



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

FIFTH SECTION

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

(Application no. 33046/02)

JUDGMENT

STRASBOURG

21 June 2007

FINAL

21/09/2007

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 Mitrevski 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 29 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 33046/02) 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 Stojan Mitrevski ("the applicant"), on 29 August 2002.

2. The applicant was represented by Mr I. Noveski, a lawyer practising in Bitola. The Macedonian Government ("the Government") were represented by their Agent, Mrs R. Lazareska Gerovska.

3. The applicant alleged procedural unfairness, in particular, in that he was not given an opportunity to attend the hearing on 29 November 2001 when the trial court gave its decision.

4. On 18 January 2006 the Court decided to communicate these complaints to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in the village of Zović and lives in Bitola.

6. On 13 September 2000 his brother (“the plaintiff”) brought a civil action against him for a declaration that he owned one half of a plot of land and a house (“the property”).

7. A hearing on 9 April 2001 was adjourned because the applicant had not been duly summoned.

8. At a hearing on 20 April 2001 the court ordered the plaintiff to provide further particulars of his claim. It further sought to obtain a deed of gift dating from 1984.

9. According to the Government, at a hearing on 24 May 2001 the court granted the plaintiff's request to carry out an on-site inspection (*ybud*) and to examine witnesses. The applicant arrived late at the hearing, but was informed of the place and time of the next hearing. The Government submitted a barely legible copy of the record, which had been signed by the applicant.

10. At the on-site inspection on 5 June 2001, the trial court heard evidence from two witnesses concerning the history of the property. The record indicates that the applicant was absent, even though he had been duly summoned.

11. A hearing fixed for 12 July 2001 was adjourned at the applicant's request.

12. At a hearing on 14 September 2001 the plaintiff's counsel stated that his client had suffered a stroke and was not medically fit to give a statement. The court ordered him to submit a medical report and on a later date in September 2001, the plaintiff's counsel submitted a medical report certifying that his client was not medically fit to give a statement.

13. On 8 November 2001 the composition of the bench changed and the hearing restarted.

14. At a hearing on 22 November 2001 the applicant disputed the plaintiff's legal capacity to bring the proceedings. He stated, *inter alia*:

“... [A]fter reviewing the file, I have concerns as to the validity of the plaintiff's letters of authority... We propose that the court assess his capacity...”

15. According to the court record, the court ruled that the next hearing would be held on 29 November 2001 on-site in order to assess the plaintiff's health and the validity of his signature on the letter of authority. It further noted that those present should consider the announcement of the next hearing as equivalent to service of a court summons. The applicant and his counsel both attended the hearing.

16. On 29 November 2001 the court held a hearing at the scheduled time, but in the court room instead of on-site. The court heard evidence from the plaintiff and established the validity of the letter of authority. It further read the record of the on-site inspection of 5 June 2001 and the witnesses' statements. It noted that the applicant was absent, even though he had been duly summoned. Following the hearing, the trial court gave a

decision declaring the plaintiff to be the owner of the property and ordered the applicant to recognise his title. It based its findings on a court decision of 1962 by which the plaintiff had been declared heir of the property. It further established that he had lived in the house and had had actual possession (*владение*) of the property since. The trial court based its decision on considerable evidence: an expert opinion; a record of the on-site inspection; statements of witnesses; and other physical evidence.

17. On 8 January 2001 the applicant appealed, arguing, *inter alia*, that he had been deprived of the opportunity to participate in the proceedings. He said that he had been prevented from attending the hearing on 29 November 2001 as it was held in the court room, instead of on-site as scheduled. He submitted that that failure could be regarded as a substantial defect in the proceedings, contrary to section 340(2)(7) of the Civil Proceedings Act (see “Relevant domestic law” below). He further complained that the trial court had taken into consideration the statements of the witnesses from the on-site hearing of 5 June 2001 which had been held in his absence.

18. On 25 February 2002 the Bitola Court of Appeal dismissed the applicant's appeal and upheld the lower court's decision finding no grounds to depart from the reasons given. Concerning the applicant's complaints about the hearing of 29 November 2001, it stated:

“... [The applicant] was duly summoned as he attended the hearing of 22 November 2001 when the date and time for the hearing were fixed. Therefore, he was obliged to appear in court and depending on whether the plaintiff was also present, it was for the court to decide whether it would visit the plaintiff in his home or hold the hearing in the court room. As the plaintiff appeared in the court ... it was not necessary to go on-site... [The applicant] was properly summoned and has failed to justify his absence...”

19. As regards the applicant's complaints concerning the examination of the witnesses at the on-site hearing on 5 June 2001, the court stated, *inter alia*:

“... [The applicant's] complaints that the court examined the witnesses at the hearing on 5 June 2001 in his absence are ill-founded, as he failed to attend, despite having been duly summoned... If [the applicant] had attended the hearing, he would have been able to discuss and challenge their statements, as well as to call other witnesses for examination...”

RELEVANT DOMESTIC LAW

20. At the material time section 103(2) of the Civil Proceedings Act (*Закон за парничната постапка*) (“the Act”) provided that the court should summon the parties and any other persons whose presence was required in due time.

21. Section 104 of the Act provided that hearings were normally to take place in the court. The court could decide to hold a hearing outside the court premises if it was considered necessary and/or would save time or reduce costs.

22. Section 105(2) of the Act laid down that if a hearing was adjourned, the court was required where possible to inform those present immediately of the time and venue of the next hearing.

23. Section 340(1) of the Act provided that civil proceedings were substantially defective if the court did not apply or incorrectly applied a statutory provision or failed to take into account a circumstance which would or could have influenced the adoption of a lawful and just decision.

24. Section 340(2)(7) of the Act provided that proceedings were substantially defective if a party was deprived of the opportunity to participate in them by unlawful conduct, such as the absence of a proper summons.

THE LAW

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

25. The applicant complained under Article 6 § 1 of the Convention that the proceedings had been unfair. He submitted that the first-instance court had examined witnesses at the on-site hearing on 5 June 2001, which was held in his absence. He further maintained that he had been deprived of the opportunity to be present at the hearing of 29 November 2001 arguing, *inter alia*, that while he had been waiting on the scheduled place, the court held the hearing in the court room without notifying him about the change of venue. Article 6 § 1 of the Convention, in so far as relevant, reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

A. Admissibility

1. *The applicant's absence at the hearing on 5 June 2001*

(a) The parties' submissions

26. The Government disputed that the applicant had been denied the right to a fair trial. They stated that, at the hearing on 24 May 2001 he was properly notified that the next hearing would be held on 5 June 2001; that it would take place on-site and that witnesses who because of their age were unable to travel to the court would be examined. Although the applicant arrived late at that hearing, he had been given a copy of the record, which he had duly signed. The Government therefore concluded that it was entirely his own fault that he failed to attend the hearing on 5 June. They further argued that in the subsequent proceedings before the trial court, he had not disputed the validity of the statements of the witnesses given at the on-site hearing.

27. The applicant contested the Government's arguments maintaining in particular that, at the hearing on 24 May 2001, he was not notified of the court's decision to examine witnesses. However, he agreed that he had been notified about the place and time of the hearing and had signed the record.

(b) The Court's assessment

28. Under the Court's case-law, the requirements of fairness of the proceedings include the way in which the evidence is taken and submitted (see *Barberà, Messegue and Jabardo v. Spain*, judgment of 6 December 1988, Series A no. 146, § 68). As regards litigation involving opposing private interests, the principle of equality of arms implies that each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent (see *Dombo Beheer B.V. v. the Netherlands*, judgment of 27 October 1993, Series A no. 274, § 33; and *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 81, § 46).

29. The Court notes at the outset that it was not disputed between the parties that the applicant was properly notified at the hearing of 24 May 2001 of the time and place of the hearing of 5 June 2001. Furthermore, the applicant did not present before the national courts any valid reason to justify his absence at the latter hearing. The Court notes the Court of Appeal's finding that the applicant could have discussed and challenged the statements of the witnesses if he had attended the hearing. It further accepts the Government's submission that the applicant did not contest the validity of the statements of the witnesses in the subsequent

proceedings, although he had ample opportunity to do so before the trial ended.

30. In these circumstances, this aspect of the application does not disclose any appearance of a violation of the Article 6 § 1 of the Convention. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicant's absence at the hearing on 29 November 2001

31. The Government have not raised any objections as to the admissibility of this complaint.

32. The Court considers that this complaint 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

33. The Government submitted that the first-instance court had adjourned the hearing on 22 November 2001 on the basis of the applicant's arguments concerning the plaintiff's legal capacity. It decided to hold the decisive hearing in the plaintiff's house to determine the latter's state of health and the validity of the letter of authority. However, as the plaintiff appeared in the court room in person at the time fixed for the hearing, the court had proceeded to determine his capacity and the validity of the letter of authority. The Government averred that it was common practice for parties to proceedings to first appear in court before accompanying the trial judge on-site. In that connection, they argued that the applicant, who had been aware that the hearing would take place on-site, should have first gone to the court at the appointed time. In addition, they maintained that the applicant had not presented, in his appeal to the Court of Appeal, any new evidence that would have altered the facts as established by the first-instance court.

34. The applicant did not make any further comments apart from those submitted with the application.

2 The Court's assessment

35. The Court reiterates that although the presence of the parties to civil litigation does not have the same significance as the presence of an accused in a criminal trial, Article 6 guarantees the right of a party to participate effectively in the proceedings, which includes, *inter alia*, not only his right

to be present, but also to hear and follow the proceedings. Such rights are implicit in the very notion of an adversarial procedure (see *Stanford v. the United Kingdom*, judgment of 23 February 1994, Series A no. 282-A, § 26). It further recalls that the Convention is intended to guarantee not rights that are theoretical or illusory, but rights that are practical and effective (see *Multiplex v. Croatia*, no. 58112/00, § 44, 10 July 2003). The right to a public hearing would be devoid of substance if a party to the case was not apprised of the hearing in such a way so as to have an opportunity to attend it, should he or she decide to exercise the right to appear established in the domestic law (see *Yakovlev v. Russia*, no. 72701/01, § 21, 15 March 2005).

36. The Court observes that the rules of civil proceedings at the material time (see paragraphs 21 and 22 above) provided that a hearing could be held outside the court premises and that the court had to inform the persons concerned of the time and venue of the next hearing.

37. In the present case, the trial court decided at the hearing on 22 November 2001, to hold the decisive hearing in the plaintiff's house. It also determined the date and time of the hearing. It notified the applicant of that decision in person. As stated in the record, that announcement was to be regarded as the equivalent of service of a court summons. The applicant did not appear at the hearing as it was held in the court room, instead of on-site as originally scheduled. However, the national courts considered that he had been duly summoned (see paragraph 18 above).

38. Having regard to all the material before it, the Court cannot accept that it was the applicant's fault that he was not present at the decisive hearing, as it did not take place as originally scheduled. In particular, it is not persuaded by the Government's argument that, according to a "common practice", the applicant should have appeared in the court room before going on-site. The announcement of the court at the hearing on 22 November 2001 unambiguously indicated that the decisive hearing would be held on-site and that that announcement should be regarded as the equivalent of service of a court summons. Under such circumstances, the Court considers unreasonable to expect the applicant to appear in the court room at the scheduled time and not on-site. Even if a certain "common practice" had developed at that court, it could not justify changing the venue of the hearing without further notice and thereby depriving the applicant of the opportunity to be present and to effectively participate at the hearing on 29 November 2001. In the Court's view, this hearing was crucial as it was the last hearing before the first-instance court gave its decision.

39. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 OF THE CONVENTION

40. Relying on Article 1 of Protocol No.1, the applicant complained about the outcome of the proceedings, arguing that he had been deprived of the property.

41. The Court considers that the applicant's complaint under Article 1 of Protocol No. 1 is directly connected with that examined under Article 6 § 1 of the Convention (see paragraph 38 above) and that it cannot speculate on the outcome of the proceedings should not have been the violation found. Having regard to its conclusion that there was an infringement of the applicant's right to a fair hearing for the reasons stated above, the Court does not consider it necessary now to rule on the applicant's complaint based on Article 1 of Protocol No. 1 (see *Glod v. Romania*, no. 41134/98, § 46, 16 September 2003, and *Albina v. Romania*, no. 57808/00, § 43, 28 April 2005).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed 20,465 euros (EUR) by way of just satisfaction. This figure included the plaintiff's costs incurred in the domestic proceedings which the applicant had been ordered to pay and the value of the property of which the plaintiff had secured possession as a result of the domestic proceedings.

44. The Government contested the applicant's claim as unsubstantiated, arguing that there was no causal link between the alleged violation and the damage claimed. In addition, they submitted that a finding of a violation should in itself constitute sufficient just satisfaction for the applicant who would ultimately be able to request, under the Civil Proceedings Act 2005, the re-opening of the proceedings on the basis of the Court's judgment.

45. The Court notes that the pecuniary damage claimed is related to the outcome of the proceedings. As the Court has only found a violation of Article 6 § 1, it discerns no causal link between the violation found (the applicant's absence at the hearing of 29 November 2001) and the pecuniary damage claimed: it therefore rejects this claim (see, *mutatis mutandis*, *Baková v. Slovakia*, no. 47227/99, § 40, 12 November 2002).

B. Costs and expenses

46. The applicant claimed Macedonian denars 11,340 (MKD) (approximately EUR 185) for the costs and expenses incurred in the domestic proceedings and MKD 11,600 (approximately EUR 190) for those incurred before the Court. The latter included the legal fees and the costs of mailing documents. The applicant provided an itemized list for the legal fees in relation to the proceedings before the domestic courts and the Court.

47. The Government contested the applicant's claims for the reasons stated above.

48. According to the Court's case-law, an applicant is entitled to the 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 *Editions Plon v. France*, no. 58148/00, § 64, ECHR 2004-IV; *Arvelakis v. Greece*, no. 41354/98, § 34, 12 April 2001; and *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). Having regard to the fee note submitted by the applicant, the Court finds that approximately EUR 127 related to the lawyer's fees for the hearings preceding the decisive hearing of 29 November 2001. As the applicant could have not prevented nor rectified the violation found at those hearings, the Court considers that those costs were not necessarily incurred: it therefore rejects the applicant's claim in that respect. The remaining EUR 58 concerned the legal and court fees in relation to the appeal proceedings which, in turn, sought to rectify the violation found. The Court therefore awards that sum.

49. As to the applicant's claim for reimbursement of the costs incurred before the Court, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award EUR 190, as claimed by the applicant. The court therefore awards total of EUR 248 in respect of costs and expenses, as referred to below, plus any tax that may be chargeable.

C. Default interest

50. 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 applicant's inability to be present at the hearing of 29 November 2001 admissible and the remaining complaint under Article 6 § 1 of the Convention inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there is no need to examine the complaint under Article 1 of Protocol No. 1;
4. *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 248 (two hundred and forty-eight euros) in respect of costs and expenses, 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President