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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 11676/04
by Ljube BOŠKOSKI
against the former Yugoslav Republic of Macedonia

The European Court of Human Rights (Third Section), sitting on 2 September 2004 as a Chamber composed of:

Mr G. Ress, *President*,
Mr I. Cabral Barreto,
Mr R. Türmen,
Mr J. Hedigan,
Mrs M. Tsatsa-Nikolovska,
Mrs H.S. Greve,
Mr K. Traja, *judges*,
and Mr M. Villiger, *Deputy Section Registrar*,

Having regard to the above application lodged on 29 March 2004,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ljube Boškoski, was born in 1960 in Tetovo in the former Yugoslav Republic of Macedonia. He has dual nationality: Macedonian and Croatian. His current place of residence is unknown. He is represented before the Court by Mr J. Arsov, a lawyer practising in Skopje.

A. The circumstances of the case

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

On 24 March 2004 the applicant applied to the State Electoral Commission (*Државна Изборна Комисија*) (hereinafter referred to as the SEC) to be listed as an independent candidate in the presidential elections in the former Yugoslav Republic of Macedonia. For that purpose he had collected 10,000 signatures of citizens in support of his candidacy.

On 25 March 2004 the SEC rejected his application on the ground that the applicant did not satisfy the requirement in Article 80 § 5 of the Constitution governing the eligibility of candidates for presidential election. In particular, the applicant had not continuously resided in the former Yugoslav Republic of Macedonia for at least ten out of the previous fifteen years preceding the date of the election. The SEC found that on 14 September 1987 the applicant had informed the authorities that he was no longer resident in Skopje and had registered himself as resident in Rovinj in Croatia; he had continued residing in Croatia until 25 January 1999 (when he re-registered himself as resident in Skopje). Whereas the applicant's residence in Croatia between 14 April 1989 and 17 November 1991 was accepted as qualifying as domestic residence by the SEC pursuant to Article 132 of the Constitution (the latter date being the date the former Yugoslav Republic of Macedonia enacted its Constitution), his residence in Croatia between 17 November 1991 and 25 January 1999 was deemed foreign and not taken into account. The SEC calculated that in the previous fifteen years the applicant had resided in the former Yugoslav Republic of Macedonia for only seven years, nine months and twenty-two days.

On 26 March 2004 the applicant challenged the rejection of his candidacy in the Supreme Court (*Врховен Суд на РМ*), alleging that the SEC had incorrectly calculated the overall length of his residence in the former Yugoslav Republic of Macedonia by an erroneous (restrictive) construction of Article 132 of the Constitution. According to him, his residence in Croatia after 17 November 1991 should have been deemed domestic residence by the SEC. First, the applicant maintained that neither the Constitution nor the Law on the Implementation of the Constitution (*Уставен Закон за имплементација на Уставот на РМ*), nor any other statute imposed a time-limit on the application of Article 132 of the Constitution, which is a transitional provision. Second, he maintained that

Article 132 of the Constitution, as well as the other provisions of the Constitution and the relevant statutes, did not specify that the qualifying period of residence in the other republics of the Socialist Federal Republic of Yugoslavia would be restricted to the period before the Constitution was enacted or any other period. Since neither the Constitution nor the statutes regulated the manner or duration of the application of Article 132 of the Constitution, the applicant argued that the said provision should have been construed by the SEC in accordance with the human rights conventions and the 1978 and 1983 Vienna Conventions on the Succession of States, that is to say, broadly, not restrictively. He claimed that he could not be blamed for leaving the former Yugoslav Republic of Macedonia for Croatia in 1987 and staying there for a certain period of time following the disintegration of Yugoslavia, and had done so for economic reasons. Finally, the applicant alleged that he had been discriminated against in comparison to other candidates in the 1994 and 1999 presidential elections, namely, Mr. K. Gligorov in 1994 and Mr. V. Tupurkovski in 1999, whose candidacies had been upheld by a differently composed SEC. He alleged that the SEC had not applied the aforementioned provision in the same manner in their cases as in his. The applicant requested the Supreme Court to order the SEC to serve and disclose its decisions on the candidacies of Mr. K. Gligorov and Mr. V. Tupurkovski.

On 27 March 2004 the Supreme Court dismissed the applicant's challenge, finding that the overall length of his domestic residence had been correctly assessed by the SEC. It held that the former Yugoslav Republic of Macedonia had declared its independence with the adoption of the Constitution on 17 November 1991, so that Article 132 of the Constitution could only be applied for the period prior to that date. It did not directly respond to the applicant's assertions or arguments.

On 29 March 2004 the applicant petitioned the Constitutional Court (*Уставен Суд на РМ*) for an order quashing the decisions of the Supreme Court and the SEC on the basis of Article 50 § 1 and Article 110 § 3 of the Constitution. He called the petition a request for the protection of an electoral right (*барање за заштита на избирачко право*). Before the Constitutional Court, the applicant repeated the assertions he had made and arguments he had advanced before the Supreme Court, adding that his right to stand for election under Article 23 of the Constitution and Article 3 of Protocol No. 1 of the Convention had been violated. He also complained that he had not received a reasoned answer from the Supreme Court to his arguments.

On the same date the applicant made an almost identical application to the Supreme Court, requesting it to adopt a common position on its decision of 27 March 2004 (and to set it aside) in a joint session of its three chambers.

On 31 March 2004 the Constitutional Court rejected the applicant's petition as being incompatible *ratione materiae*. It held that the right to stand for election was not among the individual rights and freedoms referred

to in Article 110 § 3 of the Constitution whose violation could be challenged in the Constitutional Court by way of individual petition. According to the Constitutional Court, the SEC and the Supreme Court had exclusive jurisdiction to protect the right at issue pursuant to Article 10-e of the Law on the Election of the President of the Republic. In addition, the Constitutional Court held that it had no jurisdiction to review the complaint under Article 3 of Protocol No. 1 to the European Convention of Human Rights. The Constitutional Court reached its decision without a hearing.

It is not clear whether the Supreme Court acted upon the applicant's request for the adoption of a common position and an order setting aside its decision of 27 March 2004. The applicant was deprived of the possibility to stand as a candidate in the elections. The elections took place on 14 and 28 April 2004.

B. Relevant domestic law

1. The relevant provisions of the Constitution defining the powers of the President of the Republic.

Article 79 of the Constitution *(Устав на Република Македонија)* stipulates that the President of the Republic is a Commander-in-Chief of the Armed Forces of the former Yugoslav Republic of Macedonia.

Article 84 of the Constitution *(Устав на Република Македонија)* lists the discretionary powers of the Head of the State. The President of the Republic has power to: (1) nominate an appropriate person to form the Government; (2) appoint and/or dismiss by decree ambassadors and other diplomatic representatives of the former Yugoslav Republic of Macedonia abroad; (3) accept the credentials and letters of recall of the foreign diplomatic representatives; (4) propose two candidates to sit as judges in the Constitutional Court; (5) propose two candidates for membership of the Republic's Judicial Council; (6) appoint three members to the Security Council of the former Yugoslav Republic of Macedonia; (7) propose candidates for membership of the Council for Inter-Ethnic Relations; (8) appoint and/or dismiss other holders of state and public office determined by the Constitution and the law; (9) grant decorations and honours; (10) grant pardons; and (11) perform other duties determined by the Constitution.

Article 90 § 1 of the Constitution provides that the President of the Republic is obliged, within 10 days of the formation of the Assembly, to entrust the mandate for forming the Government to a candidate from the party or parties with a majority of seats in the Assembly.

Article 75 §§ 1 and 2 of the Constitution stipulates that statutes are declared by decree (promulgation), signed by both the President of the Assembly and the President of the Republic.

Article 75 § 3 of the Constitution provides that the President of the Republic may refuse to sign a decree declaring a statute to be in force. His right to veto the declaration of the laws is only provisional since the same provision stipulates that should the Assembly re-adopt the statute by a majority vote of the total number of its representatives, the President of the Republic shall be bound to sign the decree.

Article 75 § 4 of the Constitution provides that the President shall have no right to refuse to promulgate those statutes which, under the Constitution, may only be adopted by a two-thirds majority vote of the total number of the representatives of the Assembly.

2. The exercise of other constitutional powers

Article 63 §§ 1, 3 and 4 of the Constitution provides, *inter alia*, that the representatives of the Assembly are elected for a term of four years and that the new elections are to be held within the last 90 days of the term of the current Assembly. The term of office of the representatives may be extended only during a state of war or an emergency.

Article 63 § 7 of the Constitution stipulates that the Assembly is to be dissolved when more than half of the total number of its representatives vote for dissolution.

Article 71 § 1 of the Constitution provides that the right to propose a bill is given to every Representative of the Assembly, to the Government and to a group of at least 10,000 voters.

Article 71 § 2 specifies that an initiative for adopting a law may be submitted to the authorised bodies by any citizen, group of citizens, institution or association.

Article 90 § 3 of the Constitution stipulates that the Government shall be elected by the Assembly on the proposal of the person nominated by the President of the Republic, and on the basis of the programme, by a majority vote of the total number of Representatives of the Assembly.

Article 92 of the Constitution provides, *inter alia*, that the Government and each of its members shall be accountable to the Assembly which may take a vote of no-confidence in the Government.

Article 93 of the Constitution provides, *inter alia*, that the Government has the right to submit its resignation.

COMPLAINTS

1. The applicant complained under Article 3 of Protocol No. 1 that his right to stand as a candidate in the presidential elections had been violated. In particular, he alleged that the SEC and the Supreme Court had come to

the incorrect and unfair conclusion that he had not satisfied the ten years' domestic residence requirement. Those authorities had unfairly and arbitrarily applied Article 132 of the Constitution to his case. He asserts that their decisions were politically inspired.

2.   In addition, without invoking any provision of the Convention, the applicant complained that he had not received a reasoned decision from the Supreme Court answering his arguments and assertions; that the Constitutional Court had violated his right to access to a court by rejecting his request for the protection of his electoral rights; and that the Constitutional Court had not held a hearing before reaching its decision.

THE LAW

1. Under Article 3 of Protocol No. 1 to the Convention the applicant complained that he had been prevented from standing as a candidate in the 2004 elections for the President of the Republic of the former Yugoslav Republic of Macedonia.

Article 3 of Protocol No. 1 to the Convention states as follows:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

The Court reiterates that Article 3 of Protocol No. 1 guarantees the "choice of the legislature" and that the word "legislature" does not necessarily mean the national parliament. That word has to be interpreted in the light of the constitutional structure of the State in question (see, *mutatis mutandis*, *Mathieu-Mohin and Clerfayt v. Belgium* judgment of 2 March 1987, Series A no. 113, p. 23, § 53; and *Matthews v. the United Kingdom* [GC], no. 24833/94, ECHR 1999-I , § 40).

In two earlier cases the Commission held that the powers of the Head of the State could not as such be construed as a "legislature" within the meaning of Article 3 of Protocol No. 1 (see *Baskauskaite v. Lithuania*, no. 41090/98, Commission decision of 21 October 1998; and *Habsburg-Lothringen v. Austria*, no. 15344/89, Commission decision of 14 December 1989, Decisions and Reports 64, p. 211).

The Court does not exclude, however, the possibility of applying Article 3 of Protocol No. 1 to presidential elections. It reiterates that this provision enshrines a characteristic of an "effective political democracy", for the ensuring of which regard must not solely be had to the strictly legislative powers which a body has, but also to that body's role in the overall legislative process (see the *Matthews v. the United Kingdom* judgment cited above, §§ 42 and 49). Should it be established that the office of the Head of the State had been given the power to initiate and adopt legislation or enjoyed wide powers to control the passage of legislation or

the power to censure the principal legislation-setting authorities, then it could arguably be considered to be a "legislature" within the meaning of Article 3 of Protocol No 1.

In the present case the Court finds no indication that the powers of the Head of the State are such as to make it part of the "legislature" of the respondent State.

First, it observes that the President of the Republic does not have the power to initiate legislation, accompanied with the power to adopt it (see Article 71 §§ 1 and 2 and Article 84 of the Constitution).

Second, the President of the Republic has not been granted wide powers to control the passage of legislation or the power to censure the principal institutions responsible for initiating and adopting legislation.

Thus, the President of the Republic has not been given in law or in practice a right of absolute veto over the legislation adopted by the National Assembly. Under the Constitution, the President enjoys only a limited discretion provisionally to suspend the promulgation of statutes passed by the Assembly (see Article 75 § 3 of the Constitution). Furthermore, the President has not been vested by law or in practice with an unlimited discretion to dissolve the National Assembly. The Assembly is dissolved on its own initiative (Article 63 § 7 of the Constitution) or at the end of its term of office (Article 63 §§ 1, 3 and 4 of the Constitution read together). Finally, the President has not been vested by law or in practice with an unlimited discretion to appoint or dismiss the Government or its members, without the Assembly having the final say on the matter. Apart from the discretion to nominate the appropriate person to form the Government (Article 90 § 3 of the Constitution), the Court notes that the President has no other powers over that principal initiator of legislation. It observes that the Assembly is the body which appoints or dismisses the Government or its members (Articles 90 § 3, 92 and 93 of the Constitution).

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 thereof.

2.   In substance, the applicant also complained under Article 6 of the Convention that the Supreme Court had not reached a reasoned decision and had not responded to his arguments, and that the Constitutional Court had denied him access to a court and had not held a hearing.

Article 6 of the Convention provides, in so far as relevant, as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Court observes that the object of the proceedings at issue was the determination of the applicant's political rights, in particular, his right to stand for presidential election. It notes that proceedings concerning electoral disputes fall outside the scope of Article 6 of the Convention, in so far as

they concern the exercise of political rights and do not, therefore, have any bearing on "civil rights and obligations" within the meaning of Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Pierre-Bloch v. France*, judgment of 21 October 1997, *Reports of Judgments and Decisions*, 1997-VI, p. 2223, § 50; and *Cheminade v. France* (dec.), no. 31599/96, ECHR 1999-II).

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 35 § 3 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Mark VILLIGER   Georg RESS
Deputy Registrar   President