



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

1959 · 50 · 2009

FIFTH SECTION

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

(Application no. 34151/03)

JUDGMENT

STRASBOURG

8 October 2009

FINAL

08/01/2010

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 Kamilova 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,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 15 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 34151/03) 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 Katerina Kamilova (“the applicant”), on 21 October 2003.

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

3. On 19 June 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

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1941 and lives in Gevgelija.

5. On an unspecified date in 1996, the applicant brought a civil action against Mr D. (“the debtor”) claiming restoration of the outstanding debt related to a loan that she had given to him in 1995.

6. On 29 April 1998 they reached a court settlement (*судско порамнување*, “the court settlement”) under which the debtor was required to pay the outstanding debt in equal monthly instalments.

7. On 19 January 1999 the Gevgelija Court of First Instance (“the first-instance court”) granted the applicant's request of 11 January 1999 ordering enforcement of the court settlement, less DM 300 which the debtor had meanwhile paid. The applicant proposed an inventory, valuation and public sale of movable and immovable property of the debtor. On 17 May 2000 she further specified her request as concerning a house and plot of land (“the property”). In this connection, she submitted an extract from the land registry (“the registry”) dated 21 October 1999 attesting the debtor's title to the property. She also requested the first-instance court to record a charging order over the property (*да стави прибелешка врз имотот на должникот*) so as to secure her claim.

8. On 15 June 2000 the first-instance court ordered valuation of the property. It was carried out on 10 October 2000. The first-instance court's decision in this respect dated 22 March 2001. It was served on the debtor on 28 November 2006.

9. Between 28 November 2006 and 17 April 2007, the first-instance court ordered four adjournments because of the debtor's absence.

10. By submissions of 25 April 2007 and 5 June 2007 respectively, the applicant informed the first-instance court that the debtor had transferred the property to his father's possession on the basis of a court decision of 14 March 2001. She requested the first-instance court to continue with the enforcement since the debtor had regained possession of the property after his father died.

11. No further actions were taken for enforcement of the applicant's claim.

RELEVANT DOMESTIC LAW

12. Section 3 of the Enforcement Act (“the Act”) of 2005 (*Закон за извршување*) provides that bailiffs (*извршители*) carry out the enforcement.

13. Section 238 of the Act provides that the enforcement proceedings instituted before the Act entered into force are to continue, until 31 December 2007, under the Enforcement Proceedings Act of 1997. Thereafter, the 2005 Act applies.

THE LAW

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

14. The applicant complained under Article 14 of the Convention about the non-enforcement of her claim established by the court settlement. The Court considers that the applicant's complaint falls to be examined under Article 6 § 1 of the Convention, the relevant part of which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

15. The Government did not raise any objection as to the admissibility of the application.

16. The Court notes that the application 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

17. The Government submitted that the applicant's claim could not be enforced given the lack of funds by the debtor. In this connection, they maintained that the applicant had wrongly requested enforcement against the property, which had not been in the debtor's possession. They further argued that the applicant had failed to propose alternative means of enforcement and to seek that the proceedings be expedited.

18. They also stated that the domestic courts could not be held responsible for the delays caused by the parties concerned. The first-instance court's inactivity between 2001 and 2006 had been due to the applicant's failure to propose other means of enforcement. Lastly, it was open to the applicant to request, under the Act, enforcement of her claim before bailiffs (see paragraphs 12 and 13 above).

19. The applicant contested the Government's arguments stating that the debtor had title to the property when the enforcement had been ordered. She also argued that the proceedings had been dormant for over five years.

2. *The Court's assessment*

(a) General principles

20. The Court recalls 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 (see *Jankulovski v. the former Yugoslav Republic of Macedonia*, no. 6906/03, § 33, 3 July 2008). Further, a delay in the execution of a judgment may be justified in particular circumstances. It may not, however, be such as to impair the essence of the right protected under Article 6 § 1 (see, *mutatis mutandis*, *Pecevi v. the former Yugoslav Republic of Macedonia*, no. 21839/03, § 29, 6 November 2008). The State's responsibility for enforcement of a private judgment extends no further than the involvement of State bodies, including the domestic courts, in the enforcement proceedings. However, the States are under an obligation to ensure that the procedures enshrined in the legislation for the enforcement of final judgments are complied with (see *Fuklev v. Ukraine*, no. 71186/01, §§ 67 and 91, 7 June 2005).

(b) Application of these principles to the present case

21. The Court notes that the enforcement proceedings started on 11 January 1999 when the applicant requested the first-instance court to enforce the court settlement. Although there was no formal decision terminating the enforcement proceedings before the courts, it may be regarded that they ended on 31 December 2007 when, under section 238 of the Act, the enforcement could have continued before the bailiffs (see paragraph 13 above).

22. The Court notes that in the enforcement proceedings, the applicant proposed an inventory, valuation and public sale of the property and submitted a certificate attesting the debtor's title. The transfer of the property to the applicant's father post-dated the enforcement order. The Court observes that it took over nine months for the first-instance court to determine the value of the property and another five years, eight months and six days to serve its decision on the debtor (see paragraph 8 above). Lastly, the Government did not specify what remedy could the applicant use to speed up the enforcement proceedings (see *Atanasovic and Others v. "the former Yugoslav Republic of Macedonia"*, no. 13886/02, § 39, 22 December 2005).

23. Against this background, the Court considers that by refraining from taking adequate and effective measures to enforce the court settlement, between 11 January 1999 and 31 December 2007, the domestic courts deprived the provisions of Article 6 § 1 of the Convention of all useful effect.

24. There has therefore been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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.”

26. The applicant did not submit any claim for just satisfaction in accordance with Rule 60 of the Rules of Court. Accordingly, the Court makes no award under Article 41 of the Convention (see *Jankulovski v. the former Yugoslav Republic of Macedonia*, cited above § 41).

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.

Done in English, and notified in writing on 8 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President