



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

FIFTH SECTION

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

(Application no. 44221/02)

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 Mihajloski 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 9 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 44221/02) 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 Ordan Mihajloski (“the applicant”), on 2 December 2002.

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

3. On 18 January 2006 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

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1947 and lives in Skopje.

5. The applicant worked as a supervisor in the technical control department in “Rudnici i Železarnica”- Skopje (“the company”).

6. On 20 April 1995 the company made the applicant redundant with effect from 28 February 1995. The notice was allegedly served on the applicant on 12 July 1995. On 20 July 1995 the applicant unsuccessfully objected to the redundancy before the managing board of the company.

7. On 15 August 1995 the applicant brought before the Skopje Court of First Instance (*Основен суд Скопје*) a civil action for annulment of the dismissal decision and claimed reinstatement. He alleged that between 26 January and 31 May 1995 he had been on a compulsory leave (*принуден одмор*) so that he could not be laid off. He also claimed that the company had failed to apply the relevant criteria.

8. Of four hearings scheduled between 17 October 1995 and 17 April 1996, one was adjourned at the applicant's request as his representative had been prevented from attending. The other hearings were adjourned as the company had failed to comply with the court's instruction to submit relevant documents in time.

9. Of five hearings fixed between 25 October 1996 and 11 March 1998, one was adjourned at the applicant's request, as his representative was absent. During this period, another panel of judges (*судски совет*) took over to decide the case.

10. On 11 March 1998 the Skopje Court of First Instance dismissed the applicant's claim as ill-founded. It established that the Law on Reconstruction of Loss-making Undertakings (*Закон за реструктурирање на дел од претпријатијата кои во своето работење изкажуваат загуби*) ("the Law"), being the *lex specialis*, had applied to his case and that it had suspended the application of the Labour Relationships Act (*Закон за работните односи*) concerning employees who had worked with a loss-making undertaking and who had been made redundant. In accordance with section 23 of the Law, an employee is considered as dismissed the day the Government approved the programme for reconstruction (*Програма за реструктурирање*) of the undertaking concerned. It further held that the company had been established as a loss-making undertaking by Government decision of 24 January 1995 and that the latter had approved the company's programme for reconstruction on 27 December 1994. The court dismissed the applicant's arguments that he had been dismissed contrary to the criteria set forth in collective agreements and in the relevant provisions of the Labour Relationships Act, as they had been derogated by the Law and that the dismissal decision had not been given by an authorised organ. The court accordingly found that the applicant's redundancy was lawful.

11. On 2 February 1999 the applicant appealed.

12. On 7 April 1999 the Skopje Court of Appeal (*Апелационен суд*) dismissed the applicant's appeal and upheld the lower court's decision. It found that the trial court had correctly established the facts and had properly applied the law. It further stated that the trial court had provided sufficient

reasons for its decision and that the applicant had failed to present any evidence in his favour.

13. On 18 June 1999 the applicant lodged with the Supreme Court an appeal on points of law (*пewизуја*) in which he reiterated his earlier complaints. On 21 March 2000 he submitted a copy of the Government's decision of 27 December 1994 as an addendum to the appeal on points of law.

14. On 21 March 2002 the Supreme Court dismissed as ill-founded the applicant's appeal on points of law. It upheld the facts as established and the reasons adduced by the lower courts. It did not address the matters to which the applicant referred in his supplement of 21 March 2000.

15. The applicant alleged that he was served with the decision on 7 June 2002. By a letter of 8 February 2005 he unsuccessfully requested the Supreme Court to provide him with a copy of the receipt slip concerning the date of service of that decision.

16. On an unspecified date in February 2003, the applicant lodged with the Court of First Instance a request to re-open the proceedings (*предлог за повторување на постапката*). He referred to a Supreme Court's decision given in administrative contentious proceedings (*управен спор*) concerning the amount of the unemployment allowance he had been entitled to receive.

17. On 7 June 2005 the Skopje Court of First Instance dismissed the applicant's request, as the Supreme Court's decision he had referred to in his request, did not support his claim.

18. The trial court's decision was upheld by the Court of Appeal on 17 November 2005.

19. On 5 January 2006 the applicant lodged an appeal on points of law against the lower courts' decisions.

20. The proceedings before the Supreme Court concerning the applicant's request for re-opening of the proceedings remain pending.

RELEVANT DOMESTIC LAW

21. 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.

22. 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 VIOLATIONS UNDER ARTICLE 6 § 1 OF THE CONVENTION

1. The “reasonable-time” requirement of Article 6 § 1 of the Convention

23. The applicant complained that the length of the proceedings, which had ended with the Supreme Court's decision of 21 March 2002, was incompatible with the “reasonable time” requirement 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 fair ... hearing within a reasonable time by [a] ... tribunal...”

A. Admissibility

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

B. Merits

1. The parties' submissions

25. 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 argued that the relevant period had ended on 21 March 2002 with the Supreme Court's decision.

26. They further stated that the case had been of a complex nature as it concerned the application of the Law as the *lex specialis*. In addition, they maintained that the subject-matter of the dispute had affected the complexity of the case and that the courts had examined considerable evidence to establish the facts.

27. As regards the applicant's conduct, the Government asserted that he had contributed to the length of the proceedings as he had failed to attend the hearings in time; as he had modified his claim frequently, and as he had availed himself of all legal remedies available.

28. Concerning the conduct of the national authorities, the Government argued that the national courts, including the Supreme Court, had decided the applicant's case with due diligence, despite the latter's excessive workload. They further maintained that the impugned proceedings should not be considered as one single procedure, but as composed of separate sets of proceedings.

29. The applicant contested the Government's arguments concerning the complexity of the proceedings arguing that the courts had been called upon to decide simple matters.

30. He further maintained that only three months of delay could be attributed to him; that he had attended the hearings as scheduled; and that he had filed his submissions in time.

31. As regards the conduct of the national authorities, the applicant submitted that, despite the urgent nature of proceedings in employment disputes, these authorities had unjustifiably delayed them; they had fixed two or three hearings per year; and they had failed to summon the company properly. In addition, he stated that the Government had failed to present any argument to justify the delay of three years before the Supreme Court. Finally, he maintained that they had failed to make any comments on the late service of the Supreme Court's decision.

2. The Court's assessment

32. The Court notes that the civil proceedings started on 15 August 1995 when the applicant brought his claim before the Skopje Court of First Instance. However, as argued by the Government, the period which falls within its jurisdiction did not begin on 15 August 1995, but 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).

33. 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, seven months and twenty-six days for one court level.

34. 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. It further notes that the Government did not dispute the applicant's assertion about the date of service of the Supreme Court's decision. The proceedings therefore lasted six years nine months and

twenty-two days of which five years, one month and twenty-seven days fall to be examined by the Court for three levels of jurisdiction.

35. 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).

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

37. Concerning the applicant's conduct, the Court considers that he may be considered responsible for the adjournment of one hearing during the period which falls within its competence *ratione temporis* (see paragraph 9) which did not add significantly to the length of the proceedings. The Court does not find any other periods of delay imputable to him: the fact that he used the remedies available under domestic law cannot be considered as contributing to the length of the proceedings (see *Rizova v. the former Yugoslav Republic of Macedonia*, no. 41228/02, § 50, 6 July 2006).

38. On the other hand, the Court notes that there are substantial delays attributable to the authorities. In particular, it observes that the applicant's case was pending before the Supreme Court for nearly three years after he had lodged the appeal on points of law (see paragraph 14). During this time, the Supreme Court only reviewed the case on points of law and did not take any evidence or take any other procedural step (see *Markoski v. the former Yugoslav Republic of Macedonia*, no. 22928/03, § 38, 2 November 2006; *Lickov v. the former Yugoslav Republic of Macedonia*, cited above, § 30; *Jelavić-Metrović v. Croatia*, no. 9591/02, § 28, 13 January 2005).

39. 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 v. Croatia*, no. 51585/99, § 59, ECHR 2001-VIII).

40. In this respect, it reiterates that a chronic overload, as referred to by the Government concerning the proceedings before 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; *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).

41. 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, Markoski v. the former Yugoslav Republic of Macedonia, cited above, § 32; *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.

42. In these circumstances, the Court considers that the length of the proceedings was excessive and failed to meet the “reasonable time” requirement of Article 6 § 1 of the Convention

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

2. *The remaining complaints under article 6 of the convention*

44. Referring to the outcome of the proceedings, the applicant further complained that he had been denied a fair trial and that the domestic courts had been biased as they had disregarded his arguments.

C. Admissibility

45. In so far as the applicant's complaint may be understood to concern the assessment of the evidence and the result of the proceedings before the domestic courts, the Court reiterates that, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, 29, ECHR 1999-I).

46. The Court considers that the applicant was given sufficient opportunity to come forward with his arguments and that these arguments, while duly taken into account by the domestic courts, were nevertheless rejected on the basis of a reasoning which appears consistent and devoid of any arbitrariness (see *Osmani and others v. the former Yugoslav Republic of Macedonia* (dec.), no. 50841/99, ECHR 2001-X). In addition, there is no indication in the file as to the proceedings in question being arbitrary in any manner. Moreover, there is no evidence of any procedural unfairness or of bias, as alleged.

47. 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

48. 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

49. The applicant claimed 39,600 euros (EUR) in respect of pecuniary damage. The sum allegedly corresponded to unpaid salary following his dismissal in 1995. He further claimed EUR 15,000 in respect of non-pecuniary damage for the anxiety suffered as a consequence of the violation.

50. 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 caused.

51. The Court does not discern any causal link between the violation found (excessive length of the proceedings) and the pecuniary damage alleged (financial damage resulting from his dismissal): it therefore rejects this claim. On the other hand, it 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

52. The applicant also claimed EUR 300 for his costs and expenses, without specifying whether they had been incurred before the domestic courts or before this Court.

53. The Government contested the claim.

54. 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 the sum claimed in full.

C. Default interest

55. 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 1,300 (one thousand three hundred 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