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

FIFTH SECTION

CASE OF RIZOVA v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

(Application no. 41228/02)

JUDGMENT

STRASBOURG

6 July 2006

FINAL

06/10/2006

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 Rizova 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. BOTOUCHAROVA,
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 12 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 41228/02) 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 Veselinka Rizova ("the applicant"), on 27 September 2001.

2. The applicant was represented by Mr G. Curlinov, a lawyer practising in Skopje. The Macedonian Government ("the Government") were represented by their Agent, Mrs R. Lazareska Gerovska.

3. On 24 June 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.

4. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1923 and lives in Skopje, in the former Yugoslav Republic of Macedonia.

6. On 4 October 1985 the police arrested the applicant in her apartment. On 5 October 1985 an investigating judge ordered pre-trial detention. She was released from detention on 17 or 18 December 1985.

7. By judgment of the Skopje I Municipal Court (*Општински Суд Скопје I*) of 11 December 1985, the applicant was convicted of procuring and sentenced to two years' imprisonment. On 11 March 1986 the Skopje District Court (*Окружен Суд Скопје*) reduced her sentence to two months and thirteen days' imprisonment.

8. On 1 September 1988 the applicant brought before the then Municipal Court of Skopje (*Општински суд Скопје)* a compensation claim against her tenant, Mrs V.K., the City of Skopje and Mr M.G., a police inspector. She alleged that during her detention in 1985 Mrs V.K. had stolen valuable items from her apartment.

9. Of forty-five hearings scheduled between 23 November 1988 and 20 September 1996, seventeen were adjourned as the court had failed to summon the defendants or witnesses proposed (on one occasion the court asked for police assistance); seven hearings were adjourned at the applicant's request for examination of some witnesses or the defendants (by written requests of 18 December 1994 and 6 November 1995, the applicant asked the court to examine over fifteen witnesses altogether); two hearings were adjourned due to the trial judge's absence. During this period, the applicant five times unsuccessfully requested the removal of the trial judge and of all judges of the Skopje I Court of First Instance. The proceedings were also three times suspended due to the applicant's absence from the hearings without any reasons (the court granted her request of 3 July 1990 for reinstatement of the proceedings as her lawyer had withdrawn from the case without notifying her about the hearing). Nine hearings were adjourned on different grounds related to the applicant's failure to comply with the court's instructions, lack of proper legal representation or imposition of additional requests.

10. On 20 September 1996 another judge took over the case.

11. On 6 November 1996 the applicant requested that the State be added as a third defendant in the proceedings. She argued that following the independence of the former Yugoslav Republic of Macedonia in 1991 the State had taken over the jurisdiction of internal affairs from the local authorities of the City of Skopje.

12. The hearings fixed for 12 November 1996 and 16 January 1997 were adjourned due to Mrs V.K.'s absence. On 20 January 1997 the court requested police assistance to establish Mrs V.K.'s address in order to serve on her the court summons.

13. On 13 May 1998 the applicant asked the court to summon Mrs V.K. at the address where she had already on 2 April 1996 received an earlier summons.

14. Of nine hearings fixed between 18 February 1999 and 9 June 2000, five hearings were adjourned due to improper summoning of some of the defendants (including, but not limited to Mrs V.K.); two hearings were adjourned as the applicant had failed to reply to the Attorney General's

objection to the State's status as party in the proceedings; one hearing was adjourned at the applicant's request; one hearing was adjourned so as the court to decide the City of Skopje's capacity to stand in the proceedings.

15. On 9 June 2000 the Skopje I Court of First Instance upheld the Attorney General's objection declaring the State could not be a party in the proceedings.

16. On 16 October 2000 the applicant appealed against the decision before the Court of Appeal.

17. On 10 May 2001 the Court of Appeal upheld the applicant's appeal and quashed the lower court's decision. It held that the State could not be excluded as a party in the proceedings, as the Attorney General had acted in the earlier stages of the proceedings and had thus expressed his/ her consent to participate in the proceedings.

18. The hearing of 30 October 2001 was adjourned as the applicant's lawyer had withdrawn from the case.

19. At the hearing held on 13 December 2001, the Skopje I Court of First Instance instructed the applicant to specify the State authority against which she had intended to claim damages.

20. At 4 February 2002 the applicant withdrew her action against the City of Skopje extending it against the Ministry of the Interior as a State authority. She claimed that the police were responsible as they had not secured (sealed) her apartment after her arrest. In addition, the applicant alleged that on 4 October 1985 she had been arrested unlawfully (in the middle of the night) and that police officers had broken into and searched her apartment without a warrant. She also claimed non-pecuniary damage in relation to the alleged ill-treatment and denial of a medical assistance while being detained in 1985.

21. At the hearing of 26 March 2002, the Attorney General asked the court to reject the applicant's claim against the State as time-barred.

22. The court adjourned the hearing listed on 16 May 2002 at the applicant's written request of 14 May 2002 (she asked the court to examine the witnesses as proposed by her).

23. The hearing dated 25 June 2002 was adjourned as the applicant had not been properly summoned.

24. At the hearing of 24 September 2002 the court heard the applicant. It adjourned it in order to examine some witnesses.

25. The hearings fixed for 31 October, 21 November, 19 December 2002 and 30 January 2003 were adjourned due to the improper summoning of some of the witnesses proposed. Mrs V.K. did not attend any of the hearings listed.

26. On 11 March 2003 the Skopje I Court of First Instance dismissed as unsubstantiated the applicant's compensation claim against Mrs V.K. and the Ministry of the Interior. It found that the applicant had failed to provide any evidence that the belongings, allegedly stolen, had existed and had been

actually taken away from her apartment. It held as time-barred her claim for non-pecuniary damage against the Ministry of the Interior in relation to her detention, the alleged ill-treatment and the refusal of medical assistance during her detention. The value of the dispute indicated in the judgment was 3, 275,000 Macedonian denars.

27. On 15 May 2003 the applicant appealed against the judgment before the Skopje Court of Appeal.

28. On 11 July 2003 the Skopje Court of Appeal dismissed the applicant's appeal and upheld the lower court's judgment.

29. The applicant did not lodge with the Supreme Court an appeal on points of law (*ревизија*).

II. RELEVANT DOMESTIC LAW

30. In accordance with section 137 of the Civil Proceedings Act (*Закон за парничната постапка)* ("the Act"), when a party concerned is not able to find out the address of a person to whom the writ should be served on, the court shall endeavour to receive the necessary information from the competent administrative body or in another way.

31. Section 226 of the Act provides that a party concerned requesting the court to examine a person as a witness, shall state what the witness needs to be examined for and to provide his/her name, profession and residence.

32. Pursuant to section 250 (2) of the Act, the court may decide to hear only one of the parties concerned, if the other refuses to give a statement or does not reply to the court summons.

33. Section 284 (2) provides that the parties concerned may propose new facts and evidence throughout the proceedings.

34. In accordance with section 299 (1), when a court adjourns a hearing, the presiding judge shall ensure that all evidence, which needs to be presented for the following hearing, is obtained and other preparations are carried out so as to complete the trial at that hearing.

35. Section 368 (2) provides that, *inter alia*, an appeal on points of law (*ревизија)* is inadmissible in proprietary disputes related to a pecuniary claim when the value of dispute given in the applicant's claim does not exceed 1,000,000 Macedonian denars.

THE LAW

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

36. 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..."

A. Admissibility

37. 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

38. The Court notes that the civil proceedings started on 1 September 1988 when the applicant filed her compensation claim with the then Skopje Municipal Court.

39. The Government submitted that the period which had lapsed before the entry into force of the Convention in respect of the former Yugoslav Republic of Macedonia should not be taken into consideration.

40. The Court finds that the period which falls within its 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 *Atanasovic and Others v. "the former Yugoslav Republic of Macedonia"*, no. 13886/02, § 26, 22 December 2005; *Horvat v. Croatia*, no. 51585/99, § 50, ECHR 2001-VIII).

41. 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 eight years, seven months and nine days for one court level.

42. The proceedings therefore lasted fourteen years, ten months and ten days of which six years, three months and one day fall to be examined by the Court for two levels of jurisdiction.

43. 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; 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).

44. The Government averred that the case had been extremely complex due to the amount of evidence proposed by the applicant. They argued that the applicant had modified the second and third defendants without providing their addresses thus making the service of the court summons more difficult. In particular, they underlined that it had been almost impossible to communicate with Mrs V.K. as she meantime got married, had changed her residence and last name. They also submitted that she had proposed a long list of witnesses failing to provide their accurate whereabouts.

45. Concerning the applicant's conduct, the Government stated that she had considerably contributed to the length of proceedings as thirty-nine of sixty-four listed hearings had been adjourned due to her fault: she had five times asked for removal of the trial judge; the proceedings had been three times suspended due to her absence; thirty-one hearings had been adjourned either on her explicit request or due to her insisting on examining some witnesses or Mrs V.K. who had refused to respond to the court summons. The remaining twenty-five hearings were adjourned as the court could not properly serve the court summons on some witnesses or on Mrs V.K. as the applicant had not provided the court with their correct address.

46. As regards the conduct of the authorities, the Government maintained 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. The parties to the proceedings availed themselves of all procedural and legal remedies which contributed to the length of the proceedings. They also stated that the applicant's requests for removal of the trial judge had been decided within reasonable time and that the Court of Appeal had decided the applicant's appeal with due expediency.

47. The applicant contested the Government's arguments.

48. 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).

49. Concerning the complexity of the case, the Court does not consider that it was characterised by any exceptional factual or legal difficulties.

50. Concerning the applicant's conduct, the Court notes that she may be considered responsible for the adjournment of four hearings scheduled within the period that falls within the Court's *ratione temporis* competence (see paragraphs 14 and 22 above). It also considers that her request of 4 February 2002 added to the length of the proceedings. It does not seem that any other periods of delay are imputable to the applicant. In particular, she cannot be blamed for the procedural conduct of the defendants and their refusal to respond to the court summons. The fact that she used the remedies available under domestic law cannot be considered as contributing to the excessive length of the proceedings. As regards her requests for examination of some of the defendants or witnesses, the Court notes that it is for the national courts to assess in each and every situation whether such requests are justified and necessary for the proper administration of justice.

51. 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 before the Court of First Instance for eight years, seven months and nine days. It also observes that it took another five years and eleven months for the Skopje Court of First Instance to decide the applicant's claim. Furthermore, in the period to be taken into consideration, the proceedings lasted over six years during which there were one trial court decision and one Court of Appeal's decision. It notes that the proceedings lay dormant between 20 January 1997 and 18 February 1999 (see paragraphs 12 and 13 above). It also took over one year and four months (9 June 2000-30 October 2001) for the trial court to resume the proceedings after the issue of the State's status as party in the proceedings had been decided. The proceedings before the Skopje Court of Appeal were terminated rapidly. The Court cannot, in the instant case, regard as "reasonable" a lapse of time of more than six years, especially as a period of over eight years and seven months had earlier elapsed before the Convention entered into force in respect of the former Yugoslav Republic of Macedonia.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

53. The applicant complained under Article 3 of the Convention that she had been debased, ill-treated and denied medical assistance while being detained in 1985. Relying on Article 5 § 1, she complained that her arrest in 1985 had been unlawful and that the inviolability of her home had been infringed. In substance she also complained under Article 6 § 1 of the

Convention that she had been denied a fair trial in the criminal proceedings (unfair conviction and sentencing). She further complained under Article 5 § 5 and Article 1 of Protocol No. 1 that her claims for damages had been dismissed.

54. The Court finds the applicant's complaints under Articles 3 and 5 § 1 of the Convention incompatible *ratione temporis* since the facts complained of relate to a period prior to 10 April 1997, when the Convention entered into force in respect of the former Yugoslav Republic of Macedonia. The same concerns the allegation of unfairness of the criminal proceedings under Article 6 as she had been convicted and sentenced by final judgment of the Skopje District Court of 11 March 1986.

55. It follows that these complaints are incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

56. The Court further finds that Article 5 § 5 complaint is incompatible *ratione materiae* as the applicant's complaint under Article 5 § 1 is inadmissible as being incompatible *ratione temporis.*

57. The Court considers that the applicant's complaint under Article 1 of Protocol No. 1 relates solely to the outcome of the proceedings. It finds that the judicial decision not to uphold the applicant's compensation claim did not amount to a deprivation of possessions within the meaning of Article 1 of Protocol No. 1 which is primarily concerned with the expropriation or control of assets for public purposes, and not with the regulation of civil law rights between parties under private law. The applicant also failed to exhaust all domestic remedies in this respect. In accordance with the Civil Proceedings Act (see paragraph 34 above), the applicant could have filed to the Supreme Court an appeal on points of law (*ревизија)* against the second-instance judgment of 11 July 2003 as the value of the dispute had been above the statutory threshold.

58. It follows that this complaint is 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

59. 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

60. In the reply to the Government's observations, the applicant claimed 104,000 euros (EUR) in respect of pecuniary and non-pecuniary damage. She claimed EUR 21,000 as pecuniary damage related to the value of the belongings allegedly stolen from her. She claimed EUR 33,000 as non-pecuniary damage concerning the alleged debasement, ill-treatment and the lack of medical care during the pre-trial detention; she claimed EUR 50,000 for non-pecuniary damage for the emotional suffering and health deterioration as a consequence of the length of the proceedings.

61. The Government contested the applicant's claims. They asked the Court to dismiss the applicant's just satisfaction claims as not related to the alleged breach of the "reasonable-time requirement" under Article 6 of the Convention. 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.

62. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. The same applies concerning the non-pecuniary damage claimed in respect of the pre-trial detention; it therefore rejects these claims. On the other hand, it awards the applicant EUR 2,000 in respect of non-pecuniary damage for the violation found, namely the excessive length of the civil proceedings.

B. Costs and expenses

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

C. Default interest

64. 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 complaint concerning the excessive 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. *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 (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 6 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK Registrar	Peer LORENZEN President