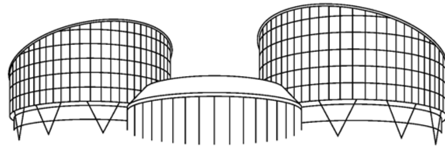

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF KITANOVSKA AND BARBULOVSKI v. NORTH MACEDONIA

(Applications nos. 53030/19 and 31378/20)

JUDGMENT

Art 6 § 1 (civil) • Access to court • Disproportionate rejection of objection against payment order issued by notary public, without examination of merits, for not being lodged through a lawyer as per domestic law • Requirement general and applied automatically without possibility of obtaining exemption • Domestic courts unable to consider specific case circumstances • No possibility under domestic law for debtor to remedy a procedural defect after expiration of deadline for lodging an objection

STRASBOURG

9 May 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Kitanovska v. North Macedonia,

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

Arnfinn Bårdsen, *President,*
Jovan Ilievski,
Egidijus Kūris,
Pauliine Koskelo,
Saadet Yüksel,
Frédéric Krenc,
Diana Sârcu*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the applications (nos. 53030/19 and 31378/20) 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 two Macedonians/citizens of North Macedonia, Ms Nadezhda Kitanovska and Mr Dimitar Barbulovski ("the applicants"), on the dates indicated in the appended table;

the decision to give notice to the Government of North Macedonia ("the Government") of the complaint concerning the alleged violation of the right of access to a court in both applications, and to declare inadmissible the remainder of application no. 53030/19;

the parties' observations;

Having deliberated in private on 4 April 2023,

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

INTRODUCTION

1. The case concerns the rejection of the applicants' objections against payment orders issued by notaries public, for reasons of not having been submitted through a lawyer. The applicants complain of a violation of their right to access to a court within the meaning of Article 6 § 1 of the Convention.

THE FACTS

2. The applicants were born in 1944 and 1945, respectively, and live in Skopje. They were granted leave to represent themselves.

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

4. The facts of the case may be summarised as follows.

I. BACKGROUND TO THE CASES

5. Both applications concern proceedings objecting to the payment of annual standing charges to a private heat supplier, similar to those described in the judgment in the case of *Strezovski and Others v. North Macedonia* (nos. 14460/16 and 7 others, §§ 4-8, 27 February 2020).

II. APPLICATION NO. 53030/19, LODGED BY MS KITANOVSKA

A. The proceedings in issue

6. On 13 February 2018 the heat supplier applied through a lawyer to a notary public to issue a payment order against the applicant in respect of several unpaid monthly instalments of the standing charge for heating in a total amount of 6,329 Macedonian denars ((MKD), equivalent to approximately 104 euros (EUR)), together with statutory default interest.

7. On 14 February 2018 a notary public issued a payment order in respect of the sum sought, as well as in respect of costs and expenses in a total amount of MKD 2,587 (equivalent to approximately EUR 42), of which MKD 1,534 (approximately EUR 25) was for legal fees for the lawyer representing the heat supplier.

8. On 5 March 2018 the applicant lodged an objection (*приговор*) against the payment order arguing, *inter alia*, that she had not entered into a contract with the heat supplier and that part of the alleged debt was time-barred.

9. On 19 March 2018 the Skopje Court of First Instance (“the first-instance court”), relying on section 68(2) of the Notary Act and section 428-a of the Civil Proceedings Act (see paragraphs 16 and 22 below), rejected as incomplete the applicant’s objection, because it had not been drafted by a lawyer.

10. The applicant appealed, arguing among other things that section 68(2) should not have been applied, as a similar provision of the Enforcement Act had been declared unconstitutional (see paragraph 26 below). She further complained of a violation of her right of access to a court, referring to the judgment in *Kreuz v. Poland* (no. 28249/95, ECHR 2001-VI).

11. By a decision of 7 March 2019, notified to the applicant on 3 April 2019, the Skopje Court of Appeal (“the appellate court”) dismissed the applicant’s appeal, finding the applicant’s objection incomplete, as it had not been drafted, signed and stamped by a lawyer.

12. On 13 August 2019 a bailiff ordered that one-third of the applicant’s pension be withheld until the debt had been fully paid. It appears from the material in the case file that the applicant’s monthly pension amounted to MKD 27,521 (equivalent to approximately EUR 447). On 26 December 2019 the appellate court confirmed the first-instance decision dismissing the applicant’s subsequent objection against the bailiff’s order.

B. Other proceedings

13. The Government submitted copies of final judgments, dated between 1 March 2017 and 13 September 2018, from five other sets of proceedings in which the applicant's objections, lodged through a lawyer, against payment orders issued by notaries public had been dismissed on the merits by the domestic courts at two levels of jurisdiction. The payment orders concerned claims which ranged from MKD 1,816 to MKD 6,745 (equivalent to approximately EUR 30 and EUR 110, respectively).

III. APPLICATION NO. 31378/20, LODGED BY MR BARBULOVSKI

14. On 21 May 2019 a notary public, upon application by the heat supplier, issued a payment order against the applicant.

15. By a decision of 28 November 2019, notified to the applicant on 20 December 2019, the appellate court upheld on appeal a decision of the first-instance court and finally rejected the applicant's subsequent objection because it had not been drafted, signed and stamped by a lawyer.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW AND PRACTICE

A. Notary Act (*Закон за нотаријатот*, Official Gazette no. 72/2016 of 12 April 2016)

16. Section 68(2) of the Notary Act provides that objections against a payment order issued by a notary public, as well as certain other submissions lodged with a notary public, must be drafted (*ги составува*), stamped and signed by a lawyer, unless the respondent State is the creditor.

17. Under section 71(5), which was applicable at the material time, if the notary considered the application for a payment order did not contain all the required information (*уреден*), he or she returned it to the creditor or lawyer to complete it within eight days. If they failed to do so, the notary would consider the application to have been withdrawn.

18. Section 72(1) and (2), as applicable at the material time, stipulated that the debtor could oppose the payment order within eight days of being notified of it by lodging an objection before a first-instance court through the notary public.

19. Under section 81, in the absence of specific provisions concerning the proceedings for payment orders, the provisions of the Civil Proceedings Act were to be applied.

B. Civil Proceedings Act

20. Section 422(2) provides that the part of a court payment order which has not been challenged through an objection becomes final.

21. Under section 424(1) if the defendant (the debtor) objects that there were no statutory grounds for issuing a court payment order, or that there were obstacles for further proceedings, the court will first decide upon that objection. If the court finds it well grounded, it will quash the payment order and initiate proceedings in respect of the main claim, if appropriate. Section 424(2) provides that if the court does not allow the objection, it will initiate proceedings in respect of the main claim.

22. Under section 428-a(1) the competent court decides upon the objection against a payment order issued by a notary public in accordance with the provisions of the Civil Proceedings Act. Under section 428-a(3) a single judge, without holding a hearing, rejects belated, incomplete or inadmissible objections against a payment order issued by a notary public.

C. Legal Aid Act (Official Gazettes nos. 161/2009, 185/2011, 27/2014 and 104/2015, applicable until 1 October 2019)

23. Section 6 of the Act provided that legal aid could be granted in all court or administrative proceedings.

24. Under section 12(1), the categories of persons listed in section 12(2) were entitled to legal aid if, in view of their financial situation, they were unable to exercise their constitutional and statutory rights without threatening their own subsistence or that of the family members with whom they lived in a joint household. Under section 12(2) the categories of persons entitled to seek legal aid under the condition above included, among others, retired persons who received the minimum pension and who lived in a joint household with two or more persons whom they supported financially.

D. Lawyers’ Tariff (*Тарифа за награда и надоместок на трошоците за работа на адвокатите*)

25. Under section 8(1) and (2) of the Lawyers’ Tariff, the lawyer’s fee for any written submission (including an objection) concerning a claim of up to MKD 10,000 is MKD 1,000 (equivalent to approximately EUR 16).

E. Practice of the Constitutional Court

26. By decision no. U.br. 135/2016-1 of 24 January 2018, the Constitutional Court declared unconstitutional provisions of the Enforcement Act under which certain submissions in enforcement proceedings concerning claims exceeding EUR 10,000 were to be drafted, signed and stamped by a lawyer, unless they were submitted by the State or certain legal persons, such

as banks, savings banks, and so on. The court found that this provision was contrary to the principles of equality and the rule of law. The court held, *inter alia*, as follows:

> "... the protection that the State has put in place in respect of individuals and legal persons is at [their own] expense, to the benefit of lawyers, preventing parties who have enough professional and legal qualifications to [draft submissions] themselves from doing so and thus being able to avoiding those expenses, and also preventing persons without legal knowledge from deciding, according to their own financial situation, the manner in which they will secure the legal assistance for drafting the submissions ..."

27. By decision no. U.br. 141/2016 of 5 July 2017, the Constitutional Court decided not to initiate constitutional review proceedings in respect of a series of provisions, including section 68(2) of the Notary Act. The relevant part of the decision reads as follows:

> "The impugned subsection 4 of section 55 of the Notary Act provides that a document of a notary public is considered 'drafted' after it has been signed by all the participants, the lawyers as representatives, the parties and the notary.
>
> [T]he court considers ... that [the involvement] of a lawyer in drafting the legal document is in the interest of citizens' legal certainty and ... that it ensures legal protection of the parties in the proceedings before the notary ... Hence, the aim of the [involvement of] lawyers in the proceedings before a notary is ensuring and providing legal assistance.
>
> ... From the analysis and content of the cited legal provisions it clearly follows that the impugned section of the Notary Act which stipulates the presence of a lawyer in the proceedings before a notary is not contrary to the principle of the rule of law, but, on the contrary, is aimed at ensuring citizens' legal certainty. ...
>
> ... The stipulation in section 68 of the [Notary] Act, pursuant to which the document mentioned in paragraph 2 is to be drafted by a lawyer, has already been elaborated on above ..."

28. By decisions nos. U.br. 27/2017 of 6 December 2017, U.br. 85/2018 of 31 October 2018 and U.br. 7/2021 of 21 April 2021, the Constitutional Court rejected as substantially the same three subsequent requests for constitutional review of section 68(2) of the Notary Act.

F. Practice of the civil courts

29. The Government submitted copies of fifteen, allegedly final decisions of the first-instance court adopted between 23 August 2017 and 23 April 2020, rejecting as incomplete objections against payment orders issued by notaries public submitted directly by the debtors, without the involvement of a lawyer. In most of those decisions the court stated that they concerned a defect which could not be remedied by the debtors after the expiration of the eight-day deadline for lodging the objection (see paragraph 18 above).

30. Ms Kitanovska submitted copies of two decisions of the appellate court (nos. ГЖ-5344/18 of 12 December 2018 and ГЖ-4338/18 of

22 October 2019) quashing the lower courts' decisions rejecting objections against payment orders submitted directly by the debtors. The Government submitted copies of the subsequent decisions of the appellate court (nos. ГЖ-4608/19 of 27 November 2019 and ГЖ-444/20 of 25 November 2020) in both sets of proceedings, in which the objections were finally rejected for not having been lodged through a lawyer.

II. RELEVANT EUROPEAN UNION DOCUMENTS

31. The relevant part of the European Commission's Progress Report of 29 May 2019 regarding the respondent State reads as follows:

> "The notary payment order works well, discharging the burden on the courts. However, the overall cost of enforcement and the length of the procedure still obstruct the system's efficiency. This, together with the mandatory presence of an attorney for procedures before notaries (including for inheritance) risks impeding access to justice."

III. RELEVANT COUNCIL OF EUROPE MATERIAL

A. Resolution (78) 8 of the Committee of Ministers of the Council of Europe on legal aid and advice, adopted by the Committee of Ministers on 2 March 1978

32. The relevant part of this Resolution reads as follows:

> "Legal aid should always include the assistance of a person professionally qualified to practise law in accordance with the provisions of the state's regulations, not only where the national legal aid system always of itself so provides, but also:
>
> a. when representation by such a person before a court of the state concerned is compulsory in accordance with the state's law;"

B. Recommendation No. R (81) 7 of the Committee of Ministers to member states on measures facilitating access to justice, adopted by the Committee of Ministers on 14 May 1981

33. The relevant part of this Recommendation reads as follows:

> "4. No litigant should be prevented from being assisted by a lawyer. The compulsory recourse of a party to the services of an unnecessary plurality of lawyers for the need of a particular case is to be avoided. Where, having regard to the nature of the matter involved, it would be desirable, in order to facilitate access to justice, for an individual to put his own case before the courts, then representation by a lawyer should not be compulsory."

C. Opinion no. 6 (2004) of the Consultative Council of European Judges (CCJE) on fair trial within a reasonable time and judge's role in trials taking into account alternative means of dispute settlement, as adopted by the CCJE at its 5th meeting (Strasbourg, 22-24 November 2004)

34. The relevant parts of the Opinion read as follows:

"A. Access to justice

...

24. The provision of legal assistance to the parties is an important component of access to justice for litigants.

25. The CCJE notes, that in certain States, the intervention of a lawyer during the proceedings is not necessary. Other States draw distinctions according to the magnitude of the financial interests and the type of dispute or proceedings. The right for a litigant to plead his or her case before a court either personally or through the representative of his or her choice appears particularly suited to simplified proceedings, litigation of minor financial importance, and cases involving consumers.

26. Nonetheless, even in cases where there is no need to engage a lawyer at the outset, the CCJE considers that there should be provision enabling the judge, as an exceptional measure, to order the intervention of counsel if the case presents particular problems or if there is a major risk that the rights of the defence will be infringed. In that event, representation by a lawyer should have the support of an effective legal aid system.

...

28. One must nonetheless guard against having the remuneration of lawyers and court officers fixed in such a way as to encourage needless procedural steps. ..."

D. 2022 European judicial systems evaluation report by the European Commission for the Efficiency of Justice (CEPEJ)

35. According to the report, for all types of cases, including civil cases, the number of States and entities that provide for monopoly on representation by lawyers increases from (judicial) instance to instance. Mandatory representation by a lawyer logically reaches its highest levels at highest instance. For civil, dismissal and administrative cases, the monopoly exists mainly at the level of highest instance.

THE LAW

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

36. The applicants complained that their objections against the payment orders issued by notaries public had been rejected without being examined on the merits. Ms Kitanovska further argued that she had been deprived of an effective legal remedy. The Court, being master of the characterisation to be

given in law to the facts of a case (see, for example, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018), finds that the essence of Ms Kitanovska's grievance is related only to her right of access to a court under Article 6 § 1 of the Convention, the relevant part of which reads as follows:

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

E. Admissibility

1. The parties' submissions

37. The Government submitted that the applications had been lodged outside of the six-month time-limit. Referring in particular to the cases of *Nuredini v. North Macedonia* ((dec.) [Committee], no. 38823/14, 7 July 2020), *Gavrilov v. the former Yugoslav Republic of Macedonia* ((dec.), no. 7837/10, 1 July 2014), and *Rezgui v. France* ((dec.), no. 49859/99, ECHR 2000-XI), the Government contended that objections that had not been lodged through a lawyer were not an effective remedy for the purpose of the applicants' complaints. In view of the clear provisions of the domestic law and the well-established, consistent and publicly accessible practice of the civil courts and the Constitutional Court, it had been clearly foreseeable that those objections would be rejected. The Government also argued that application no. 31378/20 had in any event been lodged more than six months after the appellate court's decision had been served on the second applicant, Mr Barbulovski.

38. The applicants contested those arguments. Mr Barbulovski argued that he had prepared his application on 20 May 2020.

2. The Court's assessment

(a) Application no. 31378/20 (Mr Barbulovski)

39. The Court emphasises that under Rule 47 § 6 (a) of the Rules of Court, the date of introduction of the application for the purposes of Article 35 § 1 of the Convention is the date on which an application form satisfying the requirements of Rule 47 is sent to the Court. Accordingly, the date of introduction of Mr Barbulovski's application was 10 July 2020, when it was sent to the Court (see, among many other authorities, *Vasiliauskas v. Lithuania* [GC], no. 35343/05, §§ 115-17, ECHR 2015). The application was therefore lodged after the six-month time-limit had expired on 20 June 2020.

40. The Court is mindful that on 16 March and 9 April 2020, in view of the global COVID-19 pandemic, exceptional measures (including in respect of the calculation of the six-month time-limit) were announced by the President of the Court (see, for further details, *Saakashvili v. Georgia* (dec.), nos. 6232/20 and 22394/20, §§ 46-59, 1 March 2022). Those measures were

applicable to applications in which a calendar six-month period either started to run or was due to expire at any time between 16 March and 15 June 2020 (ibid., § 58). The Court observes that in the applicant's case the six-month period started to run on 21 December 2019 and expired on 20 June 2020, and that those dates do not fall within the above-mentioned period (16 March-15 June 2020). The exceptional measures are therefore not applicable in the case of Mr Barbulovski. It follows that this part of Mr Barbulovski's application was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

(b) Application no. 53030/19 (Ms Kitanovska)

41. The requirements contained in Article 35 § 1 as to the exhaustion of domestic remedies and the six-month period are closely interrelated. Thus, as a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies (see, for example, *Savickis and Others v. Latvia* [GC], no. 49270/11, § 131, 9 June 2022). In ruling on the issue of whether an applicant has complied with the obligation to exhaust domestic remedies having regard to the specific circumstances of the case, the Court must first identify the act of the respondent State's authorities complained of by the applicant (see *Jeronovičs v. Latvia* [GC], no. 44898/10, § 76, 5 July 2016).

42. The Court observes that in the present case, unlike in the cases referred to by the Government, the complaint the applicant raised in her application and of which the Government were notified concerned precisely the fact that her objection against the payment order was rejected because it had not been submitted through a lawyer; it did not concern an alleged violation in the payment-order proceedings prior to that rejection. She challenged the rejection before the appellate court, which dismissed her appeal on the merits. The applicant lodged her application within six months from the date of being notified of the appellate court's decision. Accordingly, the Court considers that the applicant had recourse to the appropriate remedy (an appeal against the first-instance decision) for her complaint under this head. It therefore dismisses the Government's objection that this complaint was lodged outside the six-month time-limit. Their arguments concerning the clarity and foreseeability of the domestic law provisions are closely related to the merits of the applicant's complaint and will be addressed below.

43. Furthermore, the applicant's complaint under this head is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

F. Merits

1. The parties' submissions

44. The applicant complained that the heat supplier had repeatedly lodged claims against her. She argued that under domestic law the creditor had the possibility of modifying the application for issuing a payment order (see paragraph 17 above) even in a situation where it had not been lodged through a lawyer, whereas the debtor did not have such a possibility in respect of the objection against the payment order. The applicant further referred to the Constitutional Court's decision quashing a similar provision of the Enforcement Act (see paragraph 26 above). She argued that mandatory representation by a lawyer had a negative effect on the situation of individuals and was only beneficial for the lawyers themselves. She did not qualify for legal aid, as her pension was slightly higher than the threshold stipulated by law. The choice to represent herself had been an issue of personal autonomy.

45. The Government submitted that the alleged limitation of the right of access to a court had had a legitimate aim, namely to ensure legal certainty and protect the rights and interests of individuals and legal persons, to which the Constitutional Court had also referred in its decision (see paragraph 27 above). As to the proportionality of the limitation, the Government argued that the relevant domestic law and practice was clear and foreseeable. The applicant could have challenged the rejection of her objection with an appeal against the first-instance decision. The domestic courts' decisions had been devoid of arbitrariness. Furthermore, the applicant had not raised any arguments as to why she had not, or could not have, lodged the objection through a lawyer. As was apparent from the Lawyers' Tariff, the applicant would only have had to pay MKD 1,000 (approximately EUR 16) for her legal representation, which was not excessive. Under the relevant domestic legislation, she had also had the possibility of seeking legal aid. In five other sets of identical proceedings (see paragraph 13 above), the applicant had complied with the requirement of lodging the objection through a lawyer and had benefited from decisions on the merits by the courts. The relevant domestic rules did not require mandatory legal representation throughout the entire proceedings, only that the objection against the payment order be submitted through a lawyer. Domestic law did not require the courts to offer the applicant the possibility of modifying the objection, and nor would that have had any bearing on the applicant's case, in view of the clearly foreseeable requirement to lodge the objection through a lawyer. In view of the margin of appreciation enjoyed by member States, this requirement was proportionate and the reasons for it were relevant and sufficient.

2. The Court's assessment

46. The relevant principles regarding the right of access to a court were summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-78, 5 April 2018).

47. The Court would begin by noting that under domestic law a payment order issued by a notary public which has not been challenged with an objection becomes final and enforceable. Conversely, an admissible objection against a payment order would lead to standard civil proceedings before a civil court. Therefore, the sole manner for a debtor to obtain a judicial determination of an alleged civil claim against him or her lodged before a notary public is to object to the payment order. A single judge rejects inadmissible objections, reducing the workload of the courts and allowing them to deal more efficiently with meritorious claims.

48. The Court next observes that in the applicant's case the objection against the payment order issued against her was not examined on the merits by the domestic courts for the sole reason that it not been lodged through a lawyer. The Court considers that this amounts to a limitation of the applicant's right of access to a court.

49. In order to satisfy itself that the very essence of the applicant's right to a tribunal was not impaired, the Court will examine whether the procedure for lodging an objection against the payment order could be regarded as foreseeable from the point of view of a litigant and whether, therefore, the sanction for failure to follow that procedure infringed the proportionality principle (see, *mutatis mutandis*, *Paljic v. Germany*, no. 78041/01, § 43, 1 February 2007).

50. The Court observes that section 68(2) of the Notary Act clearly stipulated that an objection against a payment order issued by a notary public had to be drafted, signed and stamped by a lawyer. It is obvious that the applicant herself was aware of that requirement, as she had previously lodged objections, through a lawyer, in very similar proceedings (see paragraph 13 above). Moreover, it appears that the civil courts consistently rejected objections not lodged through a lawyer (see paragraphs 29-30 above). The Court therefore accepts that the applicant could clearly foresee that her objection against the payment order, lodged by herself in the absence of a lawyer, would be rejected.

51. It remains to be seen whether the limitation of the applicant's right to a court pursued a legitimate aim and whether there was a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 89, 29 November 2016, with further references).

52. The Court can accept that legal certainty, invoked by the Government and emphasised in the Constitutional Court's decision when assessing the constitutionality of the limitation in question, was the legitimate aim pursued

by that limitation. The Court reiterates that the right of access to a court is impaired when the rules cease to serve the aims of legal certainty and the proper administration of justice and form a sort of barrier preventing the litigant from having his or her case determined on the merits by the competent court (see *Zubac*, cited above, § 98). It will next turn to the proportionality of the limitation.

53. The Court has repeatedly held that a requirement that an appellant be represented by a qualified lawyer before the court of cassation cannot in itself be seen as contrary to Article 6 (see, for example, *Maširević v. Serbia*, no. 30671/08, § 47, 11 February 2014). The present case, however, concerns access to a court of first instance for the determination of a civil claim. The claim against the applicant was not examined by any national court (see, conversely, *Katsikeros v. Greece*, no. 2303/19, § 77, 21 July 2022).

54. The Court refers to Recommendation No. R (81) 7 of the Committee of Ministers (see paragraph 33 above) in which it was recommended that representation by a lawyer should not be compulsory where, having regard to the nature of the matter involved, it would be desirable, in order to facilitate access to justice, for an individual to put his own case before the courts. A similar view was expressed by the CCJE (see paragraph 34 above) in respect of simplified proceedings, litigation of minor financial importance, and cases involving consumers. In both of those texts, mandatory representation was considered in the light of the nature of the proceedings in question or the value of the claim.

55. The Court observes that the proceedings in the present case concerned payment orders concerning heating charges, which are of a relatively straightforward and repetitive nature, before a civil court of first instance. As stated above (see paragraph 53) they did not concern proceedings before a higher court or a court of cassation, where, owing to the special nature of the court's role, the procedure may be more formal (see *Staroszczyk v. Poland*, no. 59519/00, § 126, 22 March 2007; and *Meftah and Others v. France* [GC], nos. 32911/96 and 2 others, §§ 45-47, ECHR 2002-VII). Nor did they concern criminal proceedings, in respect of which the Court has held that the domestic courts are entitled to consider that the interests of justice require the compulsory appointment of a lawyer (see *Correia de Matos v. Portugal* [GC], no. 56402/12, § 124, 4 April 2018). Furthermore, the value of the main claim in the proceedings in question amounted to approximately EUR 104, which is arguably a small sum.

56. The Court's task is not to review the relevant law and practice *in abstracto*, but to determine whether the manner in which the law and practice were applied to or affected the applicant amounted to a denial of access to a court in the circumstances of the case at hand. Its role in cases such as the present one is to determine whether the applicant was able to count on a coherent system that struck a fair balance between the authorities' interests

and her own (see *Stichting Landgoed Steenbergen and Others v. the Netherlands*, no. 19732/17, § 45, 16 February 2021).

57. The Court notes the particular circumstances of the present case, and gives significant weight to the fact that prior to the proceedings in issue, the applicant was party to five sets of similar, if not identical, proceedings (see paragraph 13 above), all of which were simple and repetitive. In each of those cases concerning main claims ranging from EUR 30 to EUR 110, the applicant lodged the objections through a lawyer and paid the lawyer's fees. It is true, as argued by the Government, that the applicant did not explain why she had been prevented from lodging her objection through a lawyer in the present case. To have her objection drafted, stamped and signed by a lawyer, the applicant would have to pay at least EUR 16. While this fee does not appear high in itself (see, in the context of court fees, *Julin v. Estonia*, nos. 16563/08 and 3 others, § 161, 29 May 2012), it amounts to nearly one-sixth of the value of the main claim. In addition, the Court cannot discern any relevant reason why the applicant, who had already submitted such objections through a lawyer, should not have the possibility of raising similar arguments herself in the case at hand, nor as to how that would hinder legal certainty.

58. The Court further notes that the requirement to have the objection against the payment order lodged through a lawyer was general and applied automatically, without any possibility for the courts to take into account the specific circumstances of the applicant's case, and without any possibility of obtaining an exemption (see, conversely, *Julin*, cited above, § 164). The courts immediately rejected the applicant's objection, as there was no possibility under domestic law for a debtor to remedy a procedural defect after the expiration of the deadline for lodging an objection (contrast *Lanschützer GmbH v. Austria* (dec.), no. 17402/08, § 35, 18 March 2014).

59. The Court notes in addition that the Government did not expressly contest the applicant's argument that she was ineligible to receive legal aid in the proceedings in question, as her pension was above the relevant threshold foreseen in domestic law (see paragraph 44 above). Although the applicant has not argued that the cost of hiring a lawyer placed an excessive burden on her, the Court nonetheless considers that in the circumstances of the present case, where the fee was nearly one sixth of the value of the main claim, and the claim was simple and repetitive, the requirement that she conduct her claim through a lawyer was disproportionate.

60. The foregoing considerations are sufficient to enable the Court to conclude that in the circumstances of the present case the limitation on the applicant's right of access to a court was disproportionate.

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

II. OTHER ALLEGED VIOLATIONS

62. In her reply of 4 January 2022 to the Government's observations, Ms Kitanovska raised further complaints under Articles 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1, including in respect of the enforcement proceedings (see paragraph 12 above). In a submission of 21 December 2020, Mr Barbulovski further complained of a violation of Article 14 of the Convention, Article 1 of Protocol No. 1 and Article 1 of Protocol No. 12.

63. The Court observes that these complaints were lodged outside of the six-month time-limit. They must therefore be rejected under Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. Ms Kitanovska claimed 20,000 Macedonian denars ((MKD-equivalent to approximately 320 euros (EUR)) in respect of pecuniary damage and EUR 9,000 in respect of non-pecuniary damage.

66. The Government contested these claims as excessive and unrelated to the alleged violation.

67. The Court cannot speculate as to the outcome of the proceedings had the claim against the applicant been examined on the merits (see *Centre for the Development of Analytical Psychology v. the former Yugoslav Republic of Macedonia*, nos. 29545/10 and 32961/10, § 55, 15 June 2017). It therefore rejects the applicant's claim in respect of pecuniary damage. However, the Court considers that Ms Kitanovska must have suffered non-pecuniary damage as a result of the violation of her right of access to a court. Deciding on equitable basis, the Court awards her the sum of EUR 900, plus any tax that may be chargeable.

B. Costs and expenses

68. Ms Kitanovska also claimed EUR 500 in respect of the costs and expenses incurred before the domestic courts and the Court.

69. The Government contested this claim as unsubstantiated.

70. 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. The Court points out that under Rule 60 §§ 2 and 3 of the Rules of Court, "the applicant must submit itemised particulars of all claims, together with any relevant supporting documents", failing which "the Chamber may reject the claim in whole or in part" (see *Gelevski v. North Macedonia*, no. 28032/12, § 39, 8 October 2020).

71. In the present case, the Court notes that Ms Kitanovska, who was granted leave to represent herself (see paragraph 2 above), has failed to substantiate her claim with an itemised list of costs or supporting documents. In such circumstances, the Court makes no award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention concerning access to a court regarding Ms Kitanovska (application no. 53030/19) admissible, and the remainder of her complaints, as well as the complaints raised by Mr Barbulovski (application no. 31378/20), inadmissible;

2. *Holds* that there has been a violation of Article 6 of the Convention in respect of Ms Kitanovska's right of access to a court;

3. *Holds*
   (a) that the respondent State is to pay Ms Kitanovska, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 900 (nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national 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;

4. *Dismisses* the remainder of Ms Kitanovska's claim for just satisfaction.

Done in English, and notified in writing on 9 May 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Arnfinn Bårdsen
Registrar	President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality
1.	53030/19	Kitanovska v. North Macedonia	03/10/2019	**Nadezhda KITANOVSKA** 1944 Skopje Macedonian/citizen of North Macedonia
2.	31378/20	Barbulovski v. North Macedonia	10/07/2020	**Dimitar BARBULOVSKI** 1945 Skopje Macedonian/citizen of North Macedonia