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

FIRST SECTION

CASE OF KUIBISHEV v. BULGARIA

(Application no. 39271/98)

JUDGMENT

STRASBOURG

30 September 2004

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 Kuibishev v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 9 September 2004,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 39271/98) against the Republic of Bulgaria lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Valentin Kuibishev ("the applicant"), on 5 November 1997.

2. The applicant, who had been granted legal aid, was represented by Mr M. Ekimdjiev, a lawyer practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their agents, Mrs V. Djidjeva, Mrs G. Samaras and Mrs M. Dimova, of the Ministry of Justice.

3. The applicant alleged, in particular, that there were violations of Articles 5, 6 and 13 of the Convention in connection with his pre-trial detention and the criminal proceedings against him.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 18 January 2001 the Court declared the application partly inadmissible and adjourned the remainder.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

7. By a decision of 19 December 2002, the Court declared the remainder of the application admissible. On 12 February 2003 the applicant submitted an objection challenging the representative power of the Government's agent on the basis of alleged deficiencies in domestic regulations. The Court rejected the objection.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1954 and lives in Plovdiv.

A. The criminal proceedings against the applicant

9. On 8 April 1993 a preliminary investigation was opened against the applicant who was suspected of forgery of bank guarantees with a view to obtaining loans for himself and one of his business partners (Article 212 of the Penal Code).

10. On 14 July 1993 an investigator charged the applicant and ordered his detention pending trial. A prosecutor approved the detention order on an unspecified date.

11. Between an unspecified date in 1993 and September 1996 the applicant resided in the Netherlands. He applied unsuccessfully for asylum there. Upon his return to Bulgaria, on 11 September 1996, he was arrested and detained pending trial.

12. Between September 1996 and March 1997 the investigator examined documentary material, heard ten witnesses, appointed experts, examined their reports and questioned the applicant.

13. On 31 March 1997 the Sofia City Prosecutor's Office submitted an indictment against the applicant to the Sofia City Court.

14. A hearing was listed for 4 July 1997. In preparation therefor, in April and May 1997 the Sofia City Court summoned the civil plaintiff and ten witnesses and sought police assistance for the establishment of the address of one of them.

15. The Sofia City Court held five trial hearings.

16. On 4 July 1997 the Sofia City Court heard four witnesses, the applicant and two experts. Several witnesses did not appear. Both the prosecution and the applicant sought to adduce additional evidence. The hearing was adjourned until 12 September 1997.

17. On 12 September 1997 the court heard one witness. The remaining witnesses did not appear. The prosecution requested an adjournment as it

considered important the examination of the witnesses who had not appeared. The applicant objected. The court granted the prosecutor's request and listed the next hearing for 10 December 1997.

18. On that day the Sofia City Court heard one witness. The other witnesses failed to appear. The prosecutor insisted on them being heard and sought an adjournment. The applicant's lawyers objected, stating that reading out those witnesses' testimony given before the investigator would be sufficient. The court granted the prosecutor's request for an adjournment and scheduled the next hearing for 26 January 1998.

19. On 26 January 1998 the court heard two witnesses. One witness did not appear. The applicant's lawyers stated that they considered the examination of the remaining witness important and sought an adjournment. The court granted the request. It fixed the next hearing for 15 June 1998.

20. On the day of the last trial hearing, 15 June 1998, the applicant was found guilty under Articles 212 § 2 and 308 of the Penal Code and sentenced to five years' imprisonment. He was acquitted on certain of the initial charges. The court reserved its reasoning.

21. On 25 June 1998 the applicant appealed to the Sofia Appellate Court. The prosecution also appealed.

22. On an unspecified date in September 1998 the Sofia City Court delivered the reasoning of its judgment of 15 June 1998.

23. The Sofia Appellate Court listed a hearing for 12 February 1999 which was however cancelled as the prosecution had not supplemented its appeal following the delivery of the reasoning of the first instance judgment.

24. The hearing took place on 28 May 1999. On the same day the Sofia Appellate Court upheld the applicant's conviction of forgery of bank guarantees with intention to use them (Article 308 of the Penal Code) and acquitted him for the remainder. It accordingly reduced the applicant's sentence to three years' imprisonment.

25. On 25 June 1999 the applicant lodged an appeal on points of law with the Supreme Court of Cassation. It was dismissed on 10 December 2000.

B. Other criminal proceedings against the applicant

26. On an unspecified date in 1992 the applicant was sentenced by the Peshtera District Court to a suspended term of imprisonment. It appears that this conviction concerned facts linked to those which were the subject matter of the 1993 - 2000 criminal proceedings.

27. Separately, on 27 January 1997 the Pazardzik Regional Court found the applicant guilty of mismanagement of assets belonging to a cooperative for which he had been working during the period 1986-1988. He was sentenced to ten months' imprisonment. The applicant appealed. On

13 October 1997 the Supreme Court of Cassation quashed the judgment and terminated the criminal proceedings as the prosecution had become time-barred.

C. The applicant's pre-trial detention

28. On 11 September 1996 the applicant was arrested. On the following day he was placed under pre-trial detention. The parties have not submitted details as regards the applicant's detention during the preliminary investigation stage of the criminal proceedings.

29. On 23 April 1997, shortly after the case was brought before the Sofia City Court for trial, the applicant filed with that court an application for release on bail stating that his wife was seriously ill and could not look after their two children.

30. On 2 May 1997 the judge-rapporteur dismissed the application in private. She found that since other criminal proceedings were pending against the applicant, those concerning mismanagement of assets of a cooperative, Article 152 § 3 of the Code of Criminal Procedure ("CCP") made his remand in custody mandatory. Therefore, it was "not possible to substitute pre-trial detention for a more lenient measure despite the information concerning the [applicant's] difficult family circumstances".

31. The applicant's appeal against the above decision was not examined owing to a clerical error of the Sofia City Court.

32. On 2 July 1997 and at the hearing on 4 July 1997 the applicant reiterated his arguments seeking release on bail. He also made extensive additional submissions arguing that Article 152 § 3 CCP, which provided for a mandatory detention of persons against whom more than one set of criminal proceedings were pending and of recidivists, was incompatible with the Convention. Further, he maintained that there was insufficient evidence that he had committed the offence he was charged with.

33. On the same day, 4 July 1997, the Sofia City Court dismissed the renewed application for bail. It stated, *inter alia*:

> "The court finds that there is a danger of the applicant's absconding as ... he and his wife sought asylum in the Netherlands at the time when ... the investigation proceedings were pending ... The charges ... concern an offence allegedly committed during the operational period of [the applicant's] suspended [imprisonment sentence]... of 1992. That fact is sufficient to justify a finding that there is a danger of reoffending..."

34. Addressing the applicant's arguments against mandatory detention under Article 152 § 3 CCP, the Sofia City Court stated that it had no power to disregard the law on the ground that it was contrary to the Constitution or international treaties and noted that the Supreme Court had submitted the matter to the Constitutional Court.

35. On 7 July 1997 the applicant appealed to the Supreme Court of Cassation on the grounds that there was insufficient evidence that he had committed the offence and that there was no danger of his obstructing the course of justice. Confiscation of his passport and bail would be sufficient guarantees against absconding.

36. On 11 August 1997, pursuant to an amendment to the CCP, mandatory detention under paragraph 3 of Article 152 was abolished.

37. On 12 September 1997, before transmitting the appeal of 7 July 1997 to the Supreme Court of Cassation, the Sofia City Court sitting in private refused to reconsider its decision of 4 July 1997.

38. In the end of September and the beginning of October 1997 the applicant submitted additional appeals against his detention pending trial.

39. On 23 October 1997 the Supreme Court of Cassation examined the appeal of 7 July 1997 in closed session in the presence of a prosecutor and in the absence of the applicant or his representative. The prosecutor submitted written comments and made an oral statement inviting the court to dismiss the appeal. The applicant was not informed thereof and could not comment in reply.

40. The Supreme Court of Cassation dismissed the appeal and upheld the Sofia City Court's decision of 4 July 1997 finding that the applicant's detention was justified under Article 152 § 1 CCP. It also upheld the Sofia City Court's findings that there was a danger of the applicant's absconding or committing further offences.

41. The Supreme Court of Cassation also stated that issues of "sufficient evidence" within the meaning of domestic law or "reasonable suspicion" within the meaning of Article 5 § 1 (c) of the Convention could not be considered in proceedings on applications for bail. They could only be decided by way of judgment on the merits of the criminal case.

42. At the hearing on 10 December 1997 before the Sofia City Court the applicant renewed his appeal against detention. He referred to the fact that on 13 October 1997 his conviction of 27 January 1997 had been quashed as the prosecution had become time-barred. He also reiterated his previous arguments.

43. On the same day the Sofia City Court dismissed the appeal, stating that the applicant's attempt to remain in the Netherlands and the fact that the charges against him concerned an offence allegedly committed during the operational period of his 1992 suspended imprisonment sentence (see above) indicated that there was a danger of his absconding and re-offending. The court also confirmed its earlier position that in the context of the applicant's appeal against detention it would not entertain arguments as to whether or not the charges were well founded, that being an issue going to the merits of the criminal case.

44. On 16 December 1997 the applicant appealed to the Supreme Court of Cassation against the decision of 10 December 1997.

45. The Supreme Court of Cassation examined the appeal on 15 January 1998 sitting in closed session in the presence of a prosecutor and in the absence of the applicant and his representative. The court heard the prosecutor's opinion that the appeal should be dismissed. The court dismissed the appeal.

46. It stated that remand in custody was justified under Article 152 § 1 CCP as the applicant was charged with a serious offence within the meaning of the Code. Furthermore, the applicant's attempt to settle in the Netherlands with his family demonstrated a clear danger of absconding. The court also found that there had been no unjustified delays in the criminal proceedings.

47. At the hearing on 26 January 1998 before the Sofia City Court the applicant again requested his release. He argued that the facts had been clarified and that therefore there would be no danger of him obstructing the course of justice.

48. The appeal was dismissed on the same day. The Sofia City Court reiterated the reasoning of the previous decisions.

49. On 29 January 1998 the applicant appealed against the above decision to the Supreme Court of Cassation. On 11 March 1998 the appeal was dismissed on the same grounds. The appeal was dealt with in closed session in the presence of a prosecutor who sought its dismissal and in the absence of the applicant and his representative.

50. On 15 June 1998 the Sofia City Court convicted the applicant on some of the charges and sentenced him to five years' imprisonment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

51. The relevant provisions of the Code of Criminal Procedure and the Bulgarian courts' practice at the relevant time are summarised in the Court's judgments in several similar cases (see, among others, the *Nikolova v. Bulgaria* [GC], no. 31195/96, §§ 25-36, ECHR 1999-II; *Ilijkov v. Bulgaria*, no. 33977/96, §§ 55-62, 26 July 2001; and *Yankov v. Bulgaria*, no. 39084/97, §§ 79-88, ECHR 2003-XII).

THE LAW

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

A. Alleged violation of the right to be brought before a judge or other officer authorised by law to exercise judicial power

52. The applicant complained under Article 5 § 3 of the Convention that upon his arrest he had not been brought promptly before a judge or other officer authorised by law to exercise judicial power.

53. Article 5 § 3 of the Convention provides, as relevant:

> "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..."

54. The Government maintained that at the relevant time it was still not entirely clear whether prosecutors and investigators under the Bulgarian system could be considered "officers authorised by law to exercise judicial power" within the meaning of Article 5 § 3 of the Convention. After the Court's judgment in the case of *Assenov and Others v. Bulgaria* (judgment of 28 October 1998, *Reports* 1998-VIII), the system was promptly reformed, with effect as from 1 January 2000.

55. The Court found, in a number of Bulgarian cases which concerned the system of detention pending trial as it existed in Bulgaria until 1 January 2000, that neither investigators before whom accused persons were brought, nor prosecutors who approved detention orders could be considered to be "officer[s] authorised by law to exercise judicial power" within the meaning of Article 5 § 3 of the Convention (see *Assenov and Others,* cited above, pp. 2298-99, §§ 144-150; *Nikolova v. Bulgaria*, cited above, §§ 49-53; and *Shishkov v. Bulgaria*, no. 38822/97, §§ 52-54, ECHR 2003-I (extracts)).

56. The present case also concerns detention pending trial before 1 January 2000. Upon his arrest the applicant was brought before an investigator who did not have power to make a binding decision to detain him (see paragraph 10 above). In any event, neither the investigator nor the prosecutor who confirmed the detention were sufficiently independent and impartial for the purposes of Article 5 § 3, in view of the practical role they played in the prosecution and their potential participation as a party to the criminal proceedings. The Court refers to its analysis of the relevant domestic law contained in its *Nikolova* judgment cited above (see paragraphs 28, 29 and 49-53 of that judgment).

57. It follows that there has been a violation of the applicant's right to be brought before a judge or other officer authorised by law to exercise judicial power within the meaning of Article 5 § 3 of the Convention.

B. Alleged violation of the right to trial within a reasonable time or to release pending trial

58. The applicant complained under Article 5 § 3 of the Convention that his detention had been unjustified and unreasonably lengthy. Article 5 § 3 of the Convention provides, as relevant:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article ... shall be entitled to trial within a reasonable time or to release pending trial. ..."

59. The applicant stated that there had been no danger of him absconding as he had returned voluntarily from the Netherlands. While he agreed that the preliminary investigation had been completed within a reasonable time, the applicant stated that unacceptable delays had occurred at the trial stage.

60. The Government maintained that the authorities had displayed the diligence due in the handling of proceedings against persons in pre-trial detention. In particular, there had been no delays attributable to the authorities, the Sofia City Court had fixed hearings in reasonable intervals and the adjournments had been indispensable in order to ensure the proper establishment of the facts. The courts could not be held responsible for the difficulties caused by the failure of summoned witnesses to appear. The courts had taken special care to minimise possible delays. At the same time the applicant, who had been represented by three lawyers, had insisted on the questioning of a witness who had failed to appear, thus causing an adjournment. The Government also submitted that the case had been complex.

61. The Court notes that the applicant was arrested on 11 September 1996 and remained in pre-trial detention throughout the proceedings. He was convicted and sentenced to a term of imprisonment on 15 June 1998 (see paragraphs 28-50 above). The period to be examined is therefore one year nine months and four days.

62. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in

the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152-53, ECHR 2000-IV).

63. In its partial admissibility decision of 18 January 2001 in the present case the Court rejected as manifestly ill-founded the applicant's assertion that there had been no reasonable suspicion of his having committed an offence.

64. As to the grounds for the continuing detention, the Court observes that the authorities initially applied Article 152 § 3 CCP which provided for mandatory remand in custody of all accused persons against whom more than one criminal investigation was pending. That provision was clearly incompatible with Article 5 § 3 of the Convention (see *Yankov v. Bulgaria*, cited above, § 173).

65. The Court notes, on the other hand, that Article 152 § 3 of the Code was repealed in August 1997. Furthermore, unlike in the *Ilijkov* judgment cited above (see §§ 79-86 of that judgment) where the Bulgarian courts relied exclusively on legal provisions and judicial practice according to which detention on remand was always necessary barring special exceptional circumstances, in the case at hand the courts embarked on some analysis *in concreto* of the relevant circumstances. They referred to the applicant's attempt to obtain asylum in the Netherlands together with his family and to his previous conviction. In the light of these facts, it was not unreasonable to conclude that there existed a danger of him absconding and re-offending (see paragraphs 33, 36, 43 and 46 above).

66. The Court, therefore, considers that there were relevant and sufficient grounds justifying the applicant's detention.

67. It remains to be examined whether the national authorities displayed "special diligence" in the conduct of the proceedings and acted without unjustified delay.

68. The Court considers that the criminal case against the applicant, which concerned forgery of a bank guarantee, was not particularly complex.

69. There were no delays imputable to the applicant. All adjournments during the trial were caused by the failure of witnesses to appear (see paragraphs 15-20 above). While the authorities were not directly responsible therefor, they must be criticised for not having undertaken all necessary steps to secure the witnesses' presence.

70. It is further significant that on 26 January 1998, when adjourning the penultimate hearing to allow the examination of a single witness, the Sofia City Court set the next hearing for 15 June 1998, thus prolonging the applicant's pre-trial detention with almost five months (see paragraph 19 above). It has not been shown that such a long interval between the hearings was necessary or unavoidable. The approach of the Sofia City Court, which fixed the date of the hearing without taking into account the fact that the applicant remained in custody, is irreconcilable with the due diligence requirement under Article 5 § 3 of the Convention.

71. Having regard to the length of the applicant's pre-trial detention and the lack of attention on the part of the authorities to their duty to keep its duration as short as possible, the Court finds that there has been a violation of the applicant's right under Article 5 § 3 of the Convention to trial within a reasonable time or to release pending trial.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

72. The applicant alleged that his rights under Article 5 § 4 of the Convention have been breached in the examination of his appeals against pre-trial detention. He also invoked Article 13, stating that he did not have an effective remedy in respect of the violations of Article 5 in his case.

73. The Court considers that the above complaints fall to be examined under Article 5 § 4 of the Convention which provides:

> "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."

74. The applicant submitted that the courts dealt with his appeals against detention in breach of the "equality of arms" principle and did not examine all questions relevant to the lawfulness of his detention. The applicant also submitted that the delay in the examination of his appeals was incompatible with the "speediness" requirement of Article 5 § 4 of the Convention.

75. The Government stated the Supreme Court of Cassation did not hold hearings in pre-trail detention cases as that would slow down the proceedings considerably. However, the Supreme Court of Cassation had before it the full case file and the applicant's appeal. He was free to offer additional submissions. On that basis the Government invited the Court to accept that the equality of arms principle had not been breached. The Government also submitted that the courts had analysed all elements relevant under domestic law.

76. The Court observes that in the present case, as in previous Bulgarian cases (see, among others, *Ilijkov v. Bulgaria,* cited above, §§ 101-104 and *Mihov v. Bulgaria,* no. 35519/97, §§ 99-104, 31 July 2003), the parties to the proceedings before the Supreme Court of Cassation on 23 October 1997, 15 January 1998 and 11 March 1998 were not on equal footing. As a matter of domestic law and established practice the prosecution authorities had the privilege of addressing the judges with arguments which were not communicated to the applicant (see paragraphs 39, 45 and 49 above). The proceedings were therefore not adversarial.

77. The Court further notes that in accordance with their practice, prevailing at the relevant time, the courts refused to examine one of the questions relevant to the lawfulness of the applicant's detention – the question whether or not there was a reasonable suspicion of him having

committed the offences he was charged with (see paragraphs 41 and 43 above). The courts thus did not provide judicial review of the scope required by Article 5 § 4 of the Convention.

78. It follows that there was a violation of Article 5 § 4 of the Convention in the proceedings before the Supreme Court of Cassation. Having found that the proceedings were deficient, the Court does not find it necessary to examine whether the courts decided speedily.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

79. The applicant complained that the criminal proceedings against him had been excessively lengthy and thus in breach of Article 6 § 1 of the Convention. That provision reads, as relevant:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time ..."

80. The applicant accepted that the period to be examined started with his arrest on 11 September 1996 and ended on 10 December 2000. He referred to his submissions under Article 5 § 3 of the Convention and added that the hearing before the Sofia Appellate Court of 12 February 1999 had been adjourned without any valid reason and that the time taken by the Supreme Court of Cassation to decide on the case, more than eighteen months, was excessive.

81. The Government, referring to their submissions made under Article 5 § 3 of the Convention and to the fact that the applicant left Bulgaria in 1993 and returned in 1996, stated that the proceedings had been completed within a reasonable time.

82. The Court notes that the criminal proceedings against the applicant were instituted in April 1993 and that he was charged in July 1993. However, the investigation could not proceed before 11 September 1996 as until that date the applicant was in the Netherlands, seeking asylum. Therefore, in respect of the applicant's allegation that the responsibility of the State was engaged for a violation of his right to a trial within a reasonable time, the relevant period ran from 11 September 1996. It ended on 10 December 2000, the date on which the Supreme Court of Cassation delivered the final judgment (see paragraphs 9-25 above).

83. The period to be examined was thus four years and three months.

84. The Court noted above, in the context of Article 5 § 3 of the Convention, that an unnecessarily long interval of almost five months had elapsed between two hearings of the Sofia City Court and that insufficient measures had been undertaken to secure the presence of witnesses and thus to avoid certain delays (see paragraphs 69 and 70 above).The authorities were also responsible for a delay of about three and a half months as the

hearing before the Sofia Appellate Court listed for 12 February 1999 could not proceed owing to an omission on the part of the prosecution (see paragraph 23 above).

85. The Court observes, however, that within four years and three months the case went through four stages: investigation stage and three levels of court. No undue delays occurred during the investigation, between September 1996 and March 1997. The Sofia Appellate Court decided the case within a reasonable time, eleven months after the submission of the applicant's appeal against the trial court's judgment and approximately eight months after the delivery of the reasoning of the trial court's judgment. The length of the proceedings before the Supreme Court of Cassation does not appear excessive either (see paragraphs 9-25 above).

86. While it is true that the case was not particularly complex and that the applicant was not responsible for any delays, the Court, having regard to the criteria set out in its case-law and, in particular, the overall length of the proceedings which went through three levels of court, finds that the criminal proceedings as a whole did not exceed a reasonable time within the meaning of Article 6 § 1 of the Convention.

87. It follows that there has been no violation of that provision.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

88. 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

89. The applicant claimed 7,400 Bulgarian levs (BGN) (the equivalent of approximately EUR 3,700) in respect of the suffering caused by the violations of Article 5 in his case. He argued that account should be taken of the fact that he was detained in absence of certain basic safeguards against arbitrariness which gave rise to a feeling of insecurity. Also, the conditions in prison were inhuman.

90. The Government stated that the amounts claimed were excessive and that some of the applicant's arguments were irrelevant.

91. Having regard to all relevant circumstances, the Court awards EUR 2,500 in respect of non-pecuniary damage.

B. Costs and expenses

92. The applicant claimed 5,295 United States dollars (USD) for 115.5 hours of legal work at hourly rates from USD 30 to USD 50. He submitted copies of a legal fees agreement with his lawyer and a time sheet. Both documents carry the signatures of the applicant and his lawyer.

93. The applicant also claimed USD 630 for expenses including USD 402 for the translation of 67 pages, postal and overhead expenses.

94. The applicant requested that the amounts awarded by the Court under this head should be paid directly to his legal representative, Mr M. Ekimdjiev.

95. The Government stated that the claims were excessive in view of the living standard in Bulgaria. They also stated, apparently erroneously, that the fees agreement had not been signed.

96. The Court considers that the number of hours the applicant's lawyer claimed is excessive in view of the relatively low level of complexity of the case. Also, part of the initial complaints was declared inadmissible.

97. Having regard to all relevant factors and taking into account EUR 630 received in legal aid from the Council of Europe, the Court awards EUR 2,000 in respect of costs and expenses, to be paid directly to the applicant's legal representative, Mr M. Ekimdjiev.

C. Default interest

98. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 3 of the Convention in that upon his arrest the applicant was not brought promptly before a judge or other officer authorised by law to exercise judicial power and that his pre-trial detention was excessively lengthy;

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

3. *Holds* that there has been no violation of Article 6 § 1 of the Convention;

4. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts to be converted into Bulgarian levs at the rate applicable at the date of settlement:

(i) EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage to be paid to the applicant himself;

(ii) EUR 2,000 (two thousand euros) in respect of costs and expenses to be paid directly to the applicant's legal representative, Mr M. Ekimdjiev;

(iii) any tax that may be chargeable on the above amounts;

(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;

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

Done in English, and notified in writing on 30 September 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President