



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

FIFTH SECTION

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

(Application no. 35164/03)

JUDGMENT

STRASBOURG

22 April 2010

FINAL

22/07/2010

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

In the case of Ilievski 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,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges*,
and Claudia Westerdiek, *Section Registrar*,
Having deliberated in private on 23 March 2010,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 35164/03) 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 a Macedonian national, Mr Mirko Ilievski (“the applicant”), on 29 October 2003.

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

3. On 28 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

A. Proceedings concerning the applicant's dismissal

4. On 10 May 1995 the applicant was dismissed by his employer for work-related irregularities.

5. On 16 June 1995 the applicant claimed annulment of his dismissal and his reinstatement.

6. On 15 February 1996 the Delčevo Municipal Court (“the first-instance court”) annulled the dismissal decision and ordered the employer to reinstate the applicant to a post commensurate to his qualifications. On

19 September 1996 the Štip Court of Appeal quashed this decision and remitted the case for a fresh consideration.

7. On 11 November 1996 the first-instance court terminated the proceedings because insolvency proceedings had been launched against the employer on 24 April 1996.

8. On 19 November 1996 the applicant requested the court to resume the proceedings for a number of reasons, including the fact that the employer's receiver (*стечаен управник*) appointed in the insolvency proceedings had not requested termination of his proceedings.

9. On 13 January 1997 the first-instance court declared itself incompetent to decide the applicant's case and transferred it to the Kočani Court of First Instance.

10. On 7 November 1997 the Kočani Court of First Instance dismissed the applicant's claim relying on the latter's criminal conviction of 19 July 1995 for work-related offences. On 10 February 1998 the Štip Court of Appeal dismissed the applicant's appeal and upheld the lower court's decision.

11. On 29 December 1998 the Kočani Court of First Instance stayed the insolvency proceedings in respect of the employer and noted that they had no bearing on dismissal decisions.

12. On 2 December 1999 the Supreme Court upheld the applicant's appeal on points of law (*пезузија*) and quashed the lower courts' decisions of 7 November 1997 and 10 February 1998.

13. On 22 March 2000 the Kočani Court of First Instance declared itself incompetent *ratione loci* to decide the applicant's case.

14. On 22 December 2000 the Supreme Court dismissed the employer's request that the first-instance court be declared incompetent to deal with the applicant's case.

15. On 17 April 2001 the first-instance court annulled the dismissal decision and dismissed the applicant's claim for his reinstatement finding that the employer's insolvency had entailed *ipso jure* termination of all employment agreements, including the applicant's. This decision was upheld by the Štip Court of Appeal's and the Supreme Court's decisions of 27 December 2001 and 7 May 2003, respectively. This latter decision was served on the applicant on 9 July 2003.

B. Proceedings concerning the applicant's compensation claim for unpaid salary and other work-related allowances

16. On 28 July 2003 the applicant brought a civil action against the employer claiming employment emoluments (*надомест на штета од работен однос*). His claim referred to compensation for unpaid salary and an allowance for provisional unemployment that he should have received

from the State Employment Bureau (*Биро за вработување*) pending the employer's insolvency proceedings.

17. On 1 March 2004 the first-instance court ruled partly in favour of the applicant. This decision became final on 5 April 2004.

THE LAW

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

18. The applicant complained that the length of the dismissal 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

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

20. The Court notes 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

21. 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 complex circumstances related to the case, including that other related proceedings had been pending simultaneously (see paragraphs 7 and 10).

22. The Government confirmed that the applicant did not contribute to the length of the proceedings.

23. As to the conduct of the national courts, they submitted that no delays were attributable to them, except in the proceedings before the Supreme Court, which had not added much to their length.

24. The applicant did not comment.

2. *The Court's assessment*

25. The Court notes that the proceedings started on 16 June 1995 when the applicant brought his claim before the first-instance court. 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).

26. 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 almost one year and ten months at two levels of jurisdiction.

27. The proceedings ended on 9 July 2003 when the Supreme Court's decision was served on the applicant. They therefore lasted over eight years, of which six years, two months and thirty days fall within the Court's temporal jurisdiction at three court levels.

28. 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).

29. The Court considers that the case was not of a particularly complex nature. In this latter context, the Court notes that it cannot be conclusively determined that the impugned proceedings had been affected by the other proceedings pending parallel.

30. It further finds that no periods of delay are imputable to the applicant.

31. As to the conduct of the national courts, the Court observes that the applicant's case was unnecessarily transferred to be decided by the Kočani Court of First Instance, which affected the length of the proceedings.

32. Furthermore, the Court is of the view that what was at stake for the applicant, who lost his 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).

33. 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

35. Referring to the outcome of both sets of proceedings, the applicant complained that the domestic courts had wrongly dismissed his claim for reinstatement and that they had taken conflicting decisions during the proceedings. He also complained that he had not been compensated for unpaid salaries and work-related allowances.

36. 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.

37. 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

38. 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

39. The applicant claimed 52,695 euros (EUR) in respect of pecuniary damage related to allegedly unpaid salaries and other work-related allowances. He also claimed EUR 11,920 in respect of non-pecuniary damage due to lack of subsistence funds.

40. The Government contested these claims.

41. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. Furthermore, the applicant was partly awarded the claims under this head: (see paragraph 17 above), it therefore rejects this claim. On the other hand, ruling on an equitable basis, it awards him EUR 800 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

42. The applicant also claimed a global sum of EUR 813,59 for the costs and expenses incurred before the domestic courts and for those incurred

before the Court. The latter figure included, *inter alia*, court and legal fees, as well as the costs for mailing and translation of documents.

43. The Government contested these claims.

44. 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)). Concerning 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). In respect of the costs and expenses incurred before it, regard being had to the supporting documents submitted by the applicant and the above criteria, the Court awards the sum of EUR 60, plus any tax that may be chargeable to the applicant.

C. Default interest

45. 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 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 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 60 (sixty 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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President