



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

FIFTH SECTION

**CASE OF PETKOSKI AND OTHERS v. THE FORMER YUGOSLAV
REPUBLIC OF MACEDONIA**
(Application no. 27736/03)

JUDGMENT

STRASBOURG

8 January 2009

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Petkoski and Others 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,
Renate Jaeger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 2 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 27736/03) 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 six Macedonian nationals, Mr Cvetko Risteski (“the first applicant”), Mr Stojan Avramoski (“the second applicant”), Mrs Dosta Simonoska (“the third applicant”), and by Mr Petkoski Krste, Mr Blagoja Klimoski and Mr Risto Koleski (“the remaining applicants”), respectively. By a letter of 25 August 2006, the Court was informed that the first applicant had died on 25 December 2005 as had the second applicant on 9 April 2006.

2. The applicants were represented by Mr M. Popeski, a lawyer practising in Ohrid. The Macedonian Government (“the Government”) were represented by their Agent, Mrs R. Lazareska Gerovska.

3. The applicants alleged, in particular, that they had been denied the right of access to a court and that the proceedings had been unreasonably lengthy.

4. On 6 September 2006 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. On 11 September 1989 the applicants, excluding the third applicant, lodged a civil action with the then Bitola Employment Court of First Instance (*Основен суд на здружен труд Битола*) applying for the annulment of the decision (“the 1989 decision”) of the agricultural cooperative *Rasanec земјоделска задруга* (“the cooperative”), dated 26 August 1989, to restructure itself as a socially owned enterprise *општествено претпријатие* (“the enterprise”). They claimed that the 1989 decision had been adopted without the requisite number of votes of the cooperative’s members and workers being attained. They also maintained that the interests of the cooperative’s members had not been taken into consideration when adopting the 1989 decision which had affected the cooperative property directly. The applicants claimed to be members and founders of the cooperative. The action appears to have been an attempt by the applicants to restore their standing as members of a cooperative to which they had contributed.

6. On 5 February 1991 the Bitola Employment Court of First Instance rejected the applicants’ claim as the cooperative had ceased to exist after the 1989 decision had been recorded on the court’s register.

7. On 30 January 1992 the then Trade Court of Macedonia (*Стопански суд на Македонија*) upheld the applicants’ appeal and quashed the lower court’s decision.

8. On 4 March 1993 the then Bitola District Trade Court (*Окружен Стопански суд Битола*) upheld the applicants’ claim and annulled the 1989 decision. It established that, after the 1989 decision, on 21 September 1989 the enterprise had merged with the joint stock company Biljana (“the company”). The court found that the enterprise had been the legal successor of the cooperative and had accordingly undertaken the latter’s rights and obligations. As the company had twice intervened in the proceedings, the court concluded that it had assumed the position of a party being sued as the legal successor of the enterprise. It finally decided that the 1989 decision had been adopted without the necessary number of votes.

9. On 7 July 1993 the Trade Court of Macedonia accepted both parties’ appeals and quashed the above decision. It held that the lower court had erred in establishing the facts concerning the status of the cooperative. It concluded that the proceedings should have been stayed had the cooperative ceased to exist, until its legal successor was eventually able to take over the dispute.

10. On 23 February 1994 the Bitola District Trade Court declared itself incompetent to decide the case. It held that, because of the nature of the

dispute it was the Ohrid Municipal Court (*Општински суд Охрид*) which had jurisdiction to decide the case.

11. On 20 May 1994 the Trade Court of Macedonia quashed the lower court's decision and referred the case back for re-examination. It held that the Bitola District Trade Court had been competent *ratione materiae* to decide the case. According to the higher court, the matter in dispute in the case was the change of the cooperative's status (*статусен спор*).

12. On 24 June 1994 the Bitola District Trade Court stayed the proceedings as a result of the fact that the cooperative had ceased to exist on 29 January 1992. It was decided that the proceedings would be stayed until the legal successor of the cooperative could take over the dispute.

13. On 29 August 1994 the Trade Court of Macedonia dismissed the applicants' appeal and upheld the lower court's decision.

14. On 29 June 1995 the applicants requested the court to resume the proceedings against the company, as the legal successor of the cooperative. The proceedings continued against the company.

15. On 15 September 1997 the Ohrid Court of First Instance ("the first-instance court") accepted the applicants' claim and annulled the 1989 decision since it had not been adopted in compliance with the legislation applicable at that time (Association of Farmers Act, *Закон за здружување на земјоделците*). The court dismissed the company's argument that the applicants lacked the capacity to act since, under the court's register, they had been members and founders of the cooperative. The court established that the disputed decision had been adopted without any of the cooperative members having been heard. It annulled the 1989 decision stating that it had served as the legal basis for the transfer and transformation of the cooperative's property into socially-owned property.

16. On 11 September 1998 the Bitola Court of Appeal quashed the lower court's decision and remitted the case back for renewed consideration. It found that the lower court had incorrectly established the facts concerning, *inter alia*, the following issues: the applicants' status as members/founders of the cooperative; the cooperative's business activity and the body competent to adopt the decision complained of. It also instructed the lower court to hear evidence from the parties.

17. Three hearings were fixed before the first-instance court. On 5 February 1999 the first-instance court accepted the applicants' claim once more and annulled the 1989 decision. It established that the company was the legal successor of the cooperative and had accordingly had the legal capacity to act in the proceedings; that the cooperative had operated in the field of agriculture and that the applicants' contributions to the cooperative's property had been pecuniary or in kind.

18. On 7 December 1999 the Bitola Court of Appeal quashed the lower court's decision and rejected the applicants' claim. It declared itself incompetent *ratione materiae* (*апсолутно ненадлежен*) to decide the case.

Relying on sections 30 and 32 of the Courts Act 1995, it stated that “the courts have jurisdiction to decide the legality of individual decisions in administrative and accounting disputes”. It concluded that they had “no jurisdiction to decide disputes as in the present case”.

19. On 14 February 2000 the applicants lodged an appeal on points of law (*pevuzujja*) with the Supreme Court. They complained that the court below had not provided reasons for declaring itself incompetent to make a ruling on the matter ten years after the proceedings had started. Further, the court had not indicated which body would be competent to decide the case.

20. On 20 November 2002 the Supreme Court dismissed the applicants’ appeal stating, *inter alia*, that:

“...when the court does not find itself competent to decide a case, but instead nominates another body, it must declare itself incompetent, revoke all actions taken during the proceedings and reject the claim. The present case concerns a claim for the annulment of a decision of an agricultural cooperative’s council to restructure itself as a socially-owned enterprise. There are therefore, no statutory grounds for the judicial review requested...”

21. On 19 February 2003 the decision was served on the applicants.

II. RELEVANT DOMESTIC LAW

22. According to section 32 (b) of the Courts Act 1995 (*Закон за судовume*), courts of first instance were competent, *inter alia*, to decide property and other civil law disputes in which parties to the proceedings were enterprises and other legal entities; disputes concerning status changes (division, merger, acquisition and organisation); and the legality of individual decisions in administrative and accounting disputes.

23. Section 111 § 1 of the Act provided, *inter alia*, that the Trade Court of Macedonia and the District Trade Courts would cease to exist on 30 July 1996.

24. In accordance with section 116 § 2 of the Act, the courts of first instance and the appellate courts competent *ratione materiae* and *ratione loci*, took over cases that were pending, *inter alia*, in the District Trade Courts on 30 July 1996.

25. The Cooperatives Act of 1990 included provisions concerning the foundation, management and cessation of cooperatives, as well as issues related to their property.

26. In July 2002 a new Cooperatives Act was adopted setting aside the Cooperatives Act of 1990.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

27. The applicants complained under Article 6 of the Convention that they had been denied access to a court since their claim had remained undecided on the merits due to the alleged lack of jurisdiction of the national courts to decide the case. They also complained about the excessive length of the proceedings. Article 6 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 fair ... hearing within a reasonable time... by [a] ... tribunal ...”

A. Admissibility

1. As regards the first and second applicants

28. The Court notes at the outset that the first applicant died on 25 December 2005 and that the second applicant died on 9 April 2006. It further notes that no request has been submitted by those applicants' next-of-kin to pursue the case. In these circumstances, the Court concludes that it is no longer justified to continue the examination of the application in so far as it was brought by the first and second applicants within the meaning of Article 37 § 1 (c) of the Convention. Furthermore, the Court finds no reasons of a general nature, as defined in Article 37 § 1 *in fine*, which would require the examination of this part of the application by virtue of that Article. It therefore decides to strike the application out of its list of cases in so far as it was brought by the first and second applicants (see *Erol Direkçi and Ergül Direkçi v. Turkey* (dec.), no. 47826/99, 31 March 2005).

2. As regards the third applicant

29. The Government submitted that the third applicant could not claim to be a victim of the violations complained of as there had been no evidence that she had been in any way affected by the decisions in question.

30. The applicants did not express an opinion on the matter.

31. The Court observes that under Article 34 of the Convention it may receive applications from individuals and others “claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto”. In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure (see *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36, and *Buckley v. the United Kingdom*,

judgment of 25 September 1996, *Reports* 1996-IV, p. 128, p. 846, §§ 56-59).

32. In the present case, the Court considers that the third applicant cannot be regarded as having *locus standi* to complain about the proceedings in question as there is no evidence that she was a party to those proceedings (see *Bocvarska and Kupev v. the former Yugoslav Republic of Macedonia* (dec.), no. 27865/02, 6 November 2007).

33. It follows that the third applicant's complaints are incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

3. As regards the remaining applicants

34. The Government did not raise any objections concerning the admissibility of the remaining applicants' complaints.

35. The Court considers that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

36. The Government submitted that the applicants' claim, having been brought before the national courts, had not concerned the status of the body in question, but that it related to cooperative property (*задружна сопственост*), as a concept, which no longer existed at the time when the Supreme Court decided the case. The Government conceded that the Act had denied the applicants their right of access to a court since it had excluded the right of judicial protection of the cooperative property. They maintained, however, that the restriction had been justified since it had aimed to facilitate the transition and transformation of the socio-economic system of the State at that time and that it had been proportionate.

37. The applicants emphasised that the Government had confirmed that the Act had denied them access to a court in the proceedings although they had been pending for six years when the Act had entered into force. They argued that the Supreme Court had given vague reasons for dismissing their claim, failing to specify the nature of the dispute. Since it concerned the status of the entity in question, the courts, on the basis of section 32 of the Act, had jurisdiction to decide their claim.

38. They further contested the Government's argument that cooperative property no longer existed. The Government's assertion that the Act excluded the right of judicial protection of the cooperative property lacked

any force since the new Cooperatives Act of 2002 included provisions relating to that property.

2. The Court's consideration

39. The Court recalls that “the procedural guarantees laid down in Article 6 secure 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” (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, pp. 13-18, §§ 28-36). The Court notes that the Government did not contend that Article 6 of the Convention did not apply to the proceedings, and, noting that there is no suggestion that the applicants were not members of the cooperative which was transformed into a socially-owned enterprise, finds that Article 6 applies.

40. However, being able to put a case to a court does not in itself satisfy all the requirements of Article 6 § 1. It must also be established that the degree of access afforded under the national legislation was sufficient to secure the individual's “right to a court”, having regard to the rule of law in a democratic society (see *Ashingdane v. the United Kingdom*, judgment of 28 May 1985, Series A no. 93, pp. 24-25, § 57). Moreover, Article 6 guarantees the right of access to a court which does not only include the right to institute proceedings, but also the right to obtain a “determination” of the dispute by a court. As stated in the Court's case-law, “it would be illusory if a Contracting State's domestic legal system allowed an individual to bring a civil action before a court without securing that the case would be determined by a final decision in the judicial proceedings. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants - proceedings that are fair, public and expeditious - without guaranteeing the parties to have their civil disputes finally determined” (see *Multiplex v. Croatia*, no. 58112/00, § § 44 and 45, 10 July 2003).

41. At the same time, the “right to a court”, of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired (see the *Edificaciones March Gallego S.A.*, judgment cited above, p. 290, § 34). In addition, the principle of the rule of law and the notion of fair trial enshrined in Article 6 preclude any interference by the legislature with the administration of justice designed to influence the judicial determination of the dispute (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, § 49).

42. In the instant case, the Court notes that the applicants had the possibility of bringing legal proceedings and they availed themselves of it by requesting the courts to annul the 1989 decision to restructure the cooperative as a socially-owned enterprise. During the proceedings, the domestic courts gave different decisions, including two first-instance decisions on the merits – of 15 September 1997 and 5 February 1999, which post-dated both the entry into force of the Courts Act 1995 and the entry into force of the Convention in respect of the former Yugoslav Republic of Macedonia - in which they accepted the applicants' claim. The applicants thus not only enjoyed the right to institute proceedings, but, in a number of instances, domestic courts accepted jurisdiction to examine their claim on the merits. The Supreme Court, giving the final decision in the case, accepted the lower courts' finding that the 1989 decision of the co-operative could not be challenged in the courts.

43. The Court notes the Government's contention that the decisions of the domestic courts rejecting the applicants' claims were based on the Courts Act 1995, which had removed judicial protection for property belonging to cooperatives. They accepted that the Courts Act had denied the applicants access to a court since they had claimed rights in respect of that type of property.

44. It thus appears that, on the Government's account, from the enactment of the Courts Act in 1995, the applicants' action was bound to be unsuccessful because of the removal from judicial protection of the type of property at issue.

45. The question is therefore whether this denial of access to court by way of legislative amendment was compatible with Article 6 of the Convention. The Government stated that the statutory exclusion of the courts' jurisdiction to handle the applicants' case had served the transition to a market economy. However, the Court observes that they did not give any reason as to why it had been necessary to remove all protection for the particular type of property related to the applicants' claim. The domestic courts involved in the applicants' case only referred to administrative and accounting disputes stating that these fell within their jurisdiction. Furthermore, neither the courts nor the Government gave any suggestion that the applicants could have vindicated the rights they were trying to protect in any other way, for example by identifying which body would be competent to decide the case. Finally, it is to be noted that the applicants' claim was rejected seven years after the Act had entered into force. In this later context, the Court finds no explanation as to why it took so long for the courts to reach such a decision.

46. The Court concludes that, on the assumption that the courts' refusal to deal with the applicants' case was based on sections 32 of the Courts Act 1995, as claimed by the Government, no reasons have been produced to the

Court which justify the interference by that provision with the remaining applicants' right of access to a court.

47. For these reasons, there has been a violation of the applicants' right of access to a court within the meaning of Article 6 § 1 of the Convention.

48. As to the complaint concerning the length of the proceedings, which is not devoid of substance, the Court considers that it must be regarded as having been absorbed by the preceding complaint (see *mutatis mutandis* *Multiplex v. Croatia*, no. 58112/00, § 58, 10 July 2003).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicants claimed 1,500,000 euros (EUR) in respect of pecuniary damage. They explained that that sum, according to the director who had run the cooperative until 1988, would cover the movable and immovable assets of the cooperative. They further claimed EUR 50,000 for non-pecuniary damage.

51. The Government contested these claims as unsubstantiated. They stated 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.

52. The Court notes that the applicants' claim is made under Article 6 and not Article 1 of Protocol No. 1, and 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 remaining applicants jointly EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

53. The applicants also claimed EUR 10,000 for the costs and expenses incurred before the domestic courts and before the Court. They did not produce any supporting documentation.

54. The Government contested this claim as excessive and unsubstantiated.

55. According to the Court's case-law, an applicant is entitled to reimbursement of his 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 *Kostovska v. the former Yugoslav Republic of Macedonia*, no. 44353/02, § 62, 15 June 2006). 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".

56. The Court notes that the remaining applicants did not provide any supporting documents concerning their legal fees. It therefore makes no award in this respect (see *Parizov v. the former Yugoslav Republic of Macedonia*, no. 14258/03, § 72, 7 February 2008).

C. Default interest

57. 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 third applicant's complaints inadmissible;
2. *Decides* to strike the application out of its list of cases in respect of the first and second applicants;
3. *Declares* the remaining applicants' complaints admissible;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the remaining applicants' rights of access to a court;
5. *Holds* that the complaint under Article 6 § 1 regarding the length of the proceedings is absorbed by the preceding complaint;
6. *Holds*
 - (a) that the respondent State is to pay the remaining applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten 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;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President