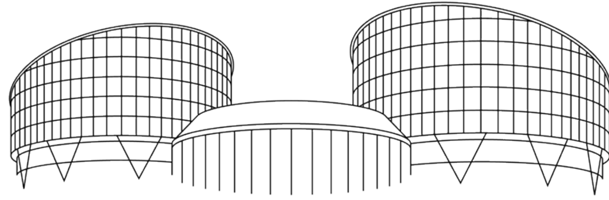

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF RISTESKA v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

(Application no. 38183/04)

JUDGMENT

STRASBOURG

28 January 2010

FINAL

28/04/2010

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

In the case of Risteska 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 5 January 2010,

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

PROCEDURE

1. The case originated in an application (no.38183/04) 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, Ms Marina Risteska ("the applicant"), on 2 October 2004.

2. The applicant was represented by Mr Z. Gavriloski, a lawyer practising in Skopje. The Macedonian Government ("the Government") were represented by their Agent, Mrs R. Lazareska Gerovska.

3. On 11 June 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 1966 and lives in Skopje.

5. On 27 November 1997 she complained to her employer about her treatment at work.

6. On 9 December 1997 the employer dismissed the applicant, considering her complaint as a request for resignation. The applicant's objection remained undecided.

7. On 26 February 1998 she claimed before the Skopje Court of First Instance ("the first-instance court") annulment of the dismissal decision, her reinstatement and payment of unpaid salary.

8. On 17 February 1999 the court ordered expert examination of the applicant's mental state of health on 27 November 1997, the date when she had submitted her complaints to the employer. The applicant was ordered to pay the expert fees within fifteen days. On 12 June 2000 the first-instance court noted that the applicant had failed to pay the fees.

9. On 4 May 2001 the court ordered expert examination of the applicant's mental health again. The applicant paid the expert fees on 26 October 2001. The expert opinion was submitted on 15 November 2001.

10. During the trial proceedings, three hearings were adjourned due to the incorrect delivery of court summons to the applicant and her lawyer.

11. On 19 September 2002 the first-instance court dismissed (*одбива*) the applicant's claim as having been submitted out of the fifteen-day statutory time-limit. On 27 March 2003 the Skopje Court of Appeal quashed this decision since the applicant's claim should have been rejected (*отфрла*) instead.

12. On 15 October 2003 the first-instance court rejected the applicant's claim as out of time. On the same date the applicant was exempted of court fees (*судска такса*). On 17 March 2004 the Skopje Court of Appeal dismissed the applicant's appeal of 5 December 2003.

13. On 20 April 2004 the applicant submitted to the Supreme Court an appeal on points of law (*ревизија*) arguing that the fifteen-day time-limit had been of a non-binding (*инструктивен*) nature. In this connection, she referred to a decision of 28 December 1999 in which the Supreme Court allegedly had given such reasoning.

14. On 30 March 2005 the Supreme Court dismissed the applicant's appeal stating that the statutory time-limit had been of a preclusive nature. This decision was served on the applicant on 27 June 2005.

THE LAW

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

15. 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

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

17. 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

18. The Government submitted that there had been complex circumstances related to the case, such as the need for expert examination of the applicant's mental health (see paragraphs 8 and 9 above).

19. They further argued that the applicant had contributed to the length of the proceedings by failing to comply with the court orders for the payment of expert's fees (see paragraphs 8 and 9 above). The improper delivery of court summons was attributable to the applicant (see paragraph 10 above).

20. The applicant contested the Government's arguments. She maintained, *inter alia*, that she had failed to pay the expert fees due to her financial situation, which was supported by the fact that she had been exempted from court fees (see paragraph 12 above).

2. The Court's assessment

21. The Court notes that the proceedings started on 26 February 1998 when the applicant brought her claim before the first-instance court. They ended on 27 June 2005 when the Supreme Court's decision was served on the applicant. They therefore lasted seven years and four months at three court levels.

22. 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).

23. The Court considers that the case was not particularly complex.

24. The Court agrees with the Government that the applicant contributed to the protraction of the proceedings. It is not persuaded by the applicant's argument that she should not be considered liable for the delay that occurred in relation to the expert fees, given that she had been exempted of payment of court fees only at a later stage (see paragraph 12 above) and as the exemption did not cover expert fees. In this connection, the Court notes that

the applicant had failed to pay the expert fees even one year and four months after the court's order (see paragraph 8 above). In addition, she had paid the expert fees the second time they were ordered with a six-month delay (see paragraph 9 above). The Court hence concludes that the applicant was responsible for a delay of one year and ten months in the proceedings in question. On the other hand, it notes that the three adjournments cannot be attributed to her since it is the State's responsibility to organise a proper system of delivery of court summons. The Government did not present any arguments to the contrary.

25. The Court recalls that it is for the Contracting States to organise their legal systems in such a way that their courts can guarantee everyone's right to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time (see *Horvat v. Croatia*, no. 51585/99, § 59, ECHR 2001-VIII). In this context, it finds significant delays attributable to the first-instance court. The Court thus observes that it took nearly four years and seven months for that court to decide the applicant's case (see paragraph 11 above).

26. The Court is of the view that what was at stake for the applicant, who lost her means of subsistence after being dismissed from work, called for special expediency (see *Dumanovski v. the former Yugoslav Republic of Macedonia*, no. 13898/02, § 48, 8 December 2005).

27. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument showing that the applicant's claim was decided with due expediency. Having regard to the circumstances of the instant case and to what was at stake for the applicant, the Court considers that the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

28. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

29. The applicant further complained under Article 6 of the Convention that the national courts had wrongly interpreted the substantive law concerning the time-limits for bringing employment-related claims.

30. The Court has examined the applicant's complaint 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, it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

31. 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

32. 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

33. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage.

34. The Government contested this claim.

35. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards award her EUR 800 under that head.

B. Costs and expenses

36. The applicant also claimed EUR 500 for the costs and expenses incurred before the domestic courts and 210 EUR for those incurred before the Court. This latter figure included legal fees and mailing expenses. As to the legal fees claimed, the applicant submitted a receipt attesting her donation to a non-governmental organisation in which her representative was employed. She further submitted a copy of mail receipts.

37. The Government contested these claims.

38. The Court reiterates that only such costs and expenses as were actually and necessarily incurred in connection with the violation found, and reasonable as to quantum, are recoverable under Article 41 (see *Kyrtatos v. Greece*, no. 41666/98, § 62, ECHR 2003-VI (extracts)). As to the applicant's request for reimbursement of the costs incurred in the proceedings before the domestic courts, the Court notes that such costs 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). Concerning the legal costs and expenses incurred before it, the Court notes that no evidence was presented that her donation in amount of EUR 200 was made with reference to the application before it. It therefore rejects her claim in this respect. On the other hand, the Court awards the sum of EUR 10 in respect of the mailing expenses, plus any tax that may be chargeable to her.

C. Default interest

39. 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 length of the proceedings complaint 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. *Holds*
a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
(i) EUR 800 (eight hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
(ii) EUR 10 (ten euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
(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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President