

## Macedonia

### The impact of the European Convention on Human Rights and the case law on the Republic of Macedonia

MIRJANA LAZAROVA TRAJKOVSKA  
AND ILO TRAJKOVSKI

#### 1. Introduction

This chapter presents our findings concerning the effects of the European Convention on Human Rights (ECHR) and the case law of the European Court of Human Rights (ECtHR) on some of the key pillars of democratisation in the Republic of Macedonia. Within the general framework of the book, 'the effects' are analysed through the legislative, institutional, and other changes, which have been introduced in the country because of its policy of domestication (ratification, application, and interpretation) of the norms and principles of the ECHR and its court's case law.

Theoretically, 'the effects' are understood as the power of one specific international system, the one established by the ECHR, to influence changes in the national or, more specifically, the Macedonian legal system for the protection of human rights through its democratic political system. Such influences are identified in the specific rational (normative and political) behind various legislative, institutional, or educative initiatives and projects introduced by relevant national actors. The specificity of this rational is formulated usually as 'harmonisation' of the national system with the respective European international system. In this particular case, we are dealing with the process of harmonisation of the national system with the ECHR. This process could be interpreted in a narrower sense, as a 'conventionisation process', and in a broader sense, as a 'Europeanisation process'.<sup>1</sup> In both cases, harmonisation

<sup>1</sup> Although the term *Europeanization* is usually used within the European Union studies and refers, first of all, to the European Union's impact on its Member States and on association states, its use in the context of our analyses of the effect of the ECHR upon the countries of South East Europe is legitimized by the fact that, the public opinion in Macedonia, for

reads acceptance and institutionalization within the Macedonian national system of the so-called European democratic and human rights values and standards established by the ECHR and its Court in Strasbourg.

The time span of the analysis extends from the time of signature of the Convention (1995) until the present day. Within less than two decades, we can distinguish two phases in terms of the scope and the character of the recognised effects. The first period extends from around the signature of the ECHR until the first violation judgments of the Court. Within this period of about ten years, the effects of the ECHR are more of a legislative and institutional nature and, as such, they have a larger scope of influence on the democratic processes. Within the second period, the effects are more of a piecemeal character and institutionally localised mainly within the judicial system.

One could also say that the effects of the ECHR and the Court's case law in these two periods had two different paths. In the first period, they initially affected the political actors and institutions undertaking legislative initiatives and further institutional changes towards the rule of law, separation of powers, and, particularly, the independence of judicial power. In the second period, it is the other way around. The case law affected primarily the national judicial system, and then, through its interpretations and the further actions of its agents, affected the government and through it, the other branches of the political system.

## 2. Historical aspects of accession to the ECHR

The institutional and legislative effects of the ECHR during the accession decade are presented through the positioning of the Convention in the national hierarchy of norms, and its status in domestic law.

The accession of the Republic of Macedonia to the ECHR was achieved in a relatively short period. It signed the Convention in November 1995 and ratified it in April 1997. Yet, the process of harmonisation of its constitutional system with the standards of the Convention had started a few years before the signature. In a way, the ECHR had influenced the democratic development in the country even before its formal membership to the Council of Europe (CoE) and its accession to the Convention. "The Republic ... undertook ... harmonisation of the legal order with the

example, considers the Council of Europe and its instruments and institutions such as the ECHR and the Court as the threshold of Europe. In a similar way, the *protection of human rights* was understood just as another term for democracy.

European Convention as early as the adoption of the Constitution ... in 1991. As a result of this, a large number of the ideas contained in the ECHR had been previously integrated in this constitutional act, as well as in other more significant laws passed by the Assembly ... in the period from 1992 to 1995 (the 1992 Law on Defense, the 1994 Law on Political Parties, the Internal Affairs Law, the Law on Courts and the Law on Local Self-Government in 1995).<sup>2</sup>

The democratic forces that in 1990 won the elections, began the long and today not yet finished march towards establishing the Republic of Macedonia as a Member State of the world polity, and, in the first instance, of the 'European family' of states. Based on their pro-European ideological convictions, they took 'the political legitimacy of the Convention ... for granted.' In this way, as it was the case in some 'other late-ratifying States ... the Convention offered an established, "external", and therefore legitimate, normative standard for the transition to constitutional democracy'. This perspective on the role of the Convention in the democratization process, developed by Helen Keller and Alec Stone Sweet, allows us to conclude that the accession and ratification that followed later 'served, in effect, to certify the membership' of the Republic of Macedonia to 'the circle of good European countries'.<sup>3</sup> Yet, there were many things to be done in order to build a domestic system for the protection of human rights that would be in harmony with the Convention and the case law. After signing the Convention, the government established an interministerial expert group with the task of analyzing the compatibility of the – at that time – existent legal order of the Republic with the standards and requirements of the ECHR and to propose required measures. The result of the work of this expert group was a compendium of recommendations for legislative changes in a number of laws before the ratification of the Convention.

The ratification<sup>4</sup> was not subject to public criticism, but on the contrary the media reported a number of welcoming comments made by human rights defenders, scholars, and analysts. The ratification was considered

<sup>2</sup> S. Skaric and C. Cvetkovski, 'Contemporary Constitutional Issues and Debates in the Republic of Macedonia: Macedonian Constitutional System in the Light of the European Convention on Human Rights', available at [http://www.cecl.gr/RigasNetwork/databank/REPORTS/r3/Fy\\_3\\_Cvetkovski.html](http://www.cecl.gr/RigasNetwork/databank/REPORTS/r3/Fy_3_Cvetkovski.html) (accessed 13 April 2013).

<sup>3</sup> A. S. Stone and H. Keller, 'Assessing the Impact of the ECHR on National Legal Systems', *Faculty Scholarship Series*, Paper 88 (2008), available at [http://digitalcommons.law.yale.edu/fss\\_papers/88](http://digitalcommons.law.yale.edu/fss_papers/88) (accessed 28 May 2013), 678–9.

<sup>4</sup> Official Gazette of the Republic of Macedonia, No. 11/97.

as confirmation of declared politics of democratization and rule of law through building an internationally verified domestic human rights protection system. Within that context, the most discussed issue concerning the effects of ratification on the national political system was the place and the status of the Convention in the hierarchy of the domestic legal system. The solution established was in line with the monist traditions of the international law.

According to the Constitution, 'the international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law'.<sup>5</sup> In the normative order of the Macedonian legal system, the Convention was positioned between the Constitution and the laws. The Constitution is the highest in the hierarchy of legal acts. This means that all acts (laws, statutes) must be in conformity with the Constitution.<sup>6</sup> Within this normative framework, incorporation of the Convention and its case law into the national law and practice was seen as the most effective way of its implementation into Macedonian legal order.<sup>7</sup>

### 3. The effects of the Court's case law: General observation

The case law of the Court in Strasbourg was not of a specific relevance for the work of Macedonian courts before, during and soon after ratification of the Convention. National courts were almost exclusively referring to the Constitution as the highest legal source concerning human rights violations. Our analysis of the effects of the Court's case law led us to the conclusion that the influences are first of all conditioned by the Court's treatment of Macedonian cases. Certainly, the Court's case law in general has certain influences, but they are rather indirect, less visible, and weaker than the national cases handled by the Court. From this perspective, in what follows we will present the effects of the most important Court's judgments concerning the Republic of Macedonia.

First, we present the main structural characteristics of Macedonian cases dealt with by the Court. In this way we highlight the possible effects of the Court's case law on the country. Then, in the second section we respond to the question of whether and how the Court's judgments had influenced

<sup>5</sup> Article 118 of the Constitution of the Republic of Macedonia.

<sup>6</sup> Constitution of the Republic of Macedonia, Article 51.

<sup>7</sup> 'Incorporation is the most faithful way of implementing the Convention into domestic law'. See J. Polakiewicz, 'The Status of the Convention in National Law', in R. Blackburn and J. Polakiewicz (eds.), *Fundamental Rights in Europe: The European Convention on Human Rights and Its Member States, 1950–2000* (Oxford: Oxford University Press, 2001), 35.

first of all the national judiciary and through it the legal and political subsystem. In this way we emphasize the role of the national judges in the implementation of the Convention and its standards, because, even a perfect legislation without proper implementation by the national courts will result in a violation of the Convention.

#### 4. The Macedonian human rights dossier at the ECHR

Macedonian case law<sup>8</sup> before the Court has evolved slowly, compared with other countries. This is especially in terms of its size, the quality of applications, and their structure; the different alleged human rights violations (different articles of the Convention); the type of the Court's treatment (decisions, friendly settlements, violation or nonviolation judgments, etc.); and their effects on the human rights situation in the country.

The first judgment was delivered in 2001, almost four years after the ratification of the Convention.<sup>9</sup> One year later in 2002, in the second judgment the case was a strike out of the list of cases as a result of friendly settlement.<sup>10</sup> In 2005, almost seven years after the ratification of the Convention, the first two violation judgments were delivered. In the cases of *Djidrovski* and *Veselinski*, in two separate judgments, the Court had decided that there had been a violation of Article 1 of Protocol No. 1, and that it was not necessary to examine whether there was a violation of Article 14 of the Convention, in conjunction with Article 1 of Protocol No. 1.<sup>11</sup>

By the end of 2005, the Court delivered two judgments on the length of proceedings.<sup>12</sup> In the case of *Atanasovic and others*, the Court decided that there had been not only a violation concerning the excessive length of proceedings, but that there had been also a violation concerning the lack of legal remedy on length of proceedings. These two judgments disclosed one of the most serious problems of the human rights protection system in the country. The growing number of cases concerning the length of proceedings in 2008 initiated significant legislative and judiciary changes

<sup>8</sup> The total number of submitted applications from 1998 until 1 January 2015 is 4,236. At the time of writing this contribution (February 2015) the database of the Court included 110 judgments, 306 friendly settlement decisions, 109 unilateral declarations, and 68 inadmissibility decisions (decided by Chamber of seven judges). One case (*El-Masri*) was decided by Grand Chamber judgment.

<sup>9</sup> *Solakov*, No. 47023/99, 31 October 2001.

<sup>10</sup> *Janeva*, No. 58185/00 (friendly settlement), 3 October 2002.

<sup>11</sup> *Djidrovski*, No. 46447/99, 24 February 2005, and *Veselinski*, No. 45658/99, 24 February 2005.

<sup>12</sup> *Dumanovski*, No. 13886/02, 8 December 2005, and *Atanasovic and others*, No. 13886/02, 22 December 2005.

aimed at strengthening the various elements of the rule of law in respect to the issue of length of proceedings.

In 2007, the Court delivered four judgments on other aspects of Article 6 and one judgment finding a violation of Article 3. In two cases, the issue was equality of arms;<sup>13</sup> in one case, it was the issue of unfair trial concerning the applicant's inability to be present at the hearing;<sup>14</sup> and in one case, the trial was unfair concerning the impartiality of the trial judge.<sup>15</sup>

The same year the Court delivered a judgment on a violation of Article 3 of the Convention on account of the failure of the authorities to conduct an effective investigation into the applicant's allegations.<sup>16</sup> This case was the first on alleged police brutality and failure to conduct an effective investigation. The judgment was followed by three new judgments in 2008 concerning Article 3 of the Convention, again because of the failure of the authorities to conduct an effective investigation into the applicant's allegations that they were ill-treated by the police.<sup>17</sup> They would later on have an impact on the appropriate changes to the new Code on Criminal Procedure.

Starting from 2008, Macedonian cases were enriched with judgments that today are part of the Court's case law. For example, in one case, a violation of Article 6 of the Convention was found in respect of the applicant's right of access to court and to having his case heard within a reasonable time.<sup>18</sup> In another case, a violation was found as a result of the fact that the Supreme Court's decision had been suspended and not enforced and that the applicant had not had an effective remedy against its nonenforcement.<sup>19</sup> In the case of *Jankulovski*, the Court found a violation because of the fact that the State violated the applicant's 'right to a court' and failed to comply with the obligation to secure for the applicant the effective enjoyment of his right of property as established by the court decisions.<sup>20</sup> The rest of the nine judgments for 2008 were on length of proceedings, but one of them deserves special attention. In the case of *Parisov* the Court clearly stressed that the legal remedy that was prescribed by domestic

<sup>13</sup> *Stoimenov*, No. 17995/02, 5 April 2007, and *Grozdanoski*, No. 21510/03, 31 May 2007.

<sup>14</sup> *Mitreovski*, No. 33046/02, 21 June 2007.

<sup>15</sup> *Nikolov*, No. 41195/02, 20 December 2007.

<sup>16</sup> *Jasar*, No. 69908/01, 15 May 2007.

<sup>17</sup> *Trajkoski*, No. 13191/02, 7 February 2008; *Dzeladinov*, No. 13252/02, 10 April 2008; and *Sulejmanov*, No. 69875/01, 24 April 2008.

<sup>18</sup> *Fetaovski*, No. 10649/03, 19 June 2008.

<sup>19</sup> *Nesevski*, No. 14438/03, 24 April 2008.

<sup>20</sup> *Jankulovski*, No. 6906/03, 3 July 2008.

legislation was not in line with the Court's standards on effective legal remedies. The year 2009 was marked by four important judgments. In the case of *Association of Citizens Radko and Paunkovski*, the Court found that Article 11 had been violated.<sup>21</sup> In the case of *Bočvarska*, the Court found that the enforcement proceeding was in breach of the principle of rule of law inherent to the Convention, and a violation was established on Article 1 Protocol No. 1.<sup>22</sup> In the cases *Stojanovski and Lazoroski*, the Court established violation(s) on different aspects of Article 5 for the first time.<sup>23</sup>

Among other cases, in 2010, the judgment on *Vasilkovski and others* was the most remarkable one. Namely, the Court found a violation of Article 5 para. 3 of the Convention based on the fact that the national courts did not provide sufficient reasons for the applicants' continued detention.<sup>24</sup> In the same year, in nine out of fifteen judgments a violation was found on the grounds of length of proceedings. In this respect, the Court found that it was still too early to deliver a judgment on the effects of the new legal remedy introduced by the amendments to the Court's act in 2008. This was the reason why in the case of *Surbanoska and others* the Court declared the application inadmissible, finding that applicants, who meanwhile used the length remedy successfully, could no longer claim to have victim status; but at the same time, the main message was that it was too early to say whether the legal remedy in general had been effective.<sup>25</sup>

Then in 2011 in the case of *Adzi-Spirkoska and others* the Court found that a length remedy introduced in 2008 could be regarded effective *ex nunc*.<sup>26</sup> In this year, one of the most important cases was the case on *Atanasov*. This case addressed a statutory inequality created by the Criminal Proceedings Act under which, in cases prosecutable *ex officio*, the public prosecutor is always invited to attend the session of the Court of Appeal, while the defendant has to make a specific request to this effect.<sup>27</sup>

<sup>21</sup> *Association of Citizens Radko and Paunkovski*, No. 74651/01, 15 January 2009.

<sup>22</sup> The quashing of a final decision given in enforcement proceedings conferring on the applicant the right to inherit the established claims of an undertaking, which was run and owned by the applicant at the relevant time. The quashing was upon the intervention of the public prosecutor, who was not a party to the proceedings. *Bočvarska*, No. 27865/02, 17 September 2009.

<sup>23</sup> *Lazoroski*, No. 4922/04, 8 October 2009, violation of Article 5 para. 1 (c), violation of Article 5 para. 2, and violation of Article 6 para. 1. In case of *Stojanovski*, No. 1431/03, 22 October 2009, violation on Article 5 para. 1 (e) was found.

<sup>24</sup> *Vasilkovski*, No. 28169/08, 28 October 2010.

<sup>25</sup> *Surbanoska and others*, No. 36665/03 was considered a leading case regarding the effectiveness of a length remedy introduced in 2008.

<sup>26</sup> *Adzi-Spirkovska and others*, No. 38914/05 and *Topuzovski*, No. 17879/05.

<sup>27</sup> *Atanasov*, No. 22745/06, 17 February 2011.



In 2012, eight judgments were established, and three of them are of special importance concerning the case law of the Court and Macedonian case law. In the case of *Sašo Georgiev*, the Court found a violation of Article 2 of the Convention in its substantive aspect in that the State was to be considered responsible for unlawful actions of its agent taken outside his official duties.<sup>28</sup> Then in the case of *Gorgi Georgiev* the Court found that the State did not discharge its procedural obligation under Article 3 of the Convention.<sup>29</sup> Perhaps one of the most remarkable judgments in 2012 on the Republic of Macedonia, but also at Court level in general, is the Grand Chamber judgment in the case of *El-Masri*.<sup>30</sup>

In 2013 and 2014 the Court was dealing with many interesting cases; among the most important, in my view, are cases that concerned detention and cases linked with property rights in procedures of expropriation and denationalization.

In general, the Macedonian case law before the ECHR increased in quantity and evolved structurally. In what follows, we present the five main types of cases whose judgments in one way or another have had the strongest influence on the interaction between the ECHR and national institutions. The effects of each group of case judgments at the national level vary in terms of the type of changes they have initiated. As we will see, in some cases, the effects are legislative changes, in others the effects are institutional or changes in the conduct (personal, educational, and organizational standards) of judges and others involved in the functioning of the democratic political system that is in the functioning of the rule of law and protection of human rights.

## 5. Selected examples

Macedonian case law year by year is becoming an important part of the 'evolutive' nature of the Convention as a 'living instrument'.<sup>31</sup> The structure and issues raised by cases changed over time. In the first ten years, more than 75 percent of the admissible cases were on length of proceedings. Today, Macedonian cases are concerned with other aspects for better protection of human rights.

For a better understanding of the impact of the Convention and the case law on the Republic of Macedonia, we classify the most important

<sup>28</sup> *S. Georgiev*, No. 49382/06, 19 April 2012.

<sup>29</sup> *G. Georgiev*, No. 26984/05, 19 April 2012.

<sup>30</sup> *El-Masri*, No. 39630/09, 13 December 2012.

<sup>31</sup> *Tyrer v. UK*, No. 5856/72, 25 April 1978.



judgments into five groups: cases on the procedural violation of Article 3 (or the failure of the authorities to conduct an effective investigation); cases concerning the right to liberty and security; cases on the right to a fair trial (in this group we will cover the most important cases on length of proceeding, access to court, independent and impartial tribunal, and equality of arms); cases on the right to property; and one case on the right to life.

### 5.1. *The failure of the authorities to conduct an effective investigation*

In the case of *Jasar*, the Court faced the first complaint of alleged police brutality and failure to conduct an effective investigation. The conclusion was that there had been a violation of the Convention because of the failure of the authorities to investigate the applicant's allegations that he was ill-treated by the police. The inertia of the public prosecutor prevented the applicant from taking over the investigation as a subsidiary complainant and denied him access to the subsequent proceedings before the court of competent jurisdiction.

This problem in the functioning of the Macedonian judiciary system with the rule of law would appear repeatedly in the following years. In 2008, three new judgments were established on the procedural aspects of Article 3 of the Convention.<sup>32</sup> Then, the fifth time happened in 2012, in the case of *Gorgiev*, when the Court had found a violation of Article 3 of the Convention on the account of the failure of the authorities to conduct an effective investigation into the applicant's allegations.<sup>33</sup> It is evident that four out of these five cases had in common the fact that the reason for finding a violation was the inactivity of the same regional office of the public prosecutor.

The effects of these judgments are found in the introduction to the Court's case law in the program of the Academy for Judges and Public Prosecutors and in the program of the Police Academy.

### 5.2. *Right to liberty and security*

In the case of *Vasilkoski and others*, the Court concluded that in confirming the applicants' detention after 15 February 2008, the domestic courts

<sup>32</sup> *Trajkoski*, No. 13191/02, 7 February 2008; *Dzeladinov*, No. 13252/02, 10 April 2008; and *Sulejmanov*, No. 69875/01, 24 April 2008.

<sup>33</sup> *Gorgiev*, No. 26984/05, 19 April 2012.

constantly repeated the same summary formula using an identical form of words. This approach led the Court to the conclusion that the authorities did not have regard to the applicants' individual circumstances, as their detention was extended by means of collective detention orders. The Court stressed that the authorities prolonged the applicants' detention on grounds, which, although 'relevant', cannot be regarded as 'sufficient'.<sup>34</sup>

In the case of *Lazoroski*, the Court concluded that the applicant's deprivation of liberty for almost ten hours did not constitute lawful detention effected 'on reasonable suspicion' of him having committed an offence. For the Court the 'operative indications' of the Intelligence Service, in absence of any statement, information, or a concrete complaint, cannot be regarded as sufficient to justify the 'reasonableness' of the suspicion on which the applicant's arrest and detention were based and, consequently, it found a violation of Article 5 para. 1 (c) of the Convention.<sup>35</sup>

In the case of *Stojanovski*, the Court was convinced that the applicant's continued confinement was manifestly disproportionate to his state of mind at that time. The conclusion was that the applicant's continued confinement in the hospital under the 2003 review had not been shown to have been necessary in those circumstances and was, therefore, unjustified within the meaning of Article 5 para. 1 (e) of the Convention.<sup>36</sup>

In the case of *Velinov*, because the applicant failed to pay a fine, the fine was commuted into a two-day prison sentence. After he had been served with the detention order, he paid the fine, but did not inform the court about the payment. He was arrested and released on the following day, after he had submitted a copy of the payment slip. The Court found violations of Article 5 para. 1 (b) and paras. 2 and 5 of the Convention.<sup>37</sup>

*Miladinov and others* is another case that concerned detention. The Court found violations on account of the lack of sufficient reasons for the applicants' detention on remand and due to the lack of oral hearing and violation of the principle of equality of arms in the proceedings for review of the detention before the Court of Appeal.<sup>38</sup>

This group of cases deserves particular diligence. National courts need to learn more about standards and principals in the implementation of detention as the most restrictive measure concerning the right to liberty and security.

<sup>34</sup> *Vasilkovski*, No. 28169/08, 28 October 2010.

<sup>35</sup> *Lazoroski*, No. 4922/04, 8 October 2009.

<sup>36</sup> *Stojanovski*, No. 1431/03, 22 October 2009.

<sup>37</sup> *Velinov*, No. 16880/08, 19 September 2013.

<sup>38</sup> *Miladinov and others*, Nos. 46398/09; 50576/09; and 50570/09, 24 April 2014.

### 5.2.1. Extraordinary rendition

The case of *El Masri* is, among others, one of the most important judgments of the Court. The applicant complained under Articles 3, 5, 8, 10, and 13 of the Convention. The Court found a violation of Articles 3 (both substantive and procedural aspects), 5, 8, and 13 of the Convention. The Court also found that the procedural obligation of the States under Article 3 of the Convention encompasses the right to the truth.<sup>39</sup> This judgment will strongly influence the future case law of the Court in years to come, but it is also reasonable to expect that it will put in motion certain changes in the functioning of the intelligence agencies, not only in the Republic of Macedonia but also elsewhere.

## 5.3. Right to a fair trial

### 5.3.1. Length of proceedings

As we mentioned previously, this problem was disclosed at the earliest stages. As a response to the numerous violation judgments, the national authorities in 2008 undertook a legislative initiative. The newly introduced remedy was put to the test by the Court in a number of new cases. The case of *Surbanovska* was considered as a leading case regarding the effectiveness of the remedy. The Court declared the application inadmissible, finding that the applicant, who had meanwhile used the length-of-proceedings remedy successfully, could no longer claim to have victim status.<sup>40</sup> It was one year later in the case of *Adzi-Spirkovska and others* in which the Court found that the new length-of-proceedings remedy could be regarded effective *ex nunc*.<sup>41</sup> Based on this decision, in 2011 the Court disposed of several hundred length-of-proceedings cases against the State.

### 5.3.2. Access to court

Judgment in the case of *Fetaovski* was the first on the right to access to a court.<sup>42</sup> The applicant complained about the unfairness and excessive length of civil proceedings and that he was not awarded any

<sup>39</sup> *El-Masri*, No. 39630/09 [GC], 13 December 2012.

<sup>40</sup> *Surbanovska and others*, No. 36665/03 (dec.), 31 August 2010.

<sup>41</sup> *Adzi-Spirkovska and others*, No. 38914/05, and *Topuzovski*, No. 17879/05 (dec.), 3 November 2011.

<sup>42</sup> *Fetaovski*, No. 10649/03, 19 June 2008, paras. 40 and 41.

compensation. The Court pointed out that the domestic courts ultimately dealt with the applicant's appeal solely based on the entry in the registry of the first-instance court. Although a number of attempts had been made to determine the actual date of lodging the appeal, no answer was given to the question of why the copy of the appeal had not been accepted as the date of lodging the appeal. The conclusion of the Court was that the failure by the domestic courts to accept the appeal or, in the alternative, to provide a tenable reason for not accepting it, amounted to a construction of the procedural rule at issue, which deprived the applicant of his right of access to a court.

In the case of *Stojanovski*, the applicant complained about the excessive length of the criminal proceedings brought against the two people who had allegedly caused him grievous bodily harm and about the fact that no decision had ever been taken concerning his compensation claim brought in the course of those proceedings as the courts advised him to bring a separate civil action for damages. The Court concluded that his failure to do so could not be held to his detriment because the civil courts, as the government argued, would have been required to wait for the outcome of the criminal proceedings. Therefore, the Court considered that the applicant could not be required to introduce, four years after he made the civil-party complaint and more than ten years after the incident, a fresh action before the civil courts seeking redress for the injuries. The conclusion was that there had accordingly been a violation of the applicant's right of access to a court.<sup>43</sup>

The case of *Petkoski and others* concerns in particular the applicants' complaint that they were denied access to a court. The Court noted that the decisions of the domestic courts rejecting the applicants' claims were based on the Courts Act 1995, which had removed judicial protection for property belonging to cooperatives. The main question in this case was whether this denial of access to a court by way of legislative amendment was compatible with the Convention. The Court observed that the government did not give any reason as to why it had been necessary to remove all protection for the particular type of property related to the applicants' claim. The Court concluded that no reasons had been submitted to the Court that justified the interference by that provision with the remaining applicants' right of access to a court.<sup>44</sup>

<sup>43</sup> *B. Stojanovski*, No. 41916/04, 6 May 2010, para. 56.

<sup>44</sup> *Petkoski and others*, No. 27736/03, 8 January 2009, paras. 38, 39, 40.

### 5.3.3. Independent and impartial tribunal

There are two Macedonian cases that provided solid ground for reexamining of the standards established by the Convention and the Court's case law in regards to the independent and impartial tribunal. In the case of *Nikolov* the applicant complained that an impartial tribunal did not hear the case because the defendant's company had employed the wife of the trial judge shortly after the proceedings had started.<sup>45</sup> The second case articulated another dimension of this standard. The applicant in the case of *Bajaldziev* complained that the Supreme Court's decision to dismiss a legality review request was not impartial as its bench included a judge who had previously examined this case on appeal.<sup>46</sup> The Court concluded that the fact that the judge involved in the dispute did not participate in the adoption of the decision that was challenged by the legality review request was of no relevance because she had already formed a view as to the merits of the applicant's claim before his case was brought before the Supreme Court. The judge involved lacked the requested impartiality to the extent necessary under the Convention. The two cases initiated a number of seminars and training for judges in connection with this aspect of fair trial.

### 5.3.4. Equality of arms

The principle of justice was and still is an area in which the Court's case law plays an important role in the development of rule of law in the country. It is also of utmost importance for the stabilisation of democracy because its implementation affirms the fundamental idea of equality before the law. The principle of equality of arms implies that each party must be afforded a reasonable opportunity to present his or her case (*audi alteram partem*) under conditions that do not place him or her at a substantial disadvantage vis-à-vis his or her opponent. The concept of a fair trial, of which equality of arms is one aspect, implies the right for the parties to have knowledge of and to comment on all evidence adduced or observations filed. The number of Macedonian cases involving various aspects of the equality of arms principle shows that the national system faced evident difficulties in dealing with the issues involved.

In the case of *Grozdanoski*, the procedural failure prevented the applicant from effectively participating in the proceedings before the Supreme Court and the failure to be given an opportunity to have knowledge and to comment upon the appeal and the public prosecutor's request led to a

<sup>45</sup> *Nikolov*, No. 41195/02, 20 December 2007.

<sup>46</sup> *Bajaldziev*, No. 4650/06, 25 October 2011.

violation on Article 6.<sup>47</sup> The case of *Stoimenov* highlighted another aspect of the principle of equality of arms – the neutrality of experts in the proceedings before the courts as one of the most important aspects of a fair trial.<sup>48</sup> In three other cases of this category the national courts dealt with even more elementary aspects of the principle of equality of arms: in the case of *Nasteska*<sup>49</sup> (complaining about being deprived of the opportunity to be present at the Court of Appeal's session), *Mitreovski*<sup>50</sup> (complaining about not being notified of a change of venue of the last court hearing), and equally in the case of *Papadakis* (complaining about unfairness of criminal proceedings and, in particular, that the conviction had been based on evidence obtained by using secret surveillance and undercover agents).<sup>51</sup>

In all these cases the Court in Strasbourg found violations of the principle of equality of arms. These cases have been broadly discussed by national courts, and special training seminars were organized by the Academy of Judges and Public Prosecutors on this aspect of a fair trial.

#### 5.4. *Right to property*

After the collapse of the communist regime, Macedonian society as all the other postcommunist societies faced one of the most serious challenges of the transition – the denationalisation and reprivatisation of the national wealth. In this respect, the right to property guaranteed by the Convention provided strong legitimising grounds for the conflictual processes of reestablishment of fundamental principles and institutions of property, which had been earlier eroded by the communist revolutions. In addition to its postcommunist genealogy, the problems involving the right to property originated also from its federal heritage – as a member of the former Yugoslav federation. The effects of the Convention on the right to property are complex because the related right is multidimensional. The Macedonian case law before the Court in Strasbourg regarding the right on property counts seven judgments. Two cases were related to the right to property in connection with the issue of privatization and purchasing of apartments in property of the former federal army;<sup>52</sup> one case<sup>53</sup>

<sup>47</sup> *Grozdanoski*, No. 21510/03, 31 May 2007.

<sup>48</sup> *Stoimenov*, No. 17995/02, 5 April 2007.

<sup>49</sup> *Nasteska*, No. 23152/05, 27 May 2010.

<sup>50</sup> *Mitreovski*, No. 33046/02, 21 June 2007.

<sup>51</sup> *Papadakis*, No. 50254/07, 26 February 2013.

<sup>52</sup> *Veselinski*, No. 45659/99, and *Dzidrovski*, No. 46447/99, 24 February 2005.

<sup>53</sup> *Jankulovski*, No. 6906/03, 3 July 2008.

involved the issue of effective enjoyment of the right to property; two cases (*Bocvarska*<sup>54</sup> and *Arsovski*<sup>55</sup>) dealt with the issue of fair balance between the sides involved into two different rights to property cases; and two cases are deriving from the process of denationalisation (*Vikentijevik*<sup>56</sup> and *Stojanovski and others*).<sup>57</sup>

Although it is still too early, we could assume that the last four judgments will have important effects on the national Courts, and they might be of equal importance for other countries in the region experiencing similar problems in respect to the right to property.

### 5.5. *Right to life*

The Macedonian right to life dossier at the ECHR counts two specific cases, *Saso Georgiev*<sup>58</sup> and *Kitanovski*.<sup>59</sup> In the first case the Court found a violation of the right to life in its substantive aspect in that the respondent State was to be considered responsible for unlawful actions of its agent taken outside his official duties. The incident happened while the police reservist had been on duty; he wore the official uniform and used an official arm conferred to him by the State. The second case concerns the events that happened when the applicant's life was put at risk while police officers opened fire on his father's car during a car chase through the streets of Skopje. When the officers subsequently arrested the applicant, they allegedly beat him with truncheons and punched and kicked him in the face, head, stomach, and back. The Court not only found a violation in substance and concerning the investigation on the right to life, but also a violation on prohibition of degrading treatment and lack of effective investigation on this ground.

These judgments are relatively recent and the execution has not yet had visible effects in terms of legislative or institutional changes. Nevertheless, the cases and the judgments have focused the public attention on the issue of staffing of state armed forces and on the training of their members.<sup>60</sup>

<sup>54</sup> *Bocvarska*, No. 27865/02, 17 September 2009.

<sup>55</sup> *Arsovski*, No. 30206/06, 15 January 2013, paras. 61 and 62.

<sup>56</sup> *Vikentijevik*, No. 50179/07, 6 February 2014.

<sup>57</sup> *Stojanovski and others*, No. 14174/09, 23 October 2014.

<sup>58</sup> *S. Georgiev*, No. 49382/06, 19 April 2012.

<sup>59</sup> *Kitanovski*, No. 15191/12, 22 January 2015.

<sup>60</sup> This is visible in the public statement given by the State agent after the Court brought the judgment. According to his reading of the judgment, it is a strong signal sent by the Court



## 6. The effects of the Court's case law at a national level

### 6.1. Legislative level

State parties to the Convention have 'undertaken to abide by the final judgments of the Court in any case to which they are parties'.<sup>61</sup> Relying on this crucial element of the subsidiary nature of the Convention, 'the Court points out that the machinery of protection established by the Convention is subsidiary to the national systems for safeguarding human rights'.<sup>62</sup> This was the reason why the Committee of Ministers stressed that '[i]t is thus at the national level that the most effective and direct protection of the rights and freedoms guaranteed in the Convention should be ensured. This requirement concerns all state authorities, in particular the courts, the administration and the legislature'.<sup>63</sup> The implementation of judgments of the Court might be supported greatly by the involvement of national parliaments.<sup>64</sup>

Many parliaments in Europe are now looking to the Court's case law before amending or establishing new legislation. The legal system in the Republic of Macedonia has been also influenced by the case law of the Court in Strasbourg. Several laws were changed as a consequence of the jurisprudence and standards of the Court. Perhaps most importantly are the changes to procedural laws: the new Code on Criminal Proceedings, amendments of the Civil Proceedings Act, and the new Act on Administrative Disputes. All of them provide for the opportunity to

that the State is expected to establish and fulfill highest professional standards of conduct for the persons employed in their armed forces. 'Македонија си ги плаќа "гревовите" од минатото', *Академик*, <http://www.akademik.mk/eschp> (accessed 3 June 2013).

<sup>61</sup> Article 46 para. 1 of the Convention.

<sup>62</sup> *Handyside v. the United Kingdom*, No. 5493/72, 7 December 1976, and the '*Belgian Linguistic*' case, 23 July 1968, Series A No. 6, 35, para. 10.

<sup>63</sup> Appendix to Recommendation Res (2004) 5 of the Committee of Ministers to Member States on the verification of the compatibility of draft laws, existing laws, and administrative practice with the standards laid down in the ECHR, para. 2.

<sup>64</sup> 'Scrutiny of the government's response to an adverse judgment of the Court takes two broad forms. First, parliament should exercise oversight to ensuring that the competent authorities promptly adopt adequate measures to execute a judgment of the European Court. Parliament, in exercising a supervisory function, places expectation upon the Government to uphold their commitments under the Convention and increases the political transparency of the implementation process.' See A. Drzemczewski and J. Gaughan, 'Implementing Strasbourg Court Judgments: The Parliamentary Dimension', in W. Benedek, F. Benoit-Rohmer, W. Karl, and M. Noeak (eds.), *European Yearbook on Human Rights* (Antwerp: European Academic Press, 2010), 233–44.

request a reopening of proceedings based on a judgment by which the Court in Strasbourg has found a violation of the Convention.

The Civil Proceedings Act provides that '[w]hen the European Court of Human Rights finds a violation of certain human rights or of the fundamental freedoms protected under the ... Convention and its additional protocols, ratified by the Republic of Macedonia, the party may, in a period of 30 days from the finality of the judgment of the ... Court ... , file a request to the first-instance court ... that decided the case in which the decision violating some human right or fundamental freedom was adopted, to amend the decision violating such right or fundamental freedom'.<sup>65</sup> This Act further stipulates that in the reopened proceedings the courts shall be obliged to follow the legal positions stated in the final judgment of the European Court.

Another important reference to the Court and its case law was introduced by amendments from 2008 to the Courts Act of 2006. Namely, this Act provides that the Supreme Court is to decide on the length-of-proceedings cases and 'it shall take into consideration the rules and principles set forth in the European Convention.' According to the Courts Act, finding of a violation of Article 6 of the Convention is grounds for dismissal of a judge who had conducted the proceedings in respect to which the violation was found. It is considered, under the Courts Act, as a professional misconduct.<sup>66</sup>

At the same time, under the Judicial Council Act, proceedings for dismissal of a judge due to a professional misconduct may not be initiated if more than five years have elapsed from the day when the misconduct took place. This time scale does not apply to cases in which the Court has found a violation of Article 6 of the Convention.<sup>67</sup> In 2009 a special Act on the Enforcement of Decisions of the ECtHR<sup>68</sup> was established. The Act on Civil Liability for Insult and Defamation, recently adopted, is another example of the introduction of the Court's case law in to the national law.<sup>69</sup> This Act specifies that limitations to the freedom of expression and information are regulated exclusively through strictly determined conditions for civil liability for insult and defamation.<sup>70</sup>

<sup>65</sup> Civil Proceedings Act, Article 400.

<sup>66</sup> *Ibid.*, Article 75, para. 1.

<sup>67</sup> Judicial Council Act, Article 74, para. 5.

<sup>68</sup> Official Gazette of the Republic of Macedonia, No. 67/2009.

<sup>69</sup> Official Gazette of the Republic of Macedonia, No. 143/2012.

<sup>70</sup> Act on Civil Liability for Insult and Defamation, Article 2, para. 2.

The role of the Macedonian Parliament in the implementation of the judgments of the Court should be much stronger than it has been in the past.

## 6.2. Judiciary

During the period analyzed here, the impact of the case law of the Court on domestic judiciary was with limited effects. Despite the fact that, at the beginning, the domestic courts approached the case law of the Court with a reserved attitude, we could register few cases of implementation of the Court's principles in the judgments of high-level domestic courts – the Constitutional Court and the Supreme Court.

The Constitutional Court, for example, has started to take into account not only the Convention, but also to refer to the principles. By its Resolution from 23 April 2008 the Constitutional Court decided on the initiative concerning the constitutionality of the Criminal Code. The analysis of this Resolution quoted the more recent case law of the ECHR in view of a life sentence (*Leger v. France*, *Kafkaris v. Cyprus*, *Stanford v. the U.K.*, *Hill v. the U.K.*, and *Wynne v. the U.K.*). For the Constitutional Court it was important that 'although the Convention generally does not provide for the right to release on parole or the right to have the sentence revised by the national authorities (judicial or administrative) in order to reduce or terminate it, from the case law it clearly derives that the existence of a system which envisages the consideration of the possibility for release is an important factor that should be taken into account when assessing the compatibility of the individual life sentence with Article 3 of the Convention.'<sup>71</sup>

After the judgment in the case of *Stoimenov* from 5 April 2007,<sup>72</sup> envisaging that it will take a long time to amend or to change the Law on Criminal Procedure, the Department of Criminal Offences of the Supreme Court took a Legal Position in favour of direct applicability of the Court's case law: 'For each and every freedom and right foreseen in the Convention and whose protection is effectuated before the ECtHR, the courts in RM directly apply its judgements and, in accordance with the Law on Criminal Procedure, in the reasons of their decisions should invoke the case-law of the ECtHR.'<sup>73</sup> This was a clear message to all courts that they, like the

<sup>71</sup> U.br. 28/2008 of 23 April 2008, at <http://www.ustavensud.mk/domino/WEBSUD.nsf> (accessed 13 March 2013).

<sup>72</sup> *Stoimenov*, No. 17995/02, 5 April 2007.

<sup>73</sup> 29 June 2007, Legal Position of the Department of Criminal Offences of the Supreme Court.

Supreme Court in criminal procedures, will have to implement provisions and the case law of the Convention directly. In the case of *Petkovski and others*, the Court had established that there had been a violation of Article 6 para. 1 of the Convention in respect of the applicants' rights to access to a court. As a result of this judgment, the Department on Civil Offences at the Supreme Court established and published the Conclusion that Section 400 of the Civil Proceedings Act of 2005 provides that a case may be reopened if the ECtHR has given a final judgment finding a violation of the Convention; and therefore the conclusion was that the applicants may ask for a reopening of the civil proceeding in their case.<sup>74</sup>

### 6.3. Remedies

Under direct influence of the Court's case law on Macedonia, a remedy on length of proceedings was introduced with the Courts Act in 2008.<sup>75</sup> Later on, by the decision in the case of *Adži-Spirkoska and others*,<sup>76</sup> the Court in Strasbourg found that the newly introduced remedy is effective within the meaning of the Convention and that applicants should avail themselves of that remedy before they bring their length-of-proceedings complaints before the Court.

Under the Act on the Enforcement of Decisions of the ECtHR, the Court's judgments against Macedonia in which a violation was found are communicated to the Supreme Court, the Administrative Court, to the Appellate Court, and to the Court of First Instance that conducted the relevant domestic proceedings.<sup>77</sup> Furthermore, one of the competencies of the Government Agent's Office<sup>78</sup> is to make a continuing analysis of the Court's case law and inform the domestic courts and other State authorities thereof. The ECHR is part of the programme for continuing education of judges and public prosecutors of the Academy for Judges and Public Prosecutors.<sup>79</sup> The qualification exam for admission at the

<sup>74</sup> Conclusion of the Department of Civil Offences of the Supreme Court from 8 June 2010 on the reopening of the procedure on the basis of Article 400 of the Code of Civil Procedure.

<sup>75</sup> Official Gazette of the Republic of Macedonia, No. 58/2006, No. 35/2008, and No. 150/2010.

<sup>76</sup> *Adži-Spirkoska and others*, No. 38914/05 and No. 17879/05 (dec.), 3 November 2011.

<sup>77</sup> Act on the Enforcement of Decisions of the European Court of Human Rights, Article 22.

<sup>78</sup> Established with the Act on Representation of the Republic of Macedonia before the European Court of Human Rights. See Official Gazette of the Republic of Macedonia, No. 67/2009.

<sup>79</sup> The programme is available at the website of the academy, at <http://www.jpacademy.gov.mk/> (accessed 17 January 2013).

academy requires knowledge of the most important judgments of the Court.<sup>80</sup>

One of the most interesting effects of the Court's case law on available national remedies for protection of human rights and thus for rule of law and development of a democratic political system is seen in the more and more frequent and better supported arguments in favour of extending the jurisdictions of the Constitutional Court in the protection of human rights and freedoms.<sup>81</sup> The need for an extension of the Constitutional Court's jurisdiction has been supported by distinguished legal experts and elaborated on the grounds of the ECHR and the Macedonian case law affront of the Court.<sup>82</sup>

#### 6.4. *Executive level*

The development of the system of execution of the Court's decisions and judgments against the Republic of Macedonia is one of the good practices developed in the interaction between the Court and the national authorities. Even until 2009, the execution was one of the weaknesses of the national system of human rights protection. In this year, the Parliament adopted the Law on the Enforcement of Decisions of the ECtHR.<sup>83</sup> On this basis, two important institutions were legally established: the Bureau of the Government's agent and the Interdepartmental Committee ('the Committee') for execution of Court's judgments.

In accordance with the law, the Interdepartmental Committee was established to monitor the enforcement of the judgments and decisions of the ECtHR. The Committee may recommend to competent State authorities specific and general measures in order to remedy a violation found by the Court, or its consequences, or in order to prevent any further violations. The general measures may include legislative amendments of acts, the application of which had led to the finding of a violation; change of administrative practices; giving legal opinion in drafting laws; and professional development and training of judges, public prosecutors, lawyers,

<sup>80</sup> Academy for Judges and Prosecutors Act, Article 50, para. 1.

<sup>81</sup> This question is regulated by the Article 110, para. 3.

<sup>82</sup> See A. Jordan, 'The Role of the Constitutional Court of the Republic of Macedonia in the Protection of the Rights and Freedoms of Men and Citizens ...' (A. Jordan, Улогата на уставниот суд на Република Македонија во заштита на слободата и правата на човекот и граѓанинот повредени со поединечен акт или дејство) in *Правен Дијалог Број 3*, 24 Јуни 2011, <http://www.ihr.org.mk/mk/praven-dijalog/praven-dijalog-br3/133-uloga-na-ustavniot-sud-na-rm.html> (accessed 2 June 2013).

<sup>83</sup> Законот за извршување на одлуките на ЕСЧП ('Сл. весник на РМ' бр. 67/2009).

and State officials in order to ensure a correct implementation of the Convention and the Court's case law. It can also propose other measures aimed to eliminate systematic problems and to ensure the payment of just satisfaction.<sup>84</sup> The Committee also has a general competence to propose improvements of human rights related legislation.<sup>85</sup>

### 7. The impact of Macedonian cases on the Court's case law

Macedonian cases have often been cited in the Court's case law. The case of *Jasar* has been used by the Court to reiterate the principle that, where domestic proceedings have taken place, it is not its task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them.<sup>86</sup>

The judgment of *Atanasovski*<sup>87</sup> is quoted in cases that concern alleged judicial inconsistency, where the Court held that case-law development is not, in itself, contrary to the proper administration of justice because a failure to maintain a dynamic and evolutive approach would risk rendering it a barrier to reform or improvement.

In connection with cases in which a new remedy is not effective within the meaning of the Convention, the Court often refers to the judgment in the case of *Parizov*.<sup>88</sup>

Another example is the case of *Božinovski*.<sup>89</sup> It relates to a situation in which an applicant submits only documents from the domestic proceedings that are not sufficient to constitute an introduction of a complaint. At least a summary indication of the nature of the alleged violation under the Convention is required to introduce a complaint and thereby interrupt the running of the six-month time limit. This case is also mentioned in the Admissibility Guide. Similarly, the Admissibility Guide refers to the case of *Stojkovic*<sup>90</sup> in order to illustrate the Court's position on the victim status of an heir or family member of the deceased applicant. The case of *Vasilkovski*<sup>91</sup> is an example used by the Court to state that applicants may

<sup>84</sup> Act on the Enforcement of Decisions of the European Court of Human Rights, Article 27.

<sup>85</sup> *Ibid.*, Article 11, paras. 1, 3.

<sup>86</sup> See *Gäfgen v. Germany*, No. 22978/05 [GC], 1 June 2010.

<sup>87</sup> *Atanasovski*, No. 36815/03, 14 January 2010.

<sup>88</sup> *Parizov*, No. 14258/03, 7 February 2008.

<sup>89</sup> *Božinovski*, No. 68368/01, 1 February 2005.

<sup>90</sup> *Stojkovic*, No. 14818/02, 8 November 2007.

<sup>91</sup> *Vasilkovski*, No. 28169/08, 28 October 2010.

be dispensed from exhausting a remedy, which has proved ineffective in practice. The recent Grand Chamber judgment in the case of *El-Masri*<sup>92</sup> is likely to influence the Court's case law in future, bearing in mind that it was the first judgment in which the Court thoroughly dealt with the issue of extraordinary rendition. In this connection, it is worth noting that there are cases against other States concerning this issue pending before the Court.

## 8. Conclusions

The analysis shows important effects of the ECHR and the Court's case law on the human rights protection system of the Republic of Macedonia and through that avenue on the democratic political development and the rule of law. The interaction went through two distinctive periods in terms of the issues and the main actors involved. In the first period –before and soon after the ratification of the Convention – the main issues influencing the domestic developments were questions about the accordance of the national political, legal, and judicial systems with the principles of the Convention and the Court's case law standards and practices. The politicians and legislators played the main role in transferring and interpreting the importance and the mission of the Convention and the Court. In the second period, after the ratification the main avenue of influence was the implementation of the Court's judgments in relation to the Republic of Macedonia. The judges at the national courts played the main role in this phase. At the time of ratification, some sixteen years ago, the case law of the ECtHR was not of relevance for Macedonian courts and other institutions. Courts were relying on the Constitution, laws, and opinions of a general nature of the Supreme Court. As in most of the postcommunist countries, the Macedonian courts 'were never required to consider the Convention as a "constitutional instrument of European public order" and to take into account the public interest of the international community.'<sup>93</sup>

Today, through the dialogue between the Court in Strasbourg, including the other institutions of the Council of Europe, and the Macedonian authorities at the different level of governance, the Convention has become an integral element of the system of the protection of human rights in the

<sup>92</sup> *El-Masri*, No. 39630/09, 13 December 2012.

<sup>93</sup> R. Maruste, 'The Impact of the Accession of Eastern Block Countries on the Convention Machinery and Its Case-Law', in L. Caflisch et al. (eds.), *Liber amicorum Luzius Wildhaber: Human Rights, Strasbourg Views – Droits de l'homme* (Kehl, Strasbourg, Arlington, VA: N. P. Engel, 2007), 291.



Republic of Macedonia. One of the most visible effects of the ECHR on the country is the fact that the Convention is today perceived as a *'part of the domestic legal order and as directly applicable'*<sup>94</sup> The Constitutional Court, the Supreme Court, and the other courts and institutions apply the Court's case law to the best of their knowledge and capacities.

The frequency of use of the case law of the Strasbourg Court is not the only and best indicator of the effects of the Convention and the case law on the country. What is more important is the positive trend of the opening of the domestic legislative, judiciary, and executive levels towards the case law. On that path, the national case law has played the role of key pillar through which the Court's standards are domesticated. It is evident from the case law on the Republic of Macedonia that there were many mistakes during the investigative part of the criminal procedure and this was leading to violations on Article 3 of the Convention in several cases. It is notable that there is not only a lack of the principles and standards in the implementation of the measures by which the right on freedom and security is breached, but also a lack of knowledge about the main principles on fair trial. Of course, this model of learning by its own mistakes and failures is longer and more costly but as life is the best tutor, so is the national case law before the Court in Strasbourg. Its reception, interpretation, and implementation contribute to the building of a human rights culture, which is essential for the stabilization of democratic political institutions and rule of law in the country.

In the past two decades, like most of the new members of the Convention, the Republic of Macedonia was learning and adapting to the doctrine of a well-balanced synthesis of common law and the continental civil law. The results achieved could be described as 'work in progress'. Despite the fact that the Convention is 'accepted as a part of the national legal system and as directly applicable'<sup>95</sup> it seems that the case law of the Court is used in a formalistic way without substantive analysis. It will take time, stronger political will, and, certainly, a great deal of education and training of judges from all instances. In the meantime, it seems that Macedonian cases are becoming an important part of the Court's case law and are used as a reference in other cases at the level of the Court.

<sup>94</sup> 29 June 2007, Legal Position of the Department of Criminal Offences of the Supreme Court.

<sup>95</sup> 29 June 2007, Legal Position of the Department of Criminal Offences at the Supreme Court of the Republic of Macedonia (29 јуни 2007, Правен став на Одделот за казниви дела при Врховниот Суд на Република Македонија).