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The European Convention on Human Rights – The Protection of Human Rights under the ECHR in Central and South East Europe: North Macedonia**

The culture of human rights derives its greatest strength from the informed expectations of each individual. Responsibility for the protection of human rights lies with the states. But the understanding, respect and expectation of human rights by each individual person is what gives human rights its daily texture, its day-to-day resilience.

Sergio Vieira De Mello
UN High Commissioner for Human Rights[1]

ABSTRACT: Regulating human rights and their protection in North Macedonia's legal system has an important historic dimension, accounting for the historic continuum of the constitutional and legal human rights framework in the country from 1946 to date. The Socialist Republic of Macedonia, as part of the former Socialist Federal Republic of Yugoslavia (SFRY), was a signatory to the European Convention on Human Rights (ECHR) since 26 January 1965. Although the Macedonian legal system, from 1946 until the start of the democratic transition process in 1990-1991, was considered a part of the socialist systems, Macedonian citizens had constitutional, legal and institutional protection of human rights and freedoms. However, the formal existence of the legislation did not achieve the protection of human rights as a final goal. Hence, in this chapter, several key issues related to the protection of human rights in the Macedonian state will be analysed and elaborated, such as the contextual introduction of the historical development of human rights in the country, the relationship

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[1] Understanding Human Rights Manual on Human Rights Education, European Training and Research Centre for Human Rights and Democracy (ETC), Graz, 2003. [Online]. Available at: https://www.etc-graz.eu/wp-content/uploads/2020/08/Manual-Eng-V1.pdf (Accessed: 23 July 2024).

between the Macedonian state and the Council of Europe (CoE) from a human rights perspective, the CoE human rights conventions to which North Macedonia is a State Party, elaboration on the national implementation (the process and time of accession/succession /ratification) of the ECHR, how human rights protection obligations deriving from the ECHR are reflected in the constitution and/or other major acts of the country and the major law-making processes that took place in the country due to the ECHR. The chapter includes several landmark cases of North Macedonia before the European Court of Human Rights (ECtHR), elaborated in detail.

KEYWORDS: ECtHR, ECHR, human rights, freedoms, protection, ECtHR cases.

1. Contextual introduction of the historical development of human rights in North Macedonia

Human rights development in Macedonia is considered in the context of the transition to a pluralist democracy. Human rights were the flagship of this transition and have been at its core. The start of the democratic transition processes in Macedonia coincided with major efforts in the international community to strengthen the protection of human rights globally. In the early 1990s, the United Nations (UN) started promoting National Human Rights Institutions, independent national agencies designed to protect and promote human rights, to 'bridge the gulf between international law and domestic practices.[2] However, these global trends did not have an immediate impact in the former Yugoslavian countries, characterised by war, violence and massive infringements of human rights. Although Macedonia managed to avoid the wars that followed the Yugoslav break-up, it did experience an inter-ethnic conflict in 2001, which had a major impact on the human rights practices in the country.

The relationship between the Macedonian state and the Council of Europe (CoE) began in 1965, when the then Socialist Federal Republic of Yugoslavia (SFRY) signed the European Convention on Human Rights

[2] Effectiveness of National Human Rights Institutions in the Western Balkans Montenegro, North Macedonia, Serbia Comparative Report (What is behind and) Beyond the average? Civil Rights Defenders, November 2019, [Online]. Available at: https://epi.org.mk/wp-content/uploads/2019/12/Effectiveness-of-National-Human-Rights-Institutions-in-the-Western-Balkans.pdf (Accessed: 23 July 2024).

(ECHR) and pledged to respect its provisions in the national legal system. A referendum on the country's independence on 8 September 1991, the adoption of the Declaration of sovereignty on 17 September 1991 and the adoption of a new constitution on 17 November 1991 marked the country's rapid transition to democratisation. In the advisory Opinion No. 11 of 16 July 1993, the Arbitration Commission of the International Conference on the Former Yugoslavia deemed Macedonia to have become one of the successor states to the SFRY from 17 November 1991. The Republic of North Macedonia, as an independent and sovereign state, became a member of the CoE on 25 June 1993. The Macedonian Assembly was granted special guest status at the Parliamentary Assembly of the CoE on 13 May 1993 after the fact-finding visit of an Assembly delegation from 26 to 30 March 1993. The Republic of North Macedonia has been participating in various CoE activities since 1993 through intergovernmental co-operation and assistance programmes, especially in the fields of legal reform and human rights, and the participation of its special guest delegation in the workings of the Parliamentary Assembly and its committees.[3]

Macedonia, as an independent state, signed the ECHR on 11 November 1995, while the Convention entered into force on 10 April 1997, which initiated the process of harmonising the Macedonian legislation with the European standards. After the adjustments were made, the instruments for ratification of the Convention and the Protocols no. 1, 4, 6 and 7 were transferred, while Macedonian citizens were given the right to seek protection before the European Court of Human Rights (ECtHR). The last Protocol (No. 16), that is, the instrument for its ratification, was deposited in the CoE on 25 September 2023.

Apart from the ECHR, Macedonia signed the 'European Convention for the Prevention of Torture and Inhumane and Degrading Treatment or Punishment', the 'Framework Convention for the Protection of National Minorities', the 'General Agreement on Privileges and Immunities - with Additional Protocol', the 'European Charter of Local Self-Government', the 'European Convention on Extradition', the 'European Convention on Mutual Assistance in Criminal Matters' and the 'Convention on the Transfer of Sentenced Persons'. Furthermore, it signed and ratified the 'Criminal Law Convention on Corruption' and, with a view to ratification, signed the

[3] Application by the former Yugoslav Republic of Macedonia for membership of the Council of Europe, [Online]. Available at:https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=13930&lang=en (Accessed: 20 July 2024).

'European Charter for Regional or Minority Languages', the 'European Convention on Nationality and the European Social Charter and Protocols' and the 'European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime'. The Assembly of the Republic of North Macedonia has adopted a Code of Criminal Procedure and has included the right to a fair trial in Article 13 of the Macedonian Constitution.[4]

In accordance with the monist conception, the ECHR in the Macedonian legal system is positioned between the Constitution and the national laws. The human rights and fundamental freedoms confirmed by international law are one of the founding principles of the Macedonian constitutional order. The Macedonian Constitution classifies the human rights and freedoms as civil, political, economic, social and cultural rights. Pursuant to Article 118 of the Constitution, international agreements ratified in accordance with the Constitution are part of the national legal order and cannot be amended by law. The Macedonian Assembly, in accordance with the Constitution and the Law on the Assembly, ratifies international agreements, which become a part of the internal legal order and cannot be changed by law.

Under Article 119 of the Constitution and Article 3 of the Law on Conclusion, Ratification and Enforcement of International Agreements, the international agreements, on behalf of the Republic, are concluded by the Macedonian President. International agreements may be concluded by the Government of the Republic of North Macedonia as well, when determined by law. The procedure for the ratification of the concluded international agreements is initiated by the Ministry of Foreign Affairs by submitting a proposal for passing a law on the ratification of the concluded international agreement to the Government. The Government then submits the proposal for the adoption of the law to the Assembly.

The North Macedonia legal system ensures compliance with human rights law, including the binding decisions of the international courts. This is regulated under Article 98 of the Constitution, which states that the courts decide based on the Constitution and the laws and international agreements

[4] Honouring of obligations and commitments by "the former Yugoslav Republic of Macedonia" Report, Committee on the honouring of obligations and commitments by Member States of the Council of Europe (Monitoring Committee), 2000, [Online]. Available at: https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=8879&lang=en (Accessed: 20 July 2024).

are ratified in accordance with the Constitution.[5] According to the national Law on Courts, when the court considers that the application of the law in concrete cases is contrary to the provisions of an international agreement ratified in accordance with the Constitution, it shall apply the provisions of the international agreement. In concrete cases, the court could directly apply the final and enforceable decisions of the ECHR, the International Criminal Court or another court whose jurisdiction is recognised by the State, if the decision is eligible for enforcement.

Broadly speaking, the North Macedonia's constitution, regarding the protection of human rights and freedoms, contains the ECHR's spirit and idea. Hence, most of the constitutionally guaranteed rights and freedoms have identical or similar wording to the ECHR. These include the right to life (Article 10), the prohibition of torture, inhuman or degrading treatment and punishment (Article 11), the right to liberty (Article 12), the presumption of innocence (Articles 13 and 14), the respect and protection of the privacy of personal and family life, dignity and reputation (Article 25), guarantee of the freedom and secrecy of letters and all other forms of communication (Article 17), guarantee of the security and secrecy of personal data (Article 18), freedom of religion (Article 19), freedom of association (Article 20) and right to peaceful assembly and protest (Article 21). The human rights and freedoms according to Article 8, paragraph 1, point 1 of the Constitution, are the fundamental values of the Macedonian constitutional order, while the Convention is considered an act with constitutional significance.

Despite the almost 30-year application of the ECHR in the national legal system, an effective system of monitoring the alignment of the current positive legislation with international agreements has not been established, including the standards built through its interpretation of the ECHR. The Representation Office of the Republic of North Macedonia, before the ECtHR, despite its legal authority to carry out monitoring and control, does not analyse the situation within the system. The only analyses that can be found in the country are from several civil society organisations that deal with a detailed study of the rights guaranteed by the ECHR, presentation of the ECHR's jurisprudence and the compliance of the domestic legislation

[5] The Rule of law in Macedonia Assessment based on the Rule of Law Checklists developed by the Council of Europe (The Venice Commission), Center for Research and Policy Making, November 2018, [Online]. Available at: https://www.crpm.org.mk/wp-content/uploads/2018/12/The-Rule-of-Law-in-Macedonia.pdf (Accessed: 22 July 2024).

with the ECHR standards. A more comprehensive analysis of the domestic jurisprudence regarding how/whether the domestic legislation complies with the ECHR is missing. However, the Macedonian regular courts have a formalistic approach to the application of the national laws. Due to these unsatisfactory conditions, many national laws call for the supremacy and direct application of the ECHR. However, despite the legal obligation to respect the ECHR, there is a trend of judgments against the Macedonian state regarding violations of the Convention.[6]

The first ECtHR judgment for the Republic of North Macedonia was delivered in 2001, almost four years after the Convention's ratification. In 2002, in the second judgment, the case was struck out of the list of cases as a friendly settlement. However, in 2005, the first two violation judgments were delivered. In the cases of *Djidrovski* and *Veselinski*, in two separate judgments, the Court decided that there had been a violation of Article 1 of Protocol No. 1 and it was not necessary to examine whether there was a

[6] The Bureau for Representation of the Republic of North Macedonia before the ECtHR is a state administrative body within the Ministry of Justice, which carries out activities concerning the representation and proceedings of the Republic of Macedonia before the ECtHR and performs other professional activities in accordance with this Law. Its responsibilities include:

- To represent the Republic of North Macedonia in proceedings before the Court in cases where the Republic of Macedonia is a party in the dispute,
- To ensure cooperation of the bodies of the Republic of Macedonia with the Court and other bodies of the CoE, regarding issues of representation of the Republic of Macedonia,
- To prepare a defence and directly represent the Republic of Macedonia in proceedings before the Court,
- In the cases it proceeds with, to serve as a mediator for the contacts of the Court with the domestic courts and state bodies,
- In the cases it proceeds with, to communicate and undertake actions for the enforcement of the judgments of the Court, concerning the protection of human rights within the framework of the CoE,
- Has insight into judicial and administrative cases, and any other documentation of the state bodies, following the law,
- In the cases it proceeds with, to collect information and require explanations and opinions from the domestic courts and state bodies,
- On behalf of the Government, conclude agreements on friendly settlement of the cases before the Court,
- On behalf of the Government, give unilateral declaration,
- To handle classified information following the regulations on classified information, etc.

violation of Article 14 of the Convention, in conjunction with Article 1 of Protocol No. 1, respectively.[7] By the end of 2005, the Court delivered two judgments regarding the length of the proceedings. In the case of *Atanasovic and others*,[8] the Court decided that there had been a violation concerning the excessive length of proceedings and the lack of legal remedy about the length of the proceedings. These two judgments disclose done of the most serious problems of the human rights protection system in the country. The growing number of cases concerning the length of the proceedings in 2008 initiated significant legislative and judiciary changes for strengthening the rule of law in respect to the concern.[9] Between 2001 and mid-2025, the European Court of Human Rights delivered approximately 230 judgments involving North Macedonia. This body of case law not only reflects the country's evolving engagement with the Convention system but also illustrates the progressive strengthening of individual rights protection and the growing impact of Strasbourg jurisprudence on the domestic legal order.

A large percentage of the ECtHR's judgments refer to the violation of the right to a trial within a reasonable time and form the largest group of repetitive or cloned cases before the ECtHR.[10] According to the ECtHR statistics, 159 judgements found at least one violation of the Convention: right to life–deprivation of life (2 judgements), lack of effective investigation (16 judgements), prohibition of torture (3 judgements), inhuman or degrading treatment (6 judgements), right to liberty and security (17 judgements), right to fair trial (50 judgements), length of proceedings (66 judgements), non-enforcement (5 judgements), right to respect for private and family life (10 judgements), freedom of expression (3 judgements), freedom of assembly and association (5 judgements), right to

[7] *Case of Djidrovski v. the former Yugoslav Republic of Macedonia*, App. No. 46447/99, 24 February 2005 and *Case of Veselinski v. the former Yugoslav Republic of Macedonia*, App. No. 45658/99, 24 February 2005.

[8] *Case of Dumanovski v. the former Yugoslav Republic of Macedonia*, App. No. 13886/02, 8 December 2005 and *Case of Atanasovic and others v. the former Yugoslav Republic of Macedonia*, App. No. 13886/02, 22 December 2005.

[9] See details in: Trajkovska and Trajkovski, 2016.

[10] In 2023, the ECtHR dealt with 393 applications concerning the Republic of North Macedonia, of which 368 were declared inadmissible or struck out. It delivered 11 judgments (concerning 25 applications), 10 of which found at least one ECHR violation. [Online]. Available at: https://www.echr.coe.int/documents/d/echr/CP_Republic_of_North_Macedonia_ENG (Accessed: 22 July 2024).

an effective remedy (11 judgements), protection of property (15 judgements) etc.

In 2023, the ECtHR delivered 11 judgments[11] involving North Macedonia (concerning 25 applications), 10 of which found at least one violation of the ECHR**:** inhuman or degrading treatment (1 judgement), right to liberty and security (4 judgements), right to fair trial (2 judgements), right to respect for private and family life (1 judgement), prohibition of discrimination (1 judgement), protection of property (3 judgements), violation of other Convention articles (2 judgements) etc.[12]

2. Relationship between the Republic of North Macedonia, the Council of Europe and the EU from a human rights perspective

The North Macedonia's legal order is defined as the European continental legal system. It is characterised by a written constitution and systematised written codes and laws enacted by governments, recognised as principal sources of law. The Republic of North Macedonia has been a CoE member state since 1995 and an EU candidate for membership state since 2005. This is relevant due to the international obligations drawn from these memberships and accompanying hard and soft laws. This part focuses on the Macedonian CoE membership due to the ratification of the ECHR and other human rights conventions[13] and the recognition of the ECtHR's jurisdiction.

Macedonia respects the Committee of Ministers' recommendations on Ombudsperson and national institutions for the promotion and protection of human rights, the opinions of the European Centre against Racism and Intolerance (ECRI), General Policy Recommendations on specialised national bodies to combat racism, xenophobia, anti-Semitism and intolerance and General Policy Recommendations on national legislation to combat racism and racial discrimination. However, the North Macedonia-EU relationship has been the greatest catalyst for human rights and

[11]The Republic of North Macedonia, [Online]. Available at: https://www.echr.coe.int/documents/d/echr/cp_republic_of_north_macedonia_eng?utm_source (Accessed: 25 July 2024).

[12] Statistical reports. [Online]. Available at: https://prd-echr.coe.int/web/echr/statistical-reports (Accessed: 22 August 2024).

[13] Human Rights and Business Country Guide Republic of Macedonia, November 2016, [Online]. Available at: https://globalnaps.org/wp-content/uploads/2018/04/business-and-human-rights-guide-to-macedonia-english.pdf (Accessed: 23 July 2024).

democracy related reforms. They bring a set of implemented institutional reforms and standards, which need to be achieved. The most important EU directives include the Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin; Council Directive 2004/113/EC of 13 December 2004, implementing the principle of equal treatment between men and women in the access to and supply of goods and services; and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006, implementing the principle of equal opportunities and treatment of men and women in matters of employment and occupation.

According to the 2023 and all previous European Commission Reports,[14] the legal framework for the protection of fundamental rights in the Republic of North Macedonia is partially aligned with the EU acquis and European standards. The country meets its general obligations on fundamental rights; however, the legislation needs to be implemented systematically. Significant amendments were made to the Criminal Code regulating criminal acts of gender-based violence. However, the Parliament should make appointments to independent and regulatory bodies based on merit and the functional independence of human rights bodies must be guaranteed at all times. This includes, amongst other things, allocating sufficient funds. Services for gender-based violence victims need improvement and proper budgeting is required to meet the standards laid down by the Istanbul Convention. Furthermore, persons with disabilities continue to face direct and indirect discrimination, social exclusion and barriers. The Ombudsman's Office and the Commission for the Prevention and Protection against Discrimination signed a memorandum of understanding (MoU) to formalise their coordination. However, the recommendations made by the European Committee for the Prevention of Torture for the treatment of detained and convicted persons were not addressed, which remains a serious concern. Special attention should be

[14] Commission Staff Working Document North Macedonia 2023 Report, [Online]. Available at: https://neighbourhood-enlargement.ec.europa.eu/north-macedonia-report-2023_en (Accessed: 24 July 2024). Commission Staff Working Document North Macedonia 2023 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy, [Online]. Available at: https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_693%20North%20Macedonia%20report.pdf (Accessed: 24 July 2024).

given to promoting non-discrimination, addressing hate crime and speech and strengthening the capacity and independence of institutions in charge of the protection of rights of persons belonging to minorities or disadvantaged communities.

The Agency for Community Rights Realization needs sufficient funding to promote the protection of minorities and the implementation of the national strategy, 'One Society for All and Interculturalism'. The external overview mechanism for the police, including prison police, remains partially functional, with three Civil Society Organization's (CSO) representatives yet to be selected by the Parliament. The enacted amendments to the Law on Civil Registry pave the way to resolving cases of statelessness and fulfilling the country's international obligations. Last year's recommendations were addressed partially and remain valid. In the coming year, the country should, particularly, address the dire conditions in prisons, step up efforts to promote alternatives to incarceration and implement relevant recommendations made by national and international institutions on detention conditions; allocate the necessary resources to the Commission for the Prevention and Protection against Discrimination, enabling it to fulfil its mandate; and ensure proper implementation of the Law on Civil Registry to end statelessness.

The Republic of North Macedonia has ratified most international human rights instruments. On 20 March 2023, the Assembly of North Macedonia ratified Protocol No. 16 to the ECHR, allowing the highest courts to request the ECtHR to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms established by the Convention. In June 2023, there were 368 applications pending before the ECtHR, which delivered judgments on 8 applications and found ECHR breaches in 6 out of 7 cases (compared with 3 in 2022). Most of these were related to the right to a fair trial, right to liberty and security and the protection of property. In the reporting period, there were 354 new applications allocated to a decision body. Currently, there are 8 cases under enhanced supervision by the Committee of Ministers.

Concerning the EU, and to fully benefit from its observer status in the EU Agency for Fundamental Rights (FRA), the country needs to develop a comprehensive monitoring and data collection system to assess the implementation level of human rights legislation, policies and strategies. The Ombudsman's Office should remain the central body for the promotion and enforcement of human rights. The Office strengthened its cooperation

with CSOs, including those dealing with the protection of rights of the children. In 2022, the Office dealt with 3482 complaints, of which 3209 had been received in 2022 and 273 had been rolled over from the previous year. Based on these, the Office initiated 2173 procedures. The Criminal Code was amended to increase the legal protection in gender-based violence cases. However, as mentioned, the services for gender-based violence victims need improvement and proper budgeting to meet the standards laid down by the Istanbul Convention, while persons with disabilities face direct and indirect discrimination, social exclusion and barriers. Nonetheless, the cooperation between the Ombudsman's Office and the Commission for the Prevention and Protection against Discrimination increased following the signature of a MoU.

The 2022 European Commission Report[15] noted that, in June 2021, the Assembly of North Macedonia ratified the CoE Protocol, amending the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data. In November 2021, the country became the 35th Member State of the International Holocaust Remembrance Alliance. Hence, it submitted periodic reports under the UN Convention on the Elimination of All Forms of Racial Discrimination and the answers to the questions from periodic reports under the Convention on the Rights of the Child. In June 2022, 813 applications were pending before the ECtHR. The ECtHR delivered 11 judgements and found ECHR breaches in 3 cases (against 14 in 2021), relating to the right to a fair trial and the prohibition of torture and the freedom of expression. In the reporting period, 370 new applications were allocated to a decision body. Currently, there are 11 cases under enhanced supervision by the Committee of Ministers. The Ombudsman's Office remained the central body for the promotion and enforcement of human rights. In 2021, it issued special reports on the implementation of the principle of equitable representation and gender representation in the public sector.

[15] Commission Staff Working Document North Macedonia 2022 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022 Communication on EU Enlargement policy [Online]. Available at: https://neighbourhood-enlargement.ec.europa.eu/document/download/48ba61f0-41ae-4cff-9517-29fac190f4bd_en?filename=North%20Macedonia%20Report%202022.pdf (Accessed: 23 July 2024).

The 2021 European Commission Report[16] noted that the Law on the Prevention and Protection against Discrimination and the Commission for the Prevention and Protection against Discrimination were in place. The deinstitutionalisation process progressed, and most of the children were resettled to community-based care. The Ministry of Labour and Social Policy invested in community services, including supporting gender-based violence victims. An important progress was achieved with the adoption of the Law on Prevention and Protection from Violence against Women and Domestic Violence, with cross-party support. An improvement was noted in gender mainstreaming and respect for women's rights, although women were among the categories most severely affected by the pandemic. Hence, the recommendations of European and international human rights bodies, particularly regarding the treatment of detained and convicted persons, must be implemented without delay. Furthermore, it is important for the country to enhance the implementation of the legislation on hate speech and the national action plan for the implementation of the Istanbul Convention.

The civilian external oversight mechanism over the police is not fully functional and the absence of independent investigators impedes addressing police impunity and effective prosecution. The country should continue to improve the situation in prisons and increase alternatives to detention. In the coming year, it should implement all the provisions of the Law on the Prevention and Protection against Discrimination and allocate the necessary resources for the Commission for Prevention and Protection against Discrimination to become fully functional; address the recommendations of international monitoring bodies, promptly and systematically, especially regarding the rights of persons in detention/prison; promote, protect and guarantee the rights of persons in disadvantaged or marginalised situations; and improve the quality of community services to identify children at risk and provide adequate support to vulnerable categories of children, especially victims of violence, Roma children and children with disabilities.

In October 2020, the country informed the Committee on the Elimination of Discrimination against Women (CEDAW) of the measures to

[16] Commission Staff Working Document North Macedonia 2021 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2021 Communication on EU Enlargement Policy, [Online]. Available at: https://neighbourhood-enlargement.ec.europa.eu/document/download/724722a9-240b-4001-abce-648e0c96f88b_en?filename=North-Macedonia-Report-2021.pdf (Accessed: 24 July 2024).

implement the recommendations contained in the Sixth Periodic Country Report. In 2020, 320 applications were pending before the ECtHR. The Court found ECHR violations in 14 cases (against 9 in 2019), relating mainly to the right to a fair trial, protection of property, respect for private and family life and the prohibition of torture. According to the Council of Europe European Commission for the Efficiency of Justice (CEPEJ), 11 cases were considered closed after an ECtHR judgement and its execution (against 26 in 2019). The Ombudsman Office remained the central body for the promotion and protection of human rights. The appointment of the new Ombudsman in January 2021 raised concerns due to the political affiliation of the selected candidate. Hence, five deputy Ombudspersons need to be appointed by the Parliament. The Ombudsman's Office issued special reports and recommendations on online education, the rights of children, persons with disabilities and those in custodian-type institutions during the COVID-19 pandemic. The budget of the Office increased by 2.3% compared to 2019 and there were no additional recruitments.

Out of the 2,448 complaints received in 2020, the highest number concerned labour relations, consumer's rights, detention conditions, social protection and property rights. The institutions responded to 63% of the Ombudsman's recommendations, which was a decrease compared to previous years. The government continued to be committed to improving the prevention of torture and ill-treatment and to have a regular dialogue with the European Committee for the Prevention of Torture (CPT) regarding its recommendations. The latest CPT reports were published on 11 May and 27 July 2021.

The 2020 European Commission Report[17] noted that, in January 2020, the country acceded to the 1961 UN Convention on the Reduction of Statelessness. In April 2020, following the declaration of the state of emergency due to the COVID-19 crisis, the country informed the CoE that, pursuant to Article 15 of the ECHR, it exercised its right to derogate from its obligations under the Convention, thereby suspending or restricting certain human rights and fundamental freedoms guaranteed under the

[17] Commission Staff Working Document North Macedonia 2020 Report Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2020 Communication on EU Enlargement Policy, [Online]. Available at: https://neighbourhood-enlargement.ec.europa.eu/system/files/2020-10/north_macedonia_report_2020.pdf (Accessed: 24 July 2024).

Constitution. To curb the spread of the disease, the government restricted freedom of movement and assembly. Control mechanisms were activated. The Constitutional Court had a mandate to review any decree adopted by the government and actively performed its prerogatives. However, the country needs to make additional efforts to ensure the recommendations of international monitoring bodies.

In 2019, the ECHR found violations in 9 out of 12 cases, relating mainly to the right to a fair trial and property rights. New applications allocated to a decision-making committee decreased to 262, from 305 the previous year. By the end of 2019, 345 cases were pending before the Court. The country reduced the number of judgments to be executed to 36, of which 5 are under enhanced supervision.

3. Major law-making processes in North Macedonia's legal system, thanks to the ECHR

The ECHR and the case law of the ECtHR have made critical legislative, institutional and political impacts on the Macedonian legal and political system development. The specificity of these impacts is formulated as a process of conventionisation of the national system with respective European values and principles. Broadly, it is the process of Europeanisation and harmonisation of the national legal system. According to the former Macedonian judge in the ECtHR, *Mirjana Lazarova-Trajkovska*, the democratic legal and political development and the rule of law in Macedonia should be analysed through two distinctive periods – before and after he ratification – accounting for the issues and the main actors involved. The ECHR and the Court's case law on the human rights protection system influenced the development of the national political, legal, and judicial systems, with the principles of the Convention and the Court's case law standards and practices.

Before the ratification of the ECHR, legislators played the main role in transferring and interpreting the importance and the mission of the Convention and the Court. However, after the ratification, the judges at the national courts played the main role. After the ECHR ratification, the main avenue of influence was the implementation of the Court's judgments. At the time of the ratification, the ECtHR's case law was not relevant for Macedonian courts and other institutions. The Courts relied on the Constitution, laws and opinions of a general nature of the Supreme Court.

As in most post-socialist countries, the Macedonian courts 'were never required to consider the Convention as a "constitutional instrument of European public order" and to take into account the public interest of the international community'.[18] One of the most visible effects of the ECHR in Macedonian society is that the Convention is perceived as a 'part of the domestic legal order and as directly applicable'.[19]

The ECHR's direct application in the national legal system and the application of the ECtHR case law in the national jurisprudence significantly impacted the process of enacting the national laws and by-laws in the country. All legal areas in the country, together with the legislation, were modelled according to the ECHR's and the ECtHR's standards and principles. However, the extent to which those guidelines were correctly and adequately implemented in the country remains a question. Nonetheless, the implementations had visible effects in the adoption of laws in the field of criminal law, civil legislation, media laws, non-discrimination laws, protection of freedom of thought and the right of speech. Furthermore, they impacted the adoption of the laws for the protection of the rights of persons with disabilities and other vulnerable categories of citizens, the protection of the rights of women in the area of domestic violence and the rights of children.

4. Landmark cases of North Macedonia before the ECtHR

In this part of the chapter, the most important ECtHR judgements against North Macedonia will be elaborated upon. The cases were selected according to the views and author's knowledge. For a better understanding of the impact of the ECHR and the Macedonian case law, the important judgments will be classified into four groups:

1. Cases on the procedural violation of Article 3 – the failure of the authorities to conduct an effective investigation,
2. Cases concerning the right to liberty and security,
3. Cases on the right to a fair trial – cases on length of proceeding, access to court, independent and impartial tribunal and equality of arms,

[18] *Ibid.*

[19] 29 June 2007, Legal Position of the Department of Criminal Offenses at the Supreme Court of the Republic of Macedonia (June 29, 2007, Legal position of the Criminal Offenses Department at the Supreme Court of the Republic of Macedonia).

4. Cases on the right to property.

4.1. Case on the procedural violation of Article 3 (the failure of the authorities to conduct an effective investigation)

4.1.1. El-Masri v. The Former Yugoslav Republic of Macedonia

The case originated in application no. 39630/09[20] against the former Yugoslav Republic of Macedonia, lodged with the Court under Article 34 of the ECHR, by a German national, Mr Khaled El-Masri, on 20 July 2009.

The ECtHR found that there had been a violation of Article 3 of the Convention in its procedural aspect on account of the failure of the respondent State to carry out an effective investigation into the applicant's allegations of ill-treatment. The Court held that there had been a violation on account of the inhuman and degrading treatment to which the applicant was subjected while being held in a hotel in Skopje. This treatment was classified as torture within Article 3 of the Convention.

The ECtHR found that the respondent State was responsible for the applicant's transfer to the custody of the US authorities despite a real risk that he would be subjected to further treatment contrary to Article 3. Furthermore, the applicant's detention in the hotel for 23 days was arbitrary and in breach of Article 5 of the Convention, and the respondent State was responsible under Article 5 for the applicant's subsequent captivity in Afghanistan. Hence, the respondent State failed to carry out an effective investigation into the applicant's allegations of arbitrary detention, as required under Article 5, which further violated Article 8 of the Convention. The ECtHR further held that there had been a violation of Article 13 of the Convention on account of the lack of effective remedies regarding the applicant's grievances under Articles 3, 5 and 8.

According to the applicant, on 31 December 2003, he boarded a bus in Ulm, Germany, to visit Skopje 'to take a short vacation and some time off from a stressful home environment'. At around 3 p.m., he arrived at the Serbian/Macedonian border crossing at Tabanovce. A suspicion arose regarding the validity of his recently issued German passport. A border official checked his passport and asked him about the purpose and length of his trip and the location of his intended stay. A Macedonian entry stamp,

[20] *Case of El-Masri v. The Former Yugoslav Republic of Macedonia*, App. No. 39630/09, 20 July 2009.

dated 31 December 2003, was affixed to his passport. His personal belongings were searched, and he was questioned about his possible ties with several Islamic organisations and groups. The interrogation ended at 10 p.m.

Accompanied by armed men in civilian clothes, he was driven to a room on the top floor of the hotel. During his detention at the hotel, he was watched by a team of nine men, who changed shifts every six hours. Three of them were with him at all times, even when he was sleeping. He was questioned in English despite his limited proficiency in the language, and his requests to contact the German embassy were refused. On one occasion, when he stated that he intended to leave, a gun was pointed at his head, and he was threatened with being shot. After seven days of confinement, another official arrived and offered him a deal, namely that he would be sent back to Germany in return for a confession that he was a member of al-Qaeda.

On the thirteenth day of his confinement, the applicant commenced a hunger strike to protest against his unlawful detention. He did not eat for the remaining ten days of his detention in Macedonia. A week later, he was told that he would be transferred by air to Germany. On 23 January 2004, at around 8 p.m., the applicant was filmed by a video camera and instructed to say that he had been treated well, had not been harmed in any way and would shortly be flown back to Germany. Handcuffed and blindfolded, he was put in a car and taken to Skopje Airport. Upon arrival, still handcuffed and blindfolded, he was placed in a chair, where he sat for one and a half hours. He was told that he would be taken for a medical examination before being transferred to Germany.

According to the applicant, a suppository was forcibly administered. He was pulled from the floor and dragged to a corner of the room, where his feet were tied together. His blindfold was removed. A flash went off, which temporarily blinded him. When he recovered sight, he saw seven to eight men dressed in black and wearing black ski masks. One of them placed him in an adult nappy. He was dressed in a dark blue short-sleeved tracksuit. A bag was placed over his head, and a belt was put on him with chains attached to his wrists and ankles. The men put earmuffs and eye pads on him and blindfolded and hooded him. They bent him over, forcing his head down, and marched him to a waiting aircraft, with the shackles cutting into his ankles. The aircraft was surrounded by armed Macedonian security guards.

During the flight, he received two injections. An anaesthetic was further administered over his nose. He was mostly unconscious during the flight. A Macedonian exit stamp, dated 23 January 2004, was affixed to the applicant's passport. According to the applicant, his pre-flight treatment at Skopje Airport, most likely at the hands of the special CIA rendition team, was remarkably consistent with a recently disclosed CIA document describing the protocol for the so-called 'capture shock' treatment. Upon landing, the applicant disembarked. It was warmer outside than it had been in Macedonia, which was sufficient for him to conclude that he had not been returned to Germany. He deduced later that he was in Afghanistan and had been flown via Baghdad. After landing in Afghanistan, the applicant was driven for about 10 minutes, dragged from the vehicle, slammed into the walls of a room, thrown to the floor, kicked and beaten. When he adjusted his eyes to the light, he saw that the walls were covered in Arabic, Urdu and Farsi handwriting. The cell did not contain a bed. Although it was cold, he had been provided with only one dirty, military-style blanket and some old, torn clothes bundled into a thin pillow. Through a window at the top of the cell, he saw the setting sun. He understood later that he had been transferred to a CIA-run facility, which media reports identified as the 'Salt Pit', a brick factory to the north of the Kabul business district, that was used by the CIA for detention and interrogation of high-level terror suspects.

During his confinement, he was interrogated on three to four occasions, each time by the same man, who spoke Arabic with a South Lebanese accent, and each time at night. His repeated requests to meet with a representative of the German government were ignored. In March 2004, the applicant, together with several other inmates with whom he communicated through cell walls, commenced a hunger strike to protest their continued confinement without charge. As a consequence, the applicant's health deteriorated. He received no medical treatment during this time, although he had requested it on several occasions. The applicant became extremely ill and suffered very severe pain. A doctor visited his cell in the middle of the night and administered medication; however, he remained bedridden for several days. Around that time, the applicant felt what he believed to be a minor earthquake. Concerning this, the applicant submitted the 'List of significant earthquakes of the world in 2004', issued by the US Geological Survey on 6 October 2005. According to this document, there was one earthquake on 5 April 2004 in the Hindu Kush region of Afghanistan.

On 29 May 2004, the applicant arrived at Frankfurt International Airport. In his written submissions, the applicant stated that he had not undergone any medical examination apart from the isotope analysis of his hair follicles. At the public hearing, his lawyers specified that the results of some medical examinations carried out upon his return to Germany had been submitted by the German public prosecutor to the European Parliament's Fava Inquiry. However, those results had not been submitted to the Court since they had not been conclusive regarding the presence of any physical injury, given the long time that had elapsed since the incident at Skopje Airport. Furthermore, he had been subjected to sophisticated interrogation techniques and methods, specifically designed not to leave any evidence of physical ill-treatment.

The 2007 Marty Report noted that the applicant had asked for treatment at the treatment centre for torture victims in Neu-Ulm shortly after his return to Germany in 2004. However, it took until 2006 to obtain the required health-insurance funding agreement to start a course of limited treatment at the centre, which was insufficient. Furthermore, the applicant submitted a written statement of 5 January 2009 by Dr Katherine Porterfield, a senior psychologist at the Bellevue/NYU Program for Survivors of Torture, whereby she confirmed that the applicant had suffered from post-traumatic stress disorder and depression 'most likely caused by his experience of capture and extensive maltreatment and abuse'. Dr Porterfield's opinion was based on several telephone calls and two follow-up discussions with the applicant. She advised him to visit a clinician in his community with the requisite expertise to help him. However the applicant did not comply with that instruction.

According to the Macedonian Government report, the Government confirmed their version of events. They denied that the applicant had been detained and ill-treated by State agents in the hotel and was handed over to CIA agents, who ill-treated him at Skopje Airport and transferred him to a CIA-run prison in Afghanistan. In their submission, the applicant had freely entered, stayed in and left the territory of the respondent State. The only contact with State agents had occurred on 31 December 2003, on the occasion of his entry into the respondent State, when enquiries had been undertaken regarding the validity of his passport.

The enquiries by the Ministry of the Interior demonstrated that the applicant had stayed in the respondent State by his free will between 31 December 2003 and 23 January 2004, when he had freely left the State

through the Blace border crossing. In support of their argument, they submitted a copy of the following documents: extracts from the official border-crossing records for Tabanovce and Blace; extract from the hotel guest book in which the applicant had been registered as a guest occupying room number 11 between 31 December 2003 and 22 January 2004; and two letters from February 2006 in which the hotel's manager had communicated to the Ministry of the Interior the names of six persons who had been on duty in the hotel at the relevant time and had denied that any person had ever stayed in the hotel involuntarily. It was further specified that the person whose photograph was on the hotel's website was Mr Z.G., who could be found in the hotel.

They produced a letter from 3 February 2006 in which the Macedonian Ministry of Transport/Civil Aviation Administration had informed the Ministry of the Interior that, on 23 January 2004, a Boeing 737 aircraft flying from Palma de Mallorca (Spain), registered as flight no. N313P, had been permitted to land at Skopje Airport, the same aircraft had been permitted (at 10.30 p.m.) to take off on the same day for Kabul (Afghanistan), and, at 2.25 a.m., on 24 January 2004, the aircraft was permitted to fly to Baghdad (Iraq). Furthermore, the Government filed a copy of the applicant's hotel bills, which, according to them, he had paid in cash. They provided a copy of a police record of the applicant's apprehension at the Tabanovce border crossing on 31 December 2003. As specified in the record, the applicant had been held between 4.30 p.m. and 9.30 p.m. The record did not state the reasons for apprehension; however, it contained an incomplete handwritten note that he was apprehended based on 'tel. no. 9106 of 8 December 2003'.

In 2004, the Munich public prosecutor's office opened an investigation into the applicant's allegations. According to the applicant, a number of investigative steps were taken, including the examination of eyewitnesses who confirmed that the applicant had travelled to Macedonia by bus at the end of 2003 and had been detained shortly after entering that State. Furthermore, a radioactive isotope analysis of the applicant's hair was carried out. An expert report of 17 January 2005 stated, *inter alia*: '... it is very likely that the changes observed in the enclosed isotopic signatures [of the applicant's hair] indeed correspond to [the applicant's] statements ...'

According to the First Committee of Inquiry of the German *Bundestag*, the radioisotope analysis confirmed that the applicant had undergone two hunger strikes. On 31 January 2007, the Munich public

prosecutor issued arrest warrants for 13 CIA agents on account of their involvement in the applicant's alleged rendition. The names of the agents were not made public; however, their identities were allegedly given to the German prosecutor by the Spanish authorities, uncovered during the course of their investigation into the use of Spanish airports by the CIA. On 7 April 2006, the German *Bundestag* appointed the First Committee of Inquiry to review the activities of the secret services. Over an investigation period of three years, the Committee held 124 sessions, whereby 7 areas of investigation were addressed, and 141 witnesses were heard, including the applicant. The findings were made public on 18 June 2009. The report, which runs to 1430 pages, stated, *inter alia*:

> ... Khaled El-Masri's report on his imprisonment in Macedonia and in Afghanistan is credible as to the core facts of his detention in Macedonia and his transfer to Afghanistan, as well as his confinement there by United States forces. Doubts remain, however, about some specific aspects of his account.

The police investigations conducted by Swabian law enforcement authorities and supported by the German Federal Criminal Police reaffirmed El-Masri's account. His trip to Macedonia on 31 December 2003 was corroborated by witnesses. El-Masri's account of the transfer from Macedonia to Afghanistan by US forces was consistent with subsequent reports from other victims of the excesses of the 'war on terror' by the US government at the time. The recorded movement of an American Boeing 737 of the presumed CIA airline 'Aero-Contractors' that flew from Majorca to Skopje on 23 January 2004 and continued to Kabul matched the temporal information that El-Masri provided about the duration of his confinement at the Macedonian hotel.

On 6 December 2005, the American Civil Liberties Union (ACLU) filed a claim on behalf of the applicant in the US District Court for the Eastern District of Virginia against several defendants, including the former CIA Director George Tenet and certain unknown CIA agents. The claim alleged that the applicant had been deprived of his liberty in the absence of legal process and included a claim under the Alien Tort Statute (ATS) for violations of international legal norms prohibiting prolonged arbitrary detention and cruel, inhuman or degrading treatment. In May 2006, the District Court dismissed the applicant's claim, finding that the US

government had validly asserted the State secrets privilege. The District Court held that the State's interest in preserving State secrets outweighed the applicant's individual interest in justice. This decision was confirmed on appeal by the US Court of Appeals for the Fourth Circuit. In October 2007, the Supreme Court refused to review the case. Hence, there are valuable criticisms about this ECtHR judgement.[21]

4.2. Case concerning the right to liberty and security

4.2.1. Lazoroski v. The Former Yugoslav Republic of Macedonia

In this case,[22] the ECtHR declared the complaints under Article 5 paragraphs 1 (c) and 2 and Article 6 paragraph 1 of the Convention admissible, while the remainder of the applications were inadmissible. It held that there has been a violation of Article 5 paragraphs 1 (c) and 2 and Article 6 paragraph 1 since the proceedings were not adversarial and that the respondent State was to pay the applicant 2000 euros for non-pecuniary damage, 180 euros for costs and expenses and any tax that may be

[21] The criticism of this judgement was as follows: 'No one who reads the facts of the case will argue with the Court's conclusion that Macedonia had to bear international responsibility. The question is on what grounds one can base this conclusion. The approach chosen by the Court may surprise many international lawyers. Influenced by decades of work of the International Law Commission (ILC), their approach would be a combination of attribution of conduct on the one hand and the breach of an international obligation, on the other: Macedonia then would be responsible for handing over El-Masri to the CIA, in the face of risk (if not certainty) that he would be ill-treated and tortured. They would not normally say that the act of ill-treatment at the hands of the CIA *itself* is attributed to Macedonia, but limit Macedonia's responsibility to its *own* wrongful conduct. This distinction may seem a legal nicety, but it may have practical relevance (for questions of evidence and reparation) and also reflects that what is essentially a sovereignty-based consideration: it should not easily be presumed that a state is responsible for acts committed by another subject of international law'. André Nollkaemper, The ECtHR Finds Macedonia Responsible in Connection with Torture by CIA. But On What Basis?, December 24, 2012, [Online]. Available at: https://www.ejiltalk.org/the-ecthr-finds-macedonia-responsible-in-connection-with-torture-by-the-cia-but-on-what-basis/ (Accessed: 28 July 2024).
Shares Research Paper 06 (2012), ACIL 2012-04, [Online]. Available at www.sharesproject.nl (Accessed: 28 July 2024), SSRN, [Online]. Available at: http://www.sharesproject.nl/wp-content/uploads/2012/01/SHARES-RP-06-final.pdf (Accessed 28 July 2024).

[22] *Case of Lazoroski v. The Former Yugoslav Republic of Macedonia,* App. No. 4922/04, 24 January 2004.

chargeable to the applicant. The case originated in application no. 4922/04 against the former Yugoslav Republic of Macedonia, lodged with the Court under Article 34 of the Convention, by a Macedonian national, Mr Jovče Lazoroski, on 24 January 2004.

On 6 August 2003, the applicant received a telephone call from an officer of the Intelligence Service who asked him to come to a police station for a 'talk'. The applicant replied that he would attend with his lawyer, provided he received a written request. Mr J.S., a high-ranking officer in the Intelligence Service, gave a verbal order for the applicant's arrest on suspicion that he was armed and might leave the State. At 11.15 p.m. the same day, the applicant was arrested by the police near the Tabanovce border post with Serbia. He was taken to the Tabanovce police station, and a body search was carried out. A report on the search indicated that a mobile phone, passport, identity card and a licence to carry arms were found. According to the parties, a gun was found as well; however, it was not recorded in the report. The applicant was handcuffed and transferred to the Kumanovo police station by the Intelligence Service. He managed to contact his lawyer on his mobile phone.

On 7 August 2003, the applicant signed a report in which he waived his right to a lawyer. No record of questioning was made. The applicant maintained that he was questioned about the work of his superiors, about certain members of the then opposition political party and certain high-profile journalists. His personal belongings were returned, and he was released at 9 a.m. On the same day, the applicant brought his alleged unlawful arrest to the attention of the Ministry of the Interior (hereafter, the Ministry) and, on 3 November 2003, to the Sector for Internal Control at the Ministry (hereafter, the Sector). Subsequently, several letters were exchanged between the applicant and the Sector.

In a 3 March 2004 report, the Sector noted that the applicant's arrest and detention had been carried out in compliance with the law. Owing to minor errors in the minutes concerning the body search, the Sector proposed that the police officers responsible be fined and warned. The Sector repeated these findings in its reply to the applicant dated 22 March 2004. However, no explanation was given for the applicant's arrest.

Furthermore, on 7 August 2003, the applicant had requested an investigating judge at the Kumanovo Court of First Instance to review the lawfulness of the deprivation of his liberty. He claimed that he had been detained unjustifiably, had not been informed of the reasons for his arrest,

his lawyer had been prevented from attending his interview and the arrest had been carried out without a court order. However, between 15 October 2003 and 12 January 2004, the investigating judge was on sick leave. On 4 February 2004, the judge requested the Ministry to provide documents concerning the applicant's arrest. In a 20 February 2004 reply, the Ministry stated that the applicant's arrest had been ordered on account of suspicion that he had been involved in arms trafficking. However, he had been released after it was established that there was no evidence to support the allegations, and he had the requisite license. On 23 June and 21 September 2004, the judge asked for further written evidence from the Ministry, which the latter submitted on 29 September 2004.

On 26 January 2005, after five requests by the applicant for the proceedings to be expedited and relying on the information provided by the Ministry and its reports, the judge found that the applicant had been lawfully deprived of his liberty on suspicion of arms trafficking. She further found that the applicant had waived his right to a lawyer, as noted in the report of 7 August 2003, which had been duly signed by the applicant. The applicant was advised that he could appeal within two days to a three-judge panel (hereafter, the panel) of the Kumanovo Court of First Instance.

On 16 February 2005, the applicant appealed, arguing that he had been deprived of his liberty contrary to Article 5 of the Convention and the applicable legislation. He maintained that he had been arrested without a court order and the investigating judge had failed to examine the grounds for his deprivation of liberty. He further submitted that he had not been summoned by the investigating judge to present the arguments in his favour, and some witnesses could shed light on the circumstances surrounding his arrest. On 18 February 2005, the panel dismissed the applicant's appeal. Finding no reasons to question the facts, it ruled that the applicant's deprivation of liberty had been lawful and intended to identify him, verify his alibi and collect necessary information. It noted that he had been informed of his rights and the reason for his arrest, namely a reasonable suspicion that he had committed the offence of 'trafficking in arms'.

In its defence, the Government stressed that the proceedings had satisfied the procedural requirements of fairness. Hence, they maintained that the courts had reached their decisions on the basis of evidence submitted by the Ministry and the applicant, who, through written submissions, had been given sufficient opportunity to present his case. They further stated that the applicant had not been heard during the proceedings

since no such requirement was contained in the Act. The investigating judge had decided the issue on the basis of the written material submitted by the parties. However, the applicant contested these arguments, stating that the courts' failure to communicate to him the documents submitted by the Ministry was contrary to the principle of equality of arms.

The ECtHR reiterated that the right to adversarial proceedings meant, in principle, the opportunity for the parties to a criminal or civil trial to have knowledge of and comment on all the evidence adduced or observations filed, with a view to influencing the court's decision. The principle of equality of arms – one of the elements of the concept of fair trial – required each party to be given a reasonable opportunity to present their case under conditions that did not place them at a substantial disadvantage *vis-à-vis* their opponent. Furthermore, Article 6 guaranteed the right of a party to participate effectively in the proceedings, which included, *inter alia*, their right to be present and to hear and follow the proceedings. Such rights were implicit in the notion of an adversarial procedure. The Court noted that the decision of the investigating judge of 26 January 2005 was based on the written evidence submitted by the Ministry. There was nothing to show that the evidence was served to the applicant. Furthermore, the applicant had not been invited to attend the decisive hearing before the investigating judge. Hence, his complaints in this respect were left unanswered by the appeal panel. Therefore, the Court concluded that the applicant was prevented from effectively participating in the proceedings. Hence, there was a breach of Article 6 paragraph 1 of the Convention.

Regarding the length of the proceedings, the Government submitted that it had not been excessive and all-time limits, although short, had been respected by all those involved. In the latter respect, they stated that the Act had not specified any time limit for the investigating judge to reach a decision. The fact that she had been on sick leave and the unavailability of any other judge in her stead had to be taken into consideration. The applicant submitted that, given the short time limits specified in the Act, the proceedings had to be regarded as urgent and the proceedings before the investigating judge had fallen foul of the 'reasonable time' requirement. The Court noted that the proceedings in question started on 7 August 2003, when the applicant challenged the lawfulness of his arrest before the investigating judge. They ended on 18 February 2005 with the panel dismissing the applicant's appeal. Therefore, the proceedings lasted for 1 year, 6 months and 12 days for two jurisdiction levels.

The Court reiterated 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 complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant. The Court did not find the applicant's case to be complex. It observed that no delays could be attributed to the applicant. On the contrary, his motions to expedite the proceedings were a factor in his favour.

Regarding the conduct of the authorities, the Court noted that it took a little under one and a half years for the investigating judge to issue a decision, and the panel took only two days. Although the dispute concerned the lawfulness of the applicant's detention for 10 hours, it did not require special diligence on the part of the authorities since the applicant was not in custody when he lodged the challenge. Hence, the Court considered that the length of the proceedings was not excessive and there had been no violation of Article 6 paragraph 1 regarding the length of the proceedings.

4.3. Case on the right to a fair trial (cases on length of proceeding, access to court, independent and impartial tribunal and equality of arms)

Since the State ratified the ECHR, more than 110 judgments have been given regarding Article 6 of the Convention – the right to a fair trial – with established violations in more than 100 cases. These cases mostly dealt with the length of proceedings and the lack of enforcement of the judgments. Additionally, several cases raised issues concerning the impartiality of judges, including in cases of dismissal and lustration of judges, the principle of equality of arms, particularly regarding the examination of witnesses and assessment of expert opinions, and presence at a trial. The admissibility of unlawfully obtained evidence, the use of evidence obtained by protected or anonymous witnesses, the right to defence, the right to an interpreter and the presumption of innocence were dealt with as well in several criminal cases. Furthermore, the need for judicial certainty and consistent case-law, the lack of reasoning, the right of access to a court and the right to an oral hearing were examined in several civil and administrative cases.[23]

[23] Recent Case Law from the European Court of Human Rights with Respect to Albania, Croatia, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia, Aire Centre, 2017. [Online]. Available at: https://rolplatform.org/wp-content/uploads/2018/09/case_law_eng-1.pdf (Accessed: 22 August 2024).

4.3.1. Ivanovski v. The Former Yugoslav Republic of Macedonia

In this case,[24] the Court held that there had been a violation of Article 6 paragraph 1 of the Convention regarding the overall unfairness of the lustration proceedings and of Article 8 of the Convention concerning the lustration proceedings. The case originated in application no. 29908/11 against the former Yugoslav Republic of Macedonia, lodged with the Court under Article 34 of the Convention, by a Macedonian national, Mr Trendafil Ivanovski, on 9 May 2011.

Before discussing the case details, it is important to understand the background of the application. On 22 January 2008, the Parliament of the respondent State passed the Additional Requirement for Public Office Act (hereafter, the Lustration Act), which entered into force eight days later. The Lustration Act introduced non-collaboration with the State security services between 2 August 1944 and 30 January 2008, the date of the Act's coming into force (hereafter, the screening period), as an additional requirement for the holding of public office. In other words, collaboration with the State security services during that period became an impediment to holding public office. All incumbent public officials and candidates for public office were required to submit a statement that they had not collaborated with the State security services during the screening period.

The Lustration Act was to apply for five years, starting from its entry into force. It provided for the establishment of a Facts Verification Commission, which had to be set up within 60 days of the Act's entry into force. Its task was to examine the veracity of the public officials' declarations. The members of the Commission were elected by the Parliament on 15 January 2009. The Commission became operational in late March 2009. On 22 May 2009, amendments to the Lustration Act entered into force, adding several provisions primarily regarding the functioning of the Lustration Commission and the status of its members. Moreover, the temporal scope of the Lustration Act was extended, from the 5 years initially envisaged following the Act's entry into force, to 10 years following the election of the Commission. On 27 January 2010, following petitions for abstract constitutional review, the Constitutional Court accepted the initiative and instituted proceedings to review the constitutionality of several provisions of the Lustration Act, including the

[24] *Case of Ivanovski v. The Former Yugoslav Republic of Macedonia*, App. No. 29908/11, 21 April 2016.

extension of the screening period beyond the date of adoption of the current Constitution of the respondent State (17 November 1991). It suspended the application of its provisions until it had decided on their compatibility with the Constitution. Fierce debate ensued, in which several politicians severely criticised the Constitutional Court's decision in the media.

Through a 24 March 2010 decision, the Constitutional Court invalidated certain provisions of the Lustration Act as unconstitutional. Particularly, the Court held that the extension of the screening period beyond 17 November 1991, the date of adoption of the present Constitution, was unconstitutional. In other words, it was incompatible with the Constitution to provide collaboration with the State security services after that date, which impeded the holding of public office. Some other provisions were held contrary to the Constitution as well, namely those providing for the publication of collaborators' names in the Official Gazette, automatic lustration in cases where no declaration had been submitted and making it possible to introduce collaboration as an impediment to membership of governing bodies of political parties, civic organisations and religious communities by internal regulations of non-State entities.

Based on this backdrop, the applicant, a judge of the Constitutional Court between 2003 and 2011, was dismissed as a result of the lustration proceedings. This was the first lustration case in the respondent State. During the lustration proceedings and at the time of his removal from office, the Applicant Was the President of the Constitutional Court. On 3 September 2009. The Applicant, as a public official, submitted to the Lustration Commission a declaration of non-collaboration with the security services. On 5 July 2010, the Commission, by a letter classified as confidential, requested the State Archive to provide it with direct access to all the data, files and documents regarding the applicant. On 12 and 22 July 2010, the State Archive informed the Commission that a personal record of the local branch of the secret police of the former Yugoslavia existed for the applicant and invited the Commission to consult the documentation.

On and around 15 September 2010, various media, despite the confidential nature of the proceedings before the Lustration Commission, reported that the Commission had allegedly identified a judge of the Constitutional Court as a collaborator with the State security services. In the following days, the media continued to speculate that the identified collaborator was the President of the Constitutional Court. During its private deliberations, held on 16 September 2010, the Lustration Commission found

that the applicant's declaration had not been in conformity with the evidence at its disposal.

The applicant was notified of the Commission's findings on 21 September 2010, with a note classified as 'strictly confidential'. He was instructed that, under the Lustration Act, he could, within five days, submit oral or written observations to the Commission's findings. The applicant replied and requested a public session on 24 September 2010. On 23 September 2010, the Commission notified the applicant that the session would be held on 27 September, it would be public 'when classified information was not being used' and he could access the entirety of the classified documentation at the Commission's disposal for one hour before the session. On 24 September 2010, in an open letter broadcast in the media, addressed to the 'opponents of the lustration', the Prime Minister of the respondent State stated, *inter alia*, that the Commission had publicly revealed that a member of the Constitutional Court had been a collaborator with the State security services and it was clear that the collaborator sitting in the Constitutional Court, nominated by the former president of the Republic, and controlled by other centres of power, had invalidated several legislative reforms of his Government. On 24 September 2010, the applicant objected to the imposed time constraints regarding his access to the classified documents. The Commission, in turn, informed him that he could consult his personal record, compiled by the secret police of the SFRY at the State Archive, and the documents at the disposal of the Commission in the coming days until the session. The applicant consulted the documents on the same day.

The record contained around 50 pages of typed reports and forms. It appeared from the record that the applicant was, on 27 and 28 March 1964, interrogated by the secret police regarding his involvement in a high-school nationalist group, and was registered as a collaborator under the pseudonym *Lambe*. The 'proposal for registration' of 19 May 1964, signed by an inspector, I.K., stated that the applicant was approached about his collaboration with the secret police and 'he gladly agreed to it, [saying] that he would do anything for the [security] service, as long as his father and the school do not find out'. A 'questionnaire' with a handwritten date of 10 February 1965, stated, *inter alia*, that the applicant was recruited on the grounds of 'compromising material' and he had not received any material benefit in exchange for his collaboration. This was noted in another

questionnaire of 10 January 1968, where, next to the pseudonym *Lambe*, there was a handwritten note '*and Lamda*'.

The record contained several reports of various dates between 1964 and 1966, composed mostly by the inspector who relied on *Lambe* as a source of information, about conversations and statements of some high-school and university students about certain political and social issues at the time. *Lambe* provided the information mostly verbally; only a few reports were based on his letters (which were not in the file). Furthermore, there were copies of two payment receipts dated May and December 1965 and a 1983 proposal for the deregistration of the collaborator *Lamda*. The deregistration referred to a person with the applicant's name, who in the 1970s was a student at the Technical Faculty and, in 1983, was working in the municipal branch of the Communist Party.

On 27 September 2010, the Commission held a public session. During the session, the applicant denied the Commission's initial findings, calling into question the veracity of his declaration. He disputed the authenticity of the documents that the Commission relied on, as he had neither composed nor signed them, and claimed that the reports had been forged or taken from others' and added to his personal record. He further denied the authenticity of the signatures on the two payment receipts. He alleged confusion regarding the two collaboration pseudonyms (*Lambe* and *Lamda*) and their real identities. He argued that the episode from the time when he was a minor and had been coerced into having contact with the secret police, due to his involvement with a high-school nationalist group, had been misused.

In a 29 September 2010 decision, the Commission held that the applicant's objection to its initial findings of 16 September 2010 was not in accordance with the information available, and he did not fulfil the additional requirement for holding public office. The decision was based on the applicant's personal record, which contained a list of 22 documents. It summarised the contents of the documents and stated that the applicant had begun collaborating in 1964 and had been deregistered in 1983. Furthermore, he had provided information on students whose activities were monitored by the security service for political reasons and, as evident from the two payment receipts, he had been paid for the collaboration in 1965. The relevant part of the Commission's decision read as follows:

> ... From the data available in the personal record compiled by the [secret police of the SFRY] it was established that in the rubric "collaboration relationship" it is stated that [the applicant] is a collaborator of the [secret police] recruited on the ground of compromising material. It was further established that [the applicant] started his collaboration with the [secret police] as early as 1964 as a high-school student who, when it was proposed to him that he be registered in the collaborators' network, stated that "he gladly accepted the collaboration and would do anything for the service", and that he was allocated a pseudonym under which he later delivered all the information to the [secret police]. In 1965 he officially became a collaborator of the [secret police]. In the documentation, in ten reports drafted by the Internal Affairs Unit in Strumica, on a number of pages, [the applicant] under his pseudonym appears as a source giving information about his schoolmates, which [information] was used by the [secret police] as operational material on the activities of high-school youth in Strumica. From four reports, it is apparent that also later on, as a student in Skopje, he gave information about students of various faculties, of which in the personal record there are five reports concerning a number of individuals whom the [secret police] monitored and had information that they were dissatisfied with the authorities in view of their weak interest in the situation of the Macedonians in the Aegean [in Greece] and Pirin [in Bulgaria] Macedonia, as well as for various wrongs committed against Macedonians in the western part of Macedonia. From the personal record it was also established that in 1965 the sums of 10,000 and 20,000 [Yugoslav] dinars had been paid to him. His collaboration officially ended in 1983 when he was employed in the Municipality of Karpoš and was deregistered from the active collaboration network.

The Commission accounted for the oral observations of the applicant, in which he expressed his disagreement with the Commission's findings. The Commission considered all the information, files and documents contained in the applicant's record relevant. It held that that the applicant's

declaration of non-collaboration submitted to the Commission was not in line with the requirements; hence, the applicant did not meet the additional requirement for public office in accordance with section 2(1) and section 4(4) of the Lustration Act. The Commission's decision was served to the applicant on 30 September 2010 and classified as 'strictly confidential'.

In an exchange of correspondence, on 1 October 2010, the applicant requested that the Commission provide him with a copy of the file for seeking a judicial review of its decision. The Commission informed him that the originals were available in the State Archive and advised him to look for them there. Upon the applicant's request on the same day, the State Archive, either on the same day or on 4 October 2010, provided him with a copy of his personal record. On 5 October 2010, the applicant pointed out inconsistencies between the files provided by the State Archive, the inventory of the documents in his record and the documentation the Commission relied on in its decision.

The State Archive responded that they had received the personal record as it was and had listed the documents therein by title, without inspecting their contents, as they had not been authorised to do so. They invited the applicant to consult the contents of his personal record under their supervision. On 8 October 2010, the applicant brought an action for judicial review in the Administrative Court against the Commission's decision. He complained that the proceedings before the Commission had been unfair and had factual and legal errors. Particularly, he complained that the session before the Commission had been held without the Rules of Procedure being adopted, which the Commission should have done *ex lege* before commencing the proceedings. The public session had not been, as initially planned, followed by proceedings *in camera*; therefore, he had not had an opportunity to fully present his arguments concerning the classified information in the file.

The applicant further objected that the time limit for the appeal preparation was reduced, since he received the copies of the documents from the State Archive on 5 October 2010. However, there were obvious discrepancies between the files of the State Archive and the ones that the Commission had accessed. The applicant denied the authenticity of the documents in his personal record and suggested obtaining an opinion from a graphology expert regarding the signatures on the two payment receipts by comparing them with the letters he had allegedly sent to the inspector of the secret police; these letters were referenced in the record, yet were not

available in the file. He submitted that his identity had been confused with that of the person with the pseudonym *Lamda*, given that, in 1983, he was already a law graduate and working for the Skopje City administration. Hence, he was neither working at the municipal branch of the Communist Party nor had he ever studied at the Technical Faculty, as the record indicated. He proposed additional evidence, asked for a public hearing and requested leave to invite an expert assistant, particularly, a certain Mr I.B., a university professor of State security and intelligence and retired staff member of the SFRY secret police, to clarify the police's methods and practices concerning the opening and maintenance of records. In its reply, the Commission listed and referenced 22 documents and mentioned 'forty-seven written documents', on which it based its decision. The Commission's reply was classified as 'strictly confidential'.

On 26 October 2010, the Administrative Court held a public hearing in the presence of the applicant and the President of the Commission. The Commission objected to the Administrative Court's competence *ratione materiae* to examine the case. On 2 November 2010, the Court held another hearing, at which the Commission withdrew its objection, the expert assistant Mr I.B. gave his testimony, and the evidence was examined. The public was excluded from the parts of the hearing in which confidential material was under consideration.

In an 8 November 2010 judgement, the Administrative Court dismissed the applicant's action. It listed 27 documents and found the Commission's files identical to the originals received from the State Archive. It held that the Commission had neither been authorised nor obliged to determine the authenticity of evidence that could only be established by an expert opinion in criminal proceedings. Furthermore, it stated that the Commission did not conduct any adversarial proceedings and could admit as fact only the records compiled by the State security services. The applicant's proposal to obtain an expert opinion to check the authenticity of the signatures on the payment receipts was rejected. The Court concluded that it was immaterial to determine whether the payments had been received by the applicant, as other (non-pecuniary) benefits could suffice for someone to be deemed a collaborator under the Lustration Act. The judgment took into account the testimony of the expert assistant, Mr I.B. Parts of the judgment were classified as 'strictly confidential'.

In a 29 September 2010 decision, the Lustration Commission established that the applicant had submitted a false declaration and he did

not meet the additional requirement for public office. On 25 February 2011, the Lustration Act was amended for the second time, and certain provisions, similar to the invalidated ones, were reintroduced. The provision delimiting the screening period was reworded in a manner that left the end date undecided. The personal scope of the application was extended to cover former officials and officers in organisations performing duties of a public nature, requiring them to submit declarations of non-collaboration.

On 28 March 2012, the Constitutional Court, once again, invalidated several provisions of the Lustration Act, as amended by the 2011 Amendments. Hence, the Constitutional Court held that its earlier decision had been circumvented in view of the content of those amendments. On 17 July 2012, the previous Lustration Act was repealed, and a new Lustration Act came into force. In 2014, the Constitutional Court refused to institute proceedings for abstract constitutional review of the new legislation. While the 2008 Lustration Act was in force, the Lustration Commission established, through 11 cases, that the declarations on non-collaboration were false; therefore, the persons did not meet the additional requirement for public office. Apart from the applicant, who was the only incumbent official whose declaration was found to be false, the other cases concerned eight former officials and two journalists.

On 1 September 2015, the Act repealing the 2012 Lustration Act entered into force. According to the Act, the Lustration Commission was allowed to complete, within two years, any ongoing proceedings in which a decision had been issued; however, it could not institute new proceedings. Pending lustration proceedings, in which the Commission had not issued a decision, were discontinued. Section 3 of the Act provided that a person, regarding whom the Commission had established that he or she had collaborated with the State security services, was banned from holding public office for five years, from the time the Commission's decision became final.

4.4. Cases on the right to property

The denationalisation processes, that is, the restitution of forcefully confiscated properties from former owners, were one of the key processes in the democratic development of the Macedonian society to rectify the injustice cost by the previous governments by returning such properties to their rightful owners. The denationalisation law enabled former owners to

gain the right to property for confiscated property based on Article 30 of the Constitution.

In North Macedonia, the denationalisation process took place much later compared to the other post-socialist countries. However, unlike the other transition countries where denationalisation was carried out successfully and efficiently, this was hardly the case in North Macedonia. According to available data,[25] the denationalisation process in the country lasted unreasonably long. One of the reasons was the lack of political will of the authorities to execute the process swiftly and successfully.

The denationalisation process in North Macedonia faced numerous institutional barriers and bureaucratic procedures.[26] The Macedonian judiciary system showed several weaknesses and slowness in completing the denationalisation cases, which obstructed the citizens' legal certainty and their trust in the judiciary.[27] The effects of the Convention on the right to

[25] See: S. Mehmeti: *The Process of Denationalization in the Republic of Macedonia After Its Independence*. [Online]. Available at: https://cdn.istanbul.edu.tr/FileHandler2.ashx?f=the-process-of-denationalization-in-the-republic-of-macedonia-after-its-independence_sami-mehmeti.pdf (Accessed: 22 July 2025).

[26] Most of the complaints brought before the Ombudsman office in 2014, 2015 and 2016 were about property relations by the citizens, who felt manipulated in their denationalisation cases; that is, people who were harassed by the Ministry of Finance and the Administrative Court for 16 years, restricting them from any right to compensation. Some of these cases remained stuck in bureaucratic labyrinths, the denationalisation commissions established by the Ministry of Finance, administrative or higher administrative courts, or the State Commission, which decided in the second instance. The administrative judges, instead of deciding on a meritorious basis, continuously sent the cases back to the commissions.

[27] In its most critical report about Macedonia in the last few years, the US State Department, in the section focused on the protection of human rights, referred to the 'Gradishte' case, a major denationalisation case, with a judicial history of 25 years. Members of 36 families from Ohrid organised a protest in April 2022, claiming that the authorities had not provided them with adequate compensation for the land plots nationalised in 1957. The Ombudsman found major difficulties and procedural flaws in the denationalisation cases and pointed out the poor work of the Denationalisation Commission under the Ministry of Finance, and the inefficient cooperation with the Administrative Court and other government agencies. The 2000 denationalisation law defined the denationalisation procedure as urgent, the US State Department said in its report. 'These properties are located in the most attractive part of the Ohrid lake coast, covering an area of 100.000 m^2', said Adrijana Bashovska whose family was one of those seeking justice for three decades. 'All applicants with cases related to "Gradishte" have four or five decisions in their favor issued by the Administrative Court. The decisions of the Administrative Court

property were complex because the related right was multidimensional. The case law of the country before the ECtHR, regarding property rights, noted seven judgments. Two cases were related to the right to property concerning the issue of privatisation and purchasing of apartments in the property belonging to the former federal army,[28] one case[53] involved the effective enjoyment of the right to property, two cases (*Bocvarska*[29] and *Arsovski*[30]) dealt with the fair balance between the sides involved in two different rights to property cases and two cases were regarding the process of denationalisation (*Vikentijevik*[31] and *Stojanovski and others).*[32]

4.4.1. Arsovski v. the Former Yugoslav Republic of Macedonia

In this case[33] the ECtHR held that there had been a violation of Article 1 of Protocol No. 1 of the Convention. The case originated in application no. 30206/06 against the former Yugoslav Republic of Macedonia, lodged with the Court under Article 34 of the ECHR, by three Macedonian nationals, Mr Stojko Arsovski, Mr Stefan Arsovski and Mrs Verka Arsovska, on 7 July

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are compulsory and executive, however the denationalisation commission under the Ministry of Finance issues decisions which are contrary with the denationalisation law and contrary to the Macedonian Constitution. These constitutes brutal violations of the applicants' human rights in the process of denationalisation', representatives of the civil organisation, Orevche, stated. 'The denationalisation process of "Gradishte" is stuck in the corruption and incapability of the institutions and the court. The state must urgently bring this process to completion', said Bashovska. Officials from Orevche accused that the denationalisation law was applied selectively. They remind the people of the scandalous decision in which the state offered compensation of 200 denars per m^2. A local suspicious businessman, with close links to the judges and state officials, was trying to acquire a 'Gradishte' property worth 20 million euros, officials from Orevche stated.

[28] *Case of Veselinski v. The Former Yugoslav Republic of Macedonia,* App. No. 45659/99, 24 February 2005 and *Case of Dzidrovski v. The Former Yugoslav Republic of Macedonia,* App. No. 46447/99, 24 February 2005; *Case of Jankulovski v. The Former Yugoslav Republic of Macedonia,* App. No. 6906/03, 3 July 2008.

[29] *Case of Bocvarska v. The Former Yugoslav Republic of Macedonia*, App. No. 27865/02, 17 September 2009.

[30] *Case of Arsovski v. The Former Yugoslav Republic of Macedonia,* App. No. 30206/06, 15 January 2013, paras. 61 and 62.

[31] *Case of Vikentijevik v. The Former Yugoslav Republic of Macedonia*, App. No. 50179/07, 6 February 2014.

[32] *Case of Stojanovski and others v. The Former Yugoslav Republic of Macedonia*, App. No. 14174/09, 23 October 2014.

[33] *Case of Arsovski v. The Former Yugoslav Republic of Macedonia,* App. No. 30206/06, 15 January 2013, paras. 61 and 62.

2006. The application was submitted on behalf of Mr Milan Arsovski, who had died on 7 October 2004. Through the submissions received on 24 January 2011, the Court was informed that Mr Stefan Arsovski had died on 26 March 2007. His widow, Mrs Dragica Arsova, and his daughters, Mrs Karolina Joseva and Mrs Kalinka Stefanovska, applied to continue the application in his name.

Since 1952, the applicants' predecessors had title to a plot of land no. 1339. Based on a gift contract of 1968, the plot was transferred to Mr Stojko Arsovski and subsequently to all the applicants. In 1973, the State was recorded in the land registry, in error, as the owner of the plot. On 1 November 1977, the City Council of Kratovo authorised company S. to use the plot for an intensive agricultural development; however, the company never engaged in any such activity. On 17 April 1996, the applicants and Mr Milan Arsovski brought a civil action against the State, seeking recognition of the title to several plots of land, including plot no. 1339. In May 1996, the then competent Ministry gave permission to the company to carry out geological research on the plot. On 19 March 2002, the Kratovo Court of First Instance upheld the applicants' claim, recognising their title to the plot. On 26 June 2002, the Skopje Court of Appeal confirmed the first-instance court's decision, establishing that the claimants had always had actual possession of the plot.

On 26 July 2002, the company requested that the State expropriate the plot for it to extract mineral water. In support, it submitted, *inter alia*, a copy of a concession contract signed by the State on 8 May 2000, under which the company had been authorised to exploit geothermal mineral water in the plot for a renewable period of 30 years. The company undertook, in return, to pay certain compensation to the State. On 9 December 2002, the Kratovo Office of the Ministry of Finance ordered the expropriation of the plot for the company to construct a pit to extract the mineral water. The expropriation order was based, *inter alia*, on the Expropriation Act. The applicants and Mr Milan Arsovski appealed against the expropriation order, arguing that the extraction of mineral water had not been specifically mentioned in any act or plan concerning the plot, and the applicable legislation had provided for partial, instead of full, expropriation in the event of research and exploitation of mineral resources, as in their case.

On 2 June 2003, the Government Appeal Commission dismissed the appeal, stating that the company had submitted the required documents and the exploitation of mineral water had been provided for in a decision of the

City Council dated 1996. The Commission stated that the expropriation in the applicants' case was in the public interest. It further stated that the company, as the beneficiary of the expropriation, would pay compensation to the applicants. The applicants and Mr Milan Arsovski lodged an appeal with the Supreme Court on points of law, arguing that they had been deprived of the peaceful enjoyment of their possessions, contrary to the Constitution and the Act. They complained that the Commission had not addressed their arguments regarding the company not being entitled to a full expropriation of the plot. They reiterated that a three-year lease contract should have applied, instead of the full expropriation, which entailed loss of the title to the plot, contrary to the principle of legal certainty.

On 16 November 2005, the Supreme Court dismissed the appeal, finding no errors in the facts or law. Noting the applicants' complaints, the court reiterated that the plot's expropriation was in the public interest, with a view to constructing objects for research and exploitation of natural resources. The company had submitted the required documents, and compensation had been determined in non-contentious proceedings. The decision was served to the applicants on 9 January 2006.

On 11 April 2006, the public prosecutor notified the applicants that there were no grounds to lodge a legality review request with the Supreme Court. According to an extract from the Land Register of 7 May 2008, the company had title to the plot. According to another extract, dated 31 December 2010, the respondent State was indicated as the owner of the plot and the company as the beneficiary. However, on 23 November 2004, the first-instance court determined, based on an expert report, the amount of compensation, which the company was required to pay to the applicants in return for the expropriated plot. The joint award was fixed at an equivalent of 880 euros. This figure corresponded to the market value of the plot, determined on the basis of its location, size, quality, suitability for construction and access to a road and different installations. The expert report contained information about the investment by the company for the exploitation of mineral water on the plot. The applicants were ordered to pay an equivalent to 475 euros for the costs incurred by the company. The decision was confirmed by the Skopje Court of Appeal on 15 September 2005.

Two individuals, one of whom was Mrs Verka Arsovska, applied to the Constitutional Court challenging the constitutionality of, *inter alia*, section 3 paragraph 1 (3) of the Act. In an *ex nunc* decision of 11 February

2009, the Court declared the provision unconstitutional, determining that although the State had a certain margin of appreciation in defining the public interest, it could not exercise it unreasonably. Hence, it was considered that the Act enumerating the objects, whose construction was regarded as public interest, was insufficient. It further stated that the construction of objects in the interest of private persons, as defined in urban plans, could not be construed as being in the public interest. Relying on Articles 8 and 30 of the Constitution, it concluded that the State could expropriate a property only after other less restrictive measures, such as a long-term lease or concession, had been exhausted. To claim otherwise would mean that the commercial interests of private persons would prevail over the public interest.

In a letter dated 3 June 2011, the Government submitted that the applicants had violated the rules of confidentiality regarding friendly-settlement negotiations. In support of this assertion, they referred to the article published in the weekly newspaper *Fokus*. According to the Government, although the article did not disclose the source of information, it was clear that the information could only have been provided by the applicants or their representatives. Although a part of that information was false and led to frivolous conclusions about the outcome of the contentious proceedings before the Court, they invited the Court to declare the application inadmissible on the ground of the abuse of the right of petition.

The applicants denied that they had disclosed any information concerning the application or the friendly-settlement proposal. They submitted that this was confirmed by the false information contained in the article. The Court noted that, according to Article 39 paragraph 2 of the Convention, friendly-settlement negotiations were confidential. Rule 62 paragraph 2 of its Rules of Court reiterated this principle and stipulated that no written or oral communication and no offer or concession made within the framework of friendly-settlement negotiations could be referred to or relied on in contentious proceedings. Noting the importance of this principle, the Court reiterated that it could not be ruled out that a breach of the rule of confidentiality may, in certain circumstances, justify that an application was inadmissible on the ground of the abuse of the right of application.

The Court considered that the direct responsibility of a party for disclosure of confidential information must always be established with sufficient certitude; a mere suspicion does not suffice to conclude that an

application amounted to an abuse of the right of individual application within the meaning of Article 35 paragraph 3 of the Convention. Hence, the Court found no evidence that the information contained in the article was disclosed by the applicants or their legal representatives. The article did not quote the applicants or their representatives, nor did it state that the relevant information had been obtained from any of them. The Government did not provide any evidence proving otherwise. Furthermore, as the Government conceded, the article contained incorrect information. The Government's assumptions that the applicants had violated the rules of confidentiality were accordingly unsubstantiated. Consequently, the objection was dismissed.

The Government did not raise any further objection about the admissibility of the application. The Court noted that the application was not manifestly ill-founded within the meaning of Article 35 paragraph 3 (a) of the Convention. It further noted that it was not inadmissible on any other grounds. Hence, it was declared admissible. The applicants submitted that the expropriation had pursued no public interest, rather the commercial interest of the company. Furthermore, there had been no relationship of proportionality between the means employed and the aim pursued, nor had a fair balance been struck between the general interest and the interests of the owners of the plot. Referring to section 4 of the Act and the Constitutional Court's decision, the applicants stated that a less restrictive measure could have been applied in their case, as they had unsuccessfully claimed in the impugned proceedings. However, their arguments remained unaddressed.

Moreover, they argued that the compensation awarded to them was below the market value of the plot. The Government submitted that the expropriation had been carried out following the Act, as in force at the time. The decision of the Constitutional Court post-dated the impugned expropriation and had no bearing on the case. The aim of the expropriation was the construction of objects for the exploitation of mineral water, an activity which the Act explicitly specified as being in the public interest. Based on the concession agreement, the company, which had been carrying out geological research in the relevant area for several years before the critical date, was granted permission to exploit the mineral water, which, as a public commodity, belonged to the State. The latter had a wide margin of appreciation in choosing the means for achieving the above-mentioned aim. Furthermore, the applicants had received compensation that corresponded to the market value of the plot, an amount determined on the basis of an expert report produced in court proceedings. Hence, the existence of mineral water

could not have any bearing on the amount of compensation, since the water was State-owned.

The Court reiterated that Article 1 of Protocol No. 1 comprised three distinct rules: first, set out in the first sentence of the first paragraph, was of a general nature and enunciated the principle of the peaceful enjoyment of property. Second, contained in the second sentence of the first paragraph, covered the deprivation of possessions and subjected it to certain conditions. Third, stated in the second paragraph, recognised that the Contracting States were entitled, amongst other things, to control the use of property following the general interest. However, the three rules were not unconnected. The second and third rules were concerned with particular instances of interference with the right to peaceful enjoyment of property and would be construed in the light of the general principle enunciated in the first rule. The Court noted that the respondent State seized the plot after the domestic courts, by a final decision of 26 June 2002, declared the applicants as the owners. It further observed that it was not disputed between the parties that the seizure amounted to an interference with the applicants' right to the peaceful enjoyment of their possessions.

Therefore, the Court determined whether the deprivation complaint was justified under Article 1 of Protocol No.1 to the Convention, notably whether it complied with the principle of lawfulness, was in the public interest and pursued a legitimate aim through means reasonably proportionate to the aim to be realised. The Court recalled that the first and most important requirement of Article 1 of Protocol No. 1 was that any interference by a public authority with the peaceful enjoyment of possessions must be lawful: the second sentence of the first paragraph authorised a deprivation of possessions only 'subject to the conditions provided for by law'.

Turning to facts, the Court observed that the applicants were dispossessed based on the Act, under which expropriation could be ordered for the construction of objects for research and exploitation of mineral resources. The Court, posterior to the applicants' case, in its decision of 2009, declared unconstitutional the statutory provision according to which the expropriation could be ordered for the benefit of private persons, which did not affect the right of the State, as such, to seize property for research and exploitation of mineral resources. Therefore, the imposition of the seizure was considered lawful within the meaning of Article 1 of Protocol No. 1. The notion of 'public interest' was necessarily extensive.

Particularly, the decision to enact laws expropriating property would commonly involve the consideration of political, economic and social issues. The Court found it natural that the margin of appreciation available to the legislature in implementing social and economic policies would be a wide one and would respect the legislature's judgment as to what is 'in the public interest' unless that judgment was manifested without reasonable foundation.[34]

In this case, the Court noted that the Act explicitly specified the construction of objects for the exploitation of natural resources as being in the public interest. Section 2 paragraph 1 (6) of the Act was not the subject of the review of the Constitutional Court in its 2009 decision. The public interest underlying the expropriation of the applicants' land was confirmed by the domestic authorities during the expropriation proceedings. Hence, the Court found no reason to consider otherwise. The seizure of the applicants' property was effected in pursuance of a legitimate public interest aim, namely the exploitation of mineral water, a State-owned public commodity, of which the community would have direct use and benefit. Hence, the interference with the applicants' rights under Article 1 of Protocol No. 1 was 'in the public interest'.

5. Conclusion

North Macedonia, as the 38th member country of the CoE, and the CoE have a long-standing cooperation regarding human rights, democracy and the rule of law. Starting on 9 November 1995, the country has been actively involved in all activities and work of the CoE. In 2009, the Macedonian Assembly adopted the ECtHR's Law on the Enforcement of Decisions,[83] which legally established two important institutions: the Bureau of the Government's agent and the Interdepartmental Committee for the execution of the Court's judgments and monitoring the enforcement of the ECtHR's judgments and decisions.

The ECHR's impact on the Macedonian society is observed through a complex social process of reception, introduced by diverse mechanisms. According to *Galigiuri and Napoletano*, the strengths of the impact of the Convention on the national legal system depend on two aspects: the position of the ECHR in the domestic hierarchy of sources of law; that is, whether it

[34] *Case of Urbárska Obec Trenčianske Biskupice v. Slovakia*, App. No. 74258/01, § 113, 27 November 2007.

has supra-national status or not, and the self-executing character of the ECHR rules by national laws.[35] In the Macedonian system, the Convention is positioned between the Constitution and the laws; hence, it is higher than the laws, yet less than the Constitution. In other words, the Constitution has the highest normative rank and every other act, including international agreements and laws, is positioned below it.

The Macedonian legal system can be identified as a variation of the monist system. According to the fundamental principles of the monistic doctrine, in case of incompatibility between a ratified international agreement and a national law, the provision of the ratified international agreement will be used. This rule, which is only one segment of the basic rules for regulating a conflict regarding the relationship between international and national law, is administered in the Macedonian constitutional system.[36] The Macedonian legal system is a part of the group of legal systems that are based on the continental law's traditional principles. Regarding the rules which regulate the relationship between domestic and international law, following the constitutional provisions, the adoption of international law into the Macedonian legal order is organised under the monistic doctrine. However, the monistic doctrine for accepting international agreements is not a legal model and was established in the Macedonian constitutional system for the first time with the 1991 Constitution. On the contrary, the 'sub-ordinary' position of the international agreements over the Constitution accepted this doctrine based on the established relationship between domestic and international law during socialism. This model had a relatively long tradition. The 1991 Constitution continued the normative continuity of regulating this monistic doctrine introduced in 1970.

The paper showed that the intensity of the influence of the ECtHR's jurisprudence on the Macedonian system has varied across time, with the Court's impact intensively increasing over time. The process of the ECHR's reception into Macedonian law and practice, and the relationship between the ECHR and domestic legal orders, has been an open-ended product of interactive social processes that cannot be easily summarised. The country continues to face systemic challenges in ensuring timely judicial proceedings and safeguarding the independence of institutions tasked with human rights protection. Numerous ECtHR judgments against the country

[35] Caligjuri and Napoletano, 2010, p. 127.
[36] Karakamisheva-Jovanovska and Saveski, 2022, p. 328.

underscore persistent violations of Articles 6 and 13, largely due to prolonged court proceedings and inadequate institutional independence. Hence, accelerating judicial reforms and enhancing the autonomy of human rights institutions are essential steps toward fulfilling North Macedonia's obligations under the ECHR to strengthen the rule of law, reduce human rights violations and reinforce the country's European integration path.

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