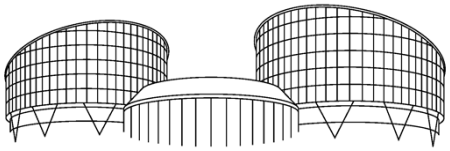

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF PRODANOV v. NORTH MACEDONIA

(Application no. 73087/12)

JUDGMENT

STRASBOURG

10 June 2021

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Prodanov v. North Macedonia,

The European Court of Human Rights (Fifth Section), sitting as a Committee composed of:

Stéphanie Mourou-Vikström, *President,*
Jovan Ilievski,
Arnfinn Bårdsen, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 73087/12) 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 Mr Jovan Prodanov ("the applicant"), a Macedonian/citizen of the Republic of North Macedonia, on 14 November 2012;

the decision to give notice to the Government of North Macedonia ("the Government") of the complaint concerning Article 6 § 1 of the Convention and to declare the remainder of the application inadmissible;

and the parties' observations;

Having deliberated in private on 20 May 2021,

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

INTRODUCTION

1. The applicant alleged that he had been denied access to the Supreme Court because of the manner in which that court had applied the provisions of the Civil Procedure Act and had rejected his appeal on points of law as inadmissible *ratione valoris*. The applicant invoked Article 6 § 1 of the Convention.

THE FACTS

2. The applicant was born in 1933. He was represented before the Court by Mr D. Ajcev, a lawyer practising in Gevgelija. Following the death of the applicant on 29 January 2018, his son and daughter, Mr G. Prodanov and Ms S. Prodanova, informed the Court of their wish to pursue the application in their father's stead and authorised Mr D. Ajcev to represent them in the proceedings before the Court.

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

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

5. On 6 November 2000 a certain G.P. brought a civil action against the applicant before the Gevgelija Court of First Instance ("the first-instance court"), seeking recognition of title to part of a house which was in the applicant's possession at the material time. The plaintiff set the value of the dispute at 40,000 denars (MKD) (the equivalent of approximately 650 euros

(EUR)). The Civil Proceedings Act (*Закон за парничната постапка*), as in force at that time, set the statutory threshold for an appeal on points of law before the Supreme Court at MKD 1,000,000 (the equivalent of approximately EUR 16,260).

6. On 31 December 2002 the first-instance court granted G.P.'s claim and ruled against the applicant. That judgment was upheld by the Skopje Court of Appeal ("Court of Appeal") on 4 September 2003.

7. On 17 December 2003, on an application by the applicant, the public prosecutor submitted a request for the protection of legality, which the Supreme Court accepted. It quashed the lower courts' judgments and remitted the case for reconsideration.

8. On 4 November 2005 the applicant, through his lawyer, brought a counterclaim before the first-instance court against G.P., seeking the annulment of a gift contract on which the plaintiff had based his property claim in the prior proceedings. In the written claim, the applicant set the value of the dispute at MKD 40,000. Both claims were joined and examined in a single set of proceedings.

9. As from 29 December 2005, a new Civil Proceedings Act ("the 2005 Act", Official Gazette no. 79/2005) entered into force and became applicable to all cases pending at first instance. The 2005 Act set the statutory threshold for an appeal on points of law to the Supreme Court at MKD 500,000 (the equivalent of approximately EUR 8,130). Under the transitional provisions of the 2005 Act, proceedings were to be completed in accordance with the law which had been in force before the conclusion of the proceedings at first instance (see paragraph 17 below).

10. On 24 January 2006 the Civil Law Department of the Skopje Court of Appeal adopted a conclusion concerning all pending cases to which the 2005 Act applied, instructing the lower courts to advise the parties and to postpone forthcoming hearings in order to enable them to undertake all the necessary actions regarding their claims. The conclusion stated that the parties to all pending cases at first instance would be given an opportunity to prepare their submissions in accordance with the 2005 Act.

11. At a hearing of 15 February 2006, the first-instance court informed the parties to the present case, in accordance with the conclusion of the Court of Appeal, that the hearing scheduled for 20 March 2006 would be treated as a preparatory hearing within the meaning of section 33 of the 2005 Act (see paragraph 16 below).

12. During the preparatory hearing, the applicant requested that the value of the dispute be increased to MKD 500,100 (the equivalent of approximately EUR 8,130). At the request of the trial judge and before the main hearing, the applicant paid additional court fees corresponding to the increase in the value of the claim.

13. On 12 January 2009 the first-instance court ruled in favour of G.P. and dismissed the applicant's claim. The introductory part of that judgment

indicated MKD 40,000 as the value of the dispute. On 13 April 2009, on a request by the applicant, the first-instance court rectified the introductory part of its judgment and set the value of the claim at MKD 501,000, holding that the amount indicated previously had been an error.

14. By a decision of 2 September 2010, the introductory part of which indicated MKD 40,000 as the value of the dispute, the Court of Appeal dismissed an appeal by the applicant. On a request by the applicant, on 9 December 2010 the Court of Appeal rectified the introductory part of its judgment and indicated the increased value of the claim.

15. On 17 May 2012 the Supreme Court rejected an appeal on points of law by the applicant as inadmissible *ratione valoris*. It held that the value of the dispute, which, in its view, had been set at MKD 40,000 in the lower judgments, fell below the statutory threshold of MKD 500,000 set under the 2005 Act. The fact that the value of the dispute had been changed by the Court of Appeal was irrelevant, as that increase had taken place at the wrong stage of the proceedings and had not pertained to an obvious error in drafting. The relevant part of that decision reads as follows:

> "Having regard to section 33 of the [2005] Civil Proceedings Act, the court shall, by the latest at the preparatory hearing or, if no preparatory hearing has been held, at the main hearing before the respondent has begun litigation on the merits of the case, quickly and in an appropriate manner verify the accuracy of the value [of the claim] specified. In the present case ... the relevant value of the subject matter of the dispute was changed with the Court of Appeal's decision of 9 December 2010."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Relevant legal framework

16. Under section 33(3) of the 2005 Act, if it is obvious that the value of the subject matter of the dispute indicated by the claimant is too high or too low so that an issue arises over subject-matter jurisdiction, the composition of the court, or the right to lodge an appeal on points of law, the court should, by the latest at the preparatory hearing or, if no preparatory hearing has been held, at the main hearing before the respondent has begun litigation on the merits of the case, quickly and in an appropriate manner verify the accuracy of the value specified.

17. Under the transitional provisions of the 2005 Act (sections 474 and 476 respectively), proceedings were to be completed in accordance with the law in force at the time when the proceedings at first instance had ended.

18. Section 400 of the 2005 Act provides for the possibility of reopening proceedings in respect of which the Court has found a violation of the Convention. In such reopened proceedings the domestic courts are required to comply with the provisions of the final judgment delivered by the Court.

B. Practice of the Supreme Court

19. The Government submitted copies of five final decisions (*Рев.2.бр.699/2014*; *Рев.2.бр. 1017/2010; Рев2.бр. 578/2012; Рев2.бр. 295/2013;* and *Рев1.бр. 68/2014*) delivered between November 2005 and March 2015 in which the Supreme Court had rejected an appeal on points of law as inadmissible *ratione valoris*, as the value of the claim indicated by the plaintiffs had been set at the wrong stage of the proceedings. It held that the value of the claim indicated in civil actions could not be changed at the wrong stage of the proceedings after the preparatory hearing or, if no preparatory hearing had been held, at the main hearing before the examination of the merits of the claim.

THE LAW

I. PRELIMINARY ISSUES

A. The Government's unilateral declaration

1. The parties' submissions

20. After having been given notice of the case and following unsuccessful friendly-settlement negotiations, on 26 August 2016 the Government submitted a unilateral declaration in which they acknowledged that there had been a violation of Article 6 § 1 of the Convention and offered to pay the applicant a sum to cover any non-pecuniary damage together with any costs and expenses. The Government requested that the Court strike the application out of its list of cases in accordance with Article 37 § 1 of the Convention.

21. On 13 October 2016 the applicant objected to the striking out of the application, arguing, in particular, that, under domestic law, a unilateral declaration by the Government, unlike a judgment delivered by the Court finding a violation, could not serve as a ground for reopening the case. The Government's unilateral declaration would therefore not lead to the actual restoration of his rights.

2. The Court's assessment

22. The relevant general principles on unilateral declarations have been summarised in *Jeronovičs v. Latvia* ([GC], no. 44898/10, §§ 64-70, 5 July 2016); *Aviakompaniya A.T.I., ZAT v. Ukraine* (no. 1006/07, §§ 27-33, 5 October 2017); and *Romić and Others v. Croatia* (nos. 22238/13 and 6 others, §§ 83-85, 14 May 2020).

23. The Court notes that section 400 of the 2005 Act (see paragraph 18 above) provides for the possibility of reopening proceedings on the basis of

a final judgment delivered by the Court finding a violation of the Convention. It has not been brought to the Court's attention that the 2005 Act or any other valid Act contains a provision allowing reopening of civil proceedings on the basis of a decision by the Court to strike a case out of its list of cases following a unilateral declaration by the Government. In this connection the Court notes that section 82 of the Administrative Disputes Act of 2020 (Official Gazette no. 96/2019) provides for such a possibility in regard to administrative proceedings. Furthermore, the Government have not presented any example of domestic case-law that civil proceedings can be reopened, under the domestic law as it now stands, in the event of a decision by the Court accepting a unilateral declaration and striking a case out of its list.

24. Therefore, the Court finds that it cannot be said with a sufficient degree of certainty that the procedure for reopening civil proceedings would be available were the Court to accept the Government's unilateral declaration and strike the case out of its list (see *Romić and Others*, cited above, § 85).

25. For the above reasons, the Court cannot make a finding that it is no longer justified to continue the examination of the application. Moreover, respect for human rights, as defined in the Convention and its Protocols, requires that the Court continue the examination of the case. In particular, the case raises questions of general interest concerning the proportionality of the restriction of the applicant's right of access to a court when the *ratione valoris* threshold is applied, which transcends the facts of the present case. The Government's request for the application to be struck out of the list of cases under Article 37 of the Convention must therefore be rejected (ibid., § 87).

B. *Locus standi*

1. The parties' submissions

26. The Government argued that the applicant's son and daughter, who had informed the Court of their wish to pursue the application in their father's stead (see paragraph 2 above), had no *locus standi* to pursue the application since they had failed to prove their status as the applicant's legal successors by means of a court decision.

27. The applicant's son and daughter contested the Government's objection, arguing that, since their father had not owned any property, they could not submit a decision on inheritance. Instead, the applicant's son and daughter submitted a written statement certified by a notary public attesting that they were the applicant's heirs.

2. The Court's assessment

28. The Court would point out that in a number of cases where an applicant has died during the proceedings, it has taken account of the wish expressed by heirs or close relatives to continue them (see, among other authorities, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 97, ECHR 2014 and the references indicated therein; *Petrović v. the former Yugoslav Republic of Macedonia*, no. 30721/15, § 15, 22 June 2017; and *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, § 73, 17 October 2019).

29. In the present case, the Court finds that the heirs of the applicant may have a sufficient interest in the continued examination of the application and thus recognises their capacity to act in his stead (see *Petrović*, cited above, § 16).

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

30. The applicant complained under Article 6 § 1 of the Convention that he had had no access to the Supreme Court because of the manner in which that court had interpreted and applied the statutory provisions regarding the value of the dispute. Article 6 § 1 of the Convention, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal established by law ..."

A. Admissibility

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

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

B. Merits

1. The parties' submissions

(a) The applicant

33. The applicant argued that the Court of Appeal's conclusion had aimed to mitigate the legal uncertainty created by the transitional provisions of the 2005 Act (see paragraph 10 above). Having set the value of the dispute at the preparatory hearing of 20 March 2006, he had complied with the 2005 Act (see paragraphs 11 and 12 above). The first- and

second-instance courts had accepted and confirmed the increased value of the subject matter of the dispute.

34. The applicant further contended that the Supreme Court's case-law to which the Government referred was irrelevant to the present case, which concerned the application of the transitional provisions of the 2005 Act to a pending case, in line with the conclusion adopted by the Court of Appeal. He pointed out that none of the decisions referred to by the Government were relevant to his situation, as he had increased the value of the subject matter of the dispute at an appropriate stage of the proceedings, namely at the preparatory hearing.

(b) The Government

35. The Government submitted that the rejection of the applicant's appeal on points of law had not undermined his right of access to court as his case had been examined on the merits at two levels of jurisdiction. In the Government's view, the Supreme Court's decision had been lawful and had followed that court's well-established practice, of which the applicant, who had been represented by a lawyer, should have been aware (see paragraph 19 above).

36. The Government submitted that the applicant had changed the value of the claim at a stage of the proceedings when, according to the relevant law and the consistent practice of the Supreme Court, such an action had no longer been possible. In this connection, they referred to the applicant's counterclaim of 4 November 2005, in which the value of the dispute had been set at MKD 40,000 (see paragraph 8 above). In the Government's view, given the Supreme Court's established practice on the matter, the acceptance of a different stance in the present case would have undermined legal certainty.

2. The Court's assessment

37. The general principles relating to the right of access to a court are set out in *Naït-Liman v. Switzerland* ([GC], no. 51357/07, §§ 112-16, 15 March 2018). The principles relating specifically to *ratione valoris* restrictions on access to a court were also established in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 80-85, 5 April 2018).

38. The Court notes that having a statutory threshold for the value of a claim for appeals to the Supreme Court is a legitimate and reasonable procedural requirement (see, for example, *Jovanović v. Serbia*, no. 32299/08, § 48, 2 October 2012). It further considers that the refusal of the Supreme Court, on the basis of the statutory provisions regulating its competence, to examine the admissibility of the applicant's appeal on points of law *ratione valoris* constituted an interference with the applicant's right of access to a court.

39. In *Zubac* (cited above, §§ 110-25), the following elements were examined to determine whether a restriction of the right of access to a court was proportionate: (i) the foreseeability of the restriction; (ii) which party should bear the adverse consequences of the errors made during the proceedings; and (iii) whether the restriction could be said to involve "excessive formalism".

40. In the present case, after the quashing by the Supreme Court (see paragraph 7 above) of the lower courts' decisions regarding G.P.'s claim, the applicant for the first time lodged a counterclaim, which was joined to the pending proceedings. The proceedings were to be pursued under the 2005 Act, which had meanwhile become applicable, as the case, in particular the applicant's fresh claim, was pending at first instance (see paragraphs 8 and 9 above). That appears to have been in compliance with sections 474 and 476 of the 2005 Act (see paragraph 17 above), as was confirmed in the conclusion of the Court of Appeal (see paragraph 10 above). The Supreme Court did not find otherwise. Relying on that conclusion, the first-instance court held a preparatory hearing during which the applicant increased the value of the claim to MKD 500,100, which was above the statutory threshold set in the 2005 Act (see paragraph 12 above). Having regard to section 33 of the 2005 Act, which regulates the determination of the value of the dispute (see paragraph 16 above), such an increase does not appear, in the Court's opinion, to have been an unreasonable procedural step on the part of the applicant (see, on the contrary, *Zubac*, cited above, § 121 and, in particular, *Doo Vio-Mark-In Insolvency v. North Macedonia* (dec.), no. 50520/15, § 20, 11 July 2019). Both the first- and second-instance courts accepted, admittedly in their rectifying decisions, the increased amount as the value of the applicant's claim (see paragraphs 13 and 14 above). The applicant also paid higher court fees corresponding to the increased value of the claim (see paragraph 12 above).

41. In those circumstances, the Supreme Court rejected the applicant's appeal on points of law as inadmissible *ratione valoris*, holding that the value of the relevant claim amounted to MKD 40,000, as the applicant had indicated in his counterclaim (see paragraph 8 above). This value fell below the statutory threshold of MKD 500,000 (see paragraph 9 above). Whereas the Supreme Court relied on section 33 of the 2005 Act (see paragraph 15 above), it nevertheless found that the value of the claim had been increased in the proceedings before the Court of Appeal, which was not the proper procedural stage for such a change. In the Court's view, such a finding is contrary to the facts of the case as indicated in paragraph 12 above, in particular since the change in the value of the claim had occurred at the preparatory hearing before the first-instance court. The Supreme Court made no mention of that fact. More importantly, it did not state its position on whether such a change at that stage of the proceedings had been in

compliance with the law or its established practice. As to the latter point, the Court does not consider that the case-law submitted by the Government is relevant to the present case, which concerns the alteration of the value of a claim at a preparatory hearing held in pending proceedings and in relation to a fresh claim in respect of which no such hearing had previously been held, nor does that case-law concern the application of the transitional provisions of the 2005 Act to pending proceedings at first instance. In such circumstances, it cannot be said that the applicant and his lawyer should have been able to ascertain that the amendment of the value of the claim at the preparatory hearing would not be taken into account for the purposes of access to the Supreme Court (see, on the contrary, *Zubac*, cited above, § 111).

42. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed 6,000 euros (EUR) in respect of non-pecuniary damage.

45. The Government submitted that the applicant's claim was excessive and unsubstantiated.

46. The Court reiterates that the most appropriate form of redress in cases where it finds that an applicant has not had access to court in breach of Article 6 § 1 of the Convention would, as a rule, be to reopen the proceedings in due course and to re-examine the case in keeping with all the requirements of a fair hearing (see, for example, *Lungoci v. Romania*, no. 62710/00, § 56, 26 January 2006; *Yanakiev v. Bulgaria*, no. 40476/98, § 90, 10 August 2006; and *Lesjak v. Croatia*, no. 25904/06, § 54, 18 February 2010). In this connection, the Court notes that, under section 400 of the 2005 Act, the applicant may request the reopening of the proceedings in respect of which the Court has found a violation of Article 6 § 1 of the Convention.

B. Costs and expenses

47. The applicant claimed EUR 2,920 for costs and expenses incurred before the Court.

48. The Government contested those claims as excessive.

49. 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 *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, § 148, 31 January 2019). 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 1,500 for costs and expenses incurred in the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Rejects* the Government's request to strike the application out of its list of cases;

2. *Holds* that the applicant's heirs have standing to continue the present proceedings in his stead;

3. *Declares* the application admissible;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the breach of the applicant's right of access to a court in relation to the Supreme Court's rejection of his appeal on points of law as inadmissible *ratione valoris*;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 June 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Stéphanie Mourou-Vikström President