



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

FIFTH SECTION

**CASE OF SAVOV AND OTHERS v. THE FORMER YUGOSLAV  
REPUBLIC OF MACEDONIA**

*(Application no. 12582/03)*

JUDGMENT

STRASBOURG

25 September 2008

**FINAL**

***06/04/2009***

*This judgment may be subject to editorial revision.*



In the case of Savov and Others 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 2 September 2008,

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

## PROCEDURE

1. The case originated in an application (no. 12582/03) 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 three Macedonian nationals, Mr Angelco Savov (“the first applicant”), Mrs Ristika Savova (“the second applicant”) and Mr Vasil Savov (“the third applicant”), on 24 March 2003. The second and third applicants are the first applicant’s parents.

2. The applicants were represented by Mr T. Torov, a lawyer practising in Štip. The Macedonian Government (“the Government”) were represented by their Agent, Mrs R. Lazareska Gerovska.

3. On 6 September 2006 the Court decided to communicate the complaint concerning the length of the civil and enforcement proceedings, taken together, 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

4. The applicants were born in 1971, 1947 and 1938 respectively and live in Štip.

5. On 6 February 1996 the applicants brought an action against Mr G., a juvenile at that time, and Ms M. and Mr B., Mr G.'s parents ("the defendants"), claiming compensation for the pecuniary and non-pecuniary damage resulting from injuries that the first applicant had sustained in a fight with Mr G. In the course of the proceedings, the applicants increased their initial claim on account of injuries that were established subsequently.

6. Five hearings were scheduled between 25 September and 9 December 1996, three of which were adjourned because of expert examinations. On the latter date the Štip Court of First Instance ruled partly in favour of the applicants, awarding them less compensation than they had sought. That judgment was quashed by the Štip Court of Appeal in a decision of 18 June 1997 following appeals by both parties.

7. On 15 October 1997 the Štip Court of First Instance partly granted the applicants' claims and ordered the defendants jointly to reimburse the second and third applicants for the material loss, and to cover the non-pecuniary damage sustained by the first applicant.

8. On 25 February 1998 the Štip Court of Appeal, on appeal by the applicants, quashed the part of the lower court's decision relating to the first applicant's claim for loss of income. It upheld the remainder of that decision.

9. On 25 May 1998 the applicants lodged an appeal on points of law (*pevuzujja*) with the Supreme Court. On 22 May 1999 the first applicant unsuccessfully requested that the case be given priority treatment.

10. On 11 January 2001 the Supreme Court partly allowed the applicants' appeal and increased the award in respect of non-pecuniary damage. The applicants were served with that decision on 23 March 2001.

11. On 17 April 2001 the applicants requested enforcement of the above decisions before the Štip Court of First Instance ("the enforcement court"). They proposed the following means of enforcement: seizure of the defendants' monetary funds or an inventory, valuation and sale of their movable and immovable assets. They also requested the court to prevent Mr B. from selling or encumbering a flat ("the flat") which he allegedly possessed. The enforcement court granted those requests in a decision of 16 May 2001 ("the order"). It appears that the applicants did not pay the court fees in time and the court did not decide upon their request for an injunction in respect of the flat.

12. An on-site examination of the flat was scheduled for 21 March 2002. However, a hearing was held in the court building instead. On that occasion, the applicants requested the court to obtain evidence about the defendants' immovable assets.

13. On 21 June 2002 the applicants requested the court, in the alternative, to order an inventory and public sale of a house ("the house") allegedly owned by Mr B. Their request for enforcement as regards the flat

remained unaffected. The defendants argued that the house had not been constructed and that Mr B. did not have title to the flat.

14. On 19 September 2002 the court inspected the site and established the existence of the house. It further ordered the applicants to provide evidence that Mr B. had title to the house.

15. On 15 November 2002 the applicants requested the continuation of the enforcement proceedings in respect of the flat and the house. The defendants contested that request, stating that they did not have title to the assets in question. Since the flat had been subjected to a charging order (a mortgage) by a bank, the applicants requested that their claim be satisfied after the bank's loan had been returned from the proceeds of the sale. The bank requested that, should the court sell the flat, which was allegedly socially owned, the loan arrangements be settled so that the charging order would be erased from the official records.

16. On 17 June 2003 the applicants requested the enforcement court to expedite the enforcement.

17. At a hearing on 11 July 2003, the applicants submitted a certificate, issued by the local authorities in 1981, authorising Mr B. to construct the house. The defendants disputed that that certificate could serve as proof of possession and stated that the house had been transferred, on the basis of a gift contract, into the possession of Mr B.'s daughter (Mrs B.N.).

18. On 1 September 2003 the applicants requested the enforcement court to prevent Mr B. from selling the house until the enforcement was concluded.

19. On 11 and 12 November 2003 the enforcement court visited the site, but it did not proceed with the enforcement given that the flat was locked. On the latter date, the applicants requested the court to obtain information as to whether the defendants possessed a vehicle.

20. On 26 December 2003 the court again went into the flat and drew up an inventory of movable items.

21. In separate proceedings instituted by the first applicant, on 6 July 2004 the Štip Court of First Instance ruled that the gift contract (see paragraph 17 above) of 28 May 2001 by which Mr B. had transferred possession of the house to Mrs B.N. was devoid of any legal effect up to the amount sufficient to satisfy the first applicant's claims (non-pecuniary damage and trial costs) as established in the substantive proceedings (see paragraphs 7-10 above). It further ordered Mrs B.N. to allow the enforcement in respect of the house that Mr B. had transferred to her on the basis of the gift contract.

22. On 21 April 2005 the Štip Court of Appeal dismissed appeals by Mr B. and Mrs B.N. and upheld the lower court's decision.

23. On 6 September 2005 the enforcement court resumed the proceedings by ordering an on-site examination of the house. The on-site visit took place on 20 September 2005. The house was locked, but the court

ordered the expert to value it. It also issued an injunction preventing the house from being sold.

24. In another set of proceedings, Mrs B.N. and Mr G.N., her husband, requested the Štip Court of First Instance to recognise that they had title to the house. On 5 October 2005 the court allowed that claim and held that the claimants had gained possession of the house as a result of having constructed it with their own assets. On the same date, that decision became final given that Mr B. and Ms M. had waived their right to appeal.

25. On 20 November 2005 the enforcement court refused a request by the defendants for postponement of the enforcement, submitted on account of the civil proceedings described in the preceding paragraph. Referring to the proceedings described in paragraph 21 above, the court held that separate proceedings concerning the same property, but on a different ground, would only delay the enforcement of the order of 16 May 2001.

26. On 16 March 2006 the enforcement court ordered the applicants to propose an alternative means of enforcement since the order could not be enforced in respect of the house given that, according to the final decision of 5 October 2005 (see paragraph 24 above), it was no longer in the defendants' possession.

27. On 14 September 2006 the applicants requested the enforcement court to continue the proceedings concerning the flat. They also requested the court to order Mr B. not to dispose of the flat.

28. On 10 October 2007 the enforcement court called the applicants to propose an alternative means and assets of enforcement under threat of suspension of the proceedings. It stated that the order could not be enforced in respect of the movable assets found in the flat (see paragraph 20 above) since they had been excluded from execution; the house had no longer been in the defendants' possession and the flat, still subjected to a charging order, could not be sold under the Law on socially-owned flats of 2004. The applicants' objections to this decision were unsuccessful.

29. On 15 February 2008 the enforcement court, reiterating its findings stated above, stayed (*zanupa*) the proceedings due to a lack of funds on the defendants' part. On 20 May 2008 the Štip Court of Appeal accepted the applicants' appeal and remitted the case for a renewed consideration. It held that the lower court's findings about the lack of funds had not been sufficiently reasoned and substantiated. It contradicted the fact that the defendants had the title of the flat under a sales contract of 1993. It therefore instructed the enforcement court to reassess the evidence so as to establish whether the enforcement could continue in respect of the flat.

30. In the course of the enforcement proceedings, the defendants proposed enforcement by means of a standing authority for deduction of funds from Mr G.'s monthly salary. The applicants refused that proposal given the high amount of their claim.

## **B. Relevant domestic law**

### *1. Enforcement Proceedings Act (Закон за извршната постапка)*

31. Under section 2 of the Enforcement Proceedings Act (“the Act”), as in force at that time, enforcement proceedings were launched upon the creditor’s request.

32. Section 27 of the Act provided for the following means of enforcing judgment debts: (i) sale of movable assets, (ii) sale of immovable assets, (iii) transfer of a pecuniary claim, (iv) encashment of other proprietary rights, and (v) transfer of funds from an account managed by the Public Payment Bureau.

33. In accordance with section 29 of the Act, the courts were required to enforce judgment debts by the means and in relation to the assets specified in the request for enforcement.

34. Section 141 of the Act provided that enforcement in respect of immovable assets was effected by recording the order in the register, obtaining a valuation of the property, selling it and settling the creditors’ claims from the proceeds of the sale.

35. Section 142(1) of the Act provided that, *inter alia*, in support of a request for a charging order in respect of immovable assets, the creditor was to submit an extract from the public records as evidence that the debtor had title to the assets in question.

## **THE LAW**

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

36. The applicants complained that the length of the civil and enforcement proceedings, taken together, 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**

37. The Government did not raise any objection as to the admissibility of this complaint.

38. The Court notes that this complaint 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 parties' submissions*

39. The Government submitted that the substantive and enforcement proceedings should be considered as two separate sets. As to the proceedings on the merits, they argued that the case had raised complex issues of fact which had required expert examinations. They further maintained that the courts had considered the applicants' case in a timely manner. It was only the proceedings before the Supreme Court which had lasted longer, but that had been due to the complexity of the case. Finally, they stated that some delays had been attributable to the applicants on account of their requests for their initial claim to be increased and for an alternative expert examination to be conducted.

40. As regards the enforcement proceedings, the Government submitted that the lack of assets on the part of the defendants had affected the enforcement of the applicants' claim. A charging order (*xunomeka*) had been made in respect of the flat and the defendants had not had title to the house (see paragraph 24 above). It remained up to the applicants, as creditors, to specify alternative means of enforcement concerning assets in the defendants' possession.

41. They further maintained that the applicants had contributed to the length of the enforcement proceedings by having refused to accept the means of enforcement proposed by the defendants (see paragraph 24 above). Their failure to pay the court fees in time had also added to the length of the proceedings (see paragraph 11 above).

42. Finally, they concluded that the national courts had conducted those proceedings with due diligence and had scheduled on-site examinations regularly. The proceedings remained open with the purpose of enabling the applicants to enforce their claim once funds became available. They also stated that a new Enforcement Act of 2005 provided for measures that would remedy the systematic flaws and delays produced by the Act.

43. The applicants contested the Government's arguments concerning the proceedings on the merits and denied that any delays had been attributable to them.

44. They further submitted that the enforcement proceedings were of an urgent nature. Furthermore, the subject-matter of the case required special diligence on the part of the courts. They also maintained that the flat had been entered in the public records in the name of the defendants, who had

meanwhile repaid the loan to the bank. In addition, the enforcement court should have sold the flat irrespective of the loan given that the bank had not opposed its sale (see paragraph 15 above). Concerning the Government's argument about their failure to pay the court fees, they maintained that they had lacked funds and that accordingly, they should have been exempted from paying them. The means of enforcement proposed by the defendants (see paragraph 24 above) would not have been efficient given that Mr G. did not have any earnings as insolvency proceedings had been opened in 2005 in respect of his employer.

## 2. The Court's assessment

45. The Court notes that the applicants complained that the reasonable-time requirement had been violated concerning both sets of proceedings, civil and enforcement, taken as a whole. In that connection, it refers to its case law to the effect that enforcement proceedings may be taken into account together with the prior civil suit when assessing compliance with the reasonable-time requirement contained in Article 6 § 1 of the Convention (see, for example, *Di Pede v. Italy* and *Zappia v. Italy*, judgments of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1383-1384, §§ 20-24, and pp. 1410-1411, §§ 16-20, respectively).

46. As to the present case, the Court notes that the proceedings started on 6 February 1996, when the applicants brought their claim before the then Štip Municipal 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).

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 *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 a year and two months for one level of jurisdiction. The relevant period has not ended yet as the enforcement proceedings are still pending.

48. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see *Markoski v. the former Yugoslav Republic of Macedonia*, no. 22928/03, § 32, 2 November 2006).

49. The Court considers that the proceedings were not of a particularly complex nature. Some complexity arose from the need to request expert reports. However, the principal responsibility for a delay caused by expert

examinations lies ultimately with the State (see *Stojanov v. the former Yugoslav Republic of Macedonia*, no. 34215/02, § 60, 31 May 2007).

50. The Court cannot discern any delays attributable to the applicants, apart from their failure to pay the court fees in time (see paragraphs 11, 40 and 43 above) and to propose alternative means of enforcement as requested by the enforcement court (see paragraphs 26 and 27 above).

51. As to the substantive proceedings, the Court notes that they ended on 23 March 2001, when the Supreme Court's decision of 11 January 2001 was served on the applicants. It considers that, while the first- and second-instance courts decided the applicants' case with reasonable expedition, the proceedings before the Supreme Court were unjustifiably lengthy. The Court observes that it took nearly two years and seven months for that court to decide upon the applicants' appeal on points of law. During that time, the Supreme Court only reviewed the case on points of law and did not obtain any evidence or take any procedural steps (see *Mihajloski v. the former Yugoslav Republic of Macedonia*, no. 44221/02, § 38, 31 May 2007). That period cannot be regarded as reasonable given that particular diligence is necessary in disputes concerning determination of compensation in personal-injury cases (see *Dika v. the former Yugoslav Republic of Macedonia*, no. 13270/02, § 59, 31 May 2007).

52. As regards the enforcement proceedings, the Court notes that they started on 17 April 2001 and that the final judgment has not yet been enforced after over seven years.

53. The Court considers that the enforcement court did not display the requisite vigilance when conducting the enforcement proceedings. Five on-site examinations of the defendants' immovable assets were ineffective (see paragraphs 12, 14, 19, 20 and 23 above). It also appears that there were some periods of total inactivity on the part of the court: eight months between 15 November 2002 and 11 July 2003 (see paragraphs 15 and 17 above) and five months between 5 October 2005 and 16 March 2006 (see paragraphs 24 and 26 above). It is further noteworthy that the enforcement proceedings were dormant for nearly two years (see paragraphs 20 and 23 above). It appears that the enforcement court awaited the outcome of the substantive proceedings in which the first applicant had successfully challenged the validity of the gift contract.

54. In that connection, the Court reiterates that it might be reasonable for national courts to await under certain circumstances the outcome of parallel proceedings as a measure of procedural efficiency. That decision must be reasonable having regard to the special circumstances of the case (see, *mutatis mutandis*, *König v. Germany*, judgment of 28 June 1978, Series A no. 27, § 110; *Boddaert v. Belgium*, judgment of 12 October 1992, Series A no. 235-D, § 39; and *Pafitis and Others v. Greece*, judgment of 26 February 1998, *Reports* 1998-I, § 97). The Court observes that, in the present case, the enforcement was not formally stayed or suspended pending the outcome

of those proceedings. Finally, it further took over a year for the enforcement court to call the applicants to come forward with another means and assets of enforcement (see paragraph 28 above).

55. In addition, the Government did not present any evidence to support their argument that the applicants' claim remained unenforced owing to a lack of funds on the defendants' part. The Court of Appeal's decision of 20 May 2008 (see paragraph 29 above) confirms that findings. The applicants' refusal to accept the charging order in relation to Mr G.'s salary as a means of enforcement cannot be held against them given Mr G.'s lack of income (see paragraph 43 above).

56. 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.

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

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

58. The applicants further complained under Article 1 of Protocol No.1 that, because of the length of the enforcement proceedings, they had not been able to recover their claim. They also complained about the enforcement court's failure to decide upon their request to order the defendants not to dispose of the flat.

59. The Court notes that the enforcement proceedings were brought against private individuals. In that connection, it reiterates that the State's responsibility for enforcement of a judgment against a private party extends no further than the involvement of State bodies in the enforcement procedures (see *Shestakov v. Russia* (dec.), no. 48757/99, 18 June 2002, and *Kravchuk v. Russia* (dec.), no. 72749/01, 1 February 2005).

60. For the reasons detailed in paragraph 55 above, the Court considers that the non-enforcement by the national courts of the applicants' claim in the present case does not amount to an interference with their right to the peaceful enjoyment of possessions within the meaning of Article 1 of Protocol No. 1. In addition, the enforcement court's failure to decide upon the applicants' application for an injunction did not cause irreversible prejudice to their interests as no evidence was produced that the defendants had disposed of that flat, which might to a substantial extent have drained the final outcome of the main proceedings of its significance.

61. It follows that this complaint 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

62. 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**

63. The applicants claimed 200,000 Macedonian denars plus interest in respect of pecuniary damage and 50,000 euros (EUR) for non-pecuniary damage concerning their complaint under Article 6 of the Convention. As regards their complaints under Article 1 of Protocol No. 1, they also sought reimbursement of the amounts awarded in the substantive proceedings.

64. The Government contested those claims as unsubstantiated. They further maintained that there was no causal link between the pecuniary damage claimed and the alleged violation.

65. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore dismisses this claim. Given its findings concerning the applicants' complaints under Article 1 of Protocol No. 1, it also dismisses the claim under that head. On the other hand, the Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards them EUR 2, 000 under that head.

**B. Costs and expenses**

66. The applicants also claimed EUR 5,000 for costs and expenses, without specifying whether they had been incurred before the domestic courts or before the Court. They did not provide any supporting documents.

67. The Government contested the claim as unsubstantiated.

68. 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 v. the former Yugoslav Republic of Macedonia*, no. 44353/02, § 62, 15 June 2006; *Arvelakis v. Greece*, no. 41354/98, § 34, 12 April 2001; and *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”.

69. 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 (see *Parizov v. the former Yugoslav Republic of Macedonia*, no. 14258/03, § 72, 7 February 2008).

**C. Default interest**

70. 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 applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicants, 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;
  - (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 25 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek  
Registrar

Peer Lorenzen  
President