



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

FIFTH SECTION

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

(Application no. 29029/03)

JUDGMENT

STRASBOURG

6 November 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Velova v. the former Yugoslav Republic of Macedonia,
The European Court of Human Rights (Fifth Section), sitting as a
Chamber composed of:

Rait Maruste, *President*,
Karel Jungwiert,
Volodymyr Butkevych,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges*,
and Claudia Westerdiek, *Section Registrar*,
Having deliberated in private on 7 October 2008,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 29029/03) 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, Ms Nikolina Velova (“the applicant”), on 1 September 2003.

2. The Macedonian Government (“the Government”) were represented by their Agent, Mrs R. Lazareska Gerovska.

3. On 3 July 2006 the President of the Fifth Section decided to communicate the complaint concerning the length of the proceedings to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

4. The applicant was born in 1951 and lives in Kočani.

5. On 13 July 1987 the applicant’s parents brought a civil action before the Kočani Municipal Court (*Општински Суд Кочани*) claiming revocation of a care agreement (“the agreement”) (*договор за доживотна издршка*) concluded on 25 December 1981 between them and their son, Mr T.K. Under the agreement, Mr T.K. was recognised as holder of the title to a property specified by the agreement in return for caring for his parents. They claimed that after their son’s death in 1982, the defendants, Mr T.K.’s wife and her children no longer lived with them and thus had ceased to fulfil the duties arising from the agreement.

6. On 30 September 1987 the Kočani Municipal Court accepted the claim and revoked the agreement. After hearing the parties to the proceedings and several witnesses, the court found that the personal relationships between the parties had deteriorated over time and that the defendants had consequently failed to care for the applicant's parents.

7. On 12 February 1988 the then Štip District Court (*Окружен Суд во Штип*) accepted the defendants' appeal of 29 October 1987. It held that the agreement had not stated that they should live under the same roof and that the separation of the living arrangements could not be considered a sufficient ground for its revocation.

8. On an unspecified date, the applicant took over the case after her parents died. On 27 June 1991 the Kočani Municipal Court dismissed the applicant's claim. The court heard the parties, examined eighteen witnesses and admitted a considerable amount of evidence.

9. On 11 November 1992 the Štip District Court accepted the applicant's appeal and remitted the case for fresh consideration.

10. On 9 February 1993 the Kočani Municipal Court dismissed the applicant's claim as ill-founded. This decision was set aside by the Štip District Court on 27 April 1994.

11. On 11 April 1996 the Kočani Municipal Court, sitting in a different composition, dismissed the applicant's claim again. On 29 October 1996 the Štip Court of Appeal upheld an appeal by the applicant of 23 May 1996 and quashed the lower court's decision. It found, *inter alia*, that the case had been decided by a single judge instead of by a chamber of three judges as required by law.

12. At the only hearing held on 9 July 1997, the Kočani Court of First Instance granted the applicant's request and revoked the agreement. This decision was partly confirmed by the Štip Court of Appeal on 24 December 1997. This latter court remitted the decision on the trial costs for fresh consideration.

13. On 23 April 1998 the Kočani Court of First Instance rejected an appeal by the defendants on points of law (*pevuzuja*) as out of time. On 12 September 1998 the Štip Court of Appeal remitted the case for re-examination. On 3 November 1999 the Supreme Court upheld the defendants' appeal on points of law and quashed the lower courts' decisions described in the preceding paragraph. It found that the first-instance court, sitting in different composition, had erred in law since it had relied on already established evidence without having the parties' consent to do so.

14. After two hearings, on 13 July 2000 the Kočani Court of First Instance upheld the applicant's claim and revoked the agreement on the same grounds as in its decision of 9 July 1997. On 13 November 2000 the Štip Court of Appeal ruled in the defendants' favour and set aside this decision for the reasons described in the preceding paragraph.

15. On 15 October 2001 the Kočani Court of First Instance granted the applicant's request and revoked the agreement. It examined the parties and eleven witnesses and admitted other evidence. None of the three hearings scheduled was adjourned at the applicant's request.

16. On 11 March 2003 the Štip Court of Appeal dismissed an appeal by the defendants dated 30 November 2001 and confirmed the lower court's decision on the merits. It overturned (*преиначува*) it in respect of the trial costs. On 24 April 2003 the defendants lodged an appeal on points of law with the Supreme Court, which was dismissed as inadmissible on 12 May 2004.

17. Meanwhile, on 12 May 2003 the Kočani Court of First Instance had granted the applicant's request for enforcement of the above decisions in respect of the trial costs. On 23 May 2003 the court suspended the enforcement pending the outcome of the proceedings before the Supreme Court. On 30 November 2004 the enforcement proceedings ended.

18. On 6 December 2005 the Kočani Court of First Instance, in separate proceedings, declared the applicant a successor in title (*законски наследник*) to her late father and granted her title to part of his property.

19. During the proceedings on the merits, the composition of the first-instance court sitting in the applicant's case changed four times.

THE LAW

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

20. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

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

22. 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*

23. The Government submitted that the period which elapsed before the entry into force of the Convention in respect of the former Yugoslav Republic of Macedonia should not be taken into consideration. They stated that there had been complex circumstances related to the case, including the death of the applicant's parents, the necessity of hearing evidence from witnesses and on-site examinations in order to establish the truth.

24. They further stated that the parties had contributed to the length of the proceedings by having challenged the first-instance court's decisions.

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

26. The applicant contested the Government's arguments. She argued that the State had borne full responsibility for the excessive length of the proceedings. The remittal orders were unnecessary, since the final first-instance court's decision of 2001 had been the same as the decision given in 1987.

2. *The Court's consideration*

27. The Court notes that the proceedings commenced on 13 July 1987 when the applicant's parents requested the court to revoke the agreement. Following her parents' death, the applicant decided to continue these proceedings as heir and could in principle complain about the entire length of the proceedings (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 113, ECHR 2006).

28. However, as noted by the Government, the period which falls within the Court's jurisdiction began 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). Nevertheless, 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 nearly nine years and nine months for two court levels.

29. The Court observes that the proceedings on the merits were concluded on 11 March 2003 when the Court of Appeal finally dismissed the defendants' appeal. The last decision given in this case was the Supreme Court's decision of 12 May 2004. The Court considers that the time elapsed for the proceedings before the Supreme Court, even though they did not result in a decision on the merits, should be taken into consideration since

those proceedings were instituted on the defendant's request and they affected the applicant's application for enforcement of the trial costs (see paragraph 17 above). The proceedings therefore lasted nearly seventeen years, of which over seven years and one month fall within the Court's temporal jurisdiction for three levels of jurisdiction.

30. 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).

31. The Court considers that the case was not of a particularly complex nature. The examination of a considerable number of witnesses added to its complexity, but it cannot, in itself, explain the length of the proceedings.

32. It further observes that there were no delays attributable to the applicant. The fact that she made use of the remedies available under domestic law cannot be considered as contributing to the length of the proceedings (see *Arsov v. the former Yugoslav Republic of Macedonia*, no. 44208/02, § 42, 19 October 2006).

33. The Court considers that the protracted length of the proceedings was due to the repeated re-examination of the case. The case was reconsidered on eight occasions, of which three times during the period which falls under the Court's temporal jurisdiction. Eighteen decisions were given during the proceedings, of which fifteen were on the merits. 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 case-law 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 discloses 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).

34. In this context, 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*, § 41, cited above).

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

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

37. The applicant complained that the District Court's decisions of 27 April 1994 and 29 October 1996 (see paragraphs above) had been given in private despite her request for a public hearing. She further alleged that the judges sitting in her case were biased, as Mr T.P., the former District Court's judge sitting in her case in November 1992, had subsequently represented the defendants. In addition, family members of Mr. T.P. were employed in the Štip courts, a fact that had affected the latter's impartiality. The applicant also complained that the courts had reached different decisions during the proceedings and that the enforcement of the Court of Appeal's decision of 11 March 2003 had been unlawfully suspended.

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

39. 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.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. In respect of the pecuniary damage, the applicant claimed the following amounts: 72,278 euros (EUR) for loss of income for having been prevented from using the agricultural land; EUR 84,442 for interest payable until 6 December 2005 (see paragraph 18 above); EUR 8,518 for loss of the agricultural pension she would have been entitled to as an individual farmer had she been able to use the land. The applicant also claimed EUR 170,000 in respect of non-pecuniary damage for the emotional stress and frustration suffered. She further claimed EUR 220,000 for the anguish suffered by her husband and sons.

42. The Government contested these claims as unsubstantiated. They argued that there was no causal link between the alleged violation and the pecuniary damage claimed. By making that claim, the applicant was in fact asking the Court to decide her case as brought before the national courts.

43. The Court considers that the applicant did not provide any evidence and that accordingly, it is speculative to determine 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 her EUR 1,200 under that head. Finally, the Court rejects the applicant's claim for non-pecuniary damage allegedly suffered by her husband and sons since they were not a party either of the domestic proceedings or those before it.

B. Costs and expenses

44. The applicant also claimed EUR 1,062 for the legal fees of a lawyer who was allegedly involved in the preparation of her application and other submissions. In addition, she claimed EUR 1,430 for the translation of the documents submitted to the Court. She produced a fee note for the legal fees and a list of expenditure for the translation costs.

45. The Government contested these claims as excessive and unsubstantiated.

46. 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 are reasonable as to quantum (see *Gjozev v. the former Yugoslav Republic of Macedonia*, no. 14260/03, § 63, 19 June 2008). The Court observes that the applicant did not appoint a lawyer to represent her in the proceedings before it. There is, accordingly, no evidence in support of her allegations that a lawyer was actually involved in her case. The Court therefore rejects her claim in respect of the legal fees claimed. As to the translation costs claimed, the Court notes that there is no documentary evidence that those costs were actually incurred. She also failed to submit a proof of payment. The Court therefore makes no award 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 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 1,200 (one thousand and two 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Rait Maruste
President