



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

FIFTH SECTION

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

(Application no. 22928/03)

JUDGMENT

STRASBOURG

2 November 2006

FINAL

12/02/2007

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 Markoski 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*,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 9 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 22928/03) 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 citizen of the former Yugoslav Republic of Macedonia, Mr Marko Markoski (“the applicant”), on 9 July 2003.

2. The applicant was represented by Mr Z. Mitic, a lawyer practising in Skopje. The Macedonian Government (“the Government”) were represented by their Agent, Mrs R. Lazarska-Gerovska.

3. On 3 June 2005 the Court decided to give notice of the application 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

4. The applicant was born in 1951 and lives in Skopje, in the former Yugoslav Republic of Macedonia.

5. On 10 July 1995 the applicant was laid off by the company “Daka-lift” d.o.o Skopje (“the employer”) where he worked as a lift repairman.

6. On 11 August 1995 the applicant brought an action against his employer, claiming that he had been unlawfully dismissed. He sought to be re-instated to a post corresponding to his qualifications.

7. Of seven hearings, including the preparatory one, scheduled between 8 November 1995 and 17 May 1996, one hearing was adjourned at the

judge's request; two hearings were postponed because of late submission of evidence; one hearing was adjourned without any reasons and one hearing was rescheduled at the employer's request. The applicant attended all the hearings as scheduled. During this period, the composition of the judicial council (*судскиот совет*) changed once.

8. On 17 June 1996 the employer requested the court to reinstate the proceedings (*враќање во поранешна состојба*) as it had failed to appear in court on 17 May 1996 due to a failure of its former representative to inform it about the date of the hearing. On 28 June 1996 the applicant filed an objection against the employer's request which he had subsequently withdrawn. The hearing of 13 September 1996 was held by another trial judge who had taken over the case.

9. At the hearing of 27 September 1996 the court examined some witnesses.

10. On 14 November 1996 the Skopje Court of First Instance upheld the applicant's claim and annulled the employer's decision for termination of his employment. The court found that his dismissal had not been made by a competent body. It held that the applicant had worked with the employer continuously for over 20 years and as such the managing board (*управен одбор*) should have decided his dismissal, instead of its manager.

11. On 11 March 1997 the employer appealed against the decision.

12. On 4 June 1997 the Skopje Court of Appeal upheld the employer's appeal, quashed the lower court's decision and ordered a retrial. It found that the lower court had erred in establishing the facts, in particular concerning the applicant's uninterrupted work with the employer which had undergone several organisational changes over the time.

13. Of ten hearings scheduled between 21 October 1997 and 5 October 1998, two hearings were adjourned by the trial court to examine the official company's register concerning the employer; one hearing was postponed due to the trial judge's absence; two hearings were rescheduled as the court could not locate a witness, whose whereabouts had been provided by the applicant. Within this period, the court heard the applicant and examined some witnesses. The composition of the judicial council also changed once as new lay-judges stepped in the proceedings. The applicant attended all the hearings as listed.

14. On 5 October 1998 the Skopje Court of First Instance dismissed the applicant's claim as the dismissal decision had been adopted by a competent body and the applicant had infringed working discipline. The court established that the applicant had been initially employed by "David Pajic-Daka" Belgrade ("the company"), a company incorporated outside the former Yugoslav Republic of Macedonia, which had had a subsidiary office in Skopje. When the company had founded "Daka servis" d.o.o. Skopje, as a separate legal entity incorporated in the former Yugoslav Republic of Macedonia, the applicant continued working for this newly created entity.

At the last stage, “Daka servis” d.o.o. Skopje was merged with another company “Daka montaza”, creating as a separate legal entity. As stated by the Government, this decision was drawn up on 1 December 1999 and served on the parties after the applicant had paid the court fees.

15. On 6 December 1999 the applicant appealed against the decision.

16. On 10 December 1999 the first-instance court ordered the applicant to pay the court fees within eight days. On 20 December 1999 the applicant complied with this order.

17. On 9 February 2000 the Skopje Court of Appeal upheld the applicant’s appeal and overturned the lower court’s decision. It found that the applicant had worked continuously for over twenty years with the same employer, despite the organisational changes that the latter underwent over time. It therefore declared the applicant’s dismissal null and void and ordered the employer to reinstate him to work.

18. On 3 May 2000 the employer lodged with the Supreme Court an appeal on points of law (*певизија*). On 22 May 2000 the applicant submitted his reply to the employer’s appeal on points of law.

19. On 4 May 2000 the employer requested the public prosecutor to submit to the Supreme Court a request for the protection of legality (*барање за заштита на законитоста*).

20. On 8 May 2000 the employer filed before the Court of First Instance a request for re-opening of the proceedings (*предлог за повторување на постапката*).

21. On 19 April 2000 the applicant instituted separate enforcement proceedings concerning the reinstatement order and the trial costs. On 27 April 2000 the court granted the applicant’s request (“the enforcement order”). On 22 June 2000 the applicant withdrew his request concerning the reinstatement, as he had meanwhile been reinstated. On 30 June 2000 the court stayed the enforcement proceedings concerning the applicant’s reinstatement and dismissed the employer’s objection concerning the reimbursement of the trial costs. On 12 October 2000 the Court of Appeal upheld the lower court’s decision. On 20 November 2000 the employer requested postponement of the enforcement. On 14 December 2000 the applicant objected to the employer’s request for postponement. It appears that the applicant received the sum due to him.

22. On 12 December 2002 the Supreme Court returned the case-file to the trial court in respect of the employer’s request for re-opening of the proceedings.

23. On 16 December 2002 the Skopje Court of First Instance terminated the proceedings concerning the employer’s request for re-opening of the proceedings and decided to transfer the case-file to the Supreme Court in respect of the employer’s appeal on points of law.

24. On 27 March 2003 the Supreme Court upheld the employer’s appeal on points of law, overturned the Court of Appeal’s decision and upheld the

trial court's decision of 5 October 1998. It departed from the reasoning of the Appeal Court finding that the employer could not be considered the one in which the applicant had been initially employed.

THE LAW

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

25. 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 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

26. 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.

B. Merits

27. The Court notes that the civil proceedings started on 11 August 1995 when the applicant brought his claim before the Skopje Court of First Instance. They terminated on 27 March 2003 when the Supreme Court upheld the employer's appeal on points of law and confirmed the applicant's dismissal.

28. 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.

29. The Court finds that the period which falls within its jurisdiction did not begin on 11 August 1995, 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).

30. 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 *Styranowski v. Poland*, no. 28616/95, § 46, ECHR 1998-VIII; *Foti and*

Others v. Italy, judgment of 10 December 1982, Series A no. 56, p. 18, § 53). 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 and eight months for one court level.

31. The proceedings therefore lasted seven years seven months and sixteen days of which five years, eleven months and seventeen days fall to be examined by the Court for three levels of jurisdiction.

32. 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 *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, ECHR 2000-IV and the *Philis v. Greece (no. 2)*, judgment of 27 June 1997, *Reports of Judgments and Decisions* 1997-IV, § 35). Furthermore, at stake for the applicant was the annulment of his dismissal from work, which requires special diligence on the part of the authorities (see *Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, § 17; *Obermeier v. Austria*, judgment of 28 June 1990, Series A no. 179, § 72).

33. The Government averred that the case had been of a complex legal and factual nature due to the considerable number of issues which required clarification: the legal status of the employer; the body competent to decide the applicant's dismissal; the applicant's working time (*смаж*) with the employer and the legal interpretation of the relevant regulations concerning the companies incorporated outside the former Yugoslav Republic of Macedonia which had adjusted their operation with domestic law. As regards the applicant's behaviour, they maintained that he had failed to take any action to speed up the proceedings and had even contributed to their length by withdrawing the objection to the employer's request for the reinstatement of the proceedings of June 1996; by providing the court with the wrong address for the witness proposed by him; by not paying the court fees, as a formal precondition to proceed with a case; by requesting the court to enforce the judgment in full, although he had already been reinstated to work. They also argued that the employer had contributed to the length of the proceedings by availing itself of three extraordinary remedies available under domestic law. Concerning the conduct of the authorities, the Government submitted that the courts had proceeded with the case with due diligence, despite the several changes of the composition of the judicial council (*судском советом*); that the scheduled hearings had been held without any interruption and delays. They noted that the time lapsed before the trial court for drafting and service of its 1998 decision had been due to the applicant's failure to pay the court fees. Concerning the

three-year period within which the Supreme Court decided the applicant's case, they noted its extensive scope of jurisdiction and its excessive workload due to the low statutory threshold for lodging an appeal on points of law that existed before the new legislative amendments entered into force. They also submitted that the national courts had enforced the Appeal Court's decision while the case had been pending before the Supreme Court.

34. The applicant contested the Government's arguments concerning the complexity of the case. He noted that the Government had not referred to any national effective remedy concerning the length of the proceedings which he might have availed himself of. He also argued that it had been the employer which had withdrawn the request for reinstatement of the proceedings. The applicant submitted that he had paid the court fees eight days after being requested by the court. Moreover, in accordance with the relevant law applicable at the time of institution of the proceedings, the payment of court fees was not a formal requirement for the courts to proceed with a case. He submitted that the Government's arguments concerning the conduct of the authorities could not exculpate the State from its responsibility to decide his case within a reasonable time. He also disagreed that the Supreme Court's workload could justify the three-year period lapsed before it.

35. 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 *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).

36. The Court considers that the case was of some legal complexity, in particular concerning the legal status of the employer which had undergone several organisational changes over time. In such a situation, the courts were required to establish whether the applicant's employment could be considered as uninterrupted, as a crucial issue determining the competent body within the employer to decide about his dismissal. However, the Court considers that the legal issues of the case cannot alone justify the length of the proceedings.

37. Concerning the applicant's conduct, the Court finds that no periods of delay are imputable to him. He attended all the hearings as scheduled and the adjournment of two hearings due to the wrong whereabouts of the witness that he had proposed (see paragraph 14) did not add significantly to the length. The same applies to the withdrawal of his objection to the employer's request for reinstatement of the proceedings and his obligation to pay the court fees, which he complied with within the time-limit given by the court. The applicant's behaviour in the enforcement proceedings did not have any impact to the proceedings concerning his claim in substance.

38. On the other hand, the Court considers that there are substantial delays attributable to the authorities. The Court is not persuaded by the Government's argument that the passage of nearly one year and two months from the adoption of the trial court's 1998 decision until it was being served on the parties could be justified by the applicant's non-payment of the court fees. It notes that nearly three years passed after the employer had lodged the appeal on points of law. 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, apart from the return of the case-file to the trial court two and a half years after the request for re-opening of the proceedings had been submitted.

39. The Court also recalls that 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). The Court therefore considers that the excessive workload, due to the low statutory threshold for lodging an appeal on points of law at the material time and the extensive scope of jurisdiction of the Supreme Court 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).

40. The same applies to the Government's arguments related to the enforcement proceedings that were pending in parallel with the proceedings before the Supreme Court. As the Court has consistently held, it might be reasonable for national courts to await under certain circumstances the outcome of parallel proceedings as a measure of procedural efficiency (see, *mutatis mutandis*, *König v. Germany*, judgment of 28 June 1978, Series A no. 27, § 110; *Boddaert v. Belgium*, judgment of 12 October 1992, Series A no. 235-D, § 39; *Pafitis and Others v. Greece*, judgment of 26 February 1998, *Reports* 1998-I, § 97). In the present case, the national courts neither stayed the proceedings on the merits nor was the outcome of the enforcement proceedings of any influence over them. The lapse of nearly three years before the Supreme Court cannot be justified by considerations of procedural efficiency as it should have acted with particular expedition given the length of the proceedings at that stage.

41. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed 12,222 euros (EUR) in respect of pecuniary damage related to unpaid salary. He also claimed EUR 50,000 in respect of non-pecuniary damage for the emotional suffering and physical pain sustained as a consequence of the length of the proceedings.

45. The Government did not express an opinion on the matter.

46. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

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

B. Costs and expenses

48. The applicant also claimed EUR 1,694 for the costs and expenses incurred before the domestic courts and EUR 200 for those incurred before the Court.

49. The Government did not express an opinion on the matter.

50. Concerning the applicant's request for 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 his claim by any particulars and supporting documents. Accordingly, the Court does not award any sum under this head (see the *Milošević* judgment, cited above, § 34). As to the legal costs and expenses incurred before it, the Court considers that the sum of EUR 200, as claimed by the applicant, should be awarded in full.

C. Default interest

51. 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 according to Article 44 § 2 of the Convention, the following amounts which are to be converted into the national currency of the respondent State at a rate applicable at the date of settlement:
 - (i) EUR 500 (five hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 200 (two hundred euros) 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President