



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

FIFTH SECTION

**CASE OF BORIS STOJANOVSKI v. “THE FORMER YUGOSLAV
REPUBLIC OF MACEDONIA”**

(Application no. 41916/04)

JUDGMENT

STRASBOURG

6 May 2010

FINAL

06/08/2010

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

In the case of Boris Stojanovski v. the former Yugoslav Republic of Macedonia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Peer Lorenzen,
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 30 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 41916/04) 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, Mr Boris Stojanovski (“the applicant”), on 26 October 2004.

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

3. The applicant alleged, in particular, that the proceedings had been unreasonably long and that he had been denied the right of access to a court.

4. On 2 February 2009 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1983 and lives in Skopje.

6. On 20 February 1994 the applicant, a minor at the time, was injured in a fight with Mr T.P. and Mr N.Z. (“the defendants”).

7. On 10 February 1995 an investigating judge discontinued the investigation after the public prosecutor had stayed the prosecution. On 20 February 1995 the applicant took over the prosecution as a subsidiary complainant. On 24 April 1997 the public prosecutor joined and took over the prosecution. Prior to that date, the trial court had set five hearings and obtained an expert opinion, according to which the applicant had sustained serious bodily injuries.

8. Thirteen hearings were rescheduled between 18 August 1997 and 11 December 1998 because of the absence of the defendants or the expert. On 11 June 1999 an alternative expert report was drawn up regarding the nature and severity of the injuries sustained by the applicant.

9. On 10 January 2000 the Skopje Court of First Instance ("the trial court") found the defendants guilty of causing grievous bodily harm and sentenced them to a suspended prison term. It found that they had hit the applicant on the head, as a result of which he had sustained concussion (*nompec na mozog*). The court further advised the applicant, under section 101 of the Criminal Proceedings Act (see paragraph 22 below) to pursue a compensation claim which he had made in the course of the proceedings by means of a separate civil action before the civil courts. It was noted that this latter claim had not been specified.

10. On 6 July 2000 the Skopje Court of Appeal allowed the defendants' appeals and quashed the trial court's decision.

11. On 12 February 2002 the Forensic Institute submitted to the court another expert opinion which stated that the applicant had sustained concussion, a serious injury.

12. On 19 November 2002 the trial court convicted the defendants again and sentenced them to a suspended prison term. It reiterated its earlier decision as regards the applicant's claim for reparation of the pecuniary and non-pecuniary loss related to the injury, namely, that he should pursue it in separate civil proceedings.

13. At a public hearing held on 10 July 2003, the Skopje Court of Appeal quashed this decision and remitted the case for fresh consideration.

14. On 18 March 2004 the trial court discontinued the proceedings because the prosecution had become time-barred. It further advised the applicant that he could claim compensation by means of a separate civil action before the civil courts. No appeal having been submitted, this decision became final on 14 May 2004.

15. During the proceedings, the applicant complained to many State institutions about the way the proceedings in question had been conducted.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Civil Proceedings Act of 1998 (Закон за парничната постапка)

16. Section 12 (3) of the Civil Proceedings Act of 1998, as applicable at the material time, provided that civil courts were bound by decisions given by criminal courts finding an accused guilty, in respect of the commission of the offence and the convict's criminal responsibility.

17. Section 197 enumerates grounds under which civil proceedings are suspended *ipso jure*. Under section 198 (2), the civil court may suspend proceedings if the decision depended on whether an offence had been committed, who the perpetrator was and if he or she was guilty.

2. Criminal Proceedings Act of 1997 (Закон за кривичната постапка)

18. Under section 55 of the Criminal Proceedings Act, during the investigation the victim is entitled to propose evidence relevant for establishing the truth and determination of his or her compensation claim (*имотноправно барање*). At the trial, the victim can propose evidence, question the accused, witnesses and experts, give statements and make additional proposals.

19. Section 96 provides that a compensation claim related to a criminal offence is to be decided in criminal proceedings, unless it significantly delays those proceedings.

20. Under section 98 (2) and (3), a compensation claim may be submitted in criminal proceedings before they are concluded at first instance. It should be detailed and supported by evidence.

21. Under section 100, the court can question the accused about the grounds of the compensation claim. If a decision on the compensation claim would significantly delay the proceedings, the court must confine itself to gathering evidence which would be impossible or significantly difficult to gather at a later stage.

22. Section 101 provides that the court decides on the compensation claim. If the court finds the accused guilty, the victim may be awarded full or partial compensation. In case of the latter, the court may advise him or her to seek the remainder in civil proceedings. The same applies if evidence taken in criminal proceedings is insufficient to have damages awarded (section 101 (2)).

23. In case of an acquittal or dismissal of the prosecution, if the proceedings are discontinued or the indictment is rejected, the court is to advise the victim to pursue his or her compensation claim in civil proceedings (section 101 (3)).

3. *Obligations Act of 1978* (Закон за облигационите односи), as applicable at the material time

24. Section 195 provided for a right to pecuniary damages in case of bodily injury. Under section 200, the victim could seek non-pecuniary damages sustained on similar grounds.

25. Under section 376, a compensation claim became time-barred three years after the victim became aware of the damage and the person responsible. The absolute time-bar for compensation was five years after the occurrence of the damage.

26. If the damage occurred as a result of a criminal offence, a claim for compensation became time-barred after expiration of the time-bar for criminal prosecution, if the latter lasted longer (section 377).

27. The running of the time-bar was interrupted if a plaintiff brought an action before a court or competent authority with a view to determining or securing his or her claim (section 388).

28. Under section 390, if a court rejected an action for lack of competence or on another ground unrelated to the merits of the claim and if the plaintiff resubmitted that claim within 3 months after that decision had become final, it would be deemed that the time-bar had been interrupted with the first action. That applied if a court or competent authority advised the person concerned to pursue his or her claim by means of a separate civil action.

29. If the time-bar was interrupted by a claim having been submitted in other proceedings, it started running after the settlement of the dispute (section 392 (3)).

4. *Obligations Act of 2001*

30. The Obligations Act of 2001 provides for the same rules of compensation, the time-bar and its interruption as those described in paragraphs 24-29 above (sections 184, 189, 365, 366, 377, 379 and 381 (3)).

5. *Relevant domestic jurisprudence*

31. With a decision confirmed at second level, civil proceedings in which the plaintiff claimed compensation for the injuries sustained by a third person were stayed pending the outcome of criminal proceedings against the defendant (*II. бр. 3183/07*).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

32. The applicant complained about the length of the proceedings in question and the lack of a decision in respect of his compensation claim. He relied on Article 6 § 1 of the Convention, which, 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 [a] ... tribunal ...”

A. Admissibility

1. *Compatibility*

a) *Compatibility ratione materiae*

i) *The parties' submissions*

33. The Government submitted that the application was incompatible *ratione materiae* since the criminal proceedings in question had not concerned the determination of the applicant's “civil rights and obligations” or of any criminal charge against him. In this connection, they stated that the applicant, being the injured party, had had an auxiliary role in the proceedings and that his claim for indemnification submitted in the course of those proceedings could not be considered equivalent to a civil action for damages examined by civil courts.

34. They further argued that under section 12 (3) of the Civil Proceedings Act, civil courts were bound by decisions given by criminal courts and were accordingly required, under section 198 (2) of the Criminal Proceedings Act (see paragraph 17 above), to stay the proceedings pending the outcome of the criminal proceedings.

35. The applicant contested the Government's arguments.

ii) *The Court's consideration*

36. The Court notes at the outset that the applicant was not accused in the criminal proceedings complained of, but participated as the injured party. In this connection, it notes that Article 6 does not apply to criminal proceedings in respect of the right to have third parties prosecuted or sentenced for a criminal offence. It may, however, apply to such

proceedings in so far as they concern a civil-party complaint by the victim (see *Perez v. France* [GC], no. 47287/99, §§ 57-72, ECHR 2004-I).

37. Under the applicable legislation of the respondent State, victims of an offence may, under the Obligations Act, pursue a civil action for damages separately from the prosecution in the civil courts. They may also pursue it in the criminal courts simultaneously with the prosecution under section 98 (2) of the Criminal Proceedings Act. Domestic legislation thus gives the victim of an offence the option of choosing between civil and criminal proceedings to obtain compensation for damage caused by an offence.

38. In addition, under section 12 of the Civil Proceedings Act, civil courts are bound by the final decision in criminal proceedings in respect of the commission of an offence and the convict's criminal responsibility. According to the Government, civil courts are further required to await the outcome of criminal proceedings.

39. In the present case, the applicant made a claim for financial reparation of the loss sustained as a result of the assault. By having brought his compensation claim to the trial court's attention, the applicant clearly demonstrated his intention to seek redress for the specific damage resulting from the assault. Consequently, he acquired the status of a civil party, even though there was no formal decision admitting him in that capacity. The Government did not submit any argument as to why the bringing of a civil-party complaint in the course of criminal proceedings did not amount to the same thing as making a civil claim for indemnification before civil courts.

40. In view of these considerations, the Court considers that Article 6 is applicable to the impugned proceedings from the moment when the applicant was joined as a civil party, namely since he brought his action for damages suffered as a result of the offence. In the absence of any evidence about the exact date when the applicant made his compensation claim, the Court, on the basis of the material in its possession, will proceed on the assumption that it was at the latest on 10 January 2000, the date when the trial court addressed the applicant's compensation claim for the first time. Accordingly, the Government's objection that the application is incompatible *ratione materiae* with the provisions of the Convention must be rejected.

b) Compatibility *ratione temporis*

41. The Government stated that the application was incompatible *ratione temporis*.

42. The applicant contested this objection.

43. The Court notes that the respondent State ratified the Convention on 10 April 1997. The applicant was party to the proceedings by 10 January 2000, and they ended with the trial court's decision of 18 March 2004, which became final on 14 May 2004. The Court therefore

has temporal jurisdiction to examine the proceedings so far as they concern the applicant. This objection must therefore be rejected.

2. Non-exhaustion of domestic remedies

a) The parties' submissions

44. The Government stated that the applicant had failed to exhaust domestic remedies insofar as he complained about a denial of access to court since he had not introduced a separate civil action as advised by the trial court. That the prosecution had become time-barred did not affect his right to claim financial reparation before civil courts because the compensation claim he submitted in the criminal proceedings had interrupted the running of the prescription period under the civil law. In this connection, they relied on the relevant provisions of the Obligations Act.

45. The applicant submitted that after the criminal proceedings had been discontinued because of the absolute time bar, he had no longer been entitled to claim compensation in civil proceedings. Relying on section 377 of the Obligations Act (see paragraph 26 above) he argued that the expiration of the statute of limitations in relation to prosecution for the offence had entailed a time bar for the civil claim.

b) The Court's consideration

46. The Court considers that the question raised by the Government is closely linked to the merits of the applicant's access to a court complaint. Consequently, its examination should be joined to the assessment of the merits of that complaint (see *Atanasova v. Bulgaria*, no. 72001/01, § 34, 2 October 2008).

3. Conclusion

47. In light of all the parties' arguments, the Court considers 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 "length-of-proceedings" complaint

a) The parties' submissions

48. The Government conceded that the overall length of the proceedings in question had been excessive. The trial court's failure to secure the

defendants' attendance at the trial and the remittal orders given by the Court of Appeal had affected their length.

49. The applicant reiterated his complaints in this respect.

b) The Court's consideration

50. The Court notes that the proceedings in question started, at the latest, on 20 February 1995. On 10 April 1997, the date when the respondent State ratified the Convention, the proceedings were still pending before the trial court. However, in view of the finding described in paragraph 40 above, the Court considers that the period to be taken into consideration in respect of Article 6 of the Convention started to run on 10 January 2000, the date when the applicant acquired the status of a civil-party complainant (see *Atanasova*, § 52, cited above). The proceedings ended on 14 May 2004, when the trial court's decision of 18 March 2004 became final. The relevant period therefore lasted four years, four months and four days at two levels of jurisdiction.

51. As regards the applicant's conduct, the Court finds no delays attributable to him.

52. As to the national courts, the Court observes that they cannot be said to have been inactive. In this connection it notes that the case was reconsidered on two occasions. In addition, the intervals between the decisions at different levels of jurisdiction were not unacceptably lengthy. Having regard to the criteria laid down in its case-law for assessing the reasonable-time requirement contained in Article 6 § 1 of the Convention (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, ECHR 2000-IV and *Philis v. Greece* (no. 2), judgment of 27 June 1997, Reports of Judgments and Decisions 1997-IV, § 35), the Court considers on the whole that the period under consideration cannot be deemed excessive.

53. Accordingly, there has been no violation of Article 6 § 1 of the Convention in respect of the "reasonable time" requirement.

2. The "access to a court" complaint

a) The parties' submissions

54. The Government stated that the trial court had decided the applicant's compensation claim in accordance with section 101 (2) of the Criminal Proceedings Act (see paragraph 22 above) since it had not been submitted in accordance with section 98 (3) of the Criminal Proceedings Act (see paragraph 20 above), namely it had not been specified nor supported by any evidence. They further reiterated that the applicant had not availed himself

of a separate civil action after the criminal proceedings had ended with a final decision, despite having been advised to do so by the trial court.

55. The applicant contested the Government's arguments.

b) The Court's consideration

56. The Court notes at the outset that the applicant complained about the lack of decision on the merits in respect of his compensation claim. The Court considers that it is to be analysed as an access to a court complaint. As to his compensation claim submitted in the criminal proceedings, the Court observes that it was not specified. Although that deficiency was noted by the trial court (see paragraph 9 above), it was not relied upon as a ground for it to be rejected as inadmissible. The Court further observes that the applicant was advised by the trial court to pursue, simultaneously with the criminal proceedings, his compensation claim by means of a separate civil action (see paragraphs 9 and 12 above). However, his failure to do so cannot be held to his detriment since the civil courts, as the Government argued, would have been required to wait the outcome of the criminal proceedings (see paragraphs 31 and 34 above). Lastly, for the reasons described in the *Atanasova* judgment, which likewise apply to this case, the Court considers that the applicant cannot be required to introduce, four years after he made the civil-party complaint and more than ten years after the incident, a fresh action before the civil courts seeking redress for the injuries sustained (see *Atanasova*, §§ 37 - 46, cited above).

57. There has accordingly been a violation of the applicant's right of access to a court within the meaning of Article 6 § 1 of the Convention.

3. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

59. The applicant claimed 150,000 euros (EUR) in respect of non-pecuniary damage for the emotional pain and suffering related to the assault.

60. The Government contested this claim as unsubstantiated and unrelated to the alleged violations.

61. The Court observes that the applicant claimed compensation for the non-pecuniary loss he had sustained as a result of the assault and further, that he did not claim any damage as a consequence of the violations found.

Since there is no causal link between the violations found and the damage alleged, the Court rejects this claim (see *Dika v. the former Yugoslav Republic of Macedonia*, no. 13270/02, § 65, 31 May 2007).

B. Costs and expenses

62. The applicant also claimed 228, 774 Macedonian denars (MKD) or the equivalent of approximately EUR 3,730 for the costs and expenses incurred before the domestic courts. He did not claim reimbursement of any costs incurred before the Court.

63. The Government contested this claim as unsubstantiated.

64. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum (see *Stoimenov v. the former Yugoslav Republic of Macedonia*, no. 17995/02, § 56, 5 April 2007). As to the costs and expenses claimed in respect of the domestic proceedings, the Court notes that such costs were not incurred in order to seek through the domestic legal order prevention and redress of the alleged violations complained of before the Court (see *Milošević v. the former Yugoslav Republic of Macedonia*, no. 15056/02, § 34, 20 April 2006). It therefore rejects the applicant's claim under this head.

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 in respect of the applicant's right of access to a court;
3. *Holds* that there has been no violation of Article 6 § 1 of the Convention in respect of the length of the proceedings;
4. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President