



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

FIFTH SECTION

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

(Application no. 22931/03)

JUDGMENT

STRASBOURG

5 July 2007

FINAL

10/12/2007

*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 Lazarevska 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 V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *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. 22931/03) 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 Anica Lazarevska (“the applicant”), on 9 July 2003.

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

3. On 11 October 2005 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

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1969 and lives in Bitola.

5. The applicant worked in a private company Megaplast (“the employer”) as a manual worker on a hydraulic compressing machine between 1 December 1995 and 23 November 1996 when an accident happened in which the machine crushed her left hand. As a result, two fingers were amputated.

1. Civil proceedings for damages

6. On 27 May 1997 the applicant brought before the Bitola Court of First Instance a civil action for damages for the injuries sustained in the accident.

7. On 29 May 1997 the court provided the applicant with a warning letter requesting her to pay the court fees.

8. On 24 April 1998 the applicant requested the court to fix a hearing.

9. On 29 May 1998 the court held a preparatory hearing (*подготвително рочиште*) during which the employer declared its intention to submit a counter-claim (*противтужба*) for compensation for the pecuniary loss caused in releasing the applicant's fingers from the machine and for loss of income. The court stated that it would schedule a hearing after the employer lodged its counter-claim.

10. On 24 June 1998 the employer submitted the counter-claim and observations in reply to the applicant's claim.

11. On 19 March 1999 the court ordered an expert examination.

12. On 31 March 1999 the court carried out an on-site inspection. On 14 April 1999 the expert submitted his report. On 21 April 1999 another expert drew up a further report.

13. On 14 December 1999 a medical examination was completed concerning the severity of her injuries and the degree of pain sustained by her.

14. A hearing fixed for 2 March 2000 was adjourned at the employer's request. The court ordered witnesses to be summoned for examination.

15. At a hearing of 20 March 2000 the trial re-started as a different panel of judges (*судски совет*) had taken over the case. The court adjourned the hearing as the witnesses were not properly summoned and the employer disputed the expert reports.

16. Hearings dated 20 April and 19 May 2000 were postponed because the witnesses and the experts were incorrectly summoned. At the latter hearing, the composition of the panel of judges was changed.

17. On 15 June 2000 the trial again re-started as the composition of the panel of judges changed. The court examined two witnesses, the parties concerned and one of the experts. It adjourned the hearing so that the expert would submit an additional report based on the employer's comments.

18. On 7 July 2000 the Bitola Court of First Instance partially upheld the applicant's claim and awarded non-pecuniary damages in foreign currency to be converted into Macedonian denar. It also dismissed the employer's counter-claim.

19. On 10 July 2000 the applicant requested the court to exempt her from paying the court fees (*судска такса*) because of lack of funds.

20. On 17 November 2000 the employer appealed. On 8 May 2001 the file was transferred to the court of appeal for consideration. In the meantime, the trial court had ordered the parties to pay the court fees. On

23 April 2001 it ordered the Public Payment Office (*Завод за Платен Промет*) to transfer the amount due from the employer's account.

21. On 5 April 2001 bankruptcy proceedings were instituted against the employer. On the same date they were completed.

22. On 7 June 2001 the Bitola Court of Appeal quashed the lower court's decision concerning the amount of the award and remitted that part for fresh consideration. It endorsed the reasons given by the trial court, but considered it unlawful to award damages in foreign currency. It further instructed the trial court to order the applicant to further particularise her claim in the correct currency. It also upheld the dismissal of the employer's counter-claim.

23. On 12 June 2001 the first-instance court received the case-file from the appellate court.

24. On 31 March 2003 the employer's representative informed the court that the employer had ceased to exist.

25. On 11 April 2003 the Bitola Court of First Instance rejected the applicant's claim as the employer had ceased to exist. None of the parties attended the hearing despite being properly summoned. The decision was served on the parties on 5 May 2003.

26. On 13 May 2003 the applicant appealed arguing that the trial court should have terminated the proceedings instead of rejecting her claim.

27. On 20 October 2003 the court ordered the Public Revenue Office (*Управа за Јавни Приходи*) ("the Office") to collect the court fees from the applicant. In that respect, on 22 December 2003 the Office submitted a warning letter to the applicant.

28. On 22 January 2004 the Bitola Court of Appeal dismissed the applicant's appeal and upheld the trial court's decision. It was served on the applicant on 16 February 2004.

2. *Criminal proceedings for alleged fraudulent insolvency*

29. On 12 December 2003 the public prosecutor rejected the applicant's criminal charges for fraudulent insolvency brought against the employer's founders. She took over the prosecution as a subsidiary complainant. On 14 December 2004 the investigating judge of the Bitola Court of First Instance allowed her criminal complaint and initiated an investigation against the employer's founders.

30. On 7 July 2005 the Bitola Court of First Instance acquitted the accused. The applicant was further instructed to institute separate civil proceedings for damages.

31. On 3 October 2005 the applicant appealed.

32. On 11 January 2006 the Bitola Court of Appeal dismissed the appeal and upheld the lower court's decision. It was served on the applicant on 20 January 2006.

RELEVANT DOMESTIC LAW

33. Section 10 of the then Civil Proceedings Act (*Закон за парничната носманка*) (“the Act”) provided that it was incumbent upon the court to undertake to conduct the proceedings without undue delay and efficiently and to prevent any attempted abuse of the rights afforded to the parties concerned.

34. Section 300 (1) of the Act provided that, following an adjournment of a hearing, the new hearing should be held, if possible, before the same panel of judges. Section 300 (3) of the Act provided that, *inter alia*, if a hearing was held before a different composition of the panel of judges, the trial should re-start.

THE LAW

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

35. The applicant complained that the length of the civil proceedings was incompatible with the “reasonable time” requirement of this Article. In the observations received by the Court on 14 March 2006, the applicant further complained in substance about the length of the criminal proceedings. 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 ... hearing within a reasonable time by [a] ... tribunal...”

A. Admissibility

1. *As to the civil proceedings*

36. The Government submitted that the applicant did not exhaust domestic remedies as she had lodged the application with the Court while the domestic appeal proceedings were still pending. The domestic courts were accordingly denied the opportunity to decide the applicant's case on merits.

37. The applicant disagreed arguing that the complaint about the length of the proceedings could be submitted before this Court even when the domestic proceedings had not been completed.

38. The Court notes its settled case law to the effect that it could consider a complaint about the length of proceedings pending before the domestic authorities (see, *mutatis mutandis*, *Milošević v. the former Yugoslav Republic of Macedonia*, no. 15056/02, 20 April 2006; *Atanasovic and Others v. the former Yugoslav Republic of Macedonia*, no. 13886/02, 22 December 2005). It further observes that the complaint about a procedural delay under Article 6 § 1 of the Convention should be distinguished from the substantive dispute decided by the domestic courts. In the present case, the appellate court was called upon to determine the applicant's compensation claim on its merits.

39. The Court therefore considers that the applicant was not required to exhaust the ordinary appeal proceedings before bringing her complaint before the Court.

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

41. The Court considers that the complaint about the length of the civil proceedings 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. *As to the criminal proceedings*

42. The criminal proceedings concerned the criminal charges for fraudulent insolvency brought by the applicant against the founders of the employer. The Court considers the applicant's complaint, which was not introduced by the initial application, incompatible *ratione materiae* with the Convention, as the latter does not generally provide for a right of prosecution of third parties (see *Jakimovski v. the former Yugoslav Republic of Macedonia* (dec.), no. 26657/02, 23 October 2006; *Trajkovski and others v. the former Yugoslav Republic of Macedonia* (dec.), no. 13191/02, 1 December 2005).

43. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

B. Merits

1. *The parties' submissions*

44. The Government submitted that the case concerned complex issues which required special diligence on the part of the courts. They cited the expert examinations and the on-site inspection carried out during the proceedings; the number of witnesses examined; and the incorrect delivery

of court summons. In addition, the domestic courts were called upon to decide simultaneously the claims of both parties to the proceedings.

45. As to the parties' conduct, the Government stated that the one-year delay between the introduction of the applicant's claim and the preparatory hearing was the employer's fault. The trial court insisted on the employer submitting its observations in reply to the applicant's claim, although such observations had not been obligatory.

46. They also referred to the applicant's failure to pay the court fees in time (see paragraphs 7 and 27 above). It was the applicant's inactivity that caused a delay of nearly one year and nine months following the appellate court's decision of 7 June 2001 (see paragraphs 21-25 above). They further maintained that she should have further particularised, of her own motion, her claim in accordance with the appellate court's instructions without waiting to be ordered by the trial court to do so. In addition, she was aware of the employer's insolvency and that fact motivated her not to request the court to expedite the proceedings. They therefore wondered whether the period following the appellate court's decision of 7 June 2001 should be taken into consideration, since the proceedings were, for all practical purposes, regarded by the applicant as already terminated. They further argued that the applicant failed to apply to expedite the proceedings.

47. The Government further averred that the national courts had proceeded with the case with due diligence and that the scheduled hearings had been held without any interruptions or delays.

48. The applicant disputed the Government's position arguing that the State had been responsible for several delays (notably the delay between the introduction of the claim and the first hearing scheduled; and the excessive time elapsed between the Court of Appeal's decision of 7 June 2001 and the trial court's hearing of 11 April 2003). She further disputed that her alleged failure to pay the court fees contributed to the length of the proceedings. She maintained her position that her case was not heard within a reasonable time despite the urgent nature of the dispute.

2. *The Court's assessment*

49. The Court notes that the proceedings started on 27 May 1997 when the applicant introduced the compensation claim before the Bitola Court of First Instance. The dispute was finally determined with the appellate court's decision of 22 January 2004. The proceedings ended on 16 February 2004 when that decision was served on the applicant. They therefore lasted six years, eight months and twenty-one days for two levels of jurisdiction.

50. 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 *Arsov v. the former Yugoslav Republic*

of *Macedonia*, no. 44208/02, § 37, 19 October 2006, and the references cited therein).

51. The Court considers that the case was not of a particularly complex nature. It can accept that its complexity increased due to the expert examinations, however that cannot of itself explain the length of the proceedings.

52. Concerning the applicant's conduct, the Court finds that no periods of delay are attributable to her. The Government did not present any convincing evidence that her alleged failure to pay the court fees in time contributed to the length of the proceedings. In addition, it considers speculative the Government's argument that she was aware of the employer's insolvency, as no substantiated evidence was produced in support. Moreover, it finds difficult to accept their argument, that following the appellate court's decision of June 2001, the applicant should have further particularised her claim on her own motion, as that court's instructions were addressed to the trial court which should have, in turn, issued the relevant instructions. Finally, the Government did not specify what effective remedies the applicant should have availed herself of to expedite the proceedings.

53. 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).

54. Having regard to the material submitted before it, the Court finds a number of delays imputable to the State: it took the trial court one year to fix a hearing following the submission of the applicant's claim (see paragraphs 6 and 9 above); nearly nine months lapsed between the introduction of the employer's counter-claim and the hearing of 19 March 1999 (see paragraphs 10 and 11 above); a total delay of nearly one year resulted from the trial court's requests for expert examinations of the parties' claims (see paragraphs 12-14 above). As to the latter, the Court notes that the principal responsibility for a delay caused by the expert examinations rests ultimately with the State (see *Capuano v. Italy*, judgment of 25 June 1987, Series A no. 119, § 32). In addition, the Court points out that the experts were working in the context of judicial proceedings, supervised by a judge, who remained responsible for the preparation and the speedy conduct of the trial (see *Scopelliti v. Italy*, judgment of 23 November 1993, Series A no. 278, § 23). Furthermore, the trial court was required under section 300 (3) of the Act (see paragraph 34 above) to restart the trial after every change of the composition of the panel of judges (see paragraphs 15-17 above) which added to the length of the proceedings. Finally, the proceedings lay dormant for nearly one year and ten months

following the appellate court's decision of 7 June 2001 (see paragraphs 23-25), a period during which the trial court did not take any procedural step. That period cannot be attributed to the applicant for the reasons stated above (see paragraph 52 above).

55. The Court further recalls that special diligence is necessary in disputes concerning 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).

56. Having regard to these circumstances and to what was at stake for the applicant, the Court considers that the length of the present proceedings was excessive and failed to meet the “reasonable time” requirement of Article 6 § 1 of the Convention.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

59. The applicant claimed 46,302 euros (EUR) in respect of non-pecuniary damage for the pain, fear and disfigurement sustained as a result of the accident. That sum corresponded to twice the amount awarded by the trial court's decision of 7 July 2000 plus interest.

60. The Government did not express an opinion on the matter given in the applicant's reply to their observations.

61. The Court observes that the applicant claimed compensation for non-pecuniary damage for the pain, fear and disfigurement sustained as a result of the accident. It notes that she did not claim any damage as a consequence of the length of the proceedings. The Court does not discern any causal link between the violation found and the damage alleged; it therefore rejects this claim.

B. Costs and expenses

62. The applicant also claimed EUR 3,644 for the costs and expenses incurred before the domestic courts and EUR 1,056 for those incurred before this Court. These included her lawyer's fees. In addition, she claimed EUR 165 for translation costs and an additional EUR 1,000 for unexpected

costs before this Court. She did not produce a fee note nor any document supporting her claims, apart from the invoice concerning the translation costs.

63. The Government did not express an opinion on the matter given in the applicant's reply to their observations.

64. Concerning the applicant's request for reimbursement of the costs incurred in the proceedings before the national authorities, the Court reiterates that legal costs are only recoverable in so far as they relate to the violation found (see *Ernestina Zullo v. Italy* [GC], no. 64897/01, § 153, 29 March 2006; *Belvedere Alberghiera S.r.l. v. Italy* (just satisfaction), no. 31524/96, § 45, 30 October 2003; *Van de Hurk v. the Netherlands*, judgment of 19 April 1994, Series A no. 288, § 66). As such costs were not incurred in seeking through the domestic legal order prevention and redress of the alleged violation complained of, the Court does not award any sum under this head (see *Milošević v. the former Yugoslav Republic of Macedonia*, no. 15056/02, § 34, 20 April 2006).

65. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses before this Court only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum (see *Kostovska v. the former Yugoslav Republic of Macedonia*, cited above, § 62; *Arvelakis v. Greece*, no. 41354/98, § 34, 12 April 2001; *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). In the present case, the Court notes that the applicant did not provide any supporting documents concerning the legal fees and the bill produced justified only the translation costs. As the Government did not contest the applicant's claim made in her reply to their observations and regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 600 for costs and expenses for the proceedings before it, plus any tax that may be chargeable.

C. Default interest

66. 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 civil 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 600 (six hundred 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;
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