



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

FIFTH SECTION

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

(Application no. 6924/03)

JUDGMENT

STRASBOURG

14 June 2007

FINAL

14/09/2007

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 Graberska 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 22 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 6924/03) 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, Ms Lidija Graberska (“the applicant”), on 24 January 2003.

2. The applicant was represented by Ms M. Nikolovska, a lawyer practising in Bitola. The Macedonian Government (“the Government”) were represented by their Agent, Mrs R. Lazareska Gerovska.

3. On 18 January 2006 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1946 and lives in Bitola.

5. On 29 May 1995 PTU “Bordo”-Bitola (“the company”) requested the then Bitola District Commercial Court (*Окружен Стопански Суд Битола*) to issue a payment order against another company (“the defendant”). The order was requested by the applicant, as the company's sole owner and manager.

6. On 7 June 1995 the Bitola District Commercial Court granted the company's request.

7. On 26 June 1995 the defendant objected to the order.

8. On 4 July 1995 the court upheld the defendant's objection and put aside the order. The subsequent proceedings continued as "civil".

9. On 31 August 1995 the company requested the court to fix a hearing.

10. The hearing of 27 September 1995 was adjourned because of the applicant's absence. The court adjourned the hearing held on 4 October 1995 as the defendant's submission had not been communicated to the company in time.

11. On 12 October 1995 the Bitola District Commercial Court upheld the defendant's objection and dismissed the company's claim as ill-founded.

12. On 25 October 1995 the company appealed.

13. On 12 February 1997 the Bitola Court of Appeal upheld the company's appeal and quashed the lower court's decision because of the latter's failure to establish the facts.

14. On 14 February 1997 the trial court received the case-file from the second-instance court.

15. On 7 October 1997 and 30 March 1998 the company requested the Bitola Court of First Instance (*Основен суд Битола*) to expedite the proceedings.

16. Five hearings scheduled between 8 April and 19 October 1998, were adjourned, but none at the applicant's request. During this time, the court examined three witnesses proposed by the defendant.

17. On 19 October 1998 the Bitola Court of First Instance dismissed the company's claim as unsubstantiated.

18. On 14 December 1998 the Bitola Court of Appeal upheld the company's appeal and remitted the case for a fresh consideration. It further instructed the trial court to re-establish the facts and to order an expert examination of the financial books of the parties.

19. On 17 December 1998 the case-file was transmitted to the Bitola Court of First Instance.

20. The appellate court's decision was served on the parties on 20 and 21 January 1999, respectively.

21. On 28 April 1999 the court ordered the expert examination. On 17 August 1999 the trial court received the expert report.

22. On 20 October 1999 the court heard the parties' comments on the expert report and ordered an additional expert examination in reply to the company's queries.

23. On 25 May 2000 the company requested the court to adjourn the hearing listed for 16 June 2000.

24. The hearing fixed for 14 July 2000 was postponed as the expert had not completed his report. At the company's request, the court ordered another expert study. It also ordered the parties to pay the expert's costs.

25. On 13 December 2000 the court received the expert report. It was served on the parties on 28 August 2001.

26. The hearing of 3 October 2001 was adjourned at the parties' request.

27. On 22 October 2001 the company submitted its comments on the expert report. On 8 November 2001 the expert filed a supplement to his report.

28. The hearing of 14 November 2001 was adjourned due to the late service of the expert's report on the parties. The hearings of 26 December 2001 and 31 January 2002 were postponed because of the expert's absence.

29. On 12 February 2002 the court ordered the parties to provide in writing their comments on the expert report so that the expert could submit his observations in reply. It so ordered as the expert, who had attended the hearing, could not answer the questions put by the parties.

30. On 4 March 2002 the company informed the court that it would not dispute the expert report in order not to prolong the proceedings.

31. On 30 September 2002 the trial judge requested information from the registration department of the same court whether bankruptcy proceedings had been launched against the company.

32. The hearing of 1 November 2002 was adjourned at the request of the company's representative who had been then informed that the company had been declared insolvent on 8 February 2002.

33. On 12 November 2002 the Bitola Court of First Instance rejected the company's claim as it had ceased to exist. It did not comment on the applicant's argument that she, as the sole proprietor, had taken over the company's claim.

34. The applicant did not appeal.

35. Between 4 March 1999 and 23 September 2002 the company submitted before the trial court five requests to speed up the proceedings. On 9 May 2002 it also unsuccessfully complained before the State Judicial Council about the excessive length of the proceedings.

II. RELEVANT DOMESTIC LAW

36. In accordance with section 339 (1) of the Civil Proceedings Act ("the Act") a decision could be appealed on the following grounds: 1) for substantial procedural deficiencies; 2) for erroneous or incomplete establishment of facts, and 3) for incorrect application of the substantive law.

37. Section 340 (1) of the Act provided that there would be a substantial procedural deficiencies if the court had not applied or had wrongly applied a statutory provision and that circumstance had influenced or might have influenced the adoption of a lawful and just decision.

38. Section 340 (2) provided *inter alia*, the following substantial procedural deficiencies: if the court was improperly composed or the judgment was adopted by a judge or a lay-judge who had not participated at the trial hearing; if the judgment was adopted by a judge or a lay-judge who had to be removed by virtue of law, *i.e.* who was removed by a court decision; if the court decided a case which fell outside its competence *ratione materiae*; if the court wrongly ruled as to its competence *ratione loci*; if, contrary to the law, the court decided *in absentia*, on the basis of a confession or a denial; if the party concerned was deprived of the opportunity to participate in the proceedings by a procedural flaw, in particular due to a lack of service; if contrary to the law, the court rejected the party's request for an interpreter; if the court decided without a public hearing which was compulsory; if a person, lacking capacity to stand as a litigant, participated in the proceedings, or the legal entity acting as litigant was not represented by an authorised person, or if a legally incapable person was not represented by the statutory representative, or if the legal or statutory representative did not have the adequate authorisation; if the court decided on a case in which other proceedings were pending, or if it was *res judicata*, or if a court settlement had been concluded; or if the public was excluded contrary to the law; or if the impugned decision contained deficiencies which made its review impossible, in particular if it was illegible, contradictory, lacked reasoning or did not provide reasons for the relevant findings of fact or if they were unclear or contradictory.

39. According to section 342 of the Act, the substantive law was incorrectly applied if the court did not apply the relevant statutory provision or if it failed to apply it correctly.

THE LAW

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

40. 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 provision, 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. Admissibility

41. The Court notes that the applicant was not a party of the relevant proceedings. It however considers that the applicant, as the sole owner of the company, can claim to be a “victim” within the meaning of Article 34 of the Convention of the delay which affected her company, because in case of a sole owner there is no risk of differences of opinion among shareholders or between shareholders and a board of directors as to the reality of infringements of the Convention rights or the most appropriate way of reacting to such infringements (see *Ankarcrona v. Sweden* (dec.), no. 35178/97, ECHR 2000-VI). Moreover, as the company was dissolved, the applicant was the only one who could complain before this Court of the proceedings to which her company was a party. The applicant may therefore reasonably claim to be a victim within the meaning of Article 34 of the Convention.

42. The Government submitted that the applicant had not exhausted domestic remedies as she had failed to appeal against the trial court's decision of 12 November 2002.

43. The applicant disputed the Government's preliminary objection.

44. The Court reiterates that the only remedies which Article 35 of the Convention requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see *Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, p. 11, § 27; *Dalia v. France*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 87, § 38).

45. It further recalls that remedies available to a litigant at domestic level for raising a complaint about the length of proceedings are “effective”, within the meaning of Article 13 of the Convention if they “[prevent] the alleged violation or its continuation, or [provide] adequate redress for any violation that [has] already occurred” (see *Kudla v. Poland* [GC], no. 30210/96, § 158, ECHR 2000-XI). In the Court's view, having regard to the “close affinity” between Articles 13 and 35 § 1 of the Convention, the same is necessarily true of the concept of “effective” remedy within the meaning of the second provision (*Mifsud v. France* (dec.) [GC], no. 57220/00, § 17, ECHR 2002-VIII).

46. The Court notes that an ordinary appeal provides a remedy for errors of facts and law allegedly made by the trial court (see “Relevant domestic law” above). It does not offer any of the above alternative remedies outlined in the preceding paragraph in relation to a complaint about excessive length of proceedings. It further observes that the Government have not referred to any domestic case in which an individual has complained to the Court of

Appeal about the length of proceedings and which resulted in the prevention of excessive delay or its continuation, or in compensation for damages for delay which had already occurred (see, *mutatis mutandis*, *Camasso v. Croatia*, no. 15733/02, § 24, 13 January 2005).

47. It therefore considers that the ordinary appeal cannot be regarded as an effective remedy for an alleged violation of the right to have a case heard within a “reasonable time” within the meaning of Article 6 § 1 of the Convention.

48. It follows that the Government's preliminary objection must be rejected.

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

B. Merits

1. The parties' submissions

50. 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.

51. They further maintained that the case was of a complex nature due to the expert examinations ordered at the parties' requests.

52. As regards the applicant's conduct, they stated that she did not undertake any measure to expedite the proceedings. They further argued that she had contributed to the length of the proceedings by failing to pay the experts' costs in time; that she had been responsible for seven adjournments; and that she had not complied with the court orders in time. In addition, they maintained that the ignorance of the applicant's representative about the company's insolvency had added much to the length of the proceedings. They concluded that the State could not be held responsible for these delays and inactivity of the parties to the proceedings.

53. Concerning the conduct of the domestic courts, the Government argued that they had decided the applicant's case with due diligence.

54. The applicant disputed that she had contributed to the length of the proceedings. She argued that only two adjournments had been ordered at her request and that had not added considerably to the length of the proceedings; her written comments on the expert reports had not caused any delays; and the alleged failure to pay the experts' costs could not justify the procedural delays, as the court could have had recourse to other legal measures to ensure the payment. She further referred to her unsuccessful requests to speed up the proceedings.

55. As regards the conduct of the domestic courts, she submitted that several periods of inactivity could be attributed to the State (see paragraphs 12-15; 21-25; 29-32 above). She finally averred that the case had concerned a dispute of minor value, which in accordance with the national rules, had required shortened time-limits and had been decided by a single judge.

2. The Court's assessment

56. The Court notes that the proceedings commenced on 29 May 1995 when the company requested the court to issue a payment order against the defendant. However, 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).

57. 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 ten months and twelve days for two court levels. The Appeal Court's decision of 12 February 1997 was the last decision given within this period.

58. The proceedings ended on 12 November 2002 with the trial court's rejection of the company's claim. They therefore lasted seven years five months and fourteen days of which five years seven months and two days fall to be examined by the Court for two levels of jurisdiction.

59. 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).

60. The Court considers that if the expert examinations complicated matters somewhat, the proceedings were not particularly complex. In addition, even assuming that the expert examinations were ordered at the parties' requests, the Court notes that it is for the national courts to assess in each and every situation whether such requests are justified and necessary for the proper administration of justice (see, *mutatis mutandis*, *Rizova v. the former Yugoslav Republic of Macedonia*, no. 41228/02, § 50, 6 July 2006).

61. Concerning the applicant's conduct, the Court considers that, within the period under consideration, she was responsible for the adjournment of

two hearings (see paragraphs 23 and 32 above). However, it did not add significantly to the length of the proceedings. Her motions to expedite the proceedings (see paragraphs 15 and 35 above) constitute a fact in favour of the applicant even if those requests could not be regarded as an effective remedy (see *Atanasovic and Others v. the former Yugoslav Republic of Macedonia*, no. 13886/02, § 31, 22 December 2005). In addition, the applicant cannot be regarded as responsible for the procedural conduct of the defendant. Finally, no convincing evidence was provided in support of the Government's assertion that the applicant failed to comply with the court orders in time.

62. 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).

63. 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).

64. Having regard to the material submitted before it, the Court finds a number of delays imputable to the State. It took the trial court nearly four years to decide the applicant's case following the appeal court's decision of 14 December 1998. During this period, the Court notes several periods of complete inactivity, also relied upon by the applicant: it took over a year for the trial court to fix a hearing after it had received the case-file from the Court of Appeal (see paragraphs 14-16 above); nearly eight months lapsed between the hearings scheduled in October 1999 and June 2000 (see paragraphs 22 and 23 above); and the court communicated the expert report to the parties nearly nine months after it had received it (see paragraph 25). In addition, the Court notes that nearly nine months elapsed between the hearings of February and November 2002 (see paragraphs 29-32 above), a period during which the only procedural activity undertaken by the court was to make a query about the company's solvency.

65. The Court accordingly concludes that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. The applicant claimed 50,000 euros (EUR) in respect of pecuniary and non-pecuniary damage. As to the pecuniary damage, she claimed at least EUR 37,500 for loss of income as a result of the protracted length of the proceedings. This figure refers to the average yearly income that the company would have earned pending the proceedings. She further claimed EUR 20,000 in compensation for the non-pecuniary loss in the form of the emotional suffering and pain sustained as a consequence of the excessive length of proceedings.

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

70. The Court notes that the applicant's judgment debt was not established as the company meanwhile ceased to exist. In addition, the applicant did not provide any evidence, and therefore the Court considers speculative to determine, whether the protracted length of the proceedings had any negative impact on the loss of income, as alleged: it therefore rejects this claim. On the other hand, it awards the applicant EUR 1,600 in respect of non-pecuniary damage.

B. Costs and expenses

71. The applicant also claimed EUR 1,420 for the costs and expenses incurred before the domestic courts. She did not present any document in support of the claim. She did not claim reimbursement of the costs and expenses incurred before the Court.

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

73. Concerning the applicant's claim for reimbursement of the costs and expenses incurred before the domestic courts, the Court notes that they were not incurred in seeking through the domestic legal order prevention and redress of the alleged violation complained of before the Court (see *Milošević v. the former Yugoslav Republic of Macedonia*, no. 15056/02, § 34, 20 April 2006). Moreover, the applicant failed to provide any particulars and supporting documents. Accordingly, the Court does not make any award under this head.

C. Default interest

74. 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 1,600 (one thousand and six hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, which sum is to be converted into the national currency of the respondent State at the rate applicable on the date of settlement;
 - (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 14 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President