



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

FIFTH SECTION

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

(Application no. 17010/04)

JUDGMENT

STRASBOURG

8 January 2009

FINAL

06/07/2009

This judgment may be subject to editorial revision.

In the case of Kangova 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. 17010/04) 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 Blagorodna Kangova (“the applicant”), on 27 April 2004. By letter of 27 December 2007 the applicant’s husband informed the Registry that she had died on 16 November 2007 and that he wished to pursue the application.

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

3. On 6 December 2007 the President of the Fifth Section decided to communicate the complaint concerning the length of the proceedings. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

a. Proceedings concerning the applicant's compensation claim

4. On 4 February 1998 the applicant brought a civil claim against her employer, seeking compensation for unpaid salary and social security contributions. On 6 July 2000 the employer was divided into three separate companies ("the successors").

5. Between 16 October 1998 and 10 September 2001 the first instance court scheduled fifteen hearings, none of which was adjourned on the applicant's request. It ordered expert examination of the applicant's claim and heard evidence from witnesses. The employer's counter claim against the applicant was dismissed five months after it had been submitted. During the proceedings, the applicant made more specific claims on four occasions.

6. On 10 September 2001 the Gevgelija Court of First Instance allowed the applicant's claim and ordered the successors jointly to pay her unpaid salary and to pay social security contributions to the Pension and Disability Insurance Fund. The total award amounted to 486, 557 Macedonian denars (MKD) (approximately 7, 940 euros) plus trial costs. This decision was served on the applicant on 26 June 2002.

7. On 11 July 2002 the successors appealed. On 7 October 2002 the applicant submitted her arguments in reply.

8. On 24 October 2002 the Gevgelija Court of First Instance dismissed the successors' appeal as having been submitted out of time.

9. On 22 November 2002 the successors appealed, arguing that the first-instance court had wrongly calculated the time-limit. On 26 June 2003 the first-instance court ordered the successors to pay the court's fees.

10. On 30 December 2003 the successors withdrew their appeal.

11. Between 1 April and 26 June 2004 the applicant requested the first-instance court to expedite the proceedings on three occasions.

12. On 15 July 2004 the Gevgelija Court of First Instance rejected the successors' appeal as having been withdrawn.

13. On 21 September 2004 the first-instance court's decision of 10 September 2001 became final.

b. Insolvency proceedings against the successors

14. Between March 2002 and June 2003 three separate sets of insolvency proceedings were initiated in respect of the successors. The last successor

was liquidated in September 2003. The receiver was ordered to enforce the liquidation by public sale of that successor's assets. The applicant filed a request to have her claim recognised only in respect of that successor. On 9 September 2003 the first-instance court partly allowed the applicant's claim. No information has been provided as to what actions were taken in respect of the court's sale order.

THE LAW

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

15. 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

16. The Court accepts that the applicant's husband has the requisite *locus standi* under Article 34 of the Convention in respect of the applicant's complaint about the length of the proceedings (see *Stojkovic v. the former Yugoslav Republic of Macedonia*, no. 14818/02, §§ 25 and 26, 8 November 2007).

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

18. 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*

19. The Government stated that there had been complex circumstances related to the case, including the expert examination and the employer's counter claim; the latter's division and the insolvency proceedings in respect of the successors.

20. As to the applicant's behaviour, they argued that she had contributed to the length of the proceedings by having specified her claim on four occasions. They also maintained that the successors had abused procedural rights, delaying the proceedings.

21. Concerning the conduct of the national courts, they submitted that no delays were attributable to them. The only exceptions concerned the fixing of the first hearing; the service of the first-instance court's decision of 10 September 2001 and that court's decision upon the successors' withdrawal of the appeal (see paragraphs 5, 6, 10 and 12). However, those delays did not add much to the length of the proceedings.

22. The applicant's husband contested the Government's arguments about the complexity of the case and the applicant's alleged contribution to the length of the proceedings. She maintained that the courts had not conducted the proceedings in a diligent manner and that their protracted length had prevented her from recovering her claim before the successors went into liquidation.

2. The Court's consideration

23. The Court notes that the proceedings in question started on 4 February 1998 and ended on 21 September 2004 when the first-instance court's decision became final. During this period, the first-instance court gave one decision on the merits and two decisions concerning the admissibility of the successors' appeal. They therefore lasted six years, seven months and seventeen days for three levels of jurisdiction.

24. 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).

25. The Court does not consider that the case required examination of complex issues.

26. It further finds that no delays are attributable to the applicant. Her submissions specifying her claim did not add substantially to the length of the proceedings. Furthermore, she cannot be held responsible for delays attributable to the successors.

27. On the other hand, the Court considers that the first-instance court did not display the requisite vigilance when deciding the applicant's case. It is the Court's finding that the delays to which the Government conceded contributed considerably to the length of the proceedings. It further observes that it took over four years for that court to decide on the merits the applicant's case (see paragraphs 4 and 6 above). In addition, the preliminary assessment of the admissibility of the successors' appeal, which that court carried out, was also longer than necessary. In this connection, the Court

notes that it took two years for that court to declare the successors' appeal as having been withdrawn. The overall time which elapsed before the first-instance court cannot be regarded as reasonable.

28. 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

30. The applicant further complained under Article 5 of the Convention that her right to social security had been breached.

31. The Court notes that the Article invoked does not provide for a right to social security. Accordingly, this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant's husband claimed MKD 486,557 plus interest in respect of pecuniary damage. This figure refers to the amount of the applicant's claim established in the proceedings in question. He claimed that his wife has been prevented from recovering her claim from the assets of the liquidated successors. He asserted that similar claims from other co-workers had been accepted within a reasonable time and consequently recovered before the successors were declared bankrupt. The applicant's husband also claimed EUR 20,000 in respect of non-pecuniary damage for the anguish, stress and deterioration of the applicant's health due to the length of the proceedings.

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

35. 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

36. The applicant also claimed MKD 9,000 for the costs and expenses incurred before the domestic courts. She did not seek reimbursement of the costs and expenses incurred in the proceedings before the Court.

37. The Government contested this claim.

38. 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 *Kostovska v. the former Yugoslav Republic of Macedonia*, no. 44353/02, § 62, 15 June 2006). The Court notes that the costs claimed had not been incurred in order to seek, through the domestic legal order, prevention and redress of the alleged violation complained of before the Court. Accordingly, it does not award any sum under this head (see *Milošević v. the former Yugoslav Republic of Macedonia*, no. 15056/02, § 34, 20 April 2006).

C. Default interest

39. 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 600 (six 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[s] 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 8 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President