



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

FIFTH SECTION

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

(Application no. 14258/03)

JUDGMENT

STRASBOURG

7 February 2008

FINAL

07/05/2008

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 Parizov v. the former Yugoslav Republic of Macedonia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Peer Lorenzen, *President*,
Karel Jungwiert,
Volodymyr Butkevych,
Margarita Tsatsa-Nikolovska,
Javier Borrego Borrego,
Renate Jaeger,
Mark Villiger, *judges*,

and Claudia Westerdiek, *Section Registrar*.

Having deliberated in private on 15 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 14258/03) 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, Mr Sterija Parizov (“the applicant”), on 11 April 2003.

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

3. On 7 May 2007 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

A. The circumstances of the case

4. The applicant was born in 1936 and lives in Štip.

5. On 17 November 1986 the applicant and three other persons instituted civil proceedings before the then Štip Municipal Court (*Општински Суд*

Штуп) for annulment of a care agreement (“the agreement”) (*договор за доживотна издршка*) concluded on 7 December 1979 between the applicant’s late father and his step-mother (“the defendant”). They maintained that the applicant’s late father had been in a fit condition and that he had sufficient financial means to take care of himself and that, accordingly, there had been no need for the agreement under which, the defendant had been granted four hundred golden liras, a priceless ancient icon and a land.

6. On 25 June 1987 the Štip Municipal Court partially upheld the applicant’s claim and annulled the agreement. It declared, *inter alia*, that the icon would be included in the applicant’s late father’s inheritance, but it dismissed the claim concerning the golden liras. That decision was served on the applicant on 3 March 1988.

7. On 14 March 1988 both parties appealed.

8. On 29 September 1989 the then Štip District Court (*Окружен суд*) dismissed the appeals and upheld the lower court’s decision.

9. On 25 September 1990 the Supreme Court upheld the applicant’s appeal on points of law (*ревизија*) submitted on 19 December 1989. It remitted the case for a renewed consideration since the first-instance court had not given sufficient reasons for its decision.

10. The proceedings resumed on 19 June 1991. Of four hearings fixed before the first-instance court, none was postponed upon the applicant’s request.

11. On 14 October 1992 the Štip Municipal Court gave the same decision as on 25 June 1987 in which it established that the applicant’s father had been amongst the richest people in his village; that he had been in a fit condition and that, by entering into the agreement, the defendant had acquired considerable interest (*значителна имотна корист*) which had not been in compliance with the then State order (*општествено уредување*). It dismissed the applicant’s claim concerning the golden liras since there had been no evidence that the applicant’s father had been in possession of any.

12. On 25 December 1992 the applicant appealed. On 6 February 1993 he submitted observations in reply to the defendant’s appeal, together with an addendum to his appeal.

13. On 8 October 1993 the Štip District Court set aside the first-instance court’s decision since it had not complied with the Supreme Court’s instructions.

14. The proceedings resumed on 25 January 1994. Eight hearings were held before the first-instance court, of which none was adjourned upon the applicant’s request.

15. On 8 December 1994 the Štip Municipal Court partially upheld the applicant’s claim. It declared that only the icon be included in his late father’s inheritance and dismissed the claim for annulment of the

agreement. It further reiterated its earlier findings as to the golden liras. The decision was served on the applicant on 13 October 1995.

16. On 16 October 1995 the applicant appealed.

17. On 20 March 1996 the Štip District Court overturned the decision and decided the case itself. It declared the agreement null and void, but considered it as having been concluded as a gift contract (*договор за подарок*). It upheld the remainder of the first-instance court's decision.

18. On 2 July 1996 the defendant filed an appeal on points of law before the Supreme Court.

19. On 9 December 1998 the Supreme Court upheld the defendant's appeal and quashed the District Court's decision. It further instructed that court to establish whether the agreement had been concluded in a statutory form.

20. On 14 April 2000 the Štip Court of Appeal remitted the case for re-examination before the first-instance court. The decision was served on the applicant on 8 April 2002.

21. Between 11 February 2003 and 20 April 2004 the first-instance court scheduled five hearings, of which one was adjourned because of the applicant's fault. During that time, the applicant lodged four submissions before the court.

22. On 20 April 2004 the Štip Court of First Instance partially upheld the applicant's claim - it declared that the agreement be invalid and considered it as having been concluded as a gift contract.

23. On 24 February 2005 the Štip Court of Appeal upheld the defendant's appeal of 10 May 2004 and remitted the case for re-consideration.

24. On 24 June 2005 the Štip Court of First Instance declared the applicant's claim as withdrawn, as he had not appeared in court despite being duly summoned. It so ruled as the case concerned a dispute of minor value.

25. On 24 January 2006 the Štip Court of Appeal set aside that decision arguing that the case could not be regarded as a dispute of minor value.

26. On 15 June 2006 the Štip Court of First Instance dismissed the applicant's claim for annulment of the agreement finding that the latter had met the statutory requirements. That decision was given after a hearing fixed for 23 May 2006 had been adjourned due to the applicant's absence.

27. On 21 August 2006 the applicant appealed.

28. On 15 March 2007 the Skopje Court of Appeal dismissed the appeal and confirmed the first-instance court's decision.

29. On 23 April 2007 the applicant lodged an appeal on points of law with the Supreme Court. Proceedings before that court are still pending.

B. Relevant domestic law

30. Section 35 § 1 (6) of the Courts Act (*Закон за судовите*) of 2006 (“the 2006 Act”) provides that “the Supreme Court is competent to decide applications about a violation of the right to a hearing within a reasonable time, in proceedings specified by law.”

31. Section 36 of 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 or 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.”

32. Section 128 of the 2006 Act provides that it would become operational on 1 January 2007.

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

33. The applicant complained that the length of the proceedings had been 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*1. Non-exhaustion of domestic remedies***(a) The parties’ submissions**

34. The Government maintained that the applicant had failed to exhaust domestic remedies as he had not lodged an application about a violation of the right to a hearing within a reasonable time under the 2006 Act. They argued that following the *Atanasovic* and *Kostovska* judgments (see *Atanasovic and Others v. the former Yugoslav Republic of Macedonia*,

no. 13886/02, § 47, 22 December 2005 and *Kostovska v. the former Yugoslav Republic of Macedonia*, no. 44353/02, § 53, 15 June 2006), the respondent State had introduced a specifically designed remedy to address the issue of an excessive length of proceedings. They averred that although that remedy was of a compensatory nature, the wording of the 2006 Act implied that it provided also for a preventive remedy. They further submitted that that remedy was to be exhausted in two cases: 1) in respect of all applications lodged with the Court that post-dated the introduction of the 2006 Act, and 2) where the impugned proceedings were pending at domestic level after 1 January 2007 and the application lodged with the Court pre-dated that date. Relying on the Court's jurisprudence, they maintained that the applicant had been required to exhaust that remedy although it had not existed at the time when he had lodged his application with the Court.

35. They further submitted that the remedy had been used in twenty cases until 3 July 2007 and that no court decision had been taken yet. However, the lack of domestic jurisprudence should not have been considered to the detriment of the effectiveness of the remedy in practice. Finally, they undertook to notify the Court about any court decision if taken.

36. The applicant contested the effectiveness of the remedy introduced by the 2006 Act. He disputed that that remedy had been apt to expedite the proceedings. He confirmed the lack of domestic jurisprudence in that respect and argued that it had been unclear which court would be competent to decide it in his case. He finally referred to a Supreme Court's report in which the latter had allegedly criticised the lack of clarity of the 2006 Act and the effectiveness of the remedy. He did not provide that report in support of his allegation.

(b) The Court's assessment

37. The Court reiterates that the purpose of the exhaustion rule, contained in Article 35 § 1 of the Convention, is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-IV). That rule is based on the assumption, reflected in Article 13 of the Convention - with which it has close affinity - that there is an effective remedy available in respect of the alleged breach in the domestic system (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI).

38. The only remedies which Article 35 of the Convention requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

39. Furthermore, in the context of Article 13 of the Convention, in the *Kudla* judgment, the Court has held that remedies available to a litigant at the domestic level for raising a complaint about a length of proceedings are “effective” if they prevent the alleged violation or its continuation, or provide adequate redress for any violation that has already occurred.

40. It is true that, according to the “generally recognised principles of international law”, there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his disposal. However, the Court points out that the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (see *Giacometti and Others v. Italy* (dec.), no. 34939/97, ECHR 2001-XII).

41. The assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with it. However, this rule is subject to exceptions, which may be justified by the particular circumstances of each case (see *Baumann v. France*, no. 33592/96, § 47, 22 May 2001 and *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX). In particular, the Court had previously departed from this general rule in cases against Poland, Croatia and Slovakia concerning remedies against the excessive length of the proceedings (see *Michalak v. Poland* (dec.), no. 24549/03, § 36, 1 March 2005; *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002-VIII, *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60226/00, 60237/00, 60242/00, 60679/00, 60680/00 and 68563/01, ECHR 2002-IX).

42. As to the present case, at the time when the applicant brought his complaint to the Court, he did not have any effective remedy available under the law of the former Yugoslav Republic of Macedonia in respect of the length of the pending proceedings in issue (see the *Atanasovic* and *Kostovska* judgments, cited above). The remedy against the excessive length of the proceedings was introduced by the 2006 Act which became operational on 1 January 2007. The applicant has not availed himself of that remedy.

43. The Court notes, first, that section 36 of the 2006 Act provides for a compensatory remedy – a request for just satisfaction – through which a party may, where appropriate, be awarded just satisfaction for any non-pecuniary and pecuniary damage sustained. A compensatory remedy is, without doubt, an appropriate means of redressing a violation that has already occurred (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 187, ECHR 2006; *Mifsud v. France* (dec.), no. 57220/00, § 17, 11 September 2002; *Kudla*, §§ 158 and 159, cited above).

44. The Court further observes that the expression “the court considers the application (*nosmanuva no baraњeto*) within six months” is susceptible to various interpretations (see, *mutatis mutandis*, *Horvat v. Croatia*, no. 51585/99, § 43, ECHR 2001-VIII). It remains open to

speculation whether the proceedings upon such application should terminate within that time-limit. In addition, the 2006 Act defines two courts which may decide upon such remedy: the immediately higher court and the Supreme Court. It does not specify which court would be competent to decide if a case is pending before the Supreme Court, as it is in the present case (see, *a contrario*, *Michalak*, § 14, cited above). Even though the Court accepts that statutes cannot be absolutely precise and that the interpretation and application of such provisions depend on practice (see, *mutatis mutandis*, *Kokkinakis v. Greece*, judgment of 25 May 1993, Series A no. 260-A, p. 19, § 40), the fact remains that no court decision has been taken although more than twelve months have elapsed after the introduction of the remedy. The absence of any domestic case-law appears to confirm that ambiguity.

45. Finally, unlike Slovenian, Polish and Italian laws which contain transitional provisions concerning cases pending before the Court (see *Grzinčič v. Slovenia*, no. 26867/02, § 48, ECHR 2007; *Michalak*, § 20, cited above and *Brusco v. Italy*, (dec.), no. 69789/01, ECHR 2001-IX), the 2006 Act does not contain a provision which would explicitly bring within the jurisdiction of the national courts all applications pending before the Court irrespective of whether they are still pending at domestic level.

46. Bearing in mind that the case was pending before the domestic courts for more than twenty years before the introduction of the remedy by the 2006 Act and is still not decided and that no conclusions can be drawn from the Government's submissions about its effectiveness in the particular circumstances of a case like the present one, the Court considers that it would be disproportionate to require the applicant to try that remedy.

47. Against this background, the application cannot be declared inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 of the Convention. Accordingly, the Government's objection must be rejected. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

48. 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 considered that there had been complex circumstances related to the case, including the subject-matter of the dispute and the passage of time between the conclusion of the agreement (1979) and the introduction of the

applicant's claim before the domestic courts (1986), a fact which had a negative effect to establishing of facts.

49. As to the applicant's behaviour, they argued that he had contributed to that complexity by frequently amending the arguments and the nature of his claim. That fact required the national courts to establish considerable facts relevant for the case. Confusing and inconsistent manner in which the applicant had presented his case reflected on the number of remittal orders given in the impugned proceedings.

50. Finally, they averred that the length of each segment of the proceedings, after the case was remitted for re-consideration, had not lasted unreasonably long. The only exception was the service of the Court of Appeal's decision of 14 April 2000 (see paragraph 20 above), which had not added considerably to the overall length of the proceedings.

51. The applicant contested the Government's argument about the complexity of the case. He disagreed that he had modified his claim and that that had affected the length of the proceedings given the fact that, under the applicable rules, the national courts had not been bound with the contents of his claim. Relying on the numerous remittal orders given in the proceedings, he stated that the length of the proceedings had been excessive. Finally, in view of what was at stake for him, he concluded that the national courts had not decided his case with due diligence.

2. The Court's assessment

52. The Court notes that the impugned proceedings started on 17 November 1986 when the applicant brought his claim before the then Štip Municipal Court. 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).

53. 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 ten years and ten months for three court levels. The then District Court's decision of 20 March 1996 was the last decision given within this time. During this time, the case was re-considered on three occasions.

54. The impugned proceedings have not ended yet since the Supreme Court has not decided upon the applicant's appeal on points of law of 23 April 2007. They have already lasted for over twenty-one years of which ten years, nine months and five days fall within the Court's temporal jurisdiction.

55. 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 *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

56. The Court considers that the subject-matter of the case cannot, in itself, explain the length of the proceedings.

57. It also observes that changes of the applicant's claim and the two adjournments requested by the applicant (see paragraphs 21 and 26 above) did not add much to the length of the proceedings.

58. The Court considers that the protracted length of the proceedings was due to the repeated re-examination of the case (see *Ziberi v. the former Yugoslav Republic of Macedonia*, no. 27866/02, § 46, 5 July 2007). During the time which falls within its competence *ratione temporis*, the case was reconsidered on five occasions. The domestic courts thus cannot be said to have been inactive. However, although the Court is not in a position to analyse the 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 *Pavlyulynets v. Ukraine*, no. 70767/01, § 51, 6 September 2005; *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003). It further observes that, as noted by the Government, it took the domestic authorities nearly two years to serve the Court of Appeal's decision on the applicant (see paragraph 20 above).

59. In this context, 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*, § 41, cited above and *Muti v. Italy*, judgment of 23 March 1994, Series A no. 281-C, § 15).

60. 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 of Article 6 § 1 of the Convention.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

62. In submissions filed in reply to the Government's observations, the applicant complained under Article 1 of Protocol No. 1 of the Convention that due to the excessive length of the impugned proceedings, his right to bring a compensation claim for having been unable to use the land, subject of the agreement, had become time-barred.

63. The Court notes that the impugned proceedings, which concerned the assessment of the validity of the agreement under which the defendant had obtained the title to the land, are still pending. In this respect, any complaint under Article 1 of Protocol No. 1 related to the outcome of the proceedings is premature. In addition, the applicant cannot be regarded as having a “possession” within the meaning of the Article invoked.

64. The Court finds therefore that the matters complained of do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this complaint must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicant claimed 144,900 euros (EUR) in respect of pecuniary damage. This claim related to the income that the applicant would have earned if he would have used the land while the proceedings in question have been pending. He also claimed an interest on 1,000,000 Macedonian denars (MKD) (the value of the golden liras) because of his inability to use them since 1986. Finally, he claimed EUR 60,000 in respect of non-pecuniary damage for the anxiety and emotional suffer sustained as a result of the protracted length of the proceedings.

67. 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 because the applicant had not had a title to the land and the impugned proceedings had not ended yet.

68. The Court, as argued by the Government, does not discern any causal link between the violation found and the pecuniary damage alleged. The Court therefore rejects this claim. 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 4,000 under that head.

B. Costs and expenses

69. The applicant also claimed EUR 5,000 for the costs and expenses without specifying whether they were incurred before the domestic courts or before this Court. He did not provide any supporting document.

70. The Government contested the claim as excessive and unsubstantiated.

71. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum (see *Kostovska*, cited above, § 62; *Arvelakis v. Greece*, no. 41354/98, § 34, 12 April 2001; *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). The Court points out that under Rule 60 of the Rules of Court "the applicant must submit itemised particulars of all claims, together with any relevant supporting documents failing which the Chamber may reject the claim in whole or in part".

72. The Court notes that the applicant did not submit any supporting documents or particulars to substantiate his claims. Accordingly, the Court does not award any sum under this head.

C. Default interest

73. 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, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, 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 7 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President