



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

SECOND SECTION

CASE OF ZAHARIEV v. NORTH MACEDONIA

(Application no. 26760/22)

JUDGMENT

Art 6 § 1 (criminal) • Fair hearing • Domestic courts' failure to address applicant's argument related to his alleged immunity from prosecution under the 1961 Vienna Convention on Diplomatic Relations in criminal proceedings resulting in his conviction

Prepared by the Registry. Does not bind the Court.

STRASBOURG

5 November 2024

FINAL

05/02/2025

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

In the case of Zahariev v. North Macedonia,

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

Arnfinn Bårdsen, *President*,

Jovan Ilievski,

Saadet Yüksel,

Lorraine Schembri Orland,

Frédéric Krenc,

Diana Sârcu,

Gediminas Sagatys, *judges*,

and Dorothee von Arnim, *Deputy Section Registrar*,

Having regard to:

the application (no. 26760/22) 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 Bulgarian national, Mr Borislav Zahariev Zahariev (“the applicant”), on 27 May 2022;

the decision to give notice to the Government of North Macedonia (“the Government”) of the complaint under Article 6 of the Convention concerning the lack of a fair hearing and to declare inadmissible the remainder of the application;

the fact that the Bulgarian Government did not express a wish to intervene in the present case (Article 36 § 1 of the Convention and Rule 44 § 1 (a) of the Rules of Court);

the parties’ observations;

Having deliberated in private on 8 October 2024,

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

INTRODUCTION

1. The case concerns the reasoning of the domestic courts’ judgments in dismissing the applicant’s argument that he enjoyed immunity from criminal jurisdiction under the Vienna Convention on Diplomatic Relations of 1961 (“the Vienna Convention”).

THE FACTS

2. The applicant was born in 1965 and lives in Sofia. He was represented by Mr M. Neykov, a lawyer practising in Plovdiv.

3. The Government were represented by their Agent, Ms D. Djonova.

4. The facts of the case may be summarised as follows.

5. Between 2004 and 2009 the applicant worked as a financial director of a telecommunications company in the respondent State.

6. From January 2007, the applicant's wife worked as an official (службеник) at the Bulgarian Cultural and Information Centre ("the Centre") attached to the Bulgarian embassy ("the embassy") in the respondent State.

7. On 24 January 2012 an investigating judge opened an investigation against the applicant and another person on suspicion of abuse of office (злоупотреба на службена положба и овластувања) and tax evasion (даночно затајување), allegedly committed by the applicant in 2008 and relating to his work at the telecommunications company. On 11 February 2013 the public prosecutor filed an indictment against the applicant.

8. On 13 June 2013 the applicant and his lawyer informed the Skopje Court of First Instance ("the trial court") that the applicant held a special identity card granting him, under international law, absolute immunity from prosecution. They submitted a copy of that card, which had been issued by the Ministry of Foreign Affairs ("the Ministry"). The card stated that its holder enjoyed immunity from criminal jurisdiction, arrest or police custody in the territory of the respondent State.

9. The trial court scheduled ten hearings between 16 October 2013 and 22 September 2015, most of which were adjourned. The applicant was absent from those hearings and was represented by a lawyer, who stated on several occasions that he had advised his client not to attend the hearings until the court had decided on the issue of his immunity.

10. In the meantime, by a letter apparently received by the trial court after 30 April 2014, the Ministry notified the public prosecutor that the applicant was the holder of a special identity card on account of the status of his wife, who was an official of the Centre, and that, under Article 37(2) of the Vienna Convention (see paragraph 30 below), members of the family of administrative and technical staff of an embassy enjoyed immunity, which, however, did not apply to acts performed outside their official functions. In a submission of 16 September 2014 the applicant argued that the exception provided for in Article 37(2) of the Vienna Convention concerned solely immunity from civil and administrative jurisdiction and not immunity from criminal jurisdiction.

11. On 22 September 2015 the trial court convicted the applicant *in absentia*. Referring, *inter alia*, to the Ministry's letter (paragraph 10 above) and to Article 37(2) of the Vienna Convention, it found that the applicant did not enjoy immunity from criminal prosecution, as he had been accused of a criminal offence unrelated to the exercise of the official functions from which such immunity would derive.

12. The applicant appealed, arguing that the trial court had wrongly applied Article 37(2) of the Vienna Convention. He relied on the judgment of the International Court of Justice in the case *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)* (ICJ Reports 2002; "the Arrest Warrant case", see paragraph 32 below). The Skopje Court of Appeal ("the appellate court") upheld his appeal and remitted the case for

reconsideration of, *inter alia*, the question of immunity from criminal jurisdiction.

13. In the remitted proceedings, in written submissions of 31 October and 1 December 2016, the applicant again referred to the judgment in the *Arrest Warrant* case, which, in his view, with respect to the immunity from criminal jurisdiction, made no distinction between acts performed in an official capacity and acts performed in a private capacity. Furthermore, a person enjoying diplomatic immunity could only be prosecuted: (i) in his or her own country; (ii) in other countries if his or her own country had waived immunity; (iii) after his or her official functions had ceased; or (iv) by an international court. The applicant submitted that none of these conditions were met in his case.

14. Following several requests for information, by a letter dated 24 July 2018 the Ministry notified the trial court that: (i) in 2007 the applicant and his wife had been issued with special identity cards; (ii) possibly because of the prohibition under Article 42 of the Vienna Convention (see paragraph 30 below) on diplomatic agents engaging in professional or commercial activities for personal profit, in February 2010 the embassy had requested the Ministry to cancel the applicant's registration as the spouse of an official of the Centre; (iii) on 30 January 2012 the Ministry had again issued the applicant with a special identity card, which had subsequently been extended until 30 May 2014; and (iv) on 3 June 2014 the embassy had requested the extension of his and his wife's special identity cards, but, given that criminal proceedings had been pending against the applicant, only the wife's card had been extended until 31 December 2015. The Ministry also stated that the applicant could not be employed and at the same time enjoy immunities and privileges. In this regard, it was necessary for the respondent State to conclude a bilateral agreement with Bulgaria, but that had not happened.

15. By a letter of 11 September 2018, the applicant argued that he had been indicted on 11 February 2013, when he had had a valid special identity card granting him immunity from criminal prosecution.

16. On 19 March 2019 the trial court discontinued the proceedings in respect of the offence of tax evasion as the prosecution had become time-barred.

17. On 19 November 2019 the trial court heard a representative of the Ministry, who stated that on 14 February 2007 the applicant had been issued with a special identity card, the validity of which had been extended until 15 April 2009, and subsequently from 20 April 2009 until 31 December 2011 and from 30 January 2012 until 30 May 2014. The applicant had enjoyed immunities as a family member of the administrative and technical staff of the Centre associated with the embassy, but that immunity could be terminated on several grounds, including when a diplomatic agent practised a professional or commercial activity for personal profit, contrary to Article 42 of the Vienna Convention. He also referred to Article 31(1)(c) of

the Vienna Convention (see paragraph 30 below) and concluded that the applicant could not invoke immunity.

18. In his concluding remarks, the applicant's lawyer argued that Article 42 of the Vienna Convention did not provide that a person entitled to immunity would be automatically stripped of it if he or she engaged in professional or commercial activities. She further reiterated the arguments previously raised (see paragraph 13 above).

19. On 24 December 2019 the trial court convicted the applicant *in absentia* of abuse of office and sentenced him to five years' imprisonment. It referred to the Ministry's letter of 24 July 2018 and the statement of the Ministry's representative of 19 November 2019 (see paragraphs 14 and 17 above). It found that Article 42 of the Vienna Convention prohibited a diplomatic agent from practising a professional or commercial activity and that, therefore, the applicant's immunity had ceased at the moment when he had taken up employment with a private company. It further found that the applicant had not invoked diplomatic immunity when the investigation against him had been opened and had concealed the fact that he had been employed in the respondent State, being aware that he had thereby "lost" his immunity. Moreover, the embassy had never invoked immunity for the applicant and had not requested the extension of his special identity card after 2014. The *Arrest Warrant* case had concerned a person who had enjoyed immunity at the time when the alleged offence had been committed, whereas the applicant's immunity had been terminated because of the breach of Article 42 of the Vienna Convention at the moment of his employment.

20. The applicant appealed against the trial court's judgment. He argued, *inter alia*, that under the Vienna Convention there were no exceptions to immunity from criminal (as opposed to civil and administrative) jurisdiction; that Article 42 of the Vienna Convention did not provide that a person's immunity was terminated when he or she engaged in professional or commercial activities; that the Vienna Convention (Article 32(1) and (2) and Article 39(2)) explicitly regulated the termination of diplomatic immunity; and that the *Arrest Warrant* case applied to his case. Bulgaria had not explicitly waived his immunity. He could invoke immunity at any stage of the proceedings. Even assuming that he had lost or waived his immunity at the moment of his employment, when he had been indicted (February 2013) he had not been employed and had possessed a special identity card granting him immunity from prosecution.

21. On 9 March 2021 the appellate court confirmed the applicant's conviction. It endorsed the trial court's reasoning that, in view of Article 42 of the Vienna Convention, the applicant had lost his immunity at the moment when he had become employed. Lastly, it held that, under Article 31(1)(c) of the Vienna Convention, the applicant could not rely on immunity in respect of an offence committed outside the official functions.

22. The applicant lodged a request for extraordinary review of a final judgment (*барање за вонредно преиспитување*) with the Supreme Court. He argued that the appellate court had failed to provide any reasoning in respect of his argument that he had enjoyed immunity at the time he had been indicted and that the lower courts had failed to establish whether the special identity cards issued to him after his employment contract had ended had granted him diplomatic immunity. Moreover, the lower courts had misquoted Article 31 of the Vienna Convention, which clearly provided that immunity from criminal jurisdiction was not subject to exceptions. He also reiterated his previous arguments (see paragraph 20 above).

23. On 3 November 2021 the Supreme Court confirmed the applicant's conviction and endorsed the lower courts' reasoning. It referred to Articles 41 and 42 of the Vienna Convention. The relevant part of its judgment reads as follows:

“In view of ... the undisputed fact that [the applicant] had been employed by the [telecommunications company] on the basis of which he had earned an income, having therefore acted contrary to the prohibition in Article 42 of the [Vienna Convention], which implies that [he had regulated] his residence in the country on the basis of employment, the lower courts correctly concluded that [the applicant] had lost his right to invoke the privileges and immunities which he had enjoyed until his employment on the grounds of [the status of his wife]. [The applicant] did not invoke diplomatic immunity before the investigation judge, knowing that his status in the country had otherwise been regulated.

This court considers that, in the specific case, there are no circumstances precluding [the applicant's] criminal prosecution, who, according to [the Ministry], does not enjoy immunity from criminal prosecution [in the respondent State] in which he lost the immunity and the corresponding privileges because of a breach of the provisions of [the Vienna Convention].”

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

A. The 1991 Constitution

24. Article 118 provides that international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be amended by law.

B. Courts Act (*Закон за судовите*, Official Gazette nos. 58/06, with further amendments)

25. Section 2 provides that the domestic courts make decisions on the basis of the Constitution, laws and international agreements ratified in accordance with the Constitution.

26. Under section 18, if a court considers that the application of a law in a specific case is in violation of an international agreement ratified in accordance with the Constitution, it will apply the international agreement if that agreement is directly applicable.

C. Criminal Proceedings Act of 1997 (*Закон за кривичната постапка*, Official Gazette no. 15/97, with further amendments)

27. Section 137 of the Criminal Proceedings Act of 1997, applicable to the applicant's case, provided that the prosecution of persons who enjoyed immunity was governed by the rules of international law. In the event of doubt as to whether the proceedings concerned such persons, the court would seek a clarification (*објаснение*) from the Ministry of Foreign Affairs.

28. Other provisions relevant to the present case are described in the case of *Mamudovski v. the former Yugoslav Republic of Macedonia* ((dec.), no. 49619/06, 10 March 2009).

29. Under section 392(1)(7), a case could be reopened if the Court had given a final judgment finding a violation of human rights or freedoms. The same provision is contained in section 449(6) of the new Criminal Proceedings Act, which became applicable after 1 December 2013.

II. INTERNATIONAL LAW AND PRACTICE

A. Vienna Convention on Diplomatic Relations 1961 (“the Vienna Convention”)

30. The relevant parts of the Vienna Convention, which was adopted on 14 April 1961 and to which the respondent State succeeded on 18 August 1993, read as follows:

“The States Parties to the present Convention,

...

Affirming that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention,

...”

Article 1

“For the purpose of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

...

(e) a ‘diplomatic agent’ is the head of the mission or a member of the diplomatic staff of the mission;

(f) the ‘members of the administrative and technical staff’ are the members of the staff of the mission employed in the administrative and technical service of the mission;

...”

Article 31

“1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

...

(c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

...

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.”

Article 32

“1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under article 37 may be waived by the sending State.

2. Waiver must always be express.

...”

Article 37

“1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in articles 29 to 36.

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in article 36, paragraph 1, in respect of articles imported at the time of first installation.

...”

Article 39

“...

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

...”

Article 41

“1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.
...”

Article 42

“A diplomatic agent shall not in the receiving State practise for personal profit any professional or commercial activity.”

B. Council of Europe Rec(87)2 containing a model agreement to enable the members of the family forming part of the household of a member of a diplomatic mission or consular post to engage in a gainful occupation

31. The model agreement to enable members of the family of diplomatic or consular staff to engage in a gainful occupation, appended to the Recommendation adopted by the Committee of Ministers of the Council of Europe on 12 February 1987 (CM/Rec(1987)2) provides, in so far as relevant, as follows:

“4. *Criminal immunity*

In the case of members of the family who enjoy immunity from the criminal jurisdiction of the receiving state in accordance with the Vienna Convention on diplomatic relations or under any other applicable international instrument:

a. *Alternative 1*: the provisions concerning immunity from the criminal jurisdiction of the receiving state shall continue to apply in respect of any act carried out in the course of the gainful occupation. However, the sending state shall give serious consideration to waiving the immunity of the member of the family concerned from the criminal jurisdiction of the receiving state.

Alternative 2: the sending state shall waive the immunity of the member of the family concerned from the criminal jurisdiction of the receiving state in respect of any act carried out in the course of the gainful occupation save in special instances when the sending state considers that such a waiver could be contrary to its interests.

b. The sending state shall give serious consideration to waiving the immunity of the member of the family from the execution of a sentence.”

C. Relevant case-law

32. In the case of *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, ICJ Reports 2002; “the *Arrest Warrant* case”), the International Court of Justice (ICJ) addressed the immunity from criminal jurisdiction, under customary international law, of the Minister for Foreign Affairs of the Democratic Republic of the Congo for grave breaches of the Geneva Conventions and crimes against humanity. The judgment is summarised in *Jones and Others v. the United Kingdom* (nos. 34356/06

and 40528/06, § 83, ECHR 2014). In addition, the following parts are relevant:

“61. ... [T]he immunities enjoyed under international law by an incumbent or former Minister for Foreign Affairs do not represent a bar to criminal prosecution in certain circumstances.

First, such persons enjoy no criminal immunity under international law in their own countries, and may thus be tried by those countries’ courts in accordance with the relevant rules of domestic law.

Secondly, they will cease to enjoy immunity from foreign jurisdiction if the State which they represent or have represented decides to waive that immunity.

Thirdly, after a person ceases to hold the office of Minister for Foreign Affairs, he or she will no longer enjoy all of the immunities accorded by international law in other States. Provided that it has jurisdiction under international law, a court of one State may try a former Minister for Foreign Affairs of another State in respect of acts committed prior or subsequent to his or her period of office, as well as in respect of acts committed during that period of office in a private capacity.

Fourthly, an incumbent or former Minister for Foreign Affairs may be subject to criminal proceedings before certain international criminal courts, where they have jurisdiction ...”

THE LAW

I. SCOPE OF THE CASE

33. In his reply to the Government’s observations, the applicant raised complaints under Article 6 § 3 (d) and Article 10 of the Convention, arguing that the trial court had allegedly partially recorded in a hearing transcript the contents of a letter from the Ministry and had refused to allow certain questions to be put to witnesses at trial.

34. The Court observes that these complaints were not included in the application form lodged with the Court on 27 May 2022, nor are they an elaboration of the complaint raised therein of which the Government were given notice. In his observations, the applicant did not elaborate on whether he intended to raise them as new complaints under the Convention, nor did he provide any documents showing that he had raised them before the domestic authorities. The Court concludes that these complaints do not fall within the scope of the present application and therefore cannot be examined (see *Ispiryan v. Lithuania*, no. 11643/20, §§ 56-57, 27 June 2023, with further references).

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

35. The applicant complained that he had been prosecuted despite his immunity from criminal jurisdiction at the time of the indictment, contrary to the provisions of the Vienna Convention, and that the domestic courts had

failed to provide appropriate reasoning in respect of his arguments. He relied on Article 6 of the Convention, the relevant part of which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

36. The Government argued that the applicant, who had been sentenced to imprisonment by a final judgment of the appellate court of 9 March 2021 (see paragraph 21 above), should not have awaited the outcome of the proceedings on his request for extraordinary review before the Supreme Court. His complaint to the Court had therefore been lodged outside the six-month time-limit.

37. The applicant did not comment on the Government’s objection.

38. The Court observes that the applicant was sentenced to imprisonment (see paragraph 19 above). A request for extraordinary review was therefore available to him (see *Mamudovski*, cited above). The Supreme Court could address the arguments raised by him and had the power to quash, in part or whole, the lower courts’ decision or decide the case itself. The request for extraordinary review was therefore an effective remedy for the purposes of the applicant’s complaints (*ibid.*, and, *mutatis mutandis*, *Taleski v. North Macedonia* (dec.), no. 77796/17 and five other applications, § 102, 24 January 2023). The application cannot therefore be rejected for failure to comply with the six-month time-limit.

39. The Court therefore rejects the Government’s inadmissibility objection. It further considers that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties’ submissions

40. The applicant complained that he had been prosecuted despite his immunity from criminal jurisdiction, contrary to the provisions of the Vienna Convention. The exception to immunity under Article 37(2) of the Vienna Convention concerned only immunity from civil and administrative jurisdiction. His immunity could only be waived by the “sending State” (Bulgaria) and such a waiver had to be explicit. As neither he nor his wife had been “diplomatic agents”, Article 42 of the Vienna Convention did not apply to them. The courts had not provided appropriate reasoning in respect of his arguments and had incorrectly deprived him of his immunity.

41. The Government submitted that the applicant’s immunity had ceased due to the fact that he had been engaged in a commercial activity, contrary to Article 42 of the Vienna Convention. The enjoyment of the immunity

conferred by the special identity card was incompatible with the economic benefit associated with the applicant's employment. Moreover, the applicant had not enjoyed other privileges under the Vienna Convention; for example, he had been paying income tax. The applicant had failed to respect the law of the respondent State, an obligation laid down in Article 41 of the Vienna Convention. He had not enjoyed immunity at the time when the investigation against him had been opened or when he had been convicted. The respondent State and Bulgaria had not concluded a bilateral agreement regulating the employment of spouses of staff members of the Bulgarian embassy in the respondent State. The applicant had never raised before the domestic courts the argument that Article 42 of the Vienna Convention did not apply to him as he had not been a "diplomatic agent". The national courts had given sufficient and valid reasons for dismissing the applicant's arguments and had correctly applied the Vienna Convention.

2. *The Court's assessment*

42. The Court reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law. This also applies where domestic law refers to rules of general international law or international agreements (see *Markovic and Others v. Italy* [GC], no. 1398/03, § 108, ECHR 2006-XIV; and *Mont Blanc Trading Ltd and Antares Titanium Trading Ltd v. Ukraine*, no. 11161/08, § 93, 14 January 2021). It is not for the Court to deal with alleged errors of law or fact committed by the national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention, for instance where, in exceptional cases, such errors may be said to constitute "unfairness" incompatible with Article 6 of the Convention (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 83, 11 July 2017). A domestic judicial decision cannot be qualified as arbitrary to the point of prejudicing the fairness of proceedings unless no reasons are provided for it or if the reasons given are based on a manifest factual or legal error committed by the domestic court, resulting in a "denial of justice" (*ibid.*, § 85, and *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, § 304, 26 September 2023).

43. The extent to which the duty of the domestic courts to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case. Without requiring a detailed answer to every argument advanced by the complainant, this obligation presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments which are decisive for the outcome of those proceedings (see *Moreira Ferreira*, cited above, § 84). A further function of a reasoned decision is to demonstrate to the parties that they have been heard. It is only by giving a reasoned decision that there can

be public scrutiny of the administration of justice (see *Paixão Moreira Sá Fernandes v. Portugal*, no. 78108/14, § 71, 25 February 2020).

44. The Court also emphasises that its only task is to apply the Convention and that therefore, in the present case, it has no competence to decide on the applicant's immunity as such (see *Aydın Sefa Akay v. Türkiye*, no. 59/17, § 119, 23 April 2024).

45. The Court will proceed to assess whether, in deciding the applicant's case and applying the relevant provisions of the Vienna Convention, the domestic courts complied with the requirements of Article 6 § 1 of the Convention and, in particular, whether their reasoning on this point was in conformity with the Convention standards (compare *Spasov v. Romania*, no. 27122/14, § 91, 6 December 2022).

46. It is undisputed between the parties in the present case that the applicant's wife was employed by the Bulgarian Cultural and Information Centre attached to the Bulgarian embassy. It also appears to be common ground that she was considered a member of the administrative and technical staff of the embassy. Furthermore, as established by the domestic authorities, on 14 February 2007 the applicant was issued with a special identity card, valid until 15 April 2009, and subsequently from 20 April 2009 until 31 December 2011 and from 30 January 2012 until 30 May 2014, which explicitly stated that he enjoyed immunity from the criminal jurisdiction of the domestic courts (see paragraphs 8, 14, 17 and 19 above).

47. On 11 February 2013 the applicant was indicted. The domestic courts at three levels of jurisdiction subsequently convicted him, despite him repeatedly and consistently invoking immunity from criminal prosecution. In doing so, the courts found that his immunity had terminated because he had engaged in commercial activities, contrary to Article 42 of the Vienna Convention, which prohibited a diplomatic agent from practising in the receiving State any professional or commercial activity for personal profit (see paragraphs 19, 21, 23 and 28 above).

48. As argued by the Government, the applicant did not raise before the domestic courts the argument that he had not been a "diplomatic agent" within the meaning of the Vienna Convention and that therefore Article 42 did not apply to him (see paragraphs 20, 22 and 41). The Court observes that the Vienna Convention is part of the domestic legal order and is directly applicable in the respondent State (see paragraphs 24 and 25 above, and, *mutatis mutandis*, the analysis in *Taleski*, cited above, §§ 41, 43-44 and 101; compare also, in the context of the applicability of the law of the European Union, *Spasov*, cited above, § 93). Be that as it may, given that the applicant raised this particular argument for the first time before the Court (see paragraph 40 above), the Court cannot find at fault the domestic courts for not providing adequate reasoning in respect of it.

49. However, the applicant repeatedly raised the argument that Article 42 of the Vienna Convention did not explicitly provide for the termination of

diplomatic immunity in the event of a breach of that provision, and that the Vienna Convention expressly regulated the termination of immunity, professional and commercial activities not being grounds for such termination. Nevertheless, the domestic courts did not expressly deal with this argument. They did not refer to any provision of the Vienna Convention or any other document, nor to any examples of international or domestic case-law, nor did they provide any legal reasoning as to how they had reached their conclusion that the applicant had lost his immunity at the moment when he had become employed (compare *Tripcovici v. Montenegro*, no. 80104/13, § 46, 7 November 2017, in the context of civil proceedings).

50. The Court therefore considers that, by failing to address the applicant's argument that his immunity could not be terminated because of him having engaged in professional and commercial activities for personal profit, the domestic courts fell short of their obligations under Article 6 § 1 of the Convention (see *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, § 280, 21 April 2011). In this connection, it notes that while immunity from criminal jurisdiction of diplomatic staff family members could have been further regulated by a bilateral agreement between the respondent State and Bulgaria, it was confirmed by the Government that no such agreement had been concluded.

51. Turning to the Government's argument that the applicant did not have immunity from criminal prosecution at the time when he was convicted, the Court observes that the validity of the applicant's special identity card was not extended after 30 May 2014, whereas the criminal proceedings against him were finally brought to an end in November 2021. In addition, the ground on which he claimed to have obtained immunity from prosecution (his wife's employment at the Centre) ceased to exist in December 2015 (see paragraph 14 above). The ICJ's judgment in the *Arrest Warrant* case (paragraph 32 above) indicates that a person will no longer enjoy immunity after the official functions which served as the basis of that immunity cease to exist. However, the Court reiterates that it is not its task to decide on the applicant's immunity, but rather to assess whether the reasoning of the domestic courts complied with the Article 6 requirements (see paragraph 44 above). In this connection, it notes that the domestic courts did not refer to the fact that the alleged ground for the applicant's immunity ceased to exist while the criminal proceedings against him were pending. The Court also considers it noteworthy that the applicant invoked immunity in the criminal proceedings beginning in June 2013, almost a year before his special identity card expired and a year and a half before his wife's employment at the Centre ended. The Court is concerned that protracted decision-making by the domestic courts until the basis for a person's immunity has ended may *de facto* render futile the protection afforded to him or her by virtue of that immunity (compare, in the context of Article 5 of the Convention, *Aydın Sefa Akay*, cited above, § 116).

52. In view of the above (see paragraph 50 above *ab initio*), the Court finds that there has been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed an unspecified amount in respect of non-pecuniary damage.

55. The Government contested that claim as unsubstantiated and unrelated to the violation alleged.

56. The Court considers that, in the specific circumstances of the present case, the finding of a violation constitutes in itself sufficient just satisfaction.

B. Costs and expenses

57. The applicant also claimed 2,000 euros (EUR) for costs and expenses, without specifying whether the claim concerned costs and expenses incurred in the proceedings before the domestic courts or those before the Court.

58. The Government contested the claim as unsubstantiated.

59. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court observes that the applicant failed to substantiate his claim with any documents. It therefore dismisses it in its entirety.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
4. *Dismisses* the applicant's claim for just satisfaction.

ZAHARIEV v. NORTH MACEDONIA JUDGMENT

Done in English, and notified in writing on 5 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim
Deputy Registrar

Arnfinn Bårdsen
President