



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

FIFTH SECTION

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

(Application no. 21839/03)

*This version was rectified on 16 December 2008
under Rule 81 of the Rules of Court*

JUDGMENT

STRASBOURG

6 November 2008

FINAL

16/03/2009

This judgment may be subject to editorial revision.

In the case of Pecevi 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,
 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. 21839/03) 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 two Macedonian nationals, Ms Trajanka Peceva and Mr Trajče Pecev (“the applicants”), on 9 June 2003.

2. The applicants were 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 3 July 2006 the President of the Fifth Section decided to give notice of the application 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1963 and 1968 respectively, and live in Strumica.

5. By a court decision of 1985, confirmed by the Appeal and Supreme Courts’ decisions of 1986 and 1987 respectively, the applicants were established as successors in title to a property which had belonged to their late grandfather. On 31 March 1992 the then Radoviš Municipal Court (“the

first-instance court”), in non-contentious proceedings, accepted the applicants’ request for physical division of the property submitted in 1987 and determined the plots of land to be transferred into their actual possession (*во сопственост и владение*). On 14 September 1993 the then Štip District Court ruled partly in favour of both parties and overturned the lower court’s decision only in respect of part of the property for which it ordered a public sale.

6. On 27 December 1993 the first-instance court granted the applicants’ request for enforcement of the above decisions submitted on 20 December 1993. Under the order, the debtor was obliged to transfer into the applicants’ actual possession the plots of land as specified in those decisions. It further ordered a public sale of the remaining property.

7. On 26 October 1994 the court inspected the site together with a land expert. Enforcement was adjourned since the debtor had applied for a court summons. The court re-scheduled enforcement for 3 November 1994. It also ordered the applicants to make a down-payment in respect of the costs of enforcement (Macedonian denars 2,500 (MKD)). The debtor was ordered to reimburse those costs within three days under threat of forcible enforcement.

8. A payment slip of the same date confirmed that the court paid that amount to the court officers involved in the above on-site inspection.

9. On 2 November 1994 the debtor objected to the order. He argued that the court decision of 31 March 1992 was unenforceable since he had not been served with the appeal court’s decision given in those proceedings. On 7 November 1994 the applicants lodged their submissions in reply.

10. On 1 November 2000 the first-instance court dismissed the debtor’s objection.

11. On 8 November 2000 that court ordered the applicants to pay MKD 4,500 for the costs of enforcement. These included MKD 2,500 for an on-site inspection and MKD 2,000 for interest. It was also indicated that in case of non-compliance enforcement might be stayed.

12. A receipt slip of 17 November 2000 confirmed the payment of the above amount.

13. After the Ministry of Justice had requested information about progress in the applicants’ case, on 20 July 2001 the first-instance court issued a letter in which it stated that enforcement would resume with an expert identification of the plots of land.

14. On 29 August 2001 the Štip Court of Appeal allowed the debtor’s appeal against the first-instance court’s decision of 1 November 2000 and remitted the case for re-examination.

15. On 9 July 2003 the first-instance court dismissed the debtor’s objection, finding that he had been served with the appeal court’s decision in October or November 1993. It also rejected the applicants’ request for public sale of part of the property as that same issue should have been

decided in the non-contentious proceedings initiated in 1987. On 26 January 2004 the Štip Court of Appeal confirmed that decision.

16. On 16 April 2004 the court inspected the site. After an expert had identified the plots of land, the court transferred them into the applicants' possession and ordered the debtor to refrain from disturbing the latter. It also ordered the debtor to pay MKD 9,750 in respect of the costs of enforcement. The applicants' lawyer requested reimbursement of the legal fees which she would specify subsequently.

17. On 4 September 2006 the court handed (*на рака*) to the applicants the amount described above. As stated in the minutes, the applicants confirmed receipt of the money and requested continuation of enforcement in respect of the remaining costs.

18. Between October 2000 and June 2006, the applicants complained several times to the President of the first-instance court, the Ministry of Justice, the Republican Judicial Council and the Ombudsman with a view to speeding up the proceedings.

II. RELEVANT DOMESTIC LAW

19. Section 9 of the Enforcement Proceedings Act ("the Act"), valid at that time, required the court to conduct enforcement proceedings without any delay.

20. Section 32 §§ 2 and 3 of the Act required a creditor to make an advance payment of the costs of enforcement within the term prescribed by the court. In case of non-compliance, the court had jurisdiction to suspend the proceedings. Under the same provision, a debtor was required to reimburse the costs of enforcement incurred by the creditor at the latter's request, which could be lodged within thirty days of the conclusion of the enforcement proceedings (section 32 §§ 5 and 7).

THE LAW

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

21. The applicants 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, 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

22. The Government did not raise any objection as to the admissibility of the application.

23. The Court notes that the application 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

24. The Government submitted that the period which had 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 further stated that the case had required examination of complex factual issues, including the circumstances complained of by the debtor (see paragraph 9 above). They argued that the applicants had contributed considerably to the length of the proceedings by failing to make the down-payment of the costs of enforcement as required by the court's order of 26 October 1994. Those costs had been paid only on 17 November 2000 (see paragraphs 7 and 12 above). Under such circumstances, the courts were entitled to stay the proceedings. As to the conduct of the national courts, the Government conceded that the proceedings had lasted too long. The courts' clear inactivity between 1994 and 2000 and between 2001 and 2003 had primarily been due to the applicants' failure to pay the costs of enforcement and their lack of interest in pursuing the case, even though they had been represented by a lawyer of their own choosing. They maintained that the enforcement had been concluded on 16 April 2004.

25. The applicants contested the Government's arguments. They maintained that they had made the down-payment of the costs in good time. That was supported by the payment slip (see paragraph 8 above), which could have been issued only if they had paid those costs in advance. They submitted that the proceedings had not yet ended, since the court had not decided their claims in respect of the remaining costs and expenses. Their requests for the proceedings to be expedited contradicted the Government's allegations about their inactivity.

2. The Court's assessment

26. The Court notes that the enforcement proceedings started on 20 December 1993 when the applicants requested the first-instance court to enforce the courts' decisions given in the proceedings on the merits of their

claim. However, the period which falls within the Court's 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 *Horvat v. Croatia*, no. 51585/99, § 50, ECHR 2001-VIII).

27. The Court further observes that, in order to determine the reasonableness of the delay in question, regard must also be had to the state of the case on the date of ratification (see, *mutatis mutandis*, *Styranski v. Poland*, judgment of 30 October 1998, *Reports of Judgments and Decisions* 1998-VIII, § 46), and finds that on 10 April 1997 the enforcement proceedings had lasted over three years and three months at one level of jurisdiction.

28. The Court notes that the parties disagreed as to whether the proceedings had ended. The Government asserted that the proceedings had ended on 16 April 2004 (see paragraph 16 above) and the applicants asserted that they were still pending, since their claim for costs and expenses had not been satisfied in full. In the light of the material in its possession, the Court considers that the enforcement proceedings must be regarded as having ended on 4 September 2006 when the first-instance court reimbursed the applicants the costs of enforcement as established by its decision of 16 April 2004. That was the last activity taken in the course of the proceedings which was supported by documentary evidence. The Court cannot accept the applicants' assertion that the proceedings are still pending since no evidence has been presented as to whether, when and in what form they requested the first-instance court to determine their claim for the alleged remaining costs and expenses. The enforcement proceedings therefore lasted over twelve years and eight months of which nearly nine years and five months fall within the Court's temporal jurisdiction at two levels of jurisdiction.

29. The Court reiterates 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 completed within a reasonable time (see *Miltenovic v. the former Yugoslav Republic of Macedonia* (dec.), no. 26615/02, 19 June 2006). In addition, it considers that the State has a positive obligation to organise a system for enforcement of judgments that is effective both in law and in practice and ensures their enforcement without any undue delay. A delay in the execution of a judgment may be justified in particular circumstances. However, the delay may not be such as to impair the essence of the right protected under Article 6 § 1 (see *Fuklev v. Ukraine*, no. 71186/01, §§ 83 and 84, 7 June 2005).

30. Under the Court's case law, 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 *Atanasovic and Others v. the former Yugoslav Republic of Macedonia*, no. 13886/02, § 33, 22 December 2005).

31. The Court considers that the case was not of a complex nature.

32. It further finds that no delays were imputable to the applicants in the period under consideration after 8 November 2000 (see paragraph 11 above). On the other hand, it draws attention to the fact that no evidence has been provided to attest to any particular diligence on the applicants' part during the six-year gap between November 1994 and November 2000, of which three years are within the Court's competence *ratione temporis*. Such inactivity is surprising, having regard to the fact that, as the Government pointed out, the applicants were represented by a lawyer of their own choosing. Their motions to expedite the proceedings post-dated that period (see paragraph 18 above). However, such requests, even if made within the above-mentioned gap, could not have expedited the proceedings (see *Atanasovic and Others*, cited above, § 31).

33. Having regard to the material submitted to it, the Court considers that this was the main delay in the proceedings. It is not in doubt that during that time the applicants and the first-instance court were inactive. The Government maintained that the courts' inactivity had resulted from the applicants' failure to pay the costs of enforcement. In this connection, the Court observes that on 26 October 1994 the first-instance court ordered the applicants to make an advance payment of these costs. The only proof of payment was dated 17 November 2000 (see paragraph 12 above). In the absence of any evidence, the Court considers the applicants' arguments that these costs had been paid before that date unsubstantiated. However, the Court is not persuaded that this blatant failure was the reason for the first-instance court's inactivity. Nor did the first-instance court, in its reply to the applicants' request for the proceedings to be expedited, put forward that failure as justification for the delay (see paragraph 13 above). In this connection, it notes that the first-instance court dismissed the debtor's objection of 2 November 1994 on 1 November 2000 (see paragraph 10 above). At that time, the applicants had not yet complied with the court's payment order. It was only on 8 November 2000, which was after that decision, that the first-instance court again requested the applicants to pay the costs of enforcement together with interest (see paragraph 11 above). In addition, the first-instance court, although empowered to do so under section 32 § 3 of the Act, did not stay the proceedings on that ground and did not issue any warning to the parties.

Furthermore, the Court observes that it took over one year and ten months for the first-instance court to re-consider the debtor's objection (see paragraphs 14 and 15 above). Finally, it took nearly two years and five months for that court to secure the payment of the costs of enforcement by the debtor (see paragraphs 16 and 17 above). Having regard to the time already elapsed by then, the Court does not consider those periods to be

compatible with the statutory requirement of concluding enforcement proceedings without delay (see paragraph 19 above).

34. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the enforcement proceedings was excessive and failed to meet the “reasonable time” requirement.

35. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. In respect of pecuniary damage, the applicants claimed 25 euros (EUR) per square metre or decametre (different parameters were given in the Macedonian and English versions of their observations) of the land as loss of profit from 1987 onwards. They also claimed EUR 10,000 for each applicant in respect of non-pecuniary damage.

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

39. The Court notes that, while there may be a causal link between the violation found and the pecuniary damage alleged, the applicants failed to substantiate their claim under this head; it therefore rejects it. On the other hand, the Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards the applicants jointly the sum of EUR 2,000, plus any tax that may be chargeable.

B. Costs and expenses

40. The applicants also claimed EUR 4,000 for legal fees and MKD 85,420 for costs without specifying whether these had been incurred domestically or before this Court. Apart from the fee note on MKD 94,270 concerning the costs incurred before the domestic courts, no other document, invoice or any other particular was provided in support of these claims.

41. The Government maintained that these claims were unsubstantiated.

42. 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 *Gjozev v. the former Yugoslav Republic of Macedonia*, no. 14260/03, § 63, 19 June 2008 and *Kostovska*, cited above, § 62). The Court notes that the applicants did not submit any supporting documents or particulars to substantiate their claim in respect of their lawyer's fees. As regards the costs, even assuming that they concerned 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). The Court therefore makes no award under this head.

C. Default interest

43. 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

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*¹
 - (a) that the respondent State is to pay the applicants jointly, 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, 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.

¹ Rectified on 16 December 2008: the text was "that the respondent State is to pay each applicant, within three months..."

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