



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

FIFTH SECTION

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

(Application no. 14260/03)

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 Gjozev 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,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *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. 14260/03) 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 Kiril Gjozev (“the applicant”), on 14 April 2003.

2. The applicant was represented by Ms T. Dedejska, a lawyer practising in Strumica. The Macedonian Government (“the Government”) were represented by their Agent, Mrs R. Lazareska Gerovska.

3. On 29 March 2006 the Court decided to communicate the complaint concerning the length of the proceedings. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1935 and lives in Radoviš.

5. On 25 December 1984 the applicant brought a compensation claim against his employer (“the employer”) for unpaid salary, subsistence and annual-leave allowance for the period between 24 June and 31 December 1983. During that time, he was seconded to different posts in the construction sector in Iraq.

6. On 17 September 1987 the then Štip Labour Court of First Instance (*Основен суд на здружен труд Штип*) partially upheld the applicant's claim. On 9 December 1987 the then Skopje Labour Court of Macedonia (*Суд на здружен труд на Македонија, Скопје*) upheld the parties' appeals and remitted the case for re-examination.

7. On 19 November 1991 the then Štip Labour Court of First Instance partially upheld the applicant's claim and ordered the employer to pay him the amount due. On 12 May 1992 the then Štip District Court (*Окружен суд во Штип*) quashed that decision and remitted the case for a renewed examination.

8. On 28 April 1994 the then Radoviš Municipal Court (*Општински суд во Радовиш*) dismissed the applicant's claim. That decision was quashed by the then Štip District Court's decision of 12 January 1995.

9. On 26 December 1995 the then Radoviš Municipal Court dismissed the applicant's claim. On 7 November 1996 the Štip Court of Appeal (*Апелационен суд Штип*) upheld the applicant's appeal and remitted the case for re-examination. It found that the lower court had not complied with its previous instructions.

10. The hearing fixed for 28 October 1997 was postponed due to the absence of his representative who had not been summoned, notwithstanding the applicant's presence,.

11. On 10 November 1997 the Radoviš Court of First Instance (*Основен суд во Радовиш*) ("the first instance court") dismissed the applicant's claim. It found that he had been remunerated in accordance with the then employer's internal regulations. It also held that all four expert reports obtained in the course of the proceedings had been inconsistent and unreliable.

12. On 20 April 1999 the Štip Court of Appeal upheld the applicant's appeal and ordered a retrial. It ordered, *inter alia*, an alternative expert examination.

13. On 13 April 2000 another expert gave his opinion setting out the exact figures of the amount due to the applicant.

14. On 15 May 2000 the first instance court ruled partially in favour of the applicant. The Štip Court of Appeal set aside that decision on 24 January 2001.

15. On 22 May 2003 the first instance court partially upheld the applicant's claim. Sums were awarded both in foreign and national currency. On 26 December 2003 the Štip Court of Appeal accepted the employer's appeal and overturned the first instance court's decision as to an award of interest. It upheld the remainder of the decision.

16. On 4 March 2003 the first instance court rejected as inadmissible the employer's appeal on points of law as the value of the dispute had been below the statutory threshold.

17. On 18 May 2004 the State Public Prosecutor's Office brought before the Supreme Court a request for the protection of legality (*барање за заштита на законитоста*) as the award indicated in the national currency had been wrongly calculated. On 26 February 2005 the Supreme Court accepted that request and quashed the lower courts' decisions.

18. On 22 December 2005 the proceedings resumed before the first instance court. On 2 February 2006 they were suspended as insolvency proceedings had been opened against the employer. After the applicant had unsuccessfully asked for his claim to be recognised in the course of these latter proceedings, he requested the first instance court to resume the substantive proceedings.

19. On 23 February 2006 the first instance court declared itself incompetent *ratione loci* to decide the applicant's case.

20. On 5 October 2006 the Strumica Court of First Instance accepted the applicant's claim in the original proceedings. On 6 November 2006 the employer appealed that decision before the Stip Court of Appeal. The case is pending before that court.

21. Between November 2002 and March 2005 the applicant requested the President of the first instance court, the Ombudsman, the President of the Supreme Court and the State Judicial Council to expedite the proceedings.

RELEVANT DOMESTIC LAW

Civil Proceedings Act 1998 ("the 1998 Act")

22. Section 10 of 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 of abuse of the rights afforded to the parties concerned.

23. Section 408 provided, *inter alia*, that the court should take into consideration the need to deal with employment disputes as a matter of urgency.

Civil Proceedings Act 2005 ("the 2005 Act")

24. Section 351 § 3 of the 2005 Act provides that a panel of the second instance court is to hold a hearing and decide a case on the merits if the first instance court's decision has been challenged due to a substantial procedural flaw or wrongly established facts. It is also to decide the case itself if the first instance court's decision has previously been quashed.

Courts Act 2006

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

26. 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 is to consider the application (*постапува по барањето*) within six months after it has been lodged and is to decide 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 is to be paid from the State’s budget.”

27. The 2006 Act entered into force on 1 January 2007.

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

28. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement and that domestic courts had not been impartial, given that the Court of Appeal had repeatedly remitted the case back for a retrial instead of deciding it on the merits. He relied on Article 6 § 1 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 an independent and impartial tribunal ...”

*1. Alleged violation of the “reasonable time” requirement***A. Admissibility**

29. The Government referred to the 2006 Act, which provided a specifically designed remedy to address the issue of an excessive length of proceedings.

30. The applicant did not comment on the matter.

31. The Court considers that the Government’s submission is to be regarded as a plea of non-exhaustion of domestic remedies.

32. In that respect, it 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).

33. Furthermore, in the context of Article 13 of the Convention, in the *Kudła* 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.

34. 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 has 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).

35. 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 *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 remedy against the excessive length of the proceedings was introduced by the Courts Act 2006 which became operational on 1 January 2007. The applicant has not availed himself of that remedy.

36. The Court notes, first, that section 36 of the Courts Act 2006 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; *Kudła*, §§ 158 and 159, cited above).

37. 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. 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.

38. 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 Courts Act 2006 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.

39. Bearing in mind that the case was pending before the domestic courts for more than twenty-two years before the introduction of the remedy by the 2006 Act and is still not decided and that the Government did not present any evidence about its effectiveness in the circumstances of a case like the present one, the Court considers that it would be disproportionate to require the applicant to try that remedy.

40. Against this background, this complaint 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

(i) The parties’ submissions

41. The Government submitted that the case had been of a complex factual nature which required numerous expert examinations and consideration of voluminous documentation. They stated that a number of factors affected the length of the impugned proceedings, namely, the opening of bankruptcy proceedings against the employer; the change of the judicial system, in particular, between 1987 and 1991; the dissolution of the Federal Yugoslavia and the monetary independence of the respondent State. While the number of remittal orders had not been restricted under the then

Act, the new Act required, under certain circumstances, the appeal courts to decide a case on the merits instead of remitting it for re-examination.

42. As regards the applicant's behaviour, they stated that he had caused procedural delays by requiring expert examinations and postponement of some hearings, including that of 28 October 1997. The use of the available remedies by the parties also affected the length of the proceedings.

43. Concerning the conduct of the domestic courts, the Government argued that the courts had decided the applicant's case with due diligence and that the scheduled hearings had been held without any interruptions or delays. Over fifteen decisions were given throughout the proceedings. The quashing of the first instance court's decisions did not signify that the applicant had not been given a fair trial given that it was for the domestic courts to assess the probative value of evidence.

44. The applicant disagreed with the Government that he had contributed to the length of the proceedings by failing to attend some hearings since no evidence had been produced to corroborate that assertion. His absence from the hearing that the Government referred to could not be attributed to him. He maintained that the first instance court had ordered five expert examinations which affected the length of the proceedings. He further argued that the courts should have displayed a particular vigilance given the possibility of the employer being declared insolvent, a fact that could prejudice the effectiveness of his claim.

45. He further stated that numerous remittal orders, the improper summoning of the parties, the number of expert examinations and irresponsible behaviour of judges involved in his case did not release the State from the responsibility regarding the length of the proceedings. He concluded that the overall length of the proceedings has been excessive given, in particular, that no final decision has been taken after twenty-three years. The fact that his case was labour-related required special diligence on the part of the domestic courts.

(ii) The Court's assessment

46. The Court notes that the proceedings started on 25 December 1984 when the applicant brought his claim before the first instance court. However, the period which falls within its jurisdiction did not begin on that date, but on 10 April 1997, when 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).

47. 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 *Styranski v. Poland*, no. 28616/95, § 46, ECHR 1998-VIII and *Foti and Others v. Italy*, judgment of 10 December 1982, Series A no. 56, p. 18, § 53). In this 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 twelve years, three months and sixteen days for two court levels. The Štip Court of Appeal's decision of 7 November 1996 was the last decision given within this period.

48. The impugned proceedings have not ended yet since the Štip Court of Appeal has not decided upon the employer's appeal of 6 November 2006. They have already lasted for over twenty-three years of which some eleven years fall within the Court's temporal jurisdiction.

49. 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).

50. The Court notes that both domestic law (see section 408 of the 1998 Act and the Court's jurisprudence (see *Ziberi v. the former Yugoslav Republic of Macedonia*, cited above, § 47) require employment-related disputes to be conducted with a special diligence. In the context of employment disputes, a continuing period of over twenty-three years of which some eleven fall within the Court's temporal jurisdiction will only be compatible with the "reasonable time" requirement of Article 6 in rare circumstances.

51. In the present case, the protracted length of the proceedings was mainly 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). The case was reconsidered on seven occasions, three of which fall within the Court's competence *ratione temporis*. 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 decisions 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 may disclose a serious deficiency in the judicial system (see *Pavlyulynets v. Ukraine*, no. 70767/01, § 51, 6 September 2005 and *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003). 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 v. the former Yugoslav Republic of Macedonia*, no. 44353/02, § 41, 15 June 2006). Section 351 of the 2005 Act was introduced over twenty years after the applicant had brought his claim and it did not prove efficient in his case yet.

52. It further accepts the applicant's arguments that no delays are attributable to him. The Government did not present any evidence that he had failed to attend the scheduled hearings. 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).

53. Having regard to these circumstances, the Court considers that the length of the present proceedings was excessive and failed to meet the "reasonable time" requirement of Article 6 § 1 of the Convention.

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

2. Alleged violation of the applicant's right to a hearing by an impartial tribunal

55. The Court has already considered the effect of the remittal orders in the context of the length of the proceedings (see paragraph 51 above). On the other hand, it finds no substantiation in the applicant's allegations that the repetition of such orders signified judges' bias.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

58. The applicant claimed 36,051 euros (EUR) in respect of pecuniary damage. This figure refers to the amount that he claimed before the domestic courts together with interest calculated as of 1 January 1984. He also claimed EUR 10,000 for non-pecuniary damage for the emotional suffering.

59. The Government contested these claims as unsubstantiated arguing that there was no causal link between the alleged violation and the damage claimed.

60. The Court notes that the impugned proceedings are still pending and it cannot speculate as to what the outcome will be. It further considers that the evidence available does not establish the existence of a causal link

between the violation of the Convention and the pecuniary damage alleged. It therefore rejects the applicant's claim under this head. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 4,400 under that head.

B. Costs and expenses

61. The applicant also claimed EUR 2,150 for the costs and expenses without specifying whether they concerned the proceedings before the domestic courts or those before the Court. He did not provide any supporting document or a fee note for the legal work done. On the other hand, he produced a copy of the post receipts for mailing of his requests described in paragraph 21 above and of his submissions lodged with the Court.

62. The Government contested these claims.

63. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum (see *Stoimenov v. the former Yugoslav Republic of Macedonia*, no. 17995/02, § 56, 5 April 2007). The Court notes that the applicant's motions to expedite the proceedings, as described in paragraph 21 above, were not remedies that could prevent or rectify the violation found or provide the applicant with redress (see *Graberska*, cited above, § 61 and *Atanasovic and Others v. the former Yugoslav Republic of Macedonia*, no. 13886/02, § 31, 22 December 2005). The postage expenses made to that effect were not, accordingly, necessarily incurred; it therefore rejects the applicant's claim under this head. On the other hand, it awards EUR 40 in respect of postage expenses incurred in the proceedings before the Court. As to the remaining claims, the Court notes that the applicant did not submit any supporting documents or particulars to substantiate them. Accordingly, it does not award any sum under this head.

C. Default interest

64. 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 4,440 (four thousand, four hundreds and forty euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage and costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (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 19 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President