



Annulment of presidential pardons was justified, but fair trial rights violated for two of the three applicants

Today's **Chamber** judgment¹ in the case of [Taleski and Others v. North Macedonia](#) (applications nos. 34261/23 and 7877/24) concerned a legislative intervention, the 2016 Pardon Act, which permitted the annulment of presidential pardons that had been granted to the applicants six weeks earlier and which, at the time, had been considered to be final and irrevocable. As a consequence, the pardons were annulled and the applicants, who were public officials, were prosecuted for abuse of official position and authority and various electoral offences. The case also concerned the fairness of those criminal proceedings.

The European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights on account of the legislative intervention permitting the annulment of the presidential pardons and the continuation of the criminal proceedings against the applicants.

The Court found, in particular, that the need to hold public officials to account and to prevent them from being placed above the law had outweighed the need to safeguard legal certainty. The Court took into account the exceptional nature of the situation created by the then President's decision to grant pardons to public officials, including senior figures from his own political party, without a valid legal basis and in breach of the rule of law. The gravity of the situation and of the ensuing political crisis justified the adoption of exceptional measures in the form of legislation targeting a small group of individuals who would otherwise have benefited from unlawful pardons, with the aim of restoring the rule of law. The Court found that the legislative intervention had been justified on compelling grounds of general interest and accordingly could not be regarded as having breached the principles of legal certainty or the rule of law.

The Court also held, unanimously, that there had been:

a violation of Article 6 § 1 of the Convention as regards the right to an adversarial trial on account of the failure to serve one of the applicants, Mr Mitrovski, with a copy of the higher prosecutor's submissions;

and by five votes to two, that there had been:

a violation of Article 6 § 1 of the Convention as regards the right to an adversarial trial on account of the failure to serve another of the applicants, Mr Janakieski, with a copy of the higher prosecutor's submissions.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicants, Vladimir Taleski, Mile Janakieski, and Kosta Mitrovski, are Macedonians/citizens of the Republic of North Macedonia, who were born in 1959, 1978 and 1983 respectively. All held high-

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

ranking positions within the Government and/or were members of the ruling political party in 2015 (*Внатрешно-Македонска Револуционерна Организација-Демократска Партија за Македонско Национално Единство – “the VMRO-DPMNE”*), when a vast programme of covert recording of thousands of telephone conversations throughout North Macedonia was revealed by the biggest opposition party at the time, exacerbating an already serious political crisis.

A Special Prosecutor’s Office (SPO) set up for the purpose, launched (or took over from the regular prosecutor’s office) prosecutions into the revelations about alleged criminal conduct stemming from the content of the phone tapping, against individuals, public officials and high-ranking former government officials, including the applicants. The prosecution in respect of Mr Taleski, Mayor of Bitola from 2005-2017, concerned rigging the procurement process for school transport contracts, that is to say abuse of official position and authority. Mr Janakieski, Minister for Transport from 2006-2015, was prosecuted for criminal association, and both he and Mr Mitrovski, a public official and chair of the local electoral committee for Centar, the central municipality of Skopje, during the local elections in Spring 2013, were prosecuted for electoral offences, including tampering with or destruction of electoral documents.

On 12 April 2016 the President of North Macedonia (elected as the candidate of the VMRO-DPMNE) issued 51 individual pardons accompanied by 107 individual rulings exempting 56 people, including the applicants, from criminal prosecution in relation to their alleged offences.

The three applicants therefore asked the SPO to discontinue the investigations and, in the absence of a reply, lodged complaints with the Public Prosecutors Council.

On 6 and 15 May 2016, Judge M.L.T. publicly stated that the President’s decision to grant a collective pardon to 56 individuals bore the characteristics of an amnesty rather than a pardon. She emphasised that, under the Constitution, the power to grant amnesty rested exclusively with Parliament and was not within the President’s competence. She urged the Constitutional Court to “rule on the matter of the President’s potential overreach of constitutional powers” and resolve the conflict of competences between the executive and the legislature.

On 20 May 2016, the 2016 Pardon Act came into force for 30 days, supplementing the 1993 Pardon Act with a new section that allowed the President to annul pardons that had been granted.

On 27 May 2016 the President declared his pardon decisions of 12 April 2016 null and void.

All three applicants, despite their subsequent objections, were convicted as charged and sentenced to terms of imprisonment, with their convictions being upheld upon appeal. In November 2022, Judge M.L.T gave a television interview, in which she made comments about the 2016 pardon decisions resembling an amnesty and stated that the central question was whether they had had legal effect.

Following requests lodged by the applicants for extraordinary review of the final judgment, the Supreme Court, sitting as a panel of five judges which included Judge M.L.T., confirmed the applicants’ convictions. It stated that, in any event, the pardons had been granted without legal basis, as the Section of the 1993 Pardon Act that had, in the past, allowed the President of the Republic to grant pardons without conducting pardon proceedings, had been repealed in 2009. In its view, the pardons had therefore had no legal effect.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing/trial) the applicants complained that the criminal proceedings against them after they had been pardoned were contrary to the principles of legal certainty and the rule of law. They also complained that their right to an independent and impartial tribunal had been violated since one of the judges in the Supreme Court panel had previously made public statements relating to their cases. Two of the applicants complained that the criminal

proceedings against them had been unfair, as they had not been served with a copy of the higher prosecutor's submissions in the proceedings before the Court of Appeal.

The applications were lodged with the European Court of Human Rights on 30 August 2023 and 18 March 2024

Judgment was given by a Chamber of seven judges, composed as follows:

Arnfinn Bårdsen (Norway), *President*,
Saadet Yüksel (Türkiye),
Péter Paczolay (Hungary),
Oddný Mjöll Arnardóttir (Iceland),
Gediminas Sagatys (Lithuania),
Stéphane Pisani (Luxembourg),
Juha Lavapuro (Finland),

and also Andrea Tamietti, *Section Registrar*.

Decision of the Court

The Court observed that the case pitted against each other legal certainty, on the one hand, and accountability and equality before the law, on the other. The Court took into account the exceptional nature of the situation created by the then President's decision to grant pardons to public officials, including senior figures from his own political party, without a valid legal basis and in breach of the rule of law. The legislative intervention had taken place following an extensive public debate and a search for a balanced solution. The 2016 Pardon Act had been enacted less than six weeks after the pardons had been granted, and the annulments had followed one week later. During that time, no decision to discontinue the criminal proceedings against the applicants had been taken by the investigating authorities or by the courts. By enacting the 2016 Pardon Act, the legislature had sought to restore the rule of law by ensuring that public officials, including those of the highest rank, who had been granted immunity from prosecution by the President acting without a valid legal basis, were brought to justice. The Court therefore considered that the need to maintain the accountability of public officials and ensure that they were not placed above the law had outweighed the need to safeguard legal certainty.

As regards Judge M.L.T.'s participation in the Supreme Court panel despite her having made public statements relating to the cases, the Court considered that, had they acted diligently, the applicants could have seen that Judge M.L.T. would probably be sitting on the Supreme Court panel hearing the applicants' cases, and they could have asked for her to be disqualified from the case. As they had not used that legal avenue, this complaint was inadmissible.

As to whether the criminal proceedings against Mr Janakieski and Mr Mitrovski had been unfair, the Court reiterated that the onus was on the national court to make sure that the applicants had an opportunity to familiarise themselves with the prosecution's written observations prior to its decision. Although the Government argued that the adversarial principle had nonetheless been complied with, as Mr Janakieski, together with his counsel and that of Mr Mitrovski, had attended the appeal hearing at which the higher prosecutor had presented his submissions and they could therefore have responded to those submissions immediately or requested an adjournment, the Court found, in particular, that making the defence's knowledge of the prosecution's observations entirely contingent upon its presence at the appeal hearing placed a disproportionate burden on the defence and did not necessarily ensure a real opportunity to comment on those observations.

Although the applicants had subsequently lodged requests for extraordinary review with the Supreme Court, that review was limited in scope and did not encompass all the issues raised in the prosecutor's submissions before the appeal court, with the result that certain issues were finally determined in the

