, the civil proceedings had not been heard within a reasonable time and that she had no effective remedy, contrary to Article 13 of the Convention, in respect of the length of those proceedings. She also complained that the public prosecutor had wrongly refused her application for lodging with the Supreme Court a request for the protection of legality.

4. The application was allocated to the Fifth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

6. The applicant, Ms Nada Kostovska, is a national of the former Yugoslav Republic of Macedonia, who was born in 1920 and lives in Skopje.

7. The applicant and her close family shared a plot of building land with the family of the applicant's niece and nephew, Mrs M.F.Z. and Mr J.F. Both families have constructed their own family houses on it. A small house and a shed existed on the plot, ownership of which was disputed in the proceedings complained of.

8. On 9 March 1982, the applicant and her husband instituted civil proceedings against Mrs M.F.Z. and Mr J.F. for determination of the ownership over the house and the shed and for recognition of the *usus* rights over the land.

9. On 19 June 1984 the Skopje I Municipality Court (*Општински Суд Скопје I*) partly upheld the applicant's and her husband's claim and awarded them ownership title over the house and the shed and the right to use the land.

10. On 31 January 1985 the then Skopje District Court (*Окружен Суд Скопје*) quashed the lower court's decision and remitted the case for re-examination as the latter had erroneously established the facts and had wrongly applied domestic law.

11. On 19 May 1988 the Skopje I Municipal Court partly upheld the applicant's and her husband's claim.

12. On 8 July 1989 the Skopje District Court quashed this decision and ordered a retrial.

13. On 19 November 1991 the Skopje I Municipal Court granted the applicant's and her husband's claims.

14. On 24 September 1992 the Skopje District Court quashed the decision and remitted the case for re-examination.

15. On 28 May 1993 the Skopje I Municipal Court dismissed the applicant's and her husband's civil action.

16. On 25 November 1993 the Skopje District Court upheld the applicant's and her husband's appeal and ordered a retrial.

17. On 31 March 1994 the Skopje I Municipal Court dismissed the applicant's and her husband's claim.

18. On 28 October 1994 the Skopje District Court upheld the lower court's decision.

19. On 27 March 1996 the Supreme Court (*Врховен Суд*) upheld the applicant's appeal on points of law (*певузуја*) and set aside the decisions of the lower courts.

20. After the death of the applicant's husband, her daughter and son, Mrs L.M. and Mr V.K., joined the proceedings. The inheritance proceedings concerning the property of the applicant's husband lasted from 9 October

2001 until 20 December 2001 when the Skopje Court of First Instance declared Mrs L.M. and Mr V.K. heirs.

21. Following the adoption of the Courts' Act in 1995 (*Закон за судовите*), the Skopje I Municipality Court became the Skopje I Court of First Instance (*Основен Суд Скопје I*) and the Skopje District Court became the Skopje Court of Appeal (*Апелационен Суд Скопје*).

22. On 2 July 1997 the Skopje I Court of First Instance dismissed the applicant's and her children's claim against Mrs M.F.Z. and Mr J.F. The court established that the applicant had built the house and the shed with the permission of Mrs M.F.Z. and Mr J.F. It was supposed to serve a purpose of a home for their late mother.

23. On 20 May 1998 the Skopje Court of Appeal upheld the applicant's and her children's appeal and quashed the lower court's decision. It instructed the court below to re-assess the evidence and to obtain new evidence; to examine the parties; to clarify in favour of whom the house and the shed had been built; and to establish when and how the applicant had obtained possession over the property at issue.

24. After fifteen hearings scheduled and attended by the applicant (except the hearing of 5 February 2001 which was adjourned due to the strike of the court's staff), on 2 November 2001, the Skopje I Court of First Instance finally dismissed the applicant's and her children's claim as ill-founded. The hearings of 23 October and 1 December 2000 were adjourned at the applicant's request.

25. On 23 May 2002 the Skopje Court of Appeal upheld the lower court's decision.

26. On 8 October 2002 the applicant lodged with the Supreme Court an appeal on points of law (*ревизија*).

27. On 9 October 2002 the applicant required the public prosecutor (*Јавен Обвинител*) to lodge with the Supreme Court a request for the protection of legality (*барање за заштита на законитост*).

28. On 23 October 2002 the public prosecutor refused her application.

29. On 19 February 2003 the Supreme Court rejected the appeal on points of law as the value of the claim fell below the statutory threshold.

30. During the proceedings, four trial judges examined the applicant's case.

THE LAW

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

31. 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

32. The Court considers 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

33. The Court notes that the civil proceedings started on 9 March 1982 when the applicant filed her claim with the then Municipal Court of Skopje.

34. 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).

35. 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; *Styranski 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 fifteen years one month and one day.

36. The Court observes that the proceedings on the merits were concluded on 23 May 2002 when the Court of Appeal had finally dismissed the applicant’s appeal. The time elapsed for the subsequent proceedings before the Supreme Court which ended on 19 February 2003 by rejecting the applicant’s appeal on points of law should not be taken into consideration, as that remedy was without prospect of success. The Court’s view is that the applicant could not have been unaware that her claim was below the statutory threshold, in particular as she had been represented by a lawyer (see *Rezgui v. France* (dec.), no. 49859/99, ECHR 2000-XI).

37. The proceedings therefore lasted for more than twenty years of which five years one month and thirteen days fall to be examined by the Court.

38. The Court recalls that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what is at stake for the applicant in the litigation (see, among other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; the *Humen v. Poland* [GC], no 26614/95, § 60, unreported, and the *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, ECHR 2000-IV; the *Philis v. Greece (no. 2)*, judgment of 27 June 1997, *Reports of Judgments and Decisions* 1997-IV, § 35).

39. The Government submitted that the proceedings complained of should not be considered as one single set, but as seven sets, of proceedings, which each commenced after the higher court (the Appellate or Supreme Court) had set aside the lower court's decision and had ordered a retrial. They averred that the period which had lapsed before the entry into force of the Convention should not be taken into consideration. As regards the conduct of the authorities, the Government maintained that the civil courts were generally restricted in their decision-making by the demands and conduct of the parties and could not take procedural steps on their own initiative. In this respect 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. They submitted that the applicant had contributed to the length. For instance, she should have submitted all the supporting evidence at the initial stage of the proceedings instead of lodging them subsequently and the courts had been repeatedly asked to have witnesses re-examined and to order expert opinions. The Government also asserted that the applicant had not attended all the hearings and by availing herself of the ordinary and extraordinary remedies had extended the proceedings. They also submitted that the proceedings had been prolonged pending the outcome of the inheritance proceedings concerning the applicant's late husband's property after which the applicant's children joined the proceedings.

40. The applicant contested the Government's argument that the proceedings should not be considered as one single procedure, pointing out that the courts had dealt throughout with the same subject-matter. She argued that the repeated examination of the witnesses, the number of experts summoned and the on-site inspections had been ordered by the trial courts as four trial judges had been replaced during the proceedings and each of them needed to acquaint himself/ herself with the case. She also denied that she had contributed to the inordinate length of the proceedings arguing that she had attended all the hearings scheduled. She pointed out that the

inheritance proceedings concerning her late husband's property started on 9 October 2001 and ended on 2 December 2001 and as such their duration had not been of decisive influence on the length of the proceedings. She therefore concluded that the delays in the proceedings had been wholly attributable to the domestic authorities.

41. 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, the *Muti v. Italy*, judgment of 23 March 1994, Series A no. 281-C, § 15; *Horvat*, cited above, § 59).

42. The Court considers that, although the case was of some factual complexity, in particular as it concerned the determination of facts that happened long time ago, this cannot alone justify the length of proceedings.

43. As regards the conduct of the domestic authorities, the Court notes that, prior to the entry into force of the Convention, the proceedings had already been pending for over fifteen years. Furthermore, in the period to be taken into consideration, the proceedings lasted over five years during which there were two trial court decisions and one decision of the Court of Appeal. The Court notes that it took nearly three and a half years for the Skopje Court of First Instance to decide the applicant's claim after the Court of Appeal had referred the case back for re-examination, although it had already been pending for nineteen years and eight months. The Court finds that the proceedings complained of should be considered as one single procedure, as the courts were considering the same-subject matter throughout.

44. As to the applicant's behaviour, the Court considers that she did not significantly contribute to length of the proceedings, as her request for adjourning two hearings in 2000 did not add much to their length. She attended the hearings as scheduled and the fact that she used the remedies available under domestic law cannot be considered as contributing the excessive length of the proceedings.

45. In these circumstances, the Court cannot regard as "reasonable" a lapse of time of more than twenty years, over five years of which falls within the Court's *ratione temporis* competence. Therefore, taking into account the overall duration of the proceedings, the Court considers that the length of the proceedings in the instant case was excessive and failed to satisfy the "reasonable time" requirement (see *Brigandi v. Italy*, judgment of 19 February 1991, Series A no. 194-B, § 30).

46. There has accordingly been a violation of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

47. The applicant also complained that she had no effective remedy whereby she could raise the issue of the excessive length of the proceedings in her case. She alleged that there had accordingly been a violation of Article 13 of the Convention, which reads:

“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.”

48. The Government admitted that the national legal system had not provided 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 that as such it could not be invoked before the national authorities.

49. The applicant did not comment.

50. The Court recalls that the correct interpretation of Article 13 of the Convention is that this provision 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).

51. 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).

52. 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.

53. 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 applicant had no domestic remedy whereby she could enforce her right to a “hearing within a reasonable time”, as guaranteed by Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

54. The applicant complained in substance that the public prosecutor had wrongly refused her application to lodge with the Supreme Court a request for the protection of legality on the ground that the statutory time-limit had expired.

55. Even assuming that the applicant complained under Article 6 that she had been denied the right of access to court, the Court considers that there is no appearance of a violation of the Convention.

56. 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

57. 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

58. The applicant claimed EUR 40,000 in respect of non-pecuniary damage as the protracted proceedings had significantly affected her emotional life.

59. The Government contested these claims as unsubstantiated. They invited the Court to consider that the eventual 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.

60. The Court accepts that the applicant suffered damage of a non-pecuniary nature as a result of the inordinate length of the proceedings complained of. Making its assessment on an equitable basis and having regard to the circumstances of the case, in particular the overall duration of the proceedings and the personal characteristics of the applicant and her age, the Court awards the applicant EUR 1,600.

B. Costs and expenses

61. The applicant requested EUR 6,000 for the lawyer’s fees incurred in the proceedings before the Court, for the copying and mailing of documents.

62. According to the Court’s case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum (see, among other authorities, *Arvelakis v. Greece*, no. 41354/98, § 34, 12 April 2001; *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). The number of hours claimed to have been spent by the lawyer on the case appears excessive. In the present case, on the basis of the information

in its possession and its case-law in length-of-proceedings cases and making its assessment on an equitable basis, the Court awards the applicant EUR 1,500 for the legal costs and expenses incurred before it.

C. Default interest

63. 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 complaints concerning the length of the proceedings and the lack of an effective remedy admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 (in respect of the length of proceedings) and Article 13 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, the following amounts:
 - (i) EUR 1,600 in respect of non-pecuniary damage;
 - (ii) EUR 1,500 in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

Done in English, and notified in writing on 15 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President