



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

FIFTH SECTION

**CASE OF PAKOM SLOBODAN DOOEL v. THE FORMER
YUGOSLAV REPUBLIC OF MACEDONIA**

(Application no. 33262/03)

JUDGMENT

STRASBOURG

21 January 2010

FINAL

21/04/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Pakom Slobodan Dooel 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 15 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 33262/03) 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 the company “Pakom Slobodan Dooel” (“the applicant”) on 15 October 2003.

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

3. On 13 September 2006 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

I. THE CIRCUMSTANCES OF THE CASE

4. In December 1993, the applicant concluded a lease contract (“the contract”) with the company “M.” (“the debtor”) under which it rented a warehouse (“the property”) for a period of five years.

5. On an unspecified date in 1996, the applicant claimed repossession (*враќање во владение*) of the property since on 12 November 1996 the debtor had broken in, removed its belongings and rented the property to a

third person. The applicant's claim was upheld in two court levels, the last being the Skopje Court of Appeal's decision of 21 October 1998 ordering the debtor to restore the property in the applicant's actual possession.

6. On 3 February 1999 the Skopje Court of First Instance ("the first-instance court") granted the applicant's enforcement request of 16 December 1998 by ordering the debtor to vacate the property and to restore it in its actual possession ("the enforcement order"). It also made a charging order over the debtor's bank account concerning the payment of trial costs.

7. On 16 February 1999 the debtor objected, *inter alia*, that the validity of the contract had expired and that the enforcement was accordingly, inadmissible. This objection was finally rejected by the Skopje Court of Appeal's decision of 17 November 1999.

8. On 11 February 2000 the first-instance court dismissed the debtor's request for postponement of the enforcement. On 7 February and 16 March 2000 respectively, it also dismissed same objections submitted by third parties, which had meanwhile joined the proceedings.

9. On 16 May 2000 the public prosecutor lodged a legality review request (*барање за заштита на законитоста*) with the Supreme Court against the decision of 16 March 2000 arguing that *inter alia* the enforcement order could not be executed since the validity of the contract had meanwhile expired. On 29 September 2000 the first-instance court postponed, on the public prosecutor's request, the enforcement proceedings pending the outcome of the legality review proceedings. On 9 October 2002 the Supreme Court dismissed the public prosecutor's legality review request.

10. Between 19 January 2000 and 29 May 2003, the first-instance court fixed five hearings to be held on-site. On two occasion, the debtor unsuccessfully requested exclusion of the sitting judge. On 20 July 2000 and 10 July 2003 the President of the first-instance court ordered removal of the sitting judge. On 4 March and 13 June 2003 respectively, it issued an eviction order against the debtor. On 29 May 2003 it refused the debtor's request that the enforcement proceedings be suspended pending the outcome of other civil proceedings, instituted in the meantime, in which the latter had claimed revocation of the enforcement order (see paragraph 12 below).

11. On 22 November 2005 the first-instance court adjourned the enforcement advising the debtor to challenge the admissibility of the enforcement (*недопуштеност на извршувањето*) in separate civil proceedings.

12. On 9 February 2006 the Skopje Court of Appeal rejected the debtor's claim for revocation of the enforcement order, under section 53 of the 1997 Act, as having not been advised by the first-instance court to do so (see paragraph 15 below).

13. On 15 December 2005, in separate civil proceedings, the debtor challenged the admissibility of the enforcement. On 30 December 2008 the Skopje Court of Appeal finally upheld its claim declaring the execution of the enforcement order inadmissible since the validity of the contract had expired on 31 March 1999.

14. There was no formal decision terminating the enforcement proceedings.

II. RELEVANT DOMESTIC LAW

15. Section 53 of the then valid 1997 Enforcement Proceedings Act (“the 1997 Act”) (*Закон за извршна постапка*) provided, *inter alia*, that the court would advise a debtor to challenge the admissibility of the enforcement in separate proceedings if that issue was relevant for the enforcement.

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

17. Section 238 of the 2005 Act provides that enforcement proceedings instituted before it entered into force are to continue in accordance with the 1997 Act until 31 December 2007. Thereafter, the 2005 Act applies.

THE LAW

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

18. Without invoking any provision of the Convention, the applicant complained about the length of the enforcement proceedings. 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 ... hearing within a reasonable time by [a] ... tribunal...”

A. Admissibility

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

20. 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

21. The Government submitted that there had been complexities related to the case, including the on-site hearings, various remedies used by the third parties and the debtor, as well as the separate proceedings instituted by the latter, which affected the length of the enforcement proceedings.

22. The applicant contested the Government's arguments.

2. The Court's assessment

23. The Court notes that the enforcement proceedings started on 16 December 1998 when the applicant requested the enforcement of the court decision of 21 October 1998. It may be regarded that they ended before the courts on 31 December 2007, when they could have continued, as specified in section 238 of the 2005 Act, before the bailiffs (see paragraph 17 above). They therefore lasted nine years and seventeen days for three 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 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).

25. Having regard to the actions taken, the Court considers that the case was of some complexity, but that this cannot, in itself, justify the length of the proceedings.

26. It further finds that no delays were attributable to the applicant. In this connection, it cannot be held responsible for the procedural conduct of the debtor and third parties (see *Stojanov v. the former Yugoslav Republic of Macedonia*, no. 34215/02, § 57, 31 May 2007).

27. As to the conduct of the national courts, the Court considers that it cannot be said that they have been inactive during the proceedings. The main issue that affected the length of the proceedings was whether the enforcement had been admissible in view of the validity of the contract. In this connection, the Court observes that the first-instance court advised the debtor to challenge the admissibility of the enforcement only on 22 November 2005. It sees no reason why did it take that long for the first-instance court to do so given that that issue had been first raised in the debtor's objection of 16 February 1999 (see paragraph 15 above).

Moreover, the proceedings lay dormant for two years and five months pending the outcome of the legality review proceedings (see paragraph 9 above).

28. 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.

29. There has accordingly been a breach of this provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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.”

31. The Court notes that in the application form, the applicant submitted a provisional claim for just satisfaction under Article 41 of the Convention. In a letter of 17 January 2007, the Registry invited the applicant to submit any claim for just satisfaction as required under Rule 60 of the Rules of Court. However, he failed to do so.

32. The Government contested the applicant’s claim submitted in the application form.

33. The Court, having regard to Rule 60 § 3 of the Rules of Court, makes no award under Article 41 of the Convention (see *Nikolov v. the former Yugoslav Republic of Macedonia*, no. 41195/02, § 31-33, 20 December 2007).

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 21 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President