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

FIFTH SECTION

DECISION

Application no. 11438/15
Anne-Marie YAZBEK and Myrna YAZBEK
against North Macedonia

The European Court of Human Rights (Fifth Section), sitting on 20 May 2021 as a Committee composed of:

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

Having regard to the above application lodged on 3 March 2015,

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

Having regard to the decision of the Government of France not to make use of their right to intervene in the proceedings (Article 36 § 1 of the Convention);

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Ms Anne-Marie Yazbek and Ms Myrna Yazbek, are two sisters who were born in 1984 and 1975 respectively and live in Skopje. The applicants were represented by Mr G. Caloni, a lawyer practising in Paris.

2. 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. The applicants are two French nationals who were legally residing in the respondent State. Their father was the owner of an international hotel in

Skopje, where he had lived from 1995 until his death in 2011. Both applicants were shareholders in a company that held the majority shares in the hotel. The applicants were also non-executive members of the board of directors of the hotel.

5. On 13 December 2012 the applicants brought a civil action against the hotel and three other individuals, one of whom was their uncle, a national of the United States, requesting that the Skopje Court of First Instance (*Основен суд Скопје*) establish that the defendants had interfered with the applicants' possession (*смеќавање на владение*) because they had prevented the applicants from entering an office located in the hotel.

6. In the course of the proceedings certain documents were translated from the language known to the applicants into the official language of the respondent State, and at the main hearing – where the parties, including the applicants, were questioned – interpreters from English and French into the official language of the respondent State and vice versa were in attendance.

7. The closing arguments and the lawyer's fees were submitted in writing to the first-instance court. Both the applicants' and the defendants' lawyers in the domestic proceedings requested that a 100% surcharge be applied to their fees owing to the participation of foreign nationals, in accordance with section 3 of the official lawyers' tariff (hereinafter "the Lawyers' Tariff"), which provided that fees for legal representation were to be doubled in cases in which one of the parties was a foreign natural or legal person (see paragraph 16 below).

8. On 24 July 2013 the Skopje Court of First Instance dismissed the applicants' claim as ill-founded. It also ordered them to jointly reimburse the defendants' procedural costs in the amount of 631,947 denars (MKD) (equivalent to approximately 10,275 euros), applying the 100% surcharge.

9. The applicants lodged an appeal against the first-instance decision, complaining, *inter alia*, about the decision concerning the costs of proceedings.

10. On 24 October 2013 the Skopje Court of Appeal (*Апелационен суд Скопје*) dismissed the applicants' appeal in the part concerning the merits of the case and upheld the first-instance decision. In the part concerning the award of costs, the second-instance court remitted the case for reconsideration. It held that the first-instance court had failed to specify the evidence on the basis of which it had been established that the proceedings involved foreign nationals. The Court of Appeal noted that the first-instance court had awarded a 100% increase in legal representation fees without determining whether the applicants – or one of the defendants, who was a national of the United States – had obtained the nationality of the respondent State.

11. In the resumed proceedings, the applicants submitted copies of their residence permits to the first-instance court.

12. On 20 February 2014 the first-instance court determined the award of the costs of the proceedings and ordered the applicants to jointly reimburse the opponents' costs in the amount of MKD 429,270 (equivalent to approximately 6,980 euros). It held that the court was able to determine on the basis of the residence permits submitted by the applicants that they were foreign nationals legally residing in the respondent State but had not acquired its nationality. On the basis of a submission by one of the defendants, who was a national of the United States, the court stated:

> "... Furthermore, the court took into consideration that the second defendant is also a foreign national, i.e. he does not have Macedonian nationality."

13. The applicants lodged an appeal against the decision of the first-instance court. They complained that, in spite of their status as legal residents in the respondent State, the first-instance court had accepted a 100% surcharge in fees for the opponents' legal representation. They argued that, as residents, they were staying in the country legally and therefore could not be treated as "foreigners" within the meaning of section 3 of the Lawyers' Tariff. The applicants further asserted that, as legal residents, they should be treated on an equal footing with nationals of the respondent State.

14. On 10 July 2014 the Skopje Court of Appeal granted the applicants' appeal in part and ordered them to jointly reimburse the defendants' costs in the amount of MKD 398,787 (equivalent to approximately 6,484 euros). It reiterated that the Lawyers' Tariff provided for increased lawyers' fees in cases involving foreign nationals. Notwithstanding the fact that the applicants were legal residents in the respondent State, they had not acquired its nationality and were therefore to be treated as foreigners, within the meaning of section 3 of the Lawyers' Tariff.

15. The applicants' legal representative received a copy of that decision on 4 September 2014.

B. Relevant domestic law

16. The relevant provision of the Lawyers' Tariff, as applicable at the material time (consolidated version, *Тарифа за награда и надоместок на трошоците за работа на адвокатите – пречистен текст*, Official Gazette no. 152/2009), reads:

Section 3

> "In proceedings in which one of the parties is a foreign natural or legal person, as well as in proceedings in which there are submissions in a foreign language, or in proceedings involving communication in a foreign language, the lawyers' fees are to be increased by 100% [*наградата е двојно поголема*]."

17. The relevant provisions of the Civil Proceedings Act (consolidated version, *Закон за парничната постапка*, Official Gazette no. 7/2011) read:

Section 148

"(1) A party which loses a case completely shall reimburse the costs of the opposing party and the party intervening on that party's behalf."

Section 149

"(1) In deciding which costs shall be reimbursed to a party, the court shall take into account only those costs which were necessary for the conduct of the proceedings. When deciding which costs were necessary and the amount thereof, the court shall carefully consider all the circumstances.

(2) The fees for legal representation and other legal costs shall be calculated on the basis of the official lawyers' tariff."

COMPLAINTS

18. The applicants complained, under Article 14 taken in conjunction with Article 6 of the Convention and under Article 1 of Protocol No. 12 to the Convention, that they had been discriminated against on the basis of their nationality.

THE LAW

19. The applicants relied on Article 14 taken in conjunction with Article 6 of the Convention and on Article 1 of Protocol No. 12 to the Convention, which 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 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 12

"1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

A. The parties' arguments

20. The Government firstly argued that the applicants had failed to exhaust relevant domestic remedies in that they had not used the legal

avenue provided for by the Law on protection against discrimination to complain of the discrimination allegedly sustained in the domestic proceedings. The Government further submitted that the complaints outlined in the present application were not identical to those outlined in the impugned domestic proceedings, nor had they been submitted before the competent domestic authorities.

21. As to the merits of the application, the Government maintained that there had been no difference in treatment of the applicants. Even assuming otherwise, there had existed a legitimate and reasonable justification. The Government pointed out that any difference in treatment of the applicants had not been based on their nationality, but had been the consequence of the presence of foreign elements in the proceedings. The Government did not deny the relationship the applicants had created with the respondent State, in which they allegedly had official and private ties, but also emphasised that such a relationship did not facilitate the additional engagement of a lawyer in the proceedings concerning them. Additionally, the Government were of the view that in the present case the State had not exceeded the margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justified different treatment.

22. The applicants maintained that, despite having established close personal and professional ties with the respondent State, they had been discriminated against on the basis of their nationality. They had been ordered to reimburse costs for the opposing party's legal representation in proceedings before the domestic courts that had been increased by 100% owing to a discriminatory provision of the domestic law that provided for such an increase only in cases involving foreign nationals. They further argued that, had the defendants in the proceedings been the losing party, as nationals of the respondent State (apart from the applicants' uncle) they would not have been ordered to reimburse the costs with a surcharge of 100%.

B. The Court's assessment

23. The Court considers that it is not necessary to examine the preliminary objections raised by the Government, as the present case is in any event inadmissible for the following reasons.

1. General principles

24. The Court reiterates that, in order for an issue to arise under Article 14 of the Convention, there must be a difference in treatment of persons in analogous, or relevantly similar, situations (see, among many authorities, *Konstantin Markin v. Russia* [GC], no. 30078/06, § 125, ECHR 2012; *X and Others v. Austria* [GC], no. 19010/07, § 98, ECHR 2013; and *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, § 64,

24 January 2017). The requirement to demonstrate an analogous position does not require that the comparator groups be identical. An applicant must demonstrate that, having regard to the particular nature of his or her complaint, he or she was in a relevantly similar situation to others treated differently (see *Clift v. the United Kingdom*, no. 7205/07, § 66, 13 July 2010).

25. However, not every difference in treatment will amount to a violation of Article 14. Firstly, the Court has established in its case-law that only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14 (see *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 61, ECHR 2010, and *Eweida and Others v. the United Kingdom*, nos. 48420/10 and 3 others, § 86, ECHR 2013). Secondly, a difference in treatment is discriminatory if it has no objective and reasonable justification – in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *Weller v. Hungary*, no. 44399/05, § 27, 31 March 2009; *Fabris v. France* [GC], no. 16574/08, § 56, ECHR 2013; and *Topčić-Rosenberg v. Croatia*, no. 19391/11, § 36, 14 November 2013).

26. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The scope of the margin will vary according to the circumstances, the subject matter and the background (see *Stummer v. Austria* [GC], no. 37452/02, § 88, ECHR 2011).

27. A wide margin is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy, for example (see *Hämäläinen v. Finland* [GC], no. 37359/09, § 109, ECHR 2014). Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the Court will generally respect the legislature's policy choice unless it is "manifestly without reasonable foundation" (see *Carson and Others*, cited above, § 61).

28. On the other hand, very weighty reasons would have to be put forward before the Court could regard a difference in treatment based exclusively on the ground of nationality as compatible with the Convention (see *Gaygusuz v. Austria*, 16 September 1996, § 42, *Reports of Judgments and Decisions* 1996-IV; *Koua Poirrez v. France*, no. 40892/98, § 46, ECHR 2003-X; *Luczak v. Poland*, no. 77782/01, § 48, 27 November 2007; *Andrejeva v. Latvia* [GC], no. 55707/00, § 87, ECHR 2009; *Zeïbek v. Greece*, no. 46368/06, § 46 *in fine*, 9 July 2009; *Fawsie v. Greece*, no. 40080/07, § 35, 28 October 2010; and *Saidoun v. Greece*, no. 40083/07, § 37, 28 October 2010).

29. Lastly, as regards the burden of proof in relation to Article 14 of the Convention, the Court has held that once the applicant has shown a difference in treatment, it is for the Government to show that it was justified (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 177, ECHR 2007-IV; *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 85, ECHR 2013; and *Khamtokhu and Aksenchik*, cited above, § 65).

2. Application of the general principles to the present case

30. In the present case the applicants, who were foreign nationals with residence permits in the respondent State, were ordered to pay the defendants the costs of the proceedings incurred in a civil case, which they had lost. The costs had increased by 100%, in accordance with the relevant provisions of the domestic law, because the case had involved foreign nationals.

31. The Court first has to establish whether there has been a difference in treatment between the applicants, as foreign nationals, and nationals of the respondent State. The Court considers in this connection that the mere fact that the applicants, as the losing party in the domestic proceedings, had been ordered to pay the procedural costs of the opponents does not imply that they were treated differently from or less favourably than any other person, including nationals of the respondent State, in a relevantly similar situation. Moreover, the Court notes that the applicants' own lawyer in the domestic proceedings had also requested that his fees be doubled owing to the involvement of foreign nationals in the proceedings (see paragraph 7 above).

32. Most importantly, the Court notes, as it was already established by the first-instance court (see paragraph 12 above), that beside the applicants (plaintiffs in the domestic proceedings) one of the defendants in the case was also a foreign national (see paragraph 5 above), a fact which, in view of the absolute nature of section 3 of the Lawyers' Tariff, would have sufficed for the domestic court to increase the legal costs payable by the applicants by 100%, irrespective of their nationality. In other words, had the losing party in the present case consisted of nationals of the respondent State, they too would have, in the circumstances, been ordered to pay the increased amount of costs. The applicants did not offer any proof in support of their claim (see paragraph 22 above) to the contrary.

33. The foregoing considerations are sufficient to enable the Court to conclude that in the circumstances of the present case there has been no difference in treatment of the applicants on the basis of their nationality. Their complaints under Article 14 in conjunction with Article 6 and under Article 1 of Protocol No. 12 are therefore manifestly ill-founded and should be rejected under Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 10 June 2021.

Martina Keller Deputy Registrar	Stéphanie Mourou-Vikström President