



## People Suspected of Fraud Kept in Pre-Trial Detention without Justification

In today's Chamber judgment in the case [Vasilkoski & Others v. "the former Yugoslav Republic of Macedonia"](#) (application no 28169/08), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 5 § 3** (right to liberty and security) of the European Convention on Human Rights.

The case concerned the complaints by 38 people, accused of fraudulently collecting over 5 million euros in the form of road toll charges in 2007, about having been detained unlawfully and without justification.

### Principal facts

The applicants, Nikola Vasilkoski and 37 other people, are Macedonian nationals, who were born between 1947 and 1985 and live in different cities in "the former Yugoslav Republic of Macedonia".

They were toll collectors, controllers or senior staff in a public roads enterprise. They were all arrested in November 2007 on suspicion of having misappropriated over 5 million euros from toll charges collected between April and November 2007. Having heard their oral submissions, an investigating judge authorised, on 20 and 27 November 2007, their detention pending investigation. The detention decisions were based on all the legal grounds enumerated in the Criminal Proceedings Act, namely the risk of absconding and reoffending, and of interference with the investigation; in addition, the judge relied on the fact that they had acted as an organised group, that the offence of which they were suspected was grave, as was the penalty they might face if found guilty.

The applicants' detention was extended several times between December 2007 and March 2008. However, some of the applicants appealed against the extensions, unsuccessfully. In their decisions dismissing the appeals, the courts reiterated consistently that the risk of the applicants' absconding was explained by the gravity of the offence, the charges brought against them and the penalty they could be given.

Shortly after the start of the trial against the applicants, in April 2008, the court changed their prison custody to house arrest. In November 2008, the applicants were found

---

<sup>1</sup> Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a judgment's delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Under Article 28 of the Convention, judgments delivered by a Committee are final.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

guilty, however the appeal court quashed their sentence and sent the case for a fresh examination. The proceedings are apparently still pending.

## Complaints, procedure and composition of the Court

Relying on Article 5 §§ 1, 3 and 4, the applicants complained about having been detained unlawfully, without any concrete and sufficient reasons and without being able to challenge that effectively.

The application was lodged with the European Court of Human Rights on 20 May 2008.

Judgment was given by a Chamber of seven, composed as follows:

Peer **Lorenzen** (Denmark), *President*,  
Renate **Jaeger** (Germany),  
Karel **Jungwiert** (the Czech Republic),  
Mark **Villiger** (Liechtenstein),  
Mirjana **Lazarova Trajkovska** ("the former Yugoslav Republic of Macedonia"),  
Zdravka **Kalaydjieva** (Bulgaria),  
Ganna **Yudkivska** (Ukraine), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

### Article 5 § 1

The Court noted that the applicants' detention had been authorised in November 2007 in view of the gravity of the offence of which they had been suspected, as well as of the potential penalty they risked, and because they had acted as an organised group. The applicants' detention had been based on the grounds listed both in the Criminal Proceedings Act, and in the Convention, and the domestic courts had acted within their powers and in accordance with the law when placing the applicants in detention. Consequently, the Court dismissed the applicants' complaint about having been detained unlawfully.

### Article 5 § 4

The Court noted that the two-level system of judicial review of pre-trial detention which existed in "the former Yugoslav Republic of Macedonia" had not been ineffective, and dismissed the applicants' complaint to that effect.

### Article 5 § 3

The Court recalled that in order for people's continuous detention to be justified, the persistence of a reasonable suspicion had to be imperatively present throughout the period of detention. However, after a certain lapse of time, a mere suspicion was not enough, and, in the absence of other relevant and sufficient reasons for keeping people detained, they had to be released.

The applicants had been arrested in November 2007 on suspicion of abuse of office and detained in view of the risk of absconding, reoffending and interfering with the investigation. Their detention had been extended several times on different grounds. However, after 15 February 2008, the only reason given by the courts for continuing to keep them in custody had been the potential risk of them absconding. The courts had not pointed to any specific aspect of the applicants' character or behaviour which could

have demonstrated that they might abscond if released. Nor had they explained why alternatives to detention had not been applied, despite the law having provided such possibilities. The courts had limited their assessment of the applicants' situation to repeating the same brief formula, using identical words, when extending their detention. Hardly any regard to the personal situation of the applicants had been made, given that their detention had been extended by means of a collective decision.

In view of the above, the Court found that, at least from 15 February 2008, the authorities had prolonged the applicants' detention without assessing their individual situation, in violation of Article 5 § 3.

#### Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that the finding of violation constituted sufficient just satisfaction for the applicants, and that "the former Yugoslav Republic of Macedonia" was to pay to them 2,000 euros for costs and expenses.

*The judgment is available only in English.*

---

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on its [Internet site](#). To receive the Court's press releases, please subscribe to the [Court's RSS feeds](#).

#### Press contacts

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel: +33 3 90 21 42 08

**Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)**

Emma Hellyer (tel: + 33 3 90 21 42 15)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Frédéric Dolt (tel: + 33 3 90 21 53 39)

Nina Salomon (tel: + 33 3 90 21 49 79)

**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.