



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

1959 · 50 · 2009

FIFTH SECTION

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

(Application no. 27865/02)

JUDGMENT

STRASBOURG

17 September 2009

FINAL

01/03/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of BOČVARSKA v. the former Yugoslav Republic of Macedonia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Peer Lorenzen, *President*,
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 6 November 2007 and on 25 August 2009,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 27865/02) 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 two Macedonian nationals, Ms Nevenka Bočvarska and Mr Angel Kupev, on 29 April 2002.

2. By a decision of 6 November 2007, the Court declared the application partly admissible only in respect of Ms Bočvarska (“the applicant”).

3. The applicant was represented by Ms L. Vanevska, a lawyer practising in Skopje. The Macedonian Government (“the Government”) were represented by their Agent, Mrs R. Lazareska Gerovska.

4. The applicant alleged, in particular, that she had been deprived of the peaceful enjoyment of her possession and that the proceedings in question had been unreasonably lengthy.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1958 and lives in Skopje.

6. According to an official note of the Ministry of Finance of 1997, the applicant and Mr Angel Kupev registered Naša Kniga STD (*самостоен*

трговски дуќан, “the undertaking”, as opposed to companies incorporated under company law) through which they pursued business activities. On 17 July 1992 they ceased trading through the undertaking. On 8 February 1993 the undertaking was re-registered in the name of the applicant. The undertaking operated until 22 February 1995, when its activities were voluntarily terminated.

A. Civil proceedings establishing the undertaking's claim

7. On 23 June 1993 the Skopje District Commercial Court (*Окружен Стопански суд*) upheld the undertaking's claim and ordered AD Gazela (“the debtor”) to pay a debt amounting to 1,393,377.70 old Macedonian denars (MKD) plus interest. The court found that the debtor and the undertaking had concluded a framework agreement under which the latter would produce paper products for the debtor. As the debtor had failed to pay for the products made, the court upheld the undertaking's claim.

8. On 10 September 1993 the Macedonia-Skopje Commercial Court (*Стопански суд на Македонија*), sitting as an appellate court, dismissed an appeal by the debtor and upheld the lower court's decision. On 22 March 1994 the Supreme Court dismissed an appeal on points of law (*ревизија*) by the debtor and upheld the lower courts' decisions.

B. Enforcement proceedings, as initially instituted by the undertaking

9. On 2 October 1993 the undertaking requested enforcement of the judgment debt, proposing the following means of enforcement: transfer of the money due from the debtor's account and an inventory, evaluation and public auction of the debtor's movable and immovable property. On 8 October 1993 the Skopje District Commercial Court granted the undertaking's request and ordered the debtor to pay the debt. On 3 November 1993 it dismissed an objection by the debtor.

10. On 26 November 1993 the District Commercial Court dismissed a request by the debtor for postponement of enforcement. On 25 December 1993 the Commercial Court dismissed an appeal by the debtor and upheld its decision.

11. On 9 June 1994 the District Commercial Court upheld an objection by the debtor and discontinued the enforcement proceedings in so far as they concerned interest.

12. On 2 September 1994 the District Commercial Court ordered the Public Payment Office to require the bank in which the debtor had had its foreign currency account to transfer the balance due to the undertaking's account. It also ordered the bank not to make any payments from the debtor's account to other parties until the undertaking's claim had been

completely honoured. The court established that the undertaking had received part of the judgment debt. It further noted that, as there were no other funds available in the debtor's account, on 25 July 1994 the undertaking had requested the court to satisfy its claim from other accounts belonging to the debtor.

13. On 6 October 1994 the undertaking, represented by Mr A. Kupev, and the debtor reached a court settlement ("the 1994 settlement") concerning the means of securing payment of the remaining balance, which amounted to MKD 21,774,593.00 (844,631 German marks). The undertaking agreed to receive the balance in twelve equal instalments within a year.

14. As the debtor did not pay the debt as agreed, on 27 October 1994 the District Commercial Court ordered an inventory and public auction of the debtor's vehicles. On 30 November 1994 the Commercial Court dismissed an appeal by the debtor and upheld the lower court's decision.

15. On 12 January 1995 the District Commercial Court partly allowed a request by the debtor for postponement of the enforcement in respect of some heavy goods vehicles and a bus. On 29 January 1996 the court ordered the confiscated vehicles to be returned to the debtor as they were necessary for its work. On 29 August 1996 the Skopje Court of Appeal (*Апелационен суд*) upheld those decisions.

16. On 14 April 1997 the Skopje Court of First Instance (*Основен суд*) dismissed a request by the debtor to postpone enforcement of the 1994 settlement.

17. On 23 September 1997 the Court of First Instance upheld an objection by the debtor, who had argued that the undertaking had no legal capacity as a creditor in the proceedings as it had ceased to exist. It also stayed the enforcement proceedings and ordered the Public Payment Office to lift the charging orders on the debtor's accounts. It dismissed the applicant's arguments that she was a successor to the undertaking and that there had been a continuity of the undertaking's claims. On 30 April 1998 the Court of Appeal dismissed an appeal by the undertaking as inadmissible.

C. Enforcement proceedings regarding the 1994 settlement

18. Pending the proceedings described above, on 14 June 1996 the Skopje Municipal Court granted the undertaking's request of 10 January 1996 and issued a charging order on one of the debtor's shops ("the shop"). On 2 September 1996 the Skopje Court of First Instance dismissed an objection by the debtor. On 31 October 1996 the Court of Appeal quashed the lower court's decision and ordered a re-examination of the case. On 21 November 1996 the Skopje Court of First Instance suspended the charging order, as the shop had been exempted from enforcement since it was necessary for the debtor's work. On

24 January 1997 the Court of Appeal quashed that decision and ordered a re-examination of the case. On 7 July 1997 the Court of First Instance dismissed an objection by the debtor.

19. On 18 February 1997 the undertaking requested the court to enforce the claim as established by the 1994 settlement. On 24 February 1997 the Court of First Instance granted the undertaking's request for the sale of the debtor's shop in respect of the principal debt, which had amounted to DM 844,631, together with interest between 11 October 1994 until settlement, plus trial costs. On 19 March 1997 the Court of First Instance partly upheld an objection by the debtor and suspended the enforcement proceedings in so far as they concerned interest.

20. On 12 June 1997 the Court of Appeal allowed an appeal by the debtor and quashed the decision of 19 March 1997. It found that the lower court had failed to determine the debtor's objection as to whether other enforcement proceedings had already been pending between the same parties on the same subject.

21. On 8 July 1997 the Court of First Instance partly upheld an objection by the debtor and suspended the enforcement proceedings in so far as they concerned interest. The order for the sale of the shop remained unaffected.

22. On 12 September 1997 the Court of Appeal dismissed an appeal by the debtor and upheld the lower court's decision.

23. On 26 November 1997 the public prosecutor lodged with the Supreme Court a request for the protection of legality (*барање за заштита на законитоста*) ("legality review request") challenging the legality of the lower courts' decisions of 8 July and 12 September 1997. It argued that the 1994 settlement could not be regarded as an enforcement order (*извршна исправа*) as it had been concluded while the enforcement proceedings were already pending and it had merely concerned the means of enforcing payment of the outstanding debt. The public prosecutor's office further contested, *inter alia*, the legal capacity of the undertaking in the enforcement proceedings as it had ceased to exist before it had lodged its application for enforcement on 18 February 1997. On 1 December 1997 the undertaking made submissions in reply.

24. On 29 January 1998 the Supreme Court upheld the public prosecutor's legality review request and quashed the impugned decisions. It found that the lower courts had wrongly considered the 1994 settlement to be an enforcement order that could validly be enforced. It instructed them, *inter alia*, to reconsider the undertaking's legal capacity as a creditor in the enforcement proceedings.

25. On 2 April 1998 the Skopje Court of First Instance upheld the debtor's objection concerning the undertaking's capacity to take part in the proceedings as a creditor. It dismissed the undertaking's application for enforcement and ordered the proceedings to be resumed in the name of the applicant as a creditor. It held that the applicant had been the last person

who had pursued business activities through the undertaking before it had ceased to exist. As the undertaking did not have the capacity of a legal entity, all its rights and obligations, including its claim against the debtor, had to be considered to have been transferred to the applicant, as the physical person who had run it.

26. On 11 June 1998 the Skopje Court of Appeal upheld the lower court's decision, finding no grounds to depart from the reasons given.

27. On 22 September 1998 the public prosecutor submitted a fresh legality review request to the Supreme Court, challenging the legality of those decisions and claiming that the applicant lacked the legal capacity to replace the undertaking and take over the enforcement proceedings as a creditor. It further disputed that the 1994 settlement could not be regarded as an enforcement order, as the enforcement proceedings had already been pending at the time when it had been concluded. On or about 29 September 1998, the applicant, who was legally represented, made submissions in reply to the public prosecutor's legality review request.

28. On 11 November 1998 the Supreme Court upheld the public prosecutor's request and quashed the lower courts' decisions. It found that they had failed to establish whether the enforcement proceedings had been pending before the 1994 settlement was concluded. It further held it to be irrelevant that the undertaking had ceased to operate, as the undertaking's founders bore its rights and obligations and it had been their responsibility to establish their status before the courts.

29. On 17 March 1999 the Court of First Instance ordered the enforcement of the 1994 settlement by sale of the shop in favour of the applicant. It held that the enforcement proceedings, which had been instituted before the 1994 settlement, had ended with the first-instance court's decision of September 1997. It further recognised the applicant's capacity to take over the undertaking's claim and to be given the status of a creditor.

30. On 13 May 1999 the Court of Appeal upheld the lower court's decision and dismissed an appeal by the debtor, which had submitted, *inter alia*, that the applicant had failed to establish that she had taken over the undertaking's claim.

31. On 9 June 1999 the public prosecutor lodged a third legality review request with the Supreme Court. The public prosecutor's office reiterated its earlier allegations that the 1994 settlement could not be regarded as an enforcement order and that the applicant could not automatically be considered to have taken over the undertaking's claim.

32. On 17 February 2000 the Supreme Court quashed the lower courts' decisions. It found that they had erroneously established that the applicant had taken over the undertaking's claims *ipso jure* as she had been the last proprietor of the undertaking. It further instructed them to verify whether

there had been a valid certificate by which the undertaking's claim had been transferred to the applicant.

33. On 23 June 2000 the Court of First Instance requested the applicant to provide, in accordance with section 22 of the Enforcement Act (see paragraph 51 below), written evidence that the undertaking's claim had been transferred to her. On 29 June 2000 the applicant submitted documents to the court, including a balance sheet (*биланс на приходи и расходи*), bank account details, a receipt (*признаница*) and a certificate issued by a bank.

34. On 6 October 2000 the Court of First Instance dismissed the applicant's application for enforcement of the claim as established by the 1994 settlement. Following the Supreme Court's instructions, it held that there had been no valid certificate by which the undertaking's claim had been transferred to the applicant. It therefore concluded that the latter could not claim to have the status of a creditor.

35. On 1 March 2001 the Court of Appeal quashed the decision as the lower court had failed to establish whether the applicant had owned and run the undertaking as a sole proprietor.

36. On 15 June 2001 the Court of First Instance dismissed the applicant's request as ill-founded. It found that the documents submitted to the court on 29 June 2000 could not be regarded as a valid certificate by which the undertaking's claim had been transferred to the applicant. It concluded that the applicant could not *ipso jure* have taken over the undertaking's claim.

37. On 6 September 2001 the Court of Appeal overturned the decision and partly allowed the applicant's application for enforcement of the principal debt indicated in the 1994 settlement. It dismissed the applicant's request for payment of the interest. It found, *inter alia*:

“...it is irrefutable that the creditor, Ms Bočvarska, owned the undertaking ..., which had no legal capacity... The fact that Ms Bočvarska carried out transactions on the market through the undertaking at the time when the latter still operated implied that she was responsible for all the rights and obligations arising from it... the lack of legal capacity of the undertaking ..., whose proprietor was the creditor [the applicant], means that it was not a separate legal entity, but that its capacity, regarded as a pool of rights and obligations, is vested solely in the creditor, Ms Bočvarska ... there is no transfer of the undertaking's claims to Ms Bočvarska, as the former does not have legal capacity, but the creditor [the applicant] was ... liable for the undertaking's obligations...”

38. On or about 15 January 2002 the public prosecutor lodged a fourth legality review request with the Supreme Court in respect of the Court of Appeal's decision.

39. At the public prosecutor's request, on 28 January 2002 the Court of First Instance postponed the enforcement of the order until the Supreme Court had determined the legality review request.

40. On the same date, the applicant made submissions to the Court of First Instance in reply to the public prosecutor's request.

41. On 30 May 2002 the Supreme Court upheld the public prosecutor's request, overturned the Court of Appeal's decision and upheld the first-instance court's decision of 15 June 2001. It found, *inter alia*, that the lower courts had established the following facts:

“...the enforcement proceedings were pending before the District Commercial Court between the [undertaking] and [the debtor]. On 6 October 1994 they concluded a court settlement on the basis of which the enforcement proceedings were instituted... on 23 September 1997 the Skopje Court of First Instance stayed the proceedings... on 30 April 1998 the Court of Appeal rejected the [undertaking's] appeal as inadmissible [these decisions concern the enforcement proceedings instituted before the 1994 settlement was concluded]... on 8 February 1993 the [undertaking] was registered in the name of Ms Bočvarska.... On 22 February 1995 [the undertaking]... ceased to exist. Ms Bočvarska was the last sole proprietor of the [undertaking], which had been set up by her funds and her labour force.”

42. The court went on to conclude that the Court of Appeal had wrongly applied the substantive law for the following reasons:

“In the present case, the requirements of the provision cited above [referring to section 22 of the Enforcement Proceedings Act], for the granting of enforcement at the request of a person not indicated as a creditor in the enforcement order, were not satisfied. There is no written certificate attesting that the claim was transferred from [the undertaking] to Ms Bočvarska, as a creditor. The termination of the undertaking's operations does not *ipso jure* entail the transfer of its claims to the last proprietor who ran it. Indeed, the Entrepreneurship Act did not contain a provision providing for *ipso jure* transfer of the undertaking's claims to the last proprietor who ran it ... Moreover, the court settlement of 6 October 1994 cannot be regarded as an enforcement order as it resulted from the enforcement proceedings already pending between the same creditor [meaning the undertaking] and the debtor... the subject of this settlement was the means of enforcing the outstanding debt...”

43. The decision was served on the applicant on 25 July 2002.

II. RELEVANT DOMESTIC LAW

1. The Constitution

44. Article 101 of the Constitution provides that the Supreme Court is the highest court and that it ensures the uniform application of the laws by the courts.

2. Entrepreneurship Act (*Закон за самостојно вршење дејност со личен труд*) of 1989

45. Section 3 (1 and 3) of the Entrepreneurship Act provided that an entrepreneur could set up an undertaking (*дуќан*), in order to pursue business activities. The undertaking could have a legal personality.

46. Section 10 provided that an entrepreneur could set up an undertaking by submitting an application to the relevant municipal administrative body.

47. In accordance with section 16 § 1 (1) of that Act, an undertaking would cease to exist if the above application had been withdrawn.

3. Enforcement Proceedings Act (*Закон за извршната постапка*) of 1997

48. Section 7 (6) of the Enforcement Proceedings Act (“the Act”), as applicable at that time, provided that a decision given on an appeal was regarded as final.

49. Under section 8 of the Act, an appeal on points of law and a request for reopening of the proceedings could not be lodged in respect of a final decision given in the enforcement proceedings.

50. Section 13 of the Act provided that the provisions of the 1998 Act applied, *mutatis mutandis*, to enforcement and security proceedings, unless otherwise provided for by law.

51. Under section 15 (2), an enforceable court decision and a court settlement were regarded as an enforcement order.

52. Section 22 (1) of the Act provided that enforcement might be granted at the request of a person not indicated as a creditor in an enforcement order only if that person proved, by a public or otherwise legally certified order, that the claim had been transferred to him or her. Should that be impossible, the transfer of the claim was to be proved by a final decision given in civil proceedings.

4. Civil Proceedings Act (*Закон за парничната постапка*) of 1998

53. Section 319 of the Civil Proceedings Act (“the 1998 Act”), which was in force at the material time, provided that a decision became final when an appeal could no longer be lodged against it.

54. In accordance with section 380 (1) of the 1998 Act, in case of substantial procedural flaws, the Supreme Court quashed the first- and the second-instance decision or the second-instance decision only and referred the case back for reconsideration.

55. Section 381 of the 1998 Act provided that where the substantive law had been applied incorrectly, the Supreme Court upheld the appeal on points of law and overturned the impugned decision. In cases where the facts were erroneously established because of the incorrect application of the substantive law and where there were no grounds for overturning the impugned decision, the Supreme Court upheld the appeal on points of law and referred the case back for fresh consideration.

56. In accordance with section 387 of the 1998 Act, the public prosecutor could submit, within three months, a request for the protection of legality in

respect of a final decision. When the request was lodged in respect of a second-instance decision, this term started to run from the date on which the last party was served with the decision. Where the parties concerned had lodged an appeal on points of law against the second-instance decision, the public prosecutor could submit a request for the protection of legality in respect of that decision within thirty days of the date of service of the appeal on points of law.

57. In accordance with section 390, a legality review request could be lodged either in respect of a substantial procedural flaw or an incorrect application of the substantive law. It could not be lodged where the impugned decision went beyond the scope of the claim or where the facts had been erroneously or incompletely established.

58. Section 394(2) of the Act provided, *inter alia*, that sections 370, 373 to 381 and 383 to 385 applied, *mutatis mutandis*, to proceedings concerning a legality review request.

5. Civil Proceedings Act of 2005

59. The Act, which repealed the 1998 Act, does not contain any provisions concerning the legality review proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

60. The applicant complained that the length of the enforcement proceedings had been incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention, which, in so far as relevant, 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...”

1. The parties' submissions

61. The applicant submitted that the enforcement proceedings were to be regarded as a single set and that the excessive use of the extraordinary legality review request had affected their length. She further stated that the case had not been of a complex nature and that she could not be held responsible for the repeated use of available remedies by the debtor and public prosecutor.

62. The Government submitted that the case had in fact been of a complex nature as it had required determination of difficult legal issues: the applicant's capacity to act; whether other enforcement proceedings had already been pending between the same parties at the time when the undertaking had requested enforcement of the 1994 settlement; and whether the latter should be regarded as an enforcement order.

63. They further argued that the applicant had contributed to the length of the proceedings by failing to submit any written evidence in support of her allegations that the undertaking's claim had been transferred to her until June 2000. They referred also to the extensive use of all available remedies by the debtor and its poor economic situation.

64. As regards the conduct of the authorities, the Government maintained that the courts had taken all reasonable steps to avoid unnecessary delays.

2. The Court's assessment

65. The Court notes that the enforcement proceedings were instituted on 2 October 1993, when the undertaking sought enforcement of the Skopje District Commercial Court's decision dated 23 June 1993. As established by the national courts, these proceedings ended on 30 April 1998 (see paragraph 17 above). On 18 February 1997 another set of enforcement proceedings was instituted in respect of the 1994 settlement. These two sets of proceedings concerned the same parties and means of enforcement. The applicant was party to both sets, either as the undertaking's proprietor and representative or in person. She can accordingly be regarded as being entitled to complain about the proceedings from their inception (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 113, ECHR 2006).

66. The enforcement proceedings ended on 25 July 2002, when the Supreme Court decision was served on the applicant. They thus lasted for nearly eight years and ten months, of which five years, three months and fifteen days fall within the Court's jurisdiction *ratione temporis* (since the ratification of the Convention by the respondent State on 10 April 1997) at three court levels. The Court further observes that, in order to determine the reasonableness of the period in question, regard must also be had to the state of the case on the date of ratification (see *Atanasovic and Others v. the former Yugoslav Republic of Macedonia*, no. 13886/02, § 26, 22 December 2005) and notes that on 10 April 1997 the enforcement proceedings complained of had already been pending for over three years and two months.

67. The Court reiterates that the "right to a court" would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6. The State has an obligation under

Article 6 to organise a system for the enforcement of judgments that is effective both in law and in practice and ensures their enforcement without undue delay (see *Jankulovski v. the former Yugoslav Republic of Macedonia*, no. 6906/03, §§ 33 and 37, 3 July 2008).

68. 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 *Atanasovic and Others*, cited above, § 33, which also concerned enforcement proceedings).

69. In the present case, the Court observes that although the case was of some legal complexity, that factor alone cannot justify the length of the proceedings.

70. It also considers that there were no delays attributable to the applicant. The latter cannot be held responsible for the procedural conduct of the debtor and public prosecutor (see *Graberska v. the former Yugoslav Republic of Macedonia*, no. 6924/03, § 61, 14 June 2007, and *Stojanov v. the former Yugoslav Republic of Macedonia*, no. 34215/02, § 57, 31 May 2007).

71. As regards the conduct of the authorities, the Court notes that, during the period under consideration, the applicant's case was reconsidered on five occasions. The domestic courts cannot therefore be said to have been inactive. However, the Court notes that repetition of remittal orders within one set of proceedings discloses a serious deficiency in the judicial system (see *Pavlyulynets v. Ukraine*, no. 70767/01, § 51, 6 September 2005, and *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003). The main reason for the numerous remittals was the different legal opinion of the domestic courts regarding legal matters indicated by the Government (see paragraph 60 above). It was those issues that affected the length of the enforcement proceedings.

72. Having examined all the material submitted to it, the Court considers that in the instant case the length of the enforcement proceedings was excessive and failed to meet the "reasonable time" requirement of Article 6 § 1 of the Convention.

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

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

74. The applicant complained under Article 1 of Protocol No. 1 that she had been prevented from obtaining payment of the undertaking's debt, although she had been its last sole proprietor. Article 1 of Protocol No. 1 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.”

1. The parties' submissions

75. The applicant maintained that she had a possession within the meaning of the provision relied on. She stated that the undertaking should not be regarded as a legal entity, but as a physical person whose business activities had been registered with the authorised Ministry. Indeed, its proprietors were personally liable for the undertaking's debts and obligations *vis-à-vis* third parties. She further submitted that the public prosecutor's interference in the proceedings had not been in the public interest for the following reasons: he had been biased; he had represented the private interests of only one of the parties concerned; and the substantive law had been incorrectly applied.

76. The Government submitted that contrary to the undertaking's claim, which could have fallen within the ambit of Article 1 of Protocol No. 1, the applicant could not be considered to have had a “possession” within the meaning of this Article, since she had failed to establish that the undertaking's claim had been transferred to her. They averred that the applicant had not been granted the status of a creditor by an irreversible decision. Although she had been established as a creditor by three final decisions of the Court of Appeal, the latter had been reviewed by the Supreme Court, which, in accordance with the principle of legality, had upheld the prosecutor's legality review requests.

77. They further stated that the applicant, even assuming that she might have been regarded as having had a “possession” under this provision, had been deprived of it in the public interest and in accordance with the conditions provided for by law. The alleged deprivation was based on the public prosecutor's legality review request, an extraordinary remedy aimed at ensuring the uniformity of the legal system and the principle of legality. Furthermore, the State had, through that remedy, exercised its power of review in cases where a law or an international agreement had been infringed by a final court decision.

2. The Court's assessment

(a) Whether there was a possession

78. The Court of Appeal, by its decision of 6 September 2001, conferred on the applicant an enforceable claim by establishing that the undertaking's capacity was vested solely in her. This decision became final as no ordinary appeal lay against it (see paragraphs 48 and 49 above). That claim may be regarded as a “possession” for the purposes of Article 1 of Protocol No. 1 (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59; *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III; *Roşca v. Moldova*, no. 6267/02, § 31, 22 March 2005; and *Ryabykh v. Russia*, no. 52854/99, § 61, ECHR 2003-IX).

(b) Whether there was interference

79. It is the established jurisprudence of this Court that the quashing of a final and binding judgment that conferred a “possession” on the applicant constitutes an interference with the applicant's right to that property (see *Tregubenko v. Ukraine*, no. 61333/00, § 51, 2 November 2004, and *Brumărescu v. Romania* [GC], no. 28342/95, § 74, ECHR 1999-VII). The Court sees no reason to depart from this approach in the present case.

(c) Whether the interference was justified

80. The Court recalls that the Preamble to the Convention declares, among other things, the rule of law to be part of the common heritage of the Contracting States (see *Brumărescu*, cited above, § 61).

81. As to Article 1 of Protocol No. 1, the Court has established that a deprivation of property can only be justified if it is shown, *inter alia*, to be “in the public interest” and “subject to the conditions provided for by law”. Moreover, any interference with property must also satisfy the requirement of proportionality. The requisite balance will not be struck where the person concerned bears an “individual and excessive burden” (see *Tregubenko*, cited above, § 53).

82. In the present case, the Court notes that the State's interference with the applicant's property rights was made by the Supreme Court's decision of 30 May 2002. This decision was given upon the public prosecutor's legality review request under the then applicable rules of civil proceedings (see paragraphs 52-58 above). The interference was made pursuant to a remedy requested by a State organ, which was not a party to the proceedings (see *Roseltrans v. Russia*, no. 60974/00, §§ 13 and 27, 21 July 2005). In addition, the public prosecutor had full discretion in deciding whether to lodge the legality review request with the Supreme Court (see *Lepojić*

v. Serbia, no. 13909/05, § 54, 6 November 2007, and *Dimitrovska v. the former Yugoslav Republic of Macedonia* (dec.), no. 21466/03, 30 September 2008). For these reasons, the Court considers that legal effects of the legality review proceedings under the 1998 Act – the quashing by the Supreme Court of the decision of 6 September 2001 – were comparable to those of the supervisory review system existing in some Contracting States, since the Supreme Court set at naught an entire judicial process which had ended in a judicial decision that was “irreversible” and thus *res judicata* (see *Brumărescu*, cited above, § 62; *Roşca v. Moldova*, no. 6267/02, § 27, 22 March 2005; *Svetlana Naumenko v. Ukraine*, no. 41984/98, § 92, 9 November 2004 and *Ryabykh v. Russia*, no. 52854/99, § 53, ECHR 2003-IX).

83. The Court finds that the quashing of the decision of 6 September 2001 was not compatible with the rule of law, which is inherent in all Articles of the Convention (see, *a contrario*, *Protsenko v. Russia*, no. 13151/04, § 33, 31 July 2008, in which the Court found that the failure to take into account the interests of third persons whose rights were considerably affected by the final decision was a legitimate ground for reopening the proceedings upon a supervisory review request)..

84. Having regard to the above considerations, the Court considers that the “fair balance” was upset by the situation brought about by the Supreme Court’s decision and that the applicant bore an individual and excessive burden. There has accordingly been a violation of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

86. The applicant claimed MKD 21,774,593 with statutory interest from 11 October 1994 until the settlement in respect of pecuniary damage sustained under Article 1 of Protocol No. 1. This figure refers to the amount specified in the 1994 settlement (see paragraph 13 above). The applicant also claimed 1,000,000 euros (EUR) for living costs due to “destroyed business and lost jobs”. She alleged that the debtor had been declared insolvent and that she could not recover her claim. Lastly, she claimed

EUR 30,000 in respect of non-pecuniary damage for anxiety and emotional suffering sustained as a consequence of the excessive length of proceedings.

87. The Government contested these claims as unsubstantiated. As regards the pecuniary damage they stated that: a) there was no ground for awarding the amount established in the 1994 settlement, given the last decision of the Supreme Court dismissing the applicant's claim and b) there was no causal link between the alleged violations and the "living costs" claimed.

88. Concerning the pecuniary damage sought under Article 1 of Protocol No. 1, the Court observes that the applicant did not present any evidence that the debtor, at the time when the Supreme Court rendered its decision, had been State-controlled, which would entail direct State liability for the judgment debt created by the Court of Appeal's decision of 6 September 2001. Furthermore, from the case-file, as it stands, the Court cannot establish as to whether, at the same point in time, the debtor had sufficient assets to comply with the 1994 settlement. In this connection, the Court notes that no evidence has been presented as to whether or when the debtor was declared insolvent or how any such insolvency affected the applicant's ability to recover the debt. In these circumstances, the Court finds no causal link between the pecuniary damage claimed and the violation found. It therefore rejects the applicant's claim for the amount specified in the 1994 settlement. For the same reasons, it also rejects the applicant's claim that interest be paid on this amount.

89. The Court further notes that the applicant did not provide any evidence that would enable it to determine whether and to what extent the violations found had any negative impact on the applicant's standard of living, as alleged: it therefore rejects this claim.

90. Lastly, the Court accepts that the applicant has suffered some non-pecuniary damage which would not be sufficiently compensated by the finding of the violations alone (see, *mutatis mutandis*, *Teltronic-CATV v. Poland*, no. 48140/99, § 70, 10 January 2006). Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant EUR 1,600 under this head.

B. Costs and expenses

91. The applicant claimed MKD 2,334,100 (approximately EUR 38,100) plus interest from 30 May 2002 until settlement for the costs and expenses incurred before the domestic courts. These included the courts' and legal fees. The applicant provided an itemised list of costs. No evidence was provided as regards court fees. Lastly, she claimed EUR 5,000 for the costs and expenses incurred in the proceedings before the Court. No document was submitted in support of this latter claim.

92. The Government contested these claims as unsubstantiated.

93. 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 are reasonable as to quantum (see *Editions Plon v. France*, no. 58148/00, § 64, ECHR 2004-IV). The Court points out that under Rule 60 of the Rules of Court “the applicant must submit itemised particulars of all claims, together with any relevant supporting documents failing which the Chamber may reject the claim in whole or in part” (see *Parizov v. the former Yugoslav Republic of Macedonia*, no. 14258/03, § 71, 7 February 2008).

94. Having regard to the fee note submitted by the applicant, the Court finds that only EUR 1,000 related to lawyer's fees which post-dated the ratification of the Convention by the respondent State and were expended with a view to seek prevention before the national courts of the violations found by the Court (see, *mutatis mutandis*, *Stoimenov v. the former Yugoslav Republic of Macedonia*, no. 17995/02, § 56, 5 April 2007).

95. In these circumstances, the Court is unable to award the totality of the sums claimed in respect of the costs and expenses incurred in the domestic proceedings. It considers that the applicant is entitled to be reimbursed under this head the sum of EUR 1,000, plus any tax that may be chargeable to her.

96. Lastly, the Court notes that the applicant did not submit any supporting documents or particulars in respect of her claim for the costs and expenses incurred in the proceedings before it. Accordingly, it does not award any sum under this head (see *Parizov*, cited above, § 72).

C. Default interest

97. 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. *Holds* that there has been a violation of Articles 6 § 1 of the Convention as regards the length of the proceedings in question;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
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 1,600 (one thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses incurred domestically;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President