



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

FIFTH SECTION

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

(Application no. 34215/02)

JUDGMENT

STRASBOURG

31 May 2007

FINAL

31/08/2007

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 Stojanov 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 V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 9 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 34215/02) 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 Vanče Stojanov ("the applicant"), on 24 August 2002.

2. The applicant was represented by Mr I. Stojanov from Skopje. The Macedonian Government ("the Government") were represented by their Agent, Mrs R. Lazareska Gerovska.

3. On 4 November 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

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1941 and lives in Skopje.

5. On 22 January 1991 the applicant brought before the then Labour Court of First Instance (*Основен Суд на Здружен Труд Скопје*) a civil action against the employer's decisions of 28 November and 10 December 1990 about his reassignment.

6. On 25 March 1991 the Labour Court of First Instance upheld the applicant's claim and annulled the impugned decisions as unlawful. It further ordered the employer to reinstate him to a post equal to his qualifications.

7. On 30 January 1992 the then Skopje District Court (*Окружен Суд Скопје*) set aside the decision and remitted the case for re-examination. It instructed the lower court, *inter alia*, to admit in evidence the internal regulations of the employer.

8. At the hearing held on 21 May 1992, the applicant lodged with the court a separate claim for compensation for the difference in salary ("the compensation claim") caused by his reassignment. On the same day, the Skopje Municipal Court (*Општински Суд Скопје*) dismissed the applicant's claims.

9. On 6 November 1992 the Skopje District Court upheld the applicant's appeal and quashed the earlier decision. It held that the lower court had not complied with its earlier instructions and had requested it, *inter alia*, to order the applicant to further particularise his compensation claim.

10. On 19 March 1993 the Skopje Municipal Court adopted a partial decision (*делумна пресуда*) by which it annulled the employer's reassignment decisions. It further held that the proceedings concerning the applicant's compensation claim would resume after the decision on the reassignment became final.

11. On 21 October 1993 the District Court of Skopje dismissed the employer's appeal and upheld the lower court's partial decision.

12. As to the applicant's compensation claim, the court adjourned the hearing of 17 February 1994 as the employer's report about the amount of the difference in salary had not been communicated to the applicant in time. At the hearing of 1 March 1994 the applicant requested the court to order a financial expertise. The expert report was provided on 26 April 1994.

13. On 15 June 1994 the proceedings were stayed for three months due to the applicant's absence.

14. On 7 October 1994 the Skopje Municipal Court upheld the applicant's compensation claim and ordered the employer to pay him the sum which had been recommended in the expert report of 26 April 1994. The court referred, *inter alia*, to the then Labour Relationships Act concerning compensation for damage sustained at work.

15. On 16 March 1995 the District Court dismissed the employer's appeal and upheld the lower court's decision.

16. On 30 October 1996 the Supreme Court upheld the employer's appeal on points of law (*ревизија*), quashed the lower courts' decisions and ordered a retrial. It found that they had incorrectly applied national law concerning the amount of the award.

17. At the hearing of 3 September 1997 the trial court ordered the applicant to further particularise his compensation claim in compliance with

the Supreme Court's instructions. The next hearing of 21 November 1997 was allegedly postponed due to the applicant's failure to comply with the order. No document was provided in support.

18. The hearing fixed for 29 December 1997 was adjourned as the court had ordered another financial expertise. At the hearing of 11 May 1998 the court requested a further expert study.

19. The next hearing of 1 December 1998 was adjourned due to the applicant's illness.

20. The hearings of 23 March and 7 June 1999 were also adjourned.

21. On 13 September 1999 the Skopje Court of First Instance (*Основен Суд Скопје*) upheld the applicant's compensation claim and awarded him the same amount as determined on 7 October 1994.

22. By letters of 31 January, 8, 15 and 22 February 2000 the applicant requested the Court of Appeal to give priority to the case.

23. On 10 February 2000 the Skopje Court of Appeal (*Апелационен Суд Скопје*) upheld the employer's appeal and remitted the case for a fresh consideration. It found that the lower court had ignored the instructions of the Supreme Court concerning the calculation of the award.

24. On 12 June 2000 the applicant applied to the Court of First Instance for expedition of the proceedings.

25. On 1 December 2000 the court suspended the proceedings due to the applicant's absence. The applicant requested reinstatement of the proceedings (*враќање во поранешна состојба*) as he had been called upon by the Army. The proceedings resumed on 15 May 2001 as the court had found the applicant's excuse justified. The hearing of 21 February 2001 was postponed because of a strike of the court administration.

26. On 19 September 2001 the Skopje Court of First Instance upheld the applicant's compensation claim and awarded compensation in a smaller amount.

27. On 13 March 2002 the Court of Appeal partially upheld the employer's appeal and overturned the lower court's decision concerning the calculation of interest. It upheld the remainder of the decision.

RELEVANT DOMESTIC LAW

28. Section 10 of the then Civil Proceedings Act (*Закон за парничната постапка*) ("the Act") provided 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.

29. Section 408 of the Act provided, *inter alia*, that the court should take into consideration the necessity of urgent settlement of employment disputes.

THE LAW

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

30. The applicant complained that the length of the proceedings was incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention, which reads, in so far as relevant, 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

1. *Compatibility ratione materiae*

31. The Government maintained that the dispute did not fall within the scope of Article 6 § 1 of the Convention nor were the proceedings directly decisive for the applicant's “civil rights and obligations”.

32. The applicant contested the Government's objection.

33. As to the existence of a “*contestation*” (dispute) over a right, the Court would refer to the principles enunciated in its case-law (see *Bentham v. the Netherlands*, judgment of 23 October 1985, Series A no. 97, § 32).

34. In the present case, the Court observes that the impugned proceedings concerned the applicant's compensation claim related to an alleged unlawful reassignment. The dispute therefore concerned an employment-related matter and was arguable and genuine. In addition, the proceedings complained of were capable of leading - and did in the present case - to a partial grant of the applicant's compensation claim; they were therefore directly decisive for the right at issue.

35. Furthermore, the Court finds that the applicant's claim was of a pecuniary and private nature arising from his employment. It is thus, not excluded, as the Government argued, from the category of civil rights to which Article 6 § 1 of the Convention applies (see, *mutatis mutandis*, *Trykhlil v. Ukraine*, no. 58312/00, 20 September 2005).

36. Accordingly, the Government's objection must be dismissed.

2. *Compatibility ratione personae*

37. The Government further considered that the applicant could not claim to be a victim of the violation complained of as he had not sustained any financial damage by the reassignment. They further maintained that he had contributed to the length of the proceedings.

38. The applicant did not express an opinion on the matter.

39. According to the Court's established case-law, the word "victim" in the context of Article 34 of the Convention denotes the person directly affected by the act or omission in issue (see *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, § 36). In addition, a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 180, ECHR 2006 and the references cited therein).

40. In the present case, while the applicant was compensated for his reassignment, the domestic courts have neither acknowledged, nor provide redress, for the alleged breach of the applicant's right to a trial within a reasonable time under Article 6 of the Convention.

41. The applicant, therefore can claim to be a victim of a violation of Article 6 § 1 of the Convention.

42. Accordingly, the Government's objection must be dismissed.

3. Conclusion

43. The Court considers that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

44. 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.

45. They further stated that the case had been of a complex nature due to the voluminous expert opinions and the volume of documents which the domestic courts had considered to establish the facts. As the proceedings concerned an employment-related matter, the domestic courts had been required to find a balance between the complexity of the case and its urgent nature.

46. As regards the applicant's conduct, the Government submitted that he had considerably contributed to the length of the impugned proceedings: his failure to attend the hearings of 15 June 1994 and 1 December 1998 caused suspension of the proceedings; that he had frequently amended the amount of his claim; and that he had not requested the court to speed up the

proceedings. They further maintained that the parties to the proceedings had availed themselves of the remedies available under the domestic law.

47. Concerning the conduct of the domestic courts, the Government argued that they had decided the applicant's case with due diligence and noted that thirteen decisions had been given throughout. They further maintained that the scheduled hearings had been held without any interruptions and delays. They concluded that the impugned proceedings had been composed of number of separate sets and that none of them had lasted unreasonably long.

48. The applicant contested the Government's argument about the complexity of the case arguing that the courts had decided a simple employment-related matter of minor value.

49. He further submitted that he had endeavoured to accelerate the proceedings and that his absence from two hearings of forty hearings listed, had not added much to the length of the proceedings. In addition, he stated that the frequent remittal orders had indicated that the lower courts had adopted poor decisions which had contributed to the length of the proceedings. He concluded that the number of remittal orders and the court's failure to fix the hearings in regular intervals had been main reasons for the protracted length of the proceedings, despite their urgent nature.

2. *The Court's assessment*

50. The Court, at the outset, notes that the proceedings commenced on 22 January 1991 when the applicant brought the civil action in relation to the reassignment decision. However, it considers that the proceedings complained of by the applicant did not start on that date, but on 21 May 1992 when he introduced his compensation claim. Moreover, as argued by the Government, the period which falls within the Court's jurisdiction began on 10 April 1997 after the Convention entered into force in respect of the former Yugoslav Republic of Macedonia (see *Lickov v. the former Yugoslav Republic of Macedonia*, no. 38202/02, § 21, 28 September 2006).

51. 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 *Styrkowski 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 ten months and twenty days for three court levels. During this time, the case was three times remitted back for a fresh consideration. The Supreme Court's decision of 30 October 1996 was the last decision given during this period.

52. For the reasons detailed in the *Arsov* case (see *Arsov v. the former Yugoslav Republic of Macedonia*, no. 44208/02, § 42, 19 October 2006), the

Court finds that the proceedings complained of should be considered as one single procedure. They therefore lasted nine years nine months and twenty-six days of which four years eleven months and three days fall to be examined by the Court for two 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 *Markoski v. the former Yugoslav Republic of Macedonia*, no. 22928/03, § 32, 2 November 2006, and the references cited therein).

54. The Court considers that the case was not of a particularly complex nature. Some complexity arose from the need to request experts' reports, but this cannot, as of itself, explain the length of the proceedings.

55. As to the applicant's conduct, while he was responsible for the adjournment of the hearings of 1 December 1998 and 1 December 2000, this was because of his health and a call by the Army. The latter adjournment resulted in the proceedings being suspended for over six months; however, a hearing was held during the period under the suspension (see paragraph 25 above).

56. In addition, the Court is not convinced by the Government's argument that the above described (see paragraph 46 above) amendments to the applicant's claim led to substantial delay nor have they submitted any evidence that there had been additional amendments. Furthermore, it is the Court's constant jurisprudence that an applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his interests (see *Kesyan v. Russia*, no. 36496/02, § 55, 19 October 2006).

57. Furthermore, and contrary to the Government's submission, the applicant's motions to expedite the proceedings constitute a fact in his favour even if those requests are not considered as an effective remedy (see *Atanasovic and Others v. the former Yugoslav Republic of Macedonia*, no. 13886/02, § 31, 22 December 2005). Moreover, he cannot be held responsible for the procedural conduct of the employer and the time in respect of the remedies which, within the period under consideration, were used only by the latter.

58. 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 *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).

59. The Court further reiterates that only delays attributable to the State may justify a finding of failure to comply with the "reasonable time" requirement (see *Proszak v. Poland*, judgment of 16 December 1997,

Reports of Judgments and Decisions 1997-VIII, § 40; *Ciricosta and Viola v. Italy*, judgment of 4 December 1995, Series A no. 337-A, p. 10, § 28).

60. From the material before it, the Court finds number of delays imputable to the State. Following the Supreme Court's decision of 30 October 1996, the proceedings resumed before the trial court nearly eleven months later of which five months fall within the period under consideration. It further observes a total delay of over a year resulting from the trial court's requests for two expert reports (see paragraph 18). In this respect, the Court notes that the principal responsibility for a delay caused by the expert examinations falls ultimately on the State (see *Capuano v. Italy*, judgment of 25 June 1987, Series A no. 119, § 32). In addition, the expert was working in the context of judicial proceedings, supervised by a judge, who remained responsible for the preparation and the speedy conduct of the trial (see *Scopelliti v. Italy*, judgment of 23 November 1993, Series A no. 278, § 23). A further four months lapsed between the hearings scheduled in December 1998 and March 1999 (see paragraphs 20 and 21). In addition to that, it observes that it took nearly ten months for the trial court to fix a hearing after the case had been referred back for re-examination by the Court of Appeal (see paragraphs 23 and 25).

61. Moreover, the Court notes that the domestic law (see section 408 of the Civil Proceedings Act above) and the Court's jurisprudence (see, *mutatis mutandis*, *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) required employment-related disputes to be conducted with a special diligence.

62. The Court accordingly concludes that, notwithstanding the periods of delay imputable to the applicant, the length of the present proceedings was excessive and failed to meet the "reasonable time" requirement of Article 6 § 1 of the Convention.

63. There has accordingly been a breach of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. Referring to the domestic proceedings, the applicant left the eventual award of pecuniary damages to the Court's discretion. He did not provide

any particulars or substantiation of his claim. He further claimed 25,000 euros (EUR) in respect of non-pecuniary damage for the anguish suffered as a consequence of the violation alleged.

66. The Government contested these claims as unsubstantiated. They further referred to their arguments concerning the serial nature of the impugned proceedings and the applicant's contribution to their length. They invited the Court to consider that the eventual finding of a violation would constitute in itself sufficient compensation for any damage in the present case.

67. Even if it could be assumed that the applicant claimed pecuniary damage, the Court rejects it as he failed to provide any detail or substantiation. On the other hand, the Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 1,000 under that head.

B. Costs and expenses

68. The applicant also claimed about EUR 70 for costs and expenses incurred before the Court in preparing the application and mailing documents. However, he left the matter to the Court's discretion.

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

70. 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 (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). In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant, who was represented by his son upon the President's approval, the sum claimed in full.

C. Default interest

71. 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 in accordance with Article 44 § 2 of the Convention, EUR 1,070 (one thousand and seventy euros) in respect of non-pecuniary damage and 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;

4. *Dismisses* the remainder of 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