



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

FIFTH SECTION

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

(Application no. 10649/03)

JUDGMENT

STRASBOURG

19 June 2008

FINAL

19/09/2008

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 Fetaovski 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,
Karel Jungwiert,
Volodymyr Butkevych,
Renate Jaeger,
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. 10649/03) 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 Rami Fetaovski (“the applicant”), on 29 January 2003.

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

3. The applicant alleged, in particular, that his rights of access to a court and to have his case heard within a reasonable time had been violated in breach of the Convention.

4. On 16 June 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1946 and lives in Kumanovo.

6. On 28 July 1992 the applicant, through his representative (who continues to represent him in the proceedings before the Court) brought a

civil action against the State and the Kumanovo Veterinary Inspectorate (“the Inspectorate”) for damages in relation to the slaughter of sheep infected by a contagious disease (brucellosis).

7. Between 23 September 1992 and 2 November 1993 the first-instance court scheduled thirteen hearings. None of them was adjourned on account of the applicant.

8. On 2 November 1993 the then Kumanovo Municipal Court (“the first-instance court”) dismissed the applicant’s claim after it had heard statements from him and a veterinary inspector who had examined the sheep. On 1 April 1994 the then Skopje District Court upheld that decision. By a decision of 25 October 1994, given upon an appeal on points of law (*pevuzuja*) by the applicant dated 31 May 1994, the Supreme Court quashed the lower courts’ decisions and remitted the case for a fresh consideration. It instructed them to assess the value of the sheep slaughtered.

9. Four hearings listed for between 16 November 1995 and 17 January 1996 were adjourned due to the Inspectorate’s failure to provide information about the value of the sheep. The applicant attended all the hearings.

10. On an unspecified date, the first-instance court ruled partially in the applicant’s favour. On 9 January 1997 the Skopje Court of Appeal accepted an appeal by the defendants and ordered a retrial concerning the accepted part of the applicant’s claim.

11. On 11 April 1997 the applicant further specified his claim, requesting compensation for loss of income (“the new claim”). The new claim was dismissed by the first-instance court on 18 April 1997.

12. On 21 May 1997 the first-instance court accepted the applicant’s claim. On 18 February 1998 the Skopje Court of Appeal dismissed an appeal by the defendants and confirmed the lower court’s decision. On 21 April 1998 the State lodged an appeal on points of law. By a decision of 21 October 1999 the Supreme Court quashed the lower courts’ decisions and remitted the case for a renewed examination.

13. None of seven hearings listed between 15 March and 28 November 2000 was rescheduled at the applicant’s request. During that time, the first-instance court requested the Inspectorate to provide information about the marked value of the sheep three times. It further requested a copy of the applicant’s request for compensation that had allegedly been submitted before the relevant administrative authorities. In reply, the court was informed that there was no such request in the case file and that it should order the applicant to provide it.

14. On 28 November 2000 the first-instance court dismissed the applicant’s claim, having established that he had failed to lodge a request for compensation with the relevant administrative authorities in good time. It established the following facts: on 20 June 1991, the Inspectorate ordered the slaughter of twenty-one sheep. On 5 July 1991 only ten sheep were

slaughtered (the others were allegedly slaughtered by the applicant). The report drawn up after the slaughter indicated that the applicant would not be compensated as he had not complied with the order. On a later date, other sheep belonging to the applicant were slaughtered. On 26 November 1991 the applicant was compensated for the sheep slaughtered on the later date, but not for those put down on 5 July 1991. The court further established that on 15 May 1992 the State Veterinary Office had dismissed a claim by the applicant for compensation for the sheep slaughtered on 5 July 1991. The decision was served on the applicant on 2 March 2001.

15. The applicant's representative appealed, arguing that the lower court, *inter alia*, had erred in the facts, namely that it wrongly concluded that he had claimed compensation from the relevant authorities out of time even though no such claim had ever been lodged. The applicant has submitted a copy of the appeal which has been date-stamped as having been received by the first-instance court on 15 March 2001. The Government have provided a different copy of the appeal, with a receipt-stamp dated 23 March 2001. The applicant's version is on plain paper and has been date-stamped on the front page, while the Government's version is written on the applicant's representative's office paper, and bears some handwritten marks. The receipt stamp for the Government's version is not on one of the typed pages of the document.

16. On 20 June 2001 the Skopje Court of Appeal returned the case file to the first-instance court, in order for it to examine the court's register of incoming applications ("the register") to determine when the applicant's appeal had been received by that court. It decided to do so because the appeal had been drawn up on 14 March and, according to the court's stamp, submitted on 23 March 2001. It stated that the first-instance court should establish the date of submission of the appeal.

17. On 11 July 2001 the first-instance court rejected the applicant's appeal as out of time. It found that that court's decision had been served on the applicant on 2 March 2001 and, relying on the court's stamp acknowledging receipt and the register, that the appeal had been lodged on 23 March 2001.

18. On 11 September 2001 the applicant appealed. He produced his copy of the appeal with the court's stamp indicating that it had been lodged on 15 March 2001. He also argued that an error in entering the introduction date of the appeal in the register should be attributed to the court and should not prejudice his case.

19. On 20 December 2001 the Skopje Court of Appeal returned the case file to the first-instance court. It did so because the appeal bearing the court's stamp of 15 March 2001 had been submitted as a copy only, and its validity needed to be verified. In that connection, it referred to the copy of the appeal of 23 March 2001. It therefore instructed the first-instance court

to order the applicant to submit the original version of his appeal for verification.

20. On 28 February 2002 the applicant, in response to the first-instance court's order, submitted the original of his appeal of 15 March 2001. The court noted that that appeal's contents and nature were the same as that bearing the court's stamp of 23 March 2001. It also stated that it could not establish the reasons for the discrepancy between the register (indicating 23 March 2001 as the date of receipt) and the original of the applicant's appeal which bore the court's stamp attesting that it had been received on 15 March 2001.

21. On 20 March 2002 the Skopje Court of Appeal returned the case file to the first-instance court for the third time. It ordered that court to hear a statement from the court's administrative officer as to when the applicant's appeal had been recorded in the register and what the reasons for having recorded different dates of receipt had been.

22. In its reply of 23 April 2002, the first-instance court informed the Court of Appeal that, according to that officer's statement, submissions filed with the court in person had to be recorded in the register on the date of receipt or the next day, and the date noted constituted the official date of submission. No copy of that letter or the court officer's statement was produced.

23. On 15 May 2002 the Skopje Court of Appeal dismissed the applicant's appeal. It found that the lower court had correctly rejected his appeal as out of time, relying on the court's stamp acknowledging receipt of the appeal and the register indicating 23 March 2001 as the introduction date. The decision was served on the applicant on 6 September 2002.

24. On 22 October 2002 the applicant requested the public prosecutor to lodge a request for the protection of legality with the Supreme Court. That request was refused on 6 December 2002.

25. On 23 January 2002 the applicant brought criminal charges for abuse of office against the court's administrative officer who had allegedly put different receipt dates on the copies of the appeal and entered the wrong date in the register.

26. On 25 February 2003 the public prosecutor rejected the applicant's criminal complaint as the offence complained of was not prosecutable *ex officio*.

27. On 11 April 2003 the first-instance court refused a request by the applicant to open an investigation in respect of that officer. That decision was upheld on 11 June 2003 by the Skopje Court of Appeal.

II. RELEVANT DOMESTIC LAW

28. Section 102 § 1 of the then Civil Proceedings Act ("the then Act") provided that a submission would be considered as submitted in good time

if it was handed over to the competent court within the prescribed time-limit.

29. Section 334 of the then Act provided that, *inter alia*, parties concerned could appeal against the first-instance court's decision within fifteen days from the date of service of that latter decision, if not otherwise regulated by law.

30. Under section 343, an appeal was to be filed with the first-instance court with a sufficient number of copies for the court and the parties concerned.

31. According to section 344 §§ 1 and 2, an appeal that was incomplete, inadmissible or submitted out of time would be rejected by the presiding judge of the first-instance court's panel without a hearing. An appeal would be considered as submitted out of time if it was not filed within the statutory time-limit.

THE LAW

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

32. The applicant complained that his appeal had not been examined on the merits, given that the Court of Appeal had wrongly considered it as submitted out of time. He also complained that his case had not been heard within a reasonable time. The Court considers that these complaints fall to be examined under Article 6 of the Convention which, in so far as relevant, reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal ...”.

A. Admissibility

33. The Government have not raised any objections as to the admissibility of these complaints.

34. The Court notes that the complaints under this head are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits*1. The “right of access to a court” complaint***(a) The parties’ submissions**

35. The Government maintained that the applicant’s representative had submitted his appeal in person to the first instance court, and that the date stamp on the appeal showed that the appeal had been submitted on 23 March 2001. The courts had therefore rejected the appeal as having not been submitted within the time-limit, as provided under the then Act. They further stated that the Court of Appeal had made efforts to establish the truth as to the date of receipt of the appeal. Acting upon its instructions, the first-instance court had established that 23 March 2001 had been recorded in the register as date of introduction. That date had been indicated on the copy of the appeal which had been communicated to the defendants for consideration. In addition, the applicant had had the right to challenge that decision before the Court of Appeal. They therefore concluded that the State could not be held responsible for errors made by the applicant’s lawyer, namely having failed to submit the appeal in good time. Finally, they stated that the applicant had been afforded the guarantees embodied in Article 6 of the Convention.

36. The applicant avowed that he had submitted his appeal on 15 March 2001. The first-instance court had acknowledged receipt on that date by affixing its stamp on his appeal. The applicant stated that he could not speculate as to what had happened with the remaining two copies of his appeal which had been stamped on 23 March 2001, as that had been in the court’s area of competence and, accordingly, beyond his control. The courts should have established, but not to his detriment, the reasons for having stamped them on 23 March 2001 and having recorded that date in the register. The Court of Appeal had dismissed his arguments although he had produced a copy of his appeal with the court’s stamp indicating that it had been lodged by him on 15 March 2001 (see paragraph 18 above). He maintained that the domestic courts’ decisions had been unlawful and subjective given that they had been based on the information obtained from their registers. Relying on section 102 § 1 of the then Act, he maintained that he had submitted his appeal within the fifteen-day time-limit and that when the court had recorded other copies in its register was irrelevant. He concluded that the courts, ignoring the evidence that his appeal had been submitted in good time, had infringed his right of access to a court as provided under this head.

(b) The Court's assessment

37. The Court reiterates at the outset that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, *mutatis mutandis*, the *Brualla Gómez de la Torre v. Spain*, judgment of 19 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2955, § 31, and the *Edificaciones March Gallego S.A. v. Spain*, judgment of 19 February 1998, *Reports* 1998-I, p. 290, § 33), and the question of whether a litigant has complied with the time-limits set out in domestic law is a prime example of such a case. Further, the “right to a court”, of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, these limitations must not restrict or reduce a person’s access in such a way or to such an extent that the very essence of the right is impaired; lastly, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim pursued (see, among other authorities, the *Edificaciones March Gallego S.A.*, judgment cited above, p. 290, § 34).

38. In the instant case, the applicant’s appeal was declared inadmissible because the applicant had failed to submit his appeal against the judgment of 28 November 2000 (served on 2 March 2001) within the time-limit which expired on 17 March 2001.

39. The Court considers the aim pursued by the 15-day time-limit prescribed in Section 334 of the Civil Proceedings Act as it was then in force was legitimate in the interests of the good administration of justice (see *Bacev v. the former Yugoslav Republic of Macedonia* (dec.), no. 13299/02, 14 February 2006). However, the rules setting time-limits for bringing appeals must not be applied in a way which prevents litigants from using an available remedy. The issue is one of legal certainty. The problem is not simply one of interpretation of substantive rules, but that a procedural rule has been interpreted in such a way as to prevent the applicant’s appeal being examined on the merits, with the attendant risk that his right to the effective protection of the courts would be infringed (see *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, § 51, ECHR 2002-IX).

40. The domestic courts in the present case ultimately dealt with the applicant’s appeal solely on the basis of the entry in the registry of the first-instance court. Although a number of attempts were made to determine the actual date of lodging, no answer was given to the question (posed at least implicitly by the Skopje Court of Appeal in its judgment of 20 March 2002) of why the copy of the appeal stamped 15 March 2001 – of which the courts knew - had not been accepted as the date of lodging the appeal.

41. In the circumstances of the case, the Court considers that the failure by the domestic courts to accept the appeal of 15 March 2001 or, in the alternative, to provide a tenable reason for not accepting it, amounted to a construction of the procedural rule at issue which deprived the applicant of his right of access to a court (see, *mutatis mutandis*, *Miragall Escolano and Others v. Spain*, nos. 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41787/98 and 41509/98, §§ 37, 38 ECHR 2000-I, and *Zvolský and Zvolská*, cited above, § 51 - 55).

42. For these reasons, there has been a violation of the applicant's right of access to a court within the meaning of Article 6 § 1 of the Convention.

2. Alleged violation of the "reasonable time" requirement

(a) The parties' submissions

43. 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.

44. They further maintained that the case had been of a complex factual nature that had required examination of the parties concerned and witnesses.

45. The Government further argued that the use of ordinary and extraordinary remedies by the parties concerned had added to the length of the proceedings. They also stated that seven adjournments had been ordered because of the defendants' absence and that three hearings had been rescheduled because of the failure to properly deliver a summons to a witness proposed by them. They referred to the conduct of the Inspectorate, with whom the first instance court had had poor communication.

46. As regards the applicant's conduct, they referred to his new claim (see paragraph 11 above) which required adjournment of a hearing. However, they did not deny that the applicant had attended all scheduled hearings and demonstrated willingness to have the proceedings ended in due course.

47. Concerning the conduct of the domestic courts, the Government argued that they had decided the applicant's case with due diligence and the scheduled hearings had been held without any interruptions or delays.

48. The applicant submitted that account must be taken of the state of proceedings on the date of ratification. He contested the Government's arguments that the case had been of a complex nature, since all the evidence had been adduced before that date. In addition, he stated that the number of parties involved, the lack of an international element in his case, the fact that the settlement of his case had not depended on another issue and that there had been no intervention of other persons in the proceedings undermined the credibility of the Government's assertion about the complexity of the case. He further argued that the only evidence taken by

the first-instance court between 11 April 1997 and 28 November 2000 had been information obtained from the Inspectorate. He further maintained that the parties could not be held responsible for having availed themselves of the available remedies. The failure properly to summon the parties concerned, which the Government referred to, could be attributed only to the court. His new claim had not added to the length of the proceedings as had been decided in a speedy manner. Finally, he stated that it had taken eighteen months for the Supreme Court to decide on the appeal on points of law of 21 April 1998 (see paragraph 12 above) although it had decided the previous appeal (see paragraph 8 above) within five months. He also submitted that it had taken seven months for the Inspectorate to provide the first-instance court with the requested information (see paragraph 13 above).

(b) The Court's assessment

49. The Court notes that the proceedings started on 28 July 1992 when the applicant filed his compensation claim with the first-instance court. However, the period which falls within its jurisdiction did not begin on that date, but 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).

50. 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 *Styrkowski 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 connection, 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 over four years and eight months for three court levels. The Skopje Court of Appeal's decision of 9 January 1997 was the last decision given within this time.

51. The proceedings ended on 6 September 2002 when the Court of Appeal's decision of 15 May 2002 was served on the applicant. The proceedings therefore lasted ten years, one month and nine days of which five years, four months and twenty-eight days fall to be examined by the Court for three levels of jurisdiction.

52. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see *Markoski v. the former Yugoslav Republic of Macedonia*, no. 22928/03, § 32, 2 November 2006, and the references cited therein).

53. The Court accepts the applicant's arguments (see paragraph 49 above) that the case was not of a complex nature.

54. It further considers that no periods of delay are imputable to the applicant. In addition, the mere fact that the parties to the proceedings made full use of the remedies available under domestic law cannot be considered as contributing to the length of the proceedings (see *Lickov v. the former Yugoslav Republic of Macedonia*, no. 38202/02, § 28, 28 September 2006 and *Arsov v. the former Yugoslav Republic of Macedonia*, no. 44208/02, § 42, 19 October 2006).

55. The Court reiterates 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).

56. In this connection, the Court notes that the case was reconsidered on three occasions. One remittal order was made during the time which falls within its competence *ratione temporis*. It further notes that it took one year and six months for the Supreme Court to review the defendants' appeal on points of law (see paragraph 12 above). That period alone may not appear excessive (see *mutatis mutandis*, *Sergi v. Italy* (dec.), no. 46998/99, 26 September 2000). However, there is no element in the case file that would justify it, having regard, in particular, to the fact that it had only taken five months to examine the previous appeal in the case (see paragraph 8 above). Furthermore, the Court observes that the only evidence required to be adduced after the Supreme Court's decision of 21 October 1999 was information about the market value of sheep. The first-instance court did not manage to obtain that information from the Inspectorate, despite three requests to that effect (see paragraph 13 above). The Inspectorate's failure to provide that information had already caused a procedural delay (see paragraph 9 above). That and delays caused by the defendants' failure to attend seven hearings and the failure to summon witnesses properly (see paragraph 46 above) can only be attributed to the State.

57. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the Court considers that the length of the proceedings complained of failed to satisfy the reasonable time requirement.

58. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 OF THE CONVENTION

59. Relying on Article 1 of Protocol No.1, the applicant complained that he had not been awarded any compensation for the slaughter of his sheep.

60. The Court considers that the applicant's complaint under Article 1 of Protocol No. 1 is directly connected with that examined under Article 6 § 1

of the Convention (see paragraphs 35-43 above) and that it cannot speculate on the outcome of the proceedings should not have been for the violation found. Having regard to its conclusion that there was an infringement of the applicant's right of access to a court, the Court does not consider it necessary to rule on the applicant's complaint based on Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Mitreovski v. the former Yugoslav Republic of Macedonia*, no. 33046/02, § 41, 21 June 2007, and the references cited therein).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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.”

62. 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”.

63. In a letter of 30 October 2006, after the application had been communicated to the respondent Government, the Court invited the applicant to submit his claims for just satisfaction by 11 December 2006. He did not submit any such claim.

64. In these circumstances, the Court makes no award under Article 41 of the Convention (see *Nikolov v. the former Yugoslav Republic of Macedonia*, no. 41195/02, § 33, 20 December 2007).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicant's complaints under Article 6 § 1 of the Convention admissible;
2. *Holds* that there has been a violation of Article 6 of the Convention in respect of the applicant's rights of access to a court and to have his case heard within a reasonable time.
3. *Holds* that there is no need to examine the complaint under Article 1 of Protocol No. 1 to the Convention;

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