



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

FIFTH SECTION

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

(Application no. 27866/02)

JUDGMENT

STRASBOURG

5 July 2007

FINAL

05/10/2007

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 Ziberi 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 12 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 27866/02) 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 Zejnula Ziberi (“the applicant”), on 19 June 2002.

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

3. On 21 October 2005 the Court decided to communicate the complaint concerning the length of the proceedings. 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 1940 and lives in Strelci.

5. He worked in a mine “Tajmiste” which was affiliated with the then socially-owned enterprise (*општествено претпријамие*) Rudnici i Železarnica Skopje (“the employer”). In 1987 the applicant was seriously injured in an accident. Following that incident, he unsuccessfully requested a disability pension.

6. On 1 June 1992 the applicant submitted a request to the employer for the termination of the employment. On 4 June 1992 the employer granted his request and adopted a dismissal decision. The dismissal became effective as of 15 June 1992. On 2 November 1992 the applicant requested the employer to reinstate him.

7. On 23 November 1992 the applicant brought a civil action for annulment of the dismissal against the employer. He also claimed reinstatement.

8. On 23 December 1992 the then Kičevo Municipal Court (*Општински суд*) upheld the applicant's claim. On 21 April 1993 the then Skopje District Court (*Окружен суд*) quashed the decision and instructed the lower court to determine whether the applicant had complied with the time-limit for the submission of his claim.

9. At a hearing of 4 June 1993, the trial court examined three witnesses proposed by the applicant. On 23 December 1993 the composition of the panel of judges changed. As the trial restarted, the court re-examined the witnesses.

10. On 30 June 1993 the Kičevo Municipal Court dismissed the applicant's claim as ill-founded. On 24 November 1993 the Skopje District Court set aside that decision and remitted the case for a fresh consideration. It further instructed the lower court to determine whether the applicant had objected to the dismissal decision before the executive board of the employer ("the executive board") and whether he had complied with the statutory time-limit to institute court proceedings.

11. At a hearing of 28 February 1994 the composition of the panel of judges changed again.

12. On the same date, the Kičevo Municipal Court upheld the applicant's claim. On 18 May 1994 the District Court upheld the employer's appeal and overturned the decision rejecting the applicant's claim as time barred. On 27 June 1995 the Supreme Court quashed the decision and referred the case back to the District Court. On 7 December 1995 the latter set aside the first instance decision to determine whether the applicant had been served with the dismissal decision.

13. On 4 March 1996 the trial court rejected as inadmissible the applicant's claim as he had failed to object to the dismissal decision before the executive board. On 10 September 1996 the Bitola Court of Appeal (*Апелационен суд*) quashed that decision as it remained undetermined whether the dismissal decision had been served on the applicant.

14. On 25 November 1996 the Kičevo Court of First Instance (*Основен суд*) upheld the applicant's claim and annulled the dismissal decision. It found that the applicant had not been served with the dismissal decision. On 19 May 1997 the Bitola Court of Appeal upheld the employer's appeal, quashed the decision and ordered a retrial.

15. The trial court adjourned a hearing fixed for 25 September 1997 because of the witnesses' absence. At a hearing of 3 November 1997, the trial court heard in evidence the witnesses proposed by the applicant. On the same date, the court rejected the applicant's claim as inadmissible. The decision was repealed by the appellate court on 30 January 1998.

16. The trial court adjourned a hearing fixed for 18 May 1998 because of the employer's absence. On 3 June 1998 it allowed the applicant's request to order the employer to submit his employment file.

17. On 12 June 1998 the first-instance court partially upheld the applicant's claim and annulled the dismissal decision. It found that the latter had not been served on the applicant nor had he received in this respect any other notification. On 8 October 1998 the appellate court upheld the parties' appeals and quashed the decision.

18. The court postponed a hearing fixed for 24 November 1998 as the applicant had not been properly summoned.

19. A hearing of 24 December 1998 was adjourned at the employer's request.

20. On 11 January 1999 the first-instance court upheld the applicant's claim and annulled the dismissal decision. It further ordered the employer to reinstate the applicant to a post equal to his qualifications. On 22 June 1999 the Bitola Court of Appeal upheld the employer's appeal and remitted the case for re-examination.

21. As indicated by the Government, on 31 August 1999 the applicant submitted to the trial court his concluding remarks in writing. The court adjourned a hearing of 2 September 1999 to communicate to the applicant real evidence that had been meanwhile submitted by the employer.

22. On 20 September 1999 the first-instance court upheld the applicant's claim. It annulled the dismissal decision and ordered the employer to reinstate the applicant. On 21 December 1999 the appellate court upheld the employer's appeal and set aside that decision.

23. Hearings of 6 April and 14 July 2000 were adjourned because the employer was not properly summoned. On 18 May 2000 the President of the Court of First Instance granted the employer's request for removal of the trial judge from the case. A hearing of 15 September 2000 was postponed at the applicant's request. At a hearing of 23 October 2000 the court examined two witnesses proposed by the applicant; read out other evidence; and heard the applicant. Following the concluding remarks, the court gave its decision dismissing the applicant's claim. It established that he had been served with the dismissal decision between 4 and 10 June 1992 and that he had failed to object to it before the executive board. It further found that his subsequent request for reinstatement could not have been considered as an objection nor had it been lodged in time. It concluded that the applicant had been dismissed on his request; that he had not come to work after 15 June 1992 and that he had received the discharge annuity (*отпремнина*).

24. On 7 June 2001 the appellate court dismissed the applicant's appeal finding no grounds to depart from the reasons given by the lower court.

25. On 20 March 2002 the Supreme Court dismissed the applicant's appeal on points of law (*ревизија*) as ill-founded.

II. RELEVANT DOMESTIC LAW

26. 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.

27. Section 300 (1) of the Act provided that if a hearing was adjourned, the new hearing would be held before the same panel, if possible. Section 300 (3) of the Act provided that, *inter alia*, if a hearing was held before differently composed panel, the trial should start again.

28. 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

29. The applicant alleged under Article 6 § 1 of the Convention that the proceedings were unfair, complaining, in particular, that the national courts erroneously established the facts and decided in arbitrary manner. He further complained that the length of the proceedings were incompatible with the “reasonable time” requirement of 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 fair ... hearing within a reasonable time by [a] ... tribunal...”

A. Admissibility

1. Alleged unfairness of the proceedings

30. In so far as the applicant's complaint may be understood to concern the assessment of evidence and the result of the proceedings before the domestic courts, the Court reiterates that it is for the national courts to

establish and assess the facts, to determine the probative value of evidence and to apply the national law. It is not the function of the Court 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). Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *Schenk v. Switzerland*, judgment of 12 July 1988, Series A no. 140, p. 29, §§ 45-46).

31. In the present case, the Court notes that the applicant was given sufficient opportunity to present his case, under conditions that did not place him at a substantial disadvantage *vis-à-vis* his opponent (see, *mutatis mutandis*, *Stran Greek Refineries and Stratis Andreadis* judgment of 9 December 1994, Series A Vol. 301, p. 81, § 46). However, these arguments of the applicant, while duly taken into account by the domestic courts, were nevertheless rejected on the basis of reasoning which appears consistent and devoid of any arbitrariness.

32. 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 length-of-proceedings complaint*

33. The Government did not dispute the admissibility of this complaint

34. 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

(a) The parties' submissions

35. 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.

36. They stated that the national courts had been required to examine complex issues of a factual nature. They had to establish when and whether the applicant had been served with the dismissal decision; when and whether he had objected to it; and whether he had sought judicial protection in compliance with the statutory time-limits. In absence of real evidence, the courts had been required to examine several witnesses, to hear the applicant and to consider other evidence.

37. They further stated that the applicant had contributed to the length of the proceedings by providing inconsistent statements concerning the disputed facts and by requesting the court to examine seven witnesses and other evidence.

38. The Government further submitted that the national courts had proceeded with the case with due diligence and that they had scheduled the hearings in short intervals without any delays. They had been in this respect governed by the urgent nature of the dispute.

39. The applicant disputed the Government's arguments arguing that he did not contribute to the length of the proceedings as their speedy termination was in his interest. He further maintained it had taken eleven years for the national courts to decide his case despite its urgent nature. In addition, he submitted that the appeal court could have decided the case by itself, instead of constantly remitting it back for reconsideration which added significantly to the length.

(b) The Court's assessment

40. The Court notes that the proceedings commenced on 23 November 1992 when the applicant had brought his civil action for annulment of the dismissal decision. 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).

41. 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, four months and seventeen days for three court levels. During this period, the case was reconsidered on five occasions. The trial court's decision of 25 November 1996 was the last decision given within this period.

42. The proceedings ended on 20 March 2002 when the Supreme Court had dismissed the applicant's appeal on points of law. They therefore lasted nine years three months and twenty-seven days of which four years, eleven months and ten days fall to be examined by the Court for three levels of jurisdiction.

43. 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).

44. The Court considers that the case was not of a complex nature. It can accept that its complexity increased because of the lack of evidence in relation to the applicant's dismissal which cannot however of itself explain the length of the proceedings.

45. The Court further considers that no periods of delay are attributable to the applicant: the adjournment of one hearing (see paragraph 23 above) did not add considerably to the length of the proceedings. As regards his requests for examination of witnesses and other evidence, 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 *Rizova v. the former Yugoslav Republic of Macedonia*, no. 41228/02, § 50, 6 July 2006). In addition, it has been the Court's constant approach 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). Finally, it was the judge who remained responsible for the preparation and the speedy conduct of the trial (see, *mutatis mutandis*, *Scopelliti v. Italy*, judgment of 23 November 1993, Series A no. 278, § 23).

46. The Court considers that the protracted length of the proceedings was due to the repeated re-examination of the case. During the time which falls within its competence *ratione temporis*, the case was reconsidered on five occasions. The domestic courts thus cannot be said to have been inactive. However, although the Court is not in a position to analyse the quality of the case-law of the domestic courts, it considers that, since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system (see *Pavlyulynets v. Ukraine*, no. 70767/01, § 51, 6 September 2005; *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003). In this context, 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).

47. 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.

48. Having examined all the material submitted to it, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement of Article 6 § 1 of the Convention.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant claimed 100,000 (EUR) in respect of pecuniary damage. He further claimed non-pecuniary damage for the anguish and debasement suffered as a result of the length of the proceedings. He left the amount of the award to the Court's discretion.

52. The Government contested these claims as unsubstantiated arguing that there was no causal link between the alleged violation and the damage claimed. 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.

53. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. Moreover, that claim is unsubstantiated as the applicant did not provide any document supporting it. The Court therefore rejects this claim. On the other hand, the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, the Court awards him EUR 500 under that head.

B. Costs and expenses

54. The applicant did not seek reimbursement for costs and expenses. Accordingly, the Court does not award any sum in this respect.

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 500 (five 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 5 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President