



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

FIFTH SECTION

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

(Application no. 22742/02)

JUDGMENT

STRASBOURG

19 June 2008

FINAL

01/12/2008

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 Manevski v. the former Yugoslav Republic of Macedonia,

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

Peer Lorenzen, *President*,

Rait Maruste,

Volodymyr Butkevych,

Renate Jaeger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 27 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 22742/02) 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 Aleksandar Manevski (“the applicant”), on 12 March 2002.

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

3. On 31 January 2006 the Court decided to communicate the complaint concerning the length of two of the sets of proceedings at issue. 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 1936 and lives in Skopje.

1. Proceedings concerning an order of the Governor of the National Bank (“the first set of proceedings”)

5. The applicant worked as General Manager of a bank, “K.B.” (“the bank”).

6. On 25 April 1996 the Governor of the National Bank (“the Governor”) issued an order preventing the applicant from working as the bank’s General Manager and from exercising other duties associated with special responsibilities for an indefinite period of time (“the order”). The order was based on findings as to the applicant’s unlawful business conduct and irregularities in the bank’s operation under his management. On 22 May 1996 the Council of the National Bank (“the Council”) dismissed the applicant’s appeal and confirmed the order.

7. On 12 September 1996 the Supreme Court allowed the applicant’s appeal on points of law (*управен спор*) submitted on 29 May 1996 and annulled the Council’s decision. It found that the position of general manager of a bank was not associated with special responsibilities and accordingly the order should not have been issued in respect of the applicant.

8. On 13 November 1996 the Constitutional Court upheld the applicant’s *actio popularis* and declared section 52 § 14 of the National Bank Act, under which the Governor had been entitled to take other measures (apart from those explicitly mentioned) if necessary, unconstitutional.

9. On 18 June 1997 the Constitutional Court declared the provisions of the National Bank Act, in accordance with which the Council decided upon appeals against the Governor’s decisions, unconstitutional. It found that the Governor’s participation in and chairing of the Council when the latter decided against his decisions given at first instance had been contrary to the constitutional principle of two-instance decision-making.

10. On 9 June 1997 the plenary session of the Supreme Court (*општа седница*) granted the public prosecutor’s request for the protection of legality (*барање за заштита на законитоста*) and quashed the Supreme Court’s decision of 12 September 1996. The court referred in its decision to the National Assembly’s authentic interpretation of section 70 of the Banks and Savings Institutions Act (*Закон за банки и штедилници*), according to which the manager of a bank was to be considered “a person with special responsibilities”.

11. On 4 February 1998 the Supreme Court, relying on the Constitutional Court’s decision of 18 June 1997, accepted the applicant’s appeal and annulled the Council’s decision of 22 May 1996.

12. As the Council allegedly remained inactive, the applicant requested the Supreme Court to decide his case on the merits instead of the Council.

13. On 1 September 1998 the Council, sitting without the Governor, dismissed the applicant’s appeal and upheld the latter’s decision. On 18 November 1998 the Supreme Court rejected the applicant’s request to decide his case on the merits instead of the Council.

14. On 7 July 1999 the Supreme Court granted the applicant's appeal and annulled the Council's decision. It found that the Council had established the facts incompletely and violated procedural rules.

15. On 26 August 1999 the Council dismissed the applicant's appeal again.

16. On 6 September 1999 the applicant lodged a fresh appeal with the Supreme Court.

17. On 2 December 1999 the Supreme Court allowed the applicant's appeal and annulled the Council's decision of 26 August 1999 and the order of 25 April 1996. It found that the Governor and the Council had wrongly established that the applicant had abused the monetary system. On 19 February 2001 the plenary session of the Supreme Court granted the public prosecutor's request for the protection of legality and quashed that decision. It found that the facts had been re-established without a hearing.

18. On 11 September 2003 the Supreme Court finally dismissed the applicant's appeal. It based its decision, *inter alia*, on the Banks and Savings Institutions Act of 1993, in accordance with which the National Bank supervised the lawfulness of a bank's operation and accordingly had been authorised to prevent, fully or partially, persons with special responsibilities from exercising their duties. It also referred to section 50 § 2 of the National Bank Act of 1992 and ruled that the latter had lawfully prevented the applicant from working as General Manager of the bank due to irregularities in the operation of the bank under his management.

19. On 26 December 2003 the applicant unsuccessfully requested the public prosecutor to lodge a request with the Supreme Court for the protection of legality.

2. Civil proceedings concerning the applicant's forced retirement ("the second set of proceedings")

20. On 25 May 2000 the newly appointed General Manager of the bank dismissed the applicant as having fulfilled the conditions for his retirement.

21. On 27 June 2000 the bank's Executive Board ("the Board") dismissed the applicant's objection.

22. On 4 June 2000 the applicant brought a civil action challenging his forced retirement. He argued that he had not met the statutory conditions for entering retirement.

23. On 2 July 2001 the Skopje Court of First Instance granted the applicant's claim and annulled the bank's decisions. It gave the ruling after it had obtained an expert report concerning the applicant's period of employment.

24. On 6 September 2001 the bank appealed. On 6 December 2001 the Skopje Court of Appeal quashed the lower court's decision and ordered a retrial.

25. On 6 December 2002 the Skopje Court of First Instance granted the applicant's claim again and annulled the bank's dismissal decisions. None of the scheduled hearings were adjourned upon the applicant's request.

26. On 13 November 2003 the Skopje Court of Appeal allowed the bank's appeal of 4 February 2003 and quashed the lower court's decision.

27. On 14 October 2005 the Skopje Court of First Instance dismissed the applicant's claim. In the course of those proceedings, that court sought information from different institutions about the applicant's period of employment. On 1 September 2004 it also appointed an expert to draw up a report in that connection and ordered those institutions to allow her access to the relevant documentation. The expert report was produced in March 2005. On 23 March 2006 the Skopje Court of Appeal upheld the first-instance court's decision.

28. On 29 May 2006 the applicant lodged an appeal on points of law (*pevuzujja*) with the Supreme Court. The proceedings are apparently still pending.

3. Civil proceedings concerning the applicant's removal from the position of General Manager of the bank ("the third set of proceedings")

29. On 29 July 1996 the Board removed the applicant from the position of General Manager of the bank. On 9 October 1996 the Board dismissed the applicant's objection and terminated his contract with the bank.

30. On an unspecified date in 1996, the applicant instituted civil proceedings against the decisions of the Board.

31. On 29 November 1996 the Skopje Court of First Instance partially allowed the applicant's claim and annulled the Board's decisions. The court dismissed the applicant's claim concerning the termination of the contract.

32. On 17 September 1997 the Skopje Court of Appeal granted both parties' appeals and quashed the lower court's decision.

33. On 27 April 1998 the Skopje Court of First Instance dismissed the applicant's claim concerning his removal and rejected his claim related to the termination of his contract.

34. On 2 June 1999 the Skopje Court of Appeal ruled partly in favour of the applicant, namely, it accepted his appeal concerning his removal and dismissed it in respect of his contract.

35. On 19 January 2000 the Skopje Court of First Instance granted the applicant's claim and annulled the Board's decisions related to his removal ("the court order"). That decision was upheld by the Skopje Court of Appeal's decision of 19 April 2000.

36. After the Board had refused the applicant's request to "reinstate his status prior to his removal" (*воспоставување на правната состојба како пред разрешувањето*), the applicant instituted enforcement proceedings claiming reinstatement and payment of salary arrears.

37. On 27 October 2000 the Skopje Court of First Instance dismissed the applicant's request as the court order had not provided for his reinstatement.

38. On 22 January 2001 the Skopje Court of Appeal allowed the applicant's appeal and remitted the case for re-examination, arguing that the court order had had a retrospective effect.

39. On 12 February 2001 the Skopje Court of First Instance dismissed the applicant's claims for his reinstatement and for payment of salary arrears.

40. On 26 April 2001 the Skopje Court of Appeal upheld the lower court's decision and dismissed the applicant's appeal. By a letter of 9 September 2005, the Skopje Court of First Instance stated that there was no evidence in the file attesting that a copy of that decision had been served on the applicant or his counsel.

41. By an application of 10 July 2001, the applicant unsuccessfully requested the public prosecutor to lodge a request with the Supreme Court for the protection of legality (*барање за заштита на законитоста*). His application was refused on 31 August 2001. On 12 September 2001 that notification was allegedly served on the applicant.

RELEVANT DOMESTIC LAW

42. Section 10 of the Civil Proceedings Act of 1998 ("the 1998 Act") provided that it was incumbent upon the courts to undertake to conduct proceedings without undue delay and economically, and to inhibit any attempt to abuse the rights afforded to the parties concerned.

43. Section 408 of the 1998 Act provided, *inter alia*, that the court should take into consideration the necessity of urgent settlement of employment disputes.

44. Sections 10 § 1 and 405 § of the Civil Proceedings Act of 2005 provide the same.

THE LAW

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

45. The applicant complained that the length of the first and second sets of 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

46. The Government did not raise any objection as to the admissibility of this complaint. The Court notes that it 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

1. The first set of proceedings

a. The parties' submissions

47. 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 stated that there had been complex circumstances related to the case, including amendments to the relevant legislation and the involvement of the Constitutional Court. As to the conduct of the domestic courts, the Government argued that they had decided the applicant's case with due diligence. They also noted the excessive workload of the Supreme Court during the period in question.

48. The applicant submitted that the case had not required consideration of any complex issue. He stated that the statutory provisions repealed by the Constitutional Court had subsequently been re-introduced, which affected the length of the proceedings. He further argued that court workload could not release the State from the responsibility to organise an efficient judicial system. Finally, he disagreed with the argument that the courts had decided his case in due time.

b. The Court's assessment

49. The Court firstly observes that the Governor issued the order on 25 April 1996. On 29 May 1996, following unsuccessful administrative appeal proceedings before the Council, the applicant instituted administrative contentious proceedings before the Supreme Court challenging the order. However, as noted by the Government, the period which falls within the Court's jurisdiction began on 10 April 1997, when recognition by the former Yugoslav Republic of Macedonia of the right of

individual petition took effect (see *Docevski v. the former Yugoslav Republic of Macedonia*, no. 66907/01, § 27, 1 March 2007).

50. In assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of the 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 nearly a year. The Supreme Court's decision of 12 September 1996 was the last decision given within this time. The proceedings ended on 11 September 2003 when the Supreme Court dismissed the applicant's appeal. The subsequent unsuccessful proceedings before the public prosecutor are not taken into consideration for the calculation of the length of the proceedings, since they did not concern an effective remedy that the applicant was required to have recourse to (see *Lepojić v. Serbia*, no. 13909/05, §§ 53 and 54, 6 November 2007). The proceedings therefore lasted some seven years and four months, of which just over six years and five months fall to be examined by the Court for three levels of jurisdiction.

51. 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; *Humen v. Poland* [GC], no. 26614/95, § 60, unreported; *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, ECHR 2000-IV; and *Philis v. Greece (no. 2)*, judgment of 27 June 1997, *Reports of Judgments and Decisions* 1997-IV, § 35).

52. The Court finds that the case was one of some legal complexity, but that that cannot alone justify the length of the proceedings. In addition, the respondent State did not argue that the applicant contributed to the length of the proceedings.

53. It further notes 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).

54. In this connection, it reiterates that a chronic overload, as referred to by the Government concerning the proceedings before the Supreme Court, cannot justify the excessive length of proceedings (see, *mutatis mutandis*, *Dumanovski v. the former Yugoslav Republic of Macedonia*, no. 13898/02, § 45, 8 December 2005; *Klein v. Germany*, no. 33379/96, § 43, 27 July 2000; and *Pammel v. Germany*, judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, § § 69 and 71).

55. Finally, the Court considers that the protracted length of the proceedings was due to the repeated re-examination of the case (see *Ziberi*,

cited above, § 46). During the time which falls within its competence *ratione temporis*, the case was reconsidered on five occasions. Even the plenary session of the Supreme Court decided twice upon the public prosecutor's request for the protection of legality. In this connection, the Court notes that repetition of remittal 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 it took the Supreme Court nearly two years and seven months to render its final decision (see paragraphs 17 and 18 above). That period appears excessive given that that court did not take any evidence or perform any procedural activity (see *Lickov v. the former Yugoslav Republic of Macedonia*, no. 38202/02, § 30, 28 September 2006).

2. The second set of proceedings

a. The parties' submissions

56. The Government submitted that the case had been complex, given that extensive evidence, including expert reports and internal regulations of the bank, had had to be examined to establish the facts. The fact that the case concerned a labour dispute which, in itself, required an urgent decision, added to its complexity.

57. They further maintained that the applicant had contributed to the length of the proceedings given his alleged failure to submit evidence required by the first-instance court. The fact that he had availed himself of the available remedies had added to the length of the proceedings.

58. The applicant argued that he had not requested any expert examinations, nor had he objected to those carried out in the course of the proceedings: he could not accordingly be held responsible for the time that elapsed on account of those examinations. He further disputed the Government's allegation that he had failed to respond to the court's orders as unsubstantiated. Moreover, he argued that there had been long delays between the hearings. Finally, he averred that the domestic courts had not displayed the requisite vigilance, given the urgent nature of the dispute.

b. The Court's assessment

59. The Court notes that the proceedings started on 4 June 2000 when the applicant brought his civil action for annulment of his dismissal. The impugned proceedings appear to be still pending, given that no evidence was provided that the Supreme Court has decided upon the applicant's appeal on points of law of 29 May 2006. They have already lasted for nearly eight years for two levels of jurisdiction.

60. The Court does not consider that the case required examination of complex issues of fact and law.

61. It further finds that, in the absence of any evidence to the contrary, there were no delays imputable to the applicant. In this latter context, it accepts his arguments concerning the expert examinations and submission of required evidence. In this connection, the Court notes that the principal responsibility for the delay caused by the expert examinations falls ultimately on the State. In addition, the expert was working in the context of judicial proceedings, supervised by a judge, who remained responsible for the preparation and speedy conduct of the trial (see *Stojanov v. the former Yugoslav Republic of Macedonia*, no. 34215/02, § 60, 31 May 2007). Finally, 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 *Arsov v. the former Yugoslav Republic of Macedonia*, no. 44208/02, § 42, 19 October 2006).

62. Having regard to the criteria described in paragraph 51 above, the Court finds that the overall length of the proceedings was excessive. In that connection, it considers it noteworthy that the domestic law (see the Civil Proceedings Acts above) and the Court's jurisprudence (see *Stojanov v. the former Yugoslav Republic of Macedonia*, cited above, § 61, 31 May 2007) required employment-related disputes to be conducted with a special diligence. The case was remitted for re-examination twice and has been awaiting consideration by the Supreme Court since 29 May 2006.

3. Conclusion

63. Having regard to its case-law on the subject, the Court considers that the length of each of the two sets of proceedings described above has failed to satisfy the reasonable time requirement. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

64. Concerning the first set of proceedings, the applicant complained under Article 6 of the Convention that they had been unfair and that the Council had lacked impartiality, since the Governor had decided on the order at first and second instance (as a member of the Council). In this latter connection, he also relied on Article 13 and Article 2 of Protocol No. 7 of the Convention. He further complained that the Supreme Court's decision of 2 December 1999 had been given without a hearing. Relying on Article 7 of the Convention, he also complained that the order had been issued for acts which had not constituted a criminal offence at the time when they had allegedly been committed.

65. He complained under Article 6 of the Convention that the third proceedings had lasted an unreasonably long time.

66. Finally, he alleged a violation of Article 4 of Protocol No.7 in that he had been repeatedly punished for the same offence, since the order had been re-issued.

67. The Court has examined these applicant's complaints and finds that, in the light of all the materials in its possession, and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

68. 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

69. 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

70. The applicant claimed 159,898 euros (EUR) in respect of pecuniary damage for salary arrears. He did not claim any compensation in respect of non-pecuniary damage, apart from an apology by those involved in his case.

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

72. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. It further does not award any non-pecuniary damage given that the applicant did not make such a claim.

B. Costs and expenses

73. The applicant claimed EUR 1,563 for the costs and expenses incurred in the second set of proceedings. He further claimed EUR 1,000 for the costs and expenses incurred in the proceedings before the Court. These included the lawyer's fees for 25 hours of legal work. He did not produce any supporting document.

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

75. Concerning the applicant's request for reimbursement of the costs incurred in the second proceedings, the Court reiterates that legal costs are only recoverable in so far as they relate to the violation found (see *Ernestina Zullo v. Italy* [GC], no. 64897/01, § 153, 29 March 2006; *Belvedere*

Alberghiera S.r.l. v. Italy (just satisfaction), no. 31524/96, § 45, 30 October 2003; and *Van de Hurk v. the Netherlands*, judgment of 19 April 1994, Series A no. 288, § 66). As such costs had not been incurred in order to seek prevention and redress of the alleged violation complained of through the domestic legal order, the Court does not award any sum under this head (see *Milošević v. the former Yugoslav Republic of Macedonia*, no. 15056/02, § 34, 20 April 2006).

76. 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 are reasonable as to quantum. In the present case, the Court notes that the applicant did not provide any supporting documents concerning the legal fees. It therefore makes no award in this respect.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the first and second sets of 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. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President