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La Corte Edu sulla legittimità delle misure cautelari privative della libertà personale
(CEDU, sez. II, sent. 14 novembre 2023, ric. nn. 57325/19 e 16291/20)

La questione esaminata dalla Corte nel presente giudizio verte sulla legittimità delle misure cautelari applicate nei confronti del ricorrente in diversi procedimenti penali; misure consistenti nella privazione della libertà personale ora in carcere ora agli arresti domiciliari.
A tal riguardo la Corte precisa come, a livello generale, i principi applicabili nella valutazione delle misure restrittive della libertà personale non si differenzino in ragione del luogo in cui tale privazione avvenga, sia esso il carcere o una privata abitazione; inoltre, sebbene le misure cautelari siano applicate in momenti diversi, la valutazione dovrà essere comprensiva dell'intero periodo di privazione della libertà.
Nel caso di specie, e in occasione del primo procedimento penale, la Corte riconosce l'esistenza di un ragionevole sospetto circa la colpevolezza dell'imputato, tale da giustificare l'applicazione di una misura cautelare ablativa della libertà; al contrario, l'applicazione di misure cautelari nel secondo procedimento si è basata esclusivamente sul rischio di fuga dell'imputato ma senza una valutazione concreta ed effettiva della situazione personale del ricorrente, omettendosi quindi di fornire una più seria giustificazione circa l'inflizione di simili misure (specie sotto l'aspetto della proporzionalità). In altri termini, le autorità giudiziarie hanno fornito una motivazione soltanto formale ma non anche sostanziale, basata su circostanze concrete.
A ciò si aggiunga che, a dispetto di quanto stabilito dall'art. 5 della Convenzione Edu – che consente la privazione della libertà soltanto in casi tassativamente elencati - il giudice ha invertito l'onere della prova a carico del ricorrente.
Per queste ragioni, la Corte ritiene che, sebbene i motivi a sostegno dell'applicazione di misure cautelari potessero essere considerati "rilevanti", essi non fossero altrettanto "sufficienti" per giustificare la privazione della libertà personale del ricorrente, integrando così una violazione dell'art. 5 della Convenzione.

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

SECOND SECTION

CASE OF XXX v. NORTH MACEDONIA

(Applications nos. 57325/19 and 16291/20)

JUDGMENT

STRASBOURG

14 November 2023

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 XXX v. North Macedonia,

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

Arnfinn Bårdsen, *President*,

Egidijus Kūris, *judge*,

Pauliine Koskelo, ad hoc *judge*,

Saadet Yüksel,

Frédéric Krenc,

Diana Sârcu,

Davor Derenčinović, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the applications (nos. 57325/19 and 16291/20) against the Republic of North Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr XXX ("the applicant"), a Macedonian/citizen of the Republic of North Macedonia, on the dates indicated in the appendix;

the decision to give notice to the Government of North Macedonia ("the Government") of the complaints under Article 5 §§ 1, 3 and 4 of the Convention concerning the overlap between the applicant's house arrest and detention in prison ordered on 28 June 2019, the extension of his house arrest two weeks before the previously ordered house arrest ended, the alleged lack of relevant and sufficient reasons justifying his detention, and the alleged lack of a "speedy" review of his house arrest extended by decisions of 22 November 2019 and 10 January, 10 February, 7 April, 7 May, 9 June, 9 July, 7 August and 7 September 2020; and

the decision to declare inadmissible the remainder of application no. 57325/19;

the parties' observations;

Having deliberated in private on 17 October 2023,

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

INTRODUCTION

1. The present case concerns the alleged unlawfulness and arbitrariness of the applicant's deprivation of liberty, lack of relevant and sufficient reasons for his deprivation of liberty and lack of a speedy review of his deprivation of liberty, in breach of Article 5 §§ 1, 3 and 4 of the Convention.

THE FACTS

2. The applicant was born in XXX and lives in XXX. He was represented by Mr V. Ilievski, a lawyer practising in Skopje.

3. The Government were represented by their Agent, Ms D. Djonova.

I.BACKGROUND TO THE CASE

4. The applicant was the Minister of Transport of the respondent State until May 2015. From May 2016 until December 2017 he was employed by the VMRO-DPMNE party (*Внатрешно-Македонска Револуционерна Организација-Демократска Партија за Македонско Национално Единство*). He was intermittently detained in prison and placed under house arrest in several separate sets of criminal proceedings, two of which are the subject of the present case.

II.FIRST SET OF CRIMINAL PROCEEDINGS

5. On 20 February 2019 a public prosecutor from the Prosecutor's Office for organised crime and corruption ("the public prosecutor") ordered an investigation against five people, including the applicant, on suspicion of posing a terrorist threat to constitutional order and security (*терористичко загрозување на уставниот поредок и безбедноста*). The applicant and his co-accused were suspected of devising a plan and mobilising members of VMRO-DPMNE to prevent the transfer of power to a new parliamentary majority. The case attracted significant media attention and became known as the "Organisers of the events of 27 April in Parliament" ("*Организаторите на настаните од 27 април во Собранието*") case, referring to a violent incident which took place on 27 April 2017 (also known as "Bloody Thursday") in which a group of protesters stormed the Parliament building, injuring several people.

6. The public prosecutor also requested the applicant's detention. On the same day (20 February 2019) a pre-trial judge (*судија на претходна постапка*) of the Skopje Court of First Instance ("the trial court") heard the applicant and ordered his pre-trial detention in prison on the grounds that he might abscond or interfere with the investigation (section 165(1)(1) and (2) of the Criminal Proceedings Act, see paragraph 32 below). The order stated that the prosecutor's request was supported by Viber and SMS messages, records from another set of criminal proceedings and a statement by a person given at court.

7. On 22 February 2019 a three-judge panel of the trial court ("the panel") overturned the order for detention in prison and replaced it with thirty days' house arrest. It held that there was still a risk of the applicant absconding or interfering with the investigation, but that the aim of his detention in prison could be achieved with house arrest.

8. Following proposals by the public prosecutor, the panel and the Skopje Court of Appeal ("the appellate court", which had competence under section 171(3) of the Criminal Proceedings Act, see paragraph 33 below) respectively extended the applicant's house arrest five times between 22 March and 28 June 2019. They referred to the risk of his absconding or interfering with the investigation. The appellate and Supreme Court dismissed appeals by the applicant against four of those extension orders.

9. On 1 July 2019 the panel discontinued the applicant's house arrest extended on 28 June 2019 because he had also been placed in detention in prison in another set of proceedings on that date (see paragraph 11 below). The panel held that more than one detention measure could not be in

place against the same person simultaneously. On 3 October 2019 the appellate court dismissed an appeal by the applicant against that decision.

10. In the meantime, on 31 May 2019 the public prosecutor issued an indictment against four people, including the applicant, which was confirmed by a panel of the trial court on 23 December 2019. On 26 July 2021 the trial court convicted the applicant and sentenced him to six years and three months' imprisonment. According to the material available to the Court, the criminal proceedings are still pending.

III. SECOND SET OF CRIMINAL PROCEEDINGS

11. On 27 June 2019 a public prosecutor from the Prosecutor's Office for organised crime and corruption ("the public prosecutor") opened an investigation against the applicant for abuse of office, along with ten other people, including employees of the Ministry of Transport ("the Ministry", the Land Registry and notaries public, on suspicion of having concluded sale contracts for State-owned plots of land and not having secured the proper implementation of such contracts, such as the payment of contractual penalties. The case was highly publicised and became known as the "Spanish steps" case.

12. The public prosecutor requested the applicant's detention in prison, supporting his request with ample documentary evidence. On 28 June 2019 a pre-trial judge heard the applicant and ordered his detention in prison for thirty days, finding that the conditions of section 165(1)(1) and (2) of the Criminal Proceedings Act had been fulfilled and that there was a risk that the applicant might flee and interfere with the investigation. The judge found that a more lenient measure could not secure his presence at trial (section 144(2) of the Criminal Proceedings Act, see paragraph 28 below). The applicant appealed, arguing, *inter alia*, that he had been simultaneously deprived of his liberty by two separate measures, namely the detention in prison ordered in the criminal proceedings in the "Spanish steps" case and the house arrest ordered in the criminal proceedings in the "Organisers of the events of 27 April in Parliament" case (see paragraph 8 above). On 1 July 2019 the panel dismissed the applicant's appeals.

13. On 26 July 2019 the panel extended the applicant's detention in prison for thirty days on the grounds that he might abscond or interfere with the investigation.

14. On 9 August 2019 the appellate court allowed an appeal by the applicant against the panel's decision and replaced his detention in prison with thirty days' house arrest, starting that day and lasting until 8 September 2019. It found that there was still a risk of his absconding or interfering with the investigation, but that in view of his deteriorating health it was appropriate to replace the detention in prison with a more lenient measure. It further confiscated his passport and banned him from contacting anyone involved in the case, as well as from using communication devices in general.

15. On 23 August 2019 the panel extended the applicant's house arrest and communication ban from 8 September to 8 October 2019 on the grounds that he might abscond or interfere with the investigation.

16. On 25 September 2019 the appellate court dismissed appeals by the applicant against the panel's decision, but of its own motion amended the order of 23 August 2019 to cover the period 8 to 26 September 2019.

17. On 25 September, 25 October and 22 November 2019 the appellate court, which had competence under section 171(3) of the Criminal Proceedings Act (see paragraph 33 below), again extended the applicant's house arrest on the grounds that he might abscond or interfere with the investigation. As to the latter, it held that witnesses were to testify regarding the conduct of work in the Ministry, Land Registry and notaries' offices (order of 25 September 2019), and that employees of the Ministry of whom the applicant had been a supervisor were to be heard, as were witnesses who knew him and were familiar with the events in question (orders of 25 October and 22 November 2019).

18. On 24 October and 20 November 2019 the Supreme Court dismissed appeals by the applicant against the appellate court's orders of 25 September and 25 October 2019 (see paragraph 17 above).

19. On 28 November and 4 December 2019 the applicant lodged two appeals (and a supplement to the second appeal) against the order of 22 November 2019 (see paragraph 17 above). On 23 December 2019, following a public hearing, the Supreme Court amended the order and extended the applicant's house arrest solely because of the risk of his absconding as the investigation had been completed (see paragraph 20 below). That decision was served on the applicant on 25 December 2019.

20. In the meantime, on 25 November 2019 the public prosecutor informed the applicant that the investigation had been completed. On 12 December 2019 the applicant was indicted for abuse of office, along with five other co-accused, for having failed to terminate previously concluded sale contracts concerning State-owned plots of land and for not having secured the payment of contractual penalties under the relevant contracts. The public prosecutor requested that his house arrest be extended. On 26 February 2020 a panel of the trial court confirmed the indictment.

21. The applicant's house arrest was extended a further fifteen times on the grounds that he might abscond, as summarised in the table below:

Date of the panel's decision extending the house arrest	Date of the applicant's appeal(s)	Date of the public session before the appellate court	Date of the appellate court's decision confirming the extension order
12 December 2019	18 and 19 December 2019	26 December 2019	26 December 2019
10 January 2020	16 and 17 January 2020	6 February 2020	6 February 2020
10 February 2020	13 February 2020	9 March 2020	10 March 2020
11 March 2020	16 and 19 March 2020	/	4 April 2020
7 April 2020	10 and 16April 2020	/	5 May 2020, served on the applicant on 7 May 2020
7 May 2020	8 and 21 May 2020	8 June 2020	8 June 2020
9 June 2020	11 and 15 June 2020	/	8 July 2020, served on 10

			July 2020
9 July 2020	13 and 17 July 2020	/	7 August 2020, served on 13 August 2020
7 August 2020	10 August 2020	/	4 September 2020, served on 7 September 2020
7 September 2020	11 September 2020	/	5 October 2020, served on 8 October 2020
7 October 2020	22 October 2020	/	4 November 2020
6 November 2020	9 and 12 November 2020	/	26 November 2020
4 December 2020	9, 11 and 18 December 2020	/	28 December 2020
5 January 2021	8 and 13 January 2021	/	2 February 2021
4 February 2021	8 February 2021	/	22 February 2021

22. All the panel's extension orders, namely first column in the table of paragraph 21 above, were issued of its own motion, save for the order of 12 December 2019 issued at the public prosecutor's request. All the orders extended the applicant's house arrest for thirty days, with the exception of the order of 4 February 2021 that was extended for twenty-two days as the one-year time-limit allowed for detention after confirmation of the indictment (section 172(2)(1) of the Criminal Proceedings Act, see paragraph 35 below) was due to expire on 26 February 2021. In all the orders, the panel provided the following reasoning regarding flight risk:

"... the justification [for house arrest] stems in particular from the type, character and nature of the offence, the degree of criminal liability, the type and severity of the sentence prescribed ... as well as [the applicant] facing the possibility that a prison sentence is being imposed ... the panel considers that there is a real danger [that the applicant] will flee ... The panel ... took into consideration the fact that [the applicant] has created a family in which he is the parent of three minor children, [and that] he owns property, but [it] considers that these circumstances are not a sufficient guarantee to secure his presence at this stage of the proceedings.

All the above circumstances, analysed separately and together, demonstrate the need to extend [the applicant's] house arrest ..."

Referring to section 144(2) of the Criminal Proceedings Act, the panel also stated that in view of "the degree of danger to society, criminal liability and the type and severity of the sentence prescribed", a more lenient measure would not suffice to secure the applicant's presence at trial.

23. In his appeals, the applicant consistently argued that there was no evidence to suggest that he would abscond and raised various other arguments. In the appeals against the orders of 7 April and 7 August 2020, he also complained of not having received the appellate court's decision regarding his previous appeals (lodged on 16 and 19 March, and 13 and 17 July 2020 respectively).

24. In its decisions (fourth column of the table in paragraph 21 above) the appellate court endorsed the findings of the panel and dismissed the applicant's arguments. In several of its decisions, it

referred to Articles 5 and 6 of the Convention and to Recommendation Rec(2006)13 of the Committee of Ministers to member States on the use of remand in custody, the conditions in which it is takes place and the provision of safeguards against abuse. However, it found that the reasons for the applicant's house arrest persisted. In its decision of 2 February 2021, it further stated that the argument raised in the applicant's appeals did not suffice to replace the house arrest with precautionary measures.

25. On 23 February 2021 the panel discontinued the applicant's house arrest because on the same day house arrest had been ordered against the applicant in another set of criminal proceedings (see paragraph 27 below).

26. According to the material available to the Court, the criminal proceedings are pending before the trial court.

IV. SUBSEQUENT DEVELOPMENTS

27. In a third, unrelated set of criminal proceedings, the applicant was placed under house arrest from 23 February until 18 November 2021, when he was released.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. Criminal Proceedings Act 2010 (Official Gazette nos. 150/2010, 100/2012, 142/2016 and 142/2018)

28. Under section 144(1) of the Criminal Proceedings Act, measures aimed at ensuring the presence of an accused in criminal proceedings and for the smooth conduct of those proceedings include, *inter alia*, precautionary measures (*мерки на претпазливост*), house arrest and detention in prison. Section 144(2) provides that in deciding which measure will be applied, the competent authority shall take into account that a more severe measure should not be applied if the same aim can be achieved with a more lenient one. Under section 144(3), the court shall, of its own motion, lift a measure when the statutory conditions for it are no longer fulfilled or replace it with another measure when the conditions allow.

29. Under section 146(1), precautionary measures may include, *inter alia*, confiscating the accused's passport, a ban on contacting certain persons or a ban on engaging in certain work-related activities linked to the offence in question. Section 146(2) stipulates that precautionary measures can last as long as there is a need and at the latest until there is a final judgment in the case.

30. Under section 163(1), if there is a reasonable suspicion that a person has committed an offence and the conditions for ordering detention in prison under section 165(1) (see paragraph 32 below) have been met, the court can place an accused under house arrest. Section 163(3) allows the court to order other measures in addition to house arrest, such as a ban on using communication devices or contacting certain people. Under section 163(6), the provisions relating to detention in prison also apply to house arrest unless the Act expressly provides otherwise.

31. Under section 164(2), the length of detention must be for the shortest amount of time necessary; if an accused is detained, all authorities participating in the criminal proceedings or providing legal assistance must act with the utmost urgency. Under section 164(3), special account will be taken of the proportionality between the gravity of the offence, the punishment expected in view of the available information and the need to order detention and its duration. Under section 164(4), detention must be discontinued as soon as the reasons for it seize to exist.

32. Under section 165(1)(1) to (4), detention in prison can be ordered if there is a reasonable suspicion that a person has committed an offence if it is necessary for the smooth conduct of the criminal proceedings and there is a risk of: his or her absconding (section 165(1)(1)), interfering with the investigation (section 165(1)(2)) or reoffending (section 165(1)(3)), as well as if he or she, despite being properly summoned, avoids attending the hearing or being summoned (under certain conditions, section 165(1)(4)). Under section 169(4), a second-instance panel shall decide on an appeal against an initial detention order within forty-eight hours from its submission.

33. Under section 171(2) and (3), during an investigation, a three-judge panel of the first-instance court can extend detention for a maximum of sixty days, following which a panel of the immediately higher court can extend it for a maximum of ninety further days (in cases concerning offences in which a prison sentence of at least four years can be imposed).

34. Under section 172(2)(2), after an indictment is confirmed, the panel can extend detention for a maximum of one year in cases concerning offences punishable by up to fifteen years' imprisonment or for a maximum of two years in cases concerning offences punishable by life imprisonment.

35. Section 173(1) stipulates that detention is discontinued, *inter alia*, when the reasons for which it was ordered or extended cease to exist, if continued detention would be disproportionate to the gravity of the offence, when the same aim can be achieved with another measure, or (where it has been ordered because of a risk of a person interfering with the investigation) when all evidence has been gathered, or the person has admitted to the offence, or when all hearings have been held.

36. Under section 421(1), when an appeal is lodged in cases initiated at the public prosecutor's request, the case file is sent to the prosecutor, who reviews it and returns it to the court without delay or within fifteen days at the latest (thirty days in more complex cases).

37. Under section 553(1)(1), a person is entitled to compensation if he or she was detained and criminal proceedings were either not instituted or were eventually stayed, he or she was acquitted by a final judgment or the indictment was dismissed. Under section 553(1)(2), a person is entitled to compensation if he or she was imprisoned in enforcement of a final conviction and subsequently, following the use of an extraordinary remedy, he or she was either sentenced to a shorter prison sentence than that already served or to a non-custodial sentence, or he or she was convicted but no sentence was imposed on him or her. Under section 553(1)(3), a person is also entitled to a compensation where, as a result of an error or unlawful act (*незаконита работа*) of a (State) body, he or she was unjustly (*неоснователно*) or unlawfully (*незаконито*) deprived of his or her liberty. Section 553(1)(4) stipulates that a person who was detained (pending trial) for a longer period than the prison sentence imposed on him or her on conviction is also entitled to compensation.

B. Obligations Act

38. Under section 9-a of the Obligations Act (Official Gazette nos. 18/2001, 4/2002, 5/2003, 84/2008, 81/2009, 161/2009 and 123/2013), every person has the right to the protection of his or her personal rights (*лични права*), which include, among other things, the right to liberty.

39. Section 189 provides, *inter alia*, for compensation in respect of non-pecuniary damage for physical and mental pain and violation of personal rights.

C. Domestic practice in awarding compensation in cases of unlawful and unjust deprivation of liberty

40. The Government submitted examples of domestic case-law in which the domestic courts had applied sections 9-a and/or 189 of the Obligations Act, as well as the relevant provisions of the Criminal Proceedings Act 2005 (see *Shipovikj v. North Macedonia* (dec.), nos. 77805/14 and 77807/14, §§ 33 and 35, 9 March 2021), which is essentially identical to section 553 of the Criminal Proceedings Act 2010 (see paragraph 37 above). In one of the examples (*МАЛВП–75/2011*), the court awarded compensation where a claimant had been unlawfully deprived of his liberty in enforcement of an imprisonment sentence even though his conviction had already been quashed by the Supreme Court. In another case (*П1-46/12*), the court awarded compensation in respect of pecuniary damage for unlawful and unjust deprivation of liberty where a claimant had been detained, then sentenced to a fine which he had paid and, subsequently, following a legality review request, his detention had been calculated towards the fine. In a third case (*МАЛВП-104/14*), the court awarded compensation to a claimant who had been detained even though she had previously paid the fine imposed on her in a final judgment. The court also awarded compensation in a case (*ГЖ-442/16*) where a claimant's prosecution had become time-barred, but he had been imprisoned in enforcement of his previous first-instance conviction.

II. RELEVANT DOCUMENTS OF THE COUNCIL OF EUROPE

Recommendation Rec(2006)13 to member States on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse

41. On 29 September 2006 the Committee of Ministers adopted Recommendation Rec(2006)13 to member States on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse. The relevant parts can be found in *Lakatos v. Hungary* (no. 21786/15, § 37, 26 June 2018).

THE LAW

I. JOINDER OF THE APPLICATIONS

42. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

43. The applicant complained under Article 5 § 1 of the Convention that his detention in prison in the second set of proceedings had been ordered on 28 June 2019 despite the fact that his house arrest had been extended on the same day in the first set of proceedings. He further complained that his house arrest had been arbitrarily extended on 23 August 2019, two weeks before the previously extended house arrest had been due to expire.

44. The applicant also complained under Article 5 § 3 that his deprivation of liberty had been lengthy and unjustified.

45. Lastly, the applicant complained under Article 5 § 4 that his appeals against the house arrest orders in the second set of proceedings had not been examined speedily.

46. The relevant parts of Article 5 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;

...

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.

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

A. Admissibility

1. The parties' submissions

(a) The Government

47. The Government submitted that, for all the complaints raised, the applicant had not exhausted domestic remedies, as he had not brought a compensation claim for unlawful or unjust deprivation of liberty under section 553 of the Criminal Proceedings Act and/or sections 9-a and 189 of the Obligations Act (jointly or separately). In their view, given that the domestic criminal proceedings had still been pending and irrespective of their outcome, this remedy had remained available to the applicant. Furthermore, the domestic practice demonstrated the effectiveness of such remedies. They relied on the case of *Shipovikj* (cited above), in which the Court had emphasised that the domestic court had taken into account "all circumstances of the case" (ibid., § 51) in finding that the applicants' pre-trial detention had been unjust. Even if the applicant had had doubts as to the effectiveness of the remedies invoked, he had not been absolved from exhausting them. In addition, the applicant had failed to raise the complaint concerning the alleged premature extension of his house arrest on 23 August 2019 in his appeal against that order. Lastly, the applicant had not raised his complaint of a lack of a "speedy" review of his house arrest before any domestic court. If the availability of the civil remedies had been dependent on the outcome of the criminal proceedings, the applicant should have awaited the conclusion of the criminal proceedings before lodging his application.

48. The Government also submitted that the applicant had not suffered any significant disadvantage on account of the alleged violations of Article 5 § 1 of the Convention.

(b) The applicant

49. The applicant submitted that the compensation remedies of section 553 of the Criminal Proceedings Act and sections 9-a and 189 of the Obligations Act would not have been available to him until after the conclusion of the criminal proceedings. The examples of domestic case-law submitted by the Government and their reference to the case of *Shipovikj* (cited above) were irrelevant because the criminal proceedings against him had still been pending. Furthermore, the

remedies could not have prevented the alleged violations or provided them with appropriate redress. A compensation claim would have been particularly futile in respect of the complaint concerning the overlap between his house arrest and detention in prison as the domestic courts had discontinued the house arrest but upheld the order for his detention in prison, which had been less favourable to him. The domestic courts had had to address the premature extension of his house arrest on 23 August 2019 of their own motion. The Government had not substantiated their non-exhaustion objection concerning the "speedy" review of his house arrest; he had raised this complaint in his appeal against the extension order of 7 August 2020. The applicant further contested the Government's arguments as to the alleged absence of a significant disadvantage.

2. The Court's assessment

50. The relevant Convention principles regarding non-exhaustion of domestic remedies are summarised in the Court's judgments in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014) and *Selahattin Demirtaş v. Turkey (no. 2)* [GC] (no. 14305/17, §§ 205-209, 22 December 2020, with further references).

51. The Court has also held, in the context of Article 5 of the Convention, that in specific circumstances it can accept that the existence of a clear and established avenue under domestic law, under which an adequate amount of compensation can be claimed, may constitute sufficient redress within the meaning of its case-law on Article 34 of the Convention (see, in the context of the assessment of the applicant's victim status, *Al Husin v. Bosnia and Herzegovina (no. 2)*, no. 10112/16, § 89, 25 June 2019, and *Udaltsov v. Russia*, no. 76695/11, § 157, 6 October 2020).

52. On the basis of these principles, the Court will address below the Government's objections as to the admissibility of each complaint separately.

(a) Complaints under Article 5 § 1

(i) As to the overlap between the applicant's house arrest and detention in prison

53. The gist of the applicant's complaint under this head concerns the alleged unlawfulness and arbitrariness of his detention in prison ordered on 28 June 2019 in the second set of proceedings, given that house arrest had been ordered for him on the same day in the first set of proceedings. The applicant argued, both domestically and before the Court, that in ordering his detention in prison, the court had failed to take into consideration the fact that he had already been under house arrest. The Court observes that on 1 July 2019 the panel discontinued his house arrest in the first set of proceedings because his detention in prison had been ordered in the second set of criminal proceedings (see paragraph 9 above), finding that more than one detention measure could not be in place against the same person at the same time. The panel thus put an end to the situation of there being two simultaneous measures for the applicant's deprivation of liberty. Moreover, according to the information available to the Court, the applicant was subsequently released (see paragraph 28 above). In such circumstances, where the alleged unlawfulness no longer persists and the impugned detention has come to an end, the Court is satisfied that a compensation claim may be an appropriate remedy for the purposes of the applicant's complaint (see, for example, *Oravec v. Croatia*, no. 51249/11, § 33, 11 July 2017). It thus remains to be seen whether its practicality has been convincingly established.

54. The Court notes that section 553(1)(3) of the Criminal Proceedings Act provides that a person is entitled to compensation if he or she has been detained unjustly or unlawfully as a result of an

error or unlawful act of the domestic authorities. The examples of domestic case-law submitted by the Government (see paragraph 40 above) – although the facts differ from the applicant's case – demonstrate that the domestic courts award compensation to claimants who have been unlawfully or unjustly deprived of their liberty as a result of an unlawful act or error of the authorities. Given the panel's finding that two measures of deprivation of liberty cannot co-exist simultaneously (see paragraph 9 above), it cannot be said that a compensation claim was bound to fail (compare and contrast *Selahattin Demirtaş*, cited above, § 210, and *Lazoroski v. the former Yugoslav Republic of Macedonia*, no. 4922/04, §§ 15 and 38, 8 October 2009, in which the applicant's deprivation of liberty had been found to be lawful). Furthermore, it does not appear that other conditions, including for the criminal proceedings to have been concluded with final effect, need to be satisfied in order for this provision to apply (see, in the context of an analysis of the applicant's victim status, *Klinkel v. Germany* (dec.), no. 47156/16, § 30, 11 December 2018). Indeed, the situation complained of is not related to the outcome of the criminal proceedings against the applicant and was independent of it. Be that as it may, the Court is satisfied that domestic law provided the applicant with an effective remedy to obtain redress at national level for the grievances submitted to it. In this context, the Court reiterates that in cases where domestic law explicitly provides for a particular remedy which is directly accessible and not obviously futile, the existence of mere doubts on the part of the applicant as to the prospects of its success is not a valid reason for failing to exhaust that avenue of redress. On the contrary, it is in the applicant's interests to apply to the appropriate court to give it the opportunity to develop existing rights through its power of interpretation (see *Delijorgji v. Albania*, no. 6858/11, § 58, 28 April 2015, with further references). Lastly, the applicant did not demonstrate that there were any special circumstances dispensing him from bringing a compensation claim.

(ii) As to the alleged premature extension of the applicant's house arrest

55. The applicant's complaint concerns the alleged premature extension of his house arrest on 23 August 2019. The Court observes that this complaint was not raised in the applicant's appeal against the decision of 23 August 2019. Even assuming that the appellate court was obliged to review the lawfulness of the early extension of the applicant's house arrest of its own motion, that fact cannot be regarded as having dispensed him from advancing arguments to that or a similar effect before that court, thus giving it the opportunity to redress the alleged breach in the first place (see, *mutatis mutandis*, *Taleski and Others v. North Macedonia* (dec.), nos. 77796/17 and 5 others, § 93, 24 January 2023). The applicant did not submit any argument that would call into question the effectiveness of his appeal for his grievance under this head. Furthermore, the above considerations regarding the availability and effectiveness of the compensation claim (see paragraphs 53-54 above) also apply to the complaint under this head.

(iii) Conclusion

56. Accordingly, the applicant's complaints under Article 5 § 1 must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies. It is therefore not necessary to address the objection of insignificant disadvantage.

(b) As to the alleged lengthy and unjustified house arrest of the applicant under Article 5 § 3

57. The Court observes that the application of section 553(1)(1), (2) and (4) depends on whether or not the person concerned has been convicted and on the nature or duration of the sentence

imposed on him or her. The Government's argument that these provisions also apply to situations where the criminal proceedings are pending, as in the present case, was not supported by any examples of domestic case-law. In *Shipovikj*, the applicants' victim status for the purposes of their complaint under Article 5 § 3 of the Convention was removed following their successful compensation claim in civil proceedings; however, the Court observed that their entitlement to compensation arose when the dismissal of the criminal charges against them became final (see *Shipovikj*, cited above, § 50). The Court does not consider that, before lodging his application, the applicant should have awaited the outcome of the criminal proceedings.

58. Furthermore, section 553(1)(3) does not provide for a right to compensation where detention or house arrest pending trial is excessively lengthy or insufficient grounds have been given to justify it. The Government have not provided any examples of domestic case-law to that effect.

59. Similarly, in the absence of any relevant examples of domestic case-law to the contrary, the Court cannot establish that a civil compensation claim brought under sections 9-a or 189 of the Obligations Act would succeed in circumstances similar to the present case.

60. Lastly, it is noteworthy that in previous cases against the respondent State concerning complaints lodged under Article 5 § 3 (see *Vasilkoski and Others v. the former Yugoslav Republic of Macedonia*, no. 28169/08, 28 October 2010; *Miladinov and Others v. the former Yugoslav Republic of Macedonia*, nos. 46398/09 and 2 others, 50570/09 and 50576/09, 24 April 2014; and *Ramkovski v. the former Yugoslav Republic of Macedonia*, no. 33566/11, 8 February 2018) the Government did not argue that a compensation claim was an effective remedy for the purposes of that provision. They did not submit that there had been any recent developments in domestic practice to that effect.

61. The Court therefore rejects the Government's non-exhaustion objection regarding the admissibility of the complaint under this head.

62. The Court further finds that the applicant's complaint under Article 5 § 3 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

(c) As to the alleged lack of a "speedy" review of the applicant's house arrest under Article 5 § 4

63. The Court observes that it does not appear from the wording of section 553 of the Criminal Proceedings Act and sections 9-a and 189 of the Obligations Act that the domestic courts could entertain, under those provisions, arguments concerning the lack of a "speedy" review of the applicant's house arrest. The Government did not submit any examples of domestic case-law which would demonstrate the availability and effectiveness of those remedies in respect of such a complaint.

64. In addition, in *Shipovikj* (cited above, § 57) the Court found that the compensation proceedings under the Criminal Proceedings Act of 2005 and the Obligations Act had not concerned a procedural deficiency, the alleged lack of a public hearing in that case, in the review proceedings regarding the applicants' detention.

65. Accordingly, the Government's non-exhaustion objection under this head must also be rejected.

66. The Court further notes that the applicant's complaint under Article 5 § 4 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. Therefore the Court declares it admissible.

B. Merits

1. Article 5 § 3 of the Convention

(a) The parties' submissions

67. The applicant argued that the decisions in both sets of criminal proceedings ordering and extending his deprivation of liberty had contained abstract, general and stereotypical reasons; the decisions in the second set of proceedings had been copied and pasted from earlier decisions. In the applicant's view, he had borne the burden of proving that he did not intend to abscond. The decisions had referred to his personal and family circumstances or his assets with an identical phrase in order to formally satisfy the requirements of the Court's case-law; the courts had not analysed those circumstances in substance, nor had they provided sufficient and plausible reasons for their refusals to replace the detention with more lenient measures.

68. With regard to the second set of proceedings, the Government submitted that the relevant period had lasted until 7 October 2020, as covered by his application no. 16291/20. In their view, the subsequent house arrest ordered until 23 February 2021 in the second set of proceedings (see paragraph 25 above) was not to be taken into consideration; in any event, it had also satisfied the requirements of Article 5 § 3. The entire period of the applicant's detention in prison and subsequent house arrest had been justified by the risk of his absconding or interfering with the investigation and, in the second set of proceedings after 23 December 2019, solely by the risk of his absconding. Careful consideration of the applicant's circumstances had been made in light of the stages of investigation and, in some instances, following reasoned proposals from the prosecutor. The domestic courts had also considered whether more lenient measures would suffice. In the Government's view, the decisions ordering and extending the applicant's detention in prison and house arrest had not been general, abstract or stereotyped, but individualised and well-reasoned. Furthermore, the second-instance courts had provided sufficient reasoning in dismissing the applicant's arguments in his appeals. Both cases had concerned complex facts and attracted particular public interest.

(b) The Court's assessment

(i) As to the place of deprivation of liberty and the period to be taken into consideration

69. At the outset, it is to be noted that the Court applies the same criteria to the assessment of the reasons for the impugned restriction on liberty for the entire period of deprivation of liberty, irrespective of the place where the applicant was detained (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 113-14, 5 July 2016, and *Kovrov and Others v. Russia*, nos. 42296/09 and 4 others, §§ 82-84, 16 November 2021, with further references). Therefore, for the purposes of the applicant's complaint under Article 5 § 3 of the Convention, the Court will take into consideration cumulatively the entire period that he spent in detention in prison and under house arrest in the proceedings at issue.

70. Moreover, where an accused person is detained on remand for two or more separate periods on different sets of charges, the reasonable time guarantee of Article 5 § 3 requires a global assessment of the cumulative period (see *Porowski v. Poland*, no. 34458/03, § 133, 21 March 2017, with further references).

71. In the present case, the applicant was detained pending trial in several separate sets of criminal proceedings, two of which are the subject of his complaints under Article 5 § 3 in the present case

(see paragraphs 5-10 and 11-26 above). In the first set of proceedings, the applicant was detained in prison from 20 to 22 February 2019 and subsequently under house arrest from 22 February until 28 June 2019. In the second set of proceedings, the applicant was detained in prison from 28 June to 9 August 2019 and then under house arrest from 9 August 2019 to 23 February 2021. Hence, in the context of the two sets of criminal proceedings that are the subject of the present case, the applicant was continuously deprived of his liberty from 20 February 2019 to 23 February 2021.

72. With regard to the Government's argument that the relevant period ended on 7 October 2020, the Court notes that it has already decided cases in which the applicants' deprivation of liberty in a given set of proceedings continued after the applications were lodged. In such cases, it did take into account the periods of deprivation of liberty following the lodging of the applications (see, for example, *Vasilkoski and Others*, § 60, and *Ramkovski*, § 55, both cited above). It sees no reason to adopt a different approach in the present case.

73. In view of these considerations, the Court finds that in the present case the relevant period for the purposes of the applicant's complaint under Article 5 § 3 began on 20 February 2019 and ended on 23 February 2021, when his house arrest in the second set of proceedings was discontinued. Accordingly, the period to be taken into consideration is two years and three days.

(ii) As to the reasonableness of duration and justification for the applicant's deprivation of liberty

74. The relevant general principles have recently been summarised in *Radonjić and Romić v. Serbia* (no. 43674/16, §§ 62-70, 4 April 2023).

75. Turning to the present case, the Court observes that in the two sets of criminal proceedings, the applicant was accused of serious crimes – terrorist endangerment to constitutional order and security and abuse of office-subject to prosecution *proprio motu*. The charges in question were both brought by the Prosecutor's Office for Organised Crime and Corruption. The Court has accepted that such crimes present more difficulties for the investigative authorities and the courts in determining the facts and the degree of responsibility of each participant in the criminal enterprise. It is obvious that in cases of this kind, continuous monitoring and limitation of the defendants' ability to contact each other and other individuals may be essential to avoid their absconding, tampering with evidence and influencing witnesses. Longer periods of detention than in other cases may therefore be reasonable (see, *mutatis mutandis*, *Radonjic and Romic*, cited above, § 72).

76. The Court notes that for the initial orders for detention in prison in both sets of proceedings (see paragraphs 6 and 12 above), the prosecutors submitted documentary evidence in support of their request that the applicant should be detained, which was accepted by the pre-trial judge. Reiterating 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 (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 184, 28 November 2017), the Court accepts that there was a reasonable suspicion that the applicant had committed the offences. That being so, the Court will examine whether the other grounds given by the courts continued to justify his deprivation of liberty.

77. The Court observes that the applicant's detention in prison and under house arrest in the first set of proceedings, from 20 February to 28 June 2019, and in the second set of proceedings, from 28 June to 12 December 2019, was based on the risk of his absconding or interfering with the investigation (see paragraphs 5 to 21 above).

78. The applicant's subsequent house arrest following his indictment in the second set of proceedings, from 12 December 2019 until February 2021, was based solely on the risk of his absconding. In establishing this risk, the panel referred to the "type, character and nature of the offence, the degree of criminal liability, the type and severity of the sentence prescribed" and the possibility that a prison sentence might be imposed. The Court observes that all of these factors concern the nature of the alleged offence and the severity of the possible sentence. The panel did not refer to the applicant's personal circumstances, such as international contacts or his conduct during the proceedings (compare and contrast *Velečka and Others v. Lithuania*, nos. 56998/16 and 3 others, § 102 *ab initio*, 26 March 2019). The only factual elements relating to the applicant's personal circumstances, notably his family ties and assets, were referred to by the panel when it made a passing remark that it had assessed them but found that they could not lead to a different outcome (see paragraph 22 above).

79. The Court further notes that the reasons provided by the panel in all the extension orders from December 2019 until February 2021 remained very similar and repetitive. Their summary wording does not suggest that the courts engaged in a substantive analysis of the applicant's personal circumstances. Furthermore, they did not include an appropriate assessment of the continued justification for the applicant's house arrest despite the passage of time (see *Vadym Melnyk v. Ukraine*, nos. 62209/17 and 50933/18, § 112, 15 September 2022).

80. It is true, as argued by the Government, that all the extension orders included a statement that alternative measures to the applicant's house arrest were considered to be inadequate. However, other than a formal statement to that effect, the panel did not provide any specific reasons for this conclusion (see, similarly, *Hysa v. Albania*, no. 52048/16, § 76, 21 February 2023) based on the applicant's personal circumstances. The Court reiterates that only a reasoned decision by the judicial authorities can effectively demonstrate to the parties that they have been heard and make appeals and public scrutiny of the administration of justice possible (see *Hasselbaink v. the Netherlands*, no. 73329/16, § 77, 9 February 2021).

81. The appellate court, for its part, when deciding the applicant's appeals, did not remedy these defects. Its decisions remained similarly general and repetitive. While the Court notes that in some of its decisions it referred to Article 5 of the Convention and Recommendation Rec(2006)13, it did not provide substantive reasoning based on the circumstances of the applicant's case as to why it considered that the principles established therein had been complied with.

82. Furthermore, on at least one occasion (decision of 2 February 2021, see paragraph 24 above), the appellate court inverted the presumption in favour of release (see *Buzadji*, cited above, § 89) by finding that there were insufficient arguments raised in the applicant's appeals to warrant replacing his house arrest with precautionary measures. By overturning the rule enshrined in Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases, the court shifted the burden of proof to the applicant (see *Ugulava v. Georgia*, no. 5432/15, § 111, 9 February 2023).

83. Having regard to the above, the Court considers that at least from 12 December 2019, by failing to address concrete facts and by essentially referring to the gravity of the charges and possible sentence, the courts prolonged the applicant's deprivation of liberty on grounds which, although

"relevant", cannot be regarded as "sufficient" (see, *mutatis mutandis*, *Vasilkoski and Others*, cited above, § 64).

84. It is therefore not necessary to decide whether the domestic authorities displayed "special diligence" in conducting the criminal proceedings against the applicant.

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

2. Article 5 § 4 of the Convention

(a) The parties' arguments

86. The applicant submitted that there had been an excessive delay in deciding his appeals against the extension orders in the second set of criminal proceedings. The delay was to be calculated until the date the second-instance decisions had been served on him; contrary to the Government's argument, they had not been pronounced at the actual public sessions before the second instance courts. The second-instance decisions had been repeatedly taken close in time to the fresh orders extending detention. The fact that his appeals had been communicated to the prosecutor for an opinion could not have contributed to the overall length of the detention review proceedings. The courts had been equally slow irrespective of whether or not a public session had been held at second instance. The applicant also contested the Government's argument that the state of emergency in the respondent State owing to the COVID-19 pandemic had rendered the review proceedings more difficult.

87. The Government submitted that in the specific circumstances of the case, the detention review proceedings had been sufficiently speedy. When the second-instance courts had held public sessions, their decisions, with the exception of the Supreme Court's decision of 23 December 2019, had been pronounced at those sessions and the applicant or his lawyers had thereby been apprised of them. While the applicant's appeals against several orders extending his house arrest had been pending, there had been a fresh judicial assessment of his house arrest at first instance. The applicant had lodged two or three appeals against certain orders, through different lawyers, which had contributed to the delay in them being decided. The second-instance court had communicated the appeals to the relevant public prosecutor, who had to submit his or her reply within fifteen, or in more complex cases, thirty days (section 421(1) of the Criminal Proceedings Act, see paragraph 36 above). The state of emergency in the respondent State owing to the COVID-19 pandemic had rendered the conduct of the proceedings more difficult. In several instances, the second-instance court had held hearings which had prolonged the decision-making process. The applicant's lawyers could have inspected the case files and learned of the appeal decisions where they had not been pronounced publicly. No further legal remedy had been available following the second-instance decisions. The applicant could at any time have lodged separate requests for the house arrest to be discontinued. The complaint concerned second-instance proceedings, where the standard of "speediness" was less stringent.

(b) The Court's assessment

88. The applicable general principles concerning the "speediness" requirement for the review of the lawfulness of detention are set out in *Ilnseher v. Germany* ([GC] nos. 10211/12 and 27505/14, §§ 251-56, 4 December 2018). The Court considers that the same principles apply in respect of the review proceedings regarding the applicant's house arrest.

89. In the present case, the applicant's appeals against the first-instance house arrest orders of 22 November 2019 and 10 January, 10 February, 7 April, 7 May, 9 June, 9 July, 7 August and 7 September 2020 reached the relevant court at the latest on 4 December 2019 and 17 January, 13 February, 16 April, 21 May, 15 June, 17 July, 10 August and 11 September 2020, respectively (see paragraphs 19 and 21 above). As regards the moment when the applicant or his lawyers were apprised of the second-instance decisions, there is a dispute between the parties as to whether the second-instance decisions were pronounced publicly at the actual sessions. The Court observes that the decisions on the applicant's appeals are included in the available records of public sessions held before the appellate court. In such circumstances, it can be considered that the applicant or his lawyers found out the second-instance decisions at the earliest on 25 December 2019, 6 February, 10 March, 7 May, 8 June, 10 July, 13 August, 7 September and 8 October 2020. The detention review proceedings therefore lasted between eighteen and twenty-eight days. The Court has previously found such delays to be excessive (see, for example, *Snyatovskiy v. Russia*, no. 10341/07, § 65, 13 December 2016, and contrast *Ramkovski v. the former Yugoslav Republic of Macedonia*, no. 33566/11, § 75, 8 February 2018).

90. By way of observation, according to domestic law, the decision on appeal against an initial order on detention has to be taken within 48 hours (see section 169(4) of the Criminal Proceedings Act, paragraph 32 above). There is no specific deadline to decide on appeal against the decision to prolong the detention, but the Court is mindful that the domestic law is clear that, if the accused is kept in detention, all entities that participate in the criminal proceedings and the entities that provide legal assistance shall be obliged to proceed with utmost urgency (see section 164(2) of the Criminal Proceedings Act, paragraph 31 above).

91. The Court further observes that on a number of occasions the second instance decisions were issued very close in time to the end of the period of house arrest. The Court is concerned that such a practice may render the appeal against the first-instance order for deprivation of liberty futile and deprive it of its substance.

92. The Court notes that, as argued by the Government, the applicant sometimes lodged multiple appeals against the first-instance orders. Whereas the applicant must expect that such a practice may affect the length of the judicial review, that fact alone cannot justify the overall delay in which the appellate court and Supreme Court decided those appeals. Similar considerations apply to the fact that, in some instances, the relevant higher courts held a public session or a hearing. In addition, the communication of the applicant's appeal to the public prosecutor and the latter's comments in reply are procedural steps to ensure adversarial proceedings and equality of arms, which necessarily affect the length of proceedings, but the Court reiterates that it is for the State to organise its judicial system in such a way as to enable its courts to comply with the requirements of Article 5 § 4 of the Convention (see, for example, *Betteridge v. the United Kingdom*, no. 1497/10, § 40, 29 January 2013).

93. Finally, the Court is mindful that the then ongoing investigation, as submitted by the respondent Government, had a certain complexity and that the COVID-19 pandemic generally rendered the conduct of the proceedings more difficult, notably in organising hearings. However, in light of what has already been highlighted above in respect of the applicant's right to a speedy review under Article 5 § 4 of the Convention, while noting also the findings of the Court regarding

Article 5 § 3 (see in particular paragraphs 81-82 above) and that many of the review proceedings were carried out without any hearing being held, the Court cannot accept that these factors could serve as an overall justification for the multiple delays in the detention review proceedings (see paragraph 89 above).

94. Considering all of the above, the Court finds that the domestic courts failed to comply with the requirement of "speediness" enshrined in Article 5 § 4 of the Convention.

3. Other alleged violations of Article 5 of the Convention

95. The applicant complained under Article 5 § 1 that there had been no reasonable suspicion that he had committed a criminal offence in the first set of proceedings. The Court notes that for the initial orders for detention in prison, the prosecutor submitted in the first set of proceedings evidence in the form of messages sent *via* Viber and SMS, records from another set of criminal proceedings in support of the request that the applicant be detained (see paragraph 6 above). Reiterating that the facts which raise a reasonable suspicion need not be of the same level as those necessary to justify a conviction, or even a bringing of a charge (see *Merabishvili*, cited above § 184), and noting that there are no indications that the assessment done by the domestic courts in this respect was arbitrary or manifestly unreasonable, the Court accepts that there was at the material time a reasonable suspicion that the applicant had committed the offences (see also paragraph 76 above). This part of the applicant's complaint, which was not communicated to the Government, must therefore be declared inadmissible in accordance with Article 35 § 3 a) of the Convention as being manifestly ill-founded.

96. The applicant further complained under Article 5 § 4 about the quality of the higher courts' review of the house arrest orders in the second set of proceedings. Having regard to its previous finding in respect of Article 5 § 3 (see paragraph 81, 82 and 85 above), the Court considers that it is not necessary to examine separately the admissibility and merits of this complaint.

III. 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 5,000 euros (EUR) in respect of non-pecuniary damage suffered as a result of the alleged violations of Article 5 §§ 1 and 3 of the Convention in the first set of proceedings, as well as EUR 5,000 in respect of non-pecuniary damage suffered as a result of the alleged violations of Article 5 §§ 1, 3 and 4 in the second set of proceedings.

99. The Government contested those claims. They submitted that the finding of a violation, if any, would constitute sufficient redress. In the alternative, they submitted that the applicant's claims were unsubstantiated and not causally linked to the violations found.

100. The Court accepts that the applicant must have suffered non-pecuniary damage which cannot be compensated by the finding of a violation of Article 5 §§ 3 and 4. Ruling on equitable basis, it awards the applicant EUR 3,900 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

101. The applicant also claimed a total of EUR 3,055 in respect of costs and expenses incurred in the proceedings before the Court in respect of the two applications. In support, he submitted copies of invoices issued by his lawyer.

102. The Government contested the claim as excessive and unsubstantiated.

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 were actually and necessarily incurred and are reasonable as to quantum (see *Elmazova and Others v. North Macedonia*, nos. 11811/20 and 13550/20, § 86, 13 December 2022). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,200 covering costs in the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the complaints under Article 5 §§ 3 and 4 (concerning the lack of a "speedy" review of the applicant's house arrest) admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the lack of sufficient reasons for the applicant's deprivation of liberty;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the lack of a "speedy" review of the applicant's deprivation of liberty;
5. *Holds* that there is no need to examine the remaining complaints under Article 5 of the Convention;
6. *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 3,900 (three thousand nine hundred euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage;

(ii) EUR 2,200 (two thousand two hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(iii) 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;

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

Done in English, and notified in writing on 14 November 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar

Arnfinn Bårdsen President