



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

FIFTH SECTION

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

(Application no. 10541/03)

JUDGMENT

STRASBOURG

15 November 2007

FINAL

31/03/2008

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 Ivanovska 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 16 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 10541/03) 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 Katica Ivanovska (“the applicant”), on 7 February 2003.

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

3. On 18 January 2006 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 1946 and lives in Skopje.

5. On 3 December 1986 the then Municipality of Centre, Skopje (“the Municipality”) expropriated a house, two separate rooms and a plot of land (“the property”) which had been in the applicant's and her mother's possessions. The expropriation award (“the award”) was to be agreed upon by the parties concerned. After that decision had been set aside, on

27 May 1987 the Municipality decided the case again stating that the award would be determined in separate proceedings. On 11 July 1987 that decision became final. On 21 October 1987, after three attempts to settle before the Municipality had failed because of, apparently, the applicant's absence, the case was referred to the competent court to determine the award. These proceedings started on 16 November 1987.

6. Between 16 November 1987 and 26 December 1996 the first-instance court fixed thirty-nine hearings of which: fourteen hearings were adjourned because of incorrect summons; nine hearings were postponed due to the applicant's absence; and thirteen hearings were adjourned at the latter's request. During this time, two expert reports were drawn up concerning the value of the property. In 1995 the Skopje Court of First Instance established the applicant and her brother as heirs of their mother's claim who died in 1989. The impugned proceedings continued thereafter with the applicant and her brother as claimants.

7. On 26 February 1997 the Municipality made an offer of compensation, which the claimants rejected on 7 April 1997. On 21 April 1997 the latter proposed another amount allegedly corresponding to the market value of the property.

8. On 19 May 1997 the first-instance court granted the applicant's request for an additional expert valuation of the property. It adjourned a hearing listed on 24 September 1997 and ordered the valuation. On 30 October 1997 the applicant requested the court to appoint another expert arguing that the expert's fee determined by the State Forensic Institute ("the Institute") on 24 October 1997 was excessive.

9. Hearings of 25 February, 6 May and 3 June 1998 were adjourned since the Municipality's representative had been either absent or had failed to place an offer of compensation.

10. On 6 July 1998 the applicant requested another expert report concerning the property's value. This report was communicated to the court on 28 April 1999. On 14 May 1999 the court returned it to the Institute as incomplete. On 24 June 1999 the Institute requested the court to order the applicant to pay expert's fee for the additional opinion.

11. A hearing fixed on 7 February 2000 was adjourned at the Municipality's request in order to study the expert report. Hearings scheduled for 7 April and 5 June 2000 were postponed, also at the Municipality's request.

12. Hearings of 4 October 2000 and 20 June 2001 were adjourned due to the expert's absence. Hearings fixed for 17 September and 7 November 2001 were adjourned because of absence of the first-instance judge. On a hearing of 26 December 2001, the court heard evidence from the parties and the experts who had drawn up the report.

13. On 1 February 2002 the Skopje Court of First Instance upheld the claimants' claim awarding them 2,814,500 Macedonian denars (MKD)

(approximately 46,150 euros) plus interest, to be paid by the City of Skopje. This decision was served on the parties in August 2002.

14. On 22 August 2002 the City of Skopje appealed. On 11 September 2002 the applicant informed the court that she would not file any submission in reply.

15. On 9 October 2002 the Skopje Court of Appeal quashed the decision of 1 February 2002 and remitted the case for a renewed examination ordering the lower court, *inter alia*, to determine the beneficiary of the expropriation, to reassess the evidence and to re-establish the facts.

16. None of three hearings scheduled between 19 February and 7 July 2003 was adjourned at the applicant's request. During this time, the first-instance court communicated the case to the Municipality and a public enterprise and received submissions only by the former.

17. On 7 July 2003 the Skopje Court of First Instance awarded the claimants the same award of compensation as earlier and ordered its payment by the City of Skopje again. This decision was served on the applicant on 18 November 2003. No appeal having been lodged, it became final on 30 January 2004.

18. On 27 February 2004 the applicant requested enforcement of the above decision. On 10 September 2004 the award, together with interest (MKD 4,303,326,50 or approximately EUR 70,100), was transferred from the City of Skopje to the applicant.

THE LAW

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

19. The applicant complained that the length of the proceedings was incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which 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

The applicant's “victim status”

20. The Government maintained that the applicant had lost the status of victim since the amount (the award plus interest) actually paid (see

paragraph 18 above) was nearly twice the amount awarded by the decision of 7 July 2003.

21. The applicant disagreed with the Government's objection.

22. The Court finds no grounds to distinguish this objection in substance from the one that had been raised in the *Sali* case (see *Sali v. the former Yugoslav Republic of Macedonia*, no. 14349/03, § 31, 5 July 2007). In the absence of any acknowledgement, whether explicit or implicit, on the part of the national authorities that the applicant's case had not been heard within a reasonable time, the Court holds that the applicant may continue to claim to be a “victim” for the purposes of Article 34 of the Convention (see, *mutatis mutandis*, *Sali*, cited above, §§ 33 and 34).

23. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

(a) The parties' submissions

24. 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. They maintained that complex circumstances surrounded the examination of the case by the first-instance court, including: the necessity of reaching a settlement between the parties; the different requests by the claimants, some having not been lodged in good time; and the frequent change of the beneficiary of the expropriation. In this later context, it was difficult to secure the presence of persons authorised to represent different beneficiaries.

25. As regards the applicant's conduct, they stated that she was to bear full responsibility for the protracted length of the proceedings since: the settlement negotiations had failed due to her absence (see paragraph 5); several hearings had been adjourned at her request for an expert valuation of the property; several adjournments had been ordered with a view to securing an out-of-court settlement with the other party; the claimants were recognised heirs of their mother's claim over six years after her death; and she had refused to file a submission in reply to the City of Skopje's appeal (see paragraph 14) depriving the court of the opportunity to establish the facts relevant for its decision-making.

26. The Government further maintained that the national courts had proceeded with the case with due diligence and that the scheduled hearings had been held without delays. The courts provided the parties with an equal opportunity to present their case and to prepare for the hearings. None of the

authorities participating in the proceedings contributed to the length of the proceedings. In addition, the case did not require special diligence on the part of the authorities nor there was a risk that the length of the proceedings would affect the award.

27. The applicant disputed the Government's arguments about the complexity of the case arguing that there had been no justification for the protracted length of the proceedings given that the first decision in her case had been given in 2002, i.e. nearly fifteen years after the proceedings had started. She further maintained that she could not be held responsible for her motions since it was the court which should decide whether such requests were justified and necessary. Finally, she submitted that the remittal order had been unnecessary since the final decision had remained unchanged (see paragraphs 13 and 17 above).

(b) The Court's assessment

28. The Court notes that the impugned proceedings started on 21 October 1987 when the Municipality referred the case to the first-instance court to determine the award. However, as noted by the Government, the period which falls within its competence did not begin on that date but rather 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).

29. 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 *Ziberi v. the former Yugoslav Republic of Macedonia*, no. 27866/02, § 41, 5 July 2007). In this connection, the Court notes that at that point the proceedings had lasted over nine years and five months. No decision was given within this period.

30. The court proceedings ended on 30 January 2004 when the Skopje Court of First Instance's decision became final. They therefore lasted over sixteen years and three months of which over six years and nine months fall to be examined by the Court for two levels of jurisdiction. This decision was enforced in September 2004.

31. 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).

32. The Court considers that the case was not of a complex nature since the only fact requiring determination was the amount of the award. Some

complexity arose from the need to request experts' reports, but this cannot, as of itself, explain the length of the proceedings.

33. As regards the applicant's conduct, the Court considers that she may be considered responsible for several adjournments during the period which is not under consideration (see paragraph 6). However, it does not find substantiated any delay imputable to her in respect of the period which falls within its competence *ratione temporis*. As to her requests for an expert valuation of the property, 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 *Graberska v. the former Yugoslav Republic of Macedonia*, no. 6924/03, § 60, 14 June 2007). In addition, an applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of her interests (see *Stojanov v. the former Yugoslav Republic of Macedonia*, no. 34215/02, § 56, 31 May 2007). Finally, the Court disagrees with the Government's argument that the applicant contributed to the length of the proceedings by deciding not to file submissions in reply to the appeal submitted against the first-instance decision of 1 February 2002 (see paragraph 14 above).

34. On the other hand, the Court notes that there are many and substantial delays attributable to the authorities. Prior to the entry into force of the Convention in respect of the former Yugoslav Republic of Macedonia, the proceedings had already been pending before the first-instance court for over nine years. It took another nearly five years for the Skopje Court of First Instance to decide the applicant's case (see paragraphs 5-13). It further observes that it took five months for the first-instance court to order an expert valuation of the property after it had previously granted the applicant's request (see paragraph 8 above); another five months lapsed for reasons which were beyond the applicant's responsibility (see paragraph 9 above); no effective activity took place between 7 February 2000 and 26 December 2001 (see paragraphs 11 and 12 above); and, finally, one year and a half lapsed in respect of the applicant's request for an expert report (see paragraphs 10 and 11 above). In this later respect, the Court reiterates that the expert was 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 *Stojanov*, cited above, § 60 and *Scopelliti v. Italy*, judgment of 23 November 1993, Series A no. 278, § 23).

35. The Court accordingly concludes that the length of the present proceedings was excessive and failed to meet the "reasonable time" requirement of Article 6 § 1 of the Convention.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

39. The Government did not express an opinion on the matter.

40. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards award her EUR 2,000 under that head.

B. Costs and expenses

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

C. Default interest

42. 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 application admissible;
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 2,000 (two thousand euros) in respect of non-pecuniary damage, 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 claim for just satisfaction.

Done in English, and notified in writing on 15 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President