



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

1959 · 50 · 2009

FIFTH SECTION

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

(Application no. 37812/04)

JUDGMENT

STRASBOURG

25 June 2009

FINAL

25/09/2009

This judgment may be subject to editorial revision.

In the case of Josifov 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,
Mark Villiger,
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. 37812/04) 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, Mr Dobre Josifov (“the applicant”), on 6 October 2004.

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

3. On 12 September 2007 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

4. The applicant was born in 1944 and lives in the village of Ularci.

1. Civil proceedings concerning the applicant’s dismissal

5. On 31 July 1996 the applicant was dismissed for failing to prevent water flood of the employer’s premises. On 14 August 1996 the dismissal decision was upheld by the employer’s executive board.

6. On 5 September 1996 the applicant brought a civil action against the employer requesting annulment of his dismissal and his reinstatement.

7. The first-instance court postponed hearings listed on 17 December 1997, 27 January, 18 February, 13 April and 20 April 1998 due to the absence of the employer and witnesses.

8. On 18 June 1998 the Štip Court of First Instance dismissed the applicant's claim. It would appear that this decision was served on the applicant in December 2000, given that his appeal of 26 December 2000 was accepted as being submitted within the statutory fifteen-day time-limit. On 9 May 2001 the Štip Court of Appeal remitted the case for a renewed examination.

9. After two on-site expert examinations and five adjournments, none of which was ordered on the applicant's request, on 25 June 2003 the first-instance court annulled the dismissal decision.

10. On 24 March 2004 the Štip Court of Appeal quashed that decision since liquidation proceedings were launched in respect to the employer.

11. On 1 November 2004 the first-instance court terminated the proceedings. The applicant was advised to seek recognition of his claim in the liquidation proceedings.

12. No further decisions were taken in these proceedings.

2. Liquidation proceedings against the employer

13. On 20 July 2004 the applicant claimed (*пријава за побарување*) compensation for the pecuniary loss sustained as a result of the alleged unlawful dismissal. In support, he referred to the first- and second-instance courts' decisions of 25 June 2003 and 24 March 2004.

14. On 7 September 2004 the first-instance court recognised the applicant's claim as having been established by a court decision.

15. On 23 November 2004 the Štip Court of Appeal upheld an appeal of the employer's receiver and quashed the lower court's decision. It held that the applicant's claim had not been established by any final decision nor had his application been based on any such decision. It further requested that fresh opinion be obtained from the receiver.

16. On 11 February 2009 the first-instance court did not recognise the applicant's claim and advised him to seek its determination in civil proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

17. 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

18. The Government objected that the applicant had not exhausted domestic remedies since he had failed to appeal the first-instance court’s decision of 1 November 2004.

19. The applicant disputed the Government’s objection.

20. The Court has already found that an ordinary appeal cannot be regarded as an effective remedy for an alleged violation of the right to have a case heard within a “reasonable time” (see *Graberska v. the former Yugoslav Republic of Macedonia*, no. 6924/03, § 44-48, 14 June 2007). The Court see no reasons to come to another conclusion in the present case.

21. It follows that the Government’s preliminary objection must be rejected.

22. The Court further considers that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also finds 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, notwithstanding the specific nature of the dispute, there had been complex circumstances related to the case, including changes of applicable legislation, the employer’s liquidation and lastly, non-recognition of the applicant’s claim in the liquidation proceedings, which have not ended yet.

24. They further stated that the applicant had significantly contributed to the length of the proceedings by claiming compensation in the liquidation proceedings even though the substantive proceedings had not ended yet. In addition, they referred to the adjournments ordered at first instance (see paragraphs 7 and 9 above).

25. The Government further maintained that the courts had proceeded the applicant’s case with due diligence and that the State could not be held responsible for the delays caused by the parties to the proceedings.

26. The applicant contested the Government’s arguments concerning the complexity of the case and his alleged contribution to the length of the

proceedings. He further stated that the subject-matter of the dispute required special diligence on the part of the domestic courts.

2. *The Court's consideration*

27. The Court notes that the civil court proceedings concerning the applicant's dismissal started on 5 September 1996 and ended 1 November 2004 when the applicant was advised to apply in the liquidation proceedings. In this latter set of proceedings, the applicant claimed loss of income as a result of his dismissal. The Court considers that these two sets of proceedings are to be regarded as a single procedure since their outcome was interdependent.

28. The period which falls within the Court's jurisdiction, as argued by the Government, began on 10 April 1997, when 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). 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). In this connection, the Court notes that at that point the proceedings had lasted less than seven months for one level of jurisdiction.

29. The proceedings lasted nearly twelve years and seven months of which almost twelve years fall within the Court's temporal competence for two levels of jurisdiction in the civil court proceedings and the liquidation proceedings each. The relevant period has ended on 11 February 2009 by the first-instance court's decision in the liquidation proceedings.

30. 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 *Dimitrievski v. the former Yugoslav Republic of Macedonia*, no. 26602/02, § 29 18 December 2008).

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

32. It further finds no delays attributable to the applicant. In particular, he cannot be held responsible for applying in the liquidation proceedings since he was advised to do so by the first-instance court.

33. On the other hand, the Court considers that there are considerable delays attributable to the national courts. In this connection, it observes that it took two years and five months for the first-instance court to serve its decision on the applicant (see paragraph 8 above). It further took four years and three months for that same court, now, in the liquidation proceedings, to advise the applicant to pursue his claim, again, in civil proceedings (see paragraphs 15 and 16 above). Furthermore, the domestic law and the Court's jurisprudence (see *Ziberi v. the former Yugoslav Republic of*

Macedonia, cited above § 47) required employment-related disputes to be conducted with a special diligence.

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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed 58,100 euros (EUR) in respect of pecuniary damage. He also claimed EUR 20,000 for non-pecuniary damage for the emotional suffering due to “lack of subsistence funds”.

38. The Government contested these claims as unsubstantiated arguing that there was no causal link between the alleged violation and the pecuniary damage claimed.

39. The Court observes that the applicant did not specify the ground on which he claimed pecuniary damage. Since there is no causal link between the violation found and the damage alleged, the Court rejects these claims. On the other hand, the applicant’s claim for non-pecuniary damage as a result of emotional suffering due to “lack of subsistence funds” is sufficiently linked to the lengthy duration of the proceedings at issue. Therefore, the Court awards him EUR 3,200 in respect of non-pecuniary damage.

B. Costs and expenses

40. The applicant also claimed EUR 5,902 for the costs and expenses incurred before the domestic courts and the proceedings before the Court. In this latter context, he claimed approximately EUR 635 (39,000 Macedonian denars (MKD) in respect of legal fees calculated according to the rate scale of the Macedonian Bar and approximately EUR 274 (16,800 MKD) for mailing and translation costs. No document was presented in support of these latter claims.

41. The Government contested this claims.

42. 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 *Stoimenov v. the former Yugoslav Republic of Macedonia*, no. 17995/02, § 56, 5 April 2007). As to the costs and expenses claimed in respect of the domestic proceedings, the Court notes that such costs 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). It therefore rejects the applicant's claim under this head.

43. As to the proceedings before it, the Court notes that the applicant did not present any evidence concerning the mailing and translation costs. 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 the sum of EUR 600 for the legal representation, plus any tax that may be chargeable to him.

C. Default interest

44. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the proceedings;
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 3,200 (three thousand and two hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 600 (six hundred euros) in respect of costs and expenses;
 - (iii) plus any tax that may be chargeable to the applicant;

(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 25 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President