



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

FIFTH SECTION

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

(Application no. 26602/02)

JUDGMENT

STRASBOURG

18 December 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Dimitrievski 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 25 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 26602/02) 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 Tihomir Dimitrievski (“the applicant”), on 2 July 2002.

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

3. On 9 May 2006 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings. It 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 1936 and lives in Skopje.

5. On 3 April 1995 the applicant instituted civil proceedings before the then Skopje Municipal Court (*Општински Суд Скопје*) (“the first-instance court”) against the Copyright Agency of Macedonia-Skopje (“the company”) claiming payment of an outstanding dividend. He alleged that the company’s restructuring had been unlawful and that the latter had not calculated his salary in compliance with the applicable legislation at that time (the applicant alleged that the company had not been fully privatised and that accordingly, it should have applied legislation concerning socially-owned enterprises). He further claimed that the company had

misappropriated part of its profits and distributed them to its employees as salaries. In that latter context, he claimed a higher dividend than he had actually received (he claimed to have possessed 13.63% of the company's capital and not 11.918%).

6. On 17 February 1997 the court ordered an expert examination of the applicant's claim. It appears that the expert report was produced in August 1997.

7. On 29 May 1997 the applicant brought a separate civil action against the company's manager. On 25 December 1997 the first-instance court joined the two applications since they concerned the same issues of facts and law.

8. On 3 December 1997 the applicant unsuccessfully proposed a friendly settlement of the case.

9. In September 1998 the applicant successfully applied for the removal of the judge sitting in his case. The sitting judge also asked to withdraw due to the applicant's difficult behaviour, namely that he had repeatedly accused the courts and experts of bias and incompetence.

10. None of five hearings fixed between 25 November 1999 and 5 October 2000 was adjourned at the applicant's request.

11. On 29 November 2000 the chairman of the panel deciding the applicant's case withdrew because the applicant had brought criminal charges against her. The latter were rejected by the public prosecutor.

12. Hearings listed on 29 May, 12 July and 21 December 2001 and 14 February 2002 were rescheduled due to the absence of the sitting judge or the incorrect summoning of the defendants.

13. By submissions of 18 November 1998, 4 May 1999, 25 April 2000, 25 April 2001 and 1 March 2002, the applicant submitted further applications increasing his claim.

14. On 28 March 2002 the first-instance court dismissed the applicant's claim. On 4 September 2002 this decision was served on the applicant.

15. On 19 December 2002 the Skopje Court of Appeal dismissed an appeal lodged by the applicant on 18 September 2002.

16. On 12 February 2003 the applicant lodged an appeal on points of law (*pevuzujja*) with the Supreme Court. On 5 and 20 March 2003 he filed supplements to his appeal.

17. On 23 June 2004 the Supreme Court dismissed the applicant's appeal. This decision was served on him on 16 December 2004.

18. On 20 December 2004 the first-instance court dismissed the applicant's request for rectification of its decision, which had been in fact a request for a fresh decision on the merits.

19. The composition of the first-instance court's panel changed four times during the proceedings in question.

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 nature of the dispute (the company’s restructuring and payment of the dividend); the change of the corporate status of the company during the proceedings and the applicant’s behaviour. As to the latter, they submitted that he had contributed considerably to the length of the proceedings, namely that he had brought two separate claims which had been joined subsequently; he had filed numerous and voluminous submissions repeating his claims in unclear language; he had increased his claim several times and requested removal of the sitting judges. He had also brought criminal charges against one of them.

24. As to the national courts, the Government argued that no delays were attributable to them. They concluded that the State could not be held responsible for the applicant’s behaviour.

25. The applicant contested the Government’s arguments concerning the complexity of the case and his contribution to the length of the proceedings. In this latter context, he argued that he had had a right to file submissions in

support of his arguments. Furthermore, he had attended all hearings as scheduled.

2. The Court's assessment

26. The Court notes that the proceedings started on 3 April 1995 when the applicant requested the courts to decide his claims. 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).

27. 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 two years at one level of jurisdiction.

28. The proceedings ended on 16 December 2004 when the Supreme Court's decision of 23 June 2004 was served on the applicant. The proceedings therefore lasted over nine years and eight months, of which seven years, eight months and six days fall within the Court's temporal jurisdiction at three court levels.

29. With reference to its settled case-law on this matter, the Court will assess the reasonableness of the length of the proceedings in the light of the particular circumstances of the case having regard to its complexity, to the conduct of the applicant and to that of the authorities dealing with the case (see *Markoski v. the former Yugoslav Republic of Macedonia*, no. 22928/03, § 32, 2 November 2006).

30. The Court first observes that the subject matter of the case before the domestic courts was complex, as shown, *inter alia*, by the fact that it involved examination of a considerable amount of documentary evidence concerning the company and its privatisation. The courts were also requested to determine the outstanding dividend and to examine other ancillary issues, such as the payment of the applicant's salary. The necessity of obtaining an expert examination of the applicant's claim supports the Court's findings about the complexity of the case.

31. The Court considers that the applicant contributed to the protraction of the proceedings. He initially brought two separate claims concerning the same issues of fact and law which led to their being joined in single proceedings; he increased his claim several times; he challenged the impartiality of one judge and brought criminal charges against another one; and he questioned the competence of the expert involved in his case. In this connection, the Court reiterates that although a party to civil proceedings cannot be blamed for using the venues available to him under domestic law in order to protect his interests, he must accept that such actions necessarily prolong the proceedings concerned (see *Malicka-Wąsowska v. Poland*,

(dec.), no. 41413/98, 5 April 2001). The Court finds that the applicant was responsible for one-year delay of the proceedings in question. On the other hand, the applicant attended all scheduled hearings.

32. The Court finds that significant delays are attributable to the national authorities. While the higher courts examined the applicant's appeals with reasonable expedition, the first-instance court gave the first and only decision nearly seven years after the introduction of the applicant's claim, of which nearly five years fall within the Court's temporal jurisdiction. Despite the latter's behaviour, that time cannot be regarded as reasonable. During this period, a number of hearings were adjourned because either the defendants were not summoned properly or the sitting judge was absent. It further took about six months for the court-appointed expert to produce his opinion. That delay can be attributed only to the State (see *Stojanov v. the former Yugoslav Republic of Macedonia*, no. 34215/02, § 60, 31 May 2007). The changes of the composition of the adjudicating panel added to the length of the proceedings since the hearing restarted after each change. Finally, it took a total of about eleven months to serve two court decisions on the applicant (see paragraphs 14 and 17 above).

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

34. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 350,000 euros (EUR) in respect of pecuniary damage, corresponding to the unpaid dividend plus interest. He also claimed EUR 30,000 in respect of non-pecuniary damage, for the stress and mental suffering caused by the protracted length of the proceedings.

37 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 his case as brought before the national courts.

38. 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 600 in respect of non-pecuniary damage.

B. Costs and expenses

39. The applicant also claimed EUR 4,460 for the costs and expenses incurred before the domestic courts. These included the courts' and the expert's fees. He further claimed EUR 3,238 for copying, mailing and translation of documents submitted to the Court and for medical and transport services related to his poor health. The applicant provided payment slips in support of his claims.

40. The Government contested these claims.

41. 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). As to the costs and expenses incurred domestically, the Court notes that they 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. On the other hand, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant, who was not represented by a lawyer, the sum of EUR 200 for the proceedings before the Court.

C. Default interest

42. 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 remainder of the application admissible;
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, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

- (i) EUR 600 (six hundred euros) for non-pecuniary damage;
- (ii) EUR 200 (two hundred euros) in respect of costs and expenses;
- (iii) plus any tax that may be chargeable;

(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 18 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Rait Maruste
President