



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

FIFTH SECTION

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

(Application no. 13270/02)

JUDGMENT

STRASBOURG

31 May 2007

FINAL

12/11/2007

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 Dika 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 3 November 2005 and 9 May 2007,
Delivers the following judgment, which was adopted on the
last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 13270/02) 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 Islam Dika (“the applicant”), on 29 September 2001.

2. The applicant was represented by Mr N. Merdzanoski, a lawyer practising in Struga. 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 3 November 2005, the Court declared the application admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1966 and lives in the village Livadi, Struga, the former Yugoslav Republic of Macedonia.

7. On 5 March 1993 a Fokker airplane, which was operated by the Macedonian company Palair (“the first defendant”), crashed at Skopje airport during taking off. The applicant was one of the few passengers who survived the accident. He sustained serious physical injuries.

8. Settlement negotiations between the applicant, the Palair, Fokker Aircraft B.V. (“the second defendant”), Aircraft Financing & Trading B.V. from the Netherlands and Lloyds of London were unsuccessful.

9. On 17 February 1995 the applicant brought a civil action before the Skopje Court of First Instance (*Основен суд Скопје I Скопје*) requesting the court to award him compensation for the pecuniary and non-pecuniary loss sustained as a result of the accident: in particular, he asked the court to order the defendants to compensate him for the loss of his personal belongings, medical expenses, his loss of income and loss for his mental suffering, as well as to pay him a life-time pension given his permanent incapacity.

10. The first hearing was held on 27 October 1995 and was attended by all parties. It was adjourned on the request of the applicant to allow him to submit additional evidence.

11. The hearing fixed for 8 December 1995 was adjourned due to the applicant's illness.

12. At a hearing held on 6 February 1996, the court provided the defendants with evidence previously submitted by the applicant.

13. The next hearing of 26 March 1996 was rescheduled on the defendants' request for further time to examine the applicant's submissions. Meanwhile, the applicant changed lawyers. At the hearing of 14 May 1996, the court ordered one of the defendants to provide further evidence.

14. At a hearing on 27 June 1996, the court ordered a forensic expert examination to establish the applicant's loss of income given that he had a work permit in Switzerland.

15. Hearings scheduled for 21 November 1996 and 11 February 1997 were adjourned as the parties had not been properly summoned.

16. At a hearing of 25 March 1997 the applicant had requested an adjournment to allow him to further particularise his claim.

17. At a hearing held on 9 May 1997, one of the defendants requested a postponement to examine the applicant's more recent submissions.

18. On 26 June 1997 the court adjourned the hearing: there was no evidence that the forensic expert and the first defendant had been properly summoned.

19. On 24 October 1997 the court heard the expert. The court further ordered the applicant to further particularise his financial claim and to provide information about a sum of money he had already received from the first defendant.

20. On 17 November 1997 the applicant requested the Minister of Justice to intervene before the competent court for a speedy resolution of his case.

21. On 24 January 1998 the applicant complained before the President of the Skopje Court of First Instance that no decision had been taken although all relevant evidence and expert opinions had been obtained. On 14 May 1998 he repeated his grievances before the President of the Skopje Appeal Court.

22. Adjournments of hearings fixed for 18 December 1997 and 17 February 1998 were afforded in the absence of evidence that the first defendant had been properly summoned.

23. A hearing fixed for 21 April 1998 was adjourned on the parties' request, as they were pursuing an out-of-court settlement.

24. A hearing held on 22 May 1998 was postponed as the first defendant had withdrawn from the case.

25. Hearings fixed for 11 September 1998, 19 November 1998 and 16 February 1999 were adjourned again due to a lack of evidence that the first defendant had been properly summoned. The court record stated that the slip of the mail receipt had borne the signature, but not the stamp, of the first defendant.

26. On 19 February 1999 the applicant requested to be exempted from court fees.

27. The court adjourned a hearing fixed for 13 April 1999 as the applicant had failed to provide evidence supporting his request for exemption. Hearings fixed for 8 June, 5 October and 7 December 1999 were adjourned due to improper delivery of the court summons on the first defendant.

28. On 8 November 1999 the applicant requested the Skopje Court of First Instance to declare it incompetent *ratione loci* and to confer the further handling of his case on the Struga Court of First Instance. He maintained that, because of his poor financial situation, he could not sustain the travelling expenses from his place of residence to Skopje to attend the court hearings.

29. On 11 February 2000 the Skopje Court of First Instance dismissed the applicant's request as out of time. By a decision of 21 September 2000 the Skopje Court of Appeal dismissed the applicant's appeal.

30. On 25 October 2000 the Supreme Court dismissed the applicant's request to transfer his case to another court competent *ratione materiae*: his

arguments, that the proceedings had lasted almost five years and that he had scarce means of subsistence, could not be regarded as sufficient to justify that measure.

31. On 20 October 2000 the applicant complained before the State Judicial Council about the delays in the proceedings.

32. A hearing fixed for 22 December 2000 was adjourned as none of the parties appeared at court.

33. On 17 April 2001 the applicant requested a special delivery of the court summons on the first defendant.

34. The court adjourned a hearing fixed for 3 July 2001, in the parties' presence, to allow it examine the first defendant's legal status and the validity of the letter of authority of its lawyer. The court also undertook to secure information as to whether the first defendant had been insolvent.

35. On 30 October 2001 the court was informed that preliminary bankruptcy proceedings had been instituted against the first defendant. As that information did not reach the court in time, it adjourned a hearing fixed for 8 November 2001. The court decided to summon the first applicant's receiver for the next hearing.

36. The hearings fixed for 27 December 2001, 14 March and 16 May 2002 were adjourned due to improper delivery of the court summons on the first defendant or the receiver. The applicant proposed that a further summons for the first defendant be announced on the court's notice board.

37. On 4 July 2002 the court was notified that the preliminary bankruptcy proceedings against the first defendant had been suspended. The court adjourned a hearing fixed for 10 September 2002 to confirm the validity of the letter of authority of the first defendant's lawyer.

38. The court then adjourned a hearing of 8 November 2002 as the first defendant had not been properly summoned. In response to the applicant's request, it fixed the next hearing for 11 March 2003.

39. On 15 May 2003 the Skopje Court of First Instance partly upheld the applicant's claim and ordered the first defendant to pay just compensation for his non-pecuniary loss and for his pecuniary loss from March until November 1993. It dismissed the remainder of his claim against the first defendant. The court further dismissed his claim against the second defendant given the latter's lack of legal capacity (*немање на пасивна легитимација*).

40. On 10 September 2004 the Skopje Court of Appeal dismissed the applicant's appeal and upheld the trial court's decision.

41. On 19 April 2006 the Supreme Court dismissed the applicant's appeal on points of law (*ревизија*).

42. The applicant had six different representatives during these proceedings.

II. RELEVANT DOMESTIC LAW

43. Section 10 of the Civil Proceedings Act (*Закон за парничната постанка*) (“the Act”) provided, at the relevant time, that it was incumbent upon the court to undertake to conduct the proceedings without undue delay and economically, and to inhibit any attempt of abuse of the rights afforded to the parties concerned.

THE LAW

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

44. The applicant complained that the length of his civil proceedings was incompatible with the “reasonable time” guarantee of 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

45. The Government submitted that the period which elapsed before the entry into force of the Convention in respect of the former Yugoslav Republic of Macedonia should not be taken into consideration. They maintained that there had been exceptionally complex circumstances attending the examination of the case by the trial court, such as: the examination of the legal status of the first defendant; one of the parties was a foreign company; the applicant had submitted voluminous evidence; he had not particularised or amended his claims in good time; and a financial expert examination was requested. The civil proceedings were based on the principle of the autonomy of parties and that the courts were bound by the applicant's conduct.

46. Concerning the conduct of the domestic authorities, the Government maintained that the trial court had proceeded with the case with due diligence, as the scheduled hearings had been held without any interruption and delays, with the exception of the summer recess.

47. As regards the applicant's conduct, the Government stated that he had contributed to the length of the proceedings, as ten of the thirty-four hearings fixed were adjourned due to his fault. In addition, they contended that he had failed to particularise his financial claims in good time. Moreover, they averred that the applicant's request for transfer of the case to another court had significantly added to the length of the proceedings as had his changed counsels six times during the proceedings.

48. The applicant submitted that the case was not of a complex nature and that the trial court had unreasonably delayed the proceedings. He maintained that the case had been of utmost importance for him: he was fully incapacitated with a resulting negative impact on his family's standard of living. No periods of delay had been imputable to him: he had complied with court orders and he had filed his evidence in time, as that was in his interest. It was his right to choose his own representatives and their frequent replacement had not affected the length of the proceedings. He had failed to attend only one hearing due to his illness.

49. As to the conduct of the domestic authorities, he stated that the trial court had expeditiously proceeded with the case until 26 June 1996, but that the subsequent proceedings had been unjustifiably delayed. The applicant also contested the accuracy of some of the court records. He further maintained that the courts had enabled the first defendant to become insolvent by delaying the impugned proceedings.

b. The Court's assessment

50. The Court notes that the proceedings started on 17 February 1995 when the applicant filed his compensation claim before the Skopje Court of First Instance.

51. 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 *Kostovska v. the former Yugoslav Republic of Macedonia*, no. 44353/02, § 34, 15 June 2006; *Dumanovski v. the former Yugoslav Republic of Macedonia*, no. 13898/02, § 36, 8 December 2005). 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 two years one month and twenty-four days for one court level.

52. Even assuming that it can be considered that the proceedings ended on 19 April 2006, there being no evidence as to the date of service of the Supreme Court's decision to the applicant, the relevant period which falls within the Court's competence was nine years and nine days for three levels of jurisdiction.

53. 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).

54. The Court finds that the case was of some complexity, but that that cannot of itself explain the length of the proceedings.

55. Concerning the applicant's conduct, the Court finds that the only period of delay imputable to him is a one-year period in relation to his request for transfer of the case to another court (see paragraphs 28-30). It further observes that he filed several motions to the trial court and to other relevant authorities to expedite the proceedings (see paragraphs 20, 21 and 31).

56. On the other hand, the Court considers that there are many and substantial delays attributable to the authorities. Prior to the entry into force of the Convention in respect of the former Yugoslav Republic of Macedonia, the proceedings had already been pending before the Court of First Instance for just over two years. It took another six years for the Skopje Court of First Instance to decide the applicant's claim. Moreover, the main obstacle to the case proceeding was the inability, on six occasions, of the trial court to secure the presence of the first defendant alone (see paragraphs 18, 22, 25, 27, 36 and 38).

57. In this respect, it 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 *Rizova v. the former Yugoslav Republic of Macedonia*, no. 41228/02, § 48, 6 July 2006).

58. In addition, the Court reiterates that although, as argued by the Government, the progress of civil proceedings is, in domestic law, decided by the parties, that principle does not dispense the courts from ensuring compliance with the "reasonable time" requirement of Article 6. In any event, section 10 of the Act (see paragraph 43 above) provided that "it was incumbent upon the court to undertake to conduct the proceedings without undue delay" (see, *mutatis mutandis*, *Scopelliti v. Italy*, judgment of 23 November 1993, Series A no. 278, § 25).

59. Moreover, it reiterates that special diligence is necessary in disputes concerning determination of compensation in personal injuries cases (see *Poje v. Croatia*, no. 29159/03, § 26, 9 March 2006; *Silva Pontes v. Portugal*, judgment of 23 March 1994, Series A no. 286-A, p. 15, § 39).

60. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

62. 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.”

63. Without specifying the total amount of his claim in respect of the pecuniary damage, the applicant requested compensation for loss of income for the period between 1994 and 2005, together with interest. He further claimed a life-time pension due to the alleged full and permanent incapacity. He also claimed Swiss Francs 950,000 (SFR) in respect of non-pecuniary damage for the fear and emotional stress suffered as a consequence of the injuries sustained.

64. The Government contested the applicant's claims. They asked the Court to dismiss these claims as essentially a repetition of his claims before the domestic courts. As an alternative, they requested 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.

65. The Court observes that the applicant claimed compensation for the pecuniary and non-pecuniary loss he had sustained as a result of the accident and further, that he did not claim any damage as a consequence of the length of the proceedings. Since there is no causal link between the violation found and the damage alleged, the Court therefore rejects these claims.

B. Costs and expenses

66. The applicant also claimed twenty percent of the award for reimbursement of the lawyer's fees in respect of the proceedings before the domestic courts and before this Court. He referred to a “service agreement” of 8 December 2000 under which the applicant had agreed to pay his representative twenty percent of the award granted before the domestic courts or before this Court, as he had not been asked to pay any fees during the proceedings. Otherwise, he left the matter to the Court's discretion.

67. The Government contested the applicant's claim.

68. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum (see *Kostovska v. the former Yugoslav Republic of Macedonia*, cited above, § 62; *Arvelakis v. Greece*, no. 41354/98, § 34, 12 April 2001; *Nikolova*

v. Bulgaria [GC], no. 31195/96, § 79, ECHR 1999-II). It is also recalled that “conditional fee agreements”, as in the present case, may show, if they are legally enforceable, that the sums claimed are actually payable by the applicant and the Court must, as always, assess whether they were reasonably incurred (see *Young v. the United Kingdom*, no. 60682/00, § 53, 16 January 2007). The Court notes that the applicant did not provide any supporting documents or particulars to substantiate the costs and expenses claimed in respect of the domestic proceedings: it therefore rejects the claim under this head. On the other hand, the Court considers reasonable, regard being had to the above criteria and in particular the scope of work done by the applicant's representative, to award the sum of EUR 600 for the proceedings before the Court.

C. Default interest

69. 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 § 1 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 600 (six hundred euros) in respect of 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 amount 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President