



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

FIRST SECTION

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

(Application no. 29784/07)

JUDGMENT

STRASBOURG

18 July 2013

FINAL

18/10/2013

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

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

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

Isabelle Berro-Lefèvre, *President*,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Linos-Alexandre Sicilianos,

Erik Møse,

Ksenija Turković,

Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 25 June 2013,

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

PROCEDURE

1. The case originated in an application (no. 29784/07) 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, Ms Rosica Stoilkovska (“the applicant”), on 3 July 2007.

2. The applicant was represented by Mr R. Aleksovski, a lawyer practising in Kriva Palanka. The Macedonian Government (“the Government”) were represented by their Agent, Mr K. Bogdanov.

3. The applicant complained, in particular, that the Court of Appeal had deprived her of the right to a fair trial by deciding her case contrary to its earlier case-law in identical cases. She also complained that the length of the proceedings had been excessive.

4. On 31 August 2011 these complaints were communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1948 and lives in Kriva Palanka.

A. Background of the case

6. The applicant worked as a salesperson in a food store run by company T. (“the employer”). In 1994 goods went missing from the store. As the person responsible for the loss could not be identified, on 31 January 1995 the employer requested that the employees compensate the losses sustained. The amount which each employee was asked to pay was calculated in proportion to their working hours with the employer. Several employees, including the applicant, were required to pay 115,682 Macedonian denars (the equivalent of 1,880 euros (EUR)).

B. Proceedings concerning the annulment of the payment requests (“the set-aside proceedings”)

7. On 7 March 1995 the applicant and nine colleagues brought a civil action against the employer seeking annulment of the payment requests. On 26 April 1995 the Kriva Palanka Court of First Instance (“the first-instance court”) accepted the claim. On 17 April 1997 the Skopje Court of Appeal quashed that judgment due to the lower court’s errors in fact and law. On 26 March 1999 the Skopje Court of Appeal again ordered the re-examination of the case, because the payment requests had not been enforceable and binding on the claimants. Accordingly, it found that the claimants had lacked a legal interest in pursuing the claim. On 31 May 1999 the first-instance court dismissed the claim for lack of legal interest. That judgment was quashed on appeal, as it had failed to state whether there had been any procedural flaws regarding the payment requests. On 15 May 2003 the first-instance court accepted the claim and annulled the employer’s payment requests. On 2 March 2005 the Skopje Court of Appeal quashed that judgment and rejected the claim as inadmissible (*недозволена*). It found that the claimants had not been entitled, under section 138 of the Employment Act 1993 as in force at the time (see paragraph 22 below), to seek the annulment of the payment requests, but rather that the employer instead had the right to seek, under section 101 of the same Act (see paragraph 21 below), a court order that the claimants reimburse the losses sustained. In those proceedings, the court would assess whether there was any damage attributable to any employee.

8. As the first-instance court stated in a letter of 3 September 2010, there was no evidence that the judgment was served on the applicant or her legal representative. The applicant asserted that she had learnt about it in February 2007. The Government did not present any evidence to disprove that allegation.

C. Civil proceedings against the applicant for damages

9. On 21 November 1995 the employer brought a civil action seeking a judgment ordering the applicant to pay the amount specified in the payment request. Initially, the first-instance court rejected the claim. Subsequently, it dismissed the employer's claim on three occasions due to lack of evidence that any responsibility could be attributed to the applicant. All of those judgments were quashed on appeal by the Skopje Court of Appeal.

10. On 3 April 2006 the first-instance court rendered its most recent judgment in the matter, in which it again dismissed the employer's claim. The relevant parts of the judgment read as follows:

“... the loss was either the result of goods going missing from the store ... or money not being put in the cash register each day. Since [the employer] did not identify the person responsible for the losses, it requested that the employees [reimburse its losses] in an amount corresponding to their working hours in 1994 ... no (internal) proceedings were carried out in order (that the employer) identify the person responsible for the losses sustained or to establish disciplinary [liability] or (any) other breaches of the working rules ...”

11. The court further relied on section 98 of the Employment Act 1993, as then in force (see paragraph 19 below), and stated that:

“The above-cited provision suggests that the Employment Act endorses the principle of individual responsibility ... which requires not only identification of the employee who caused the damage, but also (determination of) responsibility for damage caused intentionally or negligently ... In the present case and on the basis of the admitted evidence, it is established that criminal proceedings were instituted against the store's responsible person in relation to the loss sustained ... the criminal proceedings finally ended with an acquittal (of the responsible person), thus leaving two disputed issues unresolved – who caused [the damage] and whether any responsibility could be attributed to [the perpetrator] ... It appears that [the payment request] and [the employer's] claim are based on the principle of objective responsibility, which runs counter to the above-cited [statutory] provisions ... [the employer] did not present any evidence that [the applicant] contributed to the loss or was responsible for it ... consequently, the court's view is that section 98(1) of the Employment Act is not applicable [in the applicant's case] ...”

12. On 23 November 2006 the Skopje Court of Appeal overturned the judgment and accepted the employer's claim. It stated, amongst other things, the following:

“According to this court, [the employer] correctly claims in the appeal that [the payment request] was lawful. On the correctly established facts, the first-instance court wrongly applied section 98(1) and (3) of the Employment Act ... Section 98(3) of the Employment Act, according to which all employees are regarded as responsible and should compensate damage in equal proportions when it is impossible to establish any individual responsibility, applies in the present case ... Since several employees caused the damage, they are jointly responsible for it ... none of the employees, including [the applicant], alerted the responsible persons [working for the employer] to the fact that goods or money were going missing from the store, or that the responsible person (against whom criminal proceedings were instituted) had taken

goods for himself or others without paying the price, or that he had misappropriated part of the daily takings etc. ... It appears that [the applicant] contributed to the damage. Had she, as well as the other employees, reacted in a timely manner by reporting the store's responsible person, they would have prevented the damage ... The responsibility of other employees lies in their failure to undertake actions to prevent the damage. Had they reacted in a timely manner to the unlawful activities of the store's responsible person, he would have been prevented from further breaking the working rules. That would have also stopped the losses."

13. The applicant was ordered to pay, in addition to the principal debt (EUR 1,880), statutory interest calculated from the date of submission of the claim. That decision was served on the applicant on 4 January 2007.

14. On 14 May 2008 the Supreme Court rejected an appeal on points of law brought by the applicant as inadmissible, finding that the claim value was below the statutory threshold specified in section 372(2) of the Civil Proceedings Act 2005 (see paragraph 24 below).

D. Relevant court judgments rendered in civil proceedings against the applicant's colleagues

15. The applicant submitted copies of several judgments of the Skopje Court of Appeal in which it had upheld the first-instance court's judgments dismissing identical claims brought by the employer against the applicant's colleagues. Those decisions were taken between September 2004 and March 2006 (*Gž.br.4295/04*; *Gž.br.6708/04*; *Gž.br.6709/04*; *Gž.br.6711/04*; and *Gž.br.1544/06*). The relevant parts of two of these judgments read as follows:

"... In the court's view, the first-instance court correctly held that the Employment Act employs the principle of individual responsibility ... which requires identification of the person who caused the damage and [an assessment of] whether it was caused intentionally or negligently ... A person's responsibility under section 98 of the Employment Act cannot be assumed, but rather should be established in appropriate proceedings ... Criminal proceedings instituted against the store's responsible person finally ended with his acquittal. Thus [the criminal proceedings] did not resolve two contested issues, namely who caused [the damage] and whether any responsibility could be attributed ... On the basis of the admitted evidence, the first-instance court established that the payment request was based on the principle of objective responsibility, which runs counter to the Employment Act ... The first-instance court correctly concluded that the defendant had not contributed to the losses or that any responsibility could be attached to him ... The Appeal Court has examined [the employer's] arguments that the employees, including the defendant, were responsible because they had failed to exercise their working duties properly and had allowed the company to sustain damage, but it nevertheless dismisses them as unfounded ... The employees reported to the store's responsible person and available evidence suggests that there were irregularities in his work ... accordingly the defendant cannot be held responsible, all the more so since [the employer] did not institute any proceedings against the defendant or other store employees." (*Gž.br.4295/04* of 29 September 2004)

“As claimed [in the appeal], the defendant’s responsibility was based on the fact that she knew about the workplace irregularities and the damage, but she failed to undertake any action in order to prevent the losses. This court has examined [those] allegations and finds that they are unfounded ... employees reported to the store’s responsible person and the available evidence suggests that there were irregularities in his work. The [first-instance] court correctly interpreted section 98 of the Employment Act, under which the principle of individual responsibility applies to damage caused to an employer ... In the present case, criminal proceedings were instituted against the store’s responsible person in relation to the losses sustained. They finally ended with his acquittal ... thus [the criminal proceedings] did not identify who was responsible for the losses. On the other hand, it was not established whether the defendant or any other salesperson was responsible for the losses ... the [employer] did not present any evidence to prove the defendant’s individual responsibility...” (*Gž.br.6708/04* of 21 January 2005)

16. The remaining judgments (*Gž.br.6709/04* dated 14 January 2005; *Gž.br.6711/04* dated 21 January 2005 and *Gž.br.1544/06* dated 8 March 2006) of the Skopje Court of Appeal contained identical reasoning as above regarding the first-instance court’s findings that section 98 of the then Employment Act required, in the circumstances of the case, the application of the principle of individual responsibility; that no internal proceedings had been carried out, nor had the employer presented any evidence to prove any individual responsibility; that no responsibility could be attributed to any defendant for any alleged omissions; and that the principle of objective responsibility could not apply.

17. By a decision of 5 December 2001, the Supreme Court accepted the employer’s appeal on points of law in an identical case brought against a colleague of the applicant. That decision was given under the statutory rules concerning the Supreme Court’s competence *ratione valoris* provided for in the Civil Proceedings Act of 1977 (see paragraph 24 below). The first-instance court’s decision in that case was given on 30 September 1997 (*Rev.br.50/99*).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of 1991

18. Under Article 101 of the Constitution, the Supreme Court is the highest court, providing for the uniform application of laws by courts.

B. Employment Act 1993

19. Section 98 (1), (2) and (3) of the Employment Act 1993 read as follows:

Section 98

“An employee is required to compensate losses caused in the course of work or related to his or her work for which he or she is responsible.

If the losses are caused by several employees, each employee is required to compensate the losses attributable to him or her.

When individual responsibility cannot be established, all employees are considered equally responsible and required to pay compensation in equal proportions ...”

20. Section 100 empowered the employer to issue a request for compensation of damages. The employee could object to such a request within eight days after the service of the request.

21. Under section 101, in the event of non-compliance by the employee with a request for compensation of damages, the employer could institute court proceedings seeking to recover the sum claimed.

22. Under section 138(1) of the Employment Act 1993, the employee could institute civil proceedings in order to protect his or her rights affected by an employer’s request for compensation.

C. Employment Acts of 2003 and 2005

23. Section 106 of the Employment Act 2003 and section 156 of the Employment Act 2005 provided for the same rules of compensation of damages caused by employees as those contained in section 98 of the Employment Act 1993 (see paragraph 19 above). The only difference is that section 156 of the Employment Act 2005 concerns damage caused “intentionally or in gross negligence”.

D. Civil Proceedings Acts 1977, 1998 and 2005

24. Under the Civil Proceedings Act 1977, as amended in 1990, the claim value required for lodging an appeal on points of law was set at 8,000 denars (MKD). Section 368 of the Civil Proceedings Act 1998 set that threshold at MKD 1,000,000. Section 372 of the Civil Proceedings Act 2005 provided that an appeal on points of law would be inadmissible if the claim value did not exceed MKD 500,000.

25. Under the transitional provisions of Civil Proceedings Acts 1998 and 2005 (sections 476 and 474 respectively), proceedings would be completed in accordance with the law valid when the proceedings at first instance had ended.

E. Courts Act (*Закон за судовство*) of 2006 (“the 2006 Act”)

26. Sections 35 § 1 (6) and 36 of the 2006 Act provided for a length remedy, which was to be decided, as stated in section 35 § 1 (6), by the

Supreme Court. According to the Act, in case of a violation of the reasonable-time requirement, the competent court could award just satisfaction.

F. Relevant domestic jurisprudence

27. The Government also submitted copies of two judgments of the Skopje Court of Appeal adopted in June and September 2011. These cases concerned similar compensation claims submitted against nine employees in respect of drugs going missing from a pharmacy. In these cases, each defendant was ordered, under sections 106(3) and 156(3) of the 2003 and 2005 Employment Acts respectively (see paragraph 23 above), to compensate in equal proportions the losses sustained, since no individual responsibility could be attached to any of them (*Рож.бр.113/11 and Рож.бр.418/11*). They further submitted copies of other judgments in which that court had applied section 106 of the 2003 Employment Act to payment requests that the responsible persons (*одговорни лица*) employed by the claimant, namely a manager and a deputy manager, compensate the losses sustained in certain proportions (*Рож.бр.853/09; Рож.бр.715/10 and Рож.бр.1072/11*).

THE LAW

I. PRELIMINARY OBJECTION OF THE GOVERNMENT

Alleged abuse of the right of petition

1. The parties' submissions

28. The Government submitted that the applicant had violated the rules of confidentiality regarding friendly settlement negotiations because she had intentionally disclosed the “possible amounts proposed” without providing any convincing explanation for so doing. Furthermore, she had relied on those negotiations in the contentious proceedings. Consequently, they requested that the Court declare the application inadmissible on the grounds of an abuse of the right of petition.

29. The applicant contested the Government’s arguments, arguing that her comments about their attempt to reach a friendly settlement had been set out in a separate document and had not been relied on in any submissions in the contentious proceedings.

2. *The Court's consideration*

30. The Court notes that, according to Article 39 § 2 of the Convention, friendly settlement negotiations are confidential. Rule 62 § 2 of the Rules of Court reiterates this principle and stipulates that no written or oral communication and no offer or concession made in the course of friendly settlement negotiations may be referred to or relied on in contentious proceedings. Noting the importance of this principle, the Court further reiterates that it cannot be ruled out that a breach of the rule of confidentiality might, in certain circumstances, justify the conclusion that an application is inadmissible on the grounds of an abuse of the right of application (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 68, 15 September 2009; *Lesnina Veletrgovina d.o.o. v. the former Yugoslav Republic of Macedonia* (dec.), no. 37619/04, 2 March 2010; and *Balenović v. Croatia* (dec.), no. 28369/07, 30 September 2010).

31. Turning to the present case, the Court observes that, by a letter addressed to the Court on 5 March 2012, the applicant disclosed the initiative taken and the amount proposed by the Government Agent with a view to securing a friendly settlement of the case. Whereas that information was brought to the Court's attention, the applicant did not make it public. Furthermore, it was communicated in a separate document. The practice of posting that document at the same time as submissions in the contentious proceedings does not mean that there was a violation of Rule 62 § 2 of the Rules of Court. Lastly, the documents submitted by the applicant in the contentious proceedings did not contain any reference to that information. In such circumstances, the Court considers that the Government's inadmissibility plea on account of a violation of the rules of confidentiality of the friendly settlement negotiations must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION (fair trial)

32. The applicant complained under Article 6 of the Convention that her case had been decided contrary to those involving her colleagues, despite the fact that they had concerned identical issues of fact and law. Article 6 of the Convention, 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

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

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

B. Merits

1. The parties' submissions

35. The Government relied upon the *Atanasovski* judgment (see *Atanasovski v. the former Yugoslav Republic of Macedonia*, no. 36815/03, § 38, 14 January 2010) and submitted that there had been a jurisprudential development that had been reflected in the applicant's case. The change of domestic practice concerning the matter was shown by the judgments that had post-dated the applicant's case (see paragraph 27 above). That the final judgment in the applicant's case had been different from those concerning her colleagues, which had been adopted earlier, did not signify that there had been an inconsistent judicial approach that had led to judicial uncertainty. Furthermore, the Court of Appeal had provided sufficient reasons for its judgments.

36. The applicant contested the Government's arguments. She asserted that she had been the only employee who had been ordered to pay compensation for the missing goods. Identical claims based on identical facts had already been dismissed against her colleagues. The court judgments referred to by the Government were irrelevant to her case.

2. The Court's consideration

37. The Court would make a preliminary observation regarding the scope of the case. It notes that the applicant complained before it about alleged disparities between the judgments of the Skopje Court of Appeal ruling at final instance in the case. Her complaint was that the court had decided her case contrary to its earlier judgments concerning identical cases in which it had found in favour of her colleagues. That had violated, according to her, her rights under Article 6 of the Convention.

38. In such circumstances, the Court considers that the present case can be analysed through the prism of the alleged conflicting case-law of the Skopje Court of Appeal ruling at final instance (see, *mutatis mutandis*, *Tudor Tudor v. Romania*, no. 21911/03, 24 March 2009), and its effects on the applicant's right to a fair trial enshrined in Article 6 § 1 of the Convention (see *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 70, 20 October 2011).

39. In this connection, the Court reiterates that the right to a fair trial must be interpreted in the light of the Preamble to the Convention, which declares the rule of law to be part of the common heritage of the Contracting

States. One of the fundamental aspects of the rule of law is the principle of legal certainty (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII).

40. Conflicting decisions in similar cases heard in the same court which, in addition, is the court of last resort in the matter may, in the absence of a mechanism which ensures consistency, breach that principle and thereby undermine public confidence in the judiciary (see *Beian v. Romania* (no. 1), no. 30658/05, §§ 36-39, ECHR 2007-XIII; *Tudor Tudor*, cited above, § 29; and *Spaseski and others v. the former Yugoslav Republic of Macedonia* (dec.), no. 15905/07, 27 September 2011), such confidence being one of the essential components of a State based on the rule of law.

41. Lastly, the Court reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, among many authorities, *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 31, *Reports of Judgments and Decisions* 1997-VIII). That being so, the Court will not question the interpretation of domestic law by the national courts, save in the event of evident arbitrariness (see, *mutatis mutandis*, *Ādamsons v. Latvia*, no. 3669/03, § 118, 24 June 2008), in other words, when it observes that the domestic courts have applied the law in a particular case manifestly erroneously or so as to reach arbitrary conclusions (see, *mutatis mutandis*, *Farbers and Harlanova v. Latvia* (dec.), no. 57313/00, 6 September 2001, and, albeit in the context of Article 1 of Protocol No. 1, *Beyeler v. Italy* [GC], no. 33202/96, § 108, ECHR 2000-I).

42. The Court notes that the compensation proceedings brought by the employer concerned goods going missing from the store in which the applicant worked as a salesperson. After four remittals, the first-instance court, in its judgment of 3 April 2006, ruled in favour of the applicant and found that the employer could not seek, in the absence of any evidence attributing individual responsibility to her, compensation from her, the amount of which had been specified in the payment request. The court held that the employer's claim had been based on the principle of objective responsibility, which could not apply to the facts of the case. Apparently, this judgment followed the approach which the Skopje Court of Appeal had developed in its earlier judgments given between September 2004 and March 2006 in identical cases that the employer had brought against the applicant's colleagues (see paragraphs 15 and 16 above). That the applicant's case rested on identical issues of fact and law as those of her colleagues was neither challenged by the Government, nor does it appear otherwise from the evidence before the Court.

43. On 23 November 2006 the Skopje Court of Appeal quashed that judgment and ordered the applicant to pay the compensation specified in the payment request. In so doing, the court did not contest the facts established by the first-instance court, but it found that the principle of objective

responsibility, set out in section 98(3) of the Employment Act, was to be applied in her case (see paragraph 12 above). Such interpretation of the substantive law was clearly in contradiction with its earlier case-law, which resulted in diametrically opposite decisions being rendered by the Court of Appeal in what were identical cases. The Government have not denied the existence of these different interpretations, which, according to them, were the result of the jurisprudential development concerning the matter (see paragraphs 27 and 35 above).

44. The Court reiterates that the mere existence of conflicting decisions, in itself, cannot be considered contrary to the Convention (see *Santos Pinto v. Portugal*, no. 39005/04, § 41, 20 May 2008). In the *Iordan Iordanov and Others* case, the Court identified the issues that need to be assessed when analysing whether conflicting decisions in similar cases stemming from the same court violate the principle of legal certainty under Article 6 of the Convention: (1) the existence of “profound and long-lasting divergences” in the relevant case-law; (2) whether domestic law provides for a mechanism capable of removing the judicial inconsistency; and (3) whether this mechanism was applied and, if so, what its effects were (see *Iordan Iordanov and Others v. Bulgaria*, no. 23530/02, § 49, 2 July 2009).

45. As stated above, it is not in doubt that, in the applicant’s case, the Skopje Court of Appeal departed from its earlier case-law regarding identical claims submitted against the applicant’s colleagues (see paragraphs 15 and 16 above). In this connection, the Court reiterates that it is not in principle its function to compare different decisions of national courts, even if given in apparently similar proceedings; it must respect the independence of those courts (see *Nejdet Şahin and Perihan Şahin*, cited above, § 50).

46. For that reason the Court did not find a violation of Article 6 of the Convention in the latter case where two courts, each with its own area of jurisdiction, examining different cases, had reached divergent but nevertheless rational and reasoned conclusions regarding the same legal issue raised by similar factual circumstances. In so doing, it accepted that the divergences of approach that may arise between courts are merely the inevitable outcome of this process of interpreting legal provisions and adapting them to the material situations they are intended to cover (see *ibid.*, § 86).

47. However, the Court considers that the present case should be distinguished from the *Nejdet Şahin and Perihan Şahin* case, since it is here faced with a situation in which the same court applied the same law differently to the same facts. In this connection it observes that the applicable law governing compensation of work-related damages provided for both the individual and objective responsibility of workers (section 98(1) and (3) of the Employment Act 1993, see paragraph 19 above). In five cases concerning the applicant’s colleagues, the Court of Appeal applied the principle of individual responsibility and concluded that

the defendants could not be requested to compensate damage for which they had not been individually responsible. It was only in the applicant's case that the same court applied the principle of objective responsibility. Although such interpretation cannot be said to have lacked a legal basis, it caused the applicant to receive a diametrically opposite answer to the same legal question based on identical facts.

48. The Court further observes that the domestic law (see paragraph 18 above) provided for a mechanism for removing judicial inconsistency. In this connection the Court stresses that the resolution of conflicting case-law should be primarily for the national courts rather than an international court. However, this mechanism could not have been applied in the present case given the fact that the Supreme Court, owing to the operation of the rules on admissibility *ratione valoris* (see paragraph 14 above), had lacked jurisdiction to entertain the applicant's case on the merits. The judgments to which the Government referred in their observations (see paragraph 27 above) were given in individual cases in which the Court of Appeal was not called upon to settle conflicting interpretations, but rather to examine the particular application of the law to those cases.

49. In view of the foregoing, the Court considers that the applicant was faced with a flagrant inconsistency in the application of domestic law that can only undermine the credibility of the courts and weaken public confidence in the judicial system. The Court of Appeal, in its judgment of 23 November 2006, did not give any reasonable explanation for this divergence that resulted in an unjustified restriction of the applicant's right to a fair trial. In the absence of a mechanism to remove this inconsistency, the Court finds that the judgment of the Court of Appeal of 23 November 2006 ran contrary to the principle of legal certainty in violation of the applicant's rights under Article 6 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION (length of the civil proceedings)

50. The applicant complained under Article 6 of the Convention that the length of the civil proceedings (see paragraphs 9-14 above) had been excessive.

A. Admissibility

51. The Government did not raise any objection as regards the admissibility of this complaint.

52. The Court considers that the complaint about the length of the civil proceedings is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

53. The applicant reiterated her arguments that the length of the proceedings had been incompatible with the “reasonable time” requirement.

54. The Government invited the Court to decide the length-of-proceedings complaint in accordance with its established practice on the matter.

2. The Court's consideration

55. The Court notes that the compensation proceedings lasted for over eleven years (between 21 November 1995 and 4 January 2007, the date of service of the final decision of 23 November 2006) at two levels of jurisdiction, of which over nine years and eight months fall within the Court's temporal jurisdiction (after 10 April 1997, the date of ratification of the Convention by the respondent State). The time elapsed for the subsequent proceedings before the Supreme Court cannot be taken into consideration, since the Supreme Court had no competence to decide the case (see paragraph 24 above) and the applicant was not required to exhaust it (see *Kostovska v. the former Yugoslav Republic of Macedonia*, no. 44353/02, § 36, 15 June 2006).

56. The Court considers that the impugned proceedings did not require the examination of complex issues or that any adjournments were attributable to the applicant.

57. As regards the conduct of the authorities, the Court notes that the applicant's case was reconsidered on four occasions. In this connection, it reiterates that repeated remittal orders within one set of proceedings discloses a serious deficiency in the judicial system (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003 and *Pavlyulynets v. Ukraine*, no. 70767/01, § 51, 6 September 2005) Having regard to the criteria laid down in its case-law for assessing the reasonable-time requirement contained in Article 6 § 1 of the Convention (see, among many other authorities, *Philis v. Greece* (no. 2), judgment of 27 June 1997, *Reports* 1997-IV, § 35; *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; and *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, ECHR 2000-IV), the Court considers that the proceedings were unduly prolonged, for which the respondent State bears sole responsibility.

58. There has accordingly been a violation of Article 6 of the Convention as regards the length of the civil proceedings.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION (length of the “set-aside” proceedings)

59. The applicant complained under Article 6 of the Convention that the length of the “set-aside” proceedings (see paragraphs 7 and 8 above) was incompatible with the reasonable-time requirement.

Admissibility

1. The parties’ submissions

60. The Government submitted that the applicant had failed to exhaust the length remedy specified under the 2006 Act (see paragraph 26 above). According to the established practice of the Supreme Court, the six-month time-limit within which that remedy could be used started to run from the date of service of a final decision on the claimant. As the final decision of 2 March 2005 had not been served on the applicant, the set-aside proceedings were to be considered still pending for the purpose of exhaustion of the length remedy. Accordingly, that remedy was still available to the applicant.

61. The applicant contested the Government’s arguments, stating that the set-aside proceedings could not be regarded as pending. They had been finally completed on 2 March 2005.

2. The Court’s consideration

62. Notwithstanding the fact that the issue was not disputed by the parties, the Court must first ascertain whether Article 6 is applicable in the instant case (see, *mutatis mutandis*, *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III).

63. The Court notes that the Skopje Court of Appeal rejected the applicant’s claim as inadmissible, finding that she had no right under the applicable legislation to seek annulment of the payment request. That judgment followed its earlier findings that the payment requests had not been binding on the applicant. The court concluded that the applicant’s responsibility, if any, could only be determined in another set of proceedings initiated by the employer. Indeed, the compensation proceedings that the employer launched against the applicant and her colleagues at the same time resolved the issues raised in the “set-aside” proceedings. In the Court’s view, the Skopje Court of Appeal, ruling at final instance in the case, provided a comprehensive and convincing explanation of the nature of the applicant’s “right” and the resulting lack of competence of the national courts to entertain the claim. In such circumstances, the Court sees no reasons to differ from the conclusion reached by the superior national court by finding, contrary to its view, that there was arguably a

right recognised by domestic law (see *Boulois v. Luxembourg* [GC], no. 37575/04, § 91, ECHR 2012).

64. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4. In these circumstances, the Court does not consider it necessary to examine the non-exhaustion plea raised by the Government.

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION (access to a court)

65. The applicant complained that the Supreme Court had refused to examine her appeal on points of law on the merits, contrary to its previous practice in an identical case (see paragraph 17 above).

66. The Court considers that this complaint should be analysed as an access to court complaint (see, *mutatis mutandis*, *Garžičić v. Montenegro*, no. 17931/07, 21 September 2010). In this connection, it notes that different rules on admissibility *ratione valoris* of an appeal on points of law applied in the applicant's case and in the case *Rev.br.50/99* to which she referred in her application (see, conversely, *Balažoski v. the former Yugoslav Republic of Macedonia*, no. 45117/08, § 32, 25 April 2013). The Civil Proceedings Act 2005 applied to the compensation proceedings before the Supreme Court in the applicant's case (see paragraphs 10, 14 and 25 above). That Act provided for a considerably higher threshold value of claim applicable to proceedings before the Supreme Court than the threshold set in the Civil Proceedings Act 1977, applicable in the case *Rev.br.50/99*. There is no indication that the Supreme Court interpreted and applied the admissibility criterion in an arbitrary manner.

67. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

68. The applicant further alleged that the impugned proceedings had violated her rights under Articles 7, 13 and 14 of the Convention.

69. The Court has examined these allegations. However, in the light of all the material in its possession, and in so far as the matters raised by the applicant are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

70. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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

72. The applicant claimed, in an unclear manner, a total amount of EUR 29,700 just satisfaction in respect of pecuniary and non-pecuniary damage concerning all alleged violations. She claimed compensation for the excessive length of the impugned proceedings, for the outcome of the compensation proceedings and for interest (EUR 5,000) that she claimed to have paid on the principal debt established in the compensation proceedings (see paragraph 13 above). In this connection she submitted a report drawn up by a local bank in Skopje according to which the amount of interest had been set at EUR 5,300.

73. The Government contested these claims as unsubstantiated and excessive. They further argued that there was no causal link between the alleged violation and the pecuniary damage claimed.

74. The Court notes that it has found that the final judgment in the compensation proceedings against the applicant disregarded the principle of legal certainty in violation of Article 6 of the Convention. It therefore considers that the applicant's claim regarding the principal debt and interest is directly linked to the outcome of the compensation proceedings. It therefore awards the applicant EUR 1,880, which is the amount of the principal debt that she was ordered to pay to the employer (see paragraph 13 above). The Court also observes that the amount of interest was calculated by a bank. The Government did not contest that calculation. In such circumstances, the Court cannot but rely on that calculation and accept as established the amount specified by the bank. It further observes that the applicant was bound, pursuant to law and the court judgment of 23 November 2006, to pay the interest. It therefore awards the amount claimed in respect of interest in full. Consequently, the Court awards the applicant EUR 6,880 in respect of pecuniary damage.

75. The Court further considers that the applicant must have sustained non-pecuniary damage, which cannot be compensated solely by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,100 under this head, plus any tax that may be chargeable.

B. Costs and expenses

76. The applicant also claimed EUR 2,000 under this head without specifying whether it concerned costs and expenses incurred before the domestic courts or before the Court.

77. The Government contested this claim as unsubstantiated.

78. Having regard to the information and documents in its possession, the Court finds it appropriate to award the applicant EUR 850 in respect of costs and expenses.

C. Default interest

79. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints regarding the alleged violation of the principle of legal certainty caused by the judgment of 23 November 2006 and the length of the civil proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that the judgment of the Court of Appeal of 23 November 2006 ran contrary to the principle of legal certainty in violation of the applicant's rights under Article 6 of the Convention;
3. *Holds* that there has been a violation of Article 6 of the Convention in respect of the length of the civil proceedings;
4. *Holds*
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, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 6,880 (six thousand eight hundred and eighty euros), in respect of pecuniary damage;
 - (ii) EUR 3,100 (three thousand and one hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;and

(iii) EUR 850 (eight hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

Done in English, and notified in writing on 18 July 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President