



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

FIFTH SECTION

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

(Application no. 16328/03)

JUDGMENT

STRASBOURG

6 November 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Dimitrieva v. the former Yugoslav Republic of Macedonia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Rait Maruste, *President*,
Volodymyr Butkevych,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *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. 16328/03) 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 Natka Dimitrieva (“the applicant”), on 13 May 2003.

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

3. On 7 May 2007 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1958 and lives in Štip.

5. The applicant worked in Stopanska Banka A.D. Skopje (“the Bank”). On 10 March 1997 she was dismissed under, *inter alia*, section 19-a of the Restructuring Act of some of the banks in the Republic of Macedonia (“the Restructuring Act”). A redundancy allowance (*испратнина*) was paid to her.

6. On 22 April 1997 the applicant challenged her dismissal before the Štip Court of First Instance (“the first-instance court”) alleging non-compliance with the procedural requirements of the Labour Act (“Act”) (*Закон за работните односи*). She further claimed that section 19-a of the Restructuring Act had been discriminatory and accordingly, unconstitutional.

7. None of the five hearings listed before the first-instance court was adjourned at the applicant’s request. During the proceedings, the applicant specified her claim on three occasions. On 27 March 1998 the first-instance court dismissed the applicant’s claim, finding that the Restructuring Act, as the *lex specialis*, had suspended the application of the Labour Act. It further stated that an appeal against that decision could be lodged within eight days of its service on the party concerned.

8. On 2 June 1998 the applicant appealed (her notice of appeal ran to twenty-five pages). She requested, *inter alia*, the Court of Appeal to hold a public hearing for the purpose of providing her representative with an opportunity to elucidate the grounds of the appeal.

9. Following private deliberations held on 17 September 1999, the Štip Court of Appeal dismissed the applicant’s appeal and confirmed the lower court’s decision. It reiterated that the Restructuring Act had indeed been *lex specialis* and that section 19-a, as applied in her case, had suspended the application of sections 127 and 129 of the Act. It further maintained that the eight-day time-limit for submission of the appeal had been in compliance with the Civil Proceedings Act, valid at that time. The decision was served on the applicant on 12 October 1999.

10. On 11 November 1999 the first-instance court received a detailed appeal by the applicant on points of law.

11. On 19 September 2002 the Supreme Court dismissed the applicant’s appeal on points of law, endorsing the reasons given by the lower courts. It further held that the Court of Appeal had provided sufficient reasons for dismissing her arguments concerning the time-limit for submission of the appeal. It also dismissed her arguments about the temporal validity of the Restructuring Act. The applicant was served with the decision on 14 November 2002.

12. On 14 January 2003 the applicant lodged with the Constitutional Court a request for the protection of human rights and freedoms (*барање за заштита на слободите и правата на човекот и граѓанинот*) (“the constitutional complaint”) alleging discrimination. She claimed that the Restructuring Act had been more restrictive for her, as an employee of the Bank, and that she had been put in a disadvantageous position compared to employees of other employers. Following the Constitutional Court’s request, on 27 January 2003 she clarified her application: she claimed to be a victim of the application of section 19-a of the Restructuring Act which

had removed the discharge notice (*отказен рок*) and the criteria specified in the Act.

13. On 9 July 2003 the Constitutional Court dismissed the applicant's constitutional complaint, finding no discrimination: it stated, *inter alia*, that the Restructuring Act, as the *lex specialis*, had suspended the application of the Act. It also referred to its earlier decision of 23 October 1996 by which it had confirmed the constitutionality of section 19-a of the Restructuring Act. It further maintained that it did not provide supervisory review (*институционален надзор*) of the relevant decisions. On 23 July 2003 the decision was published in the Official Gazette.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. The Constitution

14. Article 32 § 5 of the Constitution provides that the rights of employees and their positions are regulated by statute and collective agreements.

2. Restructuring Act of some of the banks in the Republic of Macedonia (Закон за санација и реконструирање на дел од банките во Република Македонија)

15. Section 3 of the Restructuring Act provided that it concerned the Bank.

16. Section 19-a of the Restructuring Act provided that sections 127 § 1 and 129 of the Labour Act would not apply to the Bank's employees dismissed as redundant.

3. Labour Act (Закон за работните односи), as in force at the material time

17. Section 127 § 1 required employers to give one month's discharge notice to individual employees when dismissed as redundant.

18. Section 129 provided, *inter alia*, that the number and posts of employees to be made redundant would be determined on the basis of the criteria established by the collective agreements.

4. Decisions of the Supreme Court

19. The applicant submitted several decisions of the Supreme Court concerning same legal issues:

(a) *Supreme Court decision of 1 April 1999* (Рев.бп.531/98)

(b) *Supreme Court decision of 5 July 2001* (Рев.бп.67/99)

(c) *Supreme Court decision of 6 September 2001* (Рев.бп.366/01)

In the above cases the Supreme Court dismissed appeals on points of law lodged by the Bank's employees against courts' decisions confirming their dismissal. The Supreme Court reiterated that the Restructuring Act, as the *lex specialis*, had a specific aim and that, in relation to the Bank's employees, it had suspended some of the procedural requirements provided in the Act.

5. The Constitutional Court's decision confirming the constitutionality of section 19-a of the Restructuring Act

20. On 23 October 1996 the Constitutional Court decided not to launch proceedings for constitutional review (*не поведува постапка за оценување на уставноста*) of section 19-a of the Restructuring Act. It held that that provision had been based on Article 32 § 5 of the Constitution and that it had been adopted in a specific context concerning the Bank's restructuring. It concluded that the specific terms and criteria for dismissal of the Bank's employees as redundant could not be regarded as discriminatory compared to employees of other employers.

6. Civil Proceedings Act (Закон за парничната постапка)

21. Section 340 § 1 of the Civil Proceedings Act provided that there would be a substantial infringement of the civil procedure if the court had not applied or had wrongly applied a statutory provision, a circumstance which influenced or might have influenced the adoption of a lawful and just decision.

22. Section 348 provided that as a rule the second-instance court decided without a public hearing. A public hearing would be held if the decision-making panel of the second-instance court considered it necessary to rehear evidence which had already been taken in order to establish the facts correctly.

23. Section 408 provided, *inter alia*, that the court should take into consideration the necessity of urgent settlement of employment disputes.

24. Section 410 provided for an eight-day time-limit for lodging an appeal in employment disputes.

THE LAW

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

25. The applicant complained that the length of the proceedings before the courts of general jurisdiction 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

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

27. 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

28. The Government submitted that the case had been complex. The fact that it concerned the applicant's dismissal, as a result of the Bank's restructuring, contributed to that complexity.

29. They further stated that the applicant's submissions specifying his initial claim had also contributed to the length of the proceedings.

30. They concluded that the national courts had conducted the proceedings in accordance with the law. The proceedings before the Supreme Court had lasted longer due to its excessive workload for the respective period.

31. The applicant contested the Government's arguments about the complexity of the case and her contribution to the length of the proceedings. She further maintained that the length of the proceedings, in particular those before the Supreme Court, had been excessive. The fact that it had taken only a year for the Supreme Court to decide the same legal issue in another case (see paragraph 18 (a) above) supported her assertion. Its workload could not justify the length of the proceedings. On the contrary, it required the State to take measures to remedy it.

2. The Court's assessment

32. The Court notes that the proceedings before the courts of general jurisdiction started on 22 April 1997 and ended on 14 November 2002 when the Supreme Court's decision was served on the applicant. They therefore lasted five years, six months and twenty-two days for three levels of jurisdiction. The proceedings before the first-instance court lasted about a year, before the second-instance court over a year and four months and

before the Supreme Court over two years and ten months. In addition, it took nearly two months for the Supreme Court's decision to be served on the applicant.

33. 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).

34. The Court does not consider that the case required examination of complex issues or that the specific situation of the Bank affected the complexity of the case.

35. It further finds that no delays are attributable to the applicant. Her submissions specifying her claim cannot be considered to her detriment.

36. On the other hand, the Court considers that, while there were no delays attributable to the first- and second-instance courts, the Supreme Courts did not display the requisite vigilance when deciding the applicant's case. The time which elapsed before that court, which reviewed the case only on points of law, cannot be regarded as reasonable (see *Mihajloski v. the former Yugoslav Republic of Macedonia*, no. 44221/02, § 38, 31 May 2007). The excessive workload of the Supreme Court that the Government referred to in their observations, cannot justify the length of the proceedings for the reasons detailed in the *Lickov* and *Mihajloski* cases (see *Lickov v. the former Yugoslav Republic of Macedonia*, no. 38202/02, § 31, 28 September 2006, and *Mihajloski*, cited above, § 40), which likewise apply to this case. This is so, in particular, since that court already has established jurisprudence on the matter (see paragraph 18 above). Finally, the Court notes that the domestic law (see section 408 of the Civil Proceedings Act above) and the Court's jurisprudence (see *Ziberi v. the former Yugoslav Republic of Macedonia*, no. 27866/02, § 47, 5 July 2007) required employment-related disputes to be conducted with special diligence.

37. 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

39. The applicant further complained that the courts had not provided sufficient reasons for their decisions; that they had not been impartial and independent; that the first-instance court's decision had not been publicly pronounced; and that the Court of Appeal had decided in private despite her request for a public hearing.

40. Relying on Article 14, the applicant also complained that she had been discriminated against on the basis of her social origin by the application of section 19-a of the Restructuring Act. Finally, she complained that she had been given a shortened time-limit to appeal against the first-instance court's decision, instead of the general fifteen-day time-limit provided under the Civil Proceedings Act.

41. 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.

42. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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 Restructuring Act 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

44. The applicant claimed 36,000 euros (EUR) in respect of pecuniary damage. That figure corresponded to salary arrears since her dismissal in 1997. She also claimed EUR 46,200 in respect of non-pecuniary damage for the emotional stress and suffering caused by her dismissal and the lengthy proceedings.

45. 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.

46. The Court 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 800 in respect of non-pecuniary damage.

B. Costs and expenses

47. The applicant claimed costs and expenses incurred during the proceedings, but stated that she had not kept any receipts.

48. The Government did not express an opinion on the matter.

49. 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.

C. Default interest

50. 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 800 (eight 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