



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

1959 · 50 · 2009

FIFTH SECTION

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

(Application no. 19290/04)

JUDGMENT

STRASBOURG

22 October 2009

FINAL

22/01/2010

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 Trpeski 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,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 29 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 19290/04) 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 Dimitrija Trpeski (“the applicant”), on 13 May 2004.

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

3. On 29 May 2007 the President of the Fifth Section decided to communicate the complaint concerning the length of the proceedings. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1944 and lives in Skopje.

5. He worked in a company for production of chemical products (“the employer”).

6. On 8 February 1993 a second-instance commission of the Pension and Social Insurance Fund (“the Fund”) declared the applicant completely and

permanently incapacitated due to a work-related eye-disease. On 30 April 1993 the applicant's employment terminated *ipso jure*. On 4 June 1993 the Fund determined the amount of his disability pension.

7. In other proceedings that ended with the Supreme Court's decision of 6 July 1995, it was established that the applicant had contracted a work-related eye-disease.

8. On 4 April 1994 the applicant brought a civil action against his employer requesting the then Skopje Municipal Court to award him compensation for the pecuniary and non-pecuniary loss sustained as a result of his disease.

9. On four hearings listed between 22 April 1997 and 11 November 1998 the applicant specified his claim, submitted new evidence or requested additional expert examination.

10. On 6 April 1999 the Skopje Court of First Instance ("the first-instance court") dismissed the applicant's claim finding that the damage to his eye was to be regarded as a disease and that the employer could not be held responsible for the applicant's disease. It based its decision on a range of evidence: the expert report of the Forensic Institute of 6 April 1995; its supplement of 25 December 1995; the oral evidence of the Institute's experts produced on a hearing of 19 February 1998; the statements of two co-workers and a physician working with the employer. On 5 April 2000 the Skopje Court of Appeal quashed this decision instructing the lower court to obtain an alternative expert opinion from a hospital since the Institute's experts were not eye-disease specialists.

11. On 8 February 2002 the first-instance court dismissed the applicant's claim again. The alternative expert examination confirmed that the damage to the applicant's eye could not be regarded as work-related. On 5 June 2002 the Skopje Court of Appeal dismissed the applicant's appeal.

12. On 28 October 2002 the applicant lodged with the Supreme Court an appeal on points of law (*pevuzujja*) which was dismissed by a decision of 22 October 2003. This decision was served on the applicant on 5 December 2003.

THE LAW

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

13. 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

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

15. 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

16. 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 particularly complex circumstances related to the case, such as the determination of the reasons of the applicant's disease and his behaviour. As to the latter, they submitted that he had contributed to the length of the proceedings, namely that he had submitted evidence gradually during the proceedings; that he had requested several expert reports and that he had specified his claim on several occasions (see paragraph 9 above).

17. The applicant contested the Government's arguments.

2. The Court's consideration

18. The Court notes that the proceedings started on 4 April 1994 when the applicant brought his claim. 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).

19. 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 three years at one level of jurisdiction.

20. The proceedings ended on 5 December 2003 when the Supreme Court's decision was served on the applicant. They therefore lasted over nine years and eight months, of which six years, seven months and twenty-seven days fall within the Court's temporal jurisdiction at three court levels.

21. 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 *Markoski v. the former Yugoslav Republic of Macedonia*, no. 22928/03, § 32, 2 November 2006).

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

23. As to the applicant's conduct, the Court finds that his submissions specifying his claim and requests for alternative expert examination could not be regarded to his detriment (see *Dimitrieva v. the former Yugoslav Republic of Macedonia*, no. 16328/03, § 35, 6 November 2008). Furthermore, he attended all hearings as scheduled.

24. On the other hand, the Court finds significant delays attributable to the first-instance court. In this connection, it observes that it took five years for that court to render its first decision, of which two years fall within the Court's jurisdiction (see paragraph 10 above). It took another two years for that same court to decide the case after it had been referred back for re-examination (see paragraph 11 above). Lastly, the Court does not consider that the overall length of the proceedings satisfied the "reasonable time" requirement of Article 6 § 1 of the Convention given the special diligence which is required in disputes concerning the determination of compensation in personal injuries cases (see *Sali v. the former Yugoslav Republic of Macedonia*, no. 14349/03, § 47, 5 July 2007).

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

26. The applicant further complained that he had not been given a fair trial since the courts had dismissed his claim. He also made allegations of bias on part of the experts and of corruption of all involved in his case. In addition, the applicant complained that the courts decided contrary to the UN Convention on Rights of Persons with Disabilities.

27. The Court has examined the remainder of the applicant's complaints and finds that, in the light of all the materials in its possession, and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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.”

A. Damage

30. The applicant claimed 25,000 euros (EUR) in respect of pecuniary damage. This figure corresponded to the difference between salary that he would have received if still employed and the disability pension. He also claimed EUR 330,000 for non-pecuniary damage as compensation for his disease and for being dependant on other family members.

31. The Government contested these claims.

32. The Court does not discern any causal link between the violation found and the damage claimed. It therefore rejects these claims.

B. Costs and expenses

33. The applicant also claimed EUR 3,600 for the costs and expenses incurred before the domestic courts. These included legal fees and trial costs. He did not seek reimbursement of the costs and expenses incurred in the proceedings before this Court.

34. The Government contested this claim.

35. 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 *Kostovska v. the former Yugoslav Republic of Macedonia*, no. 44353/02, § 62, 15 June 2006). The Court notes that the costs claimed 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).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the 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 the proceedings;
3. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President