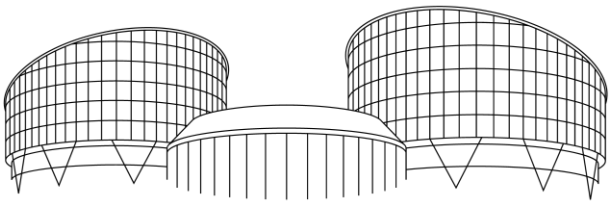

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

**CASE OF VASILKOSKI AND OTHERS v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA**
*(Application no. 28169/08)*

JUDGMENT

STRASBOURG

28 October 2010

**FINAL**

*28/01/2011*

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of** Vasilkoski and Others v. the former Yugoslav Republic of Macedonia**,**

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

Peer Lorenzen, *President,*
Renate Jaeger,
Karel Jungwiert,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva,
Ganna Yudkivska, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 5 October 2010,

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

# PROCEDURE

1. The case originated in an application (no. 28169/08) against the former Yugoslav Republic of Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by 38 Macedonian nationals, Mr Nikola Vasilkoski, Mr Zoran Božinovski, Mr Trifun Lazarevski, Mr Iljir Redžepi, Mr Muhamed Seid Karadža, Mr Jetljum Požarani, Ms Lenka Jovanovska, Mr Zvonko Pankovski, Mr Perica Dimitrievski, Mr Fatmir Amzi, Ms Snežana Trajanovska, Mr Džemail Dauti, Mr Panče Dimitrieski, Mr Naum Mihajlovski, Mr Mitre Kirovski, Ms Gordana Dodevska, Mr Robert Jordanov, Mr Zvonko Nikov, Mr Goran Nautliev, Mr Melita Mijakova, Mr Špend Osmani, Mr Faredin Kamberi, Ms Slavjanka Angelova, Mr Risto Kirkov, Mr Mitre Petrov, Mr Ljubomir Bundalevski, Mr Živko Ugrinoski, Ms Vesa Petrovska, Mr Mehmed Asani, Mr Mevaip Ljoki, Mr Afrim Sulejman, Mr Agim Stafai, Mr Ibraim Alimi, Mr Zvonko Bojarovski, Mr Dragan Tričkovski, Mr Dritan Saiti, Mr Gani Kadrija and Mr Miodrag Davčeski ("the applicants"), on 20 May 2008.

2. The applicants were represented by the "Helsinki Committee for Human Rights of the Republic of Macedonia", represented by Mr S. Dukoski, a lawyer practising in Skopje. The Macedonian Government ("the Government") were represented by their Agent, Mrs R. Lazareska Gerovska.

3. The applicants alleged, in particular, that their continued detention was not justified by concrete and sufficient reasons.

4. On 1 April 2009 the President of the Fifth Section decided to communicate the above complaint to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born between 1947 and 1985 and live in different cities in the former Yugoslav Republic of Macedonia.

6. They were toll collectors, controllers or senior staff (*инкасанти на наплатна рампа или раководители*) in a public roads enterprise.

7. The applicants were detained in several police stations in Skopje, some on 18 and some on 24 November 2007 on suspicion of abuse of office, namely that they had acted as an organised group and misappropriated over 5 million euros (EUR) from toll charges collected between April and November 2007. An individual report was drawn up for the detention of each applicant.

8. A group of applicants were brought before an investigating judge of the Skopje Court of First Instance ("the trial court") on 19 November 2007, and the remainder on 25 November. By two separate decisions of 20 and 26 November 2007 respectively, after having heard oral evidence from the applicants, the investigating judge started the investigation and remanded them in custody. The orders were based on all the grounds specified in section 199 of the Criminal Proceedings Act ("the Act", see paragraph 32 below), namely a risk of absconding and reoffending, and of interference with the investigation. The judge relied on the gravity of the charges and the potential penalty and the fact that the applicants had acted as a well organised group.

9. Nine applicants and other co-accused appealed against the detention order, requesting its replacement by a more lenient measure. The appellants relied on their family situation in the respondent State, the absence of a previous criminal record, the fact that some of them had appeared voluntarily in police stations and the failure of the investigating judge to give concrete reasons justifying the detention of each of them separately. A three-judge panel of the trial court ("the panel"), set up under section 22 § 6 of the Act, dismissed appeals submitted by two applicants. No evidence was produced that the panel decided the remaining appeals.

10. On 18 and 21 December 2007 respectively, the panel extended the applicants' detention for thirty days on all three counts specified under section 199 of the Act. The risk of absconding was justified by the gravity

of the charges, the potential penalty and the fact that ten applicants had no possessions and no family in the respondent State. Eighteen applicants appealed, alleging lack of reasons. Their requests for a more lenient measure were supported with evidence about their poor health, copies of their passports and certificates attesting to their possessions in the respondent State. Some of them also requested release on bail.

11. On 31 December 2007 and 4 January 2008 respectively, the Skopje Court of Appeal dismissed the appeals and confirmed the orders. Only in respect of Mr Z. Pankovski, who produced the original copy of his employer's decision dismissing him from work, did the court exclude "the possibility of reoffending" from the list of grounds for his detention. It did not admit in evidence the uncertified copies of the dismissal decisions submitted by the other appellants. As to the remainder, it stated *inter alia*:

> "... circumstances related to the type and nature of the criminal offence for which the investigation has started against the accused, the potential penalty prescribed for the offence, as well as the personal circumstances of the accused, taken as a whole, suggest that there is a real risk of flight if they are released at this stage of the proceedings ... a reasonable risk that they may interfere with the investigation, as well as grounds to reoffend ... it is this court's view that there are no statutory grounds at this stage of the proceedings to replace custody with a more lenient measure that would guarantee that the accused would appear for trial ..."

12. The investigation was subsequently extended and involved, in total, seventy-two accused.

13. On 16 and 21 January 2008 respectively, the panel extended the applicants' pre-trial detention for thirty days, relying on all the grounds specified in section 199 of the Act, namely the risk of absconding and reoffending, and of interference with the investigation. Sixteen applicants appealed against these orders, seeking release.

14. With decisions of 28 January and 1 February 2008 respectively, the Skopje Court of Appeal ruled partly in favour of those applicants who appealed and presented originals or certified copies of the employer's decisions dismissing them from work. "The possibility of them reoffending" was no longer relied on as a ground for their continued detention. Furthermore, of its own motion and relying on section 397 of the Act (see paragraph 34 below), the court excluded in respect of all the accused included in the panel's decision of 21 January 2008, "the possibility of them interfering with the investigation" from the list of grounds for their detention. In so doing it reasoned that the accused could not interfere with the examination of protected witnesses and the viewing of a DVD, which were the only remaining investigative measures. The court confirmed the panel's concern about the risk of flight, however, relying on the gravity of the charges and the potential penalty.

15. On 15 February 2008 the public prosecutor lodged an indictment against all the accused, including the applicants. On the same day, the panel partly upheld the public prosecutor's request and extended the applicants'

detention, but only on account of the risk of them absconding. In this connection it stated:

> "... the detention in prison is justified given the fact that there is a real risk of flight in view of the gravity and nature of the offences with which the accused are charged, and the potential penalty ..."

16. That decision was challenged by eight accused, including five applicants. They alleged that the panel had not given sufficient reasons to substantiate the risk of them absconding, given their family situation, their state of health, the absence of any previous criminal record and the fact that some of them had already had their passports seized.

17. On 6 March 2008 the Skopje Court of Appeal confirmed the panel's decision, stating that the risk of flight was substantiated by the gravity of the charges, the potential penalty and the way in which the offence had been committed.

18. By individual decisions rendered between 7 March and 1 April 2008, Mr Mehmed Asani and Mr Mitre Kirovski were released on bail. Ms Lenka Jovanovska, and Ms Slavjanka Angelova, were also released on condition that they appeared in court on a regular basis. These decisions were given in response to separate requests from these applicants for the detention order to be replaced by a more lenient measure.

19. On 15 March 2008 the panel ordered a thirty-day extension of the pre-trial detention of the remaining applicants. "The risk of them absconding" was once again based, in respect of all of them, on the gravity of the charges and the potential penalty. Four accused appealed against that decision, including two applicants who argued that the panel had not given specific reasons to substantiate the risk of them absconding. They submitted that they had not gone into hiding; their identity was known and they had appeared in court regularly. The Skopje Court of Appeal dismissed those arguments, holding that the risk of flight lay in the nature of the offence, the gravity of the charges and the potential penalty.

20. On 7 April 2008 the trial started. Given the high number of accused, the trial court decided to hold hearings outside the court building. After taking oral evidence from the applicants, on 15 April 2008 the trial court accepted the proposal of the public prosecutor and replaced the order for prison custody with an order for house arrest in respect of all remaining applicants, except Mr Nikola Vasilkoski, Mr Ljoki Mevaip, Mr Agim Stafai, Mr Dragan Trickovski and Mr Goran Nautliev, who remained in prison. In taking that decision the court relied on section 198 (2) of the Act (see paragraph 31 below), under which prison custody should be as brief as possible. The police were also ordered to supervise compliance with the house arrest. For the same reasons as in earlier decisions, the detention in respect of the remaining applicants was ordered on account of the risk of them absconding.

21. It would appear that only Mr Agim Stafai appealed against that decision. On 8 May 2008 his appeal was dismissed with the explanation that

the panel had given sufficient reasons for extending his detention, namely that the gravity of the charges and the potential penalty pointed to a risk of him absconding.

22. On 15 May 2008 the panel extended the detention of the remaining applicants for the same reasons as before. On 22 May 2008, of its own motion, the panel substituted the order for detention in prison with an order for house arrest in respect of the five applicants mentioned in paragraph 20 above.

23. After that date, the house arrest of the remaining applicants was extended on several occasions. The extension was grounded on their potential to abscond in view, once more, of the gravity of the charges and the potential penalty.

24. In a decision of 10 October 2008, the panel extended the house arrest for the following reasons:

> "... the criminal proceedings are about to end ... for the sake of expediency it is considered that the risk of flight still persists in view of the gravity of the charges, the potential penalty and the number of accused, suggesting the need to extend the house arrest as the most lenient means of securing attendance at the trial ..."

25. In decisions of 11 and 17 November 2008 respectively, the panel gave the same reasons for extending the house arrest of the remaining applicants. For failure to comply with the house arrest order, Mr Nikola Vasilkoski and Mr Goran Nautliev were ordered to be sent back to prison.

26. On 28 November 2008 the trial court found the applicants guilty and imposed a prison sentence in respect of six applicants and a suspended sentence in respect of the others. As the trial had ended and the applicants had a permanent residence and family in the respondent State, the court also ordered their release, considering that there was no risk of them absconding.

27. At a public hearing held on 30 November and 1 December 2009, the Skopje Court of Appeal quashed the trial court's decision and referred the case for fresh consideration. It would appear that the proceedings are pending at the trial level.

28. During the proceedings, the applicants made numerous unsuccessful requests for their detention in prison to be replaced by a more lenient measure, or sought their release on bail.

## II. RELEVANT DOMESTIC LAW

29. Section 22 § 6 of the Criminal Proceedings Act of February 2005 provides for a three-judge panel of the trial court to rule, *inter alia*, on appeals against decisions of the investigating judge.

30. The Act specifies the measures which the court may issue in order to secure the attendance of an accused at a trial (sections 185-199).

31. Under section 198 § 2 of the Act detention in prison should be as brief as possible.

32. Under section 199 § 1 (1-3) of the Act detention in prison may be ordered on reasonable suspicion that the person concerned has committed an offence if there is a risk of absconding, interference with the investigation or reoffending.

33. Under section 200 §§ 1 and 6 of the Act an investigating judge has jurisdiction to order pre-trial detention. The person concerned may appeal before the panel.

34. Section 205 §§ 2 and 6 of the Act provides for the panel set up under section 22 § 6 to extend the detention at the request of the investigating judge or the public prosecutor. The extension order may be challenged before the court above.

35. Under section 397 of the Act, if the second-instance court considers grounds for an appeal applicable to any co-accused who did not lodge a formal appeal, it may, of its own motion, proceed as if the appeal had been lodged by the co-accused concerned (the *beneficium cohaesionis* rule).

# THE LAW

## I. ALLEGED VIOLATIONS OF ARTICLES 5 AND 13 OF THE CONVENTION

36. In a letter of 20 May 2008, Mr S. Dukovski informed the Court of the applicants' intention to lodge an application under Article 5 §§ 1 (c), 3 and 4 of the Convention, setting out the factual background of the case. On 19 November 2008, which was within the time-limit specified by the Court, the applicants submitted the application form and letters of authority for Mr S. Dukovski. In them they specified their complaints under Article 5, namely that there were no legal grounds for their detention, which was accordingly unlawful, that the domestic courts, using stereotyped forms of words, had not given concrete and sufficient reasons for their detention and that the review procedure of their detention was ineffective. In this latter context they also invoked Article 13 of the Convention. Article 5 §§ 1 (c), 3 and 4 and Article 13, in so far as relevant, read as follows:

**"Article 5 §§ 1 (c), 3 and 4**

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having

committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

**Article 13**

Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

## A. Admissibility

### *1. Six-month time-limit in respect of Mr Mehmed Asani, Ms Lenka Jovanovska, Mr Mitre Kirovski and Ms Slavjanka Angelova*

37. Referring to the date when the application form had been submitted, the Government argued that, in respect of the above applicants, the application had been lodged more than six months after 7 March and 1 April 2008 respectively, the dates when these applicants had been released (see paragraph 18 above).

38. The applicants submitted that 20 May 2008, the date of the first letter, should be considered as the introductory date in respect of the application which had stopped the running of the six-month time-limit.

39. The Court notes that in their first letter of 20 May 2008 all of the applicants, through their representative Mr Dukoski, indicated their intention to lodge the application and gave an indication of the nature of the application. This date is accordingly to be considered as the date of introduction of the application (see *Chalkley v. the United Kingdom* (dec), no. 63831/00, 26 September 2002). The application was therefore submitted within the six-month time-limit specified in Article 35 § 1 of the Convention. The Government's objection must accordingly be rejected.

### *2. Non-exhaustion of domestic remedies*

#### (a) The parties' submissions

40. The Government objected that the applicants had not exhausted all effective domestic remedies. In particular, not all the applicants had

appealed against the initial detention order issued by the investigating judge and the panel's orders by which their detention had been extended.

41. The applicants submitted that they had repeatedly challenged the detention orders by requesting the domestic courts, albeit in vain, to terminate them or replace them with a more lenient measure. They had done so either by appealing to a higher authority or by separate requests lodged with the panel or at the trial. The higher instances had rejected the appeals, simply reiterating the summary formula given at first instance, which had undermined the effectiveness of the review procedure. Since the applicants' cases had been based on the same issues of fact and law, any favourable decision of the Court of Appeal given in respect of those who had appealed would have applied (under the *beneficium cohaesionis* rule) to all the applicants, including those who had not lodged a formal appeal.

**(b) The Court's assessment**

42. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see, *mutatis mutandis, Merger and Cros v. France* (dec.), no. 68864/01, 11 March 2004; *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, ECHR 1996-VI; and *Akdivar and Others v. Turkey,* 16 September 1996, §§ 65-67, ECHR 1996-IV).

43. The Court emphasises that the application of the exhaustion rule must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights and that it must be applied with some degree of flexibility and without excessive formalism. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned, but also of the general context in which they operate, as well as the personal circumstances of the applicant (see *Jašar v. the former Yugoslav Republic of Macedonia* (dec.), no. 69908/01, 19 January and 11 April 2006).

44. The burden of proof is primarily on the Government claiming non-exhaustion to satisfy the Court that an effective remedy was available in theory and in practice at the relevant time; that is to say, that the remedy was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been discharged it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the

particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see *Akdivar and Others v. Turkey*, cited above, §§ 65-69, and *Menteş and Others v. Turkey*, judgment of 28 November 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2706, § 57).

45. The Court notes that the domestic legislation provided for a two-tier system of judicial review of pre-trial detention. An initial detention ordered by an investigating judge may be challenged before the panel set up under section 22 § 6 of the Act. An order of the panel extending the detention may be reviewed by the Court of Appeal (section 205 § 6 of the Act, see paragraph 34 above). Both the panel, when deciding at second instance, and the Court of Appeal, can make a full assessment as to whether the detention was lawful and justified. For these reasons, the appeal is to be regarded, in principle, as an effective remedy within the meaning of Article 35 of the Convention.

46. In the present case the Court observes that, as the Government submitted, not all the applicants appealed against the detention orders issued either by the investigating judge or by the panel (see paragraphs 9, 10, 13, 16, 19 and 21 above). Those who appealed argued that the detention had been insufficiently justified, that is, that no concrete and sufficient reasons had been given to corroborate, at the very least, a real risk of them absconding (see paragraphs 9, 10, 16 and 19 above). Their numerous requests for release were supported with arguments related to their personal and family circumstances. The Court of Appeal, on each occasion, rejected those arguments with a single decision in which it reiterated, in a summary form, the reasons given by the panel. It did not make an individual assessment of the arguments in the light of the personal characteristics of each appellant separately. The Court sees no reason to believe that the Court of Appeal would have decided otherwise if the remaining applicants had appealed. The Court therefore considers that in the particular circumstances of the case the appeal was ineffective and the fact that some applicants did not use it cannot be regarded as a failure to exhaust the domestic remedies. In such circumstances, the Government's objection must be rejected.

*3. Article 5 § 1 (c) complaint*

47. As regards the applicants' complaint that their detention was unlawful, the Court notes that by two separate decisions of 20 and 26 November 2007 respectively, the investigating judge of the trial court ordered the applicants' detention on account of the gravity of the charges against them, the potential penalty and because they had allegedly acted as a well organised group (see paragraph 8 above). The orders were based on the grounds enumerated in section 199 of the Criminal Proceedings Act, which overlap with those indicated in Article 5 § 1 (c) of the Convention. The applicants' detention was subsequently extended on several occasions by the

panel. After 15 February 2008, the applicants' detention was based only on their potential to abscond (see paragraph 15 above).

48. The Court considers that the domestic courts acted within their powers in making those decisions and there is nothing to suggest that they were invalid or unlawful under domestic law. The question whether the reasons for the decisions were sufficient and relevant is analysed below in connection with the issue of compliance with Article 5 § 3 (see *Lind v. Russia*, no. 25664/05, § 66, 6 December 2007).

49. The Court finds that the applicants' detention was compatible with the requirements of Article 5 § 1 (c) of the Convention. It follows that this complaint must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

*4. Alleged ineffectiveness of the review proceedings (Articles 5 § 4 and 13 of the Convention)*

50. The Court notes the existence of a two-tier system of judicial review of pre-trial detention (see paragraph 45 above). It further observes that domestic law provides for the possibility for replacement of a custody order by a more lenient measure, as a special remedy which a detainee may use while in custody. This latter remedy proved effective in respect of four applicants who were released pending the trial (see paragraph 18 above). Despite the above finding as regards the appeal proceedings (see paragraph 46 above), the review procedure that was put in place does not appear, as such, as ineffective.

51. It follows that this part of the application must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

*4. Conclusion*

52. The Court considers that the applicants' complaints under Article 5 § 3 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

## B. Merits

*1. The parties' submissions*

53. The applicants reiterated that the domestic courts had not given any concrete reason that justified the detention of each of them individually, but had merely quoted the statutory grounds for detention without providing any concrete justification for it, in particular with regard to the “risk of absconding”.

54. The Government submitted that the applicants' detention in police stations and the subsequent detention orders had been in compliance with the Act. The case was one of the most complex criminal cases given that it involved seventy-two accused. When issuing the detention orders, the courts had duly considered the personal circumstances of each applicant and provided detailed reasons for their detention, as confirmed by the orders releasing some applicants (see paragraph 18 above) and decisions replacing the detention orders with orders for house arrest (see paragraphs 20 and 22 above). Lastly, the applicants' detention had served its purpose, namely to secure their attendance at the trial. In the result, despite the complexity of the case and the number of accused, none of the scheduled hearings had been postponed due to the applicants' absence.

*2. The Court's assessment*

**(a) General principles**

55. The Court reiterates that the persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention. However after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty (see *Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV).

56. The presumption is in favour of release. As the Court has consistently held, the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until his conviction, the accused must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continuing detention ceases to be reasonable. A person charged with an offence must always be released pending trial unless the State can show that there are "relevant and sufficient" reasons to justify the continued detention (see, among other authorities, *Castravet v. Moldova*, no. 23393/05, §§ 30 and 32, 13 March 2007; *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006; *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000; and *Neumeister v. Austria*, judgment of 27 June 1968, Series A no. 8, § 4).

57. It is incumbent on the domestic authorities to establish the existence of concrete facts relevant to the grounds for continued detention. Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005, and *Ilijkov*

*v. Bulgaria*, no. 33977/96, §§ 84-85, 26 July 2001). The national judicial authorities must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions dismissing the applications for release. It is not the Court's task to establish such facts and take the place of the national authorities who ruled on the applicant's detention. It is essentially on the basis of the reasons given in the domestic courts' decisions and of the true facts mentioned by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Korchuganova v. Russia*, no. 75039/01, § 72, 8 June 2006; *Ilijkov*, cited above, § 86; and *Labita*, cited above, § 152).

**(b) Application to the present case**

58. In the present case, the Court notes that on 18 and 24 November 2007 respectively, the applicants were arrested and detained in several police stations in Skopje. On 19 and 25 November 2007 respectively, they were brought before the investigating judge who, by two separate decisions, remanded them in prison on suspicion of abuse of office. In the period up to 28 January 2008, the applicants' detention was extended on two occasions. In respect of all the applicants, with the exception of Mr Z. Pankovski (see paragraph 11 above), the collective detention orders were based on all three grounds enumerated in section 199 of the Act, namely the risk of absconding, reoffending and interference with the investigation. The reasons given to justify the orders, for all the applicants, were the seriousness of the offence and the potential penalty (see paragraphs 10 and 13 above).

59. “The possibility of reoffending” and of “interfering with the investigation” remained the grounds on which the detention orders were based until 1 February 2008 in respect of one group of applicants, and until 15 February 2008 in respect of another group of applicants. Initially, the risk of reoffending was excluded only in respect of those applicants who presented valid proof of their dismissal from work (see paragraph 14 above). By 15 February 2008 neither of these grounds was relied on by the courts any longer to justify the continued detention of the applicants (see paragraph 15 above).

60. After that date the applicants' detention was extended on several occasions, based only on the risk of their absconding. Only four applicants who had submitted special requests for release were subsequently released (see paragraph 18 above). Until 28 November 2008, the date of the applicants' release, the domestic courts consistently relied on the gravity of the charges and the potential penalty as the decisive elements warranting further extensions of the applicants' detention (see paragraphs 15, 17, 19, 20, 21, 22 and 23 above). Subsequently, the need to secure their attendance

at the trial was also included among the grounds for their detention (see paragraphs 24 and 25 above).

61. In this connection, the Court points out that although the severity of the sentence faced is a relevant element in the assessment of the risk of an accused absconding, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Letellier v. France*, 26 June 1991, § 43, Series A no. 207; *Muller v. France*, 17 March 1997, § 43, *Reports* 1997-II; *Yağcı and Sargın*, cited above, § 52; and *Korchuganova v. Russia*, no. 75039/01, § 73, 8 June 2006).

62. In the Court's view, the domestic courts did not demonstrate the existence of any concrete fact in support of their conclusions. No reason was given why the consequences and hazards of absconding would have seemed to the applicants to be a lesser evil than continued imprisonment (see *Stögmüller v. Austria*, judgment of 10 November 1969, Series A no. 9, § 15). Apart from simply referring to the applicants' "possessions and family situation" and "their personal characteristics" (see paragraphs 10 and 11 above) at the early stage of the applicants' detention, the domestic courts did not point to any specific aspects of their character or behaviour capable of justifying their conclusion that each applicant presented a persistent risk of absconding. Nor did they address any of the applicants' arguments that mitigated the risk of their absconding. It remained unclear, therefore, why they did not consider that risk to have been removed in respect of the applicants who had already had their passports withdrawn or had invoked facts showing close ties with the respondent State (see paragraphs 10, 16 and 19 above). Moreover, at no point in the proceedings did the domestic courts explain in their decisions why alternatives to deprivation of liberty would not have sufficed to ensure that the trial would follow its proper course, which, according to the Government, was the main purpose of the applicants' detention (see paragraph 54 above). Furthermore, the applicants' release was ordered on the basis of the fact that they had permanent places of residence and families in the respondent State. These factors were not unknown to the domestic courts at the earlier stages of the proceedings (see paragraph 26 above).

63. Moreover, in confirming the applicants' detention after 15 February 2008, the domestic courts constantly repeated the same summary formula using an identical form of words. It appears that they had little if any regard to the applicants' individual circumstances, as their detention was extended by means of collective detention orders. The practice of issuing collective detention orders has already been found by the Court to be incompatible, in itself, with Article 5 § 3 of the Convention in so far as it would permit the

continued detention of a group of persons without a case-by-case assessment of the grounds for detention in respect of each individual member of the group (see *Dolgova v. Russia*, no. 11886/05, § 49, 2 March 2006).

64. Having regard to the above, the Court considers that, at least from 15 February 2008 (see paragraph 15 above), by failing to address concrete facts and by relying essentially on the gravity of the charges and the potential penalty, the authorities prolonged the applicants' detention on grounds which, although "relevant", cannot be regarded as "sufficient".

65. There has accordingly been a violation of Article 5 § 3 of the Convention.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicants claimed between 500 euros (EUR) and EUR 800 each in respect of pecuniary damage for medical expenses incurred while they were in detention and after their release. In support, they produced copies of medical reports. Mr Zvonko Bojarovski claimed EUR 2,500 for medical expenses and loss of income as a result of his dismissal from work. In this latter respect, he claimed that he had been dismissed because of his detention and that he had been acquitted by the trial court's decision of 28 November 2008.

68. The applicants also claimed EUR 5,000 each in respect of non-pecuniary damage for the pain and stress suffered as a result of their detention. Five applicants (Mr Naum Mihajlovski, Mr Mitre Petrov, Mr Zoran Božinovski, Mrs Lenka Jovanovska and Mrs Slavjanka Angelova) also claimed between EUR 10,000 and EUR 12,000 each as a result of the death of a next-of-kin while they were in detention.

69. The Government contested these claims as unsubstantiated, arguing that there was no causal link between the alleged violation and the damage claimed.

70. The Court considers, on the evidence before it, that the applicants have failed to show that the pecuniary damage pleaded was actually caused by the violation found. Consequently, it finds no justification for making an award to the applicants under that head. As to non-pecuniary damage, the Court considers that the present judgment constitutes sufficient reparation

(see *Letellier v. France*, 26 June 1991, § 62, Series A no. 207, and *Muller v. France*, 17 March 1997, § 54, *Reports* 1997-II).

### B. Costs and expenses

71. The applicants all claimed EUR 2,000 each, with the exception of Mr Perica Dimitrievski, who claimed EUR 2,500, for the costs and expenses incurred before the domestic courts. This figure included legal fees for their representation at the hearings based on the fee scale of the Macedonian Bar; court fees; travel expenses of their representatives and family members related to their visits while the applicants had been in detention, and other travel expenses. The applicants did not produce any supporting documents.

72. They also claimed EUR 3,140 in respect of costs and expenses incurred in the proceedings before the Court. This included legal fees for a hundred and forty hours of legal work, as well for the copying and mailing of documents. In support, the applicants submitted an itemised list of costs concerning the legal fees claimed. No evidence was submitted in respect of expenses for the mailing and copying of documents. The applicant's representative has requested that the fees be paid directly to the "Helsinki Committee for Human Rights of the Republic of Macedonia"; and provided the latter's bank account.

73. The Government contested these claims as unsubstantiated and excessive.

74. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Editions Plon v. France*, no. 58148/00, § 64, ECHR 2004-IV). The Court points out that under Rule 60 of the Rules of Court "the applicant must submit itemised particulars of all claims, together with any relevant supporting documents", failing which "the Chamber may reject the claim in whole or in part" (see *Parizov v. the former Yugoslav Republic of Macedonia*, no. 14258/03, § 71, 7 February 2008).

75. In the present case, the Court notes that the applicants did not submit any supporting documents or particulars in respect of their claim for the costs and expenses incurred in the domestic proceedings. Accordingly, it does not award any sum under that head (see *Lazoroski v. the former Yugoslav Republic of Macedonia*, no. 4922/04, § 91, 8 October 2009). It further finds the amount claimed by the applicants in respect of the costs and expenses incurred in the proceedings before it to be excessive and in part unsubstantiated and awards instead the sum of EUR 2,000, plus any tax that may be chargeable to the applicants, which is to be paid into the bank account of the "Helsinki Committee for Human Rights of the Republic of Macedonia" (see, *mutatis mutandis*, *Jašar v. the former Yugoslav Republic of Macedonia*, no. 69908/01, § 71, 15 February 2007).

### C. Default interest

76. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 5 § 3 concerning the lack of sufficient reasons for the applicants' detention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

3. *Holds* that the finding of a violation of the Convention constitutes sufficient just satisfaction in respect of the applicants;

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement and paid into the bank account of the "Helsinki Committee for Human Rights of the Republic of Macedonia";
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President