



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

FIFTH SECTION

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

(Application no. 26541/02)

JUDGMENT

STRASBOURG

29 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 Nankov 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 Mr J.S. PHILLIPS, *Deputy Section Registrar*,

Having deliberated in private on 6 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 26541/02) 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 Ljuben Nankov (“the applicant”), on 3 July 2002.

2. 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

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1943 and lives in Gostivar.

5. On 24 March 1992 preliminary investigations were opened against the applicant. Five hearings were held during these proceedings. On 18 June 1992 the public prosecutor lodged an indictment against him on account of “grievous offences against the general safety” because on 19 October 1991, while employed in a supervisory position at a power supply company and contrary to safety requirements, he did not cut the

power supply from the grid of the power line on which Mr B. was carrying out some repair works, causing the latter's death.

6. Between 4 September 1992 and 8 October 1993 the then Gostivar Municipal Court (*Општински суд*) ("the trial court") scheduled eight hearings in the course of which it obtained three expert reports, heard evidence from the applicant and witnesses, and carried out an on-site examination.

7. On 8 October 1993 the trial court upheld the indictment and sentenced the applicant to one year's imprisonment.

8. At the public hearing held on 23 March 1994, the then District Court of Skopje (*Окружен суд*) ("the Appeal Court") upheld the applicant's appeal of 17 November 1993 and quashed that decision finding that the lower court had erroneously established the facts and wrongly assessed the evidence.

9. The Government stated that out of seven hearings scheduled between 25 April 1994 and 2 March 1995, two hearings were adjourned at the applicant's request. No copy of the minutes was submitted in support of this assertion. During this period, the trial court examined the applicant and witnesses and carried out another on-site inspection.

10. On 2 March 1995 the trial court found the applicant guilty and sentenced him to one year and two months' imprisonment. This decision was served on him on 12 June 1995. Both parties appealed.

11. At a public hearing of 14 May 1995, the Appeal Court quashed this decision, holding that the lower court had erred in its assessment of the facts, in particular that it had overlooked the expert reports concerning the impact of weather conditions and other circumstances related to Mr B.'s death.

12. On 4 September 1996 the trial judge withdrew from the case at his own request.

13. The Government stated that the hearings of 28 March and 24 April 1997 and 10 December 1999 were postponed for reasons imputable to the applicant. No copy of the minutes was submitted in support of this claim.

14. On 13 October 1999 the trial court received another expert report which had been drawn up at the public prosecutor's request. A hearing of 26 November 1999 was adjourned despite the applicant's presence.

15. A hearing listed for 21 January 2000 was adjourned due to the applicant's request for exclusion of the public prosecutor. This request was dismissed at a later date.

16. The proceedings resumed with hearings of 1 and 13 March 2000, at which the trial court examined the experts and witnesses.

17. On 22 March 2000 the trial court convicted the applicant and sentenced him to one year's imprisonment. On 18 September 2000 the applicant appealed.

18. At a public hearing held on 21 February 2001 the Appeal Court quashed this decision and remitted the case for a renewed examination. It ruled that the lower court had erred in ordering an alternative expert report, given that it had not established that the existing expert reports were inconsistent. It accordingly instructed the trial court to arrange a confrontation of all the experts and to reassess the evidence so as to determine whether the applicant had negligently switched off the power supply of the wrong installation.

19. On 7 May 2001 the applicant informed the trial court that he had been admitted to hospital and requested an adjournment. On 9 May 2001 the Gostivar Hospital attested to the applicant's poor health.

20. On 29 May 2001 the applicant's representative unsuccessfully requested the postponement of a hearing fixed for 31 May 2001. It was held on the scheduled date in the applicant's presence.

21. On 1 June 2001 the trial court ordered the applicant to undergo a medical examination so as to determine his capacity to defend himself in court. It also requested that the experts adjust their reports in compliance with the Appeal Court's instruction. A hearing of 13 June 2001 was adjourned due to the experts' absence.

22. On 11 July 2001 the applicant's representative unsuccessfully requested to postpone a hearing listed for 12 July 2001. Despite the applicant's presence, the hearing was adjourned on account of the experts' absence.

23. On 19 July 2001 the applicant challenged the trial judge, the trial court's President and all judges of that court. That request was dismissed by decisions of 24 and 31 July 2001.

24. The Government stated that hearings listed for 7 and 12 September 2001 were adjourned at the applicant's request. A hearing of 14 September 2001 was postponed because of the armed conflict that broke out in the former Yugoslav Republic of Macedonia in 2001. No evidence was submitted in support of these statements.

25. On 10 October 2001 the trial court found the applicant guilty and sentenced him to one year's imprisonment suspended for two years.

26. On 13 February 2002 the Appeal Court overturned that decision dismissing the charges because the prosecution had become time-barred. It held that over ten years had elapsed from 19 October 1991, the date when the offence had been committed, without a final decision having been given.

27. During the proceedings, the applicant lodged three objections (*ноплака*) (June 1994, February and June 1995) in which he complained about the conduct of the trial and the frequent change of the trial judges.

28. It transpires that six trial judges decided the applicant's case throughout the impugned proceedings.

THE LAW

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

29. The applicant complained under Article 6 § 1 of the Convention, *inter alia*, that the length of the proceedings had been incompatible with the “reasonable time” requirement laid down in this Article, the relevant part of which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Admissibility

1. The applicant's “victim” status

30. The Government submitted that, regard being had to the outcome of the proceedings, the applicant had lost his victim status given that no penalty had been imposed and no damage had been incurred as a result of the impugned proceedings. They further maintained that the dismissal of the criminal charges because of the time-bar was to be considered as compensation for the excessive length of the proceedings. They further maintained that he had contributed to the length of the proceedings.

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

32. 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” (see *Sali v. the former Yugoslav Republic of Macedonia*, no. 14349/03, § 33, 5 July 2007).

33. In the instant case, the Court finds that the Appeal Court did not make any reference to the length of the proceedings. It only confirmed that over ten years had elapsed from the day the crime had been committed, a fact that rendered the prosecution time-barred. It cannot therefore be accepted that the discontinuance of prosecution because of the time-bar constituted 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). Moreover, the Court has already determined the reasonableness of the length of proceedings which were

discontinued because the action had become time-barred (see *Stamoulakatos v. Greece* (dec.), no. 42155/98, 9 November 1999).

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

35. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

(a) The parties' submissions

36. 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.

37. They further maintained that the case had been of a complex nature given the fact that it required numerous expert examinations and that extensive evidence had to be examined to establish the facts. The armed conflict of 2001 had also affected the length of the proceedings.

38. As regards the applicant's conduct, the Government submitted that he had considerably contributed to the length of the impugned proceedings: he had failed to attend some of the hearings despite being summoned properly; he had frequently changed his representative; he had challenged judges; he had not requested the court to expedite the proceedings; and he had availed himself of an appeal remedy on four occasions.

39. Concerning the conduct of the domestic courts, the Government argued that, despite the complexity of the case, they had decided the applicant's case with due diligence and the scheduled hearings were held without any interruptions or delays. They concluded that the impugned proceedings had been composed of a number of separate sets and noted that eight decisions had been given throughout.

40. The applicant contested the Government's arguments, maintaining that no delays were imputable to him. He pointed out that the Government did not present any evidence that any hearing had been adjourned due to his absence or at his request. He further argued that none of the expert reports had been drawn up upon his request; that he had challenged a trial court judge only once; that six successive trial court judges had been assigned to deal with his case, a fact which affected the length of the proceedings; and that it was his right to avail himself of the available remedies in his defence.

(b) The Court's assessment

41. As stated in the Court's case-law, a “charge”, for the purposes of Article 6 § 1, may in general be defined as “the official notification given to an individual by the competent authority of an allegation that he has

committed a criminal offence". This may occur on a date prior to the case coming before the trial court, such as the date of arrest, the date on which the person concerned was officially notified that he was to be prosecuted or the date on which the preliminary investigations were opened (see *Šubinski v. Slovenia*, no. 19611/04, § 62, 18 January 2007 and the references cited therein).

42. Turning to the present case, the Court observes that on 24 March 1992 preliminary investigations were opened against the applicant and that on 18 June 1992, the public prosecutor lodged the indictment with the trial court. In the circumstances of the case, the Court considers 24 March 1992 as a date on which the applicant was "charged" for the purposes of Article 6 of the Convention. As argued by the Government, the period which falls within its temporal jurisdiction began on 10 April 1997, when the recognition by the former Yugoslav Republic of Macedonia of the right of individual petition took effect (see *Dika v. the former Yugoslav Republic of Macedonia*, no. 13270/02, § 51, 31 May 2007 and the references cited therein).

43. 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 *Milošević v. the former Yugoslav Republic of Macedonia*, no. 15056/02, § 21, 20 April 2006; *Styranski 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 respect, 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 five years and seventeen days for two court levels.

44. For the reasons detailed in the *Arsov* case, which likewise apply to this case (see, *mutatis mutandis*, *Arsov v. the former Yugoslav Republic of Macedonia*, no. 44208/02, § 42, 19 October 2006), the Court finds that the proceedings complained of should be considered as one single procedure. The proceedings ended on 13 February 2002 when the Appeal Court dismissed the criminal charges against the applicant because of the time-bar. They therefore lasted nearly ten years of which over four years and ten months fall to be examined by the Court for two levels of jurisdiction.

45. 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 (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

46. It finds that some complexity arose from the need to request expert reports, but this cannot in itself explain the length of the proceedings. Moreover, 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). The procedural steps (see paragraphs 20-25 above) taken during the armed conflict in 2001 suggest that the latter did not affect considerably the length of the proceedings.

47. As to the applicant's conduct, while he was responsible for the adjournment of the hearings of 21 January 2000 and 7 May 2001, the latter on account of his health, the Court finds unsubstantiated the Government's argument that several other adjournments (see paragraphs 13 and 24 above) were imputable to him. Neither is it persuaded that the applicant's challenge of judges added to the length of the proceedings, given that it was decided in a speedy manner (see paragraph 23 above). His unsuccessful requests for postponement (see paragraphs 20 and 22 above) did not affect the length of the proceedings, given that those hearings were held as scheduled. The applicant's three objections (see paragraph 27 above) repudiate the Government's argument that he had failed to undertake any measure to expedite the proceedings. In any case, the Court notes that the Government have already acknowledged the lack of an effective remedy in respect of the length of proceedings under the then applicable rules (see *Kostovska v. the former Yugoslav Republic of Macedonia*, no. 44353/02, § 52, 15 June 2006). Finally, the applicant cannot be blamed for taking full advantage of the remedies afforded by national law in the defence of his interests (see *Kesyan v. Russia*, no. 36496/02, § 55, 19 October 2006 and *Rizova v. the former Yugoslav Republic of Macedonia*, no. 41228/02, § 50, 6 July 2006).

48. On the other hand, the Court considers that significant delays are attributable to the authorities. Over two and a half years elapsed between the hearings of 24 April 1997 and 26 November 1999 (see paragraphs 13 and 14 above). Three remittal orders were given during the proceedings. In this context, the Court reiterates that although it is not in a position to analyse the juridical 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 *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003). Moreover, it took nearly five years, of which nearly three years fall within the period under consideration, for the trial court to decide the applicant's case even though it had already been reconsidered on two occasions (see paragraphs 11 and 17 above). The frequent change of the trial judges also contributed to the length of the proceedings. Finally, the charges were ultimately dismissed more than ten years after the date on which the offence had been committed.

49. 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

51. The applicant complained under Article 3 of the Convention arguing that the proceedings had been degrading and that the courts had tolerated breaches of discipline in the courtroom by aggrieved persons who allegedly insulted him.

52. Relying on Article 6 §§ 1 and 3 of the Convention, the applicant complained that he had not been given a fair trial, alleging that the trial court had misinterpreted his statements and had drawn up the minutes incorrectly; that he had not been informed in a timely fashion about the hearings or he had been afforded free legal aid; that he had been prevented from examining witnesses; and that the court had been biased.

53. In the second reply to the Government's observations received by the Court on 27 October 2006, he further complained under Article 34 of the Convention that he had been denied access to the file after the case had been communicated to the respondent Government.

54. The Court notes that the criminal charges against the applicant were dismissed on appeal because the prosecution had become time-barred. It considers that in such a situation the applicant can no longer claim to be a victim of a violation of the right to a fair trial (see *Stamoulakatos*, cited above).

55. As to his complaints under Articles 3 and 34 of the Convention, the Court finds no appearance of a violation of the rights guaranteed by these provisions on the basis of the information contained in the case-file.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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.”

58. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”.

59. In a letter of 15 February 2006, after the length-of-the-proceedings complaint had been communicated to the respondent Government, the Court

invited the applicant to submit his claims for just satisfaction by 31 March 2006. He did not submit any such claim within the specified time-limit.

60. In these circumstances, the Court makes no award under Article 41 of the Convention (see *Smirnov v. Russia*, no. 71362/01, § 70, 7 June 2007, ECHR 2007, and *Timofeyev v. Russia*, no. 58263/00, § 52, 23 October 2003).

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;

Done in English, and notified in writing on 29 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen PHILLIPS
Deputy Registrar

Peer LORENZEN
President