



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

1959 · 50 · 2009

FIFTH SECTION

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

(Application no. 35640/04)

JUDGMENT

STRASBOURG

23 July 2009

FINAL

23/10/2009

This judgment may be subject to editorial revision.

In the case of Veljanoska 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,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 30 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 35640/04) 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 Gordana Veljanoska (“the applicant”), on 9 September 2004.

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

3. On 2 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 1962 and lives in Ohrid.

5. On 16 September 1994 she brought before the Ohrid Court of First Instance (“the first-instance court”) a compensation claim against the Ohrid Health Centre (“the hospital”) for pecuniary and non-pecuniary loss sustained as a result of an alleged medical negligence during a 1991 surgery.

6. On 1 December 1994 the first-instance court ordered the applicant to propose, within ten days, an expert so that to assess whether she had received proper care in the hospital.

7. On 27 February 1995 the applicant made a proposal, while the hospital consented with Mr V.Dz. being the expert on 19 April 1995.

8. On 8 May 1995 the first-instance court ordered the expert to produce his opinion, which he did on 3 October 1995. On this latter date, the applicant increased the value of her claim.

9. On 14 November 1995 the applicant requested additional expert examination. As on 7 March 1996 the expert requested exclusion, the court ordered the applicant to propose a new expert within fifteen days. She proposed a new expert on 17 December 1996. The expert submitted his report only on 5 November 1997, while being ordered to do so on 6 March 1997.

10. After three hearings being adjourned on the applicant's request and four hearings on the hospital's request, the first-instance court ruled partly in favour of the applicant on 17 March 1998.

11. On 20 October 1998 the Bitola Court of Appeal upheld the parties' appeals and remitted the case for a renewed consideration.

12. Hearings scheduled for 30 June and 9 November 1999 respectively, were adjourned due to the absence of witnesses.

13. On 26 May 1999 the first-instance court requested an additional expert examination by Mr V.Dz.. On 9 November 1999 the court withdrew this request due to the expert's repeated absence from hearings.

14. On 14 December 1999 the first-instance court dismissed the applicant's claim. On 17 May 2000 the Bitola Court of Appeal upheld the applicant's appeal and referred the case back for a fresh consideration.

15. On 16 December 2000 the first-instance court ordered the Forensic Institute to draw up the third expert report.

16. On 27 March 2002 the Forensic Institute informed the court that the applicant had failed to attend medical examinations fixed for 6, 14 and 25 March 2002, respectively.

17. On 23 April 2002 the first-instance court dismissed the applicant's claim relying, *inter alia*, on her failure to undergo medical examination. This decision was upheld by the Bitola Court of Appeal's and the Supreme Court's decisions of 5 February 2003 and 28 January 2004, respectively. This latter decision was served on the applicant on 10 April 2004.

THE LAW

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

18. 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

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

20. 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

21. 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 further stated that there had been complex circumstances related to the case, such as the assessment of the pecuniary and non-pecuniary loss, the difficulties between the parties in agreeing on the appointment of experts and the need for the applicant's further medical examination.

22. They also argued that the applicant had contributed to the length of the proceedings by failing to attend three hearings (see paragraph 10 above) and to undertake medical examination as requested by the Forensic Institute (see paragraph 16 above). In addition, her failure to propose, in a timely manner an expert (see paragraph 9 above) and her request increasing the value of her claim had added considerably to the length of the proceedings (see paragraph 8 above). Lastly, four adjournments were imputable to the hospital (see paragraph 10 above).

23. The applicant contested the Government's arguments.

2. The Court's assessment

24. The Court notes that the proceedings started on 16 September 1994 when the applicant brought her claim before the first-instance court. 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).

25. 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 over two years and six months at one level of jurisdiction.

26. The proceedings ended on 10 April 2004 when the Supreme Court's decision was served on the applicant. They therefore lasted over nine years and six months, of which seven years fall within the Court's temporal jurisdiction at three court levels.

27. 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).

28. The Court considers that the case was of some complexity, but that cannot in itself explain the length of the proceedings.

29. It further finds no adjournments attributable to the applicant within the period which falls within its competence *ratione temporis*. Her failure to undergo medical examination requested by the Forensic Institute (see paragraph 16 above) did not add much to the length of the proceedings.

30. On the other hand, the Court finds significant delays attributable to the first-instance court. In this connection, it observes that within the period which falls within its jurisdiction it took nearly two years and six months for that court to decide the applicant's case (see paragraph 10 above). It took another two years for the same court to render a decision after the case had been referred back for re-examination (see paragraph 17 above). Delays related to the expert examinations (see paragraphs 13, 15 and 16 above) are imputable to the State (see, *mutatis mutandis*, *Stojanov v. the former Yugoslav Republic of Macedonia*, no. 34215/02, § 60, 31 May 2007).

31. 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

33. The applicant further complained that judges had been biased since the hospital, as the opposing party, had been a public funded institution.

34. The Court considers that this complaint is unsubstantiated since the applicant did not present any evidence that the hospital's public funding played any role in the courts' adjudication.

35. 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

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 1,000 euros (EUR) in respect of pecuniary damage for loss of income due to her inability to go to work pending her case. She further claimed EUR 10,000 in respect of non-pecuniary damage for the emotional stress and suffering caused by the length of the proceedings.

38. The Government contested the applicant's claim for loss of income arguing that she had been represented by a lawyer in the domestic proceedings. They further argued that her claim for non-pecuniary damage was unsubstantiated.

39. 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, ruling on an equitable basis, it awards her EUR 1,200 under this head, plus any tax that may be chargeable.

B. Costs and expenses

40. The applicant claimed EUR 6,033 for the costs and expenses incurred before the domestic courts. These included the legal, courts' and experts' fees. As to costs and expenses incurred before this Court, she

claimed EUR 800 for the lawyer's fees and for translation of documents, and duly supported her claims by respective invoices.

41. The Government contested the applicant's claims.

42. The Court reiterates that only such costs and expenses as were actually and necessarily incurred in connection with the violation found, and reasonable as to quantum, are recoverable under Article 41 (see *Kyrtatos v. Greece*, no. 41666/98, § 62, ECHR 2003-VI (extracts)). Concerning the applicant's request for reimbursement of the costs incurred in the proceedings before the domestic courts, the Court notes that such costs 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). As to the legal costs and expenses incurred before it, regard being had to the information in its possession and the above criteria, the Court awards the sum of EUR 600 to cover the applicant's costs and expenses, plus any tax that may be chargeable to her.

C. Default interest

43. 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 in respect of the length of 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 1,200 (one thousand and two hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;

(ii) EUR 600 (six hundred euros) in respect of costs and expenses, 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 23 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President