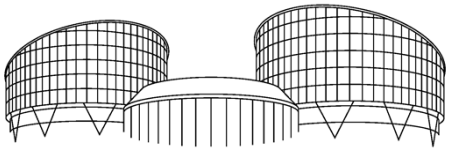

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF NDI SOPOT S.A v. NORTH MACEDONIA

(Application no. 6035/17)

JUDGMENT

Art 6 § 1 (civil) • Impartial tribunal • Fair hearing • Domestic courts' refusal to allow the recognition of a final arbitration award by the International Chamber of Commerce of the International Court of Arbitration in favour of the applicant company • Applicant company's concerns as to the impartiality of the presiding judge of the appellate court objectively justified • Appellate court's composition not such as to guarantee its impartiality • Domestic courts' failure to adequately respond to key arguments • Insufficient reasoning

Prepared by the Registry. Does not bind the Court.

STRASBOURG

26 November 2024

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

In the case of NDI SOPOT S.A v. North Macedonia,

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

Arnfinn Bårdsen*, President*,
Pauliine Koskelo,
Jovan Ilievski,
Péter Paczolay,
Davor Derenčinović,
Gediminas Sagatys,
Stéphane Pisani*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 6035/17) 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 a private company incorporated under Polish law, NDI SOPOT S.A. ("the applicant company"), on 13 January 2017;

the decision to give notice to the Government of North Macedonia ("the Government") of the complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 of the Convention and to declare the remainder of the application inadmissible;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant company;

the comments submitted by the Government of Poland, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 5 November 2024,

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

INTRODUCTION

1. The application concerns the applicant company's complaints under Article 6 of the Convention of the unfairness of domestic proceedings concerning the recognition of an arbitration award issued by a Tribunal of the International Court of Arbitration ("the ICA") of the International Chamber of Commerce ("the ICC") in Paris – hereinafter, "the ICC Tribunal" – in favour of the applicant company.

THE FACTS

2. The applicant company is a private joint stock company incorporated under Polish law and having its registered office in Sopot, Poland. It was named NDI S.A. at the time of the introduction of the application but on 6 December 2019 it changed its name to NDI SOPOT S.A. The applicant company was represented by Mr R. Morek, Ms E. Buczkowska and

Mr W.Sadowski, lawyers practising in Warsaw. On 15 March 2022, that is after the parties had exchanged their observations, the applicant company submitted an authority form authorising Ms E. Wętrys, a lawyer practicing in Warsaw, to represent it before the Court.

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

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

I. BACKGROUND

5. The applicant company operates in the field of construction and civil engineering. In 2010 it concluded a joint-venture agreement ("the JVA") for joint participation in a public tender for the construction of a section of the A4 motorway in Poland ("the A4 Project") with a private company, G (hereinafter, "the debtor company"), which is incorporated under the law of North Macedonia, has its registered office in the respondent State and operates in the field of road construction. The parties undertook, *inter alia*, to fund the joint venture and provide working capital for the performance and execution of the A4 Project in equal shares.

6. Under the JVA arbitration clause, if the parties were not able to reach an amicable settlement of a dispute between them, the dispute was to be settled under the Rules for Conciliation and Arbitration of the International Chamber of Commerce in Paris ("the ICC Rules") by three arbitrators in accordance with those rules. The place of arbitration was to be Warsaw and the JVA was subject to Polish law.

7. In February 2010 the parties were successful in a tender run by the General Directorate for National Roads and Motorways of Poland ("the GDDKiA") and the construction works began. The joint venture faced financial difficulties, so in February 2011 both companies decided to terminate the construction agreement and to withdraw from all contracts with several subcontractors and other agreements concluded by the joint venture in the context of the A4 project. Pursuant to the parties' notice, in March 2011 the GDDKiA terminated the construction contract, leaving the parties to deal with over 100 subcontractors whose legal status was not affected by the termination. One month after the cut-off date for the project's costs (set out as 19 April 2011), the applicant company issued a final notice for payment to the debtor company in respect of costs and expenses borne by the applicant company in excess of its share (50%) in the financing of the consortium's financial obligations, as well as claims due to third parties.

II. FIRST ROUND OF ARBITRATION PROCEEDINGS AND ENSUING DOMESTIC PROCEEDINGS

A. Partial award of 21 July 2015

8. On 27 February 2012 the applicant company requested arbitration before the ICC Tribunal, arguing that the debtor company had breached its obligation to co-finance the project. It claimed the reimbursement of all joint project costs and expenses it had made in excess of its share, including those incurred both before and after the termination of the construction contract, and those incurred in connection with the termination of agreements with subcontractors. It argued that it had paid 80% of the costs and expenses, against 20% paid by the debtor company, in breach of the equal distribution of expenses principle set out in the JVA, and that the debtor company had failed to provide working capital despite the JVA requirement.

9. The applicant company nominated one J.M., and the debtor company one A.H. as arbitrators. In a statement of acceptance, availability, impartiality and independence of 24 February 2012, made in accordance with Article 11(2) and (3) of the ICC Rules (see paragraph 65 below), J.M. declared that he was impartial and specified that he had nothing to disclose in that respect. On 23 March 2012 the Secretariat of the ICA sent that statement to the parties. On 7 May 2012 the Secretary General of the ICA confirmed J.M. and A.H. as arbitrators. In May 2012 the arbitrator A.H. disclosed to the Secretariat of the ICA that in November 2010 he had been instructed by a partner of a legal firm representing the debtor company, in A.H.'s capacity as a lawyer, to advise a private company in an unrelated set of arbitration proceedings, and sent a letter of impartiality and disclosure to the parties to that effect. The parties did not raise any objections in respect of the arbitrators. Given the parties' inability to reach an agreement on a proper appointment, in June 2012 the Secretariat of the ICA appointed the arbitrator P.N. as President of the Tribunal.

10. In May 2012 the debtor company filed a counterclaim that was subsequently treated by the ICC Tribunal as a defence to the applicant company's claim. Denying bad faith while entering the JVA, it argued that it had not had to provide working capital and co-finance the venture in equal part as the parties had agreed separately on a different basis for funding. It raised further specific objections arguing, in particular, that a contract concluded by the applicant company with private company operating under Polish law, S.K., for the purchase of a large amount of aggregate had been fraudulent, had not been authorised by both parties and could not have been treated as binding on the debtor company. As subsequently established in the arbitration proceedings, the contract on behalf of S.K. had been signed by one R.

11. On 29 July 2013 the debtor company submitted, among various other items of evidence, a witness statement by one V., who had been its technical director at the time of the events, in support of its defence pertaining, *inter alia*, to the pre-contractual negotiations between the applicant company and S.K. in April-July 2010. According to the statement, on 7 July 2010 one J.K.J. had participated in those negotiations on behalf of S.K.

12. By a partial award of 21 July 2015 ("the partial award"), notified to the parties on 29 July 2015, the ICC Tribunal granted the applicant company's claims in part. Having found no other basis for distribution of expenses than that laid down in the JVA, the ICC Tribunal established that the applicant company was in principle entitled to reimbursement of amounts paid in excess of its share of 50%, subject to specific deductions. In particular, as regards the contract with S.K., the ICC Tribunal found no evidence of it being fraudulent or corrupt but established that the applicant company's representative had acted in excess of its authority when signing the contract; and rejected, by a majority, the applicant company's argument that the debtor company had subsequently approved the S.K. contract. The ICC Tribunal accordingly concluded that the relevant contract had not been binding on the debtor company and deducted, by a majority (with the arbitrator J.M. dissenting on the issue), the relevant amount from the applicant company's claim for reimbursement.

13. By the above award the ICC Tribunal ordered the debtor company to pay the applicant company 12,979,309.11 Polish zlotys (PLN - approximately 3,193,066 euros (EUR)), plus interest of 13% from 31 May 2011 to 23 December 2014, and interest of 8% from 23 December 2014 until payment. By the same ruling the ICC Tribunal decided to reserve all issues relating to liability, allocation and quantum of costs and all issues related to value-added tax (VAT) payments to a separate Costs and Ancillary Award and rejected the remainder of the applicant company's claims.

B. Subsequent procedural requests and relevant decisions

14. Both the applicant and the debtor companies applied for a correction of the partial award (the term is used in Article 35 the ICC Rules concerning correction and interpretation of the awards, in respect of clerical, computational, typographical, or similar errors). On 24 February 2016 the ICC Tribunal rejected both parties' requests, and on 15 March 2016 notified the parties of that decision.

15. By a letter dated 29 April 2016 the debtor company raised challenges against the arbitrator J.M. and the entire tribunal under Article 14 of the ICC Rules (see paragraph 66 below). The debtor company argued that the arbitrator J.M. had failed in his duty to disclose information relevant to a key issue of the arbitration – namely, that he had known for many years J.K.J., who had represented the company S.K. in the negotiations concerning the

contract between the applicant company and S.K. (see paragraphs 10-12 above), who had been a member of S.K.'s supervisory board, and whom the debtor company believed to be the owner of S.K. and one of the people controlling it. The debtor company referred to information it had lately "found by chance on the internet", and a preliminary report of 28 April 2016 by a global business advisory firm, F, (which had been invited by the debtor in early 2016 to research the matter) confirming that J.M. and J.K.J. had known each other for decades – they had both been members of parliament representing the same political party (the Democratic Left Alliance (Sojusz Lewicy Demokratycznej – "the SLD")) in 2001-2004 and members of the presidium of that party in 2004. In the debtor company's view, that amounted to a circumstance capable of calling into question J.M.'s independence in the eyes of the parties. The debtor company further challenged the entire tribunal for its failure to conduct the arbitration in an expeditious manner.

16. By letter of 4 May 2016 the ICA of the ICC informed the parties that the challenge had been accepted for examination. On 13 May 2016 J.M. advised the ICA Secretariat that, as specified in his Curriculum Vitae ("CV") at the disposal of the Secretariat, he had been a member of parliament from 2001 to 2004, at the same time as J.K.J. Furthermore, he and J.K.J. had been members of the SLD parliamentary club, which had comprised about 250 persons at that time. J.K.J. had been the Minister of Internal Affairs and Administration at the time of the events, whilst J.M. had been "dealing with the maritime economy and the amendment of civil and commercial law regulations". Throughout that period there had been no personal or direct contact between them. J.M. stated that he had met J.K.L. for the first time in 2001, and firmly denied having known him "for decades". J.M. further stated that, contrary to the debtor company's allegations, he had not been a member of the SLD Presidium, but only of its parliamentary club. Prior to his appointment as arbitrator he had been unaware of either the debtor company or the applicant company, or of S.K. and the members of its supervisory board, he had had no contact with J.K.J. since 2004, and therefore he had had nothing to disclose.

17. On 26 May 2016 the ICA of the ICC rejected the debtor company's challenge. Referring to Article 14(3) of the ICC Rules (see paragraph 66 below), by a letter dated 1 June 2016 the ICA of the ICC advised the parties, *inter alia*, that the challenge against the arbitrator J.M. was "inadmissible and in any event failed on the merits". The letter did not contain further details of the decision in so far as the challenge of the arbitrator was concerned.

C. Certificate of 7 June 2016

18. By a certificate of 7 June 2016, the Secretary General of the ICA of the ICC confirmed that (i) on 29 July 2015 the partial award of 21 July 2015 had been notified to the parties; and (ii) on 15 March 2016 the decision to

reject the parties' requests for corrections of the partial award dated 24 February 2016 (see paragraph 14 above) had been notified to the parties. The certificate reiterated that every award was binding on the parties, as stipulated in Article 34(6) of the ICC Rules as in force at the material time (see paragraph 67 below).

D. Final award of 26 August 2016

19. On 26 August 2016 the ICC Tribunal issued its final award concerning the VAT and the costs of arbitration. On 21 June 2017 the ICC Tribunal rejected the debtor company's request of September 2016 for a correction of the final award.

III. PROCEEDINGS FOR ENFORCEMENT OF THE PARTIAL AWARD

A. Information about relevant court proceedings in Poland

20. The applicant company petitioned for enforcement of the partial award in Poland. On 10 December 2015 the Gdańsk Regional Court in Poland recognised it as valid and enforceable.

21. It appears that the applicant company was then able to recover about 1% of the amount awarded, and that the remainder of the partial award could not be enforced in Poland as the debtor company lacked assets in that State.

22. On 20 January 2017 the debtor company appealed against the decision of 10 December 2015, arguing that the award was inconsistent with the fundamental principles of legal order of the Republic of Poland. It referred, in particular, to the arbitrator J.M.'s lack of impartiality on account of his ties with J.K.J. (see paragraph 15 above).

23. On 6 February 2018 the Gdańsk Court of Appeal dismissed the appeal on the merits. The appellate court noted, with reference to the position of the Supreme Court of Poland, that the lack of impartiality of an arbitrator would mean that an arbitration award was contrary to the public policy of Poland, and stressed the importance of an arbitrator's duty to disclose ties with a party to an arbitration. It found, however, that in the case at hand it had not been demonstrated that J.M. had had any close relations with the applicant company which could have raised doubts as to his impartiality. Indeed, J.M.'s connection to S.K. had been *de facto* limited to an acquaintance, long before the arbitration took place, with a person who had been a member of the S.K.'s supervisory board since 2008. Considering the powers of such board members under the law of Poland (which did not include representing the company), and the arbitrator's relationship with J.K.J. (membership in the same parliamentary club in 2001-2004, with their having represented different constituencies), the appellate court found that the independence of the arbitrator had not been placed in doubt. The court added that it had not

been demonstrated that J.K.J. had participated in negotiations on behalf of the company S.K. Nor had J.M.'s and J.K.J.'s membership in the Club of Contemporary Political Thought in Gdańsk been a ground to disqualify the arbitrator. Such a remote connection could not be compared to that which had led the arbitrator A.H. to make a disclosure in connection with the events which had taken place months prior to the arbitration (see paragraph 9 above). The appellate court also noted that the ICC Tribunal had ruled in favour of the debtor company in so far as the contracts with S.K. had been concerned. It concluded that the debtor company's argument was to be dismissed. The fact that the courts of North Macedonia had reached a different conclusion on the matter (see paragraphs 29-35 below) did not, in the appellate court's view, have any bearing on its own findings made in accordance with the law of Poland.

24. The debtor company did not bring proceedings in Poland to challenge the arbitration award.

B. Proceedings in North Macedonia

1. The first-instance court's decision of 20 May 2016

25. On 20 April 2016 the applicant company lodged an "application for recognition" with the Skopje Court of First Instance no. 2 – that is to say, petitioned for the recognition of the partial award of 21 July 2015 in North Macedonia, so that it could be enforced in that State. The applicant company set the value of the dispute at 10,000 Macedonian denars (MKD, approximately 163 euros (EUR)). It referred to Articles I to V of the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards ("the New York Convention"), section 37 of the International Commercial Arbitration Act and section 116 of the Private International Law Act ("the PIL Act", see paragraphs 46 and 52 below). It submitted to the court, in particular, a notarised copy of the partial award with an apostille stamp and its certified translation; a notarised copy of the JVA agreement containing the arbitration clause, with apostille stamps, and its certified translation; a notarised copy of the notification letter of 24 February 2016 (see paragraph 14 above) and its translation; and enclosed a copy of the decision of 10 December 2015 by the Gdańsk Regional Court (see paragraph 20), "in order to fully confirm the validity and enforceability of the Partial Award".

26. On 28 April 2016 the debtor company objected to the application, submitting that the applicant company's reference to the above-cited judgment of the Polish court was irrelevant, and arguing that the applicant company had based its claim solely on that judgment and had failed to submit evidence of the partial award's finality. It further submitted that the composition of the ICC Tribunal had been unlawful for the purposes of Article V(1)(d) of the New York Convention (see paragraph 64 below). It

asserted that (i) the arbitrator J.M. had lacked impartiality on the same grounds as summarised in paragraph 15 above. It submitted, *inter alia*, J.M.'s statement of acceptance in the ICC proceedings, an undated biography of him, a list of elected members of parliament published in the Official Gazette of the Republic of Poland in 2001, archived data from the *Sejm* website concerning J.K.J. and J.M., extracts from the minutes of a June 2005 session of the Sejm, a publication in the *Wprost* newspaper from January 2004, the report on J.K.J. by the consulting firm F., an extract from the State Register of 2008 for the company S.K. apparently listing members of its supervisory body, as well as S.K.'s registration data for 2008 and 2012, the contract between S.K. and the applicant company (see paragraph 10 above) and V.'s statement in the arbitration proceedings (see paragraph 11 above). Referring to Article 11 of the ICC Rules and citing commentaries to the New York Convention (see paragraphs 65 and 69 below), it stressed that J.M. had failed to disclose circumstances which might have called into question his independence in the eyes of the parties, or those which could have given rise to reasonable doubts as to his impartiality, and argued that the recognition of a partial award issued in biased proceedings would be in breach of public order of North Macedonia (they referred to Article V(I)(b) of the New York Convention). It also argued, among other things, that the ICC Tribunal's award in respect of interest had been in contradiction with the public order; and alleged that it had been unable to properly submit evidence in the arbitration proceedings.

27. The parties disagreed on the question whether the applicant company had submitted to the domestic court, in reply to the debtor company's argument concerning lack of impartiality, a copy of the request in similar terms which the debtor company had already lodged to the ICA on 29 April 2016, and a copy of the letter of 4 May 2016 from the ICA Secretariat (see paragraphs 15-16 above). The applicant company maintained that it had submitted the relevant documents during the hearing. The record of the hearing on 20 May 2016, to which the parties made no comments or objections contains no reference to the impugned ICA letters. The first-instance court's judgment (see below) refers, in particular, to J.M.'s statement of 13 May 2016 (see paragraph 16 above) and a letter by the ICA Secretariat "of 19 May 2016", both submitted by the applicant company during the hearing.

28. On 20 May 2016 the Skopje Court of First Instance no. 2 dismissed the applicant company's request for the following reasons.

29. Firstly, as regards the public order ground, the court reiterated that pursuant to section 37 of the International Commercial Arbitration Act (see paragraph 46 below), recognition and enforcement of foreign arbitral awards was to be carried out in accordance with the New York Convention, which the domestic court was bound to respect and apply. Referring to documents submitted by the debtor company (see paragraph 26 above), and noting from

a commentary to the New York Convention that the notion of composition of an arbitral tribunal comprised aspects related to an arbitrator's personality (see paragraph 69 below), the court found established the existence of ties between the arbitrator J.M. and J.K.J., who had been acquaintances (*факти дека за постоење на врски и познанства*). According to the court, J.K.J. had been a member of S.K.'s supervisory body, had represented it at the negotiation stage (*бил ... претставник ... во преговорите кога партнерите го склучувале договорот*) and had directly participated in signing the contract at issue (*директен учесник во потпишувањето на договорот*). The contract with S.K. had subsequently constituted one of the significant aspects (*значителен дел*) of the dispute submitted for arbitration. However, J.M. had failed to notify the parties of his ties with J.K.J., despite an explicit requirement set out in Article 11(2) and (3) of the ICC Rules. The court further observed that Article V(1)(b) of the New York Convention (see paragraph 64 below) was fully concordant with the principle of impartiality and independence of a tribunal enshrined in Article 6 of the European Convention of Human Rights. Referring to Article 11 of the ICC Rules and a commentary on the New York Convention (see paragraph 69 below), the court further noted that an arbitrator's failure in an obligation to disclose obvious connections (*несомнено врски*) with parties to a dispute would be contrary to the legal order (*поредокот*) of North Macedonia, as well as to the international legal order of democratically governed countries. Against that background, the court reiterated that the New York Convention, on the one hand, obliged the States Parties to recognise and enforce foreign arbitral awards, but on the other hand provided for exceptions in cases where the procedure in which the award had been issued had been in breach of basic principles of the legal system of the country where the recognition was sought (the court referred to Article V(2)(b), quoted in paragraph 64 below). The court found that the partial award had been made in proceedings with the participation of an arbitrator who had not been independent and impartial. With reference to section 116 of the PIL Act, taken in conjunction with sections 113 and 107 and section 103(1) of that Act (as in force at the material time, see paragraphs 48-52 below), the court concluded that the recognition of the award was to be refused, owing to the irregularities of the procedure underlying the impugned decision, as otherwise the effect of the recognition would have been contrary to public order of North Macedonia.

30. Secondly, the court considered that the applicant company had failed to comply with the requirement set out in section 101 of the PIL Act (see paragraph 47 below) to submit evidence confirming that the arbitration award had become final and enforceable (*правосилна и извршна*). The court considered that the Gdańsk Regional Court's decision of 10 December 2015 could not be relied on to confirm the finality of the partial award. The partial award and the decision of the Polish court had been issued by different authorities – one by an independent arbitration body and the other by a court

of general jurisdiction of a foreign country – and the decision of the Polish court had never been recognised in North Macedonia. The domestic court concluded that the applicant company had failed to submit a valid certificate confirming the partial award's finality, as required by section 101 of the PIL Act.

2. The applicant company's grounds for appeal

31. The applicant company appealed, referring to (i) a substantive violation of the rules of civil procedure, (ii) the incorrect establishment of the relevant facts, and (iii) the misapplication of substantive law.

32. Firstly, it noted that the first-instance court had disregarded the challenge of the arbitrator lodged by the debtor company with the ICA that had been pending at the relevant time (see paragraph 15 above). While relying on Article 11 of the ICC Rules, the first-instance court had disregarded a clear procedure for challenging the arbitrators set out in Article 14 of those Rules (see paragraph 66 below) and had ruled on the issue of an arbitrator's alleged partiality, which had been within the exclusive competence of the ICA. The applicant company argued that on 20 May 2016 it had submitted to the first-instance court a copy of the letter of 4 May 2016 by which the ICA Secretariat had advised the parties that the debtor's challenge of the arbitrator had been accepted for examination as well as a copy of the debtor company's challenge of 29 April 2016 (see paragraphs 15-16 above), but that the first-instance court had omitted to decide on those submissions or to cite them, let alone to suspend proceedings pending the determination of the challenge by the ICA. It invited the appellate court to take account of the ICC's decision of 26 May 2016 to reject the debtor company's challenge of the arbitrator as both unfounded and inadmissible for procedural reasons (see paragraph 16 above); and submitted the relevant letter as evidence. It reiterated that the debtor company had entered the arbitration voluntarily and had been aware of the final and binding nature of the award. Referring to Article 39 of the ICC Rules (see paragraph 68 below), it claimed that the debtor company had waived its right to raise its objections in the recognition proceedings, but the first-instance court had nonetheless allowed those objections. Moreover, the lower court had clearly gone beyond its jurisdiction as set out in sections 101 to 110 of the PIL Act by embarking on its analysis of the substance of the partial award and categorising certain aspects of the arbitration as "significant"; had wrongly established that J.K.J. had participated in signing the contract on behalf of S.K. despite a lack of evidence to that effect; and had not sufficiently explained its conclusions as to the existence of a link between J.M. and J.K.J. which, according to the applicant company, had also lacked evidence and had been unfounded.

33. Secondly, it stated that it had duly submitted all the documents required for a recognition request to the first instance court, and additionally

referred to the ICC certificate of 7 June 2016 (see paragraph 18 above) in support of its position, to dispel any doubts; and challenged the lower court's reference to the Polish court's decision as irrelevant, arguing that that had not been the subject-matter of the recognition proceedings. It disputed the first-instance court's conclusion in that part as being based on an incorrect application of domestic law, namely section 101 of the PIL Act which the applicant company considered inapplicable to the circumstances of its case. It claimed, for various reasons related to the interpretation of the New York Convention in the light of the international law of treaties, that Article IV of the New York Convention (see paragraph 63 below) was to be applied instead as a *lex specialis*, and that it had duly submitted the documents listed therein. Lastly, it insisted that the partial award had in any event been binding on the parties by virtue of the ICC Rules, of which the debtor company had been aware at the outset. The applicant company submitted that the debtor company had failed to discharge its burden to prove that the arbitral award had not become final and enforceable. The applicant company quoted extensively from commentaries and study materials concerning the New York Convention in support of its arguments.

3. The appeal judgment of 15 July 2016

34. On 15 July 2016 the Skopje Court of Appeal, sitting in a three-judge formation presided over by Judge J.N., examined the appeal in written proceedings and dismissed it, endorsing the lower court's findings as lawful and well-founded. The court found that there had been no omission by the first-instance court to admit documents (see paragraph 32 above) as such evidence had not been presented to it, whilst all the submitted items of evidence had been duly cited and addressed by the lower court.

35. Having reiterated that, pursuant to section 116 of the PIL Act, sections 111 to 115 of the Act applied to the recognition of foreign arbitral awards (including section 113 of the Act determining the scope of review), the appellate court then reproduced, in essence, the first-instance court's findings concerning the arbitrator J.M. (see paragraph 29 above). It noted that the lower court had established, on the basis of the available evidence, the existence of ties between J.M. and J.K.J., who had been a member of S.K.'s supervisory body at the material time, had represented it in the contract negotiations with the applicant company and had directly participated in signing the contract, a claim in respect of which had subsequently formed a "significant part" (*значителен дел*) of the applicant company's claims before the ICC Tribunal. The lower court had thus correctly applied substantive law, in line with the principle of fair trial set out in Article V(1)(b) of the New York Convention and Article 6 of the Convention (the appellate court also referred to a commentary to the New York Convention, cited in paragraph 69 below). Without further details, the appellate court assessed as "undisputed" (*неспорно*) the information and facts pointing to the existence of

"connections and an acquaintance" (*врски и познанства*) between J.M. and J.K.J. There was no doubt for the court that they had known each other for a long period of time and had cooperated; and that J.M. had been clearly aware (*неспорно ... бил свесен*) of the role that J.K.J. had played in the S.K. at the relevant time. J.M. should have disclosed those circumstances under Article 11 of the ICC Rules, but he had failed to do so. J.M.'s failure to disclose the above-mentioned connections gave rise to a doubt as to his impartiality and independence and therefore constituted a ground for the refusal of recognition within the meaning of Article V(1)(d) of the New York Convention. The court further found that it would run contrary to the public order of North Macedonia to recognise a decision taken by an arbitrator who had undoubtedly had ties with one of the parties (*[имал] несомнено врски со спротивната страна*), and especially with a person whose actions had been at the origin of the dispute and had constituted part of the subject-matter of the arbitration. The court reiterated that Article V of the New York Convention had clearly allowed for an exception from the general obligation to recognise and enforce foreign decisions where recognition would run contrary the basic principles of the domestic legal system (it referred to Article V(1)(b) and Article V(2)(b) of the New York Convention).

36. The appellate court further rejected as unfounded the applicant company's reference to Article 34 of the ICC Rules, to Article 14 of those Rules setting out the procedure for challenging an arbitrator, as well as to the ICC's rejection on 26 May 2016 of the debtor company's challenge of J.M., as they had concerned procedural actions taken within the arbitration proceedings. It found that the first-instance court's task in the recognition proceedings had been confined to deciding whether the conditions for recognition set out in the PIL Act and the New York Convention had been met. That was exactly what the first-instance court had done within the meaning of section 116 of the PIL Act: having established an irregularity in the proceedings which had led to the delivery of the partial award, it had found that it could not be recognised on the ground that it was in contradiction with the public order of North Macedonia.

37. The appellate court rejected as unfounded the applicant company's argument that Article IV of the New York Convention was to be applied as a *lex specialis*, and that it had not been under an obligation to submit proof of the finality of the arbitration award. It reiterated that the applicant company had had an obligation to submit a document certifying that the partial award had become final, issued by the body that had made it, as set out in section 101 of the PIL Act. The appellate court reproduced, in essence, the lower court's reasoning to the effect that a copy of the judgment given by the Gdańsk Regional Court allowing enforcement of the partial award in Poland had not constituted such proof (see paragraph 30 above). Lastly, without giving further details, the appellate court noted that the remaining arguments of the applicant company were to be rejected as either irrelevant or not

affecting the conclusions as to the lawfulness of the first-instance court's decision.

38. The applicant company received a copy of the judgment on 12 September 2016.

4. Refusal to reopen the case of 16 February 2017

39. According to the applicant company, in September 2016, after the receipt of the appellate court's decision, it learned that the husband of Judge J.N., a certified engineer, (a) had been an employee of the debtor company since 1980, that is for more than 36 years by the time of the events, and (b) had owned shares of significant value – presumably, in the debtor company.

40. On 12 October 2016 the applicant company lodged a request for the reopening of the proceedings for recognition under section 392(1) of the Civil Proceedings Act (see paragraph 57 below) with the Skopje Court of First Instance no. 2. It argued that Judge J.N. should have disclosed the information concerning her husband as required by section 64(6) of that Act but had failed to do so in breach of section 65(1) of the same Act (see paragraphs 53-54 below). It referred to (i) a domestic database of registered engineers, (ii) a property deed and a property record, and (iii) extracts from a database of the property of elected or appointed officials of the State Commission for the Prevention of Corruption. It further reiterated its arguments concerning the unlawfulness of the refusal to recognise the partial award. It asked the court to either obtain itself or to order the debtor company to submit certain records concerning the company's employees and shareholders. The court rejected those requests.

41. On 16 December 2016 the Skopje Court of First Instance no. 2 decided to transfer the case file to the Skopje Court of Appeal for decision as to whether the reopening was to be granted.

42. On 16 February 2017 the Skopje Court of Appeal dismissed the request. It found that the substantive criteria for the exclusion of a judge set out in section 64(1-5) of the Civil Proceedings Act had not been met and, moreover, the applicant company had failed to produce new facts and evidence to justify reopening the proceedings but had merely reiterated the arguments it had already raised on appeal. In so far as relevant, the decision read as follows:

> "...[T]he participation in the decision-making of a judge ... who should have been exempted pursuant to section 64(1-5) of the Civil Proceedings Act ... constitutes an absolutely substantial breach of the procedure, on account of which a higher court should quash the judgment. [It] also constitutes a ground for filing an appeal on points of law and a request for the reopening of the proceedings. [Comparing] the grounds for the reopening the proceedings with the absolutely substantial breaches of the provisions [governing] the contentious procedure, [the court finds] that the grounds of section 392(1)(1, 2, 3 and 7) of the Civil Proceedings Act are identical to the substantial breaches of the provisions of the contentious procedure set out in section 343(2)(2) of

> the Act. ... A substantial breach ... always exists where a panel included a judge or a lay judge who should have been exempted from sitting on the bench (section 64(1-5)) [Bearing in mind the above, as well as the contents of] the claimant's request for the reopening [of the proceedings], [the court] considers that legal conditions to allow the reopening of the second instance proceedings are not met ... This is so, moreover, as the claimant in the request for the reopening does not state new facts and evidence discovered after the completion of the proceedings, which, if taken into account, would have resulted in a more favourable decision for the party, but repeats the complaints raised in the appeal filed against the first instance decision [which] were rejected by the [appellate court] by a reasoned decision."

5. Proceedings for annulment of the partial award brought by the debtor company

43. On 12 November 2020 the Skopje Court of Appeal, by way of a final judgment, dismissed a separate action that had been brought by the debtor company for the annulment of the partial award (lodged in December 2016) owing to an "absolute lack of jurisdiction" *lex arbitri*, as it was within the competence of the courts of Poland to decide on annulment.

IV. SECOND ARBITRATION AWARD AND SUBSEQUENT PROCEEDINGS IN NORTH MACEDONIA

44. It transpires from the applicant company's further observations and subsequent submissions that in 2014 it initiated another arbitration dispute against the debtor company, unrelated to the first one but concerning the same JVA. On 19 December 2017 the ICA of the ICC issued a new final arbitration award granting the applicant company's claim against the debtor company ("the second arbitration award"). The first-instance court refused to recognise that award, and the applicant company's appeal against the refusal was dismissed as belated (as upheld on 21 January 2021 on appeal). The applicant company's subsequent appeal on points of law was dismissed by the Supreme Court of North Macedonia as inadmissible (for the reasoning, see paragraph 61 below).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

A. The Constitution

45. Article 118 of the Constitution provides that international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law.

B. International Commercial Arbitration Act

46. Under section 37 § 3 of the International Commercial Arbitration Act (Official Gazette of the Republic of Macedonia no. 39/2006), recognition and enforcement of foreign arbitral awards should be carried out in accordance with the provisions of the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

C. Private International Law Act

47. In accordance with section 101(1) of the Private International Law Act of 20 July 2007 in force at the time of the events (Official Gazette of the Republic of Macedonia, no. 87/2007, "the PIL Act"), a party requesting the recognition of a foreign court decision should accompany the "application for recognition" with an original of the decision or a certified copy, and a certificate from a foreign court or another competent authority confirming the finality of the foreign decision *(за правосилноста на одлуката)* in accordance with the law of the State in which it was handed down.

48. A domestic court had to refuse a request for the recognition of a foreign court decision if a party proved that it had been unable to present its grounds for defence (*своите средства за одбрана*) owing to irregularities in the procedure (section 103(1) of the PIL Act), or that summons or decisions had not been duly notified to the party (section 103(2)).

49. Under section 107 of the PIL Act ("Violation of public order"), a foreign court decision would not be recognised if the effect of its recognition would be in contradiction with the public order of North Macedonia.

50. Under section 113(1) of the Act, in the procedure for the recognition of a foreign court decision, the scope of a domestic court's review was confined to an examination of the criteria set out in sections 101-110 of the Act (in addition to the above-cited provisions, they included the issues of exclusive jurisdiction, existence of a final decision between the same parties on the same matter, and other criteria).

51. In accordance with section 115 of the Act, the rules of non-contentious procedure (*вонпарничната постапка*) applied to the recognition of foreign court decisions, unless a specific provision in the relevant chapter of the PIL Act stipulated otherwise.

52. Sections 111 to 115 of the PIL Act setting out the procedure for the recognition of a foreign court award applied to the procedure for recognition of foreign arbitral decisions (section 116 of the Act).

D. Civil Proceedings Act

53. Section 64 of the 2005 Civil Proceedings Act (*Закон за парничната постапка,* 79/2005, with subsequent amendments) reads as follows:

"A judge or a lay judge cannot perform his or her judicial functions if:

1. he or she is a party, statutory representative or counsel of a party ... ;

2. he or she is permanently or temporarily employed by a party to the proceedings;

3. the party or counsel is his or her relative ... ;

4. he or she is the guardian, adoptive parent, adoptive child ... of a party;

5. he or she has participated in the rendering of any decision by a lower court or another body in the relevant proceedings; or ...

6. there are other grounds which cast doubt on his or her impartiality."

54. Section 65 of the Act sets out the procedure for the exclusion of a judge. Having learned that one of the reasons listed in section 64(1-5) of the Act (see above) applies in a given case, a judge should stop any work on the case and notify the president of the court, who then decides on a replacement (section 65(1)). If a judge considers that there are other grounds which cast doubt on his or her impartiality within the meaning of section 64(6) of the Act, he or she must notify the president of the court, who will decide on his or her exclusion (section 65(2)). If the president of the court considers that there are other grounds which cast doubt on his or her impartiality within the meaning of section 64(6) of the Act, he or she must notify the president of the immediately higher court, who will decide on his or her exclusion (section 65(3)). Under section 66(6), a party may submit a request for the exclusion of a judge from a higher court in the legal remedy or in a submission submitted in reply; if a hearing is held before a higher court, such a request may be submitted until the end of the hearing.

55. Under section 343(2)(2) of the Act (Chapter 24 – Ordinary Remedies), the determination of a case with the participation of a judge who either should have been excluded within the meaning of section 64(1-5) or was excluded by a court decision, constitutes a substantial violation of procedural law.

56. Section 372 of the Act (Chapter 25 – Extraordinary Remedies) sets out the procedure for an appeal on points of law to the Supreme Court. Parties can file an appeal on points of law against a second instance judgment if the value of the dispute in the impugned part exceeds MKD 1,000,000 (section 372(2)), subject to exceptions where such an appeal could be allowed regardless of the dispute value at issue. That rule does not apply to disputes for which either the Civil Proceedings Act or another law expressly states that an appeal on points of law is not allowed.

57. Under section 392(1) of the Act (Chapter 25 – Extraordinary Remedies), proceedings which have ended in a final court decision that has entered into force can be reopened on request by a party, in particular: if the case was decided with the participation of a judge who should have been excluded in accordance to section 64 of the Act, or had been excluded by a court decision (section 392(1)(1)); or if the party learns of new facts or

presents new evidence which, had they been submitted in the earlier procedure, could have led to a more favourable decision being made for the party (section 392(1)(9) of the Act). The reopening of proceedings for the reasons listed in section 392(1)(1) and elsewhere cannot be requested if the reason cited had already been unsuccessfully raised in earlier proceedings (section 393(1)). A reopening on the grounds set out in section 392(1)(1) and (9) can only be allowed if a party, through no fault of its own, had been unable to raise it in earlier proceedings which had ended with a final court decision (section 393(2)).

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

E. Non-Contentious Proceedings Act 2008

59. Pursuant to section 33(1) of the Non-contentious Proceedings Act, unless otherwise determined by the Act, the provisions of the Civil Proceedings Act should be applied in non-contentious proceedings.

II. RELEVANT DOMESTIC PRACTICE

60. On 26 May 2011 the Supreme Court of North Macedonia allowed an appeal on points of law (*ревизија*) in a case concerning the jurisdiction of the courts of North Macedonia to adjudicate a case arising from a distribution agreement between a foreign private company and a private company incorporated in North Macedonia, by which the parties had agreed to submit their dispute for consideration by the ICA of the ICC *(Рев.1бр.781/2010)*.

61. On 15 June 2021 the Supreme Court rejected as inadmissible the applicant company's appeal on points of law in the proceedings concerning the refusal of recognition of the second arbitration award (see paragraph 44 above). The Supreme Court noted that the refusal of recognition of the partial award had been based on the PIL Act, and that the relevant procedure was governed by sections 99 to 116 of that Act. Under section 115 of the PIL Act, unless a specific provision in the relevant chapter of the PIL Act provided otherwise, the rules of non-contentious procedure applied to proceedings concerning the recognition of foreign court decisions (and, accordingly, to proceedings for recognition of foreign arbitral awards). Pursuant to section 33(1) of the Non-Contentious Procedure Act (see paragraph 59 above), the provisions of the Civil Proceedings Act applied to non-contentious proceedings unless otherwise stipulated in the Non-Contentious Procedure Act. That latter Act, however, did not contain a general provision concerning the availability of an appeal on points of law in non-contentious proceedings but set out an exhaustive list of specific types of proceedings in

respect of which such a remedy could be requested (sections 56, 188, 173). Accordingly, the Supreme Court concluded that an appeal on points of law was not allowed in respect of the remainder of the non-contentious proceedings, including the proceedings at hand.

III. REMEDIES UNDER POLISH LAW IN RELATION TO INTERNATIONAL ARBITRATION AWARDS ISSUED IN POLAND

62. An arbitral award issued in the Republic of Poland may only be set aside by a court in proceedings initiated by the lodging of an application to set aside the award, in accordance with relevant procedure (Article 1205 of the Code of Civil Procedure of the Republic of Poland). A party may petition for the annulment of an arbitral award on the ground that the party was not given proper notice of the appointment of an arbitrator or the proceedings before the arbitral tribunal, or was otherwise deprived of the ability to defend its rights before the arbitral tribunal (Article 1206 § 1 (2); or the requirements of the composition of the arbitration court or the basic rules of procedure before the arbitration court were not complied with (Article 1206 § 1 (4). An arbitral award should also be set aside if the court finds that the arbitral award is contrary to fundamental principles of the legal order of the Republic of Poland (Article 1206 § 2). A petition for the annulment of an arbitral award is to be lodged within a two-month time-limit from the date the award (or, where relevant, a decision pertaining to correction or interpretation of the award) has been notified to a party, or, in some cases (where the award was obtained by means of an offence or issued based a forged or altered document; or there exists a final and binding court judgment on the same matter between the same parties), within two months from the date a party had learned of such grounds, but no later than five years from the date the award had been notified to the party (Article 1208 of the Code of Civil Procedure of the Republic of Poland).

IV. RELEVANT INTERNATIONAL MATERIAL

A. United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958)

63. Under Article IV of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958, Official gazette of the Socialist Federal Republic of Yugoslavia, "International Agreements" no.11/81):

> "1. To obtain the recognition and enforcement mentioned in the preceding [A]rticle, the party applying for recognition and enforcement shall, at the time of the application, supply:
>
> (a) The duly authenticated original award or a duly certified copy thereof;

(b) The original agreement referred to in [A]rticle II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent."

64. The relevant parts of Article V of the New York Convention provide as follows:

"1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

...

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

...

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

...

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

...

(b) The recognition or enforcement of the award would be contrary to the public policy of that country."

B. The ICC Arbitration Rules

65. The relevant parts of Article 11 of the 2012 ICC Rules, as in force at the material time, read:

"1. Every arbitrator must be and remain impartial and independent of the parties involved in the arbitration.

2. Before appointment or confirmation, a prospective arbitrator shall sign a statement of acceptance, availability, impartiality and independence. The prospective arbitrator shall disclose in writing to the Secretariat any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties, as well as any circumstances that could give rise to reasonable doubts as to the arbitrator's impartiality. The Secretariat shall provide such information to the parties in writing and fix a time limit for any comments from them.

3. An arbitrator shall immediately disclose in writing to the Secretariat [of the ICA] and to the parties any facts or circumstances of a similar nature to those referred to in Article 11(2) concerning the arbitrator's impartiality or independence which may arise during the arbitration.

4. The decisions of the [International Court of Arbitration] as to the appointment, confirmation, challenge or replacement of an arbitrator shall be final, and the reasons for such decisions shall not be communicated."

66. The relevant parts of Article 14 of the ICC Rules, concerning the challenge of arbitrators, read:

"2. For a challenge [of an arbitrator] to be admissible, it must be submitted by a party either within 30 days from receipt by that party of the notification of the appointment or confirmation of the arbitrator, or within 30 days from the date when the party making the challenge was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.

3. The [ICA] shall decide on the admissibility and, at the same time, if necessary, on the merits of a challenge after the Secretariat has afforded an opportunity for the arbitrator concerned, the other party or parties and any other members of the arbitral tribunal to comment in writing within a suitable period of time. Such comments shall be communicated to the parties and to the arbitrators."

67. The relevant part of Article 34 of the Rules reads as follows:

"6. Every award shall be binding on the parties. By submitting the dispute to arbitration under the [ICC] Rules, the parties undertake to carry out any award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made."

68. Under Article 39 of the ICC Rules ("Waiver"), as in force at the material time:

"A party which proceeds with the arbitration without raising its objection to a failure to comply with any provision of the Rules, or of any other rules applicable to the proceedings, any direction given by the arbitral tribunal, or any requirement under the arbitration agreement relating to the constitution of the arbitral tribunal or the conduct of the proceedings, shall be deemed to have waived its right to object."

C. Commentaries to the New York Convention

69. Commentaries to the New York Convention referred to by the debtor company in the domestic proceedings and by the Government in the proceedings before the Court are cited below:

"... [N]either Article V(1)(b) nor Article V(2)(b) precludes invocation of the other. Rather, Article V(1)(b) can be seen as a more specific guarantee to the parties and provides guidelines as to the basic procedural guarantees that must be offered by the arbitral tribunal. Moreover, courts may find that elements of due process not included in Article V(1)(b) should be included in the public policy exception of Article V(2)(b), such as the opportunity to defend oneself. Conversely, if a party participates in proceedings with counsel, it is generally estopped from alleging due process violations under both the due process and public policy exceptions.

In practice, courts generally consider the expectations jointly ...”[1]

“A failure to disclose contacts with a party may lead to a finding of improper composition. The Paris Court of Appeal recently annulled an award because a chairman failed to disclose that, following his appointment, a foreign office of his firm was retained by one of the parties to the arbitration. The court did not investigate whether the chairman actually knew about his firm’s representation and argued that the objective fact should have been disclosed, regardless of actual knowledge.”[2]

“Article V(1)(b) guarantees minimum requirements for a fair arbitral procedure ... Under [that provision], a court may refuse to recognise or enforce an arbitral award, if the party against whom the award is invoked was (i) not given proper notice of the appointment of the arbitrator or of the arbitration proceedings; or (ii) otherwise unable to present its case. The first possible defence encompasses not only the failure to notify of the appointment of the arbitrator ... but also the failure to do so in a ‘proper’ fashion: timely, in adequate form and language and to the correct addressee(s) ...”[3]

“Issues giving rise to doubts as to an arbitrator’s impartiality have to be disclosed immediately at any stage of the arbitral proceedings. In a case in which the chairman of an arbitral tribunal had failed to disclose existing ties between the law firm he worked for and one of the parties of the arbitration, the *Cour d’Appel de Reims* assumed an irregular composition of the arbitral tribunal [France: CA Reims, November 2, 2011].”[4]

70. Commentaries to the New York Convention referred to by the applicant company in both the domestic and the Court proceedings are cited below.

“**Waiver of procedural obligations.** ... [M]ost national arbitration regimes require that parties object to procedural or evidentiary rulings during the proceedings in order to preserve their rights subseqently to seek annullment of an award on the basis of those rulings. ...

Even in the absence of agreements incorporating such provisions, however, national law will almost invariably produce the same result: if parties fail promptly to raise a procedural objection, they will be held to have waived subsequent objections in an annullment action. ...

The application of waiver principles complements the central role of the parties’ procedural autonomy in international arbitration. ... [I]t is ordinarily only where a party has requested, and been denied, a particlar procedural right, or where it objects to a

[1] See Kronke, Nacimiento, Otto, and Port (eds.), *Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention*, Kluwer Law International, (2010), p. 237, with references cited therein.
[2] Ibid., p. 293 with further references.
[3] Wolff, *New York Convention. Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 Commentary*, Beck, Hart and Nomos, (2012), p. 279 with further references.
[4] Ibid., p. 340, with further references.

particlar procedure after it has been ordered or proposed, that it will be able to raise that procedural action in an annullment proceeding"[5]

"To restrict the possibility of challenges being used for tactical and dilatory purposes most rules and laws submit the right to challenge an arbitrator to strict time limits. The challenge must generally be exercised within a very short period after the facts giving rise to the challenge become known.

...

Parties cannot wait until the arbitration turns against them and then rely on a ground for challenge but must exercise their right immediately. Otherwise they are considered to have waived their objections.

...

Parties who appoint their arbitrator despite knowing his lack of independence or impartiality are considered to have waived any objections to the arbitrator and any personal conflict he may have in this respect.

Whether the same limitation applies to a party which knowing the incriminating facts did not object to an appointment made by the other side or an appointing authority is not as clear. The principle of estoppel might also justify an exclusion of the right to challenge in these cases. Irrespective of this the ICC allows challenges in such situations if they are raised within 30 days after the notification or the confirmation of an appointment."[6]

THE LAW

I. PRELIMINARY REMARK

71. In its latest submissions the applicant company raised various grievances pertaining to the second arbitration award and ensuing domestic proceedings for its recognition (see paragraph 44 above). The Court does not find it appropriate to examine any new matters raised by the applicant company after communication of the application to the Government, in so far as they do not constitute an elaboration upon its original complaints to the Court (see, among many others, *Rafig Aliyev v. Azerbaijan*, no. 45875/06, § 69, 6 December 2011). The factual developments referred to by the applicant company will be addressed below only in so far as they are relevant for the present case concerning the proceedings for the recognition of the partial award of 2015.

[5] Gary Born*, International Commercial Arbitration*, Kluwer Law International (2014), pp. 3258-3259, with further references.
[6] Lew, Mistelis, Kröll, *Comparative International Commercial Arbitration,* Kluwer Law International (2003), pp. 308-309, with further references.

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

72. The applicant company complained under Article 6 § 1 of the Convention that the proceedings concerning the recognition of the partial award had been unfair because the findings of the domestic courts at all levels of jurisdiction in those proceedings, including the reopening proceedings, had been arbitrary and manifestly unreasonable; the panel of the Skopje Court of Appeal had not been impartial on account of participation of Judge J.N.; and the domestic courts had given insufficient reasons for their decisions refusing recognition to the partial award given against a major domestic company. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018), finds it appropriate to limit the scope of its examination to the domestic proceedings in which the substance of the applicant company's grievances was dealt with. Article 6 § 1 of the Convention reads as follows:

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

A. Admissibility

1. Applicability of Article 6 of the Convention to proceedings concerning recognition of an arbitral award

(a) The parties' submissions

(i) The Government

73. The Government argued that Article 6 was not applicable to proceedings for the recognition of an arbitration award. The partial award had not been automatically enforceable because the enforcement was conditional on the outcome of the recognition proceedings. The recognition proceedings had not concerned a "civil right" to have an arbitration award recognised, and the Convention did not guarantee a particular outcome of the case. The Government further argued that a right to a fair trial was guaranteed in respect of a "tribunal established by law", while the ICC Tribunal – an arbitration body established under the auspices of a non-State entity – was not a "tribunal" in that sense. If it was accepted that Article 6 did not apply to proceedings before such a tribunal, that would inevitably mean that it was also inapplicable to the recognition proceedings. Furthermore, they argued that under the terms of the arbitration agreement the parties had waived at least some of their Article 6 rights; assuming that such waiver had not excluded *ex post* control of the legality of the arbitral award, they argued that the State could in principle decide on which ground the award might be annulled (they referred to *Nordström-Janzon and Nordström-Lehtinen v. the Netherlands*, no. 28101/95, Commission decision of 27 November 1996,

Decisions and Reports (DR) 87-B, pp. 115-16) or not recognised. Lastly, in their further observations in reply to those of the applicant company concerning the fairness of the reopening proceedings, the Government argued, with reference to *Bochan v. Ukraine (no. 2)* ([GC] no. 22251/08, § 44, ECHR 2015), that Article 6 was inapplicable to proceedings concerning a request for the reopening of a case (an extraordinary remedy).

(ii) The applicant company

74. The applicant company maintained that Article 6 § 1 under its civil head applied to all stages of proceedings for the determination of civil rights, including those after a judgment on the merits. The outcome of the recognition proceedings had been decisive for the applicant company's civil rights (it referred to *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II, and *Avotiņš v. Latvia* [GC], no. 17502/07, § 96, 23 May 2016). The Government's reference to a waiver in the arbitration proceedings was irrelevant (and so was their reference to the Commission decision in the case of *Nordström-Janzon and Nordström-Lehtinen* in so far as that case dealt with the applicability of Article 6 to the arbitration proceedings and subsequent proceedings before a *lex arbitri* court), as the applicant company's complaint only concerned the recognition proceedings in North Macedonia, in which it had not waived any of its Article 6 rights. Its complaint did not concern a right to a particular outcome of the case but specific breaches of the procedural guarantees of Article 6.

(iii) The Government of Poland

75. The Government of Poland submitted that Article 6 § 1 of the Convention applied to all stages of proceedings, including those for the recognition and enforcement of the arbitration award. They referred to the Court's settled approach (notably, to the above-cited *Hornsby* case and the case-law cited therein) that execution of a judgment given by any court was to be regarded as an integral part of the "trial" for the purposes of Article 6.

(b) The Court's assessment

(i) Applicability of Article 6 to the proceedings concerning recognition of an arbitral award

76. For Article 6 § 1 in its "civil" limb to be applicable, there must be a dispute over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether that right is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and the result of the proceedings must be directly decisive for the right in question (see *Grzęda v. Poland* [GC], no. 43572/18, § 257, 15 March 2022, with further references).

77. The Court notes that the applicant company specifically complains about the proceedings in North Macedonia concerning the recognition of the partial award in that State. The Court further notes that the applicant company's rights under the arbitration award in the present case were "pecuniary" in nature and resulted from a contractual relationship between private entities (see, among others, *Ali Rıza and Others v. Turkey*, nos. 30226/10 and 4 others, § 159, 28 January 2020; *Mutu and Pechstein,* nos. 40575/10 and 67474/10, §§ 56-59, 2 October 2018; *Ali Riza v. Switzerland*, no. 74989/11, §§ 64-65, 13 July 2021; and, in so far as relevant, *Xavier Lucas v. France*, no. 15567/20, § 30, 9 June 2022, and *Avotiņš*, cited above, § 96). The right to recover the amount awarded by the ICC Tribunal was therefore a "civil right" within the meaning of Article 6. The outcome of the proceedings brought by the applicant company in the ordinary courts to have the partial award recognised in North Macedonia was therefore decisive for its "civil right" (see, in so far as relevant, *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 40, Series A no. 301-B). The proceedings at hand constituted a "dispute" over a right recognised, at least on arguable grounds, under domestic law (see paragraphs 46 and 47-52 above), and the dispute was genuine and serious. The fact that the impugned proceedings ended with a refusal to allow the recognition and enforcement of the arbitral award is of no relevance (see, *mutatis mutandis*, *Vrbica v. Croatia*, no. 32540/05, § 60, 1 April 2010, in the context of the proceedings which ended with a refusal to allow the enforcement of a recognised foreign judgment).

78. It follows that Article 6 of the Convention was applicable to the domestic recognition proceedings at hand (see also, in so far as relevant, *BTS Holding, a.s. v. Slovakia*, no. 55617/17, § 76, 30 June 2022).

(ii) Applicability of Article 6 to the reopening proceedings

79. Given the scope of the case as defined in paragraph 72 above, the Court does not consider it necessary to deal separately with Government's objection concerning the applicability of Article 6 to the reopening proceedings.

2. Exhaustion of domestic remedies

(a) The parties' submissions

(i) The Government

80. The Government argued in respect of all the complaints under Article 6 that, by setting the value of the dispute at a low amount (see paragraph 25 above), which was manifestly disproportionate to the amount awarded by ICC Tribunal and far below the statutory threshold of MKD 1,000,000 for an appeal on points of law specified in section 372(2) of the Civil Proceedings Act, the applicant company had voluntarily deprived

itself of an opportunity to submit an appeal to the Supreme Court, which could have constituted an effective remedy in respect of its grievances (reference was made to a judgment of that court in a case relating to "some aspects of arbitration agreements", see paragraph 60 above).

81. In respect of the lack of impartiality grievance, they further submitted that the applicant company could have requested the exclusion of Judge J.N. in its appeal against the first-instance decision of 20 May 2016. The applicant party could have consulted the site of the relevant court to obtain information about J.N. and could have anticipated her assignment to work on cases of the relevant type. If obtained timely, that information would have allowed the applicant company to realise the likelihood of J.N.'s involvement in the proceedings as a member of the composition of the appellate court, and to raise its objection in good time. They enclosed a copy of J.N.'s biography available at the Skopje Court of Appeal website in 2019 which specified, in particular, that in 2010 she had been elected as a judge of the Skopje Court of Appeal, where she had dealt with commercial cases (*стопанскиот оддел*) and had been the president of the panel.

(ii) The applicant company

82. The applicant company argued that, firstly, the value set for the dispute (never modified by the domestic courts) had been correctly determined in compliance with the domestic Court Fees Act setting out the methodology for the calculation of court fees in respect of "non-monetary claims" – which included, in terms of the domestic law, a request for the recognition of a foreign judgment. Secondly, it argued that the Government had failed to demonstrate that an appeal on points of law in a case concerning the recognition of a foreign judgment would be allowed under domestic law (it referred in particular to section 372 of the Civil Proceedings Act, see paragraph 56 above) and accepted for examination by the Supreme Court. The only instance of case-law referred to by the Government (see paragraph 80 above) had been irrelevant as it had not concerned the recognition of a foreign arbitration award but rather the courts' jurisdiction to decide on a lawsuit.

83. The applicant company further argued that it could not have raised the issue of J.N.'s alleged partiality during the appeal proceedings. It had only discovered that Judge J.N.'s husband had been working for the debtor company after the appellate court decision had been notified to it. It had been unable to discover that information earlier because it had not been available and searchable in the public domain, as the list of the debtor company's employees had not been publicly available. Thus, even if the applicant party had learned of Judge J.N.'s participation in the examination of the case at an earlier stage, it would have been unable to "match" the judge's personal details with those of her husband. Once it had become aware of the relationship, the applicant company had duly lodged the reopening request,

as the existence of an affiliate relationship between a judge and an employee of one of the parties to the proceedings had constituted a straightforward violation of the procedural fairness requirement and was a self-standing ground for reopening within the meaning of section 392(1)(1) of the Civil Proceedings Act (see paragraph 57 above).

(iii) The Government of Poland

84. The Government of Poland stressed that the purpose of the exhaustion rule was to afford the States the opportunity of putting right the violations alleged before those violations had been submitted to the Court. They submitted that by refusing a request for reopening, the domestic courts had missed an opportunity to put matters right through the domestic legal system.

(b) The Court's assessment

85. The general principles regarding the exhaustion of domestic remedies were summarised in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

(i) Appeal on points of law to the Supreme Court

86. As regards the objection pertaining to the alleged failure to specify a correct value for the dispute which allegedly had led to the applicant company's inability to lodge an appeal on points of law, the Court does not need to address the parties' arguments concerning the method of calculating the value of the dispute, for the following reason. It is incumbent on a Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one and was available in theory and in practice at the relevant time – that is to say that it was accessible and was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Vučković and Others*, cited above, § 77). The Government did not provide any specific case-law examples to demonstrate that an appeal on points of law in proceedings concerning the recognition of a foreign arbitral award would be accepted for examination by the Supreme Court. On the contrary, for instance, in the proceedings concerning the refusal of recognition for the second arbitration award the Supreme Court rejected the applicant company's appeal on points of law as inadmissible, having taken a clear stance as regards the application of the Non-Contentious Proceedings Act to such proceedings and, consequently, the lack of a specific provision therein allowing for an appeal on points of law against a court decision issued in recognition proceedings (see paragraph 61 above). The only domestic case-law example cited by the Government (see paragraph 60 above) appears to be irrelevant, as the proceedings in that case, although indeed related to a dispute which the parties had agreed to settle by way of international arbitration, did not concern the recognition of a foreign arbitration award.

87. The Court finds accordingly that an appeal on points of law to the Supreme Court would not have constituted an effective remedy for the complaints raised by the applicant company.

(ii) Anticipatory complaint and request for reopening (the lack of impartiality grievance)

88. The Government suggested that the applicant company could have anticipated Judge J.N.'s participation in the panel of Skopje Court of Appeal adjudicating its case, and should have lodged an "anticipatory complaint" against Judge J.N.'s participation – that is, request her recusal – in its statement of appeal against the judgment of 20 May 2016, under section 66(6) of the Civil Proceedings Act (see paragraph 54 above).

89. The Court reiterates that, when the domestic law offers a possibility of eliminating concerns regarding the impartiality of a court or a judge, it is expected that an applicant who truly believes that there are arguable concerns on that account would raise them at the first opportunity. This would above all allow the domestic authorities to examine the applicant's complaints at the relevant time, and ensure that his or her rights were respected (see, for example, *Miljević v. Croatia*, no. 68317/13, § 88, 25 June 2020; *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia,* no. 16812/17, § 304, 18 July 2019, and the case-law cited therein; and *Katsikeros v. Greece*, no. 2303/19, § 86, 21 July 2022). For example, where no further remedy is available because an applicant alleged a violation of Article 6 § 1 of the Convention on account of a lack of impartiality on the part of the last-instance judicial authority of the domestic legal system, the Court has found that the principle of subsidiarity may require special diligence from the applicant in complying with the obligation to exhaust domestic remedies. In such cases preventive remedies are of particular importance. Naturally, these considerations apply only if an applicant knew or could have known of the composition of the court in question (see *Katsikeros*, cited above, § 87, and *Croatian Golf Federation v. Croatia*, no. 66994/14, §§ 112-13, 17 December 2020).

90. In the present case, the Court notes that, while referring broadly to the possibility for the applicant company to consult the copy of Judge J.N.'s CV available on the appellate court's website, the Government failed to provide any further details to demonstrate that there had existed a real opportunity for the applicant company to learn that Judge J.N. would be assigned to sit in its case. Nor did they submit any example of domestic practice to show that a request for the prospective exclusion of a judge would be an effective remedy in circumstances such as those in the present case (see, in so far as relevant, *Stoimenovikj and Miloshevikj v. North Macedonia*, no. 59842/14, § 30, 25 March 2021).

91. In any event, the applicant company consistently claimed that the fact of the employment of Judge J.N.'s husband with the debtor company – and,

accordingly, the judge's alleged bias – had come to its attention after the appellate court's decision. There is nothing to show *in concreto* that the applicant company or the lawyers representing it before the appellate court were actually aware of the employment of Judge J.N.'s husband with the defendant at the time when the appeal was pending (see, *mutatis mutandis*, *Nicholas v. Cyprus,* no. 63246/10, § 36, 9 January 2018, and *Dorozhko and Pozharskiy v. Estonia*, nos. 14659/04 and 16855/04, §§ 48-49, 24 April 2008). The domestic courts never assessed that aspect of the case. The Government have not provided any evidence to the contrary, nor is there anything in the file to discredit the applicant company's claim (see *Nikolov v. the former Yugoslav Republic of Macedonia (dec.)*, no. 41195/02, 9 October 2006). Accordingly, the Court finds it reasonable that the applicant company could not have raised the issue of J.N.'s alleged partiality during the ordinary appeal proceedings by lodging an anticipatory request for exclusion on the ground of that information.

92. Lastly, the Court observes that the applicant company raised its lack of impartiality grievance in its request for the reopening of the proceedings (which, as a rule, is not considered as an effective remedy for the purposes of Article 35 § 1 of the Convention), referring to section 392(1)(1) of the Civil Proceedings Act (see paragraph 57 above). That provision did not distinguish between the grounds for exclusion listed in section 64 of the Act, including section 64(6) referred to by the applicant company. Such a distinction was a result of the interpretation provided by the domestic courts in the reopening proceedings (see paragraph 42 above). In the absence of any argument by the Government, let alone an example of domestic case-law demonstrating that such an interpretation was the subject of an established practice by the courts, the Court does not consider that it was unreasonable that the applicant company made use of the reopening proceedings seeking to make right the alleged violation in the appeal proceedings related to Judge J.N.'s participation.

93. The Court therefore considers that the applicant company's complaints cannot be rejected for failure to exhaust domestic remedies. It follows that the Government's objection must be dismissed.

3. Conclusion on admissibility

94. The Court further notes that the applicant company's complaint under Article 6 is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. As regards Judge J.N.'s alleged lack of impartiality

(a) The parties' submissions

(i) The applicant company

95. The applicant company argued that Judge J.N.'s husband had been an employee of the debtor company at the time of both the arbitration and the recognition proceedings. His position in the company – whether he was a senior or a "low-profile" employee, as suggested the Government (see paragraph 96 below) – was immaterial and, moreover, the Government's submissions to that effect made before the Court could not replace the domestic courts' assessment or remedy its deficiencies. With reference to the Court's considerations in *Nicholas* (cited above, § 64), it argued that Judge J.N.'s kinship with an employee of the debtor company, regardless of his status, constituted a situation which could have given rise to an appearance of bias and should have been disclosed at the outset of the appeal proceedings. The defect could have been remedied by way of reopening of the proceedings, but the courts had rejected the request for reopening on factually and legally flawed grounds. The substance of the request – that is, the applicant company's suspicions regarding the judge's bias – had therefore remained unexamined.

(ii) The respondent Government

96. With reference to a certificate of employment from the debtor company and various documents describing its organisational structure, the Government submitted that the husband of Judge J.N. had been one of more than 1,500 low-profile employees of the debtor company (specifically, a mechanical engineer in its mechanics unit), that he had never possessed any of its shares, had no managerial powers, and had not been in any way related to the subject-matter of the debtor company's dispute with the applicant company. Given his low-profile status in the company, the impugned kinship was a remote link (reference was made to *Bajramovski v. the former Yugoslav Republic of Macedonia* (dec.), no 14466/11, §§ 34-36, 26 June 2018). Moreover, its disclosure had not been mandatory under sections 64 and 65 of the Civil Proceedings Act. Thus, the appellate court's panel had met the impartiality requirement. Moreover, the applicant company's challenge of the judge had been dismissed by a reasoned decision in the reopening proceedings by a panel which had not included J.N., and which had properly assessed the facts and applied the relevant domestic law. That constituted subsequent scrutiny by a judicial body that had full jurisdiction, had provided guarantees for Article 6 § 1 and had been capable of remedying possible irregularities.

(iii) The Government of Poland

97. The Government of Poland shared the applicant company's position. It noted that, even if the domestic law had not required a judge to withdraw from a case where his or her relative was an employee of one of the parties to a dispute, the failure to disclose such kinship had been in breach of the Convention (they referred to *Nicholas*, cited above). They submitted that a well-evidenced allegation of the partiality of a judge had constituted a self-standing prerequisite for reopening of the domestic proceedings.

(b) The Court's assessment

98. The relevant general principles concerning impartiality are summarised in *Ramos Nunes de Carvalho e Sá v. Portugal* ([GC], nos. 55391/13 and 2 others, §§ 145-50, 6 November 2018, with further references, and *Morice v. France* ([GC], no. 29369/10, §§ 73-78, ECHR 2015).

99. The Court reiterates that, under the subjective test of impartiality, the personal impartiality of a judge must be presumed until there is proof to the contrary (see *Morice*, cited above, § 74). No evidence has been produced as regards any personal bias on the part of Judge J.N. or any other domestic judges. The case must therefore be examined from the perspective of objective impartiality. It must be determined whether there are ascertainable facts which may raise doubts as to Judge J.N.'s impartiality; and whether a fear that a particular judge or a body sitting as a bench lacks impartiality can be held to be objectively justified (see *Ramos Nunes de Carvalho e Sá*, cited above, §§ 147-48).

100. In the present case, Judge J.N. presided over the three-judge panel of the appellate court which decided the applicant company's case. The applicant company's fear that she lacked impartiality stemmed from the fact that Judge J.N.'s husband was, at the time of the impugned proceedings, an employee of the opposing party, the debtor company. The nature of those personal links is of importance when determining whether the applicant company's fears were objectively justified (see *Micallef v. Malta* [GC], no. 17056/06, § 102, ECHR 2009; *Mitrov v. the former Yugoslav Republic of Macedonia*, no. 45959/09, § 54, 2 June 2016; and *Ramljak v. Croatia*, no. 5856/13, § 31, 27 June 2017). The Court accepts that the employment of J.N.'s husband by the defendant could raise doubts about that judge's impartiality (see, in the context of the employment of a judge's wife by a defendant, *Nikolov v. the former Yugoslav Republic of Macedonia*, no. 41195/02, § 25, 20 December 2007; see also, in so far as relevant, *Micallef*, cited above, and *Nicholas*, cited above, § 60).

101. The Court considers the following factors to be of relevance in its assessment of whether those fears were objectively justified.

102. Firstly, Judge J.N. could not have been unaware of the fact that her husband was employed with the debtor company, a party in the proceedings at issue (compare *Dorozhko and Pozharskiy*, cited above, § 56). However, she failed to disclose her husband's employment with the party in line with the applicable procedure set out in section 65(3) of the Civil Proceedings Act for cases of "other circumstances that cast doubt" on a judge's impartiality within the meaning of section 64(6) of the Act (see paragraph 54 above; and see *Nikolov*, § 25, and *Nicholas*, §§ 64-65, both cited above). Moreover, in the Court's view, Judge J.N. should have displayed a higher level of diligence given the specificity of the issues she was confronted with in the recognition proceedings, namely the alleged bias of one of the arbitrators owing to alleged ties (acquaintance) with a person whom the debtor company claimed to have been related to the applicant company. Given the importance of appearances, when a situation which could give rise to a suggestion or appearance of bias arose, it should have been disclosed at the outset of the proceedings and an assessment should have been made, taking into account the various factors involved, including the employment status of Judge J.N.'s husband in the debtor company, in order to determine whether disqualification was actually necessitated in the case (*Nicholas*, cited above, §§ 64-65, and *Koulias v. Cyprus*, no. 48781/12, §§ 63-34, 26 May 2020). However, as that was not done, the applicant company discovered the impugned connection only after judgment had been given in respect of its appeal.

103. Secondly, the reopening proceedings, because of the interpretation provided by the domestic courts, ended with no determination of the merits of the applicant company's concerns about the judge's bias (see *Nikolov,* cited above, §§ 64-65), as the relevant request was rejected on formal grounds.

104. In the light of the above, the Court considers that the applicant company's concerns as to the impartiality of presiding Judge J.N. of the appellate court could be considered objectively justified. These considerations are sufficient to enable the Court to conclude that the composition of the appellate court was not such as to guarantee its impartiality and that it failed to meet the Convention standard under the objective test (see *Ramljak*, § 41, cited above). In this regard, in the Court's view, it is immaterial that J.N. was a member of a three-judge panel as in view of the secrecy of the deliberations, it is impossible to ascertain the actual influence of presiding Judge J.N. on the decision (see, in so far as relevant, *Stoimenovikj and Miloshevikj*, cited above, § 41).

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

2. As regards the remaining complaints pertaining to the fairness of the recognition proceedings

(a) The parties' submissions

(i) The applicant company

106. The applicant company maintained that it had not had a fair hearing in the recognition proceedings because the domestic courts had given insufficient reasons for their decisions to refuse recognition, had not conducted a proper examination of the submissions and evidence presented by the parties, and the courts' reasoning underlying both grounds for the refusal of recognition had been manifestly flawed.

107. The applicant company argued, as regards the first (formal) ground of the refusal – that is, its failure to provide a proof of finality – that the domestic court had confined its analysis to a reference to the decision of the Gdańsk Regional Court, and that it had wrongfully applied section 101 of the PIL Act (which was only applicable, in the applicant company's view, to cases where the recognition of a domestic court judgment was requested), leading it in turn to make an incorrect choice as to the applicable legal regime: that of the domestic law, instead of that of the New York Convention. Moreover, the fact that no proof of finality (within the meaning of section 101 of the PIL Act) had been submitted in respect of the decision of the Polish court had been immaterial, as the recognition proceedings had not concerned the Gdańsk court's ruling, but only the partial award; and it had been uncontested that the applicant company had submitted the proof of enforceability of the partial award as required by Article IV of the New York Convention (see paragraph 63 above). The case had been adjudicated at two instances in a manifestly arbitrary manner (the applicant company referred to *Barać and Others v. Montenegro*, no. 47974/06, §§ 32-34, 13 December 2011), as the courts had relied on law inapplicable to the case, in deviation from the New York Convention requirements, and in disregard of the applicant company's relevant arguments.

108. As regards the second (substantive) ground – namely the contradiction with the public order of North Macedonia – the applicant company argued, firstly, that the debtor company's allegations of the arbitrator's partiality had been already precluded on procedural grounds. Indeed, the parties had voluntarily submitted their dispute to an arbitration. In February 2012, when J.M. had signed his statement of acceptance, it had been unknown either to the applicant party or to the arbitrator that the negotiations with S.K. would constitute a subject-matter of the debtor company's defence (filed in May 2012, see paragraphs 9-10 above), and J.K.J.'s involvement had not been disclosed until 2013. Conversely, the debtor company had clearly known of J.K.J.'s possible involvement in the contract negotiations as early as in 2013, as shown by a statement of a witness on its behalf (see paragraph 11 above). Moreover, the information concerning

the alleged link between the arbitrator and J.K.J. had been clearly available in the public domain. Therefore, the debtor company should have raised its challenge to the arbitrator within thirty days, as stipulated by Article 14(2) of the ICC Rules (see paragraph 66 above), but instead it had waived its right, and, according to the relevant doctrine and practice, in doing so had been precluded from raising the matter in post-arbitration proceedings (see paragraph 70 above; it also referred, in the context of the Court's approach to the waiver issue, to *Suovaniemi and Others v. Finland* (dec.), no. 31737/96, 23 February 1999, and, *mutatis mutandis*, *Nordström-Janzon and Nordström-Lehtinen,* cited above, albeit in the context of proceedings before a *lex arbitri* court). The debtor company had chosen to take no steps until years later, when the applicant company was petitioning for recognition of the award in North Macedonia. Secondly, no evidence had been adduced to demonstrate the arbitrator J.M.'s partiality (and the relevant allegations had thus remained completely unsubstantiated) or to prove that J.K.J. had represented S.K. in the negotiations with the Joint Venture (which, moreover, had not been claimed by the debtor itself); the applicant company also noted that J.K.J. had not signed the relevant contract. Significantly, the debtor company's belated challenge of the arbitrator had been rejected on 26 May 2016 by the ICA of the ICC as inadmissible and failing on the merits (see paragraph 17 above). Nonetheless, the domestic court, in a succinct one-paragraph ruling, had established the relevant facts without assessing the items of evidence submitted for its consideration in any detail. Thirdly, even if the allegation of partiality was to be accepted, it had had no bearing on the outcome of the arbitration proceedings (contrary to the domestic courts' findings), as the claims concerning the contract with S.K. had been resolved by the ICC Tribunal in favour of the debtor company. Accordingly, the expenses arising from the contract with S.K. could not have constituted a "substantive part" of the value of the dispute, contrary to the courts' findings. Lastly, by the time of the exchange of observations the debtor company had never challenged the arbitral award, on partiality or other grounds, before a court competent *lex loci arbitri*. Nor had it "questioned" the above-mentioned decision of 26 May 2016 given by the ICA of the ICC.

(ii) The Government

109. The Government argued that the proceedings had been fair. They reiterated that it was not the Court's task to deal with alleged errors of facts and law, and that the Convention did not guarantee a right to a particular outcome of the case. As the dispute was between two private companies, the Government had no interest in its outcome (they cited, by contrast, *Regent Company v. Ukraine*, no. 773/03, § 59, 3 April 2008). The reasons given by the domestic courts were both relevant and sufficient, and were based on a meticulous analysis of dozens of items of evidence submitted by the parties (by contrast to the ICA decision of 26 May 2016 which, in the Government's

opinion, had not contained any reasoning). The applicant company had had ample opportunities to present its case, and all evidence submitted by it had been duly admitted and taken into account. The first-instance court's findings had been upheld on appeal based on a detailed analysis of the evidence, and then again in the reopening proceedings, by a panel that had not included Judge J.N.

110. They submitted that the underlying reason for the refusal of the recognition was that it would have been in contradiction with the public order of the respondent State. Recapitulating the reasoning behind the domestic judicial decisions, the Government argued that the courts had duly considered the extensive evidence of the arbitrator J.M.'s former collaboration with J.K.J., as well as the latter's role in negotiations of the S.K. contract with the applicant company; and that they had correctly established that the value of the impugned contract had constituted a "considerable portion" of the disputed sum in the arbitration proceedings which had led to the partial award. Reiterating the fundamental importance of the impartiality principle and restating the findings of the domestic courts and domestic and international legal provisions cited therein, they argued that the courts could not have disregarded J.M.'s failure to disclose the above connection (either in his initial statement of acceptance or at a later stage, in 2013), which they argued had been in breach of Article 11 of the ICC Rules. The domestic courts had correctly applied section 107 of the PIL Act and the relevant New York Convention provisions, taking into account the consistent interpretation of the New York Convention's Article V(2)(b) in cases where an arbitrator had had connections to a party in the proceedings (they referred to the commentaries cited in paragraph 69 above). The courts had not overstepped the exhaustive list of refusal grounds set out in the New York Convention and had met *ex post* the State's obligation to make sure that the minimum of procedural guarantees had been observed in the arbitration proceedings, with the aim of protecting the public order. The appeal court, in addition, had duly addressed the applicant company's argument based on Articles 14 and 34 of the ICC Rules and its reference to the ICA decision of 26 May 2016 dismissing the debtor company's challenge of the arbitrator. Lastly, the domestic courts assessed the applicant company's failure to provide proof of the enforceability of the decision by the Polish court with reference to relevant domestic provisions requiring such proof.

111. They further argued that the debtor company could not have challenged the arbitrator's lack of impartiality before a Polish court, as it had learned about the links between the arbitrator and J.K.J. in 2016, "after receiving the report [from] FC", that is outside the two-month time-limit set out in the Polish law for lodging a petition for annulment (see paragraph 62 above). In their further observations they noted that, given the findings of the Polish courts in the proceedings concerning the recognition of the partial award in Poland and their response to the debtor company's argument

concerning J.M.'s alleged bias (see paragraph 20 above), such an action would in any event have had no prospects of success.

(iii) The Government of Poland

112. The Government of Poland submitted that, in the absence of any waiver of its Article 6 rights by the applicant company in the recognition proceedings in North Macedonia, the domestic courts had been under an obligation to examine its recognition request in compliance with Article 6 standards. Furthermore, the domestic courts' findings pertaining to a refusal of recognition on the grounds of the alleged threat to public order and partiality of the arbitration panel, although admittedly compatible with the domestic standards, had failed to meet the requirements of Article 6. Moreover, the debtor company had voluntarily adopted the JVA arbitration clause. By so doing, it had subjected itself to the binding nature of the ICC arbitration award (Article 35(6) of the ICC Rules). The debtor company could have challenged the award in Poland but had failed to do so. Having complied with the relevant criteria, the applicant company could have expected recognition of the arbitration award in North Macedonia – a State Party to the New York Convention. Lastly, it is noteworthy that the courts of North Macedonia had focused on the validity of a judgment by the Polish court by which the partial award had been recognised on the territory of Poland, while the crux of the applicant company's claim was the recognition of the partial award itself.

(b) The Court's assessment

113. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see *Ramos Nunes de Carvalho e Sá*, cited above, § 186). This also applies where domestic law refers to rules of general international law or international agreements. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Markovic and Others v. Italy* [GC], no. 1398/03, § 108, ECHR 2006-XIV).

114. The Court should not act as a court of fourth-instance and will not therefore question under Article 6 § 1 the judgment of the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *Bochan (no. 2),* cited above, § 61), and provided that the proceedings as a whole were fair, as required by Article 6 § 1 (see, among others, *Khamidov v. Russia*, no. 72118/01, § 170, 15 November 2007, and *Anđelković v. Serbia,* no. 1401/08, § 24, 9 April 2013). A domestic judicial decision cannot be characterised as arbitrary to the point of prejudicing the fairness of proceedings unless no reasons are provided for it or if the reasons given are based on a manifest factual or legal error committed by the domestic court,

resulting in a "denial of justice" (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 85, 11 July 2017).

115. Judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see, among many others, *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). Even though the courts cannot be required to state the reasons for rejecting each argument of a party, they are nonetheless not relieved of the obligation to undertake a proper examination of and respond to the main pleas put forward by that party. If a submission would, if accepted, be decisive for the outcome of the case, it may require a specific and express reply by the court in its judgment (see, for instance, *Petrović and Others v. Montenegro*, no. 18116/15, § 41, 17 July 2018). The principle of fairness enshrined in Article 6 of the Convention would be disturbed where domestic courts ignore a specific, pertinent and important point made by an applicant (see, for instance, *Mont Blanc Trading Ltd and Antares Titanium Trading Ltd v. Ukraine*, no. 11161/08, § 82, 14 January 2021, with further references, and, in so far as relevant, *Yüksel Yalçınkaya v. Türkiye [GC]*, no. 15669/20, § 305, 26 September 2023, with further references).

116. In cases concerning the recognition of foreign judgments the Court found, having regard, among other elements, to the nature of the dispute and financial implications for the parties, that it had to assess whether, before recognising the foreign judgments, the national authorities had duly satisfied themselves that the relevant proceedings before the relevant jurisdictions had fulfilled the guarantees of Article 6 § 1 (see *Dolenc v. Slovenia*, no. 20256/20, §§ 59-60, 20 October 2022, and *Pellegrini v. Italy*, no. 30882/96, § 40, ECHR 2001-VIII, with further references).

117. The Court notes that the domestic courts in the present case based their refusal to recognise the partial award on two key arguments, one concerning the failure to submit proof of the finality of the partial award, and the other one on the alleged serious procedural deficiencies of the arbitration proceedings. The Court will address them in turn.

(i) As regards the domestic courts' findings concerning the applicant company's failure to submit a proof of the finality of the partial award

118. The Court notes that, having applied section 116 of the PIL Act, read in conjunction with section 113(1) of that Act, the domestic courts found themselves competent to review, among other things, compliance with the criteria set out in section 101 of the PIL Act, which primarily concerned the recognition of a foreign court judgment (see paragraphs 47, 50 and 52 above). That provision required that a claimant seeking recognition of a foreign decision provide, *inter alia*, a certificate confirming its finality. The Court notes that that requirement is not among those listed in Article IV of the New

York Convention (see paragraph 63 above), the *lex specialis* for the recognition of a foreign arbitral award, of which the respondent State is a Contracting Party. Whereas it is not the Court's task to decide, in the place of the domestic courts, whether they should have applied the above provision of the PIL Act, or Article IV of the New York Convention, it notes that under Article 118 of the Constitution, international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be amended by law (see paragraph 45 above). The domestic courts did not explain why in the circumstances of the case they gave precedence to the domestic legal provision (see paragraph 37 above).

119. The Court further observes that the crux of the domestic courts' findings in the relevant part was that the judgment of the Gdańsk Regional Court by which the partial award had been recognised in Poland could not serve as a due confirmation of the validity of the partial award for the purposes of section 101 of the PIL Act (see paragraph 30 above). However, the applicant company, in its statement of appeal, (a) clearly disputed that line of reasoning as irrelevant, and reiterated that its request for recognition did not concern the impugned judgment given by the Polish court, but the partial award of the ICC tribunal; and (b) referred, "to dispel any doubt", to additional evidence that became available after the judgment of the Skopje Court of First Instance, namely the certificate of 7 June 2016 issued by the Secretary General of the ICA confirming that the partial award had been duly notified to the parties and reiterating its binding nature (see paragraph 18 above) which, in the applicant company's view, in any event constituted a proof of finality of the partial award for the purposes of section 101 of the PIL Act (see paragraph 31 above). Indeed, the Court notes, as in the case of *BTS Holding, a.s.* (cited above, § 68 – albeit in the context of Article 1 of Protocol No. 1 to the Convention) that it cannot be put into question that the award had contained an order for payment which was binding on the parties and that by submitting their dispute to the ICC Tribunal the parties undertook to abide by the award without delay, as provided for by the ICC Arbitration Rules and certified by the ICA Secretary General.

120. However, the appellate court failed to address the applicant company's above-mentioned specific objections. Instead, it reiterated the first-instance court's findings on the matter without considering the applicant company's argument about their irrelevance in so far as the enforceability of the decision of the Polish court was concerned. It also remained silent in respect of the letter from the Secretary General of the ICA of the ICC reiterating the binding nature the partial award (see paragraph 37 above). The appellate court neither rejected that evidence as inadmissible, nor assessed its relevance or sufficiency for deciding whether the applicant company had submitted a certificate from a competent authority confirming the finality of the decision to be recognised.

121. Noting that the purported failure to comply with the requirements of section 101 of the PIL Act constituted, for the domestic courts of both instances, a separate ground for the refusal to recognise the partial award in North Macedonia, the Court concludes that the applicant company's challenge of the first-instance court's findings in that part was decisive for the outcome of the case. Therefore, the Court finds that the appellate court did not respond to the applicant company's specific and important arguments on that aspect of the case, in breach of the Article 6 § 1 requirements (see, among others, *Mont Blanc Trading Ltd and Antares Titanium Trading Ltd*, cited above, §§ 28-31, and *Carmel Saliba v. Malta*, no. 24221/13, § 79, 29 November 2016; and contrast *Petrović*, cited above, § 43).

(ii) As regards the findings concerning the alleged lack of impartiality of an arbitrator

122. In their second line of reasoning, the domestic courts found that the recognition of the partial award, issued in breach of the impartiality requirement owing to the participation of the arbitrator J.M., would have been in contradiction with the public order of North Macedonia.

123. The Court accepts that, in doing so, the domestic courts exercised their powers under domestic law (see paragraph 46 above) and referred to the grounds for refusal of recognition set out in the New York Convention, including public policy and due process grounds (see paragraph 64 above). Indeed, it follows from the authoritative commentaries to the New York Convention citing pertinent case-law examples that (i) the public policy defence could be based on facts which could also give rise to a defence under Article V(1) of the New York Convention, and there was a certain overlap between Article V(1)(b) and Article V(2)(b) of the New York Convention (see paragraph 69 above); and (ii) the courts' analysis in recognition proceedings under either the procedural fairness aspect or on the public policy ground set out in Article V(1)(b) and Article V(2)(b) of that Convention could encompass an assessment of the compliance of arbitration proceedings with fundamental fair trial guarantees, including those concerning the impartiality of an arbitrator (see paragraphs 69-70 above). It is also clear that the domestic courts interpreted domestic law as requiring them to review whether the partial award had been given in proceedings complying with the fundamental guarantees of a fair trial (see paragraphs 29 and 34 above; and compare, albeit in the context of the recognition of foreign judgments, to *Dolenc,* cited above, §§ 59-60, and, *mutatis mutandis*, *Pellegrini,* cited above, § 40), and constructed their reasoning accordingly.

124. It remains to be ascertained whether the domestic courts in the recognition proceedings duly satisfied themselves that the impartiality requirement had been complied with in the arbitration proceedings and adequately stated the reasons for that finding (see paragraphs 115-116 above).

125. In the present case, there is no dispute between the parties as to the voluntary nature of arbitration proceedings before the ICC Tribunal (see paragraph 6 above for the JVA clause). The validity or the legality of the JVA was never challenged or called into question by the parties (see *Beg S.p.a. v. Italy*, no. 5312/11, § 135, 20 May 2021; *Tabbane v. Switzerland* (dec.), no. 41069/12, § 26-27 and 29, 1 March 2016; and *Mutu and Pechstein* cited above, § 120). In the case of voluntary arbitration, by signing an arbitration clause the parties voluntarily waive certain rights secured by the Convention. Such a waiver is not incompatible with the Convention provided it is established in a free, lawful and unequivocal manner (see *Mutu and Pechstein*, cited above, § 96 and §§ 145-46, with further references).

126. Against that background, the Court considers pertinent the following arguments raised by the applicant company before the domestic court of appeal (see paragraph 32 above):

(a) It argued that although the debtor company admitted that it had been aware of J.K.J.'s alleged involvement in the negotiations of the contract as of July 2013 (see paragraph 11 above), it had not carried out research concerning alleged links between J.M. and J.K.J. until 2016, despite the fact that the information referred to by it before the courts of North Macedonia regarding that link was in the public domain (see paragraph 108 above); and that, by failing to raise the lack of impartiality objection in the ICC proceedings in good time, the debtor company had waived its relevant right.

(b) It also argued that the debtor company's challenge of the arbitrator had been rejected by the ICA as both unfounded and inadmissible within the meaning of Article 14(3) of the ICC Rules (see paragraph 17 above); and that, in any event, there had been no evidence of J.K.J.'s participation in signing the impugned contract and there had been no or insufficient evidence to demonstrate the existence of the link between the arbitrator J.M. and J.K.J.

(c) Lastly, it argued that the first-instance court had erred in having categorised the contracts allegedly negotiated by J.K.J. as having represented a "significant" aspect of the dispute (see paragraph 32 above).

127. The Court does not need to decide, at this juncture, and in the place of the domestic courts, on any of those arguments, or, in particular, to state whether the debtor company waived its right to challenge the issue of impartiality in the arbitration proceedings in an unequivocal manner. The Court considers, however, that the applicant company's arguments under that head required an adequate response (see *Deryan v. Turkey*, no. 41721/04, § 36, 21 July 2015 in the context of arbitration, and the commentaries to the New York Convention summarising the practice of various courts cited in paragraphs 69-70 above; compare also the above-cited cases of *Suovaniemi*; *Mutu and Pechstein*, §§ 15 and 122; and *Beg S.p.a.*, §§ 127-34, 138-42 and 136-40, in so far as both the principle of independence and impartiality and the waiver issue are concerned; and note also the debtor company's

failure to challenge the partial award in the courts of Poland, see paragraphs 6, 24 and 62 above).

128. However, the appellate court confined its reasoning in the relevant part of its decision to a reference to its competence to decide whether there had been circumstances excluding recognition of the partial award under the domestic PIL Act and the New York Convention (see paragraph 36 above). The Court considers that the appellate court's summary reply to the arguments cannot be considered as sufficient (see, *mutatis mutandis*, *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, § 126, 12 January 2023, and *Samoylova v. Russia*, no. 49108/11, §§ 50-51, 14 December 2021). The domestic courts did not point to any particular evidence for their finding that J.K.J "had directly participated in signing the contract" (see paragraphs 29 and 35 above), which is in conflict with the ICC Tribunal's own finding of fact regarding the same issue (see paragraph 10 above). They also established, without giving further details, that J.M. had been "clearly aware" of the role J.K.J. had played in the S.K. at the relevant time. The Court further notes that the applicant company's specific arguments about the erroneous finding of the courts that its contract with S.K. had represented a "significant" aspect of the dispute in the context of the arbitration proceedings were not elaborated against the fact that the ICC Tribunal concluded that the relevant contract had not been binding on the debtor company and had deducted the relevant amount from the applicant company's claim for reimbursement (see paragraph 12 above, and, conversely, the judgment of the Gdańsk Court of Appeal, paragraph 23 above). Lastly, the courts did not explain why the "undisputed" existence of "connections and an acquaintance" between J.M. and J.K.J. that they established (see paragraph 35 above) was such as to make any fears about J.M.'s impartiality objectively justified.

129. In sum, in the Court's view, the domestic courts failed to give an adequate response to the applicant company's specific arguments which could have been decisive for the outcome of the proceedings. As a result, the courts' reasoning was not sufficient, as the courts did not attach sufficient weight to important aspects of the case highlighted above (see, in so far as relevant, *Carmel Saliba,* cited above; and compare, *mutatis mutandis*, *Dolenc*, cited above, § 75).

(iii) Conclusion

130. For the above reasons, the Court concludes that there has been a violation of Article 6 § 1 of the Convention on the facts of the present case.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

131. The applicant company complained that enforcement of the arbitral award in its favour had been arbitrarily refused, contrary to Article 1 of Protocol No. 1 to the Convention.

132. Having regard to its findings above, the Court considers that it is not necessary to examine the admissibility and merits of the applicant company's complaint under Article 1 of Protocol No. 1 (see *Petko Petkov v. Bulgaria*, no. 2834/06, § 38, 19 February 2013, and *Nikolov*, cited above, § 29, with further references).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

133. 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

134. The applicant company claimed 12,857,340.15 Polish zlotys (PLN) in respect of pecuniary damage, which represented the amount awarded in the applicant company's favour by virtue of the partial award less PLN 121,968.96 already received on the basis of the award, plus 13% interest on the above amount for the period between 31 May 2011 and 23 December 2014 and 8% from 24 December 2014 until the date of payment. It further claimed 8,000 euros (EUR) in respect of non-pecuniary damage.

135. The Government contested the claims as excessive and unfounded and argued, *inter alia*, that the finding of a violation of Article 6 would constitute sufficient just satisfaction.

136. The Court observes that an award of just satisfaction can only be based on the fact that the applicant did not have the benefit of all the guarantees of Article 6 § 1 of the Convention. However, the Court cannot speculate as to what the outcome of proceedings compatible with Article 6 § 1 of the Convention would have been. In the present case, the Court discerns no causal link between the breach of Article 6 § 1 of the Convention established and the alleged pecuniary damage. There is therefore no ground for an award under this head (see, in so far as relevant, *Stoimenovikj and Miloshevikj*, cited above, § 49).

137. However, it reiterates that it cannot exclude the possibility that compensation may be awarded for non-pecuniary damage alleged by a legal entity (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 32-35, ECHR 2000-IV); and, having regard to the circumstances of the case, awards

the applicant company EUR 3,600 in respect of non-pecuniary damage, plus any tax that may be chargeable, and rejects the remainder of the claims under that head.

138. The Court further reiterates that in the event of a violation of Article 6 of the Convention, an applicant should as far as possible be put in the position he or she would have been in had the requirements of this provision not been disregarded. The most appropriate form of redress in cases like the present one would be the reopening of the proceedings, if requested. The Court notes, in this respect, that the Civil Proceedings Act provides for the possibility of proceedings being reopened where the Court concludes in a judgment that a court's decision or proceedings prior to it were in breach of the fundamental human rights or freedoms of the party (see paragraph 58 above, see also, among other authorities, *Stoimenovikj and Miloshevikj,* cited above, § 50, with further references).

B. Costs and expenses

139. The applicant company also claimed EUR 17,744.87 for the costs and expenses incurred in the domestic proceedings and EUR 53,176.77 for those incurred in connection with the proceedings before the Court, and court fees incurred in the domestic proceedings in the amount of EUR 500, for a total of EUR 71,421.64. It enclosed a detailed breakdown of the costs, as well as relevant invoices evidencing the payment of the costs and expenses.

140. The Government disputed the claims as being largely excessive and unfounded, and doubted that they had been incurred necessarily – and, thus, unavoidably. They referred to the irrelevance or the partial or only remote relevance of some of the charged activities at the domestic level and to overcharging in general, which was in dramatic contrast to relevant domestic regulations and standards; noted the lack of proof of payment for EUR 1,216.87; and suggested that local circumstances, such as the normal amounts generally charged for costs and expenses, be taken into account by the Court. They submitted that the same considerations applied, to an even greater degree, to the costs and expenses allegedly incurred in the Strasbourg proceedings. They argued that the amounts claimed exceeded by far those normally incurred by lawyers and awarded by the Court under Article 41 of the Convention (and noted the applicant company's failure to submit the Polish Bar Association tariff). They invited the Court to reduce the amount to be awarded to a reasonable amount.

141. 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 were actually and necessarily incurred and are reasonable as to quantum (see, among others, *Vegotex International S.A. v. Belgium* [GC], no. 49812/09, § 167, 3 November 2022). This includes only domestic legal costs incurred to prevent or redress the breach of the Convention found by

the Court (ibid.; see, to similar effect, *inter alia*, *Nada v. Switzerland* [GC], no. 10593/08, § 243, ECHR 2012). As to the proceedings before it, costs and expenses are only recoverable to the extent that they relate to the violation found (see *Vegotex International S.A*., cited above, § 168).

142. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award EUR 15,000 covering costs under all heads, plus any tax that may be chargeable to the applicant company, and rejects the remainder of the claim.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 of the Convention admissible;

2. *Holds* that there has been a violation of Article 6 of the Convention;

3. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 1 of Protocol No. 1 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts**,** to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable to the applicant company, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 26 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President