



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

1959 · 50 · 2009

FIFTH SECTION

**CASE OF IVANOVSKI AND OTHERS v. THE FORMER
YUGOSLAV REPUBLIC OF MACEDONIA**

(Application no. 34188/03)

JUDGMENT

STRASBOURG

26 November 2009

FINAL

26/02/2010

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 Ivanovski and Others 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 3 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 34188/03) 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 two Macedonian nationals, Mr Slobodan Ivanovski (“the first applicant”) and Mr Cvetan Velkoski (“the second applicant”) on 21 October 2003. The first applicant, who has a Croatian citizenship, also submitted the application on behalf of Mr Mile Stojčevski.

2. Mr Mile Stojčevski and the second applicant died on 27 February 2002 and 30 December 2005, respectively. Their widows, Mrs Vasilka Stojčevska and Mrs Stojanka Velkoska, both citizens of the former Yugoslav Republic of Macedonia and resident in Skopje, applied to continue the application in their name. They further authorised the first applicant to represent them in this case.

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

4. On 6 September 2007 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).

5. On 17 August 2009 the Croatian Government, having been informed of their right to intervene in the proceedings in respect of the first applicant (Article 36 § 1 of the Convention and Rule 44 of the Rules of Court), indicated that they did not wish to exercise that right.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

6. In 1995 the applicants concluded a sales contract with three individuals buying shares from the A. company (“the company”).

7. On 13 September 1996 the first applicant brought a civil action requesting the Skopje Court of First Instance (“the first-instance court”) to order the company to register the sales contracts in its book of shareholders and to provide them with a certificate of title. On 22 November 1996 the second applicant and Mr Mile Stojčevski joined the first applicant's claim. During the proceedings, the applicants specified their claim on three occasions.

8. Between 25 June 1997 and 27 November 1998, the first-instance court ordered four adjournments, none of which was requested by the applicants.

9. On 11 January 1999 the first-instance court dismissed the applicants' claim finding that they had failed to comply with the applicable legislation and that the company had not had a capacity to stand in the proceedings. It also dismissed their request of 27 May 1998 for an interim measure prohibiting the vendors to dispose of the shares.

10. On 12 April 2000 the Skopje Court of Appeal partly upheld the applicants' appeal of 3 November 1999 and remitted the case for a renewed examination.

11. On 18 December 2001 the first-instance court dismissed the applicants' claim. The decision was served on them on 22 August 2002.

12. On 19 March 2003 the Skopje Court of Appeal dismissed the applicants' appeal. They were served with the decision on 7 May 2003.

THE LAW

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

13. The applicants 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 the applicants' complaints.

15. The Court recalls that in a number of cases in which an applicant died in the course of the proceedings, the Court has taken into account the statements of the applicant's heirs or of close family members expressing the wish to pursue the proceedings before the Court. This is particularly the case concerning applications which were introduced by the applicant himself and only continued by his widow after his subsequent death.

16. As to Mr Mile Stojčevski, the Court notes that he died before the introduction of the application. There is no evidence that the first applicant had any authority to defend his interest or that Mrs Stojčevska stepped in at any stage of the domestic proceedings. In such circumstances, it considers that she does not have the requisite standing under Article 34 of the Convention (see, *mutatis mutandis*, *Dimitrovska v. the former Yugoslav Republic of Macedonia* (dec.), no.21466/03, 30 September 2008).

17. It follows that the application, in part concerning Mr Mile Stojčevski, is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

18. In the circumstances of the present case, the Court considers that the second applicant's widow has the requisite *locus standi* under Article 34 of the Convention in respect of his complaint about the length of the proceedings (see *Stojkovic v. the former Yugoslav Republic of Macedonia*, no. 14818/02, § 25, 26, 8 November 2007).

19. Therefore, the Court concludes that the length complaint raised by the first and second applicant is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

20. 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.

21. They further stated that there had been complex circumstances related to the case, including the nature of the dispute, the changes of the applicable legislation and the applicants' behaviour. As to the latter, they submitted that they had contributed considerably to the length of the proceedings by specifying their claim on several occasions, requesting an interim measure and failing to attend three hearings.

22. The applicants did not comment on the Government's arguments about the length of the proceedings.

2. The Court's consideration

23. The Court notes that in respect of the first applicant, the proceedings started on 13 September 1996 and for the second applicant, on

22 November 1996. They ended on 7 May 2003 when the Skopje Court of Appeal's decision was served on the applicants.

24. However, as noted by the Government, the period which falls within the Court's jurisdiction began only 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). 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 about six months for one level of jurisdiction.

25. The proceedings lasted over six years and seven months, of which nearly six years and one month fall within the Court's temporal jurisdiction for two court levels.

26. 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 (see *Velova v. the former Yugoslav Republic of Macedonia*, no. 29029/03, § 30, 6 November 2008).

27. The Court considers that the case was not complex. No convincing arguments were provided in this respect.

28. It further finds that no delays were attributable to the applicants as they attended all scheduled hearings. Submissions specifying the claim or their request for an interim measure cannot be considered to their detriment (see *Dimitrieva v. the former Yugoslav Republic of Macedonia*, no. 16328/03, § 35, 6 November 2008).

29. On the other hand, the Court finds significant delays imputable to the national courts. In this connection, it notes that it took nearly two years and two months for the first-instance court to decide the applicants' claim. Furthermore, nearly one year and five months lapsed for the service of the two first-instance court's decisions (see paragraphs 9-11 above).

30. 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. The applicants further complained under Article 6 of the Convention that the courts had refused their request for interim measure, disregarded evidence and incorrectly interpreted the domestic law.

33. They also alleged a violation of Article 1 of Protocol No. 1 given the company's refusal to register them as shareholders.

34. The Court has examined these 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.

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.”

37. The applicants did not submit any claim for just satisfaction in accordance with Rule 60 of the Rules of Court. In these circumstances, the Court makes no award under Article 41 of the Convention (see, *mutatis mutandis*, *Jankulovski v. the former Yugoslav Republic of Macedonia*, no. 6906/03, § 41, 3 July 2008).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the first and second applicants' 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 first and second applicants.

Done in English, and notified in writing on 26 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President