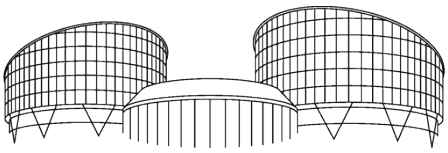

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF VELINOV v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

(Application no. 16880/08)

JUDGMENT

STRASBOURG

19 September 2013

FINAL

19/12/2013

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

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

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

Isabelle Berro-Lefèvre, President,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Ksenija Turković,
Dmitry Dedov, judges,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 August 2013,

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

PROCEDURE

1. The case originated in an application (no. 16880/08) 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 a Macedonian national, Mr Pančo Velinov ("the applicant"), on 19 March 2008.

2. The applicant was represented by Mr T. Torov, a lawyer practising in Štip. The Macedonian Government ("the Government") were initially represented by their former Agent, Mrs R. Lazareska Gerovska, and subsequently by their present Agent, Mr K. Bogdanov.

3. The applicant alleged that, in particular, he had been deprived of his liberty without compensation in breach of Article 5 §§ 1, 2 and 5 of the Convention; that the compensation proceedings regarding his detention had been unreasonably lengthy (Article 6); and that he had not had an effective remedy with respect to their length (Article 13).

4. On 5 May 2011 these complaints were communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1952 and lives in Kočani.

A. The applicant's conviction and detention

6. On 30 June 2000 the Ministry of the Interior instituted misdemeanour proceedings against the applicant, a driver employed by company B.E. ("the company"), for driving an unroadworthy bus. The proceedings also concerned the company and a responsible officer of the company. On 22 September 2000 Štip Court of First Instance ("the trial court") convicted the applicant of a minor offence and ordered him to pay a fine in the amount of 2,000 Macedonian denars (MKD) (equivalent to 33 euros (EUR)). The applicant was ordered to pay the fine within fifteen days of the judgment becoming final. The judgment further specified the bank account to which payment of the fine was to be made. The court also referred to section 15(1) of the Misdemeanour Act 1997 (see paragraph 22 below), stating that if the applicant did not pay the fine within the specified time-limit, the court would enforce it by converting the fine into a prison sentence, on the basis of one day's imprisonment for every MKD 1,000 owed. A reprimand was issued regarding the company and its responsible officer. This judgment became final on 27 September 2001 (*Pkr.br.2149/2000*).

7. On 14 November 2001 the trial court ordered the applicant to pay the fine and appear in court on 26 November 2001 in order to submit proof of payment. As established in the course of the compensation proceedings instituted by the applicant (see paragraph 17 below), the letter informing him of the court order was served on his son.

8. On 7 February 2002 a trial court judge responsible for the enforcement of sanctions converted the fine into a two-day prison sentence ("the detention order"). The detention order stated that:

> "The [applicant] did not pay the fine, either within the time-limit set or after the court had ordered and warned him to do so ... In view of the foregoing ... the court has decided to enforce the fine ... by means of converting it into a two-day prison sentence."

9. On 12 February 2002 the detention order was served on the applicant in person. He was further informed that he would start serving the sentence on 15 March 2002 in Štip Prison. The prison was also informed of the start date of the prison sentence.

10. On 13 February 2002 the applicant paid the fine. According to a payment slip of that date, the applicant indicated the number of the domestic case file in respect of which the payment was made (*Pkr.br.2149/2000*). He did not submit a copy of the payment slip to the trial court.

11. As stated by the Government in their observations:

> "On 28 October 2002 the applicant was arrested in his house. He was not informed of the reasons for his arrest. [The applicant] alleges that he was informed of the reasons for his arrest in the afternoon on 29 October 2002".

12. On 29 October 2002 and after he had submitted a copy of the payment slip, the applicant was released from prison. The release order issued by Štip Prison indicated that:

> "[The applicant] is released on 29 October 2002 on the basis of a notification received from the trial court that the fine has been paid."

B. Compensation proceedings for unlawful detention

13. On 22 November 2002 the applicant contacted the Ministry of Justice with a view to securing an out-of-court settlement and the payment of MKD 310,000 (equivalent to EUR 5,060) in respect of non-pecuniary damage for what he claimed had been the unlawful deprivation of his liberty. By letter of 10 December 2002 the Ministry, referring to section 526 of the Criminal Proceedings Act 1997 (see paragraph 37 below), rejected the applicant's request, stating that he had not presented any evidence that he had been wrongfully convicted or detained.

14. On 17 January 2003 the applicant brought a civil action against the State claiming the same amount of money for non-pecuniary damage sustained as a result of the alleged unlawful deprivation of his liberty. He claimed that on 28 October 2002 he had been detained by police without being informed of the reasons for his arrest.

15. According to the Government, on 23 March 2007 the trial court forwarded the applicant's statement of claim to the Solicitor General (*Јавен Правобранител*) for comment. On 24 April 2007 the court set a date for a preparatory hearing (*подготвително рочиште*).

16. During that hearing, which took place on 23 May 2007, the applicant stated that the signature on the delivery receipt concerning the court's letter of 14 November 2001 (see paragraph 7 above) was not his. He stated that:

> "... After I had received the delivery receipt regarding the court order for the payment of the fine, I contacted the company and asked them to pay the MKD 2,000. In February I again received a court warning letter to pay the fine ... under threat of [it] being converted into a prison sentence. After I had received that information from the court, I called the company within a day or two seeking to have the fine paid. The payment slip was prepared by the company for which I work and I immediately took the money that they had given me (in order) to transfer it to the court's bank account. I did not submit proof of payment to the court ...
>
> ... I would like to point out that after I had received the judgment and the warning letter [stating] that the fine, in case of non-payment, would be converted into a prison sentence, I immediately contacted the company and paid the fine. However, I did not submit proof of payment to the court."

17. The court set two further hearings, the second of which took place on 19 June 2007 when it dismissed the applicant's claim. The trial court held that the letters of 14 November 2001 and 12 February 2002 (see paragraphs 7 and 9 above) had been properly served on the applicant. As to

the former, the court found that it had been served on the applicant's son, who at the time, and as stated by the applicant, had been mature and could have understood the contents of that letter. On 13 February 2002 the applicant had paid the fine without notifying the court, despite the fact that he had known about the conversion of the fine into a prison sentence and his obligation to submit proof of payment to the court. The court, having been unaware that the fine had been already paid, had therefore issued an arrest warrant against the applicant. The court further held that on 28 October 2002 the police had gone to the applicant's house and arrested him. As stated by the court:

> "During [the applicant's] arrest, police officers were holding the arrest order in their hands, but it was not handed over to [the applicant]. [The applicant] was not informed of the reasons for his arrest. The next day, [the applicant] was informed in Štip Prison that he had been detained for having failed to pay the fine [imposed in] case Pkr.br.2149/2000. Then, he informed the [prison officials] that he had already paid the fine in February and called his son, who brought the payment slip. On 29 October 2002 [the applicant] was released from Štip Prison. [The applicant] was detained in Štip Prison for one day."

18. In its decision, the court referred to the applicant's attempt to seek an out-of-court settlement with the Ministry of Justice. It also addressed an expert report, which confirmed that the applicant had sustained non-pecuniary damage (mental pain and anxiety) as a result of his detention. Relying on section 141 of the Obligations Act 2001 (see paragraph 40 below), the court found that:

> "... no responsibility for the non-pecuniary damage suffered by [the applicant] can be attributed to the defendant, which acted in compliance with the law.
>
> ...
>
> The court has examined [the applicant's] argument that he was detained in Štip Prison without [there being] any order [for that detention], but [the court] dismisses [that argument] as it has established, on the basis of [the applicant's] statement made on 23 May 2007, that, at the time of his arrest, the police officers had the arrest order in their possession."

19. The applicant appealed against this decision, arguing, *inter alia*, that by paying the fine, he had discharged his duty and it had been the State's responsibility to have in place a system of registering payments, including a payment such as that which he had made in the present case. The detention order, which had been served on him on 12 February 2002, had not contained any instructions requiring him to submit proof of payment. He further contested the trial court's finding that the court order of 14 November 2001 had been served on his son. In this connection, he stated that no expert examination of the signature on the delivery receipt had been carried out. Relying on Article 5 §§ 2 and 5 and Article 6 of the Convention, the applicant complained that he had not been informed of the reasons for

his arrest, that the proceedings had lasted too long and that he had been denied the right of access to court.

20. On 10 September 2007 the Štip Court of Appeal dismissed the applicant's appeal, finding no grounds to depart from the established facts and reasoning given by the first-instance court. It ruled that the applicant was responsible for the events related to his detention since he had neither paid the fine within the time-limit set nor notified the court of the payment once made. This decision was served on the applicant on 21 September 2007.

II. RELEVANT DOMESTIC LAW

A. Misdemeanour Act 1997 *(Закон за прекршоци)*

21. According to section 2(1) of the Misdemeanour Act 1997, as in force at the time, the Criminal Code likewise applied to misdemeanour liability, and the imposition and enforcement of misdemeanour sanctions, unless otherwise specified by law. Misdemeanour proceedings were to be conducted under the rules of the Criminal Proceedings Act, unless otherwise specified by law.

22. Under section 15(1) of the Misdemeanour Act, if a convicted person did not pay any fine imposed within the specified time-limit, the court would enforce it by converting it into a prison sentence, on the basis of one day's imprisonment for every MKD 1,000. The prison sentence could not exceed sixty days. Under subsections 2 and 3, if the convicted person partly paid a fine exceeding MKD 2,000, the remainder would be converted into a prison sentence. The execution of a prison sentence that had been imposed for non-payment of part of a fine would be terminated (*прекинува*) if the convicted person paid the remainder of the fine.

23. Prison sentences, fines and fines converted into prison sentences would be enforced according to the Enforcement of Sanctions Act, unless otherwise specified by law (section 96).

24. Under section 99 of the Act, the trial court could itself initiate the mandatory enforcement of a fine. The mandatory enforcement action would be carried out under the rules for the mandatory enforcement of a fine issued in criminal proceedings.

B. Criminal Code 1996 *(Кривичен Законик)*

25. Under section 38 of the Criminal Code, a trial court shall specify in its judgment the time-limit within which a fine is to be paid, which can neither be less than fifteen days nor more than sixty days. If the convicted person does not pay the fine within the specified time-limit, the court shall

enforce it by converting the fine into a prison sentence, on the basis of one day's imprisonment for every MKD 1,000. The prison sentence cannot exceed sixty days. According to subsection 4, if the fine is partly paid, the remainder shall be converted into a prison sentence. If the remainder of the fine is paid, the execution of the prison sentence shall be terminated.

C. Enforcement of Sanctions Act 1997 *(Закон за извршување на санкции)*

26. Section 83 of the Enforcement of Sanctions Act 1997 provided that a detention order should be served on the offender in person. The detention order should indicate the date on which the convicted person would start serving the sentence.

27. Under section 84, the competent court was also required to inform the relevant prison about the date on which the convicted person would start serving the sentence.

28. Chapter XVII of the Act concerned the enforcement of fines. Under section 26, if the convicted person did not pay the fine within the specified time-limit, it could be made the subject of a mandatory enforcement (*присилно извршување*) action.

29. The trial court could initiate, on its own motion, the mandatory enforcement of a fine (section 227).

30. Section 228 provided that a mandatory enforcement action could be carried out against the movable property of the convicted person. If the movable property was insufficient to satisfy the fine, the mandatory enforcement action could be carried out against the immovable property of the convicted person, which was not exempted, under the rules of enforcement proceedings, from enforcement of judgments.

31. Under section 229 of the Act, if the fine could not be enforced, in part or in total, through a mandatory enforcement action, the court which had issued the fine could then decide on its conversion into a prison sentence.

D. Criminal Proceedings Act 1997 *(Закон за кривичната постапка)*

32. Section 3 of the Criminal Proceedings Act 1997 provided that anyone who was 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.

33. According to section 126 of the Act, if mandatory enforcement of a fine was impossible, the court should enforce it in accordance with the relevant statutory provisions.

34. Under section 343(2) of the Act, if a fine was issued against an accused, the court was required to indicate in the judgment the time-limit

within which the fine should be paid, as well as the way in which it should be dealt with if it could not be enforced through a mandatory enforcement action.

35. Under section 392(1) § 7 of the Act (inserted into the Act in 2004), a case may be reopened if the European Court of Human Rights has given a final judgment finding a violation of the individual's human rights.

36. Chapter XXXII of the Act concerned, *inter alia*, compensation for wrongful conviction or unjustified detention (*неоправдано осудени и неосновано лишени од слобода*).

37. Section 526 related to compensation for wrongful conviction.

38. Sections 527(2) and 528 of the Act stipulated that the party concerned had to lodge any claim for damages (related to wrongful conviction) 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 claimant could claim compensation before the court of competent jurisdiction.

39. In accordance with section 530(1) § 3 of the Criminal Proceedings Act 1997, 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 public body. Subsection 3 of this paragraph provided that no compensation would be awarded to a person who, due to his or her illegal (*недозволени*) actions, had caused his or her own deprivation of liberty.

E. Obligations Act of 2001

40. Section 141 of the Obligations Act provides for compensation of damage, unless the defendant proves that no responsibility could be attributed to him or her for the damage.

F. Civil Proceedings Act 2005

41. Section 400 of the Civil Proceedings Act 2005 provides that a case may be reopened if the European Court of Human Rights has given a final judgment finding a violation of the Convention or its Protocols ratified by the respondent State.

G. Courts Act (*Закон за судовите*) of 2006 ("the 2006 Act")

42. Sections 35 § 1 (6) and 36 of the 2006 Act provided for a length remedy, which was to be decided, as stated in section 35 § 1 (6), by the Supreme Court. According to the Act, in case of a violation of the reasonable-time requirement, the competent court could award just satisfaction.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

43. The applicant complained under Article 5 § 1 of the Convention that he had been unlawfully deprived of his liberty when imprisoned on 28 October 2002. Article 5 § 1 of the Convention reads 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:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. Admissibility

44. The Government did not raise any objection as regards the admissibility of this complaint.

45. The Court notes that this part of the application 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

46. The applicant reiterated that he had been detained contrary to Article 5 § 1 of the Convention. In this connection, he argued that the State ought to have had in place an efficient system of recording and tracing payments of court fines. He had not been obliged to provide the trial court with a copy of the payment slip. He further denied that the court's warning letter of 14 November 2001 had been correctly served on him. There was no proof that it had been delivered to his son.

47. The Government submitted that the applicant had been lawfully detained due to his failure to comply with a court order. The applicant had not paid the fine either within the time-limit specified in the trial court's judgment or after the trial court had ordered him to do so within the additional period specified in the letter of 14 November 2001 (see paragraphs 6 and 7 above). Furthermore, the applicant had failed to inform the trial court that he had paid the fine, notwithstanding the court's explicit request in that respect (see paragraph 7 above). The Government explained that court fines were paid and recorded with the Ministry of Finance. Statements regarding payments received by the Ministry of Finance were not transferred to the courts. In order to keep track of payments, convicted persons who had paid a fine were required to provide the courts with a copy of their payment slip. In any event, the applicant had been detained on the basis of the detention order of 7 February 2002, pursuant to which the fine had been converted into a prison sentence. It had been irrelevant that the applicant had paid the fine after that decision. In such circumstances, the Government denied that the applicant's detention had been contrary to the relevant part of Article 5 § 1 (b) of the Convention.

2. The Court's assessment

48. The Court reiterates that Article 5 § 1 of the Convention requires in the first place that any detention be "lawful", which includes the condition of compliance with a procedure prescribed by law. The Convention here essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof, but it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness. A period of detention will in principle be lawful if it is carried out pursuant to a court order (see *Witold Litwa v. Poland*, no. 26629/95, §§ 72 and 73, ECHR 2000-III; and *Gatt v. Malta*, no. 28221/08, § 40, ECHR 2010).

49. Furthermore, the list of exceptions to the right to liberty secured in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that

no one is arbitrarily deprived of his liberty (see *Vasileva v. Denmark*, no. 52792/99, § 33, 25 September 2003).

50. Turning to the present case, the Court notes that the applicant was imprisoned in Štip Prison between 28 and 29 October 2002 (see paragraph 17 above). It is not disputed that he was accordingly "deprived of his liberty" within the meaning of Article 5 § 1 of the Convention. The Government argued and put forth arguments that the applicant's detention had been ordered in conformity with Article 5 § 1 (b) of the Convention. The applicant does not appear to disagree that his detention should be examined under that provision. Indeed, the release order issued by Štip Prison was based on evidence that the fine had been paid and thus that the applicant had complied with the relevant court order (see paragraph 12 above). The Court therefore sees no reason to examine the case under a different provision of the Convention.

51. By the judgment of 22 September 2000 the applicant was convicted and ordered to pay the fine within fifteen days of the judgment becoming final. The judgment clearly stated that in the event of non-payment, the fine would be converted into a two-day prison sentence. That was compliant with domestic law (see paragraphs 22, 25 and 33 above). The judgment became final on 27 September 2001.

52. Since the applicant did not pay the fine within the time-limit set by the trial court, the court ordered him, by letter of 14 November 2001, to pay the fine. It further instructed the applicant to appear before it on 26 November 2001 in order to present a copy of the payment slip. It is not in doubt that the applicant, who was aware of that letter (see paragraph 16 above), failed to comply with the payment order. In such circumstances, the judge responsible for the enforcement of sanctions converted the fine into a two-day prison sentence (see paragraph 8 above). That order was issued pursuant to section 15(1) of the Misdemeanour Act and section 38(2) of the Criminal Code (see paragraphs 22 and 25 above). It appears that no action was taken with a view to mandatory enforcement of the fine, as provided for in domestic law (see paragraphs 24, 28, 29 and 30 above). However, the Court notes that the applicant did not raise any complaint on that ground. In such circumstances, it is not in doubt that the detention order of 7 February 2002 was issued in "accordance with a procedure prescribed by law".

53. The Court recalls that "lawfulness" is required in respect of both the ordering and the execution of measures involving deprivation of liberty (see, *mutatis mutandis*, *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33).

54. In this connection, the Court notes that the applicant was arrested and detained in Štip Prison pursuant to the detention order of 7 February 2002. That order was issued with a view to enforcing the fine, which the applicant had not paid as at that date (see paragraph 8 above). The applicant, however, paid the fine on 13 February 2002, a day after he had received the

detention order. He did not however, inform the trial court that he had paid the fine, notwithstanding the court's explicit request in that respect. In such circumstances, the Court needs to examine whether the payment of the fine after it had been converted into a prison sentence made his subsequent imprisonment unlawful. The other relevant issue is whether the fact that the applicant failed to notify the court that he had paid the fine justified his imprisonment.

55. As to the former, the Court notes that, unlike rules on partial payment of a fine, there were no statutory provision regarding the execution of a prison sentence converted from a fine, which, after the conversion, was paid in full. According to the relevant legislation, in case of partial payment of a fine, the remainder which was not paid would be converted into a prison sentence. Subsequent payment of the remainder of the fine which had been converted into a prison sentence entailed termination of the execution of the sentence (see paragraphs 22 and 25 above). The Court sees no reasons, nor was it presented with any arguments, why those rules could not have been relied on in the circumstances of the present case, where the fine had been paid in full before the execution of the converted prison sentence started. On the facts of the case, it is evident from the release order issued by Štip Prison that the applicant was released on the basis of evidence that the fine had been paid (see paragraph 12 above). In such circumstances, in the Court's view, the basis for the applicant's detention under Article 5 § 1 (b) of the Convention ceased to exist as soon as he complied with the payment order, the relevant date being 13 February 2002 (see, *mutatis mutandis*, with respect to "fulfilment of any obligation prescribed by law", *Osypenko v. Ukraine*, no. 4634/04, § 57, 9 November 2010, and *Lolova-Karadzhova v. Bulgaria*, no. 17835/07, § 29, 27 March 2012).

56. The Court further notes that the applicant did not notify the trial court about the payment, notwithstanding its explicit order in that respect (see paragraph 7 above). In the compensation proceedings, the trial court referred to that failure and concluded that no responsibility could be attached to the State for the applicant's subsequent arrest and detention. The Court is not convinced by that explanation. In this connection it observes that there was no statutory provision requiring the applicant to notify the court about the payment of the fine. Furthermore, the applicant was arrested and imprisoned on 28 October 2002, namely over eight months after the detention order had been issued and the applicant had paid the fine. During this time, the trial court was unaware that the applicant had complied with the payment order. As the Government admitted in their observations, there was no exchange of information between the trial court and the Ministry of Finance that the fine had been paid. In the Court's view, the applicant's failure to notify the trial court that he had paid the fine cannot release the respondent State from the obligation to have in place an efficient system of recording the payment of court fines. The decision-making process in

matters where a person's liberty is at stake should take into account all the relevant circumstances of the case. The importance of the applicant's right to liberty required the respondent State to take all necessary measures in order to avoid his liberty being unduly restricted.

57. In view of the foregoing, the Court considers that the applicant's detention in Štip Prison was contrary to Article 5 § 1 (b) of the Convention. There has therefore been a breach of that provision.

II. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

58. The applicant complained under Article 5 § 2 of the Convention that he had not been informed of the reasons for his imprisonment. Article 5 § 2 read as follows:

> "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."

A. Admissibility

59. The Government did not raise any objection as regards the admissibility of this complaint.

60. 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

61. The applicant maintained that he had not been informed of the reasons for his arrest. That failure had been confirmed in the compensation proceedings (see paragraph 17 above). Had the authorities complied with the requirement under this head, he would not have been arrested and detained.

62. The Government submitted that the case file in the misdemeanour proceedings had meanwhile been destroyed and that accordingly limited information was available regarding the events surrounding the applicant's arrest. Given that the courts, in the compensation proceedings, had established that the applicant had not been informed of the reasons for his arrest, the Government stated that:

> "... the State is not able to present further evidence that [the applicant's arrest] was carried out in compliance with Article 5 § 2 of the Convention, i.e. that the applicant was informed of the reasons for his arrest."

2. The Court's assessment

63. 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 *Lazoroski v. the former Yugoslav Republic of Macedonia*, no. 4922/04, § 52, 8 October 2009).

64. The Court notes that in the compensation proceedings the trial court established that the police officers who had arrested the applicant in his house had had the arrest order in their possession, but they had failed to hand it over to the applicant. It therefore concluded that the applicant had not been informed of the reasons for his arrest (see paragraph 17 above). The Government did not submit any arguments to prove the contrary (see paragraphs 11 and 62 above).

65. The Court sees no reason to find otherwise. It cannot speculate what the subsequent flow of events would have been had the police officers informed the applicant of the reasons for his arrest. However, it underlines that the applicant was released as soon as he provided a copy of the payment slip, which he did immediately after he had learnt why he was being deprived of his liberty.

66. Against that background, the Court finds that the applicant was not 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.

III. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

67. The applicant also complained that he had not received any compensation for the alleged unlawful imprisonment. He relied on Article 5 § 5 of the Convention, which reads as follows:

> "5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. Admissibility

68. The Government did not raise any objection as regards the admissibility of this complaint.

69. 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

70. The applicant did not provide any comments under this head. It can be however assumed that he maintained that there had been a violation of his rights under this head.

71. The Government stated that the applicant had not had an enforceable right to compensation, as required under Article 5 § 5 of the Convention, since the courts had dismissed his compensation claim, despite the fact that they had established that he had not been informed of the reasons for his arrest, as required under Article 5 § 2 of the Convention. Lastly, they referred to the possibility, under domestic law, of reopening of the proceedings if the Court found a violation of the Convention (see paragraphs 35 and 41 above).

2. The Court's assessment

72. The Court will confine its examination to the applicant's complaints under this head taken in conjunction with Article 5 § 2 of the Convention. In this connection it notes that in so far as it has found that there has been a violation of Article 5 § 2 of the Convention in the applicant's case, Article 5 § 5 of the Convention is also applicable. It further reiterates that Article 5 § 5 of the Convention is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to one of the preceding paragraphs of Article 5 of the Convention, as established either by a domestic authority or by the Court (see *Włoch v. Poland (no. 2)*, no. 33475/08, § 25, 10 May 2011, and *Korneykova v. Ukraine*, no. 39884/05, § 79, 19 January 2012).

73. In the present case, the Court notes that section 3 of the Criminal Proceedings Act set out the requirement that anyone who was arrested or detained had to be informed promptly of the reasons for their arrest or detention. Section 141 of the Obligations Act set out the general principle of compensation of damages. Section 530(1) § 3 of the Criminal Proceedings Act provided for the right to compensation in the event of unjustified detention through the fault or unlawful conduct of a public body. In the compensation proceedings, which were apparently instituted pursuant to the procedural rules of the Criminal Proceedings Act (see paragraphs 36-39 above), the applicant claimed *inter alia* that he had not been informed of the reasons for his arrest. The domestic courts dismissed his claim despite the fact that they had established that the applicant had not been informed of the reasons for his arrest (see paragraph 17 above). The Government admitted that it amounted to a violation of the applicant's rights under Article 5 § 5 of the Convention (see paragraph 71 above).

74. The Court sees no reasons to hold otherwise. Furthermore, in the absence of any evidence to the contrary, it does not appear that reopening of the proceedings, if possible, following a judgment in which this Court finds a violation of the Convention would secure such a right to the applicant. Having regard to the circumstances of the case, to require that the applicant seek re-opening of the compensation proceedings would place a disproportionate burden on him. The Court thus concludes that there has been a violation of Article 5 § 5 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

75. The applicant complained that the length of the compensation proceedings had been incompatible with the "reasonable time" requirement under 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 ... hearing within a reasonable time by [a] ... tribunal ..."

A. Admissibility

76. The Government did not raise any objection as regards the admissibility of this complaint.

77. 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

78. The applicant reiterated that the length of the compensation proceedings had been excessive.

79. The Government accepted that the length of the impugned proceedings had been unduly protracted, given the fact that over four years had elapsed between the introduction of the applicant's claim and the first action taken by the trial court (see paragraphs 14 and 15 above).

2. The Court's assessment

80. The Court notes that the compensation proceedings lasted between 17 January 2003 and 21 September 2007, when the Court of Appeal's

judgment was served on the applicant. The proceedings therefore lasted about four years and eight months at two levels of jurisdiction.

81. 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).

82. The Court does not consider that the case required examination of complex issues.

83. It further finds that no delays were attributable to the applicant.

84. As regards the conduct of the domestic courts, the Court observes that the proceedings lay dormant for over four years until the trial court communicated the applicant's claim to the Solicitor General (see paragraphs 14 and 15 above). During this time, the trial court took no action. That the applicant's claim was subsequently decided with reasonable expedition cannot compensate for the initial inactivity of the trial court. The Government also admitted that that inactivity had unduly protracted the overall length of the proceedings (see paragraph 79 above).

85. The Court therefore considers that the length of the compensation proceedings was excessive and failed to meet the reasonable-time requirement of Article 6 § 1 of the Convention.

86. There has accordingly been a breach of that provision.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

87. The applicant also complained that he had had no effective remedy whereby he could have raised the issue of the excessive length of the compensation proceedings in his case. He alleged that there had accordingly been a violation of 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."

A. Admissibility

88. The Government did not raise any objection as regards the admissibility of this complaint.

89. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

90. The Government submitted that the length remedy, as specified in the 2006 Act (see paragraph 42 above), could have been effective in his case, notwithstanding that it had not been regarded as such at the relevant time (see *Parizov v. the former Yugoslav Republic of Macedonia*, no. 14258/03, 7 February 2008). However, the applicant could have attempted to make use of that remedy. The case-law of the Supreme Court, which had had jurisdiction to decide cases in which claimants sought to use the length remedy, confirmed that it had examined on the merits such claims introduced on the basis of the 2006 Act. What the outcome of the proceedings would have been had the applicant used that remedy could not be speculated upon.

91. The applicant submitted that the length remedy, as in operation at the relevant time, had not been effective. That had been confirmed in the Court's case-law on the matter. Consequently, he had not been required to have recourse to the length remedy.

2. The Court's assessment

92. The Court observes that the compensation proceedings ended on 21 September 2007, when the length remedy, as accepted by the Government (see paragraph 88 above), was not effective. Only after the improvements noted in the *Adži-Spirkoska and Others* case (see *Adži-Spirkoska and others v. the former Yugoslav Republic of Macedonia* (dec.), nos. 38914/05 and 17879/05, 3 November 2011) were made, was the Court able to regard the length remedy as effective (see *Ogražden Ad and Others v. the former Yugoslav Republic of Macedonia*, nos. 35630/04, 53442/07 and 42580/09, §§ 17 and 29, 29 May 2012). Consequently, it sees no reason to depart from its earlier case-law in which it found a violation of Article 13, taken in conjunction with Article 6, due to lack of an effective remedy concerning length-of-proceedings cases that pre-dated the *Adži-Spirkoska and Others* case (see *Atanasovic and Others v. the former Yugoslav Republic of Macedonia*, no. 13886/02, § 47, 22 December 2005; *Kostovska v. the former Yugoslav Republic of Macedonia*, no. 44353/02, § 53, 15 June 2006; and *Krsto Nikolov v. the former Yugoslav Republic of Macedonia*, no. 13904/02, § 33, 23 October 2008).

93. In view of the above considerations, the Court concludes that there has been a breach of Article 13, taken in conjunction with Article 6 of the Convention.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

94. Lastly, the applicant complained under Article 3 of the Convention that he had been subjected to inhuman and degrading treatment at the time of his arrest and that the conditions of his detention in Štip Prison had been inappropriate, given his poor health. Relying on Article 6 §§ 1 and 2 of the Convention, he complained that he had been denied the right of access to court and that the principle of equality of arms had not been upheld, in that he had been punished twice for the same offence and because the courts had rejected his request to have an expert verify whether the signature on the delivery receipt concerning the court order of 14 November 2001 belonged to him. He also cited Article 1 of Protocol No. 1.

95. The Court has examined these complaints. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

96. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

97. 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

98. The applicant claimed the equivalent to approximately 9,900 euros (EUR) together with interest in respect of non-pecuniary damage for the emotional suffering, anxiety and loss of reputation which he had suffered due to the deprivation of his liberty and the length of the compensation proceedings. In support, he referred to the expert report admitted in the compensation proceedings (see paragraph 18 above).

99. The Government contested this claim as excessive and unsubstantiated.

100. The Court considers that the applicant must have sustained non-pecuniary damage, which cannot be compensated solely by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,500 under this head, plus any tax that may be chargeable.

B. Costs and expenses

101. The applicant also claimed EUR 500 for costs and expenses incurred before the domestic courts and EUR 1,000 for those incurred before the Court. These figures concerned lawyer's fees based on the fee scale of the Macedonian Bar. The applicant submitted a fee note (*трошковник*) regarding his lawyer's fees in the compensation proceedings, according to which the total amount of lawyer's fees had been set at MKD 25,290 (the applicant stated that this corresponded to EUR 500).

102. The Government contested these claims as speculative and unsubstantiated. In particular, they argued that the applicant had not presented any evidence that any of the costs claimed had actually been incurred.

103. 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). That is to say, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or to obtain redress (see *Belchev v. Bulgaria*, no. 39270/98, § 113, 8 April 2004, and *Hajnal v. Serbia*, no. 36937/06, § 154, 19 June 2012). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award EUR 410 for costs and expenses in the compensation proceedings and EUR 850 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

104. 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 complaints under Articles 5, 6 (regarding the length of the compensation proceedings) and 13 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 (b) of the Convention;

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

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

5. *Holds* that there has been a violation of Article 6 of the Convention regarding the length of the compensation proceedings;

6. *Holds* that there has been a violation of Article 13 of the Convention, taken in conjunction with Article 6 of the Convention;

7. *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, where applicable, into the national currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 1,500 (one thousand and five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,260 (one thousand two hundred and sixty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 19 September 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President