



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

FIFTH SECTION

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

*(Application no. 40233/03)*

JUDGMENT

STRASBOURG

25 March 2010

**FINAL**

*25/06/2010*

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



**In the case of Jovanovski 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,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 2 March 2010,

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

## PROCEDURE

1. The case originated in an application (no. 40233/03) 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 Tomislav Jovanovski (“the applicant”), on 13 December 2003.

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

3. On 27 November 2007 the Court decided to communicate the length complaint concerning the first set of proceedings (see below). 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

4. The applicant was born in 1951 and lives in Bitola.

#### **A. Proceedings concerning the applicant's compensation claim for being unable to use his house (“the first set of proceedings”)**

5. On 9 November 1987 the applicant entered into an agreement with Mr V.G. (“the defendant”) under which the latter had agreed to produce and install some furniture in the applicant's house. The applicant made an advance payment.

6. On 12 April 1993 the applicant claimed annulment of the agreement since the defendant had not complied with it.

7. On 1 February 1994 the applicant specified his claim and sought compensation.

8. On 16 June 1995 the applicant lodged another compensation claim on a different ground. On the same date, the then Bitola Municipal Court (“the first-instance court”) ruled partly in favour of the applicant ordering a cross-cancellation of debts (*пребивање*). It made no decision in respect of the applicant's compensation claim since it had not been specified. On 26 March 1996 the Bitola Court of Appeal confirmed the decision on the merits and quashed it in respect of the trial costs.

9. After the defendant died, the first-instance court invited defendant's heirs (“the heirs”) to submit a court decision recognising them as his successors.

10. On 10 March 1997 the applicant successfully requested removal of the judge.

11. On 8 December 1998 the applicant further specified his claim.

12. After one hearing being adjourned due to the applicant's absence, the first-instance court dismissed the applicant's compensation claim on 19 January 2000. This decision was confirmed on the merits by the Bitola Court of Appeal's decision of 26 October 2000. On 10 April 2003 the Supreme Court dismissed the applicant's appeal on points of law of 31 March 2001. This latter decision was served on the applicant on 25 August 2003.

### **B. Proceedings concerning the applicant's dismissal (“the second set of proceedings”)**

13. The applicant's dismissal was annulled by a decision of the Bitola Court of Appeal of 16 October 1997. He was reinstated on 7 November 1997.

### **C. Proceedings concerning the applicant's compensation claim related to his unlawful dismissal (“the third set of proceedings”)**

14. On an unspecified date in 1998, the applicant brought an action against his employer claiming compensation for the unlawful dismissal.

15. On 8 December 2000 the first-instance court ruled partly in his favour. This decision was upheld by the Bitola Court of Appeal and the Supreme Court with decisions of 22 May 2001 and 13 March 2003,

respectively. This latter decision was served on the applicant on 13 June 2003.

## THE LAW

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

16. The applicant complained that the length of all sets of 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

##### *1. The first set of proceedings*

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

18. 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. The second set of proceedings*

19. The Court notes that this set of proceedings ended with the Bitola Court of Appeal's decision of 16 October 1997, while the application was lodged with the Court on 13 December 2003.

20. It follows that the applicant's complaints under this head have been introduced outside the six-month time-limit laid down in Article 35 § 1 and must be rejected in accordance with Article 35 § 4 of the Convention.

##### *3. The third set of proceedings*

21. The Court observes that this set of proceedings started in 1998 and ended on 13 June 2003 when the Supreme Court's decision was served on the applicant. They therefore lasted at least four years and seven months for three court levels. The Court observes that the proceedings before the Supreme Court were somewhat long (see, *a contrario*, *Kertakov v. the former Yugoslav Republic of Macedonia* (dec.), no. 13302/02, 6 November 2006). However, a delay at some stage may be tolerated if the

overall duration of the proceedings cannot be deemed excessive (see *Nuutinen v. Finland*, no. 32842/96, § 110, ECHR 2000-VIII). Having regard to the overall length of the proceedings and the number of instances involved, the Court considers that there was no violation of the “reasonable time” requirement in respect of these proceedings.

22. 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.

## **B. Merits**

### *1. The parties' submissions*

23. 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, such as the need for expert examination and the fact that the first-instance court had to await the outcome of inheritance proceedings so that the heirs could be accepted as a party to the proceedings.

24. They also argued that four adjournments were attributable to the applicant (see paragraph 12 above); that he had specified his claim on several occasions (see paragraphs 7, 8 and 11 above) and that he had requested exemption of the judge (see paragraph 10 above).

25. The applicant contested the Government's arguments.

### *2. The Court's assessment*

26. The Court notes that the proceedings started on 12 April 1993 when the applicant brought his claim. 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).

27. 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 nearly four years at two levels of jurisdiction.

28. The proceedings ended on 25 August 2003 when the Supreme Court's decision was served on the applicant. They therefore lasted over ten years and four months, of which six years, four months and sixteen days fall within the Court's temporal jurisdiction at three court levels.

29. With reference to its settled case-law on this matter, the Court will assess the reasonableness of the length of the proceedings in the light of the particular circumstances of the case having regard to its complexity, to the conduct of the applicant and to that of the authorities dealing with the case (see *Markoski v. the former Yugoslav Republic of Macedonia*, no. 22928/03, § 32, 2 November 2006).

30. The Court considers that the case was of some complexity, but that it cannot in itself explain the length of the proceedings. No justification was advanced as to how the inheritance proceedings increased the complexity of the case.

31. As regards the applicant's behaviour, the Court considers that he was responsible for one adjournment, as opposed to the Government's arguments in this respect (see paragraphs 12 and 24 above). His submissions specifying his claim cannot be considered to his detriment. Lastly, he cannot be held responsible for having availed himself of the available remedies to request successfully exclusion of the trial judge.

32. Conversely, the Court finds significant delays attributable to the domestic courts. In this connection, it observes that during the time under consideration, it took nearly three years and ten months for the first-instance court to decide the applicant's case after it was remitted (see paragraphs 8 and 12 above). It further took nearly two years for the Supreme Court to decide the applicant's appeal on points of law (see paragraph 12 above). The time which elapsed before that court, which reviewed the case only on points of law, cannot be regarded as reasonable (see *Mihajloski v. the former Yugoslav Republic of Macedonia*, no. 44221/02, § 38, 31 May 2007). Lastly, four months and fifteen days elapsed for the Supreme Court's decision to be served on the applicant.

33. Against the foregoing, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

34. There has accordingly been a breach of Article 6 § 1.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

35. Lastly, the applicant alleged that the courts had incorrectly assessed the evidence; that they had incorrectly applied domestic law and that they have reached the wrong decision

36. The Court has examined these 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 6,125,463 euros (EUR) in respect of pecuniary damage because he was unable to use the house.

40. The Government contested these claims.

41. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore rejects this claim. The applicant did not submit a claim for non-pecuniary damage in accordance with Rule 60 of the Rules of Court. In these circumstances, the Court makes no award under this head (see, *mutatis mutandis*, *Nikolov v. the former Yugoslav Republic of Macedonia*, no. 41195/02, § 33, 20 December 2007).

#### B. Costs and expenses

42. The applicant also claimed EUR 4,636 for the costs and expenses incurred before the domestic courts. He did not make any claim for the proceedings before this Court

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). The applicant did not seek reimbursement of legal costs and expenses incurred before it.

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 the proceedings;
3. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 March 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek  
Registrar

Peer Lorenzen  
President