



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

FIFTH SECTION

**CASE OF KRSTO NIKOLOV v. THE FORMER YUGOSLAV
REPUBLIC OF MACEDONIA**

(Application no. 13904/02)

JUDGMENT

STRASBOURG

23 October 2008

FINAL

23/01/2009

This judgment may be subject to editorial revision.

In the case of Krsto Nikolov 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,

Mark Villiger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 30 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 13904/02) 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 Krsto Nikolov (“the applicant”), who lives in Štip, on 4 October 2001.

2. The applicant was 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 19 March 2004 and 13 February 2006, respectively, the Court decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect 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. By a judgment of the Štip Municipal Court (“the first-instance court”) of 14 June 1989 (“the 1989 judgment”), confirmed by the Štip Court of Appeal on 30 October 1989, the applicant and his neighbour (“the defendant”) were ordered to build a concrete supporting wall between their adjacent plots of land to protect the applicant’s house from damage. The

civil courts found that the applicant should bear 31.4% of the costs, and the defendant 68.6%. The defendant was ordered to reimburse the applicant for the trial costs. Finally, an injunction was issued authorising the applicant to build the wall at the defendant's expense if the latter had failed to do so as required. The injunction was valid until the 1989 judgment became final.

5. On 12 July 1989 the first-instance court accepted the applicant's request for enforcement of the 1989 judgment by way of seizure of the defendant's immovable and immovable assets. The court also ordered the defendant to deposit his part of the costs for the construction of the wall (court deposit).

6. On 10 September 1990 the first-instance court decided that offers should be collected for construction of the wall. On 1 October 1991 company B. ("the construction company") was chosen to build the wall. On 22 October 1991 an on-site inspection was carried out.

7. On 30 October 1991 the first-instance court ordered the parties to deposit with it money as established by the 1989 judgment. It further ordered the defendant to deposit an amount to secure the applicant's trial and enforcement costs. It was also stated that in case of non-compliance, the payment would be enforced by an inventory and public sale of assets. The applicant deposited his part not with the court, as ordered, but with the construction company.

8. Four hearings fixed between 29 May 1992 and 29 April 1993 were attended by the applicant. As the defendant failed to deposit the amount required, the enforcement proceedings continued with the drawing up an inventory of his belongings. Despite the court's orders of 20 July and 13 September 1993 requesting the defendant to surrender certain movable assets to bailiffs, it appears that no items were seized or sold by the enforcement authorities. In the meantime, the defendant had constructed a wall. On 30 June 1997 the court made a further on-site inspection to examine the wall. At a hearing of 23 September 1998, the applicant requested the construction company to use his deposit to complete the wall so as to comply with the 1989 judgment.

9. The applicant attended the four hearings which were scheduled between 30 April 1999 and 7 June 2001. On 7 December 2001 the first-instance court ordered the applicant to pay the costs of an on-site examination under threat of suspension of the proceedings. The applicant has submitted to the Court a payment slip of 26 December 2001.

10. On 27 February 2003 the first-instance court fixed an on-site examination to be carried out on 25 March 2003 at the defendant's home with a view to seizing the latter's movable assets. The court also requested the presence of two policemen in case assistance was needed. According to the minutes of the on-site examination, the first-instance court examined the wall again.

11. A hearing listed on 3 October 2003 was adjourned because of the absence of the sitting judge.

12. At a hearing of 16 March 2004, the first-instance court scheduled another on-site examination of the wall constructed by the defendant. The inspection took place on 13 April 2004. The next day, the applicant paid the expert fees.

13. On 15 May 2004 the first-instance court found that the wall constructed by the defendant in 1993 had not met the criteria established by the 1989 judgment. It further determined that the wall, as constructed, corresponded to 53.64% of the value of the wall as the court had ordered, and that the defendant should cover 14.96% of the expenses for the improvement works. With reference to the 1989 judgment, it ordered the applicant to cover 31.4% of the expenses for the improvement works. It established, *inter alia*, that the applicant had not deposited, as ordered, his part of the expenses with the court, but with the construction company, which had not released him from the obligation established by the 1989 judgment. It further stated that the applicant, after having realised that the defendant had constructed part of the wall, should have withdrawn his deposit from the construction company. Finally, it concluded that the applicant should have deposited the money with the court and that he should have required the court to order the construction company to build the wall. The part of expenses to be borne by the defendant was to be secured by an inventory and sale of the latter's belongings. On 14 December 2004 the Štip Court of Appeal confirmed that decision.

14. On 5 July 2007 the first-instance court ordered the applicant to deposit money equivalent to 31.4% of the cost of improving the wall under threat of suspension of the proceedings. It appears that no such order was issued against the defendant given the latter's statement that he would deposit the remaining part after the applicant had done so. On 23 July 2007 the applicant objected to that order arguing that he had already made his deposit with the construction company on the basis of the court decision of 30 October 1991.

15. No further information has been provided as regards the subsequent enforcement proceedings.

THE LAW

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

16. The applicant complained that the length of the enforcement proceedings had been incompatible with the "reasonable time" requirement

laid down in Article 6 § 1 of the Convention. After that complaint has been communicated to the respondent Government, the applicant also complained that the protracted length of the enforcement proceedings had denied him the right of access to a court. Article 6 § 1 of the Convention, in so far as relevant, 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

17. The Government did not raise any objection as to the admissibility of the “reasonable time” complaint. The Court notes that the applicant’s complaint concerning his right of access to a court is in fact restatement of his complaint about the length of the enforcement proceedings and will be considered accordingly. In that context, it finds that the “reasonable time” 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

18. The Government admitted that the enforcement proceedings had been too long, but considered that they had been conducted in accordance with the law, and that the length had not been due to failures to act on the part of State institutions. The parties had been in dispute about the proportion of their financial contribution for the construction of the wall. They further stated that the applicant had contributed to the length of the proceedings. In that latter context, they maintained that he had failed to pay the costs for the on-site examination of the wall constructed by the defendant, which fact had led to the suspension of the proceedings for nearly a year and three months (see paragraphs 9 and 10, above).

19. The applicant submitted that the domestic courts had not conducted the enforcement proceedings in an efficient and diligent manner. Despite the seizure orders of 1993, no movable assets had ever been confiscated from the defendant. He further contested the Government’s argument that some delays were attributable to him and stated that the proceedings had never been suspended. On the contrary, his case had been archived for some time as the courts had wrongly regarded it as finished. In addition, the enforcement proceedings aimed at execution of a final court decision – their purpose was not, as argued by the Government, to settle any dispute

between the parties. Finally, he maintained that six different judges sat in his case.

2. The Court's consideration

20. The Court notes that, in its 1989 judgment, the first-instance court ordered the parties jointly to build a supporting wall and specified the financial contribution to be made by each of them. The enforcement proceedings which the applicant instituted on 12 July 1989 appear to be still pending. The impugned situation has thus already been continuing for nearly nineteen years, of which over eleven years fall within the Court's jurisdiction *ratione temporis* (since the ratification of the Convention by the respondent State on 10 April 1997) for two court levels. The Court further observes that, in order to determine the reasonableness of the period in question, regard must also be had to the state of the case on the date of ratification (see, *mutatis mutandis*, *Styranowski v. Poland*, judgment of 30 October 1998, *Reports* 1998-VIII) and notes that on 10 April 1997, the enforcement proceedings complained of had already been pending for nearly seven years and nine months. During this period, the first-instance court selected the construction company, went on-site once and drew up an inventory of the defendants movable assets.

21. The Court reiterates that, according to its established case-law, Article 6 § 1 of the Convention, secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6. It further recalls that Article 6 § 1 of the Convention requires that all stages of legal proceedings for the "determination of ... civil rights and obligations", not excluding stages subsequent to judgment on the merits, be resolved within a reasonable time. 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 *Miltenovic v. the former Yugoslav Republic of Macedonia* (dec.), no. 26615/02, 19 June 2006).

22. In that connection, 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, also concerning enforcement proceedings, *Atanasovic and Others v. the former Yugoslav Republic of*

Macedonia, no. 13886/02, § 33, 22 December 2005, and the references cited therein).

23. The Court does not under-estimate the difficulties in enforcing civil judgments, particularly in the context of boundary disputes. Further, the State's responsibility for enforcement of a private judgment extends no further than the involvement of State bodies, including the domestic courts, in the enforcement proceedings (see *Fuklev v. Ukraine*, no. 71186/01, § 67, 7 June 2005).

24. Turning to the present case, the Court considers that the Government did not present any evidence that the enforcement of the 1989 judgment was complex. Nor did they substantiate their allegations that the applicant had contributed to the length of the proceedings. In particular, the Court notes that the applicant attended all scheduled hearings and made the advance payment of the enforcement costs as required (see paragraph 9 above). As to the Government's assertion that the proceedings were suspended due to the applicant's fault, it is true that on 7 December 2001 the first-instance court instructed the applicant that if he did not pay the costs of an on-site examination, the proceedings would be suspended. However, the applicant has submitted a payment slip of 26 December 2001, and the Court's attention has not been drawn to any court decision by which the proceedings were suspended. Accordingly, there is no indication that the proceedings were suspended, or that the applicant was responsible for any such suspension.

25. Significant delays were attributable to the State which stemmed primarily from the long intervals between the scheduled hearings. For example, it took over a year and two months for the court to summon the parties after the applicant had paid the costs for an on-site examination (see paragraphs 9 and 10 above); six months lapsed between the on-site examination of 25 March and the hearing dated 3 October 2003. In addition, it appears that the proceedings lay dormant for nearly two years and seven months after the Court of Appeal's decision of 14 December 2004 (see paragraphs 13 and 14 above). Three on-site inspections (see paragraphs 8, 10 and 12 above) carried out during the period under consideration also added much to the length of the proceedings.

26. The Court reiterates that the State has an obligation to organise a system for the enforcement of judgments that is effective both in law and in practice and ensures their enforcement without undue delay (see *Mužević v. Croatia*, no. 39299/02, § 84, 16 November 2006 and *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005).

27. Having examined all the material submitted to it, the Court considers that in the instant case the length of the enforcement proceedings was excessive and failed to meet the "reasonable time" requirement of Article 6 § 1 of the Convention.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

29. In the reply to the Government's observations and by the letter submitted on 27 January 2005, the applicant also complained that in the former Yugoslav Republic of Macedonia there was no court to which application could be made to complain of the excessive length of proceedings. He relied on Article 13 of the Convention, which reads as following:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

30. The Government did not comment on the matter.

31. The Court considers that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

32. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It further notes that the Government have already acknowledged the lack of an effective remedy in respect of the length of proceedings under the rules applicable at that time (see *Kostovska v. the former Yugoslav Republic of Macedonia*, cited above § § 48-53; *Atanasovic and Others v. the former Yugoslav Republic of Macedonia*, cited above, § § 42-47). It therefore, sees no reason to reach a different conclusion in the present case.

33. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

34. In the reply to the Government's observations and by the subsequent letter of 27 January 2005, the applicant raised the following complaints under Article 6 § 1 of the Convention: that the courts had decided his case arbitrarily; that the Court of Appeal had not provided sufficient reasons for its decision; and that the judges had lacked impartiality.

35. He also invoked Article 1 of Protocol No. 1 alleging that the deposit he had paid to the construction company in 1991 and the trial costs awarded by the 1989 judgment had devaluated over time which signified a violation of his right to peaceful enjoyment of his possessions. He also complained under this head that the costs of enforcement had increased due to the unreasonable length of the proceedings.

36. The Court has examined the remainder of the 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.

37. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant claimed 1,639,579 Macedonian denars (MKD) plus interest to be calculated as of 23 August 2004 in respect of pecuniary damage. This figure concerned the amounts described in paragraph 35 above, including the currency denomination and devaluation. An expert report was submitted in that respect. He further claimed 50,000 euros (EUR) in respect of non-pecuniary damage for the emotional stress, anxiety and uncertainty suffered as a result of the length of the impugned proceedings.

40. The Government contested these claims as unsubstantiated. They further maintained that there was no causal link between the pecuniary damage claimed and the alleged violation. They invited the Court to consider that a possible finding of a violation would constitute in itself sufficient compensation for any damage in the present case. As an alternative, they asked the Court to assess the amount of just satisfaction to be awarded on the basis of its case-law and the economic situation of the State.

41. The Court, as the Government, does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 5,300 in respect of non-pecuniary damage.

B. Costs and expenses

42. The applicant claimed MKD 42,490 for the costs and expenses incurred in the enforcement proceedings. He also claimed EUR 5,000 under

this head, without specifying whether this sum of money was incurred before the domestic courts or before this Court. As to this latter claim, he did not provide any supporting document.

43. The Government contested the claim as unsubstantiated.

44. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum (see *Kostovska*, cited above, § 62; *Arvelakis v. Greece*, no. 41354/98, § 34, 12 April 2001; *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). As to the costs and expenses incurred in the proceedings before the domestic courts, the Court notes that such costs were not incurred in order to seek through the domestic legal order prevention and redress of the alleged violation complained of before the Court (see *Milošević v. the former Yugoslav Republic of Macedonia*, no. 15056/02, § 34, 20 April 2006). It further considers that the applicant can seek reimbursement of these costs domestically.

45. As to the remaining claim under this head, 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". The Court notes that the applicant did not submit any supporting documents or particulars to substantiate his claim.

46. Accordingly, the Court does not award any sum under this head.

C. Default interest

47. 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 complaints concerning the excessive length of the proceedings and the lack of remedies in that respect 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* that there has been a violation of Article 13 of the Convention;
4. *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 5,300 (five thousand and three hundred euros), plus any tax that may be chargeable, 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;

5. Dismisses the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President