



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

FIFTH SECTION

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

(Application no. 6906/03)

JUDGMENT

STRASBOURG

3 July 2008

FINAL

03/10/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Jankulovski v. the former Yugoslav Republic of Macedonia,

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

Peer Lorenzen, *President*,

Rait Maruste,

Karel Jungwiert,

Volodymyr Butkevych,

Mark Villiger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 10 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 6906/03) 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 Tomce Jankulovski (“the applicant”), on 5 February 2003. He was born in 1962 and lives in Bitola.

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

3. On 30 January 2006 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

(a) Civil proceedings for debt

4. On an unspecified date in 1995, the applicant instituted civil proceedings for debt against Mr N. and a company run and owned by the latter (“the company”). He claimed that he had bought a vehicle (“the

vehicle”) for 54,000 German marks (“DM”) for the benefit of the company and that, in return, he had received from Mr N. another vehicle and DM 10,000. The remaining balance was DM 24,000.

5. On 26 September 1995 the then Bitola Municipal Court (*Општински суд Битола*) (“the first-instance court”) issued an injunction preventing Mr N. from selling the vehicle.

6. On 27 November 1995 the first-instance court ruled partly in favour of the applicant and ordered Mr N. and the company (“the debtors”) jointly to pay him DM 24,000 together with interest (*домицилна камата*). In addition, it ordered the debtors to pay the applicant’s costs. On 28 February 1996 the then Bitola District Court (*Окружен суд Битола*) confirmed that decision. It also declared it final in respect of Mr N. as he had not challenged it.

7. On 25 September 1997 the Supreme Court upheld an appeal by the applicant on points of law (*пезузија*) and quashed the lower courts’ decisions in respect of the company only. It held that they had not decided the applicant’s claim as submitted, in that they had ignored his request to have his claim converted into the national currency.

8. On 29 April 2004 the first-instance court upheld the applicant’s claim and ordered the debtors (Mr N. and the company) jointly to pay the applicant 636,384.00 Macedonian denars (equivalent to DM 24,000) together with default interest (*затезна камата*) calculated as of 11 August 1995. On 13 September 2004 that court ordered the debtors to reimburse the trial costs incurred by the applicant. On 4 November 2004 those decisions became final.

(b) Enforcement proceedings

9. On 1 April 1996 the first-instance court granted the applicant’s request for enforcement of the decision of 27 November 1995. The debt was to be honoured by an inventory and public sale of Mr N.’s property or by its transfer from the company’s bank account. On 13 May 1996 that court refused the company’s objection and declared the order against Mr N. final as he had not challenged it. That decision was confirmed by the then Bitola District Court’s decision of 10 June 1996.

10. On 17 June 1996 the first-instance court ordered the then Payment Exchange Office (*Завод за платен промет*) to enforce its order by transferring the amount due from the company’s account to the applicant’s. On 2 July 1996 the first-instance court ordered enforcement of the applicant’s claim by means of an inventory and public sale of the debtors’ movable property, including the vehicle. That decision was set aside by the Bitola Court of Appeal on 24 October 1996.

11. After establishing that there were insufficient funds in the company’s account, on 26 December 1996 the first-instance court ordered continuation of the enforcement proceedings. A public sale of the vehicle was fixed for

24 March 1997. On 25 March 1997 a third party challenged that decision since it had obtained possession of the vehicle on the basis of a sales contract concluded with the company.

12. On 14 April 1997 the first-instance court granted the applicant an enforcement title over the vehicle and ordered the third party to transfer the vehicle into the applicant's possession. On 3 June 1997 the Bitola Court of Appeal dismissed appeals by the debtors and the third party and confirmed the above decision.

13. On 18 December 1997 the first-instance court authorised the third party to register the disputed vehicle in his possession, but ordered him not to sell it before the final conclusion of the enforcement proceedings. It established that Mr N. had meanwhile deposited about DM 13,000 in various currencies to secure the applicant's claim.

14. On 23 January 1998 Mr N. left the respondent State.

15. On 27 January 1998 the first-instance court ordered its treasurer to transfer to the applicant the funds deposited by Mr N.

16. On 11 March 1998 the first-instance court requested the police to confiscate the disputed vehicle from the third party. The police replied that the third party had obtained ownership of the vehicle on the basis of a sales contract certified by the Štip Court of First Instance and that accordingly, the latter court should proceed with the enforcement.

17. On 27 April 1998 the Supreme Court informed the applicant that the enforcement of his claim had been delayed as the whereabouts of Mr N. were unknown. On 9 September 1998 that court stated that the delay had been caused by the police's failure to enforce the order. On 12 November 1998 the Ombudsman informed the applicant that the case had been transferred to the Štip Court of First Instance, as competent *ratione loci*, to proceed with the enforcement.

18. On 17 June 1998 Mr N. was convicted of fraud and sentenced to one year's imprisonment for selling the vehicle to the third party despite the court's order (see paragraph 5 above) not to do so.

19. On 2 June 1999 the first-instance court informed the applicant that as of 16 February 1999 the enforcement proceedings had been transferred to the Štip Court of First Instance. It also referred to the deposit which had been made available to him.

20. On 15 June 1999 the funds deposited with the first-instance court (see paragraph 13 above) were handed to the applicant, as evidenced by a payment slip of that date.

21. On 15 November 2004 the applicant requested enforcement of the first-instance court's decisions of 29 April and 13 September 2004 (see paragraph 9 above). In that submission, he also referred to the enforcement proceedings of 1996 pending between the same parties in relation to the same subject-matter.

22. On 16 January 2006 the first-instance court requested information from the Štip Court of First Instance regarding measures taken with a view to enforcing the applicant's claim. No further action was taken in respect of the enforcement proceedings.

23. In the course of these proceedings, the applicant requested various institutions, on many occasions, to expedite the enforcement proceedings concerning his claim.

RELEVANT DOMESTIC LAW

24. Section 32 §§ 5 and 7 of the Enforcement Proceedings Act then in force provided that a debtor was required to reimburse the costs of enforcement incurred by the creditor at the latter's request, which could be lodged within thirty days of the conclusion of the enforcement proceedings.

25. Section 88 of the Act, which concerned the enforcement of payment through seizure of movable property, provided that the money obtained from the sale of that property would be used for reimbursement of, *inter alia*, the costs of enforcement incurred by the creditor.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 AND ARTICLE 1 OF PROTOCOL NO. 1 OF THE CONVENTION

26. The applicant complained about the unreasonable delay of the enforcement proceedings and his inability to recover his debt. The Court considers that those complaints concerned the non-enforcement of the applicant's civil judgment debt and that, accordingly, they fall to be considered under Articles 6 § 1 and Article 1 of Protocol No. 1 of the Convention, the relevant parts of which read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

27. The Government have not raised any objections as to the admissibility of these complaints.

28. 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

29. The Government stated that the case had been of a complex nature which required numerous expert examinations and consideration of voluminous documentation. They further maintained that the impugned proceedings had been composed of a number of separate actions, including the enforcement stage. The fact that the parties concerned had availed themselves of the available remedies affected the length of the enforcement proceedings. In addition, several State institutions were involved in these latter proceedings, which contributed to the complexity of the case. They further argued that the applicant himself, by failing to specify his claim in good time and to expedite the proceedings, added much to the length of the proceedings. He had further failed to seek alternative means to secure his claim, but had relied entirely on those undertaken by the first-instance court.

30. As regards the conduct of the national courts, the Government argued that they had decided the applicant's case with due diligence despite the fact that the civil proceedings had lasted over nine years, while the enforcement proceedings were still pending.

31. They further submitted that the applicant could rely on Article 1 of Protocol No. 1 only in respect of the part of his claim which remained unenforced. No evidence was produced that he could be deprived of that part of his claim.

32. The applicant contested the Government's arguments and stated that they concerned mainly the civil proceedings, but not the non-enforcement, as the most salient issue in his case. He maintained that no delays could be attributed to him. He confirmed that only part of his claim remained unenforced, namely DM 11, 000, plus interest and the awarded trial costs.

He further argued that he had submitted many requests to expedite the enforcement of that part of his claim, none of which had been successful.

2. The Court's assessment

(a) General principles

33. The Court recalls that the right to a court would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 63, ECHR 1999-V). A delay in the execution of a judgment may, however, be justified in particular circumstances, but this delay may not be such as to impair the essence of the right protected under Article 6 § 1 (*ibid.*, § 47).

34. In terms of Article 1 of Protocol No. 1, a “claim” can constitute a “possession” if it is sufficiently established to be enforceable (see *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III). By virtue of Article 1 of the Convention, each Contracting Party “shall secure to everyone within [its] jurisdiction the rights and freedoms defined in ... [the] Convention”. The obligation to secure the effective exercise of the rights defined in that instrument may result in positive obligations for the State. As regards the right guaranteed by Article 1 of Protocol No. 1, those positive obligations may entail certain measures necessary to protect the right to property, even in cases involving litigation between private individuals or companies. This means, in particular, that States are under an obligation to ensure that the procedures enshrined in the legislation for the enforcement of final judgments are complied with (see *Fuklev v. Ukraine*, no. 71186/01, §§ 89-91, 7 June 2005, with further references).

(b) Application of these principles to the present case

35. The Court notes that, by the decision of 27 November 1995, the first-instance court accepted the applicant's claim and ordered the debtors jointly to pay the debt. That decision became final and enforceable only in respect of Mr N. On 29 April 2004, after the Supreme Court's decision of 25 September 1997, the first-instance court ordered the debtors again jointly

to repay the debt. The enforcement proceedings which the applicant instituted on 1 April 1996 with a view to securing payment of his debt, established initially by the decision of 27 November 1995 and subsequently by the decision of 29 April 2004, are still pending. The impugned situation has thus already been continuing for nearly eleven years since the ratification of the Convention by the respondent State on 10 April 1997 (the period which falls within the Court's jurisdiction *ratione temporis*).

36. The Court further observes that, in order to determine the reasonableness of the delay in question, regard must also be had to the state of the case on the date of ratification (see, *mutatis mutandis*, *Styranowski v. Poland*, judgment of 30 October 1998, *Reports* 1998-VIII) and notes that on 10 April 1997 the enforcement stage of the proceedings complained of had already been pending for just over one year.

37. The Court reiterates that the State has an obligation under Article 6 to organise a system for the enforcement of judgments that is effective both in law and in practice and ensures their enforcement without undue delay (*Fuklev v. Ukraine*, referred to above, § 84.).

38. As to the present case, part of the applicant's claim was satisfied (see paragraph 20 above). The remaining part of the debt, however, has not yet been honoured. In the course of the enforcement proceedings the applicant proposed two alternative means of enforcement: public sale of the debtors' movable property or transfer of the amount due from the company's account. Since the latter means lacked any prospect of success, the enforcement continued against the debtors' movable property. Indeed, a public sale of the vehicle was fixed by the first-instance court to that end (see paragraph 11 above). The applicant was even granted, by a final decision, an enforcement title over that vehicle. A third party who was in actual possession of the vehicle was also ordered to transfer it in the applicant's possession (see paragraph 11 above). Instead of completing the enforcement against the vehicle, the same court later authorised the third party to register it in his possession (see paragraph 12 above). The subsequent confiscation order of the vehicle was unsuccessful because, as the Supreme Court found, the police had failed to enforce the order (see paragraphs 16 and 17 above). Given the third party's residence, on 16 February 1999 the applicant's case was reassigned to the Štip Court of First Instance (see paragraph 19 above). The Court finds that that court did not take any measure to enforce payment of the remaining debt. It was only on 16 January 2006, that is seven years after the reassignment of the case, that the first-instance court made queries about the state of affairs regarding the enforcement of the applicant's claim. The applicant's numerous requests to expedite enforcement also proved unsuccessful.

39. Against this background, the Court considers that the respondent State has failed to conduct the enforcement proceedings at issue effectively (see *Fuklev v. Ukraine*, cited above, § 86). The Government's arguments

about the complexity of the case and the applicant's alleged contribution to the partial non-enforcement of his claim cannot alter that conclusion. It therefore finds that the Macedonian authorities impaired the essence of the applicant's "right to a court" and failed to comply with their obligation to secure to the applicant the effective enjoyment of his right of property as established by the court decisions given in the substantive proceedings. There has accordingly been a violation of Article 6 § 1 of the Convention and a separate violation of Article 1 of Protocol No. 1 (see *Kolyada v. Russia*, no. 31276/02, § 25, 30 November 2006).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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."

41. In the application, the applicant requested payment of his claim, together with interest, but failed to comply with Rule 60 of the Rules of Court in that he did not submit any claim for just satisfaction after the application had been communicated to the respondent Government. In these circumstances, the Court makes no award under Article 41 of the Convention (see *Nikolov v. the former Yugoslav Republic of Macedonia*, no. 41195/02, § 33, 20 December 2007).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there have been violations of Article 6 § 1 and Article 1 of Protocol No. 1 of the Convention.

Done in English, and notified in writing on 3 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President