



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

FIFTH SECTION

**CASE OF MZT LEARNICA A.D. v. THE FORMER YUGOSLAV  
REPUBLIC OF MACEDONIA**

*(Application no. 26124/02)*

JUDGMENT

STRASBOURG

30 November 2006

**FINAL**

*28/02/2007*

*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 MZT Learnica A.D. 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 6 November 2006,

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

## PROCEDURE

1. The case originated in an application (no. 26124/02) 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 MZT Learnica A.D. Skopje (“the applicant”), on 10 May 2002.

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

3. On 8 July 2005 the Court decided to communicate the complaint concerning the length of the proceedings 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 had foreign currency accounts in Jugobanka A.D. Skopje that was afterwards re-registered as Foreign Trade Bank Skopje (*Банка за надворешна трговија Скопје*) (“the bank”), through which it had made the payments to its business partners. In 1991 the applicant made available several letters of credit (*акредитиви*) as warranty for payments to third parties. The bank allegedly did not comply with the applicant's order to execute them and to transfer the money. The amount of these letters of credit allegedly exceeded \$ 200,000.

5. On 25 June 1992 the applicant instituted enforcement proceedings requesting the then Skopje District Commercial Court (*Окружен Стопански Суд во Скопје*) to order the bank to transfer the money due to its account.

6. On 30 June 1992 the then District Commercial Court granted the applicant's request. As the bank objected to the order, the subsequent proceedings continued as civil proceedings on the merits of the applicant's claim.

7. At the hearing held on 26 May 1993, the then Skopje District Commercial Court required an independent expert opinion. On 18 June 2003 the expert opinion was submitted to the court. On 16 July 1993 the applicant objected to the expert opinion.

8. The hearing listed for 20 September 1993 was adjourned at the applicant's request.

9. On 20 October 1993 the applicant requested the court to fix a hearing at its earliest convenience.

10. The hearing scheduled for 8 December 1993 was postponed as the bank's counter-claim of 21 June 1993 had not been forwarded to the court on time.

11. At the hearing of 31 January 1994 the applicant was requested to clarify its claim. On 22 February 1994 the applicant complied with the order.

12. The hearing of 7 March 1994 was adjourned and the bank was ordered to submit information concerning the applicant's claim as clarified. The court adjourned the hearing of 18 April 1994 due to the parties' absence.

13. At the hearing of 6 June 1994 the court ordered the State Forensic Institute (*Републички Завод за судски веештачења*) ("the Institute") to draw up an expert report concerning two letters of credit. On 1 July 1994 the Institute asked the court to order the applicant to pay the expert's costs. The expertise scheduled for 1 November 1994 was adjourned as the bank had requested the court to disqualify the expert for bias. On 17 November 1994 the court dismissed the request. On 17 February 1995 the court received the expert opinion.

14. On 24 March 1995 the then Skopje District Commercial Court launched bankruptcy proceedings against the bank.

15. On 26 April 1995 the court stayed the civil proceedings.

16. As the receiver (*стечаен управник*) in the bankruptcy proceedings had disputed the applicant's claim, on 5 and 6 June 1995 the District Commercial Court, as a bankruptcy court, instructed the latter to institute separate civil proceedings to ascertain its claim.

17. On 23 February 1996 the applicant requested the court to resume the civil proceedings against the bank. It also asked the court to hold a hearing and to summon the experts who had already provided their opinions.

18. The court scheduled the next hearing for 16 March 1997. As this date fell on a Sunday, on 12 February 1997 the applicant requested the court to fix a working day.

19. On the hearing of 16 April 1997 the bank objected to the applicant's capacity to stand as a party and to the experts' opinions.

20. The hearing fixed for 18 June 1997 was adjourned due to the strike of the court's administrative staff. The hearing of 8 October was also adjourned.

21. The hearings of 10 December 1997 and 23 February 1998 were adjourned as none of the parties attended, albeit properly summoned. The court considered the applicant's claim as withdrawn.

22. On 2 March 1998 the applicant requested reinstatement of the proceedings (*враќање во поранешна состојба*). On 27 May 1998 the court granted the applicant's request and re-scheduled the hearing for 21 September 1998 ordering it to clarify its claim. On 2 June 1998 the applicant partly withdrew its claim concerning one of the letters of credit.

23. The hearings of 21 September and 22 December 1998 and 22 February 1999 were postponed because of the defendant's absence or at the latter's request.

24. On 2 April 1999 the bank challenged the previous expert opinion. On 26 April 1999 the applicant submitted its comments on this challenge.

25. On 21 April 1999 the court required additional expert opinion to be obtained concerning the bank's challenge of 2 April 1999. On 22 December 1999 the court appointed the State Forensic Institute for Financial Matters to draw up a report. On 7 February and 29 March 2000 the Institute asked the court to order the bank to pay the expert's costs. As the expert's costs remained unpaid, on 17 May 2000 the Institute sent the case-file back to the court.

26. On 8 November 2000 the applicant requested the court to transmit the file back to the Institute paying the expert's costs. On 14 November 2000 the court asked the Institute again to draw up its report. On 11 April 2001 the court received the expert opinion.

27. The hearing scheduled for 3 December 2001 was adjourned because of the defendant's absence, albeit properly summoned.

28. On 29 November 2001 the Skopje Court of First Instance completed the bankruptcy proceedings against the bank. It noted, *inter alia*, that the creditors' claims had been cleared from the bank's assets (*стечајна маса*) and that the remaining part had been transferred to the State.

29. On 4 February 2002 the Skopje Court of First Instance stayed the proceedings as the bank had ceased to exist.

30. On 13 March 2002 the applicant appealed against this decision. It complained *inter alia*, that the proceedings should continue against the State, as a legal successor of the bank which assumed possession of the remaining assets after the latter had been declared insolvent. By a

submission of 12 June 2002, the applicant requested the court to invite the State to join the proceedings as a legal successor of the bank.

31. On 30 October 2002 the Skopje Court of Appeal dismissed the applicant's appeal and upheld the lower court's decision. It found that the proceedings could not continue against the State, as the applicant had not officially requested continuation of the proceedings against the latter and the court could not *ex officio* continue them.

32. On 5 December 2002 the applicant requested the court to resume the proceedings against the State and to ask the latter to join the proceedings as a legal successor of the bank.

33. On 19 April 2004 the applicant asked the court to hold a hearing and to summon the Solicitor General (*Јавен Правобранител*) on behalf of the State.

34. On the hearing of 20 June 2005 the Solicitor General refused to participate in the proceedings. The applicant stated that it would lodge a separate claim against the State.

35. As far as the Court is aware, no final decision has yet been given.

## 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, 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

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 proceedings started on 25 June 1992 when the applicant requested the then Skopje District Commercial Court to order the bank to transfer the money due to its account. As the bank objected to

the court's order, the subsequent proceedings continued as civil proceedings on the merits of the applicant's claim. They have been stayed as the bank meanwhile ceased to exist. The Court considers that the proceedings have not yet ended, as domestic courts have not yet decided on the applicant's request for their continuation against the State, as the bank's legal successor. The trial court held a hearing summoning the State as a party to the proceedings, but it did not make any decision in this respect.

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 25 June 1992, 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 *Milošević v. "the former Yugoslav Republic of Macedonia"*, no. 15056/02, § 21, 20 April 2006; *Styranski 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 four years nine months and fifteen days for one court level.

42. The period in question has not yet ended. It has already lasted more than fourteen years, of which more than nine years after the ratification of the Convention by the former Yugoslav Republic of Macedonia. The Court notes that no decision on the merits has been made.

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 (see *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, ECHR 2000-IV; *Philis v. Greece (no. 2)*, judgment of 27 June 1997, *Reports of Judgments and Decisions* 1997-IV, § 35).

44. The Government submitted that the case had been of a complex nature as it had overlapped in time with the dissolution of the former Yugoslavia and its banking system and because of the blockage of the payment exchange system. The complexity of the case was, in their view, corroborated by a number of elements: the three expert opinions obtained during the proceedings; the bank's counter claim; the fact that the applicant had twice clarified its claim and the suspension of the proceedings pending

the outcome of the bankruptcy proceedings. Concerning the applicant's conduct, the Government maintained that it had failed to request the court to speed up the proceedings, despite its earlier requests which had proved effective. They argued that it had contributed to the length of the proceedings by failing to attend two hearings in a row which caused the suspension of the proceedings for about five months and a half; by failing to clarify its claim and by not paying in advance the expert's costs. Moreover, it had the applicant taken over eight months to request the court to resume the proceedings after they had been stayed because of the insolvency proceedings. The Government also noted that the bank's behaviour had contributed to the length of the proceedings, e.g. its failure to attend seven hearings; its failure to comply with the court's instructions in time and to pay the expert's costs for over a year. As regards the conduct of the national authorities, the Government submitted that the proceedings should be considered as including differing enforcement and civil procedures. They averred that the courts had held the hearings without any interruption or delays, except for the one-year's inactivity before the proceedings resumed in March 1997. They stated that the delays in obtaining the expert opinions had been attributable to the parties to the proceedings. The strike of the court's administrative staff had delayed the proceedings for four months, a period which had not added much to the length of the proceedings. They argued that the lapse of eight months in 1999 to transmit the case-file to the expert institution had been due to the applicant's late submission of the additional comments to the previous expert opinion. The Government submitted that although it took over two years and a half for the court to fix a hearing in the proceedings against the State, it had been the applicant who caused that delay, as it had not requested the court to speed up the proceedings and it had lost interest in pursuing the case against the State.

45. The applicant argued that the case had been of a commercial nature for which national legislation had provided abbreviated time-limits. It stated that duration of eight years after the ratification of the Convention had been sufficient to find a violation of the reasonable-time requirement. It maintained that by 10 April 1997, the case had been ready for adjudication, as two expert opinions had been already obtained in its favour. It claimed that the courts had unnecessarily upheld the bank's request for a third expertise and that, although the expert's costs were the responsibility of the bank, it had paid them to avoid any further delays. It contested the Government's argument that the case had been complex and that it had contributed to the length of the proceedings. Its failure to attend some hearings did not cause much delay. It submitted that it had not lost interest in pursuing the case against the State, but that there had been no reasonable alternative as the latter had declined to take over the proceedings as a defendant. In conclusion, the applicant maintained that the unreasonable length of the proceedings had been wholly attributable to the State which

should be found responsible and ordered to pay the amount owed by the bank.

46. 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*, cited above, § 25).

47. Having regards to the number of expert opinions drawn, the Court considers that the case was of some legal complexity, but that this cannot alone justify the length of the proceedings.

48. Concerning the applicant's conduct, the Court finds that no significant periods of delay are imputable to the company. It notes that the applicant's failure to attend the hearings of 10 December 1997 and 23 February 1998 caused a suspension of the proceedings for only three months (see paragraphs 22 and 23). The Court further observes that the applicant endeavoured to speed up the proceedings by paying the expert's costs, although this had been the bank's responsibility (see paragraph 27) and by requesting the court to hold a hearing at its earliest convenience (see paragraph 34). It could not be held responsible for any failure to request the court more often to speed up the proceedings as such submissions could not be considered as an effective remedy concerning the length of proceedings (see *Atanasovic*, cited above, § 31).

49. On the other hand, the Court observes that it took over a year and a half for the trial court to schedule a hearing upon the applicant's request for continuation of the proceedings against the State which had assumed the remainder of the bank's assets after the latter's insolvency. It notes that no decision on the merits has been made although the proceedings had been pending for nearly ten years before being suspended. They were finally stayed by the Appeal Court's decision of 30 October 2002 after the bank ceased to exist. Since the proceedings are still pending, the period in question has not yet ended. The Court, therefore, considers that responsibility for the protracted length of the proceedings falls on the domestic authorities.

50. Having examined all the material submitted to it, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

52. Relying on Article 1 of Protocol No.1, the applicant complained that it was deprived of its possession over the amount in question. The applicant complained under Article 14 of the Convention that it was discriminated

against as all the other creditors had redeemed their claims from the bank's assets in the bankruptcy proceedings.

53. The Court reiterates that the concept of “possessions” in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to ownership of physical goods and is independent from the formal classification in domestic law (see, *mutatis mutandis*, *Zwierzynski v. Poland*, no. 34049/96, § 63, ECHR 2001-VI). The concept of “possessions” is not limited to “existing possessions” but may also cover assets, including claims, in respect of which the applicant can argue that he has at least a reasonable and “legitimate expectation” of obtaining effective enjoyment of a property right (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 124, ECHR 2004; *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 83, ECHR 2001-VIII). However, it has been the Court's constant case-law that a “claim” can only constitute a “possession” within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Nosov v. Russia* (dec.), no. 30877/02, 20 October 2005; *Grishchenko v. Russia* (dec.), no. 75907/01, 8 July 2004; *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III).

54. Turning to the present case, the Court notes that the national courts reached no decision on the merits. It appears that some of the bank's assets remained available, as they were transferred to the State. Therefore, the applicant may still recover its claim. In this respect, the application is premature and therefore the domestic remedies have not yet been exhausted.

55. It follows that this complaint must be rejected in accordance with Article 35 § 4 of the Convention.

56. Finally, the Court finds that the applicant's complaint under Article 14 of the Convention is unsubstantiated as no evidence has been provided in support of its allegations. Moreover, the applicant failed to raise the issue of discrimination before the Constitutional Court which is vested with the jurisdiction to decide such issues (see *Sijakova and others v. “the former Yugoslav Republic of Macedonia”*, (dec) 6 March 2003, no. 67914/01).

57. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

59. The applicant claimed 200,668.56 US dollars plus interest in respect of the damage sustained as a consequence of the length of the proceedings.

60. The Government contested the claim as unsubstantiated.

61. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, ruling on an equitable basis, it awards the applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

### B. Costs and expenses

62. The applicant also claimed 153,840 Macedonian denars (*approx. 2,500 euros*) for the costs and expenses incurred before the domestic courts. It did not claim reimbursement of the costs incurred in the proceedings before the Court.

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

64. 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 of or redress for the alleged violation complained of before the Court. Moreover, the applicant failed to support its 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).

### C. Default interest

65. 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 4,000 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 30 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK  
Registrar

Peer LORENZEN  
President