



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

1959 · 50 · 2009

FIFTH SECTION

**CASE OF BLAGE ILIEVSKI v. THE FORMER YUGOSLAV
REPUBLIC OF MACEDONIA**

(Application no. 39538/03)

JUDGMENT

STRASBOURG

25 June 2009

FINAL

25/09/2009

This judgment may be subject to editorial revision.

In the case of Blage Ilievski 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 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 39538/03) 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, Mr Blage Ilievski (“the applicant”), on 3 December 2003.

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

3. On 30 May 2007 the Court decided to communicate the complaint concerning the length of the proceedings. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

4. The applicant was born in 1947 and lives in Kumanovo.

5. On 29 June 1995 the applicant applied for disability pension.

6. On 30 January 1996 the Pension and Disability Insurance Fund (“the Fund”) rejected the applicant’s request for lack of jurisdiction (*ненадлежен*).

7. On 15 February 1996 the second-instance commission (“the Commission”) dismissed the applicant’s appeal of 2 February 1996.

8. Between 30 October 1996 and 5 February 2003, the Supreme Court ordered retrial on four occasions. This latter decision was given on the applicant’s appeal on points of law lodged on 25 November 2000.

9. On 23 April 2003 the Commission ordered the Fund to carry out an on-site examination so that to determine the validity of the applicant's employment.

10. On 4 December 2003 the Fund rejected the applicant's request since he had no valid employment in the respondent State. On 30 January 2004 the Commission confirmed this decision. On 16 December 2004 the Supreme Court dismissed the applicant's appeal on points of law accepting the reasons given by the Fund.

THE LAW

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

11. 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

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

13. 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

14. 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 until 2002 no bilateral agreement for social insurance had been concluded between the respondent State and the Federal Republic of Yugoslavia.

15. They further argued that the applicant had contributed significantly to the length of the proceedings by requesting disability pension in the

former Yugoslav Republic of Macedonia, although he had been advised to bring such claim in the Federal Republic of Yugoslavia.

16. The applicant did not comment.

2. *The Court's consideration*

17. The Court notes that the proceedings started on 2 February 1996, when the applicant appealed the Fund's decision of 30 January 1996 (see *Dumanovski v. the former Yugoslav Republic of Macedonia*, no. 13898/02, § 35, 8 December 2005). They ended on 16 December 2004, when the Supreme Court dismissed the applicant's appeal on points of law.

18. 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 *Velova v. the former Yugoslav Republic of Macedonia*, no. 29029/03, § 28, 6 November 2008). However, 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).

19. In this connection, the Court notes that at that point the proceedings lasted one year and two months. Hence, the proceedings lasted over eight years and ten months of which seven years, eight months and six days fall within the Court's temporal jurisdiction for an administrative appeal body and the Supreme Court.

20. 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 *Dimitrieva v. the former Yugoslav Republic of Macedonia*, no. 16328/03, § 33, 6 November 2008).

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

22. It further finds no delays imputable to the applicant. The fact that he applied for a disability pension in the former Yugoslav Republic of Macedonia and used the available remedies cannot be regarded as contributing to the length of the proceedings (see *Rizova v. the former Yugoslav Republic of Macedonia*, no. 41228/02, § 50, 6 July 2006).

23. The Court considers that the protracted length of the proceedings was due to the repeated re-examination of the case. During the time which falls within its competence *ratione temporis*, the case was reconsidered on four occasions. The domestic authorities thus cannot be said to have been inactive. However, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system (see *Parizov v. the former Yugoslav Republic of Macedonia*, no. 14258/03, § 58, 7 February 2008). It further took two years, two months and eight days for the Supreme Court to decide the applicant's appeal on points of law (see

paragraph 8 above). This time, in view of the Supreme Court's competence, cannot be regarded as reasonable (see, *mutatis mutandis*, *Mihajloski v. the former Yugoslav Republic of Macedonia*, no. 44221/02, § 38, 31 May 2007). Moreover, the Court reiterates that special diligence is necessary in pension disputes (see *Docevski v. the former Yugoslav Republic of Macedonia*, no. 66907/01, § 35, 1 March 2007).

24. 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

26. Referring to the outcome of the proceedings, the applicant also complained that the authorities had incorrectly applied the substantive law and had erred on the facts.

27. The Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. There is no indication in the file as to the proceedings in question being arbitrary in any manner (see *Mihajloski v. the former Yugoslav Republic of Macedonia* cited above, § 45).

28. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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.”

30. The applicant did not submit any claim for just satisfaction in accordance with Rule 60 of the Rules of Court. In these circumstances, the Court makes no award under Article 41 of the Convention (see *Nikolov v. the former Yugoslav Republic of Macedonia*, no. 41195/02, § 33, 20 December 2007).

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. *Decides* not to make an award under Article 41 of the Convention.

Done in English, and notified in writing on 25 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President