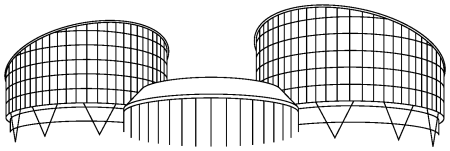

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SEJDIJI v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

(Application no. 8784/11)

JUDGMENT

STRASBOURG

7 June 2018

This judgment is final but it may be subject to editorial revision.

In the case of Sejdiji v. the former Yugoslav Republic of Macedonia,

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Kristina Pardalos, *President,*
Pauliine Koskelo,
Tim Eicke, *judges,*
and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 15 May 2018,

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

PROCEDURE

1. The case originated in an application (no. 8784/11) 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 Bajruš Sejdiji ("the applicant") on 7 February 2011.

2. The applicant was represented by Ms N. Najdenova Levik, a lawyer practising in Skopje. The Macedonian Government ("the Government") were initially represented by their former Agent, Mr K. Bogdanov, succeeded by Ms D. Djonova.

3. The applicant alleged, in particular, that there had been a lack of relevant and sufficient reasons for his prolonged pre-trial detention, contrary to Article 5 § 3 of the Convention.

4. On 3 July 2014 the above-mentioned complaint was communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1968 and lives in Kumanovo.

6. The applicant had been in pre-trial detention since 21 October 2008 in connection with proceedings (*КОК бр. 3/09*) related to a suspicion of criminal conspiracy (*злосторничко здружување*) and abuse of office (*злоупотреба на службената положба и овластување*) when, on 26 December 2009, the investigating judge of the Skopje Court of First Instance (*Основен суд Скопје*, "the trial court") opened a new investigation in respect of him and fourteen other people. The new investigation related to

allegations of criminal conspiracy, abuse of office and extortion (*изнуда*) related to alleged money laundering and the unlawful acquisition of property (*КОК бр. 17/10*).

7. At the same time the investigating judge ordered that the applicant be held in pre-trial detention for thirty days, starting from 25 December 2009. The order applied also to thirteen other suspects and was based on all three grounds specified in section 199(1) of the Criminal Proceedings Act (*Закон за кривичната постапка*, Official Gazette no. 15/2005 – "the Act"), namely a risk of absconding, reoffending and interfering with the investigation. As to the risk of absconding and reoffending, the judge relied on the gravity of the charges, the potential penalty, the circumstances under which the alleged offences had been committed and the links between the suspects. She further held that there was a risk of interference with the investigation if the suspects were released as the investigation had just begun and there were a number of investigative actions pending, including the questioning of witnesses.

8. The applicant lodged an appeal, arguing that he had already been held in detention in relation to the other set of criminal proceedings and the reasons provided by the investigating judge were not relevant and sufficient to justify another detention order.

9. On 30 December 2009 a three-judge panel of the trial court, dismissed the applicant's appeal and endorsed the investigating judge's findings. As to the risk of the applicant's absconding, the panel, in addition to the gravity of the charges and the potential penalty, took into account his previous history of being in "conflict with the law" (*и претходно доаѓал во судир со законот*) and the fact that there were parallel criminal proceedings against him for similar criminal offences. The panel considered that the fact that the applicant had a family and three children who were still minors could not suffice as a guarantee of his presence during the proceedings. The panel took note of the detention order in the other set of proceedings, but held that the question concerned two separate and independent sets of criminal proceedings. In the light of all the circumstances, the court was of the opinion that a further extension of the applicant's detention had been warranted.

10. On 21 January 2010 a three-judge panel ordered a thirty-day extension of the pre-trial detention of the applicant and some of the other suspects. The extension was ordered on all three grounds of the Act. The panel based its decision on the same reasons as before. It also referred to the applicant's possessions in the respondent State, and considered that, in the circumstances, there were insufficient guarantees to ensure his presence during the proceedings.

11. Appeals by the applicant were dismissed by the Skopje Court of Appeal (*Апелационен суд Скопје*, "the Court of Appeal") on 8 February 2010. The Court of Appeal reiterated that the gravity of the charges, the

severity of the penalty and the fact that the suspects had acted as a well-organised group indicated a risk of flight and of reoffending if the applicant were to be released. It further held that there was a risk of interference with the investigation in view of the fact that some of the witnesses and suspects who were still at large had not yet been examined.

12. On 22 February 2010 a three-judge panel ordered another thirty-day extension of the applicant's pre-trial detention on the same grounds as before.

13. On 23 March 2010 the applicant and the other suspects were indicted before the Skopje Court of First Instance. The applicant was charged with money laundering, abuse of office and extortion. In the course of the proceedings, the prosecutor withdrew the charge of abuse of office and amended the extortion charge to one of violence (*насилство*).

14. On 24 March 2010 a three-judge panel ordered another thirty-day extension of the pre-trial detention of the applicant and other accused. The panel excluded the risk of interference with the investigation from the list of grounds for the detention since the investigation had been completed and an indictment lodged. It reiterated the arguments justifying the applicant's detention on the grounds of the risk of absconding and reoffending.

15. On 12 April 2010 the Court of Appeal partially overturned the panel's decision in relation to its reliance on the possibility of reoffending. It held that there was no risk of reoffending given that the applicant and his co-accused had been detained. However, the Court of Appeal upheld the panel's finding regarding the risk of absconding and held that a further extension of the detention order had been justified on the basis of the gravity of the charges and the potential penalty.

16. Three-judge panels ordered further extensions of the pre-trial detention of the applicant and the other co-accused on 23 April, 19 May, 21 June, 22 July, 20 August, 20 September, 20 October, 18 November, 17 December 2010 and 17 January 2011. In each order the panel provided the following reasoning regarding the risk of absconding:

> "The material and verbal evidence adduced so far corroborates the reasonable suspicion that the accused have committed the crimes with which they are charged. Having regard to the nature, character and type of offences with which the accused have been charged, as well as the gravity of the charges and the potential penalty ... the panel considers that there is a real risk of flight if the accused are released. The risk of flight is further supported by the financial circumstances of the [accused] ... [the applicant] ... has been in conflict with the law ... The panel has taken into consideration the fact that the accused have families and children, and that [the applicant] has immovable property in his name, but it considers that the accused's family and material situation are insufficient guarantees of their presence at trial ..."

17. The applicant appealed against the extension orders, arguing, *inter alia*, that the panels had not given sufficient reasons to substantiate the risk of his absconding, given that they had only relied on the gravity of the charges and the potential penalty. The panels had referred to his family

situation and possessions, without providing an explanation for why they considered that those circumstances were not sufficient to guarantee his presence at trial. Lastly, the applicant sought his release and the replacement of the detention order with a more lenient measure, such as house arrest.

18. The Court of Appeal dismissed the appeals, finding that the three-judge panels had given sufficient reasons for the applicant's continued detention. In decisions dated 13 May and 16 December 2010 the Court of Appeal stated:

> "The court considers that the circumstances related to the type, gravity and the specific circumstances of the criminal offences with which the accused has been charged, the manner in which the criminal offences were committed and the potential penalty, indicate a risk of flight if the accused is released in order to avoid eventual criminal responsibility for the criminal offences in question, as the first-instance court rightfully decided, providing sufficient reasoning, which this court finds acceptable. In that connection, the allegations made by the accused in his appeal are of no relevance and cannot be accepted as sufficient evidence that the accused, if released, will not abscond.
>
> In that connection, the court took into account the accused's request to replace detention with house arrest or another, more lenient, measure ... but the court has dismissed that request because in its view, at this stage of the proceedings, custody in prison is the only effective measure to exclude the risk of the accused absconding ..."

19. Meanwhile, the applicant made several unsuccessful applications for release on bail. On 14 May 2010 he applied to the Skopje Court of First Instance for the detention order to be replaced with release on bail. As a guarantee he offered immovable property owned by third persons, valued at an estimated 860,221 euros (EUR), and offered to give his passport to the court as a further guarantee.

20. On 26 May 2010 a three-judge panel rejected the applicant's bail application. On 3 June 2010 the Court of Appeal dismissed an appeal by the applicant and upheld the panel's decision. It held that the guarantees offered by the applicant were not sufficient to ensure his presence during the proceedings, given the gravity of the charges, the potential penalty and the complexity of the proceedings, which involved many defendants and a large volume of evidence. It also took note of the fact that the applicant had been convicted at first-instance in a separate set of criminal proceedings on similar charges.

21. On 23 July 2010 the applicant again applied for release on bail because his wife had had an operation and was unable to take care of their children. As security, he offered immovable property owned by third persons (accompanied by written statements by the owners certified by a notary public), whose value was estimated at EUR 1,230,614. Furthermore, another person offered to make a court deposit of EUR 100,000.

22. On 6 August 2010 a three-judge panel refused the applicant's request, finding that the nature and the amount of bail offered by the applicant did not offer sufficient guarantees for his presence during the

proceedings. On 30 September 2010 the Court of Appeal dismissed an appeal by the applicant, relying on the gravity of the charges, the severity of the penalty and the complexity of the proceedings. It also took into account his previous history of being in conflict with the law and the fact that he had been convicted for similar offences by a first-instance judgment in another set of criminal proceedings.

23. On 25 October 2010 the applicant again applied for release on bail. He offered security of immovable property owned by third persons of an estimated value of EUR 1,230,614 and a court deposit of EUR 110,000. On 10 November 2010 a three-judge panel once again refused his bail application, relying on the gravity of the charges and the potential penalty. Additionally, it stated that the applicant had already been convicted in a separate set of criminal proceedings and sentenced to an effective prison sentence, although that conviction was still under appeal. The fact that the applicant had a family and possessions in the respondent State could not provide sufficient guarantees of his presence during the proceedings. Lastly, the applicant was advised that he could lodge an appeal against the decision with the Court of Appeal.

24. The applicant appealed against the panel's decision. On 6 December 2010 the Skopje Court of Appeal upheld his appeal and overturned the panel's decision. The court granted bail as requested and ordered the annulment of the applicant's detention after the guarantee had been deposited. It further ordered that the applicant be put under house arrest. The Court of Appeal considered that the proposed bail was a sufficient guarantee of the applicant's presence during the proceedings, given his personal circumstances and the gravity of the charges.

25. On 9 December 2010 the public prosecutor lodged a request for the protection of legality (*барање за заштита на законитоста*) with the Supreme Court. On 10 December 2010 the Supreme Court granted the prosecutor's request and overturned the Court of Appeal's decision of 6 December 2010, declaring the applicant's appeal inadmissible. The Supreme Court held that the Criminal Proceedings Act explicitly excluded the possibility of an appeal against a panel decision dismissing a request for release. Accordingly, the Court of Appeal had not been allowed by law to decide on the merits of the applicant's appeal and should have rejected it as inadmissible.

26. On 26 January 2011 the Skopje Court of First Instance convicted the applicant of the charges against him and sentenced him to twelve years' imprisonment. The court also decided that he should remain in custody until the judgment had become final. The conviction was upheld on appeal.

II. RELEVANT DOMESTIC LAW

27. A detailed description of the relevant domestic law is set out in the Court's judgment in the case of *Vasilkoski and Others v. the former Yugoslav Republic of Macedonia* (no. 28169/08, §§ 29-35, 28 October 2010).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

28. The applicant complained that the domestic courts had not given relevant and sufficient reasons for his continued pre-trial detention. He relied on Article 5 § 3 of the Convention which reads as follows:

> "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."

A. Admissibility

29. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

30. The applicant maintained that the domestic courts had not given sufficient reasons to justify his continued detention. They had decided on the extension of the pre-trial detention in respect of the applicant and the other accused in a single decision, using a stereotyped formula and without providing individualised arguments. The courts had assessed the risk of absconding *in abstracto* and had failed to provide any concrete evidence or reasons to justify further extensions of the detention order solely on those grounds, other than the severity of the penalty. The applicant's arguments regarding his and his wife's health, the medical procedure she had undergone and the fact that he had a family in the respondent State had not been taken into account. Furthermore, the domestic courts had not taken

into consideration the fact that he had been continuously detained since 21 October 2008, in relation to another set of criminal proceedings.

31. The applicant criticised the Government's reliance on media articles in their submissions to the Court. He maintained that his case had received extensive coverage in the national media, but that the coverage had not always been balanced and objective. The media had helped to create an impression in the public mind that he was a criminal, even before the criminal proceedings against him had ended.

(b) The Government

32. The Government submitted that the applicant had been arrested on the border in October 2008 while attempting to flee to Kosovo[1]. The authorities in Bulgaria, Croatia and Kosovo had sought to detain the applicant as he had been suspected of serious criminal offences. Moreover, the national authorities had not been able to reach the applicant for a certain period of time prior to his arrest. All that information had been published in the national media.

33. The Government asserted that the court orders regarding the applicant's detention had contained sufficient and relevant reasons. Even though the detention orders had referred to several accused, an assessment of the personal circumstance of each had been carried out by the domestic courts. When extending the applicant's detention, the domestic courts had taken into account the fact that he had previously been "in conflict with the law". At the time, another set of criminal proceedings against the applicant had been pending before the domestic courts. Furthermore, several international warrants for his arrest had been issued, a fact which had been reported in the media and was public knowledge.

34. The Government conceded that the court orders had not referred in detail to the circumstances related to the applicant's arrest and the fact that prior to his arrest the national authorities had not had access to him. However, they considered that the lack of detail in that regard did not mean that the domestic courts had failed to provide relevant and sufficient reasons for the applicant's detention, as those circumstances had been reported in the media and were public knowledge. In the specific circumstances of the case, the Government argued that detention had been the only effective measure to ensure the applicant's presence during the proceedings.

1. All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

2. The Court's assessment

(a) General principles

35. The applicable general principles have been summarised in *Buzadji v. the Republic of Moldova* ([GC], no. 23755/07, §§ 84-91, ECHR 2016 (extracts)); *Vasilkoski and Others* (cited above, §§ 55-57); and *Miladinov and Others v. the former Yugoslav Republic of Macedonia* (nos. 46398/09, 50570/09 and 50576/09, §§ 45-49, 24 April 2014).

(b) Application of these principles to the present case

36. The Court is mindful of the fact that the applicant had been detained since October 2008 in relation to unrelated criminal proceedings (*КОК бр. 3/09)*. Nevertheless, the Court notes that the complaints raised in the present application concern the period spent in pre-trial detention in the criminal proceedings that began on 26 December 2009 (*КОК бр. 17/10*). Accordingly, the period to be taken into consideration began on 25 December 2009 (see paragraph 7 above), and ended on 26 January 2011, when he was convicted by the first-instance court. It lasted for one year, one month and two days.

37. The Court notes that fourteen people, including the applicant, were remanded in custody by the investigating judge's decision of 26 December 2009. The detention order was based on all three grounds for pre-trial detention specified under the Criminal Proceedings Act, namely the risk of absconding, reoffending, and interfering with the investigation. After the investigation had been completed and the indictment had been lodged against the accused, the domestic courts excluded the risk of interfering with the investigation and the risk of reoffending from the list of grounds justifying further extension of the applicant's detention. For the remaining period the sole grounds for keeping the applicant and the other defendants in pre-trial detention was the risk of their absconding.

38. The Court notes that throughout the period under consideration, the domestic courts repeatedly relied on the gravity of the charges and the severity of the sentence the applicant and the other co-accused faced as decisive elements warranting the extension of their detention (see paragraphs 16 and 18 above). They also referred in vague terms to the applicant's previous history of being "in conflict with the law", without further specifying whether that referred to the parallel set of criminal proceedings or to other possible criminal cases. In the course of the proceedings for release on bail, the courts referred to the applicant's conviction in the parallel set of criminal proceedings, irrespective of the fact that the conviction had not yet become final (see paragraph 23 above). The Court has previously held that when there is no formal finding of a previous crime by a final conviction, the principle of the presumption of innocence requires that proceedings that are merely pending cannot be referred to as

proof of a propensity to commit criminal offences (see *Perica Oreb v. Croatia*, no. 20824/09, § 113, 31 October).

39. The Government submitted that the applicant had been arrested on the border with Kosovo while attempting to flee the country, that prior to his arrest the national authorities had not been able to contact him for a certain length of time and that he had been the subject of several international search warrants, all facts that had been widely published in the national media.

40. The Court notes that the domestic courts did not rely on those reasons for keeping the applicant in custody. As the Government submitted, other facts that could have supported the authorities' conclusion about the applicant's potential to abscond might have existed, however, they were not mentioned in the detention orders and it is not the Court's task to establish such facts and take the place of the national authorities who ruled on the issue of detention (see *Yuriy Yakovlev v. Russia*, no. 5453/08, § 73, 29 April 2010, and *Valeriy Kovalenko v. Russia*, no. 41716/08, § 49, 29 May 2012). Accordingly, the reasons which the Government raised for the first time in the proceedings before the Court cannot be taken into account (see *Orban v. Croatia*, no. 56111/12, § 61, 19 December 2013).

41. As to the risk of absconding, the Court considers that the danger of fleeing cannot be gauged solely on the basis of the severity of the sentence faced. While the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, 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 facts which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial. Furthermore, an extension order requires a more solid basis to show not only that there was genuinely "a reasonable suspicion", but also that there were other serious public-interest considerations which, notwithstanding the presumption of innocence, outweighed the right to liberty (see *Miladinov and Others*, cited above, § 54 and authorities cited). The Court observes that each time they extended the applicant's detention, the domestic courts repeated the same stereotype formula with identical wording. There is, therefore, no indication that they sufficiently assessed the applicant's personal situation beyond a mere reference to his possessions and family situation (see paragraph 16 above), which was not accompanied by any explanation as to why his personal circumstances made detention necessary, given that he had immovable property and a family, including children who were still minors, residing in the respondent State. The courts did not refer to any examples of behaviour which indicated a risk of his absconding. Nor did they identify any other serious public interest considerations justifying the repeated extension of his pre-trial detention.

42. Moreover, the orders extending the pre-trial detention had little if any regard to the applicant's individual circumstances, as his detention was extended by means of collective detention orders covering both him and the other defendants. 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 *Vasilkoski and Others*, cited above, § 63).

43. Lastly, the Court is not satisfied that the domestic courts genuinely considered the possibility of imposing other measures to ensure the applicant's presence at the trial. In particular, in their assessment of the applicant's application for bail, supported by a substantial amount of money as security, the domestic courts constantly referred to the severity of the charges, the potential penalty and the fact that the applicant had been convicted at first instance in the parallel set of criminal proceedings, which, as already explained above, cannot in themselves be used as a sufficient reason. It is true that on 6 December 2010 the Skopje Court of Appeal accepted the applicant's appeal, granted bail of EUR 1,340,614 and placed him under house arrest. However, the Supreme Court annulled that decision, declaring the applicant's appeal inadmissible (see paragraph 25 above).

44. Having regard to the foregoing, and even taking into account the fact that the authorities were faced with a particularly difficult task of dealing with a case concerning charges of organised crime, the Court concludes that by failing to refer to concrete, relevant facts justifying the applicant's detention or to give genuine consideration to alternative "preventive measures", the authorities extended the applicant's detention on grounds which cannot be regarded as "relevant and sufficient" within the meaning of the Court's case-law (see *Vasilkoski and Others*, cited above, § 64, and *Miladinov and Others*, cited above, § 58). In those circumstances, it is not necessary to examine whether the proceedings were conducted with special diligence (see *Orban*, cited above, § 62, and *Sadretdinov v. Russia*, no. 17564/06, § 86, 24 May 2016).

45. There has therefore been a violation of Article 5 § 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 5,760,000 euros (EUR) in respect of pecuniary damage on account of a loss of equity capital which he alleged had occurred as a result of the fact that during the period of his detention he had been unable to undertake activities necessary for the normal operation of a company in which he was a majority shareholder. The applicant also claimed EUR 1,850,000 in respect of non-pecuniary damage for the pain and stress suffered as a result of his detention.

48. The Government contested the claims as excessive and unsubstantiated.

49. The Court does not discern any causal link between the violation found and the pecuniary damage alleged and it therefore rejects that claim. Having regard to all the circumstances of the case, the Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation (see *Dervishi v. Croatia*, no. 67341/10, § 151, 25 September 2012). Making its assessment on an equitable basis, the Court awards the applicant EUR 660 in respect of non-pecuniary damage, plus any tax that may be chargeable to him.

B. Costs and expenses

50. The applicant also claimed EUR 180,000 for the costs and expenses incurred before the domestic courts and EUR 4,500 for those incurred before the Court.

51. The Government contested the claims as unsubstantiated and excessive.

52. 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. The Court points out that under Rule 60 §§ 2 and 3 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 *Lazoroski v. the former Yugoslav Republic of Macedonia*, no. 4922/04, § 88, 8 October 2009).

53. In the present case, the Court notes that the applicant failed to submit itemised claims or any supporting documents or particulars concerning the costs and expenses incurred in the domestic proceedings or those before the Court. In such circumstances, the Court makes no award.

C. Default interest

54. The Court considers it appropriate that the default interest rate 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 applicant's prolonged detention admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 660 (six hundred and sixty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
   (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;

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

Done in English, and notified in writing on 7 June 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Kristina Pardalos
Deputy Registrar	President