



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

FIFTH SECTION

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

(Application no. 38202/02)

JUDGMENT

STRASBOURG

28 September 2006

FINAL

28/12/2006

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 Lickov 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 K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 4 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 38202/02) 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 Angel Lickov (“the applicant”), on 8 October 2002.

2. The applicant was represented by Mr N. Radovic and Mr V. Zezov, lawyers practising in Štip. The Macedonian Government (“the Government”) were represented by their Agent, Mrs R. Lazareska-Gerovska.

3. On 27 May 2004 the Court declared the application partly inadmissible and 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

5. The applicant was born in 1947 and lives in Štip, in the former Yugoslav Republic of Macedonia.

6. In 1981 the public undertaking “Elektrostopanstvo” (“the company”) installed a power-distribution pillar on a plot of land, which at that time was the property of the applicant's father. The latter did not object to it. The applicant gained ownership of the land in 1988 as a gift from his father.

7. On 26 February 1996 the applicant instituted civil proceedings against “Pogon Elektroistok Štip”, a branch of the company, claiming restoration of the property in his possession and removal of the pillar and the auxiliary installations, as they had been constructed without his (and his father's) consent.

8. Between 26 February 1996 and 10 July 1996 the trial court scheduled nine hearings and took the following actions: an on-site inspection; an examination of a witness and an expertise. Within this period, the applicant also extended his claim requesting compensation.

9. On 10 July 1996 the Štip Municipal Court upheld the applicant's claim ordering the company to restore the plot of land in the applicant's possession and to remove the pillar and auxiliary installations.

10. On 25 February 1997 the Štip Court of Appeal quashed the lower court's decision and remitted the case for a fresh consideration. It held that the branch of the company had not had legal capacity to stand in the proceedings.

11. On 5 September 1997 the trial court requested the applicant to clarify his claim. On 9 September 1997 the applicant replied that the proceedings should continue against the company.

12. At the hearing held on 27 November 1997 (in the absence of the company albeit properly summoned), the Štip Court of First Instance dismissed the applicant's claim as out of time. It found that the applicant (and his father) had known about the installation of the pillar and that he had failed to bring his claim within the statutory time-limits of three years (subjective term) or ten years (objective term) after the pillar had been fixed on the property.

13. On 25 November 1998 the Štip Court of Appeal dismissed the applicant's appeal and upheld the lower court's decision.

14. On 15 January 1999 the applicant lodged with the Supreme Court an appeal on points of law (*pevuzija*) against the Appeal Court's decision. He argued that the lower courts had erroneously established the facts and had wrongly applied national law.

15. On 10 January 2002 the Supreme Court dismissed the applicant's appeal on points of law. It upheld the lower courts' decisions on a different reasoning: by installing the power-distribution pillar in 1981, the company had obtained an encumbrance (*право на службеност*) over the plot of land to which neither the applicant's father nor the applicant had objected to in 1981 when the pillar was installed or in 1988 when the applicant gained ownership of the property. The judgment was served on the applicant on 11 April 2002.

THE LAW

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

16. 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

17. 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

18. The Court notes that the civil proceedings started on 26 February 1996 when the applicant filed his civil claim with the then Štip Municipal Court.

19. 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.

20. The Court finds that the period which falls within its jurisdiction did not begin on 26 February 1996, 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).

21. 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; *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 proceedings had lasted one year, one month and twelve days for two court levels.

22. The proceedings therefore lasted six years, one month and thirteen days of which five years and one day fall to be examined by the Court for three levels of jurisdiction.

23. 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, 15 October 1999 and the *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 19, ECHR 2000-IV).

24. The Government maintained that the courts had proceeded with the case with due diligence and in accordance with domestic law. They averred that the length of proceedings was not excessive and that the courts had held the scheduled hearings without any interruption and delays. They submitted that the applicant had contributed to the length by availing himself of the ordinary and extraordinary remedies. Concerning the proceedings before the Supreme Court, the Government noted its excessive workload for the respective period; its extensive scope of jurisdiction and proceedings before it regarding complaints related to the local elections of 2000.

25. The applicant contested the Government's arguments.

26. 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; *Milošević v. "the former Yugoslav Republic of Macedonia"*, no. 15056/02, § 25, 20 April 2006).

27. The Court does not consider that the case was characterised by any factual or legal difficulties.

28. Concerning the applicant's conduct, the Court finds that no periods of delay are imputable to him. The mere fact that he made full use of the remedies available under domestic law cannot be considered as contributing to the length of the proceedings (see *Girardi v. Austria*, no. 50064/99, § 56, 11 December 2003).

29. As regards the conduct of the domestic authorities, the Court observes that after 25 February 1997, when the Court of Appeal had referred the case back for a fresh examination, it took just one year and nine months for the courts to decide the applicant's claim in two court levels (see § §10-13).

30. The Court notes that the applicant's case was pending before the Supreme Court for nearly three years after he had lodged the appeal on points of law (see paragraphs 14 and 15). During this time, the Supreme Court only reviewed the case on points of law and did not take any evidence or perform any other procedural activity (see *Jelavić-Metrović v. Croatia*, no. 9591/02, § 28, 13 January 2005). In addition, it took three months for the Supreme Court's decision to be served on the applicant.

31. Moreover, the Court recalls that while a temporary backlog of court business does not entail a Contracting State's international liability if that State takes appropriate remedial action with the requisite promptness, a chronic overload cannot justify an excessive length of proceedings (see *Klein v. Germany*, no. 33379/96, § 43, 27 July 2000, and *Pammel v. Germany*, judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, § § 69 and 71). While the Government referred to the Supreme Court having to deal with the appeals related to the 2000 local elections, the Court notes that they also quoted its excessive workload and its extensive scope of jurisdiction, which cannot justify an excessive length of proceedings (see *mutatis mutandis Dumanovski v. "the former Yugoslav Republic of Macedonia"*, no. 13898/02, § 45, 8 December 2005).

32. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings before the Supreme Court was excessive and failed to meet the "reasonable time" requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant claimed 200,000 euros (EUR) in respect of non-pecuniary damage.

36. The Government contested as unsubstantiated the initial claim lodged in the application form. 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.

37. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him 500 EUR under this head, plus any tax that may be chargeable.

B. Costs and expenses

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

C. Default interest

39. 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;
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 according to Article 44 § 2 of the Convention, EUR 500 (five hundred 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 September 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President