



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

1959 · 50 · 2009

FIFTH SECTION

**CASE OF LAZOROSKI v. THE FORMER YUGOSLAV REPUBLIC
OF MACEDONIA**

(Application no. 4922/04)

JUDGMENT

STRASBOURG

8 October 2009

FINAL

08/01/2010

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 Lazoroski 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,
Rait Maruste,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 15 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 4922/04) 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 a Macedonian national, Mr Jovče Lazoroski (“the applicant”), on 24 January 2004.

2. The applicant was represented by Ms L. Vanevska, a lawyer practising in Skopje. The Macedonian Government (“the Government”) were represented by their Agent, Mrs R. Lazareska Gerovska.

3. The applicant alleged, in particular, that his arrest was contrary to Article 5 §§ 1 (c) and 2 of the Convention and that the ensuing proceedings for a review of its lawfulness did not satisfy the requirements of Article 6 § 1 of the Convention.

4. On 29 January 2008 the President of the Fifth Section decided to communicate these complaints 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 applicant was born in 1973 and lives in Kičevo.

1. The applicant's arrest

6. On 6 August 2003 the applicant received a telephone call from an officer of the Intelligence Service (*Управа за безбедност и контраразузнавање*) who asked him to come to a police station for a “talk”. The applicant replied that he would attend with his lawyer provided he received a written request.

7. Mr J.S., a high-ranking officer in the Intelligence Service gave a verbal order for the applicant's arrest on suspicion that he was armed and might leave the State.

8. At 11.15 p.m. the same day the applicant was arrested by police near the Tabanovce border post with Serbia. He was taken to Tabanovce police station and a body search was carried out. A report on the search indicated that a mobile phone, passport, identity card and a licence to carry arms (“the licence”) had been found. According to the parties, a gun was also found, but was not recorded in the report. The applicant was handcuffed and transferred to Kumanovo police station by the Intelligence Service. He managed to contact his lawyer on his mobile phone.

2. Events in police custody

9. At 2 a.m. on 7 August 2003 the applicant signed a report in which he waived his right to a lawyer. No record of questioning was kept. The applicant maintained that he was questioned about the work of his superiors (one of the executive managers of company O.), about certain members of the then opposition political party and certain high-profile journalists. His personal belongings were returned and he was released at 9 a.m.

3. Findings of the Sector for Internal Control at the Ministry of the Interior

10. On 7 August 2003 the applicant brought his alleged unlawful arrest to the attention of the Ministry of the Interior (“the Ministry”) and on 3 November 2003, to the Sector for Internal Control at the Ministry (“the Sector”). Several letters were subsequently exchanged between the applicant and the Sector.

11. In a report of 3 March 2004 the Sector noted that the applicant's arrest and detention had been carried out in compliance with the law. Owing to minor errors in the minutes concerning the body search, the Sector proposed that the police officers responsible be fined and warned. The Sector repeated these findings in its reply to the applicant dated 22 March 2004. No explanation was given for the applicant's arrest.

4. Review of the lawfulness of the applicant's detention

12. On 7 August 2003 the applicant requested an investigating judge at the Kumanovo Court of First Instance to review the lawfulness of his deprivation of his liberty (*барање за испитување на законитоста на лишувањето од слобода*). He claimed that he had been detained unjustifiably; that he had not been informed of the reasons for his arrest; that his lawyer had been prevented from attending his interview and that the arrest had been carried out without a court order.

13. Between 15 October 2003 and 12 January 2004 the investigating judge was on sick leave.

14. On 4 February 2004 the investigating judge requested the Ministry to provide documents concerning the applicant's arrest. In a reply of 20 February 2004, the Ministry stated that the applicant's arrest had been ordered on account of suspicion that he had been involved in arms trafficking and that he had been released after it had been established that there was no evidence to support the allegations and that he had the requisite licence. On 23 June and 21 September 2004 the investigating judge required further written evidence from the Ministry which the latter submitted on 29 September 2004.

15. On 26 January 2005, after five requests by the applicant for the proceedings to be expedited and relying on the information provided by the Ministry and the reports described in paragraphs 8 and 9 above, the investigating judge found that the applicant had been lawfully deprived of his liberty on suspicion of arms trafficking. She further found that the applicant had waived his right to a lawyer, as noted in the report of 7 August 2003, which had been duly signed by the applicant. The applicant was advised that he could appeal within two days to a three-judge panel ("the panel") (*Кривичен Совет*) of the Kumanovo Court of First Instance.

16. On 16 February 2005 the applicant appealed, arguing that he had been deprived of his liberty contrary to Article 5 of the Convention and the applicable legislation. He maintained that he had been arrested without a court order and that the investigating judge had failed to examine the grounds for his deprivation of liberty. He further submitted that he had not been summoned by the investigating judge to present the arguments in his favour and that there had been witnesses who could have shed light on the circumstances surrounding his arrest.

17. On 18 February 2005 the panel dismissed the applicant's appeal. Finding no reasons to question the established facts, it ruled that the applicant's deprivation of liberty had been lawful and intended to identify him, verify his alibi and collect necessary information. It noted that he had been informed of his rights and the reason for his arrest, namely a reasonable suspicion that he had committed the offence of "trafficking in arms".

18. No proceedings were taken against the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. The Constitution

19. Article 12 §§ 2, 3 and 4 of the Constitution provides that freedom cannot be restricted except by a court decision and in cases and proceedings regulated by a law. Individuals summoned, arrested or detained must be informed promptly of the reasons for the summons, arrest or detention and of their statutory rights. They cannot be forced to make a statement. Everyone has a right to a lawyer in police and in court proceedings. Detainees must be brought, promptly or within twenty-four hours of their arrest, before a court which will examine the lawfulness of their detention.

2. Criminal Proceedings Act of 1997 (“the Act”)

20. Section 3(1) and (2) of the Act, as worded at the material time, provided that everyone summoned, arrested or detained had to be informed promptly, in a language which he or she understood, of the reasons for the summons, arrest or detention and of his or her statutory rights. He or she could not be forced to make a statement. The suspect, that is, the person accused, had to be clearly informed from the outset of his or her right to remain silent, to consult with a lawyer, to have a lawyer of his or her choice present during questioning, and to inform a third party of his or her detention.

21. Section 22(6) of the Act provided for a three-judge panel of the first-instance court to hear, *inter alia*, appeals against decisions of the investigating judge.

22. Section 142(4) laid down that a person against whom the Ministry had taken the measures set forth in subsection 2 (measures which the Ministry was authorised to take on account of suspicion that an offence had been committed) could request the court to review the lawfulness of those measures and that the court had to issue a decision.

23. Under section 184(1)(1) of the Act, pre-trial detention could be ordered on reasonable suspicion that the person concerned had committed an offence if he or she had gone into hiding or his or her identity could not be determined, or when there were circumstances to suggest the possibility that he or she might abscond.

24. Section 188(2) provided that Ministry officials could arrest without a court order anyone suspected of committing an offence prosecutable *ex officio*. The arrested person had to be brought promptly before an investigating judge. In accordance with section 188(3) and as an exception

to the general rule, Ministry officials could detain a person if it was necessary to determine his or her identity; to verify his or her alibi or if there were other grounds requiring the collection of information to enable proceedings to be brought against a third party. Such detention could be effected only if the requirements for pre-trial detention, as set forth in sections 184(1)(1) and (1)(3), were met. Section 184(4) required the arrested person to be given the information referred to in section 3 of the Act. Section 184(6) provided that detention pursuant to section 184(3) could not exceed twenty-four hours. The Ministry official was required either to release the arrested person or to proceed in accordance with section 184(2).

25. Sections 527(2) and 528 of the Act, which related to compensation for wrongful conviction and unjustified detention, stipulated that the party concerned had to lodge any claim for damages with the Ministry of Justice in the first instance and to indicate the requested form and amount of any settlement. If the compensation claim was not upheld or the Ministry of Justice failed to decide it within three months from the date the claim was brought, the party concerned could claim compensation in the court of competent jurisdiction.

26. In accordance with sections 530(1) (3) and 530(2) of the Act, a person was entitled to compensation if he or she had been unjustifiably deprived of his or her liberty through the fault or unlawful conduct of a body. A person unlawfully arrested under section 188 of the Act could claim compensation.

3. Amendment of the Criminal Proceedings Act of October 2004 ("the amended Act")

27. Section 49 of the amended Act replaced section 142 of the Act. Under subsection 9, the person concerned may within thirty days request the investigating judge to review the lawfulness of the measures taken by the police. An appeal to the panel may be lodged within 48 hours. The panel must issue its decision within three days.

4. Practice in awarding compensation in cases of unlawful and unjustified deprivation of liberty

28. In case no. II.6p.441/06 the Ministry of Justice, on the basis of a court settlement, paid compensation to a claimant who had been held for three days before being released. The investigation against him was also discontinued.

29. On 15 February 2007 the Ministry of Justice paid compensation for non-pecuniary loss sustained by Mr N.N. following his arrest in 2006 to serve a prison sentence he had already served in 2004 (6p. 08-692/2).

30. In civil proceedings instituted under the Law on Obligations (*Закон за облигационите односи*), Mr R.M. was awarded compensation after being unjustifiably held in police custody in order to serve a prison sentence even though no such sentence had been imposed, but rather a security measure - compulsory psychiatric treatment on release.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 5 § 1 (c), 2 AND 3 OF THE CONVENTION

31. The applicant complained under Article 5 §§ 1, 2 and 3 of the Convention that his deprivation of liberty had not been based on any of the permissible grounds under those provisions and that he had not been informed of the reasons for his arrest. The relevant parts of Article 5 §§ 1 (c), 2 and 3 of the Convention read as follows:

“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; ...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial”

32. The Court observes that the applicant's allegations under Article 5 § 3 of the Convention are in fact a restatement of his complaints under Article 5 § 1 and, therefore, must be examined under that provision.

A. Admissibility

1. *The parties' submissions*

33. The Government submitted that the applicant had not exhausted all effective domestic remedies. In particular, he had failed to claim compensation under section 530 of the Act (see paragraph 26 above). In their submission, the practice described in paragraphs 28-30 above supported the view that such claims afforded an effective remedy.

34. The applicant maintained that a compensation claim would have been ineffective in his case given the outcome of the proceedings at issue.

2. *The Court's assessment*

35. 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).

36. 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. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. 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. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *Jasar v. the former Yugoslav Republic of Macedonia* (dec.), no. 69908/01, 19 January and 11 April 2006).

37. It further recalls that an applicant who has exhausted a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see *Aquilina v. Malta* [GC], no. 25642/94, § 33, ECHR 1999-III).

38. The Court notes that the remedy which the applicant pursued could have given rise to a declaration that his detention overnight from 6 to 7 August 2003 was unlawful. The applicant thus put to the domestic courts, in accordance with domestic law, the substance of his subsequent complaint to the Court. In these circumstances, he was not required, in addition, to make a request for compensation which could also have given rise to a finding that the detention had been unlawful.

39. This part of the application cannot, therefore, be declared inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 of the Convention. Accordingly, the Government's objection must be rejected.

40. The Court further considers that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Alleged violation of Article 5 § 1 (c) of the Convention

(a) The parties' submissions

41. The Government submitted that the applicant had been arrested and detained in police custody in compliance with the law and on account of reasonable suspicion that he had committed an offence. In this latter respect, they referred to the scope of the work and terms of appointment of the Director of the Intelligence Service which, they said, served as an irreversible presumption that the latter had had "certain operative indications" about the applicant's alleged involvement in committing the offence. They further maintained that the gun found in the applicant's possession had confirmed those allegations initially. They noted, too, that the applicant had been released when the police failed to find any evidence of his involvement in the commission of an offence.

42. The applicant maintained that the Government had not presented any concrete information or evidence to confirm the "reasonableness" of the suspicion on which his arrest and detention had been based. The fact that a gun had been found in his possession could not be held against him since he had a licence, as indicated in the record of the body search.

(b) The Court's assessment

43. The Court notes that the applicant was arrested at 11.15 pm. on 6 August 2003 and released at 9.00 am. on 7 August 2003.

44. Noting the parties' submissions, it considers that the applicant's detention in police custody amounted to a "deprivation of liberty" within the meaning of Article 5 § 1 of the Convention (see, *mutatis mutandis*, *Witold Litwa v. Poland*, no. 26629/95, § 46, ECHR 2000-III).

45. The Court must consider whether it was based, as the Government submitted, on "reasonable suspicion" of his having committed an offence.

46. In this connection, it reiterates that a "reasonable suspicion", within the meaning of Article 5 § 1 (c) of the Convention, that a criminal offence has been committed presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed an offence. The question is whether the arrest and detention were based on sufficient objective elements to justify a "reasonable suspicion" that the facts at issue had actually occurred (see *Włoch v. Poland*, no. 27785/95, §§ 108 and 109, ECHR 2000-XI).

47. From the case file as it stands, the Court cannot determine why the applicant was suspected of being involved in any alleged crime. The judicial authorities did not provide any information concerning an alleged offence, let alone any evidence in support of his involvement. They merely indicated that the allegations had transpired to be unsubstantiated and that the applicant had the requisite licence for his gun. The Court notes that this was confirmed immediately after the applicant's arrest when the body search was carried out (see paragraph 8 above). Furthermore, the police could easily have established this from their own records.

48. The Court reiterates that the facts which raise a suspicion need not be of the same level as those necessary to justify a conviction or even the bringing of a charge, which comes at a later stage of the process of criminal investigation (see *K.-F. v. Germany*, 27 November 1997, § 57, *Reports of Judgments and Decisions* 1997-VII). In the instance case, however, there was nothing to suggest that the applicant was involved in trafficking in arms. Even in the proceedings before the Court, the Government did not present any material that would persuade it to conclude otherwise. The "operative indications" of the Intelligence Service, in the absence of any statement, information or a concrete complaint cannot be regarded as sufficient to justify the "reasonableness" of the suspicion on which the applicant's arrest and detention were based.

49. On the basis of the foregoing, the Court concludes that the applicant's deprivation of liberty did not constitute lawful detention effected "on reasonable suspicion" of his having committed an offence. There has therefore been a breach of Article 5 § 1 (c) of the Convention.

2. Alleged violation of Article 5 § 2 of the Convention

(a) The parties' submissions

50. The Government submitted that although there had been no report attesting that the applicant had been informed of the reasons for his arrest, this could be presumed from the fact that the arrest was carried out by high-ranking officers from the Intelligence Service, who were well trained for complex actions.

51. The applicant contested the Government's arguments.

(b) The Court's assessment

52. The Court reiterates that Article 5 § 2 of the Convention contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. By virtue of this provision any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness (see *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, § 40, Series A no. 182).

53. The Court notes that none of the reports submitted by the Government indicated that the applicant was informed of the reasons for his arrest. Furthermore, no report was drawn up regarding the applicant's questioning while in police custody, and there has been no other evidence, such as a statement from one of the arresting officers, that the applicant was given reasons for the arrest.

54. In the absence of any evidence, the Court is not persuaded that the applicant was informed of the reasons for his arrest as required under Article 5 § 2 of the Convention. There has accordingly been a breach of that provision.

II. OTHER ALLEGED VIOLATIONS OF ARTICLE 5 § 1 OF THE CONVENTION

55. The applicant further complained that he had been arrested without a court order and that he had been prevented from consulting a lawyer. In this latter respect, he complained that he had been forced to sign the report of 7 August 2003 (see paragraph 9 above) under threat of not being released.

1. As regards the applicant's arrest without a court order

56. The Court notes that the applicant's arrest was based on section 188(2) of the Act, which permitted an arrest to be made without a court order. That fact was established by the domestic courts. Furthermore,

Article 12 of the Constitution provides that deprivation of liberty may be carried out also “in cases and proceedings regulated by a law”.

57. In such circumstances, the Court considers that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. As regards the alleged denial of access to a lawyer

58. Assuming that this complaint falls within the ambit of Article 5 of the Convention, the Court considers that it is manifestly-ill founded for the following reasons.

59. According to the police report of 7 August 2003, which is the official record of the events, the applicant waived his right to see a lawyer. He signed the report without making any comment or reservation that would confirm his allegations before the Court. He did not object to the content of this report, except in so far as he claimed that he had agreed to the waiver under threat by the police. In this latter respect, the Court observes that no evidence whatsoever has been adduced to support his allegation that the waiver was made under conditions of threat and duress by the police (see, *mutatis mutandis*, *Berisha and Haljiti v. the former Yugoslav Republic of Macedonia* (dec.), no. 18670/03, 10 April 2007).

60. It follows that the applicant's complaint was not substantiated. It is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

61. The applicant complained that he had not been given the right to participate effectively in the proceedings and that the latter had been unreasonably lengthy. In this connection, he relied on Article 6 of the Convention, which in so far as relevant, reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time... by [a] ... tribunal...”

62. For the same reasons, the applicant invoked Article 13 of the Convention, which reads as follows:

“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.”

63. The Court observes that the applicant's allegations under Article 13 of the Convention are in fact a restatement of his complaints under Article 6 and, therefore, must be examined under Article 6 § 1 of the Convention.

A. Admissibility

64. The Government did not raise any objections concerning the admissibility of the applicant's complaints under this head.

65. The Court recalls that in the case of *Aerts v. Belgium*, which concerned proceedings for legal aid to challenge the lawfulness of detention and to seek compensation, it stated that Article 6 applied to proceedings concerning the lawfulness of deprivation of liberty (*Aerts v. Belgium*, 30 July 1998, § 59, *Reports of Judgments and Decisions* 1998-V). In the subsequent case of *Reinprecht v. Austria*, it noted the risk of conflict between Article 5 § 4 and Article 6 of the Convention if both provisions were to apply to the same set of proceedings. In particular, it explained the different contexts of cases which concern the lawfulness of detention to which Article 5 § 4 applies on the ground that the detention is continuing, and those to which Article 5 § 4 does not apply because the proceedings are conducted after the applicant's release (*Reinprecht v. Austria*, no. 67175/01, §§ 50, 51, ECHR 2005-XII and the cases cited there).

66. The Court notes that the applicant was no longer detained when he brought his action, and its purpose cannot have been to bring about his release. Accordingly, Article 5 § 4 of the Convention did not apply to the proceedings, and there is no obstacle to the applicability of Article 6 to the proceedings.

67. The Court considers that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Adversarial nature of the proceedings

(a) The parties' submissions

68. The Government submitted that the proceedings in question had satisfied the procedural requirements of fairness. In this connection, they maintained that the courts had reached their decisions on the basis of evidence submitted by the Ministry and the applicant who, through his written submissions, had been given sufficient opportunity to present his case. They further stated that the applicant had not been heard during the proceedings since no such requirement was contained in the Act. The investigating judge had decided the issue on the basis of the written material submitted by the parties.

69. The applicant contested these arguments stating that the courts' failure to communicate to him the documents submitted by the Ministry was contrary to the principle of equality of arms.

(b) The Court's assessment

70. The Court reiterates that the right to adversarial proceedings means in principle the opportunity for the parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations filed, with a view to influencing the court's decision. The principle of equality of arms – one of the elements of the broader concept of fair trial – requires each party to be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent (see *Morel v. France*, no. 34130/96, § 27, ECHR 2000-VI).

71. Further, Article 6 guarantees the right of a party to participate effectively in the proceedings, which includes, *inter alia*, not only his right to be present, but also to hear and follow the proceedings. Such rights are implicit in the very notion of an adversarial procedure (see, *mutatis mutandis*, *Mitrevski v. the former Yugoslav Republic of Macedonia*, no. 33046/02, § 35, 21 June 2007).

72. Turning to the present case, the Court notes that the decision of the investigating judge of 26 January 2005 was based on the written evidence submitted by the Ministry (see paragraph 15 above). There is nothing to show that that evidence was ever served on the applicant. Furthermore, it is not in doubt that the applicant was not invited to attend the decisive hearing before the investigating judge. His complaints in this respect were left unanswered by the appeal panel. The Court therefore, concludes that he was prevented from effectively participating in the proceedings at issue.

73. There has accordingly been a breach of Article 6 § 1 of the Convention.

2. Length of the proceedings

(a) The parties' submissions

74. The Government submitted that the length of the proceedings had not been excessive and that all time-limits, although short, had been respected by all those involved. In this latter respect, they stated that the Act had not specified any time-limit for the investigating judge to reach a decision. The fact that she had been on sick leave and the absence of any other available judge to replace her also had to be taken into consideration.

75. The applicant submitted that, given the short time-limits specified in the Act, the proceedings at issue had to be regarded as urgent and that the proceedings before the investigating judge had fallen foul of the "reasonable-time" requirement.

(b) The Court's assessment

76. The Court notes that the proceedings in question started on 7 August 2003, when the applicant challenged the lawfulness of his arrest before the investigating judge. They ended on 18 February 2005 with the panel's decision dismissing the applicant's appeal. The proceedings therefore lasted one year, six months and twelve days for two levels of jurisdiction.

77. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Humen v. Poland* [GC], no. 26614/95, § 60, unreported; *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, ECHR 2000-IV; and *Philis v. Greece (no. 2)*, judgment of 27 June 1997, Reports 1997-IV, § 35).

78. The Court does not find the applicant's case to have been complex.

79. It also observes that there were no delays attributable to the applicant. On the contrary, his motions to expedite the proceedings constitute a factor in his favour (see paragraph 15 above).

80. As regards the conduct of the authorities, the Court notes that it took a little under one and a half year for the investigating judge to issue a decision, and the panel which decided the applicant's appeal took two days (see paragraph 17 above). Although the dispute concerned the lawfulness of the applicant's detention for a period of 10 hours, it did not require special diligence on the part of the authorities since the applicant was not in custody when he lodged the challenge.

81. Against this background, the Court considers on the whole that the length of the proceedings in the present case was not excessive (see, *mutatis mutandis*, *Kertakov v. the former Yugoslav Republic of Macedonia* (dec.), no. 13302/02, 6 November 2006 and *Bajraktarov v. the former Yugoslav Republic of Macedonia* (dec.), no. 34112/02, 18 November 2008) and that there has been no violation of Article 6 § 1 of the Convention in respect of the length of the proceedings.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. 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

83. The applicant claimed 33,000 euros (EUR) in respect of non-pecuniary damage for the humiliation, fear and stress sustained as a result of his unlawful arrest and the length of the ensuing proceedings.

84. The Government contested the above claim as unsubstantiated.

85. The Court considers that the applicant has suffered non-pecuniary damage which is not sufficiently compensated for by the finding of a violation. Making its assessment on an equitable basis, it awards him EUR 2,000 under this head.

B. Costs and expenses

86. The applicant also claimed 35,780 Macedonian denars for the costs and expenses he incurred before the domestic courts. This figure concerned the legal fees related to the submissions described in paragraphs 10, 12, 15 and 16 above. The applicant provided an itemised list of costs. He also claimed EUR 5,000 for the costs and expenses incurred before the Court. No document was submitted in support of this latter claim.

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

88. 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).

89. Having regard to the fee note submitted by the applicant, the Court finds that only EUR 180 related to lawyer's fees expended with a view to preventing before the national courts of the violations found by the Court (see, *mutatis mutandis*, *Stoimenov v. the former Yugoslav Republic of Macedonia*, no. 17995/02, § 56, 5 April 2007).

90. It considers therefore that the applicant is entitled to be reimbursed EUR 180 under this head, plus any tax that may be chargeable to him.

91. Lastly, the Court notes that the applicant did not submit any supporting documents or particulars in respect of his claim for the costs and expenses incurred in the proceedings before it. Accordingly, it does not award any sum under this head (see *Parizov*, cited above, § 72).

C. Default interest

92. 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 complaints under Article 5 §§ 1 (c) and 2 and Article 6 § 1 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 §§ 1 (c) and 2 of the Convention;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in that the proceedings were not adversarial
4. *Holds* that there has been no violation of Article 6 § 1 of the Convention in respect of the length of the proceedings;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, 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 national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 2, 000 (two thousand euros) for non-pecuniary damage;
 - (ii) EUR 180 (one hundred and eighty euros) in respect of costs and expenses;
 - (iii) plus any tax that may be chargeable to the applicant;
 - (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;

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

Done in English, and notified in writing on 8 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President