



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

FIFTH SECTION

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

(Application no. 14349/03)

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 Sali 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. 14349/03) 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, Mr Skender Sali (“the applicant”), on 17 April 2003.

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

3. On 13 March 2006 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 1959 and lives in Skopje.

5. He was employed by the State Land Bureau (*Геодетска Управа/Државен Завод за Геодетски Работи*) (“the employer”). On 29 September 1994 he sustained grievous bodily injuries while on duty: trying to jump over a fence, he fell down and broke his spine and elbow. Until June 1997 he was several times hospitalised and underwent four spinal operations.

6. On 21 October 1996 the applicant instituted civil proceedings for damages against the employer before the Skopje Court of First Instance (“the trial court”).

7. At a hearing of 8 January 1997 the court ordered the examination of two witnesses. As their whereabouts fell within the territorial competence of the Ohrid Court of First Instance, the trial court requested the latter to carry out the examination.

8. On 4 March 1997 the trial court examined one of the witnesses. The hearing was postponed as the Ohrid Court of First Instance had failed to examine the other witness.

9. On 22 April 1997 the trial court heard the applicant and adjourned the hearing because of the failure of the Ohrid Court of First Instance to examine the other witness. A hearing scheduled for 16 June 1997 was adjourned for the same reason.

10. On 18 June 1997 the Ohrid Court of First Instance provided the trial court with a record of the witnesses' examination. Between 13 January and 17 May 1997 the trial court had requested the Ohrid Court of First Instance to carry out the examination on three occasions.

11. On 30 September 1997 the trial court suspended the proceedings because of the applicant's absence.

12. On 25 November 1997 the applicant requested the trial court to resume the proceedings.

13. On 16 February 1998 the trial court ordered the re-examination of one of the witnesses. It further requested the employer to submit the Working Posts' Regulation (*Акт за систематизација на работите и работните задачи*) (“the Regulation”).

14. On 26 March 1998 the trial court re-examined one of the witnesses and adjourned the hearing, as the employer had not submitted the Regulation. It postponed a hearing fixed for 14 May 1998 as the Regulation had not been provided yet. The trial court further allowed the applicant's request for an expert examination in relation to the non-pecuniary damage and ordered the Psychiatric Hospital “Bardovci” in Skopje (the “Hospital”) to carry out the examination. The Hospital provided its expert report on 28 August 1998.

15. On 22 October 1998 the applicant requested an additional expert examination concerning the anguish suffered which was allegedly omitted in the previous expert report. The trial court granted his request and ordered the employer to provide information as to whether the applicant had been medically insured.

16. A hearing fixed for 24 November 1998 was adjourned as the additional expert report had not been provided.

17. On 16 February 1999 the trial court partly upheld the applicant's claim and awarded him 3,834,960 Macedonian denars (MKD) together with interest.

18. On 4 October 1999 the Deputy Solicitor General appealed before the Skopje Court of Appeal on the basis that the amount of the award had been excessive; that the lower court had erroneously established the facts, in particular that the employer had not issued a special work-instruction for a particular job at the time of the accident; and that the substantive law had been incorrectly applied.

19. On 23 December 1999 the Skopje Court of Appeal dismissed the Deputy Solicitor General's appeal and upheld the trial court's judgment.

20. On 1 March 2000 the Deputy Solicitor General brought before the Supreme Court an appeal on points of law (*певузуја*). He complained that the applicant had also contributed to the accident by overlooking the possible negative consequences of jumping over the fence. The Deputy Solicitor General further alleged the incorrect application of the national law. On 9 March 2000 the appeal on points of law was communicated to the applicant. The latter did not file submissions in reply.

21. On 21 April 2000 the applicant applied to the trial court to enforce its judgment and to transfer to him the amount due from the employer's account. Judgment award was paid in September 2001.

22. On 24 October 2002 the Supreme Court partly upheld the Deputy Solicitor General's appeal on points of law and overturned the lower courts' judgments. It dismissed his arguments that there had been substantial procedural deficiencies, but it ruled that the lower courts had incorrectly applied the national law. Referring to the facts as established by the lower courts, the Supreme Court held that they had erroneously found that the applicant had not contributed to the accident. Moreover, it found that there had been no instruction by the employer for the undertaking of the relevant action. It ruled therefore, that the applicant shared the responsibility with the employer for the injuries sustained: it consequently reduced the award by 50% together with statutory interest (*законска затезна камата*). The interest concerning the pecuniary damage was to be calculated from 21 October 1996 and 22 October 1998, respectively, and the interest concerning the non-pecuniary damage – from 18 February 1999, until the final payment.

23. No further actions were taken by either of the parties in respect of the Supreme Court's judgment.

II. RELEVANT DOMESTIC LAW

24. Section 334 of the then Civil Proceedings Act (*Закон за парничната постапка*) ("the Act") provided that, *inter alia*, parties could appeal the first-instance judgment within fifteen days from the date of service of that judgment, if not otherwise regulated by law.

25. Section 368 §§ 1 and 2 of the Act provided that the parties could file an appeal on points of law against a second instance final judgment within

thirty days from the date of service of a certified copy of that judgment. The appeal on points of law would be inadmissible, *inter alia*, if the value of the dispute did not exceed MKD 1,000,000.

26. Section 370 of the Act provided that an appeal on points of law would not suspend the enforcement of the final judgement against which it had been submitted.

27. According to section 371 § 1 (3) and § 3 of the Act, the appeal on points of law could be submitted for incorrect application of the substantive law. It could not be brought for incorrectly or incompletely established facts.

28. Section 377 of the Act provided that the Supreme Court would decide at a hearing held in camera.

29. Section 381 § 1 of the Act provided that the Supreme Court would overturn the impugned judgment if the substantive law had been incorrectly applied.

THE LAW

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

30. The applicant complained under Article 6 of the Convention that the length of the proceedings had been excessive. He further argued that the Supreme Court had re-established the facts of the case although it had not been vested with such a jurisdiction; that it had not been impartial and independent, as it had decided under the Government's influence. He further maintained that it had not decided in public. 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 and public hearing within a reasonable time by an independent and impartial tribunal established by law...”

A. Alleged breach of the “reasonable time” requirement of Article 6 of the Convention

1. Admissibility

a. The applicant's “victim status”

31. The Government maintained that the applicant had no victim status. Referring to the Supreme Court's judgment, they maintained that the interest awarded was sufficient compensation for any excessive length of proceedings.

32. The applicant responded that there was no causal link between the interest and his right for his case to be heard within a reasonable time. Under the domestic civil law rules, there was a right of statutory interest for damage sustained by late payment. In his case, the interest was compensation for the injuries sustained and not for the length of the proceedings.

33. As to the question of whether the applicant may claim to be a victim of a violation of Article 6 § 1 of the Convention as regards the length of the impugned proceedings, the Court reiterates that “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” (*Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36).

34. In the instant case, the Court finds that the Supreme Court did not make any reference to the length of the proceedings. It further accepts that the statutory interest could be regarded as a compensation for the late payment and did not constitute any acknowledgment, whether explicit or implicit, on the part of the national authorities that the applicant's case had not been heard within a reasonable time (see, *mutatis mutandis*, *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, § 66).

35. In conclusion, the Court holds that the applicant may claim to be a “victim” for the purposes of Article 34 of the Convention.

b. Conclusion

36. 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.

2. Merits

a. The parties' submissions

37. The Government submitted that the applicant had contributed to the length of the proceedings as he had submitted the evidence in his favour gradually during the proceedings. In addition, the proceedings had been suspended for several months because of his absence from the hearing of 30 September 1997.

38. As to the conduct of the national courts, they argued that the applicant's medical treatment, which had been carried out pending the proceedings, had been an aggravating circumstance which had affected their length. The same concerned the expert examinations carried out during the proceedings. They further maintained that no periods of inactivity were imputable to the national courts. Concerning the proceedings before the Supreme Court, they noted its excessive workload and its extensive jurisdiction.

39. The applicant disputed the Government's arguments arguing that he had submitted all available evidence together with his claim, but that it had taken more than a year for the Ohrid Court of First Instance to examine one of the witnesses proposed, which had added considerably to the length of the proceedings. He further maintained that it had been the trial court's fault for failing to order the expert examination at an earlier stage. On the other hand, he accepted that the suspension of the proceedings could be attributed to him, but he argued that it had not prevented the court from establishing the facts. In addition, he submitted that it had taken seven months for the trial court to serve its judgment on the parties. He further argued that the long delays between the hearings and the delay before the Supreme Court were not justified by the Government's arguments.

b. The Court's assessment

40. The Court notes that the proceedings started on 21 October 1996 when the applicant had brought the compensation claim before the Skopje Court of First Instance. However, the period which falls within the Court's jurisdiction did not begin on that date, but nearly six months later, 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. The proceedings ended on 24 October 2002 with the Supreme Court's decision. Accordingly, the relevant period which falls within the Court's competence was five years, six months and fourteen days for three levels of jurisdiction.

42. 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).

43. The Court does not consider that the national courts were required to examine issues of a complex nature.

44. As to the applicant's conduct, the Court considers that he was responsible for the adjournment of the hearing of 30 September 1997 (see paragraph 11 above) resulting in the proceedings being suspended for four months and sixteen days. It does not find any further delays attributable to the applicant nor does it consider that the Government have put forward any convincing evidence to the contrary.

45. As regards the conduct of the domestic authorities, the Court observes that it took five months and ten days for the Ohrid Court of First Instance to examine the witness whose whereabouts fell within its jurisdiction (see paragraphs 7 and 10 above). It further observes that nearly eight months lapsed between the trial court's judgment and the introduction of the Deputy Solicitor General's appeal (see paragraphs 17 and 18 above). In absence of evidence as to the date of service of the trial court's judgment to the parties and having regard to the fifteen-day time-limit for introduction of an appeal (see paragraph 24 above), inferences could be drawn in favour of the applicant's allegations that it took the trial court about seven months to serve its judgment on the parties. As to the appeal proceedings, the Court observes that they lasted less than three months (see paragraphs 18 and 19 above).

46. The Court further notes that the applicant's case was pending before the Supreme Court for two years, seven months and twenty-three days following the Deputy Solicitor General's appeal on points of law (see paragraphs 20 and 22 above). During this time, the Supreme Court only reviewed the case on points of law and did not take any evidence or perform any other procedural activity (see *Lickov v. the former Yugoslav Republic of Macedonia*, cited above, § 30; *Jelavić-Metrović v. Croatia*, no. 9591/02, § 28, 13 January 2005). In this respect, it cannot accept the Government's arguments concerning its workload and extensive jurisdiction for the reasons detailed in the *Lickov* judgment (see *Lickov v. the former Yugoslav Republic of Macedonia*, cited above, § 31).

47. Moreover, it reiterates that special diligence is necessary in disputes concerning the determination of compensation in personal injuries cases (see *Poje v. Croatia*, no. 29159/03, § 26, 9 March 2006; *Silva Pontes v. Portugal*, judgment of 23 March 1994, Series A no. 286-A, p. 15, § 39).

48. Having regard to the circumstances of the instant case and to what was at stake for the applicant, the Court considers that in the instant case the

length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

B. The remaining complaints under Article 6 § 1 of the Convention

50. The applicant further complained that the Supreme Court had not decided his case in public; that establishing facts was beyond its competencies; and that it had not been impartial and independent, as it had decided under the Government's influence.

51. The Court has held on a number of occasions that, provided that there has been a public hearing at first instance, the absence of public hearings at second or third instance may be justified by the special features of the proceedings at issue. Thus, proceedings for leave to appeal or proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6 even where the appellant was not given an opportunity of being heard in person by the appeal or cassation court (see *Meftah and Others v. France* [GC], nos. 32911/96, 35237/97 and 34595/97, § 41, ECHR 2002-VII, and the references cited therein).

52. Under the national rules of civil proceedings, the Supreme Court carried out a supervision which was limited to compliance with the law, including jurisdictional and procedural rules, to the exclusion of any examination of the facts in the strict sense, such examination being within the sole province of the courts below. In the present case, the Court observes that the first-instance hearing took place in public. It further notes that the applicant did not file his defence in reply to the Deputy Solicitor General's appeal on points of law which was communicated to him (see paragraph 20 above).

53. In addition, the Supreme Court did not adduce any new evidence. Relying on the facts established by the lower courts, it simply drew a different conclusion as to the applicant's contribution to the accident which ultimately affected the amount of the compensation. The Court finds no indication of arbitrariness in that reasoning.

54. The Court further considers as unsubstantiated the applicant's complaint that the Supreme Court was not impartial and independent as he did not provide any evidence that would shed light to that allegation.

55. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

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

56. The applicant complained under Article 1 of Protocol No. 1 of the Convention that, as a result of the Supreme Court's decision, he would be partly deprived of the compensation he had already received in the enforcement proceedings. Article 1 of Protocol No. 1 to the Convention reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

57. The Court observes that the applicant's complaint under Article 1 of Protocol No. 1 relates solely to the outcome of the proceedings. In the Court's view, regard being had to the structure of the domestic proceedings as a whole, the circumstances of the case do not constitute an interference with the applicant's rights under Article 1 of Protocol No. 1.

58. Having regard to the applicable rules of civil proceedings (see “Relevant domestic law” above), where an appeal on points of law is admissible, as in the present case, the final appeal court's decision cannot be regarded as irreversible. The applicant could not have been unaware of the risk he was taking when bringing the enforcement proceedings against the employer. He must have known that the Supreme Court might overturn the Court of Appeal's judgment, annulling or changing thus the legal ground for the enforcement order. Moreover, the applicant was aware that the employer had lodged with the Supreme Court an appeal on points of law, but had decided not to file submissions in reply (see paragraph 20 above). Such a situation where the applicant had accepted the risk of a possible different decision in the subsequent stages of the proceedings cannot be interpreted as entailing any legitimate expectation on his part (see *Arsov v. the former Yugoslav Republic of Macedonia* (dec.), no. 44208/02, 12 May 2005).

59. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed MKD 3,116,190 in respect of pecuniary damage. The sum allegedly corresponded to 50% of the judgment debt with interest that he had received. He further claimed MKD 4,000,000 (approximately EUR 65, 400) in respect of non-pecuniary damage for the anguish suffered as a consequence of the length of the proceedings.

62. The Government contested these claims as unsubstantiated finding no causal link between the damage claimed and the alleged violation. As an alternative, they asked the Court to assess the amount of just satisfaction to be awarded on the basis of its case-law and the economic situation of the State.

63. The Court does not discern any causal link between the violation found and the pecuniary damage alleged: it therefore rejects this claim. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 800 under that head, plus any tax that may be chargeable.

B. Costs and expenses

64. The applicant also claimed MKD 85,800 (approximately EUR 1,400) for the costs and expenses incurred before the Court. These included the lawyer's fees for the preparation of the application and the observations. Referring to the rate scale of the Macedonian Bar, he submitted in support information concerning the hours worked.

65. The Government contested this claim as unsubstantiated.

66. 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). Regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 600 under this head, plus any tax that may be chargeable.

C. Default interest

67. 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, 400 (one thousand and four hundred euros) in respect of non-pecuniary damage and 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;
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