



Former senior politicians' and officials' complaints following annulments of pardons declared inadmissible

In its decision in the case of **Taleski and Others v. North Macedonia** (applications nos. 77796/17, 80003/17, 81848/17, 81862/17, 11583/18, and 30884/18) the European Court of Human Rights has unanimously declared the application **inadmissible**. The decision is final.

Many of the applicants were members of the governing party (VMRO-DPMNE) at the time of the events in question, and they all held prominent public positions, including Prime Minister, Government ministers and mayors. They are on trial for alleged crimes related to and arising from the content of unlawful, widespread wiretapping. They received presidential pardons which were later annulled. Following the annulments they were tried, which is the matter of this case.

The Court held that the applicants had **failed to exhaust domestic remedies**. It held that the complaints under **Article 6 (right to a fair trial)** were premature as the domestic authorities would have an opportunity to address them first in the pending criminal proceedings; and regarding **Article 5 (right to liberty and security)**, one of the applicants, Mr Temelko, had failed to raise his Convention complaints before the domestic courts, while the remedy that another applicant – Mr Taleski – alleged to have been effective had been rejected as out of time in national court decisions that did not appear to have been arbitrary.

A legal summary of this case will be available in the Court's database HUDOC ([link](#))

Principal facts

The applicants are seven Macedonians/citizens of the Republic of North Macedonia (Nikola Gruevski, Mile Janakieski, Gordana Jankuloska, Toni Jakimovski, Sasho Mijalkov, Vladimir Taleski, and Toni Trajkovski), and one Macedonian/citizen of the Republic of North Macedonia who is also an Albanian national (Edmond Temelko). They live in Skopje bar Mr Taleski (Bitola) and Mr Temelko (Resen).

Most of the applicants were members of the governing party (*Внатрешно Македонска Револуционерна Организација-Демократска Партија за Македонско Национално Единство – VMRO-DPMNE*) at the time of the events in question. They held senior Government and/or party roles, including as follows:

Mr Gruevski was Prime Minister and party leader; Ms Jankuloska and Mr Janakieski were Minister of the Interior and Minister for Transport respectively; Mr Mijalkov was the Director of the Bureau for Security and Counterintelligence (*Управа за безбедност и контраразузнавање*) and Mr Taleski, Mr Trajkovski and Mr Temelko were mayors (in Mr Temelko's case, of Pustec in Albania).

In 2015 it emerged that covert recording of telephone conversations had been taking place throughout North Macedonia, allegedly in widespread violation of human rights. Files stemming from these recordings were given to prosecutors. As a result, the applicants became suspects in various crimes, including electoral offences.

On 12 April 2016 the President of North Macedonia issued individual pardons exempting 56 people, including the applicants, from criminal prosecution in relation to these specific alleged offences. Massive street protests – known as the Colourful Revolution (*Шарена револуција*) – sprang up in response, which included the President's office being attacked.

Following a change in the law, in May and June 2016 the President annulled the pardons he had given. As a result, trials were started or continued against the applicants for the alleged offences. The trial court confirmed that the pardons no longer had legal effect and that therefore indictments against the applicants were legal.

All the applicants were tried in several separate trials and those found guilty were given prison sentences: Mr Taleski's case (alleged rigging of procurement for school transport) is awaiting a decision following an appellate hearing; Ms Jankuloska and Mr Janakieski have appealed against their convictions (alleged electoral offences – case known as “Titanic 1”); as have Mr Gruevski, Mr Janakieski and Mr Trajkovski (alleged unlawful demolition of a political opponent's property) – “TNT”); Mr Mijalkov was acquitted, and a prosecutorial appeal is pending (alleged incitement of police officers to ill-treat a political rival – “Torture”); Mr Jakimovski's and Ms Jankuloska's convictions were quashed by the appellate court and the case is set for a retrial (alleged destruction of the wiretapping equipment – “Fortress”); Mr Temelko has also been charged in “Titanic 1”.

Complaints, procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 3, 21 and 30 November 2017, and on 2 February and 27 June 2018.

Relying on Article 6 § 1 (right to a fair trial), the applicants (bar Mr Temelko) complained that their having been prosecuted following their pardons had been in violation of the rule of law, and that the annulment decisions had been against the principle of legal certainty owing to their retrospective effect. Furthermore, Mr Taleski and Mr Temelko complained under Article 5 § 1 (c) (right to liberty and security) that their pre-trial detention had been arbitrary.

The decision was given by a Chamber of seven judges, composed as follows:

Arnfinn **Bårdsen** (Norway), *President*,
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),
Saadet **Yüksel** (Türkiye),
Lorraine **Schembri Orland** (Malta),
Frédéric **Krenc** (Belgium),
Diana **Sârcu** (the Republic of Moldova),

and also Hasan **Bakırcı**, *Section Registrar*.

Decision of the Court

Articles 5 and 6

Concerning Mr Taleski's complaints under Article 5, the Court did not need to examine the proceedings regarding his house arrest following his pardon, as they had led to his release more than six months before he had applied to the Court.

Regarding the failure to discontinue the investigation on the other hand, the Court noted, in particular, that his application had been rejected as out of time by the domestic courts at two levels of jurisdiction. The Court considered that it could not substitute its view for those decisions, which did not appear unreasonable or arbitrary.

Regarding Mr Temelko's complaints under Article 5, the court noted that he had either been in remand or under house arrest between 26 September 2017 and 16 May 2018. He had that detention judicially reviewed. However, he asserted that the domestic courts had been required to examine of their own motion whether there had been any grounds (the presidential pardon) precluding the

criminal prosecution which would have rendered his detention unlawful. Even if that had been the case, there had still been an obligation on him to raise his Convention complaints before the domestic courts. He had failed to do so, and he made no argument as to why that legal avenue would have been ineffective.

Concerning the complaints under Article 6, the Government argued that they were premature as there were still appellate proceedings pending in the cases before the courts of North Macedonia. The trial court had either found the annulments valid and so too therefore the applicants' indictments, or had not commented on them (a decision is still waiting in Mr Temelko's case). The Government, with reference to the relevant provisions of the Criminal Proceedings Act argued that the pending appellate proceedings in North Macedonia would provide the applicants with an opportunity to put forward their arguments as regards the pardons in question. In addition, the Criminal Proceedings Act allowed for extraordinary review by the Supreme Court, and the Court was satisfied (and had held as such in its previous case-law) that such a request under certain circumstances would be an effective remedy, in which the applicants could rely on their pardons, and separately seek financial redress if they won. The Court therefore ruled that the national court system, which can directly apply the Convention, should be given a chance to address the complaints and to put right any Convention breaches it found.

Overall, the Court therefore ruled that the complaints under Article 5 and Article 6 were inadmissible owing to the failure to exhaust domestic remedies.

The decision is available only in English.

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