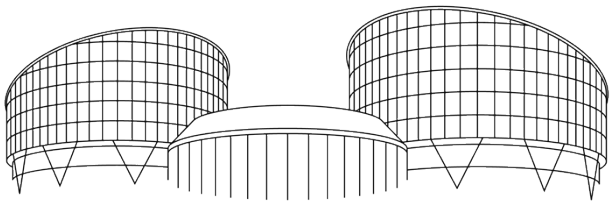

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ATANASOVSKI v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

(Application no. 36815/03)

JUDGMENT

STRASBOURG

14 January 2010

FINAL

14/04/2010

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

In the case of Atanasovski v. the former Yugoslav Republic of Macedonia**,**

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

Peer Lorenzen, *President,*
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges,*
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 8 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 36815/03) against the former Yugoslav Republic of Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Macedonian national, Mr Petar Atanasovski ("the applicant"), on 17 November 2003.

2. The applicant was represented by the "Helsinki Committee for Human Rights of the Republic of Macedonia". The Macedonian Government ("the Government") were represented by their Agent, Mrs R. Lazareska Gerovska.

3. The applicant alleged, in particular, lack of reasons in the Supreme Court's decision for departing from its previous jurisprudence and that the length of proceedings had been excessive.

4. On 3 October 2006 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1937 and lives in Bitola. He worked for "Aparati za domakinstvo", a socially-owned company which was later

restructured under the Government's decision of August 1997 allowing its transformation.

6. On 21 February 1997 the applicant was reassigned to the post of technologist with the stated aim of increasing productivity and efficiency and improving operations.

7. On 17 March 1997 the applicant brought a civil action seeking to have the reassignment annulled since, in thirty years with the same employer, he had never worked as a technologist.

8. On 21 May 1997 the Bitola Court of First Instance ("the first-instance court") dismissed the applicant's claim. On 29 September 1997 the Bitola Court of Appeal quashed this decision ordering the lower court to examine what had been the applicant's status with the employer; whether and how had the bankruptcy proceedings, initiated meanwhile against the employer, affected the applicant's employment and whether the employer had been restructured.

9. On 30 September 1998 the first-instance court annulled the employer's decision of 27 May 1997 dismissing the applicant (in respect of which the applicant had brought a separate action). According to the Government, in these proceedings the applicant had sought to have the proceedings concerning his reassignment suspended.

10. On 29 March 1999 the applicant's claim was upheld at first instance. The court held that although the reassignment decision had referred to the relevant provisions of the Labour Act and the General Collective Agreement (see "Relevant domestic laws" below) it had not provided the applicant with concrete reasons for his reassignment. In this connection, it stated that section 27 of the Labour Act had been of a declaratory nature without providing any concrete reason for reassignment. On 29 September 1999 the Bitola Court of Appeal quashed this decision finding that the reassignment decision had provided reasons for the applicant's reassignment. However, it ordered the first-instance court to determine whether the reassignment had been justified.

11. On 26 March 2001 the first-instance court, deciding the case for the third time, upheld the applicant's claim and annulled the reassignment decision. The court established that the applicant had worked for the same employer since 1966 in different posts and that no concrete reasons had been given for his reassignment. In this latter respect, it referred to a court annulment, for lack of concrete reasons, of the reassignment of Mr R.V., the applicant's colleague, which had been based on the same grounds, as the applicant's (see paragraph 6 above, *П.бр. 680/97* of 9 June 1999). Noting that the reassignment decision had been rendered under section 27 of the Labour Act and section 11 of the General Collective Agreement, it stated, *inter alia*,

> "... in case of reassignment, an employee should be provided with a reasoned decision in writing so that he or she can protect his or her rights and the court may review its lawfulness. In the present case, the disputed decision does not set out any reasonable ground, which implies that the employer had not established the need for

> the [applicant's] reassignment. If no reasonable grounds are provided, the reassignment of any employee, including the [applicant], is unlawful. [The employer] has only quoted the terms for reassignment, as specified in the Collective Agreement, without providing any reasonable ground ..."

12. The court also concluded that the reassignment had been unjustified given the applicant's age and lack of experience required for the new post.

13. On 24 May 2001 the Bitola Court of Appeal dismissed the employer's appeal and upheld the lower court's decision. It stated, *inter alia*:

> "... the reassignment decision does not set out any reasons. The employer has merely referred to the Collective Agreement's objectives of increasing the productivity and efficiency of the applicant and for work organisation purposes. It does not mean that by mere reference to these grounds, the employer has established the need for the [applicant's] reassignment...It means that [the applicant] was reassigned to a post which does not correspond to his work experience ..."

14. On 29 May 2003 the Supreme Court allowed an appeal on points of law submitted by the employer on 9 July 2001 and overturned the lower courts' decisions. It held that they had wrongly applied national law. Referring to section 27 of the Labour Act and section 11 of the Collective Agreement, it found that the employer had been entitled to assess the need for reassignment - which would be well-founded only if an employee was reassigned to a post commensurate with his or her vocational capacity. It further held that the issue as to whether the employee would be more efficient in the new post went beyond the scope of judicial review. It concluded that:

> "Concerning the grounds for reassignment provided in the [disputed] decision, the court considers that it is sufficient to state one of the terms specified in the Collective Agreement. The disputed decision meets this requirement ..."

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. The Constitution

15. Under Article 101 of the Constitution, the Supreme Court is the highest court providing uniformity in the implementation of laws by the courts.

2. The Labour Act of 1993

16. Section 27 (2) of the Labour Act (*Закон за работните односи)*, as in force at the material time, provided that in cases where collective agreements applied, an employee could be reassigned to any post commensurate with his or her vocational capacity.

3. General Collective Agreement of 1994

17. Under section 11 of the Collective Agreement, an employee may be reassigned to a post commensurate with his or her qualifications with a view to, *inter alia*, improving efficiency.

4. Civil Proceedings Act of 1998

18. Section 408 provided, *inter alia*, that the court should take into consideration the need for the urgent settlement of employment disputes.

5. The Supreme Court's jurisprudence

19. In two decisions of 1997 and 1999, the Supreme Court ruled that employers were required to give concrete reasons for reassignment and that mere reference to section 27 of the Labour Act and section 11 of the collective agreement was insufficient unless concrete facts, circumstances and grounds were provided for the reassignment (the Supreme Court's decisions of 5 February 1997 (*Рев.бр.474/96*) and 23 June 1999 (*Рев.бр.312/98*)).

20. In 2005 and 2006, the Supreme Court ruled that under section 27 of the Labour Act, it was sufficient that the new post corresponded to the qualifications of the person concerned. Only employers, and not the courts, were entitled to assess the need for reassignment and employers were not required to provide concrete reasons (the Supreme Court's decisions of 7 December 2005 (*Рев.бр.768/04*) and 22 March 2006 (*Рев.бр.285/05*)).

THE LAW

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

21. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement and that the Supreme Court had decided his case contrary to previously established practice without providing reasons for the departure. He alleged violation of Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

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

A. Admissibility

22. The Government did not raise any objection as to the admissibility of the application.

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

B. Merits

1. The length of proceedings

a) The parties' submissions

24. The Government submitted that there had been complexities in the case, including the employer's restructuring and issues related thereto, the interpretation of applicable legislation, and the applicant's retirement. As to the latter, they submitted that he had contributed considerably to the length of the proceedings with his request, made in the proceedings regarding his dismissal, that they be suspended (see paragraph 9 above). As to the national courts, the Government argued that, on the whole, they had decided the applicant's case with due diligence and that no delays were attributable to them. The only exception concerned the length of proceedings before the Supreme Court which was justified by its excessive workload during the relevant period.

25. The applicant contested the Government's arguments about the complexity of the case and his alleged contribution to the length of the proceedings. Having regard to what was at stake for him, he stated that the national courts had not decided his case with the required expediency and nor could the Supreme Court's workload justify the length of the proceedings before it.

b) The Court's assessment

26. The Court notes that the proceedings in question started on 17 March 1997, when the applicant brought his claim before the first-instance court. However, the period which falls within its competence did not begin on that date, but only on 10 April 1997 when the Convention entered into force in respect of the former Yugoslav Republic of Macedonia (see *Parizov v. the former Yugoslav Republic of Macedonia*, no. 14258/03, § 52, 7 February 2008).

27. The impugned proceedings ended on 23 May 2003. Accordingly, the relevant period which falls within the Court's competence was six years, one month and thirteen days for three levels of jurisdiction.

28. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see *Markoski v. the former Yugoslav*

Republic of Macedonia, no. 22928/03, § 32, 2 November 2006, and the references cited therein).

29. The Court does not consider that the case required examination of complex issues or that the factors, referred to by the Government, affected the complexity of the case.

30. It further considers that no delay was attributable to the applicant. No evidence was presented that the proceedings in question had been suspended, let alone at the applicant's request.

31. Having regard to the criteria described in paragraph 34 above, the Court finds that the overall length of the proceedings was excessive even though there were no significant periods of inactivity between decisions at different instances. The fact that the case was remitted on two occasions contributed to the length of the proceedings. The excessive workload of the Supreme Court, to which the Government referred in their observations, cannot justify the length of the proceedings before it for the reasons detailed in the *Lickov* and *Mihajloski* cases (see *Lickov v. the former Yugoslav Republic of Macedonia*, no. 38202/02, § 31, 28 September 2006, and *Mihajloski v. the former Yugoslav Republic of Macedonia*, no. 44221/02, § 40, 31 May 2007), which likewise apply to this case. Lastly, the Court considers it noteworthy that domestic law (see the Civil Proceedings Acts above) and its jurisprudence (see *Stojanov v. the former Yugoslav Republic of Macedonia*, no. 34215/02, § 61, 31 May 2007) required employment-related disputes to be conducted with special diligence.

32. Having examined all the material submitted to it, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the reasonable time requirement of Article 6 § 1 of the Convention.

33. There has accordingly been a breach of that provision.

2. The reasoning of the Supreme Court's decision

a) The parties' submissions

34. The Government submitted that labour regulation had developed over time, namely that it had become more protective of employers than employees, since the market economy had been introduced. The Supreme Court's decisions (see paragraph 20 above) confirmed that its jurisprudence had been consistent with the applicant's case. However, this practice was not regarded as a source of law (*извор на правото*) or ground on which that court could decide. They further invited the Court to reject the applicant's complaint as being related to the way in which the domestic courts had interpreted and applied national law, a matter which was beyond the Court's jurisdiction.

35. The applicant contested the Government's arguments.

b) The Court's assessment

36. The Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). In that context, its established case-law reflecting a principle linked to the proper administration of justice requires that judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision. The question whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 of the Convention, can only be determined in the light of the circumstances of the case (see *Hiro Balani v. Spain*, 9 December 1994, § 27, Series A no. 303-B, *Suominen v. Finland*, no. 37801/97, § 34, 1 July 2003 and *Tatishvili v. Russia*, no. 1509/02, § 58, ECHR 2007-III).

37. The present case reflects the development of the domestic jurisprudence as to whether employers were required to provide concrete reasons for a reassignment. In this connection, the Court observes that the case-law on the matter initially imposed such requirement. This is evident from the Supreme Court's decisions *Рев.бр.474/96* and *Рев.бр.312/98* (see paragraph 19 above). In the applicant's case, the first-instance court also applied this jurisprudence by having relied on a court decision in which the reassignment of the applicant's colleague had been found unlawful due to lack of reasons (see paragraph 11 above). It was the Supreme Court which departed, for the first time in the applicant's case, from the previous case-law stating that the employers were not bound with such a requirement. The Supreme Court's decisions *Рев.бр.768/04* and *Рев.бр.285/05* (see paragraph 20 above) support the continued application of this approach after the applicant's case. This jurisprudential conflict evolved between 1997 and 2006 (see, *a contrario*, *Beian v. Romania (no. 1)*, no. 30658/05, § 35, ECHR 2007 (extracts)).

38. In these circumstances, the Court observes that the Supreme Court changed the jurisprudence in the applicant's case by deciding it contrary to already established case-law on the matter. In this connection, the Court notes that case-law development is not, in itself, contrary to the proper administration of justice since a failure to maintain a dynamic and evolutive approach would risk rendering it a bar to reform or improvement. However, it recalls that the existence of an established judicial practice should be taken into account in assessing the extent of the reasoning to be given in a case (see, *mutatis mutandis*, *Gorou v. Greece (no. 2)* [GC], no. 12686/03, § 38, ECHR 2009). In the present case, the Supreme Court deviated from both the lower courts' and its own jurisprudence on the matter. In this connection, the Court recalls that the requirement of judicial certainty and the protection of legitimate expectations do not involve the right to an established jurisprudence (see *Unédic v. France*, no. 20153/04, § 74, 18 December 2008). However, given the specific circumstances of the case, the

Court considers that the well-established jurisprudence imposed a duty on the Supreme Court to make a more substantial statement of reasons justifying the departure. That court was called upon to provide the applicant with a more detailed explanation as to why his case had been decided contrary to the already existing case-law. A mere statement that the employers were no longer required to provide concrete reasons for reassignment, but only to refer to one of the terms specified in the Collective Agreement was insufficient. While such a technique of scarce reasoning by the highest court is, in principle, acceptable, in the circumstances of the present case it failed to satisfy the requirements of a fair trial.

39. The Court therefore concludes that there has been a breach of Article 6 § 1 of the Convention in respect of the applicant's right to receive an adequately reasoned decision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

41. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage "for pain and stress due to lack of subsistence funds".

42. The Government contested these claims as unsubstantiated.

43. The Court considers that the applicant's claim for non-pecuniary damage as a result of emotional suffering due to "lack of subsistence funds" is sufficiently linked to the violations found. Ruling on an equitable basis, it awards him EUR 2,600 under this head, plus any tax that may be chargeable.

B. Costs and expenses

44. The applicant also claimed EUR 5,000 for costs and expenses incurred before the domestic courts. He did not produce any documents supporting his claim.

45. The Government contested this claim.

46. The Court notes that the costs claimed had not been incurred in order to seek, through the domestic legal system, prevention of and redress for the violations found. Moreover, the applicant failed to support his claim with any particulars and supporting documents. Accordingly, the Court does not

award any sum under this head (see *Milošević v. the former Yugoslav Republic of Macedonia*, no. 15056/02, § 34, 20 April 2006).

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the application admissible;

2. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention in respect of the length of proceedings;

3. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention in respect of lack of reasons in the Supreme Court's decision;

4. *Holds* unanimously
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,600 (two thousand and six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Peer Lorenzen
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Maruste is annexed to this judgment.

P.L.
C.W.

DISSENTING OPINION OF JUDGE MARUSTE

I, like some of my colleagues, found this case to be a borderline one in respect of sufficient reasons being given in the Supreme Court ruling.

It is important to bear in mind the subsidiary nature of the Convention system and the well-established doctrinal principle that the interpretation and application of domestic law are primarily the prerogative of the domestic judiciary. It is also clear from the rule-of-law principle that the requirement of legal certainty and predictability of judicial decisions falls under the protection of Article 6. It is indeed difficult in cases such as the one at hand to draw a clear line between the competences of two legal systems (domestic and international).

I am more inclined to leave greater freedom in such matters to the domestic authorities.

This view relies primarily on the above-mentioned general principle of subsidiarity, but also on the need to take into account the interests of judicial economy and local requirements. It is evident that domestic courts, especially Supreme Courts, are better placed than an international court to assess their workload and the need for shorter or longer explanations for their decisions, and to decide the manner in which instructions are to be given.

Secondly, the facts of the case show that this was not a case of major importance and that some reasons and instructions, although minimal, were nonetheless given (see paragraph 14 of the judgment). The validity of the applicable law was not challenged, and the Supreme Court found that the applicant's reassignment had met the requirements set out in the relevant legislative provisions. It further held (gave instruction) that it had been sufficient for the employer to refer to one of the terms specified in the Collective Agreement. This ruling clearly cannot be considered either arbitrary or unreasonable. Should the Supreme Court have given more reasons? Perhaps, but it is not our duty to be a tutor or supervisor to Supreme Courts in how they fulfil their functions, unless the result is manifestly in contradiction with Convention requirements.

In so stating, I do not question the very concept of good administration of justice, which presupposes that courts will provide reasoning in their decisions and judgments and which, as indicated above, falls under the ambit of Article 6. The question here, however, is about scope. I believe that in this particular case the prerequisite justifying the intervention of an international court was not met.