



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

FIFTH SECTION

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

(Application no. 14818/02)

JUDGMENT

STRASBOURG

8 November 2007

FINAL

02/06/2008

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 Stojkovic 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,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 9 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 14818/02) 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 Živko Stojkovic (“the applicant”), on 8 March 2002. On 26 August 2004 the Registry was informed that the applicant had died on 31 October 2002. His wife, Mrs Stojna Stojkovic, and their two daughters, Ms Marija Stojkovic and Ms Tatjana Stankovska, applied to continue the application in his name and designated the same counsel to represent them. For the reason of convenience, they will be referred to as “the applicant’s successors”.

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

3. On 12 March 2004 and 30 January 2006, respectively the Court decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect 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. Between 5 July and 27 December 1991 the applicant worked as a manager of a joint stock company (“the employer”). On 7 February 1992 he was dismissed by the employer’s disciplinary commission, a decision which was confirmed by the executive board on 17 March 1992.

5. On 23 March 1992 the applicant brought an action against the employer to annul his dismissal and for his reinstatement as a manager.

6. On 16 June 1992 the then Štip Municipal Court (*Општински Суд Штип*) dismissed his claim.

7. On 25 January 1993 the then Štip District Court (*Окружен Суд Штип*) upheld his appeal of 19 November 1992 and remitted the case for a re-examination.

8. Of nine hearings scheduled before the first-instance court, none was adjourned at the applicant’s request.

9. On 29 December 1993 the then Municipal Court dismissed his claim. That decision was upheld by then District Court’s decision of 30 March 1994 dismissing his appeal of 10 February 1994.

10. On 30 May 1994 the applicant lodged an appeal on points of law (*пезузија*) which was granted by the Supreme Court’s decision of 20 December 1995. On 22 February 1996 the then District Court again upheld the first-instance decision of 29 December 1993.

11. On 17 April 1996 the applicant submitted a fresh appeal on points of law before the Supreme Court. On 20 November 1997 the Supreme Court quashed both the first- and second-instance decisions and remitted the case for a renewed examination. It ruled that the lower courts had erroneously established that the employer’s meeting of shareholders (*собрание на акционери*) and the strike board (*интрајкувачки одбор*) had discharged the applicant as the employer’s manager prior to the disciplinary commission having given the dismissal decision (see paragraph 4 above). According to the minutes of their meeting of 27 December 1991, they had only voted against him, but had left the matter to be decided by the disciplinary commission.

12. On 29 May 1998 the applicant requested the removal of the first-instance judge for bias. On 3 June 1998 the President of the Štip Court of First Instance dismissed that request as unsubstantiated.

13. According to the information submitted by the parties, none of the six hearings fixed by the first-instance court was adjourned at the applicant’s request.

14. On 17 December 1998 the Štip Court of First Instance annulled the 1992 dismissal order finding that it was not given by an authorised body.

However, it dismissed the applicant's claim for his reinstatement to a post corresponding to his qualifications since bankruptcy proceedings had been meanwhile launched against the employer. The employer's receiver (*стечаен управник*) could decide the reinstatement issue.

15. On 29 December 1999 the Court of Appeal quashed this decision as incoherent and ordered a retrial arguing that the lower court had erred in establishing the facts concerning the body competent to decide on the dismissal.

16. After three hearings being fixed, on 24 April 2001 the Štip Court of First Instance dismissed the applicant's claims finding that: he was discharged as the employer's manager by the executive board on 27 December 1991; under an application for disciplinary proceedings submitted by the strike board, the newly appointed manager requested the disciplinary commission to dismiss him for having committed serious work-related violations, which was actually done by the commission's decision of 7 February 1992; and the executive board dismissed his objection by decision of 17 March 1992. The court therefore concluded that the applicant's claims were ill-founded. This decision was given by another first-instance judge. On 29 November 2001 the Court of Appeal upheld this decision.

17. On 21 January 2002 the applicant submitted an appeal on points of law before the Supreme Court arguing that the lower courts had wrongly established and assessed the facts.

18. The applicant died on 31 October 2002.

19. On 11 September 2003 the Supreme Court finally dismissed his appeal finding that the lower courts had properly established the facts and correctly applied the national law. According to a note written on the slip receipt, on 3 December 2003 there was an unsuccessful attempt to serve this decision due to the applicant's death. The applicant's successors maintained that they learnt about this decision only on 29 July 2004 when they received the Government's observations. The Government did not contest that assertion.

20. During the proceedings, the applicant applied several times to the first-instance court to expedite the proceedings. His requests for priority treatment submitted before the Supreme Court were refused. He also notified the State Judicial Council about the protracted length of the proceedings.

RELEVANT DOMESTIC LAW

21. 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 avoid any attempt of abuse of the rights afforded to the parties concerned.

22. Section 408 of the Act provided, *inter alia*, that the court should take into consideration the necessity of urgent settlement of employment disputes.

23. Section 36 of the Courts Act (*Закон за судовите*) of 2006 (“the 2006 Act”) provides that a party concerned can lodge with the immediate higher court (*непосредно повисокиот суд*) an application for the protection of the right to a hearing within a reasonable time if he/she considers that it has been violated by a court of competent jurisdiction. The immediate higher court considers the application (*постанува по барањето*) within six months after it has been lodged and decides whether the court below violated the right to a hearing within a reasonable time. The higher court shall award just satisfaction to the claimant if it finds a violation of the right to a hearing within a reasonable time. The just satisfaction shall be paid from the State’s budget. The 2006 Act became applicable on 1 January 2007 (section 128).

THE LAW

I. ALLEGED VIOLATION OF THE “REASONABLE TIME” REQUIREMENT UNDER ARTICLE 6 § 1 OF THE CONVENTION

24. The applicant initially complained that the length of the proceedings was incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention which, 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. The “victim” status of the applicant’s successors

25. The Court recalls that in a number of cases in which an applicant died in the course of the proceedings, the Court has taken into account the statements of the applicant’s heirs or of close family members expressing the wish to pursue the proceedings before the Court (see *Karner v. Austria*, no. 40016/98, § 22, ECHR 2003-IX, with further references). This is particularly the case concerning applications which were introduced by the

applicant himself and only continued by his widow after his subsequent death (see *Dalban v. Romania* [GC], no. 28114/95, ECHR 1999-VI).

26. In the circumstances of the present case, the Court considers that the applicant's successors have the requisite *locus standi* under Article 34 of the Convention in respect of the applicant's complaint about the length of the proceedings (see *Vocaturo v. Italy*, judgment of 24 May 1991, Series A no. 206-C, § 2).

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

28. 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

29. 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.

30. Concerning the conduct of the domestic courts, the Government argued that they decided the applicant's case with due diligence and that the scheduled hearings were held without any interruptions and delays. They further maintained that the impugned proceedings were composed of a number of separate actions, each starting after a remittal order was made, and that none of them lasted unreasonably long. In addition, the subject-matter of the dispute affected the complexity of the case and the courts examined considerable evidence to establish the facts. The civil proceedings were based on the principle of the autonomy of parties and the courts were bound by the parties' conduct.

31. As regards the applicant's conduct, they submitted that he had contributed to the length by availing himself of all legal remedies available.

32. The applicant's successors argued that the courts had held numerous hearings at excessive intervals. They also addressed the late service of court decisions, in particular the last Supreme Court's decision of September 2003 which has never been served on them. They further contested the Government's arguments about the complexity of the case arguing that it was a simple employment-related matter which required urgent settlement. They also disagreed that the applicant had contributed to the length of the proceedings by taking advantage of the resources afforded by national law. Referring to his letters sent to different institutions, they maintained that the applicant applied to expedite the proceedings. Finally, the applicant's successors underlined what was at stake for him and the national courts' responsibility to decide his case with due expedience given his health.

(b) The Court's assessment

33. The Court notes that the civil proceedings started on 23 March 1992 when the applicant brought his claim before the then Štip Municipal Court. However, as argued by the Government, the period which falls within its jurisdiction did not begin on that date, but 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).

34. In assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings on 10 April 1997 (see *Styranowski v. Poland*, no. 28616/95, § 46, ECHR 1998-VIII and *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 over five years for three court levels. The then District Court's decision of 22 February 1996 was the last decision given within this time.

35. For the reasons detailed in the *Arsov* case (see *Arsov v. the former Yugoslav Republic of Macedonia*, no. 44208/02, § 41, 19 October 2006), the Court finds that the proceedings complained of should be considered as one single procedure. It further considers that the proceedings ended on 29 July 2004 given that the Government did not dispute the applicant's successors' assertion about the date of service of the Supreme Court's decision of 11 September 2003 (see paragraph 19 above). The proceedings therefore lasted over twelve years and one month of which over seven years and three months fall to be examined by the Court for three levels of jurisdiction.

36. 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).

37. The Court finds that the case was of some factual complexity, but that that cannot of itself explain the length of the proceedings.

38. The Court further considers that no periods of delay are imputable to the applicant. He attended all hearings as scheduled. His motions to expedite the proceedings constitute a fact in his favour even if those requests are not considered as an effective remedy (see *Atanasovic and Others v. the former Yugoslav Republic of Macedonia*, no. 13886/02, § 31, 22 December 2005). The mere fact that he made full use of the remedies available under domestic law cannot be considered as contributing to the length of the proceedings (see *Lickov*, cited above, § 28).

39. 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 and *Muti v. Italy*, judgment of 23 March 1994, Series A no. 281-C, § 15).

40. In this respect, the Court notes that the case was reconsidered on four occasions. Two remittal orders were made during the time which falls within its competence *ratione temporis*. The domestic courts thus cannot be said to have been inactive. However, while the Court is not in a position to analyse the quality of the case-law of the domestic courts, the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, so that the repetition of such orders within one set of proceedings must be considered to disclose a serious deficiency in the judicial system (see *Pavlyulynets v. Ukraine*, no. 70767/01, § 51, 6 September 2005 and *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

41. In addition, the Court reiterates that although, as argued by the Government, the progress of civil proceedings is, in domestic law, decided by the parties, that principle does not dispense the courts from ensuring compliance with the "reasonable time" requirement of Article 6. In any event, section 10 of the Act (see paragraph 21 above) provided that "it was incumbent upon the court to undertake to conduct the proceedings without undue delay". The courts therefore remain 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). Moreover, the domestic law (see paragraph 22 above) and the Court's jurisprudence (see, *mutatis mutandis*, *Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, § 17 and *Obermeier v. Austria*, judgment of 28 June 1990, Series A no. 179, § 72) required employment-related disputes to be conducted with a special diligence.

42. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case and what was at stake for the applicant, the Court considers that the length of the proceedings complained of, failed to satisfy the reasonable-time requirement.

43. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

44. In submission received by the Court on 26 August 2004, the applicant's successors complained under Article 6 § 1 of the Convention about the alleged unfairness of the proceedings. They further complained under Article 7 that the applicant was dismissed in disciplinary proceedings

under the employer's internal regulations that had not been valid at the material time. Relying on Article 13 they also complained of the fact that in the former Yugoslav Republic of Macedonia there was no court to which application could be made to complain of the excessive length of proceedings. They finally alleged violation of Article 1 of Protocol No. 1 that the applicant had been deprived of unpaid salaries as a result of his dismissal.

45. The Court observes that the applicant died on 31 October 2002. The complaints under this head were introduced by the applicant's successors after his death as opposed to the length-of-proceedings complaint, which was introduced by the applicant himself and continued by them after his death.

46. In this respect, the Court reiterates that the existence of a victim of a violation, namely, an individual who is personally affected by an alleged violation of a Convention right, is indispensable for putting the protection mechanism of the Convention into motion, although this criterion is not to be applied in a rigid, mechanical and inflexible way throughout the proceedings (see *Karner*, cited above, § 25).

47. In the circumstances of the present case, the applicant's successors do not have the requisite standing under Article 34 of the Convention in respect of the alleged violations of the Convention under this head (see, *mutatis mutandis*, *Fairfield and Others v. the United Kingdom* (dec.), no. 24790/04, 8 March 2005).

48. These complaints are therefore incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant's successors claimed 31,300 euros (EUR) in respect of pecuniary damage and EUR 135,000 for non-pecuniary damage. They maintained that the applicant's death was a direct consequence of the length of the proceedings. As a result, they claimed EUR 2,500 for the funeral costs and the remaining EUR 28,800 concerned the total salary that he would have received if he had reached the average age of 70. In this latter

context, the applicant's successors referred to an expert report of 2004 which concerned the applicant's unpaid salary between his dismissal and the date of his death. The non-pecuniary damage was for the emotional stress allegedly caused by the applicant's illness and his subsequent death. According to a medical report of 2004, the stress caused by the impugned proceedings affected his medical treatment. The applicant's successors further claimed 8,162,906 Macedonian denars in respect of pecuniary damage for the alleged violations of Articles 6 (the alleged unfairness of the proceedings), 7 and Article 1 of Protocol No. 1.

51. The Government contested these claims as unsubstantiated. They further maintained that there was no causal link between the pecuniary damage claimed and the alleged violation. 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. 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.

52. The Court, as argued by the Government, does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. It also rejects the applicant's successors' claim in respect of the remaining complaints as having been declared inadmissible. On the other hand, it considers that the applicant must have sustained non-pecuniary damage in respect of the violation found. Ruling on an equitable basis, it awards a total sum of EUR 2,000 under that head.

B. Costs and expenses

53. The applicant's successors also claimed EUR 5,000 in costs and expenses, without specifying whether they were incurred before the domestic courts or before this Court. They did not provide any supporting document.

54. The Government contested the claim as unsubstantiated.

55. 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*, cited above, § 62; *Arvelakis v. Greece*, no. 41354/98, § 34, 12 April 2001 and *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). The Court finds that the amount claimed is unreasonable as to quantum. However, regard being had to the above criteria and in particular the scope of work done by the applicant's representative (the preparation and submission of the application and the replies to the Government's observations), it considers reasonable to award the sum of EUR 600 for the proceedings before the Court.

C. Default interest

56. 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's successors, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, a total sum of EUR 2,600 (two thousand and six hundred euros) in respect of non-pecuniary damage and costs and expenses, plus any tax that may be chargeable;
 - (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 successors' claim for just satisfaction.

Done in English, and notified in writing on 8 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President