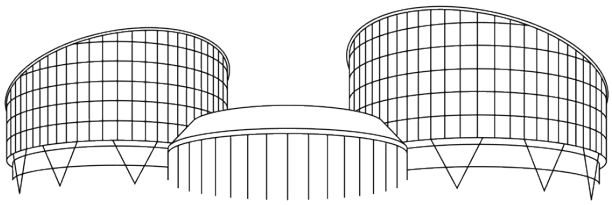

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF JOVANOSKI v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

(Application no. 31731/03)

JUDGMENT

STRASBOURG

7 January 2010

FINAL

28/06/2010

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

In the case of Jovanoski 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 1 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 31731/03) 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 Krste Jovanoski ("the applicant"), on 22 September 2003.

2. The applicant was represented by Mr M. Popeski, a lawyer practising in Ohrid. The Macedonian Government ("the Government") were represented by their Agent, R. Lazareska Gerovska.

3. On 15 November 2006 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1932 and lives in Gorno Lakocerej.

5. On an unspecified date in 1991, the applicant, as a successful litigant, instituted enforcement proceedings against the Croatian company "Fruktus", ("the debtor"), for payment of a debt.

6. On 6 June 1991 the then Ohrid Municipal Court ("the first-instance court") upheld the applicant's request ordering the debtor to transfer the amount due on his account ("the 1991 order").

7. On 20 June 1991 the Zagreb Payment Exchange Bureau (*Служба за општествено книговодство Загреб*) ("the Bureau") transferred part of the debt on the applicant's account.

8. On 4 February 1992 the applicant requested the court to enforce the remainder. On 19 February 1992 the first-instance court granted this request.

9. On 9 November 1992 it rejected as out of time the debtor's objection on the 1991 order. On 19 March 1993 the Bitola District Court dismissed an appeal of the debtor against this latter decision rejecting its argument that normal communication had been disrupted because of the war conflict in Croatia at the material time.

10. On 20 September 1993 the first-instance court unsuccessfully requested the applicant to propose an alternative means of enforcement. On 8 November 1994 it stayed the proceedings finding that the enforcement of the remainder, by the means proposed by the applicant, had become impossible due to the dissolution of the then Federal Bureau of Yugoslavia and the creation of the Bureau, as an autonomous institution of the independent Croatia.

11. On 11 July 1995 the Bitola District Court upheld the applicant's appeal and remitted the case for a fresh consideration. It held that the dissolution of the then Federal Bureau of Yugoslavia could not be regarded as a valid ground for suspending the enforcement. It ordered the lower court to contact the Ministry of Justice so as to establish whether an inter-state agreement existed between the respondent State and Croatia concerning the payment exchange operations. No further decision has been taken.

12. On 31 August 2001 the case-file was destroyed. According to the Government, all case-files involving a foreign debtor were destroyed on the basis of an internal act of competent courts. There is no evidence that that was brought to the applicant's attention. The queries which he made at an unspecified date in 2003 revealed that the case had been archived.

II. RELEVANT DOMESTIC LAW

13. The Agreement between the former Yugoslav Republic of Macedonia and Croatia on Mutual Legal Assistance in Civil and Criminal Matters (*Договор помеѓу Република Македонија и Република Хрватска за правна помош во граѓанските и кривичните предмети*) ("the agreement"), was concluded on 2 September 1994 and became applicable as of 26 May 1995.

14. Section 20 of the agreement stipulates, *inter alia,* that the contracting parties are bound to recognise and enforce final decisions rendered by courts of the other party.

15. Under section 22 of the agreement, an interested person can submit a request for recognition and enforcement of a final judgment before the courts of the contracting party, which are called upon to decide the request for recognition and enforcement, or before the court, which rendered the final judgment.

THE LAW

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

16. The applicant complained that he had been denied the right of access to a court due to the non-enforcement of his claim. He complained under Article 6 of the Convention, the relevant part of which reads as follows:

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

A. Admissibility

17. The Government objected that the applicant had not complied with the six-month time-limit which had started to run as of 31 August 2001 when the case-file had been destroyed. They further argued that the application was an abuse of the right of application and that the applicant's representative furnished a power of attorney only in 2006. The Government also argued that the applicant had not exhausted all available remedies given his failure to seek enforcement before Croatian courts.

18. The applicant contested the Government's objections.

19. The Court reiterates that the six-month period will run from the date on which a decision is actually served (see *Worm v. Austria* (dec.), no. 22714/93, 7 November 1995). In this connection, it observes that the Government did not provide any evidence that the applicant had been served with a decision in respect of the destruction of the case-file. The Government's arguments that the application was an abuse of the right of application are also unsubstantiated.

20. As to the Government's objection for non-exhaustion, the Court considers that the applicant's failure to seek enforcement of the remainder before the Croatian courts could not absolve the responsibility of the respondent State for the proceedings pending before its courts. Furthermore, this objection was raised also in respect of the applicant's claim for

pecuniary damage and it should be examined accordingly (see paragraph 34 below). It follows that the Government's objections must be rejected.

21. The Court further considers that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

22. 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 stated that his claim had been partly enforced (see paragraph 7 above). They further maintained that there had been complex factors such as the dissolution of former Yugoslavia and the war in Croatia. The Government pointed out that the applicant had not demonstrated any interest in the enforcement proceedings and had failed to seek their expedition.

23. The applicant contested the Government's arguments.

2. The Court's consideration

24. The Court reiterates that the execution of a judgment given by any court must be regarded as an integral part of the "trial" for the purposes of Article 6 of the Convention (see *Jankulovski v. the former Yugoslav Republic of Macedonia*, no. 6906/03, § 33, 3 July 2008). Moreover, it considers that the State has a positive obligation to organise a system for enforcement of judgments that is effective both in law and in practice and ensures their enforcement without undue delay (see *Pecevi v. the former Yugoslav Republic of Macedonia*, no. 21839/03, § 29, 6 November 2008). However, the Court notes that State responsibility for enforcement of a judgment against a private party extends no further than the involvement of State bodies in the enforcement procedures. Once the enforcement procedures were closed by a court in accordance with the national legislation, the responsibility of the State ended (see *Martinovska v. the former Yugoslav Republic of Macedonia*, (dec.), no. 22731/02, 25 September 2006).

25. The Court notes that the enforcement proceedings started in 1991 when the applicant had sought enforcement of his claim. His claim was partly enforced on 20 June 1991. On 4 February 1992 the applicant requested that the court enforce the remainder. The Court will therefore examine the applicant's complaint in respect of the proceedings as of this latter date. It further observes that they formally ended on 31 August 2001

when the case-file had been destroyed. No further action has been taken by both the courts and the applicant.

26. The impugned situation lasted therefore nearly eleven years, of which approximately six years fall within the Court's jurisdiction *ratione temporis* (since the ratification of the Convention by the respondent State on 10 April 1997).

27. The Court recalls 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 *Jankulovski*, cited above, § 36) and notes that on 10 April 1997 the enforcement proceedings had already been pending for around five years.

28. The applicant requested enforcement of a final decision given in his favour (see paragraph 5 above). After his claim was partly enforced on 20 June 1991 (see paragraph 7 above), the enforcement proceedings laid dormant since 11 July 1995 when the Bitola District Court remitted the case for a fresh consideration (see paragraph 11 above). The first-instance court remained inactive although it was called upon to render a decision. The next and last activity was taken on 31 August 2001 when the case-file was destroyed. There is no evidence that the latter was ordered on the applicant's request.

29. The Court observes that the applicant's last activity in respect of the proceedings was before July 1995 (see paragraph 11 above). He thereafter showed interest about the outcome of the proceedings only in 2003 (see paragraph 12 above).

30. Notwithstanding, having regard to all circumstances the Court considers that by refraining from taking adequate and effective measures to enforce the applicant's claims the domestic courts deprived the provisions of Article 6 § 1 of the Convention of all useful effect.

31. There has therefore been a violation of Article 6 § 1 of the Convention.

II. 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 1,076,284 euros (EUR) in respect of pecuniary damage. That figure corresponded to the amount awarded in the

substantive proceedings together with interest. He also claimed EUR 20,000 in respect of non-pecuniary damage for emotional suffering.

34. The Government contested these claims arguing that the applicant could have sought enforcement of the remainder before the Croatian courts.

35. As to the pecuniary damage, the Court finds persuasive the Government's argument that the applicant had failed, although entitled to under the agreement, to seek enforcement of the remainder before the Croatian courts. It therefore rejects his claim under this head.

36. On the other hand, the Court accepts that the applicant suffered emotionally due to the failure of the first-instance court to decide his request for enforcement in respect of the remainder. Ruling on an equitable basis, it awards him EUR 500 in respect of the non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

37. The applicant also claimed EUR 3,700 for the costs and expenses incurred before the domestic courts and the Court. He did not submit any supporting documents.

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

39. The Court points out that under Rule 60 of the Rules of Court "the applicant must submit itemised particulars of all claims, together with any relevant supporting documents failing which the Chamber may reject the claim in whole or in part" (see *Parizov v. the former Yugoslav Republic of Macedonia*, no. 14258/03, § 72, 7 February 2008).

40. The Court notes that the applicant did not provide any supporting documents. It therefore makes no award in this respect.

C. Default interest

41. 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 application admissible;

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 from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 500 (five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the national currency of the respondent State, at the rate applicable at the date of settlement;

(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 7 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Peer Lorenzen
Registrar	President