

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

SECOND SECTION

DECISION

Application no. 38692/16
Jonche BLAZHESKI and Vide BLAZHESKA
against North Macedonia

The European Court of Human Rights (Second Section), sitting on 4 July 2023 as a Chamber composed of:

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Pauliine Koskelo,
Saadet Yüksel,
Lorraine Schembri Orland,
Frédéric Krenc,
Davor Derenčinović*, judges*,

and Hasan Bakırcı, *Section Registrar,*

Having regard to the above application lodged on 29 June 2016,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Jonche Blazheski ("the first applicant") and Ms Vide Blazheska ("the second applicant"), are Macedonians/citizens of the Republic of North Macedonia who were born in 1962 and 1970, respectively, and live in the village of Drugovo. They were represented before the Court by Mr D. Bogdanov and Ms T. Siljanoska, lawyers practising in Skopje and Kichevo respectively.

2. The Government of North Macedonia ("the Government") were represented by their Agent, Ms D. Djonova.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. In 2007 the second applicant, who was then an Albanian citizen, married the first applicant. The couple are raising three minor children. All children acquired the nationality of the respondent State by birth, through their father. At the material time, the second applicant held a permanent residence permit. She obtained citizenship of the respondent State in February 2012.

5. On 14 February 2011 the second applicant was granted a monthly welfare benefit in respect of her third child amounting to 8,177 Macedonian denars (equivalent to 132 euros (EUR)), in her own name and on behalf of her third child.

6. On 12 June 2012 the Social Welfare Centre discontinued the payment of the benefit after it discovered that the second applicant had not been a national of the respondent State in the three years preceding the submission of the claim for welfare benefit. It based its decision on section 30-a(2) of the Child Protection Act ("the Act" – *Закон за заштита на децата*, Official Gazette nos. 98/00, 17/03, 65/04, 113/05, 98/08 and 107/08) and the Rulebook on the requirements, criteria and manner of exercising the right to one-off financial assistance for a new baby and the right to a welfare benefit for a third child ("the Rulebook" – Official Gazette no. 163/08). The applicants appealed to the Ministry of Labour and Social Policy ("the Ministry").

7. On 20 December 2012 the Ministry dismissed the applicants' appeal. The Ministry established that, pursuant to section 30-a(2) of the Act, only mothers who had been permanently resident in the respondent State for at least three years and had held citizenship of the respondent State throughout that time could apply for a welfare benefit under the relevant provisions of the Act. It concluded that, since the second applicant did not fall into this category, payment of the welfare benefit had to be discontinued.

8. On 4 May 2012 the first applicant instituted proceedings for a review of the constitutionality of the Rulebook in the Constitutional Court. On 12 September 2012 the Constitutional Court dismissed the request and held that, among other things, the purpose of the welfare benefit, as provided for by the Act and the amended Rulebook, was to support mothers who were responsible for the care and upbringing of their children and in particular of their third-born children, irrespective of their family or marital status.

9. On 16 January 2013 the applicants challenged the Ministry's decision of 20 December 2012 in the Administrative Court. They argued that the right to a welfare benefit had been acquired in 2011 and that the decisions of the competent authorities had been discriminatory. On 25 November 2013 and on 2 October 2015 the Administrative Court and the Higher Administrative

Court respectively dismissed the applicants' claim, finding that the administrative authorities' decisions had been in compliance with the law. They reiterated the arguments put forward by the administrative authorities.

B. Relevant domestic law

1. The Child Protection Act no. 170 of 2010 – consolidated version

10. Sections 1 and 2 of the Act provide that the purpose of the Act is to determine the system and organisation of child support and protection. The State and the municipalities are to provide adequate material support to parents for the care, upbringing and protection of their children.

11. Sections 4, 6 and 8 of the Act provide that the protection of children is in the public interest and that the right to a welfare benefit is a personal right of the child. The right to a welfare benefit is secured by the State.

2. The Child Protection Act (Official Gazette nos. 98/00, 17/03, 65/04, 113/05, 98/08 and 107/08)

12. Section 30-a(2) of the Act provides that only mothers who had been permanently resident for at least three years and who had held citizenship of the respondent State throughout that time were entitled to apply for a welfare benefit.

C. International legal framework

Explanatory Report to Protocol No. 7 to the Convention

13. The Explanatory Report to Protocol No. 7 to the Convention provides that, under the terms of Article 5, equality must be ensured solely in the relations between spouses themselves, with regard to their person or their property and in their relations with their children. The rights and responsibilities are thus of a private law character; the Article does not apply to other fields of law, such as administrative, fiscal, criminal, social, ecclesiastical or labour laws.

COMPLAINT

14. The applicants complained under Article 5 of Protocol No. 7 to the Convention that on account of the relevant domestic legal framework, the first applicant had suffered inequality in the enjoyment of parental rights *vis-à-vis* the second applicant.

THE LAW

A. Alleged violation of Article 5 of Protocol No. 7 to the Convention

15. The applicants argued that on account of the legislative framework, the father (the first applicant) had been unable to claim the welfare benefit following its discontinuation on the basis of the nationality of the mother (the second applicant). The circumstances in which only mothers could claim the right to a welfare benefit in respect of their third child resulted in inequality between the mother and the father.

16. The applicants relied on Article 5 of Protocol No. 7 to the Convention, which reads as follows:

> "Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children."

1. The parties' submissions

17. The Government raised several objections regarding the admissibility of the complaint. They submitted that the second applicant had not availed herself of the opportunity to lodge a request with the Constitutional Court seeking a constitutional review of the Act. The application had been lodged more than six months after the Constitutional Court's decision of 12 September 2012 in respect of the first applicant, which was to be regarded as the last effective remedy for exhaustion purposes.

18. Lastly, relying on the Explanatory Report to Protocol No. 7 to the Convention, the Government argued that the applicants' grievances did not fall under the scope of the term "private law character" within the meaning of Article 5 of Protocol No. 7 to the Convention and that that Article could not therefore apply in the case.

19. The applicants contested the Government's submissions, without providing any specific arguments.

2. The Court's assessment

20. The Court does not consider it necessary to examine all the admissibility issues, including the victim status of the applicants, raised by the Government, but it will assess, in the light of its case-law, the applicability of Article 5 of Protocol No. 7 to the welfare-benefit dispute in the present case.

21. In this connection, the Court observes that, in accordance with the Explanatory Report to Protocol No. 7, and the terms of Article 5 of that Protocol, equality must be ensured solely in the relations between the spouses themselves, with regard to their person or their property and in their relations

with their children. The rights and responsibilities are thus of a private law character. The Article does not apply to other fields of law, such as administrative, fiscal, criminal, social, ecclesiastical or labour law (see paragraph 13 above).

22. Accordingly, the applicability of Article 5 of Protocol No. 7 to the Convention to the present case depends on whether the right to a welfare benefit asserted by the applicants was of a private law character.

23. The former Court and the European Commission of Human Rights ("the Commission") have had opportunities to examine whether parental rights (see *Konstantin Markin v. Russia*, no. 30078/06, § 61, 7 October 2010), and social security rights (see *Frischknecht v. Switzerland* (dec.), 28334/95, Commission decision of 18 January 1996, and *Klöpper v. Switzerland* (dec.), no. 25053/94, Commission decision of 18 January 1996, in respect of payment obligations of social insurance contributions) are of a private law character in the light of Article 5 of Protocol No. 7 to the Convention. This is the first time that the Court has had to consider the right to a welfare benefit under that Article.

24. It is true that the Court has held Article 6 § 1 of the Convention applicable to disputes over entitlement to social security or welfare benefits (see *Fazia Ali v. the United Kingdom*, no. 40378/10, §§ 58-59, 20 October 2015, with further references), while distinguishing them from private-law disputes in the traditional sense (see, among others, *Feldbrugge v. the Netherlands*, 29 May 1986, §§ 36-39, Series A no. 99, and *Fazia Ali,* cited above*,* §§ 58-59). However, it cannot be concluded that as a result of the aforementioned interpretation the "rights and responsibilities" at issue were of a "private law character" within the meaning of Article 5 of Protocol No. 7 (see, similarly, *Frischknecht*, and *Klöpper*, both cited above). In this connection, the Court reaffirms the Commission's finding, with reference to the explanatory report to Protocol No. 7 to the Convention, that Article 5 of Protocol No. 7 does not apply to other fields of law, such as administrative, fiscal, social or labour laws (*ibidem*).

25. Having analysed the features of the present case from the standpoint of Article 5 of Protocol No. 7 to the Convention, the Court considers that it concerns a dispute which does not fall in the sphere of private law.

26. The complaint under Article 5 of Protocol No. 7 to the Convention must therefore be declared inadmissible as incompatible *ratione materiae* with the provisions of the Convention and the Protocols thereto, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 7 September 2023.

Hasan Bakırcı Section Registrar	Arnfinn Bårdsen President