



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

FIRST SECTION

CASE OF TASEV v. NORTH MACEDONIA

(Application no. 9825/13)

JUDGMENT

STRASBOURG

16 May 2019

FINAL

16/08/2019

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

In the case of Tasev v. North Macedonia,

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

Linós-Alexandre Sicilianos, *President*,

Ksenija Turković,

Aleš Pejchal,

Krzysztof Wojtyczek,

Armen Harutyunyan,

Jovan Ilievski,

Gilberto Felici, *judges*,

and Renata Degener, *Deputy Section Registrar*,

Having deliberated in private on 2 April 2019,

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

PROCEDURE

1. The case originated in an application (no. 9825/13) against the Republic of North 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/citizen of the Republic of North Macedonia, Mr Slavčo Tasev (“the applicant”), on 30 January 2013.

2. The applicant, a judge in the Štip Court of Appeal, was represented by Ms L. Taseva, a lawyer practising in Štip. The Government of North Macedonia (“the Government”) were represented by their former Agent, Mr K. Bogdanov, and then by their current Agent, Ms D. Djonova.

3. The applicant alleged, in particular, a breach of his right to respect for his private life as a result of the authorities’ refusal to register his ethnicity, as declared by him in the electoral roll for judges.

4. On 22 April 2016 notice of the above complaint, as well as a complaint about the alleged unfairness of the administrative proceedings, was given to the Government, and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1959 and lives in Štip.

A. Proceedings in respect of the rectification of the applicant's ethnicity, as recorded in the electoral roll

6. On 21 September 2012 a vacancy notice was published in respect of five posts on the State Judicial Council (“the SJC”) to be filled by sitting judges elected from among their peers. Ethnicity was not among the stated requirements for the posts (see paragraph 20 below).

7. On 28 September 2012 the applicant lodged a request with the Ministry of Justice for his ethnicity entry in the electoral roll to be changed from that of Bulgarian to Macedonian.

8. On 15 October 2012 the electoral roll was made available to the Štip Court of Appeal for inspection. Since the applicant's ethnic designation had not been changed, on the same date he lodged a fresh request for it to be rectified (from Bulgarian to Macedonian), relying on section 17 of the State Judicial Act (“the Act”) (see paragraph 23 below).

9. By a decision of 18 October 2012, the Ministry of Justice refused the applicant's request. The relevant parts of the decision read as follows:

“... [the applicant's] requests for a change to the details [recorded] in the electoral roll regarding ‘ethnicity’ were submitted after the announcement had been published of an election of [new] members to [the SJC]. The requested change cannot be made because it [was intended to secure] the attainment of a(n) [electoral] right concerning the election of members of [the SJC]. A change of ethnicity entry [sought exclusively for the attainment of another right] after the announcement for the election of members of the SJC [would put other judges] ... , in a disadvantageous position ...”

10. The applicant lodged an appeal with the Administrative Court challenging that decision and arguing that the Ministry's decision had not been based on any statutory grounds. In particular there had been no provision preventing him from changing his ethnicity entry in the electoral roll while the election of members to the SJC had been ongoing. He furthermore submitted that it had been his personal right to determine his own ethnicity and that the Ministry had had no grounds for disregarding his chosen affiliation in this regard. The conclusion that his request would have put other judges in a disadvantageous position had been unreasonable and unsubstantiated.

11. On 25 October 2012 the Ministry submitted its observations in reply, to which it appended, *inter alia*, extracts from the electoral rolls of 2006, 2008 and 2010.

12. On 26 October 2012 the Administrative Court upheld the Ministry's decision and the reasons that the Ministry had given. It furthermore added that:

“... the request (lodged after the publication of the [election] announcement) for a change to the ethnicity entry was aimed exclusively at the attainment of another [electoral] right that would have put other judges (who had attained their right related to the election of [new] members to [the SJC]), in a disadvantageous position. [The applicant's] request for the rectification post-dated the announcement of the election

of [new] members to [the SJC]. The requested change cannot be regarded as a ‘rectification’ since it does not concern a change to numbers, names or other obvious errors, but rather concerns a detail [concerning his ethnicity] that [the applicant] provided. He enjoyed rights as [an individual] of Bulgarian ethnicity concerning the election of members to [the SJC]. That was established on the basis of extracts from the electoral rolls of October 2006, December 2008 and July 2010 submitted together with the observations in reply to [the applicant’s] claim. In these three electoral rolls [the applicant was] declared [to be] Bulgarian. This means that there has been no violation of his right to declare his own ethnicity.”

13. The applicant appealed against this decision, contesting as unreasonable the finding that his request had aimed at enabling him to attain rights related to the election of new members to the SJC and that the requested change would have put other judges involved in that election in a disadvantageous position. It was unclear how and by what means those judges would have been put in such a position, or indeed which judges would have been affected. Such findings had no legal basis. Furthermore, he contested as irrelevant the findings that his requests had been lodged after the publication of the announcement. He also reiterated his arguments that declaring his own ethnic identity was his personal right. In that connection it was irrelevant which ethnicity had been ascribed to him in 2006, 2008 and 2010 and what electoral rights he had attempted to attain in the past as a Bulgarian. Lastly, he had not been given the opportunity to comment on the electoral rolls of 2006, 2008 and 2010, which the Ministry of Justice had submitted in evidence and to which the Administrative Court had referred in its decision establishing his ethnic identity as Bulgarian.

14. On 2 November 2012 the Ministry’s observations in reply were communicated to the applicant.

15. On 5 November 2012 the Higher Administrative Court dismissed the applicant’s appeal. The judgment, in which the court cited the wording of provisions of the Act and the General Administrative Procedure Act (see paragraphs 19, 23 and 24 below), stated, *inter alia*, that:

“... [the applicant requested] the modification of his ethnicity entry in the electoral roll after the [publication of] the announcement of the election of [new] members to the SJC, in which he ... participates. Such a modification of the national ethnicity after the publication of the announcement related to another right would leave other judges who attain the right related to election of members to the SJC in a disadvantageous position. [The applicant], as a Bulgarian, enjoyed rights related to the election of members to the SJC [given the fact that] he had declared himself in the electoral rolls of [2006, 2008 and 2010] as Bulgarian ...

... [The Ministry’s] decision is based on the State Judicial Council Act and the General Administrative Procedure Act ...

... [T]he court examined and rejected as ill-founded [the applicant’s] allegations that the impugned decision had restricted his right to assert his own ethnic identity. In the present case, [the applicant] requested a rectification – that is to say the modification of his ethnicity entry in the electoral roll. [The Ministry’s] refusal [to do so] cannot be regarded as a restriction on his right to assert his ethnic identity, given that the

modification in question was sought after the announcement of the election of [new] members to the SJC had been published.”

B. Other relevant information

16. On 5 October 2012 the applicant submitted himself for election as a member of the SJC. On an unspecified date, he submitted a written statement affirming that he was of Macedonian ethnicity and that his application for election to the SJC had been made with regard to the general list of judges of the courts within the territorial jurisdiction of the Štip Court of Appeal (see paragraph 21 below).

17. By a letter of 3 December 2012, the SJC informed the applicant that it had struck his name out of the general list of candidates for election to the SJC to be selected from judges of the courts within the territorial jurisdiction of the Štip Court of Appeal. It had decided to do so in the light of the fact that his declared ethnicity (Macedonian) had not corresponded with the official records, according to which since 1995 he had been registered as being of Bulgarian ethnicity. It also acknowledged the outcome of the “rectification proceedings” described above. The SJC furthermore stated that it was not required under the Act to take any decision related to entries in the electoral roll. Section 17 of the Act specified the procedural rules and the relevant body in respect of their rectification.

II. RELEVANT DOMESTIC LAW

A. Constitution

18. Article 8 § 1 (2) of the Constitution defines the free expression of national (ethnic) identity as a fundamental value of the constitutional order.

B. State Judicial Council Act (*Закон за Судскиот Совет на Република Македонија*) (“the Act”)

19. Section 6 of the Act provides that the SJC is composed of fifteen members, of whom eight members are judges elected from among their peers. Three of those members must belong to ethnic-minority communities.

20. Under section 11 of the Act, any judge with a minimum of five years’ working experience as a judge who has obtained a positive evaluation in the previous three years can stand for election to membership of the SJC. A statement indicating the list of candidates for which the judge is applying must be appended to the written application (section 12).

21. Section 13 of the Act provides the following lists of candidates for election to the SJC: a general list of candidates drawn from judges of the

Supreme Court; four general lists of candidates drawn from judges of the courts within the territorial jurisdiction of the Courts of Appeal (including the Štip Court of Appeal); and a single list of candidates consisting of judges belonging to ethnic-minority communities (*заедници кои не се мнозинство*).

22. Section 16 provides that five members of the SJC are to be elected from the general lists of candidates (one member per list) and three members from judges belonging to ethnic-minority communities. All judges registered in the electoral roll vote for candidates on the single list.

23. Under section 17, the Ministry of Justice administers the electoral roll. It contains personal information about judges, including their respective ethnicity (*национална припадност*). Within five days of elections for members of the SJC being announced, the electoral roll is made available for inspection in all courts, and every judge is entitled to seek rectification of the details (in respect of themselves) thereon for a further three days. The Minister of Justice must decide upon such a request within three days. His or her decision may be subject to an appeal in administrative-dispute proceedings.

C. General Administrative Procedure Act

24. Section 222(1) of the General Administrative Procedure Act provides for the rectification, at any time, of errors and other obvious mistakes in a decision or certified transcripts.

III. INTERNATIONAL LAW

Framework Convention for the Protection of National Minorities, Council of Europe, Strasbourg, February 1995 (“the Framework Convention”)

25. Article 3 of the Framework Convention reads as follows:

“Article 3

1. Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.

2. Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.”

26. The explanatory report on the Framework Convention emphasises that Article 3 § 1 “firstly guarantees to every person belonging to a national minority the freedom to choose to be treated or not to be treated as such.

This provision leaves it to every such person to decide whether or not he or she wishes to come under the protection flowing from the principles of the framework Convention” (§ 34). The report specifies that that paragraph “does not imply a right for an individual to choose arbitrarily to belong to any national minority. The individual’s subjective choice is inseparably linked to objective criteria relevant to the person’s identity” (§ 35). It adds that paragraph 1 “further provides that no disadvantage shall arise from the free choice it guarantees, or from the exercise of the rights which are connected to that choice [and that t]his ... provision aims to secure that the enjoyment of the freedom to choose shall also not be impaired indirectly” (§ 36).

THE LAW

I. ALLEGED VIOLATIONS OF THE CONVENTION

27. The applicant complained under Article 6 of the Convention that he had not been given the opportunity to examine and comment on the extracts from the electoral rolls of 2006, 2008 and 2010 submitted as evidence by the Ministry of Justice and cited in its reasoning by the Administrative Court. Under the same Article, he complained about the authorities’ refusal to change his ethnicity entry in the electoral roll, as that refusal had violated his right to an ethnic identity. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], no. 37685/10, § 124, 20 March 2018, and *Söderman v. Sweden* [GC], no. 5786/08, § 57, ECHR 2013), considers that this latter complaint should be analysed from the standpoint of Article 8 of the Convention. Articles 6 and 8 of the Convention, in so far as relevant, read as follows:

Article 6 § 1

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

Article 8

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Article 8 complaint

1. Admissibility

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

29. The Court concludes that the complaint under this head is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

30. The applicant reiterated that his ethnic identity was his personal right and that he should not be required to prove his ethnic affiliation. He maintained that his self-identification as ethnic Macedonian had been genuine and denied that his request in the impugned proceedings had been aimed at gaining any advantage over other candidates in the election for membership of the SJC. In that respect he argued that any judge who fulfilled the statutory conditions set out in sections 11 and 12 of the Act (see paragraph 20 above), irrespective of his or her ethnicity, was eligible to stand in elections to the SJC on one of the general lists of candidates. On the other hand, candidates of Macedonian ethnic origin could not stand in elections to the SJC on the single list of candidates drawn from judges belonging to ethnic-minority communities. Accordingly, nothing had prevented him from standing as a candidate of Bulgarian ethnicity in elections to the SJC on the general lists.

31. The Government submitted that the applicant had abused his right to determine his own ethnic identity in order to increase his chances in the elections to the SJC. They presented evidence that since 1995, when he had been appointed as judge, he had declared himself to be an ethnic Bulgarian. He had failed to prove that he had been an ethnic Macedonian. His request (paragraph 7 above) in the impugned proceedings had been lodged only after the publication of the announcement regarding the election of new members to the SJC; this fact had raised concerns that the request had been lodged in an effort to increase his chances in the election for membership of the SJC, in which he had intended to participate. In the 2012 elections to the SJC the applicant had applied for the first time to be included as an ethnic Macedonian on the general list of judges serving in the courts within the territorial jurisdiction of the Štip Court of Appeal. Had the applicant been admitted to that list as an ethnic Macedonian it would have considerably increased his chances of being elected. According to the Government, “there would have been no problem for the applicant to have his ethnicity entry

changed had his request pre- or post-dated the announcement of the election in which he had been involved”.

(b) The Court’s consideration

32. The Court has previously held that ethnic identity is a detail pertaining to an individual’s identity that falls within the personal sphere protected by Article 8 of the Convention (see *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, § 58, ECHR 2012, and *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 66, 4 December 2008).

33. It is also to be reiterated that refusing members of a minority the right to voluntarily opt for and benefit from ordinary law amounts not only to discriminatory treatment but also to a breach of a right of cardinal importance in the field of protection of minorities, that is to say the right to free self-identification. The negative aspect of this right, namely the right to choose not to be treated as a member of a minority, is not limited in the same way as the positive aspect of that right (see paragraphs 25-26 above). The choice in question is completely free, provided it is informed. It must be respected both by the other members of the minority and by the State itself. That is supported by Article 3 § 1 of the Council of Europe Framework Convention for the Protection of National Minorities (see paragraph 26 above) which provides as follows: “no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice”. The right to free self-identification is not a right specific to the Framework Convention. It is the “cornerstone” of international law on the protection of minorities in general. This applies especially to the negative aspect of the right: no bilateral or multilateral treaty or other instrument requires anyone to submit against his or her wishes to a special regime in terms of protection of minorities (see *Molla Sali v. Greece* [GC], no. 20452/14, § 157, 19 December 2018).

34. The Court observes at the outset that the Government did not deny before it that the authorities’ refusal to change the applicant’s ethnicity entry in the electoral roll had amounted to an interference with his “private life” within the meaning of Article 8 § 1 of the Convention. In view of the fact that the domestic law entitled (and required) judges to declare their ethnic identity in the electoral roll within the context of elections to the SJC (see paragraphs 21 and 23 above), the Court sees no reason to hold otherwise (see *Ciubotaru v. Moldova*, no. 27138/04, § 53, 27 April 2010, in which the authorities refused to record the applicant’s declared ethnic identity in the State Population Registry database).

35. The Court will examine whether that interference was compatible with the second paragraph of Article 8 of the Convention – that is to say whether it was “in accordance with the law”, pursued one or more of the

legitimate aims listed in that paragraph and was “necessary in a democratic society”.

36. According to the Court’s established case-law, the expression “in accordance with the law” requires that an impugned measure should have some basis in domestic law; moreover, it also refers to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects (see *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 341, ECHR 2012 (extracts)). Domestic law must indicate with reasonable clarity the scope and manner of the exercise of the relevant discretion conferred on the public authorities so as to ensure to individuals the minimum degree of protection to which they are entitled under the rule of law in a democratic society (see *Piechowicz v. Poland*, no. 20071/07, § 212, 17 April 2012).

37. In the present case, the applicant, who was a judge of the Štip Court of Appeal, requested to have his ethnicity entry in the electoral roll of 2012 changed from that of Bulgarian to Macedonian. The Ministry of Justice and courts at two levels of jurisdiction declined to grant that request on the following grounds: 1) it had been submitted after the announcement of the election of new members to the SJC had been published; 2) it had related to the applicant’s electoral rights in the forthcoming election for new members to the SJC; and 3) it would have put other judges involved in those election at a disadvantageous position (see paragraphs 9, 12 and 15 above). In so far as it may be understood from the Government’s observations that the applicant failed to prove his claimed (Macedonian) ethnic identity, the Court observes that at no stage in the impugned proceedings was the applicant requested to provide any (objective) evidence that his claim (to have his ethnicity changed) was genuine. Indeed, there is nothing in the impugned decisions to suggest that the applicant’s request was dismissed as purely subjective and based on unsubstantiated grounds. In this respect the Court is also mindful of the Government’s argument that the applicant’s request would have been granted had it not been submitted after the publication of the announcement of the election of new members to the SJC, in which he intended to participate as a candidate. They made no reference to any further requirement, such as the objective substantiation of that request (see paragraph 31 above).

38. Given those circumstances, the Court considers that the main reason for the impugned refusal was the timing of the applicant’s request, seen within the context of his participation as a candidate in the forthcoming election to the SJC.

39. The Court notes that neither the Ministry nor the Administrative Court referred to any statutory or other legal provision when explaining the basis of their findings, notwithstanding the applicant’s explicit complaints in this respect (see paragraph 10 above). Only the Higher Administrative Court stated that the impugned refusal of the applicant’s request (see

paragraph 7 above) had been based on the State Judicial Council Act (“the Act”) and the General Administrative Procedure Act; it furthermore identified the provisions that it deemed relevant for its decision (see paragraph 15 above). The Court observes that section 6 of the Act specified the composition of the SJC and that section 221(1) of the General Administrative Procedure Act set out the general rules regarding the rectification of errors in respect of administrative matters. Neither of those provisions concerned the electoral roll or the rectification of details contained therein. Such issues were regulated by section 17 of the Act, to which the applicant also referred in his request for the modification of his ethnicity entry in the electoral roll (see paragraph 8 above). That was also confirmed by the SJC (see paragraph 17 above). It has not been argued, either during the impugned proceedings or before the Court, that there was open to the applicant any other legal avenue in respect of his request.

40. The Court notes that section 17 of the Act specifies the authority of the Ministry to administer the electoral roll and the procedural rules under which judges can seek the rectification of recorded details, including the designation of their ethnicity. Under that provision, such a request is to be lodged after the electoral roll has been made available for inspection, which, in itself, can occur only after the public announcement of the election of new members to the SJC (see paragraph 23 above). In the Court’s view, that provision is couched in general terms and applies to all judges whose personal details are recorded in the electoral roll. It contains no clause that further specifies or limits its applicability or makes it dependent on, for example, certain circumstances that apply to the claimant in the present case. Indeed, there is nothing in that provision that could be interpreted as preventing (that is to say excluding) judges running for election to the SJC from seeking the rectification of their personal entries in the electoral roll, (including their respective ethnicity designations) subsequent to the publication of the announcement of such an election. In the present case, the domestic authorities cited and applied the above interpretation of that provision, which in the Court’s opinion cannot be said to have been predictable; furthermore, in the Court’s opinion, the applicant could not reasonably have expected, in the absence of any clause to that effect, that his request would fail on those grounds. Accordingly, although it was accessible, the legal basis on which the impugned refusal rested was not foreseeable.

41. This is sufficient for the Court to come to the conclusion that the interference with the applicant’s Article 8 rights was not “in accordance with the law” (see *Kurić and Others*, cited above, § 349). Having regard to that finding, it does not consider it necessary to ascertain whether the other requirements of Article 8 § 2 were complied with. Consequently, the Court finds that there has been a violation of Article 8 of the Convention.

B. Article 6 complaint

Admissibility

(a) The parties' submissions

42. The Government contested that the applicant had not been acquainted with the electoral rolls of 2006, 2008 and 2010 submitted in evidence by the Ministry together with its reply to the claim that he had lodged with the Administrative Court. Under the applicable legislation, those judicial rolls had been made available for inspection at the time, and the applicant had not challenged them. That the Ministry's observations submitted in reply to his appeal had been forwarded to the applicant (paragraph 14 above) proved that he had been acquainted with the above-mentioned evidence.

43. The applicant reiterated that the evidence in question had not been communicated to him and that accordingly, he had not been given the opportunity to comment on it.

(b) The Court's consideration

44. In view of the circumstances of the present case, the Court finds it appropriate to examine of its own motion whether the applicant's complaint under this head is admissible under Article 35 § 3(b) of the Convention (see *Magomedov and Others v. Russia*, nos. 33636/09 and 9 others, § 49, 28 March 2017). This provision provides as follows:

Article 35 § 3(b)

"3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

...

(b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.

..."

45. The Court notes at the outset that the applicant's complaint under this head concerns only documentary evidence, notably extracts from the electoral rolls of 2006, 2008 and 2010, which were appended to the Ministry's observations submitted in reply to the applicant's claim before the Administrative Court (see paragraph 11 above). In the absence of any evidence that those extracts were served on the applicant, the Court is unable to accept the Government's argument that that service actually occurred. The fact that the Ministry's observations submitted in reply to the applicant's appeal before the Higher Administrative Court were

communicated to the applicant is inconclusive in that respect (see paragraph 39 above).

46. In the Court's opinion, this evidence did not comprise observations constituting a reasoned opinion on the merits of the applicant's claim (see, conversely, *Milatová and Others v. the Czech Republic*, no. 61811/00, § 65, ECHR 2005-V). They were objective pieces of evidence regarding the applicant's entries (including information regarding his ethnic identity) in three preceding electoral rolls. In this connection the Court agrees with the Government that the applicant must have been aware of the contents of that evidence (see paragraph 23 above). Indeed, he did not argue and there is nothing to indicate that he had no knowledge of them (see *BENet Praha, spol. s r.o. v. the Czech Republic*, no. 33908/04, § 125, 24 February 2011).

47. Furthermore, as can be seen from the Administrative Court's decision of 26 October 2012, which was confirmed on appeal by the Higher Administrative Court (see paragraphs 12 and 15 above), that evidence enabled the courts to establish the applicant's declared ethnic identity (Bulgarian) at the time in question. However, the fact that the applicant had previously declared himself to be Bulgarian could easily have been determined by consulting the material in the case file, and the administrative courts could have established it by exercising their functions (see *Holub v. the Czech Republic* (dec.), no. 24880/05, 14 December 2010; see, conversely, *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 44, 3 March 2000). Indeed, in the wording of the requests that set in motion the impugned proceedings the applicant clearly stated that his intention was to have his ethnic-identity entry in the electoral roll changed from that of Bulgarian to Macedonian (see paragraphs 7 and 8 above).

48. Lastly, having regard to the grounds on which the Administrative Court dismissed the applicant's claim (see paragraph 34 above), the Court does not consider that the documentary evidence in issue manifestly influenced that court's decision. In the Court's view, the said evidence was of no importance for the outcome of the case and the Administrative Court's findings on the merits of the applicant's claim (see, conversely, *Colloredo Mannsfeld v. the Czech Republic*, nos. 15275/11 and 76058/12, §§ 30-31, 15 December 2016).

49. For these reasons, the Court finds that the applicant did not suffer a significant disadvantage when the Administrative Court failed to communicate to him copies of the extracts of the electoral rolls submitted in evidence by the Ministry (see *Liga Portuguesa de Futebol Profissional v. Portugal* (dec.), no. 49639/09, § 39, 3 April 2012).

50. It furthermore adds that the present case has been duly considered by domestic courts at two instances and that respect for human rights does not require an examination of this complaint on the merits (see *Cavajda v. the Czech Republic* (dec.), no. 17696/07, 29 March 2011).

51. It follows that this complaint must be declared inadmissible, in accordance with Article 35 § 3 (b) of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed 60,000 euros (EUR) in respect of non-pecuniary damage arising from the mental suffering related to the alleged violations complained of.

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

55. Having regard to the violation found above, the Court considers that an award of compensation for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards the applicant EUR 4,500, plus any tax that may be chargeable.

B. Costs and expenses

56. The applicant also claimed EUR 807 for the costs and expenses incurred before the domestic courts and EUR 2,589 for those incurred before the Court. The first figure concerned the court fees in respect of the proceedings before the administrative courts; the second figure concerned the fees for his legal representation (on the basis of the tariffs list of the Macedonian Bar), as well as postal and translation expenses. The applicant submitted a fee note and copies of some payment slips.

57. The Government contested those claims as unsubstantiated and excessive.

58. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Editions Plon v. France*, no. 58148/00, § 64, ECHR 2004-IV). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,800, covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

59. 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,

1. *Declares*, by a majority, the complaint concerning the domestic authorities' refusal to register the applicant's declared ethnicity admissible;
2. *Declares*, unanimously, the remainder of the application inadmissible;
3. *Holds*, by six votes to one, that there has been a violation of Article 8 of the Convention;
4. *Holds*, by six votes to one,
 - (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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 4,500 (four thousand and five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,800 (one thousand and eight hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 16 May 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Deputy Registrar

Linos-Alexandre Sicilianos
President

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

L.A.S

R.D.

PARTLY DISSENTING OPINION OF JUDGE WOJTYCZEK

1. I respectfully disagree with the views of the majority that the application is admissible and that Article 8 has been violated. In my opinion, the decision to refuse to change the applicant's entry on the electoral roll pertaining to his ethnic identity did not amount to an interference with the right protected by Article 8 of the Convention. My disagreement with the majority pertains in particular to (i) the interpretation of the Framework Convention for the Protection of National Minorities, which forms the context in which the European Convention on Human Rights is applied; (ii) the methodology for the application, as well as the meaning, of Article 8 of the European Convention on Human Rights; and (iii) the methodology for the interpretation of national law and its content.

2. Concerning the facts of the case, I note that the applicant identified himself as Bulgarian in the previous elections to the State Judicial Council (in 2006, 2008 and 2010 – see paragraph 15 of the judgment). In 2012 he decided to identify himself as Macedonian in these elections. The applicant justified this new identity solely by his right to free self-identification (see paragraph 10). According to the national authorities, the applicant was seeking an unfair advantage in the elections (see paragraph 12 and 15). To put it in other words, his request was dismissed as abusive by the national authorities.

3. In the instant case the majority rightly refer to the Framework Convention for the Protection of National Minorities. I note that North Macedonia has ratified this treaty and that it entered into force in respect of that State on 1 February 1998. By a letter of the Minister of Foreign Affairs, dated 16 April 2004, registered at the Secretariat General of the Council of Europe on 2 June 2004, North Macedonia made the following declaration in connection with this treaty, replacing its previous declarations:

“The term ‘national minorities’ used in the Framework Convention and the provisions of the same Convention shall be applied to the citizens of the Republic of Macedonia who live within its borders and who are part of the Albanian people, Turkish people, Vlach people, Serbian people, Roma people and Bosniac people.”

4. The Framework Convention for the Protection of National Minorities contains a provision which has the following wording:

Article 3

“1. Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.

2. Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.”

The Explanatory Report to the Framework Convention for the Protection of National Minorities contains the following explanations in this respect:

“12. It should also be pointed out that the framework Convention contains no definition of the notion of ‘national minority’. It was decided to adopt a pragmatic approach, based on the recognition that at this stage, it is impossible to arrive at a definition capable of mustering general support of all Council of Europe member States.

...

Article 3

...

Paragraph 1

34. Paragraph 1 firstly guarantees to every person belonging to a national minority the freedom to choose to be treated or not to be treated as such. This provision leaves it to every such person to decide whether or not he or she wishes to come under the protection flowing from the principles of the framework Convention.

35. This paragraph does not imply a right for an individual to choose arbitrarily to belong to any national minority. **The individual’s subjective choice is inseparably linked to objective criteria relevant to the person’s identity** [emphasis added].

36. Paragraph 1 further provides that no disadvantage shall arise from the free choice it guarantees, or from the exercise of the rights which are connected to that choice. This part of the provision aims to secure that the enjoyment of the freedom to choose shall also not be impaired indirectly.”

In other words, according to the Explanatory Report, the Framework Convention does not guarantee the right to choose arbitrarily one’s own ethnic identity. It only guarantees the right of persons belonging to national minorities to opt out freely from the special protection of the Framework Convention and to choose the general regime. A person belonging to a national minority has the right to opt out of the Framework Convention protection in certain chosen spheres of life or in all fields. At the same time, affiliation with a national minority or the national majority for the purpose of the exercise of certain rights is not identical to ethnic identity. Ethnic identity as such, under the Framework Convention, reflects objective criteria accepted in the society in question. It is not a subjective feeling and cannot be chosen arbitrarily.

The reasoning of the majority may suggest that for the purpose of recognition of ethnic identity by the State authorities, the subjective feelings of the person concerned are always decisive. In my view, such an interpretation of the Framework Convention would not be correct. It would depart both from the text of the treaty and from the intent of the Contracting Parties as expressed in the above-mentioned Explanatory Report.

5. I have previously expressed my doubts as to whether the right enshrined in Article 8 of the Convention may extend to ethnic identity (see

my separate opinion appended to the judgment in the case of *R.B. v. Hungary*, no 64602/12, 12 April 2016). This issue, however, is not decisive in the present case, because in any event it is difficult to conclude that Article 8, as understood in the Court’s case-law, is applicable to the applicant’s grievances.

The Court addressed issues concerning the protection of ethnic identity under Article 8 of the Convention in the judgment in the case of *Ciubotaru v. Moldova* (no. 27138/04, 27 April 2010), in which it expressed the following views (§ 57):

“The Court does not dispute the right of a Government to require the existence of objective evidence of a claimed ethnicity. In a similar vein, the Court is ready to accept that it should be open to the authorities to refuse a claim to be officially recorded as belonging to a particular ethnicity where such a claim is based on purely subjective and unsubstantiated grounds.”

I fully agree with this view.

This approach is further confirmed and explained in paragraph 59 of the same judgment in the following terms:

“Having regard to the circumstances of the case as a whole, it cannot be said that the procedure in place to enable the applicant to have his recorded ethnicity changed complied with Moldova’s positive obligations to safeguard his right to respect for his private life. For the Court, the State’s failure consists in the inability for the applicant to have examined his claim to belong to a certain ethnic group in the light of the **objectively verifiable evidence adduced in support of that claim.**” [emphasis added]

Under this approach, ethnic identity consists in belonging to an ethnic community. Although membership of the community depends also on personal choice, it cannot be reduced to such a choice. Membership of an ethnic community is a social reality involving different types of interactions with its other members. In other words, Article 8 does not protect the freedom to determine arbitrarily one’s own ethnic identity by way of a simple declaration not substantiated by any objective evidence. Therefore, the refusal to recognise a change of ethnic identity if the request is not substantiated by any evidence pointing to objective criteria cannot be seen as an interference with a right protected by Article 8.

6. In paragraph 32 of the instant judgment the majority express the following view:

“The Court has previously held that ethnic identity is a **detail pertaining** to an individual’s identity that falls within the personal sphere protected by Article 8 of the Convention (see *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, § 58, ECHR 2012, and *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 66, 4 December 2008).” [emphasis added]

This wording is not very fortunate. The word “detail” in English may mean either (i) “an individual feature, fact or item” or (ii) “a minor or less significant item or feature” (see *The New Oxford Dictionary of English*,

J. Pearsall (ed.), Oxford University Press, Oxford, 1998, p. 502, entry “*detail*”). In my view, for most people ethnic identity is neither of the above. Ethnic identity is an essential part of personal identity, one of its most important aspects. As explained by the Court in the reasoning of the judgment in the case of *Ciubotaru* (cited above, § 53), “an individual’s ethnic identity constitutes an essential aspect of his or her private life and identity”.

I also note that in the two judgments quoted in paragraph 32 of the instant judgment, ethnic identity is referred to as an “element” and not as a detail. The phrase “a detail pertaining to an individual’s identity” is taken from the *Ciubotaru* judgment (cited above, § 49). However, the label “detail” is contradicted in the same judgment by emphasising the essential nature of ethnic identity (*ibid.*, § 53).

7. The applicant in the present case complained that his new ethnic identity was not recognised in the context of elections to the State Judicial Council. The case raises the question whether the applicant was able to secure recognition of his new ethnic identity in other spheres of life and whether he could seek from the authorities a more general recognition of his new ethnic identity which could make it easier for him to have his identity recognised in more specific spheres of life.

The question of respect for a person’s ethnic identity requires a broader assessment of the person’s legal situation in this respect *vis-à-vis* the national authorities in different spheres of life. In particular, it seems indispensable to get a comprehensive view of the national legislation pertaining to the recognition of ethnic identity in these different spheres. It is also necessary to consider how this legislation has been applied to the applicant.

The majority decided to adopt an area-specific approach: they looked at ethnic identity in the context of elections of the State Judicial Council while ignoring the question of recognition of ethnic identity in other contexts. In my view, such a methodology of applying Article 8 to questions of ethnic identity is problematic, even if the authorities have to observe the right of every person belonging to a national minority to opt out of minority protection in some areas while not in others.

8. When assessing whether the domestic authorities complied with Article 8 of the Convention, the majority focus on the question of the foreseeability of the impugned interference and analyse the meaning of section 17 of the State Judicial Council Act. They conclude that “although it was accessible, the legal basis on which the impugned refusal rested was not foreseeable” (see paragraph 40 *in fine* of the judgment).

I note that under section 17 of the State Judicial Council Act, within five days of elections for members of the SJC being announced, the electoral roll is made available for inspection in all courts, and every judge is entitled to seek **rectification** of the details (in respect of themselves) thereon for a

further three days. The law guarantees the right to have entries rectified, which presupposes that the relevant information should reflect an objective reality. The applicant could not legitimately expect his ethnic identity to be modified without sufficient substantiation of his request. In my view, the national legislation is sufficiently clear and precise in this respect.

It is true that the decisions of the domestic authorities were not reasoned in a satisfactory way. But at the same time, it appears that there were no grounds to expect that the authorities would accept the applicant's request.

9. The assessment of the clarity of the national legislation and the foreseeability of the authorities' decision has another serious flaw. The majority interpret section 17 in complete isolation from any other legal rule or provision. The impugned provision is interpreted without any consideration for its systemic context. This context consists of relevant legal rules which might have been inserted in other statutes or regulations and more general principles which may be applicable and which might have implicitly guided the national authorities, even if they did not consider it necessary to refer expressly to them in the reasoning of the decisions they rendered. It is also necessary to take into account all the relevant rules concerning the recognition of ethnic identity in other spheres of life.

It does not seem reasonable to assess whether a request was duly rejected by an administrative authority as abusive without looking at more general legal rules in domestic law concerning abusive applications and without taking into account the relevant case-law of the domestic courts concerning the abuse of rights in administrative proceedings. The approach of the majority violates the established canons of legal interpretation.

10. As mentioned above, the majority rightly emphasise the right to opt out of the special regime protecting ethnic minorities. I note that this right to opt out was fully observed. The applicant himself explained that he was free to opt out from running on a national minority list and to run on a general list of candidates (see paragraph 30 of the judgment). There was nothing preventing him from benefiting from the general regime applicable to all citizens of North Macedonia.

I also note in this context that the right to opt out of the special regime for minorities is limited to the regime under the Framework Convention. Elections to national councils of the judiciary are not covered by this treaty.

11. In paragraph 39 *in fine* of the judgment the majority state the following: "It has not been argued, either during the impugned proceedings or before the Court, that there was open to the applicant any other legal avenue in respect of his request." This is simply not true. According to the Government, the applicant could have submitted a renewed request after the elections. The applicant has not denied this assertion. The resulting delay, given the context of the case, would not appear unreasonable. At the same time, the applicant did not claim that he would have suffered any significant disadvantage because of such a delay.

In these circumstances, the refusal of the domestic authorities to accept the applicant's request does not reach the threshold of an interference with a right protected under Article 8 of the Convention, as understood in the Court's case-law.