



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

FIFTH SECTION

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

(Application no. 21790/03)

JUDGMENT

STRASBOURG

27 May 2010

FINAL

27/08/2010

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

In the case of Sandel 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,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 4 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 21790/03) 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 an Israeli national, Mr Gideon Sandel ("the applicant"), on 25 June 2003.

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 19 June 2006 and 25 May 2009, the President of the Fifth Section decided to communicate to the Government the applicant's complaints about the length of proceedings and that in the trial against him he had been denied the right to use a language which he understood. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

4. The applicant was born in 1941.

1. The first set of proceedings

5. On 9 April 1998 the applicant was arrested on suspicion of fraud. On 10 April 1998 he was brought before an investigating judge of the Skopje Court of First Instance ("the trial court"). The minutes of the hearing held

on that date recorded that he had an insufficient command of Macedonian, but that he would agree, if need be, to have some phrases re-read or explained in detail. However, in the absence of his lawyer he remained silent. The investigation started and the applicant was remanded in custody. On 16 April 1998 he was again brought before the investigating judge and this time, in the presence of his lawyer, he produced evidence in Serbian stating that he had a limited command of Macedonian. He gave his testimony in the presence of Ms O.T., a court-certified interpreter. He signed the minutes without making any comment or objection.

6. On 29 April 1998 the public prosecutor lodged a bill of indictment. On 8 May 1998 the applicant objected on the ground that the bill was defective because it was not supported by sufficient evidence. On 15 May 1998 the trial court dismissed the applicant's objection.

7. On 23 June 1998 the applicant appointed another lawyer to represent him in the proceedings.

8. Four hearings fixed between July and September 1998 were adjourned owing to the applicant's request to use Hebrew, his mother tongue.

9. On 6 August 1998 he was released on bail.

10. On an unspecified date between September and December 1998, the trial court, at the applicant's suggestion, appointed Mr E.F., a Hebrew-speaking employee in a Skopje-based non-governmental organisation, as interpreter.

11. A hearing fixed for 15 January 1999 was rescheduled owing to the absence of Mr E.F.

2. The second set of proceedings

12. On 29 April 1998 an investigation started in respect of the applicant into two other counts of fraud. On 1 June 1998 the public prosecutor lodged an indictment against the applicant. On 11 June 1998 the applicant objected on the ground of lack of evidence to support the charges against him. He also requested that the bill of indictment be translated into Hebrew. On 20 October 1998, in the presence of the applicant and his second lawyer, the trial court dismissed the applicant's objection.

3. The joint proceedings

13. On 10 March 1999 the trial court joined the two sets of proceedings.

14. Between 15 January 1999 and 12 September 2001, the trial court fixed nineteen hearings of which three were adjourned at the applicant's request, five owing to the absence of either an expert, who was called upon to provide an opinion of the applicant's signature, the public prosecutor or Mr E.F. and two owing to the absence of the trial judge and a strike by the court administration. During this time, the proceedings were conducted with the assistance of Mr E.F. In his presence, the court heard the applicant, the

expert and several witnesses, two of which were foreign nationals, and obtained an expert report on the applicant's signature. At hearings on 10 March and 12 October 1999, and 12 September 2001, the applicant confirmed his testimony given in the pre-trial proceedings and stated that he had understood the bills of indictment communicated to him.

15. On 30 September 2001 Mr E.F. left the State and informed the trial court that he could no longer provide interpretation. By 3 March 2004, fifteen hearings were postponed because the trial court could not secure the attendance of Mr E.F. or another interpreter into Hebrew. At a hearing of 21 June 2002, the applicant insisted on having interpretation into Hebrew and refused the court's offer of English or Serbian interpretation. The Ministry of Justice stated that there was no court-certified interpreter into Hebrew registered in the respondent State who, under the rules of court, would be authorised to assist in court. The Jewish Association also replied that none of its members had sufficient command of Hebrew.

16. According to the minutes of the hearing held on 19 March 2003, the applicant stated that he had been living in the respondent State for ten years and had used English and Serbian for everyday communication. However, since his command of these languages was limited, he had insisted on having interpretation into Hebrew.

17. On 21 April 2003 a Skopje-based foreign language school issued a certificate attesting to the applicant's level of Macedonian. According to the latter, the applicant had limited understanding of Macedonian; he replied in Serbian; he could partly understand a written text if it was in Latin script but he could write only in Serbian. The applicant stated that he had submitted this certificate to the court as evidence.

18. At a hearing of 29 September 2003, the applicant stated that he used Macedonian, Serbian, Bulgarian and English for everyday communication. He signed contracts in Macedonian or English. In case something had to be added, he would ask his sons in Israel, in Hebrew, to translate the relevant part into English.

19. At a hearing of 17 November 2003, the applicant, when asked by the court, stated that he "used Macedonian, Serbian and English for everyday communication, but ... could not write or read in these languages or use them in the proceedings". The applicant further stated that in the pre-trial proceedings, meaning the questioning of April 1998, he had made his statement in Serbian – despite having limited command of it – on the instructions of his lawyer, who, he alleged, had been working in concert with the police and who had set him up to sign the minutes.

20. In view of the applicant's statements, on 28 January 2004 the trial court appointed two interpreters into English, Serbian and Bulgarian, one of whom was Ms O.T.

21. From 3 March 2004 the proceedings were conducted with the assistance of these two interpreters. Three adjournments were ordered owing to the applicant's absence.

22. On 10 November 2004 the trial court ordered, at the applicant's request, that the bills of indictment of 29 April and 1 June 1998, be translated into English and Serbian. On 29 December 2004 the applicant returned the translated versions saying that he was proficient only in Hebrew.

23. From 15 January 2005, a third lawyer represented the applicant in the proceedings. At a hearing of 17 January 2005, the trial court refused his request for all documents in the case file to be translated into Hebrew since they had already been orally translated by Mr E.F., in whose presence the court had admitted other evidence.

24. At hearings held on 4 and 15 April 2005 and after the applicant's lawyer had given extensive concluding remarks, the trial court convicted the applicant and sentenced him to two years and six months' imprisonment. It also ordered a security measure – expulsion from the respondent State for four years.

25. On 29 September 2005 the applicant lodged an appeal written in Hebrew. At the trial court's request, he submitted a certified copy in Macedonian. He complained that, *inter alia*, he had not been given the right to use Hebrew even though the trial court had accepted that he had a limited command of Serbian and English. He argued that his initial statement in Serbian had been made under duress. He further complained that evidence against him had been admitted in the form of photocopies.

26. At a public hearing held on 18 April 2006, the Skopje Court of Appeal dismissed the applicant's appeal. It rejected his arguments concerning the use of Hebrew, relying on his initial statement of 16 April 1998 made in Serbian and the fact that all the admitted evidence had been translated into Hebrew with the assistance of Mr E.F. It also stated that his appeal had been translated into Macedonian by an interpreter certified by the court to translate into Turkish, which suggested that the applicant's insistence on the use of Hebrew had been aimed at prolonging the proceedings. It further rejected his complaints about the use of evidence in the form of photocopies, stating that it had not been possible to admit it in original form as it had meanwhile been destroyed.

27. On 14 June 2006 the applicant submitted an appeal on points of law (*барање за вонредно преиспитување на правосилна пресуда*) to the Supreme Court in which he reiterated his complaints that he had been denied the right to use Hebrew, the only language of which he had sufficient command. He complained that the trial court, after being unable to secure the presence of a suitable interpreter, imposed the use of Serbian and other languages, even though it had established earlier in the proceedings that he could not use them proficiently. In this connection he complained about the

rejection of his request to have an interpreter from abroad, even though Mr E.F. was an American Jew. He further complained that he had not been informed, in a language which he understood, of the nature and cause of the accusation. Lastly, he complained about the use of evidence in the form of photocopies.

28. On 16 January 2007 the Supreme Court dismissed the applicant's appeal on points of law. It held that the proceedings had been conducted in a language which the applicant understood, relying on the depositions taken on 16 April 1998 in the pre-trial proceedings and the fact that all the evidence had been translated into Hebrew by Mr E.F. It also held that the applicant had had, throughout the entire proceedings, defence counsel of his own choosing. It further dismissed the remaining complaints finding no grounds for departing from the reasoning given by the lower courts. No information was provided as to the date of service of this decision.

29. On 27 June 2008 the President of the State granted the applicant early release from prison.

30. During the proceedings, the applicant requested, on several occasions, that the trial court and the State Judicial Council speed up the proceedings.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

31. The applicant complained under Article 6 §§ 1 and 3 (a), (b) and (e) of the Convention of the excessive length and unfairness of the proceedings. In respect of the latter, he complained that he had not been given the right to use Hebrew, the only language which he understood; that the evidence had been admitted in the form of photocopies; that the domestic courts' decisions had not been reasoned; that he had not been informed, in a language which he understood, of the nature and cause of the accusations against him; and that he had not been given adequate facilities for the preparation of his defence. Article 6 of the Convention, in so far as relevant, reads as follows:

Article 6 §§ 1 and 3 (a), (b) and (e)

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal ...

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

...

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

A. Length-of-proceedings complaint

1. Admissibility

32. The Government submitted that this complaint could be viewed as an abuse of the right of petition since the alleged excessive length of the proceedings had been due to the applicant's insistence on having Hebrew interpretation, which, at the time, had not been possible to secure for the entire proceedings. In this connection they referred to the case of *X. v. Ireland* (see *X. v. Ireland* (dec.) no. 9742/82, 2 March 1983).

33. The applicant contested the Government's argument, arguing that the trial judge had had the principal responsibility for the conduct of the trial.

34. The Court notes that the Government's objection did not concern the applicant's availability during the trial (see, *a contrario*, *X. v. Ireland*, cited above). The applicant requested, as a procedural right, to use Hebrew since it was allegedly the only language of which he had sufficient command. That request cannot, therefore, be regarded as an abuse of the right of petition. It may only be taken into consideration when regarding the applicant's contribution to the length of the proceedings, which falls under the merits of this complaint (see paragraph 44 below). Accordingly, the Government's objection must be rejected.

35. 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.

2. Merits

a) The parties' submissions

36. The Government submitted that there had been complex circumstances related to the case, including that the domestic courts had decided simultaneously on three counts of fraud and that oral evidence had been heard from many witnesses, some of them foreign nationals.

37. As regards the applicant's behaviour, they stated that he had contributed to the length of the proceedings in that he had insisted on using Hebrew, he had appointed three local lawyers, each requesting time to examine the case file, and he had been absent from several hearings.

38. As to the national courts, the Government argued that they had proceeded with the case with due diligence and that the scheduled hearings had been held regularly and without any delays. In addition, considerable efforts had been made to secure Hebrew interpretation.

39. The applicant contested the Government's arguments stating that he had a right to appoint lawyers of his own choosing in order to obtain as good a defence as possible. His request to use Hebrew could not be held to his detriment since he had a legitimate right to use a language of which he had sufficient command. Adjournments ordered owing to his absence had not added much time to the length of the proceedings.

b) The Court's consideration

40. The Court observes that on 10 April 1998 the applicant was questioned by the investigating judge about the charges brought against him. Consequently, this was the date on which he was "charged" for the purposes of Article 6 of the Convention and which is to be taken as the starting point for calculating the relevant period (see *Šubinski v. Slovenia*, no. 19611/04, § 62, 18 January 2007 and the references cited therein). The proceedings ended on 16 January 2007 when the Supreme Court dismissed the applicant's appeal on points of law. They therefore lasted eight years, nine months and nine days for three levels of jurisdiction.

41. 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 *Nankov v. the former Yugoslav Republic of Macedonia*, no. 26541/02, § 45, 29 November 2007).

42. The Court firstly observes that the case involved a measure of complexity on account of the number of witnesses heard, some of them foreign nationals; the need for expert examinations; the fact that it involved three counts of fraud and that three interpreters assisted during the trial. However, this complexity cannot explain the length of the proceedings.

43. As regards the applicant's behaviour, the Court finds a ten-month delay due to his failure to attend the scheduled hearings, despite being summoned properly (see paragraphs 14 and 21 above). On the other hand, there is no evidence that, having appointed three lawyers, the applicant affected the length of the proceedings since no adjournment or postponement was ordered on that ground. Furthermore, although the applicant cannot be blamed for having requested to use Hebrew, as was his procedural right, he must accept that such a request necessarily prolonged

the proceedings concerned. However, his insistence in this respect must be seen in the context of the national court's responsibility to ensure compliance with the requirements of Article 6 (see *Scopelliti v. Italy*, judgment of 23 November 1993, Series A no. 278, § 25). Lastly, the letters requesting acceleration of the proceedings (see paragraph 30 above), although ineffective, are a fact in his favour.

44. As regards the conduct of the national courts, the Court considers that the main reason for the protracted length of the proceedings was the trial court's inability to secure interpretation into Hebrew. For this reason, the proceedings lay dormant for two months in 1998 (see paragraph 8 above) and between 30 September 2001 and 3 March 2004 (see paragraph 15 above). That delay can be attributed only to the State since the trial judge remained responsible for the preparation and the speedy conduct of the trial (see, *mutatis mutandis*, *Scopelliti*, cited above, § 23). Had the court found the applicant's request to use Hebrew abusive, as argued by the Government, it should not have waited until 28 January 2004 (see paragraph 20 above), namely, nearly six years after the proceedings had started, to discontinue the assistance of an interpreter into Hebrew. Furthermore, several adjournments were ordered because of the trial court's inability to secure the attendance of either the parties, the experts or the interpreters (see paragraph 20 above). As a result, it took seven years for that court to take the first and only decision in the applicant's case. That time cannot be regarded as reasonable despite the fact that the higher courts examined the applicant's appeals with reasonable expedition.

45. Against this background, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1 of the Convention.

B. Alleged denial of the applicant's right to use a language of which he had sufficient command

46. The Government submitted that the applicant had not been denied the right to use a language which he understood. With the assistance of Mr E.F., he had been able to follow the proceedings in his mother tongue. Mr E.F. had explained the bills of indictment to him and had provided interpretation into Hebrew when witnesses were heard. After Mr E.F. had left the State, the proceedings had continued with assistance in Serbian, a language of which the applicant, as he had stated, had sufficient command. Furthermore, the applicant had had no difficulties in communicating with his lawyers. Lastly, all costs in respect of the interpretation had been borne by the State.

47. The applicant reiterated that Hebrew was the only language of which he had sufficient command. The trial court had not given any reason for having discontinued providing interpretation into Hebrew. It had refused to

appoint another interpreter into Hebrew from abroad, although available at the time, despite the fact that Mr E.F., who had also been a foreign national, had been involved in the trial. He had persistently brought his limited proficiency in Macedonian, Bulgarian, Serbian and English to the trial court's attention during the proceedings. The courts had not adduced any evidence establishing, in an objective manner, the level of his proficiency in these languages (see paragraphs 18 and 19 above). He had agreed to give his initial statement in Serbian out of fear that he would remain in custody for an indefinite period of time (see paragraph 5 above). He had communicated with the lawyers with the assistance of his colleagues.

48. The Court recalls that Article 6 § 3 (e) indicates that a person "charged with a criminal offence" who cannot understand or speak the language used in court has the right to the free assistance of an interpreter for the translation or interpretation of all those documents or statements in the proceedings instituted against him which are necessary for him to understand, or to have rendered into the court's language in order to have the benefit of a fair trial (see *Luedicke, Belkacem and Koç*, 28 November 1978, § 48, Series A no. 29, p. 20).

49. The interpretation assistance provided should be such as to enable the defendant to have knowledge of the case against him and to defend himself, notably by being able to put before the court his version of the events. This right applies not only to oral statements made at the trial hearing but also to documentary material and the pre-trial proceedings (see *Kamasinski v. Austria*, 19 December 1989, § 74, Series A no. 168).

50. As to the present case, it is not in dispute that the applicant, who was represented by three local lawyers of his own choosing throughout the proceedings, had a limited command of Macedonian, the language used in the criminal proceedings brought against him. That had been brought to the courts' attention since 10 April 1998, the date of the applicant's initial questioning by the investigating judge (see paragraph 5 above). Consequently, the pre-trial proceedings and the trial were conducted with the free assistance of an interpreter.

51. In the pre-trial proceedings, the applicant agreed, in the presence of his lawyer, to make oral submissions in Serbian. A court-certified interpreter assisted. The applicant signed the minutes without making any objection as to its contents, his ability to comprehend the questions put to him or to make himself understood in his defence (see paragraph 6 above).

52. The bills of indictment were initially served on him in Macedonian. That fact however, did not prevent him from challenging their substance (see paragraphs 6 and 12 above). They were later, at the applicant's request, translated into English and Serbian (see paragraph 22 above). A written translation in Hebrew, the applicant's mother tongue, was unnecessary given that sufficient oral information as to their content was given to the applicant

by Mr E.F., the interpreter into Hebrew (see paragraph 14 above) (see *Kamasinski* cited above, § 81).

53. An interpretation between Macedonian and Hebrew was provided between December 1998 and September 2001 (see paragraphs 10 and 14 above). During this time, the trial court admitted all evidence on which the applicant's conviction rested, namely, it heard the applicant, an expert and several witnesses and admitted an expert report (see paragraph 14 above). With the assistance of Mr E.F., the applicant was questioned on three occasions on which he did not contest the accuracy of his initial statement given in Serbian (see paragraph 14 above).

54. Between September 2001 and January 2004, the trial court took no procedural action in the applicant's case apart from efforts to secure the attendance of an interpreter into Hebrew that would meet the requirements of the national rules of court (see paragraphs 15-20 above). It was on this later date that the trial court discontinued the assistance of interpretation into Hebrew and replaced it with interpretation into Serbian, English and Bulgarian. This decision was given on an assumption about the applicant's sufficient command of these languages. During this time, the court admitted no additional evidence. It only heard the parties' concluding remarks (see paragraph 24 above).

55. In light of the foregoing, the Court finds no indication that the requirements of Article 6 § 3 (e) of the Convention were not met in the applicant's case.

56. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Remaining complaints

57. The applicant further raised complaints under Article 6 §§ 3 (a) and (b) of the Convention. In letters of 14 November 2006 and 15 September 2008, he also complained that evidence had been admitted in the form of photocopies and that the domestic courts' decisions had not been reasoned.

58. The Court has examined these complaints. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

59. 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.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage for the anguish, prolonged uncertainty and loss of reputation sustained as a result of the length of the proceedings.

62. The Government contested this claim reiterating that the applicant alone was responsible for the excessive length of the proceedings.

63. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 1,600 under this head, plus any tax that may be chargeable.

B. Costs and expenses

64. The applicant also claimed EUR 2,500 for the costs and expenses incurred before the Court. This figure included legal fees for forty hours of legal work.

65. The Government contested this claim as unsubstantiated and excessive.

66. 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 are reasonable as to quantum (see *Editions Plon v. France*, no. 58148/00, § 64, ECHR 2004-IV). In the present case, regard being had to the information in its possession, and the fact that only concerning the length-of-proceedings complaint a violation was found, the Court considers it reasonable to award the sum of EUR 600 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

67. 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 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;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of 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 on the date of settlement:
 - (i) EUR 1,600 (one thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 600 (six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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 27 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President