



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

FIFTH SECTION

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

(Application no. 41195/02)

JUDGMENT

STRASBOURG

20 December 2007

FINAL

20/03/2008

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 Nikolov 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 9 October 2006 and 27 November 2007,
Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 41195/02) 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 Zlatko Nikolov (“the applicant”), on 28 May 2001.

2. The applicant, who had been granted legal aid, 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. The applicant alleged, in particular, that his case was not heard by an impartial tribunal since the trial judge's wife was employed with the defendant on a substantial salary soon after the present proceedings had started, a fact that affected his impartiality.

4. By a decision of 9 October 2006, the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1949 and lives in Štip.

6. On 11 November 1996 the applicant, a farmer who reared cows, concluded an insurance agreement (*полиса за осигурување*) (“the agreement”) with an insurance company (“the defendant”) against a risk of the cows' death under which the latter would be liable to pay the damage, irrespective of the time of the death, if it was caused by reasons other than illness. On 23 November 1996 one of the applicant's cows died. Since the defendant refused to pay for the loss, on 30 January 1997 the applicant brought a claim against the defendant before the Štip Court of First Instance (“the first-instance court”).

7. On 1 March 1997 the trial judge's wife was employed with the defendant as an assistant to the manager of its branch office.

8. On 30 January 1998 the first-instance court dismissed the applicant's claim.

9. The applicant appealed, arguing, amongst other things, that the first-instance court had arbitrarily given weight to evidence in favour of the defendant and that it had refused to examine witnesses as to the cause of death.

10. On 17 June 1998 the Štip Court of Appeal quashed the court of first instance's decision, instructing it to hear evidence from the vet who had examined the cow in order to determine the cause of the death.

11. On 28 March 2000 the first-instance court dismissed the applicant's claim, reiterating its earlier findings.

12. On 20 June 2000 the applicant appealed, arguing that he had never received a copy of the general terms of the contract, and that the cause of death had not been properly established. He also contended that that judge was biased since his wife had started working with the defendant just after the proceedings had started. He asked for the trial judge to be removed if the Court of Appeal were to quash the lower court's decision and remit the case.

13. On 27 November 2000 the Court of Appeal dismissed the applicant's appeal, finding no grounds to depart from the established facts and the reasons given by the lower court. It did not make any comments on the applicant's allegations that the trial judge was biased.

14. The decision was served on the applicant on 24 April 2001.

II. RELEVANT DOMESTIC LAW

15. The relevant provisions of the then Civil Proceedings Act (*Закон за парничната постапка*) provided as follows:

Section 65

“A judge or a lay-judge cannot perform his/ her judicial function if:

1. he/ she is a party, a statutory representative or a counsel of a party...;
2. he/ she is permanently or temporary employed by a party to the proceedings;
3. the party or its counsel is his/ her relative...;
4. he/ she is a custodian, an adoptive parent, an adoptive child ...of a party;
5. he/ she participated in the rendering of any decision by a lower court or another body; and
6. there are other grounds which cast doubts to his/her impartiality.”

Section 66 § 2

“A judge who considers that there are other grounds which put his/her impartiality under doubt should give notice to the President of the court who will decide on his/her exclusion.”

Section 67 §§ 1, 2, 4

“The parties may also challenge the participation of a judge. The party concerned is obliged to challenge (*изземање*) a trial judge or a lay-judge as soon as it learns about it, but not later than the end of the trial before the first-instance court i.e. until the adoption of the decision. The party concerned is obliged to provide the reasons for challenging a judge's ability to sit in a case.”

THE LAW

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

16. The applicant complained under Article 6 of the Convention that his case had not been heard by an impartial tribunal as the trial judge's wife had been employed by the defendant soon after the proceedings had started. Article 6, in so far as relevant, provides as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

A. The parties' submissions

17. The Government asserted that the employment of the trial judge's wife by the defendant two months after the proceedings started could not be considered as a ground which had put his impartiality in doubt nor did it necessarily imply that he had been biased. They noted that the applicant had not provided any evidence corroborating his allegations, he had not pointed to any inferences of bias that could be drawn from the judge's conduct; and, indeed, the judge had admitted all evidence submitted by the applicant. The mere fact that the trial judge had failed to request the President of the court to exempt him from the case suggested his professionalism and confidence in his own impartiality and ability to decide on the basis of the evidence and the circumstances of the case. The applicant was afforded an opportunity to challenge the first-instance decision and the trial judge's impartiality by submitting the appeal to the Court of Appeal, which, if it found any irregularity, could set aside that decision and remit the case for a fresh consideration. The timing of the employment of the judge's wife and the commencement of the proceedings did not imply that that judge had been personally concerned by the outcome of the relevant proceedings.

18. The applicant argued that the judge's wife had worked as a manual worker in an insolvent company before she was employed as an assistant to the manager of the defendant's branch office and that that recruitment had occurred in time of a high unemployment in the respondent State. He disagreed that the employment of the judge's wife had not affected his impartiality pointing out that it had generated a significant financial benefit. He noted many alleged procedural violations as evidence of the judge's bias. He submitted that the judge should have given notice about that decisive fact to the President of the court to allow the latter to decide whether there were grounds for exemption. He further maintained that the judge of the Court of Appeal who decided his appeal had been a close friend of the trial judge and that, for that reason, no comments had been provided in the appeal decision about the latter's alleged bias. He finally submitted that that judge had been exempted from sitting in all other cases following his case in which the defendant was a party to the proceedings.

B. The Court's assessment

19. According to the Court's constant jurisprudence, the existence of impartiality must be determined according to a subjective test, that is on the basis of the personal conviction of a particular judge in a given case, and

also according to an objective test, namely by ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect (see *Kyprianou v. Cyprus* [GC], no. 73797/01, § 118, ECHR 2005; *Steck-Risch and Others v. Liechtenstein*, no. 63151/00, § 38, 19 May 2005; *Puolitaival and Pirttiahö v. Finland*, no. 54857/00, § 41, 23 November 2004; *Pétur Thor Sigurðsson v. Iceland*, no. 39731/98, § 37, ECHR 2003-IV; and *Wettstein v. Switzerland*, no. 33958/96, § 42, ECHR 2000-XII).

20. The Court notes that the applicant argued that the mere employment of the judge's wife with the defendant soon after he had brought his claim, objectively gave rise to doubts about his impartiality.

21. Under the objective test, it must be determined whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to the judge's impartiality since “justice must not only be done; it must also be seen to be done” (see *De Cubber v. Belgium*, judgment of 26 October 1984, Series A no. 86, p. 14, § 26). In this respect, even appearances may be of a certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public (see *Wettstein*, cited above, § 44; *Castillo Algar v. Spain*, judgment of 28 October 1998, Reports 1998-VIII, p. 3116, § 45; *Morris v. the United Kingdom*, no. 38784/97, § 58, ECHR 2002-I). Accordingly, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw. This implies that, in deciding whether in a given case there is such a legitimate reason, the standpoint of the party concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (see *Pétur Thór Sigurðsson*, cited above, § 37; *Ferrantelli and Santangelo v. Italy*, judgment of 7 August 1996, Reports of Judgments and Decisions 1996-III, p. 951, § 58).

22. According to the information provided by the parties, the trial judge's wife was employed with the defendant one month after the applicant had submitted his claim (see paragraphs 6 and 7 above). Before that employment, she worked as a manual worker in an insolvent company. The Government did not comment on the applicant's argument about the resulting significant financial input to the judge's household budget and the consequent impact on the latter's impartiality. Neither did they reply to his assertion that that judge had been subsequently removed by the President of the court from all other cases, in which the defendant was a party.

23. The Court accepts that the employment of the judge's wife with the defendant could raise doubts in the applicant's mind about that judge's impartiality.

24. However, it needs to be decided whether these doubts were objectively justified.

25. The Court notes, first, that the trial judge did not bring his wife's employment by the defendant to the immediate attention of the President of the court, as provided for by Section 66 § 2 of the Civil Proceedings Act, to decide on whether he should be excluded. Even in the absence of any direct financial link between the judge and the defendant, the fact that his wife was employed by the defendant should have alerted him to the possibility that his impartiality might appear to be under doubt, and should have brought about a notice under Section 66 § 2. The applicant could not request his disqualification from sitting for the reasons detailed in the Court's admissibility decision of 9 October 2002 given in the present case. Secondly, the Court of Appeal did not address the applicant's concerns about the judge's bias. This may have been because under domestic law, challenges to judges must be made at the latest by the end of the first-instance trial (see Section 67 of the Civil Proceedings Act at paragraph 15 above). However, when the applicant raised the issue with the Court of Appeal, he gave that tribunal the opportunity to put his mind at rest as to his concerns about the perceived lack of impartiality on the part of the judge. The Court of Appeal's failure to comment may have confirmed the applicant's impression. Finally, the exclusion of the judge in question from other cases in which the defendant was a party supports the conclusion that the applicant's doubts were objectively justified.

26. The Court considers that, having regard to the circumstances of the present case, there was objective justification for the applicant's apprehension that the trial judge lacked the requisite impartiality to the extent necessary under Article 6 of the Convention. In particular,

27. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

28. The applicant further complained under Article 6 of the Convention that the courts had decided his case arbitrarily; that they had erred in fact and law; that their decisions had not been reasoned; and that he had not been allowed to cross-examine the court-appointed expert. He also complained under Article 1 of Protocol No. 1 that he had been deprived of possessions.

29. Having regard to its finding of a violation of the applicant's right to a hearing by an impartial tribunal, the Court considers that it is not necessary to examine the other complaints under Article 6 and Article 1 of Protocol No. 1 of the Convention relating to the impugned proceedings (see *Erçikdi and Others v. Turkey*, no. 52782/99, § 20, 11 April 2006, and the references cited therein).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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.”

31. 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”.

32. In the instant case, the Court notes that in his initial application to the Court, the applicant specified his preliminary claims for just satisfaction under Article 41. In a letter of 13 October 2006, after the application had been declared admissible, the Court invited the applicant to submit his claims for just satisfaction by 18 December 2006. He did not submit any such claim within the specified time-limit.

33. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention concerning the impartiality of the trial judge;
2. *Holds* that it is not necessary to consider the applicant's other complaints under Article 6 and Article 1 of Protocol No. 1 of the Convention;
3. *Decides* not to make an award under Article 41 of the Convention.

Done in English, and notified in writing on 20 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President