



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

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1959 · 50 · 2009

FIFTH SECTION

**CASE OF STOLESKI AND SILJANOSKA v. THE FORMER  
YUGOSLAV REPUBLIC OF MACEDONIA**

*(Application no. 17547/04)*

JUDGMENT

STRASBOURG

5 November 2009

**FINAL**

*05/02/2010*

*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 Stoleski and Siljanoska 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 13 October 2009,

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

## PROCEDURE

1. The case originated in an application (no. 17547/04) 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 two Macedonian nationals, Mr Živko Stoleski and Mrs Cveta Siljanoska (“the applicants”), on 27 April 2004.

2. The applicants were represented by Ms T. Siljanoska, a lawyer practising in Kičevo. The Macedonian Government (“the Government”) were represented by their Agent, Mrs R. Lazareska Gerovska.

3. On 17 January 2008 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

## THE FACTS

4. The applicants were born in 1962 and 1934 respectively and live in Makedonski Brod.

5. On 12 March 1996 the applicants brought a civil action against the Ministry of Finance (“the Ministry”) claiming an annual leave allowance (*пезпец за годишен одмор*) for 1995.

6. On 18 April 1996 the then Kičevo Municipal Court (“the first-instance court”) ruled in favour of the applicants, ordering the Ministry to pay them

the amount claimed. The decision was given in the Ministry's absence, although summoned properly. It became final on 27 May 1996.

7. On 27 June 1997 the applicants requested enforcement of this decision. This request was granted on 29 September 1997. On 5 December 1997 the Attorney-General (*Јавен Правобранител*) objected to the enforcement order, arguing, *inter alia*, that it had not been given an opportunity to participate in the substantive proceedings as the Ministry's legal representative. Its objection was dismissed by decisions of 11 March 1999 and 8 March 2000 respectively. In or about May 2000 the amount due was transferred on the applicants' accounts.

8. On 3 September 2000 the Attorney-General requested that the first-instance court remove the clause attesting that its decision of 18 April 1996 had become final ("the clause", *се брише клаузулата на правосилност*) since it had not been summoned, as the Ministry's legal representative, to participate in those proceedings.

9. On 25 September 2000 the first-instance court dismissed this request. The Attorney-General appealed. On 12 June 2001 the Bitola Court of Appeal accepted its appeal and remitted the case for a fresh consideration. On 6 July 2001 the first-instance court accepted the request and removed the clause. The parties were advised to appeal against this decision. The applicants refused to be served with this decision. They did not appeal.

10. On 28 November 2001 the Attorney-General appealed against the first-instance court's decision of 18 April 1996. The applicants refused to have a copy of this appeal communicated to them.

11. On 15 January 2002 the Bitola Court of Appeal allowed the Attorney-General's appeal and quashed the decision of 18 April 1996.

12. On 27 January 2003 the proceedings were stayed. On the applicants' appeal, on 3 April 2003 the Bitola Court of Appeal quashed this decision and remitted the case for re-examination.

13. On 5 September 2003 the first-instance court dismissed the applicants' claim since no such allowance had been paid in 1995 and no funds had been allocated for that purpose in the State's budget.

14. On 19 November 2003 the Bitola Court of Appeal dismissed an appeal by the applicants of 15 October 2003. This decision was served on them on 10 December 2003. On 6 February 2004 the public prosecutor informed the applicants that there were no grounds for lodging a request for the protection of legality with the Supreme Court.

15. In separate proceedings, the State requested that the applicants pay back the amount awarded by the first-instance court's decision of 18 April 1996. This request was accepted by court decisions of 7 May and 6 December 2004 respectively.

## THE LAW

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

16. The applicants complained under Article 6 § 1 of the Convention that the proceedings had been incompatible with the “reasonable time” requirement, that the removal of the clause had violated the principle of legal certainty and that judges had been biased. Article 6 § 1 of the Convention, in so far as relevant, reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by an independent and impartial tribunal ...”

#### A. Length of the proceedings

##### 1. Admissibility

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

18. 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.

##### 2. Merits

###### a. The parties' submissions

19. The Government stated that there had been complex circumstances related to the case, including the absence of the Attorney-General and problems with the delivery of court summons and decisions to the parties concerned. They further argued that the proceedings, within the Court's *ratione temporis* competence, had lasted six years and seven months at two levels of jurisdiction and that they had not accordingly been excessive. No significant delays could be attributed to the domestic courts.

20. The applicants did not provide any comment.

###### b. The Court's consideration

21. The Court notes that the proceedings started on 12 March 1996 when the applicants brought their claim before the first-instance court. The substantive proceedings were concluded on 27 May 1996 when the first-instance court's decision of 18 April 1996 became final. However, this period pre-dates 10 April 1997, the date when the Convention entered into

force in respect of the former Yugoslav Republic of Macedonia, and does not fall accordingly within the Court's jurisdiction (see *Lickov v. the former Yugoslav Republic of Macedonia*, no. 38202/02, § 21, 28 September 2006).

22. 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 lasted less than four months at one level of jurisdiction.

23. The enforcement stage of the proceedings, which is an integral part of the "trial" (see *Jankulovski v. the former Yugoslav Republic of Macedonia*, no. 6906/03, § 33, 3 July 2008) started on 27 June 1997 and ended on 8 March 2000 when the objection of the Attorney-General was finally rejected. Afterwards, the proceedings were not pending until 3 September 2000 when the Attorney-General requested, in the substantive proceedings, removal of the enforcement clause. The resumed substantive proceedings ended on 10 December 2003, when the Court of Appeal's decision of 19 November 2003 was served on the applicants. The time lapsed for the subsequent proceedings before the public prosecutor cannot be taken into consideration since the applicants were not required to exhaust this remedy for the reasons detailed in the *Dimitrovska* case (see *Dimitrovska v. the former Yugoslav Republic of Macedonia* (dec.), no. 21466/03, 30 September 2008). The relevant period therefore lasted six years and two months, of which five years, ten months and eighteen days fall within the Court's temporal jurisdiction at two court levels.

24. 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 applicants and the relevant authorities (see *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

25. The Court considers that the case was of some complexity, but that it cannot in itself justify the length of the proceedings.

26. It also observes that there were no delays attributable to the applicants.

27. As regards the conduct of the authorities, the Court notes that the main issue that affected the length of the proceedings was the courts' consideration of the Attorney-General's objection as to whether it had been given the opportunity, as the Ministry's legal representative, to participate in the substantive proceedings. That issue was discussed in the enforcement proceedings for two years and three months (see paragraph 7 above). It took another ten months for the courts to decide that issue in the substantive proceedings (see paragraphs 8 and 9 above). In the Court's view, this time was excessive.

28. Against this background, the Court considers on the whole that the proceedings in the present case in the relevant period were not conducted within a reasonable time.

29. There has accordingly been a breach of Article 6 § 1.

## **B. Alleged violation of the principle of legal certainty**

### *1. The parties' submissions*

30. The Government submitted that the applicants had not exhausted all effective domestic remedies. In particular, they had failed to appeal against the first-instance court's decision of 6 July 2001.

31. The applicants did not comment on this matter.

### *2. The Court's consideration*

32. The Court reiterates that according to its established case-law the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see, *mutatis mutandis*, *Merger and Cros v. France* (dec.), no. 68864/01, 11 March 2004; *Aksoy v. Turkey*, judgment of 18 December 1996, ECHR 1996-VI, §§ 51-52; and *Akdivar and Others v. Turkey*, judgment of 16 September 1996, ECHR 1996-IV, §§ 65-67).

33. The Court notes that the application of this rule must make due allowance for the context. Accordingly, it has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned, but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether in all the circumstances of the case the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *Akdivar and Others*, cited above, § 69, and *Aksoy*, cited above, §§ 53 and 54).

34. Turning to the present case, the Court notes that the first-instance court's decision of 18 April 1996 became final on 27 May 1996. The clause was added to this decision as a stamp, with a view to attesting to that fact. On 6 July 2001 the same court accepted the request of the Attorney-General and removed the clause. The applicants did not appeal against this decision nor did they provide, in the proceedings before the Court, any explanation for not doing so. The Court observes that the Court of Appeal had full jurisdiction to decide on such an appeal. In support is the Attorney-General's appeal, which led to the quashing of the first-instance court's decision of 25 September 2000. The Court therefore considers that the applicants were required to exhaust the appeal procedure, as an effective remedy.

35. In these circumstances, the Court considers that they failed to exhaust domestic remedies with regard to their complaint under this head.

36. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

### **C. Remaining complaint**

37. The applicants also complained that the judges were biased, since their claim had been lodged against the Ministry, a State body.

38. The Court considers that this complaint is unsubstantiated since the applicants did not present any evidence that the Ministry being the opposing party in the proceedings played any role in the courts' adjudication.

39. 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.

## **II. APPLICATION OF ARTICLE 41 OF THE CONVENTION**

40. 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**

41. The applicants claimed 4,000 euros (EUR) in respect of pecuniary damage. This figure corresponded to the claim requested in the substantive proceedings with interest. They also claimed EUR 6,000 in respect of non-pecuniary damage for the length of the proceedings.



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

43. 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 the applicants EUR 1,600 under this head, plus any tax that may be chargeable.

#### **B. Costs and expenses**

44. The applicants also claimed EUR 2,000 for the costs and expenses incurred before the domestic courts and EUR 3,000 for those incurred before the Court. No supporting evidence was submitted.

45. The Government contested these claims as unsubstantiated.

46. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum (see *Kostovska v. the former Yugoslav Republic of Macedonia*, no. 44353/02, § 62, 15 June 2006). 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".

47. The Court notes that the applicants did not submit any supporting documents or particulars to substantiate their claims. Accordingly, the Court does not award any sum under this head (see *Parizov v. the former Yugoslav Republic of Macedonia*, no. 14258/03, § 72, 7 February 2008).

#### **C. Default interest**

48. 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;

3. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,600 (one thousand and six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 5 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek  
Registrar

Peer Lorenzen  
President