CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF DOCEVSKI v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

(Application no. 66907/01)

JUDGMENT

STRASBOURG

1 March 2007

FINAL

01/06/2007

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 Docevski 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 5 February 2007,

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

PROCEDURE

1. The case originated in an application (no. 66907/01) 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 Tomislav Kirov Docevski ("the applicant"), on 8 December 2000.

2. The applicant was represented by Ms J. Gligorovska, a lawyer practising in Kumanovo. The Macedonian Government ("the Government") were represented by their Agent, Mrs R. Lazareska Gerovska.

3. The applicant alleged that his case had not been heard within a reasonable time as required under Article 6 of the Convention.

4. By a decision of 10 November 2005 the Court declared the application partly admissible.

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

THE FACTS

6. On 16 November 1994 the applicant retired. On 20 December 1994 the Pension and Disability Insurance Fund ("the Fund") determined the amount of his pension.

7. On 31 October 1996 the applicant requested the Fund to re-calculate the amount of his pension on account of newly discovered evidence. He argued that the Constitutional Court had meanwhile repealed some

provisions of the Pension and Disability Insurance Act (“the Act”) and had created a legal basis for a higher calculation of his pension.

8. On 25 November 1996 the Fund dismissed his request, holding that the Constitutional Court's decision concerned only persons who had retired as of 1995.

9. On 1 December 1996 the applicant appealed against the decision.

10. On 3 February 1997 the Second Instance Commission within the Fund dismissed the applicant's appeal.

11. In March 1997 the applicant instituted administrative contentious proceedings (*управен спор)* before the Supreme Court challenging the lawfulness of the Fund's decisions.

12. On 19 November 1997 the Supreme Court quashed the decision of 3 February 1997 as adopted by a body which had not met the statutory requirements to decide in second instance. It referred to the Constitutional Court's decision by which it had abrogated the relevant provisions of the Act in accordance with which the Second Instance Commission within the Fund had been vested with a jurisdiction to decide the appeals against the Fund's first-instance decisions.

13. On 28 January 1998 the Government Appeal Commission (“the Commission”) (*Комисија за решавање во втор степен по предметите од пензинското и инвалидското осигурување)* dismissed the applicant's appeal restating the reasons adduced by the Fund in its decision of 25 November 1996.

14. On 15 September 1998 the applicant instituted administrative contentious proceedings before the Supreme Court against this decision.

15. On 27 October 1999 the Supreme Court quashed the Commission's decision and remitted the case for re-examination. It held that the Commission had not examined the applicant's request for reassessment of the previous years' salary as submitted by him, but instead had evaluated the impact of the Constitutional Court's decision on the calculation of the amount of his pension.

16. It appears that on 15 February 2000 the applicant instituted administrative contentious proceedings before the Supreme Court as the Commission had failed to decide his claim.

17. On 12 June 2000 the Commission upheld the applicant's appeal and decided that the amount of his pension should be increased. It referred to a Supreme Court's decision given in plenary session concerning the calculation of a pension in compliance with the Constitutional Court's decision mentioned above.

18. On 22 June 2000 the applicant complained to the Supreme Court that the Commission had not decided his initial claim as submitted in his request.

19. On 7 September 2000 the applicant requested the President of the Supreme Court to join the proceedings and to decide on the merits.

20. On 5 December 2001 the Supreme Court adopted two separate decisions: it dismissed the applicant's appeal against the Commission's decision of 12 June 2000 and it upheld the appeal for failure of the administrative authorities to decide. It also instructed the Commission to decide the applicant's appeal against the Fund's decision of November 1996, as initially submitted.

21. On 28 March 2002 the Commission decided the applicant's claim concerning the adjustment of the amount of his pension.

22. On 10 February 2005 the Supreme Court dismissed the applicant's appeal on points of law and upheld the Commission's decision. It found that the Commission had correctly calculated the amount of the applicant's pension in compliance with the Constitutional Court's decision.

23. On 9 May 2005 this decision was served on the applicant.

THE LAW

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

24. 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 in so far as relevant, 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. The parties' submissions

25. The Government submitted that the proceedings complained of should be considered as composed of three separate sets and that none of them had contravened the "reasonable time" requirement. In the first set of proceedings, the Supreme Court upheld the applicant's claim and remitted the case for re-examination to the Commission. The second set of proceedings started in September 1998 by the institution of the administrative contentious proceedings before the Supreme Court. They ended in October 1999 when the court had upheld the applicant's claim and had remitted the case for re-examination. They maintained that the length of each set of the proceedings had not been excessive. The third set of proceedings before the Supreme Court lasted about eighteen months until December 2001 when it rendered its decision. The Government also noted the Supreme Court's excessive workload for the respective period and proceedings before it regarding complaints related to the local elections of 2000.

26. The applicant rejected the Government's arguments maintaining that the length of the proceedings would not have been excessive if the administrative authorities had observed the Supreme Court's decisions or if the latter had decided the case on the merits. He argued that it had taken nearly three years for the Supreme Court to decide his appeal on points of law lodged against the Commission's decision of 2002. He submitted that no periods of delay are imputable to him as he had submitted the evidence within the statutory time-limits. He further maintained that the circumstance that he had availed himself of the remedies available under the national law could not be regarded as contributing to the length of the proceedings. The applicant concluded that the case had not been of a complex nature and that the Supreme Court's overload could not justify the protracted length.

b. The Court's assessment

27. The Court firstly observes that the administrative proceedings were instituted on 31 October 1996 and that on 25 November 1996 the Fund gave a decision dismissing the applicant's request. In March 1997, following unsuccessful administrative appeal proceedings, the applicant instituted proceedings before the Supreme Court challenging the Fund's decision. However, the period which falls within the Court's jurisdiction began on 10 April 1997, when the recognition by the former Yugoslav Republic of Macedonia of the right of individual petition took effect (see *Dumanovski v. the former Yugoslav Republic of Macedonia*, no. 13898/02, § 36, 8 December 2005; *Horvat v. Croatia*, no. 51585/99, § 50, ECHR 2001-VIII).

28. On the other hand, the Court is not persuaded by the Government's argument that the proceedings complained of should not be considered as one single procedure, as the administrative authorities and the Supreme Court were considering the same subject-matter throughout. The three separate sets of proceedings referred to by the Government formed integral part of these proceedings which ended on 9 May 2005 when the Supreme Court's decision was served on the applicant. Accordingly, the relevant period which falls within the Court's competence was about eight years and one month for two levels of jurisdiction.

29. 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 *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).

30. The Court finds that the case was of some legal complexity, but that it cannot alone justify the length of the proceedings.

31. Concerning the applicant's conduct, the Court finds that no periods of delay are imputable to him.

32. On the other hand, the Court notes that there are substantial delays attributable to the authorities. During the time which falls within its competence *ratione temporis*, the Supreme Court gave five decisions of which one concerned the Commission's failure to decide and the Commission adopted three decisions. The domestic authorities thus cannot be said to have been inactive. However, it observes that the delay was caused mainly by the re-examination of the case. In addition, the Court notes that the Supreme Court's decision on the applicant's appeal on points law was taken nearly three years after the Commission had rendered its decision in 2002 (see paragraphs 21 and 22).

33. It further 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 *Kostovska v. the former Yugoslav Republic of Macedonia*, no. 44353/02, § 41, 15 June 2006; *Muti v. Italy*, judgment of 23 March 1994, Series A no. 281-C, § 15; *Horvat*, cited above, § 59).

34. In this respect, 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, *mutatis mutandis, Dumanovski*, cited above, § 45; *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). As regards the appeals filed with the Supreme Court concerning the 2000 local elections, the Court notes that the Government failed to provide any evidence that during the reference period steps had been taken which would reflect a genuine willingness of the State to tackle the problem (see, *mutatis mutandis*, *Zimmermann and Steiner v. Switzerland*, judgment of 13 July 1983, Series A no. 66, § 31).

35. Moreover, it reiterates that special diligence is necessary in pension disputes (see *Počuča*, cited above, § 46; *H.T. v. Germany*, no. 38073/97, § 37, 11 October 2001).

36. Having regard to the circumstances of the instant case and to what was at stake for the applicant, the Court considers that the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant claimed EUR 29,000 in respect of pecuniary damage. That sum allegedly corresponded to the wrongly calculated amount of his pension with interest. He also claimed EUR 110,000 in respect of non-pecuniary damage for the anxiety suffered and health deterioration as a consequence of the length of the proceedings.

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

41. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. 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, the Court awards the applicant EUR 3, 600, plus any tax that may be chargeable.

B. Costs and expenses

42. The applicant claimed EUR 1,000 for the costs and expenses incurred before the domestic authorities. He further claimed EUR 3,625 for the costs and expenses incurred in the proceedings before the Court. These included the lawyer's fees for 105 hours of legal work; the copying and mailing of documents. He did not produce a fee note nor did he provide justification for all of the costs claimed.

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

44. Concerning the applicant's request for reimbursement of the costs incurred in the proceedings before the national authorities, the Court reiterates that legal costs are only recoverable in so far as they relate to the violation found (see *Ernestina Zullo v. Italy* [GC], no. 64897/01, § 153, 29 March 2006 *Belvedere Alberghiera S.r.l. v. Italy* (just satisfaction), no. 31524/96, § 45, 30 October 2003 *Van de Hurk v. the Netherlands*, judgment of 19 April 1994, Series A no. 288, § 66). As such costs had not been incurred in order to seek through the domestic legal order prevention and redress of the alleged violation complained of, the Court does not award any sum under this head (see *Milošević v. the former Yugoslav Republic of Macedonia*, no. 15056/02, § 34, 20 April 2006).

45. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court notes that the applicant did not provide any supporting documents concerning the legal fees and the bills produced justified only part of the costs claimed. As the Government did not contest the applicant's claim and regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 600 for costs and expenses for the proceedings before it, plus any tax that may be chargeable.

C. Default interest

46. 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. *Holds* that there has been a violation of Article 6 of the Convention;

2. *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 3,600 (three thousand and six hundred euros) in respect of non-pecuniary damage and EUR 600 (six hundred euros) for the costs and expenses, 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;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 March 2007 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK Registrar	Peer LORENZEN President