



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

1959 · 50 · 2009

FIFTH SECTION

**CASE OF BOGDANSKA DUMA v. THE FORMER YUGOSLAV
REPUBLIC OF MACEDONIA**

(Application no. 24660/03)

JUDGMENT

STRASBOURG

7 May 2009

FINAL

07/08/2009

This judgment may be subject to editorial revision.

In the case of Bogdanska Duma 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,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 14 April 2009,

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

PROCEDURE

1. The case originated in an application (no. 24660/03) 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 Jasna Bogdanska Duma (“the applicant”), on 25 July 2003.

2. The applicant was represented by Mr J. Naumov, a lawyer practising in Skopje. The Macedonian Government (“the Government”) were represented by their Agent, Mrs R. Lazareska Gerovska.

3. On 24 October 2006 the President of the Fifth Section decided to communicate to the Government the complaints concerning the length of the first set of proceedings and the alleged interference with the applicant’s rights under Article 1 of Protocol No. 1 concerning the second set of proceedings. 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 applicant was born in 1959 and lives in Skopje.

A. Factual background

5. On 1 February 1993 Mr. F.D., the applicant's former husband, bought a state-owned apartment and a garage ("the property"). By a deed of gift of 29 December 1994 ("the 1994 gift"), Mr F.D. transferred one notional half of the property into the applicant's possession. The spouses divorced in 1996. By court decisions of 18 April and 5 September 2001 respectively, the 1994 gift was rescinded.

6. The present case concerns two sets of proceedings concerning the property at issue.

B. Proceedings concerning the title to the property ("the first set of proceedings")

7. On 13 July 1995 Mr H.D. and Mrs V.D., Mr F.D.'s parents ("the plaintiffs"), brought a civil action against the applicant and Mr F.D. to establish their title to the property and to rescind the 1994 gift. The plaintiffs alleged that they had transferred to their son the right to buy the property and that they had paid the price.

8. Of six hearings scheduled between 3 November 1995 and 19 May 1997, none was rescheduled on the applicant's request.

9. Sixteen hearings fixed between 19 May 1997 and 20 November 2000 were adjourned because of incorrect service of the court summons, late exchange of applications by the parties, belated submissions or the failure of the national authorities and the parties to respond to court orders in time. A hearing fixed for 25 May 1998 was postponed due to the applicant's absence for work-related reasons.

10. On 20 November 2000 the Skopje Court of First Instance upheld the plaintiffs' claim and recognised their title to the property. It rescinded the 1994 gift and declared that Mrs V.D. had the title to one notional half of the property. The court established that Mr H.D. had tenancy of the property since 1972 and that the plaintiffs had authorised the defendants to buy the property under the condition of caring for them and living under the same roof. As the applicant had divorced her husband and ceased to live with the plaintiffs, the court held that the right to buy the apartment remained groundless and considered it as if it had not been established.

11. On 28 June 2001 the Skopje Court of Appeal accepted an appeal by the applicant and remitted the case for a fresh consideration. It established that the lower court had not given sufficient reasons for its decision. It further ordered a stay of the proceedings pending assessment of the validity of the sale agreement of 1 February 1993, the subject of other proceedings.

12. Between 19 November 2001 and 15 September 2005 the first-instance court listed twenty-three hearings which were re-scheduled for similar reasons as those described in paragraph 9 above. The applicant did

not attend four hearings. During this time, the applicant claimed title to four fifths of the property, as a joint property acquired through marriage. She further proposed an out-of-court settlement on two occasions and requested the court to expedite the proceedings.

13. The proceedings resumed on 4 December 2006 when a new judge was assigned to sit in the case. The court listed six hearings until 18 May 2007. The proceedings are still pending before the Skopje Court of First Instance.

C. Proceedings for annulment of a deed of gift of 2001 (“the second set of proceedings”)

14. On 4 April 2002 Mr F.D. requested annulment of a deed of gift of 18 July 2001 (“the 2001 gift”) under which the applicant had transferred into the possession of their two daughters her notional half of the property. Referring to the annulment of the 1994 contract, Mr F.D. claimed that the applicant had not been entitled to dispose of the property. On 5 April 2001 Mr F.D. extended his claim against their daughters. On 17 November 2002, one of the daughters, Ms I.D., came of age.

15. On 22 November 2002 the Skopje Court of First Instance granted Mr F.D.’s action and annulled the 2001 gift. It further ordered their daughters to restore the property into Mr F.D.’s possession. Lastly, it ordered the applicant not to dispose of the property. The court established that the applicant had made the 2001 gift while the proceedings regarding the 1994 gift had been pending on appeal. It ruled that the applicant accordingly had known or ought to have known that she could not make the 2001 gift while the proceedings in respect of the 1994 gift were pending. It dismissed the applicant’s objection that her lawyer had not been provided with explicit authority to represent Ms I.D. In this respect, it held that the applicant had been her daughters’ statutory guardian and they all acted as a single party to the proceedings. The court concluded that they had not had conflicting interests, but that the applicant had acted on behalf of her daughters.

16. On 27 March 2003 the Skopje Court of Appeal upheld the lower court’s decision concerning the annulment order and injunction. It found no reasons to depart from the established facts and legal reasoning given by the lower court in respect of the deed of gift. It ruled, however, that the lower court had wrongly ordered the applicant’s daughters to restore the property into Mr F.D.’s possession. The applicant unsuccessfully requested the public prosecutor to lodge with the Supreme Court a request for the protection of legality.

17. On 23 May 2003 the Skopje Court of First Instance dismissed the remainder of Mr F.D.’s claim.

18. These proceedings ended on 14 October 2004 when the first-instance court's decision concerning trial costs became final.

THE LAW

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

19. The applicant complained that the length of the first set of 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

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

21. 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

22. 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 number of parties and claims and that other property-related proceedings had been pending between the same parties.

23. They further stated that the parties had contributed considerably to the length of the proceedings by failing to respond to the courts' orders in good time and abusing procedural rules related to court summons.

24. As to the national courts, the Government argued that they had proceeded with the case with due diligence and that the scheduled hearings had been held regularly and without any delays, the only exception being when a new judge was assigned to decide the case (see paragraph 13 above).

25. The applicant contested the Government's arguments concerning the complexity of the case and her contribution to the length of the proceedings. She further maintained that the domestic courts bore full responsibility for the protracted length of the proceedings having allowed the plaintiffs to abuse the proceedings.

2. The Court's assessment

26. The Court notes that the proceedings started on 13 July 1995 when the plaintiffs requested the courts to decide their 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 almost one year and nine months at one level of jurisdiction.

28. The impugned proceedings have not yet ended, since the case awaits consideration at first instance. They have already lasted for over thirteen years and seven months of which twelve years and four days fall within the Court's temporal jurisdiction.

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 considers that the number of parties and claims involved in the case increased its complexity, but these factors cannot, in themselves, explain the length of the proceedings.

31. It further cannot find, apart from incidental absences from several hearings (see paragraph 12 above), which did not add much to the length of the proceedings, any adjournments imputable to the applicant.

32. On the other hand, the Court notes that there were many substantial delays attributable to the authorities. In this connection, it observes that most adjournments were ordered because the first-instance court could not secure the presence of the parties (see paragraph 9 above), for which it bore sole responsibility (see, *mutatis mutandis*, *Dika v. the former Yugoslav Republic of Macedonia*, no. 13270/02, §§ 56 and 58, 31 May 2007). It finds it particularly striking that that court has not yet given its ruling, even though the case was remitted for reconsideration in June 2001 (see paragraph 11 above). Furthermore, the proceedings lay dormant for over

one year and two months after the hearing dated 15 September 2005 (see paragraphs 12-13 above), a period during which the first-instance court did not take any procedural step.

33. In this context, the Court recalls that it is for the Contracting States to organise their legal systems in such a way that their courts can guarantee everyone's right to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time (see *Kostovska v. the former Yugoslav Republic of Macedonia*, no. 44353/02, § 41, 15 June 2006, § 41).

34. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 OF THE CONVENTION

36. The applicant alleged a violation of her property rights and those of her daughters, relying on Article 1 of Protocol No. 1, which reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. The first set of proceedings

37. The Court notes that these proceedings, which concern determination of the title to the property, are still pending. In this respect, any complaint under Article 1 of Protocol No. 1 related to the outcome of the proceedings is premature.

38. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. The second set of proceedings

1. The parties' submissions

39. The Government maintained that the annulment of the 2001 gift did not amount to interference with the applicant's property rights. The applicant became, under the 1994 gift, the registered owner of a notional half the property. The annulment of that gift entailed loss of the applicant's title to that part. In addition, they submitted that the applicant had not claimed a joint title to the property, acquired through marriage, in any of the proceedings related to the property. It was only on 5 April 2002 that she made such a claim in the first set of proceedings. In any event, the title to the property was to be determined in this later set of proceedings, which were still pending.

40. The applicant reaffirmed her complaints.

2. The Court's assessment

41. The Court notes that the impugned proceedings concerned the annulment of the 2001 gift under which the applicant transferred a notional half of the property into her daughters' possession. The domestic courts found that she had not acted in good faith since she had made the 2001 gift when the 1994 gift, conferring on her the title to that part of the property, had been rescinded at first instance.

42. Under these circumstances, the Court observes that domestic courts' regulation of property disputes according to domestic law does not, by itself, raise any issues under Article 1 of Protocol No. 1 to the Convention. It finds no indication in the present case that the conclusion of the domestic courts interfered with the applicant's property rights contrary to Article 1 of Protocol No. 1 to the Convention. The same concerns the daughters' proprietary rights, if any.

43. The Court further notes that the applicant, although legally represented, did not claim before the courts that she had a joint title to the property, as acquired through marriage. In this context, she failed to exhaust the domestic remedies.

44. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

45. The applicant also invoked Article 8 and Article 5 of Protocol No. 7 of the Convention. Lastly, she complained under Article 10 that Ms I.D. had not been summoned to attend hearings in person after she had come of age.

46. The Court has examined these complaints. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

47. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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.”

49. The applicant did not submit a claim for just satisfaction, as specified under Rule 60 of the Rules of Court. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the length of the first set of proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the first set of proceedings

Done in English, and notified in writing on 7 May 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Rait Maruste
President