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

FIRST SECTION

CASE OF MITEV v. BULGARIA

(Application no. 40063/98)

JUDGMENT

STRASBOURG

22 December 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 Mitev 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 N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 2 December 2004,

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

PROCEDURE

1. The case originated in an application (no. 40063/98) 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 Iavor Deltchev Mitev ("the applicant"), on 23 October 1997.

2. The applicant was represented by Mr V. Vasilev, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their agents, Mrs G. Samaras and Mrs M. Dimova, of the Ministry of Justice.

3. The applicant alleged, in particular, that there had been violations of Article 5 §§ 1, 3, 4 and 5 and Article 6 § 1 in relation to 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). By partial decision of 21 November 2000 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 30 January 2003, the Court declared the remainder of the application partly admissible.

8. The applicant, but not the Government, filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1967 and lives in Sofia.

10. During the relevant period the applicant, who was addicted to drugs, was charged with numerous counts of theft. The charges concerned thefts of electric appliances, small amounts of money, small religious ceremonial objects, food, cigarettes and objects of higher value, such as icons and antiquities. More than twenty separate investigations were launched in relation to those thefts. Some of the investigations were initially instituted against an unknown perpetrator whereas in others the applicant, either alone or together with other persons, was named as the suspected perpetrator from the outset.

11. In the course of the ensuing criminal proceedings the investigations were grouped. Two sets of such grouped proceedings are relevant to the present application: one concerning petty thefts and the second concerning icons and antiquities.

A. Criminal proceedings on charges of petty thefts (1993-2000)

12. These included eight investigations and four summary investigations, instituted between 1993 and 1996. The applicant was charged for the first time on 26 October 1993 in respect of one of the investigations. Later charges were brought in the remainder and eventually the twelve files were joined.

13. During the investigation, between 1993 and 1996, the applicant and other suspected or accused persons were interrogated numerous times, forty-four witnesses were questioned, fifteen on-site visits were made, nine searches were undertaken and numerous expert reports were commissioned and examined (psychiatric reports, finger-print reports and accounting reports).

14. Approximately one third of these acts of investigation concerned charges under which the applicant was eventually convicted. The remainder concerned charges in respect of which the applicant was later acquitted.

15. On 27 October 1994 the competent prosecutor referred the case back to the investigator as there had been irregularities and discrepancies. The investigator concluded his work on 15 June 1995.

16. On 20 February 1996 the Sofia Prosecutor's Office submitted an indictment to the Sofia District Court.

17. On 18 March 1996 the Sofia District Court, noting that there had been breaches of procedural rules and discrepancies as regards the value of some of the stolen objects, referred the case back to the prosecutor.

18. On 20 February 1997 the prosecutor submitted a fresh indictment.

19. On 28 February 1997 the District Court, noting that some of the defects of the indictment had not been remedied despite the instructions given in the decision of 18 March 1996 and pointing to other discrepancies, referred the case back to the prosecutor.

20. On 22 January 1998 the prosecutor again submitted an indictment.

21. On 6 February 1998 the Sofia District Court, noting that certain procedural rules concerning the modification of the charges had not been observed, referred the case back to the prosecutor once more.

22. The final version of the indictment was submitted on 19 February 1998. It concerned sixteen counts of theft allegedly committed by the applicant and two other persons.

23. Throughout the judicial proceedings the applicant and his lawyer regularly appeared when summoned and did not cause any of the adjournments.

24. The first hearing was held on 13 May 1998. The court noted that one of the co-accused persons was not legally represented whereas legal representation was mandatory in view of the contradictory interests of the three accused persons. As a result, the hearing was adjourned.

25. It resumed on 10 June 1998 but had to be adjourned as one of the accused persons had not appeared. The court ordered his arrest.

26. On 14 July 1998 the hearing proceeded with the questioning of the three accused persons. Several experts and witnesses were also heard. As some of the witnesses had not appeared, the case was adjourned.

27. At the next hearing, held on 12 October 1998, several witnesses were heard. Others had not appeared, which necessitated an adjournment.

28. The hearing scheduled for 10 November 1998 could not proceed as one of the applicant's co-accused was ill.

29. When the hearing resumed on 7 December 1998 several witnesses were heard but an adjournment was again necessary as other witnesses had not appeared.

30. The next hearing took place on 11 February 1999. Several witnesses were heard. The failure of one witness to appear prompted another adjournment.

31. Throughout the relevant period the Sofia District Court sought police assistance for the establishment of the addresses of witnesses.

32. On 29 March 1999, at the last hearing, the Sofia District Court acquitted the applicant on nine of the charges and convicted him on the remaining seven. He was sentenced to three years' imprisonment, suspended.

33. On 27 April 1999 the applicant appealed to the Sofia City Court.

34. The Sofia City Court listed a hearing for 13 December 1999 which, however, could not proceed as one of the accused persons did not appear.

35. The hearing took place on 10 April 2000.

36. On 12 June 2000 the Sofia City Court delivered its judgment. It accepted the applicant's argument that the case should be treated as one concerning a continuing criminal activity and modified the conviction accordingly while upholding the sentence.

B. Criminal proceedings on charges of theft of icons and antiquities (1992-pending)

37. This second group of proceedings commenced on 26 November 1992 when the applicant was arrested and charged with theft. Other files, concerning separate thefts were opened between 1992 and 1995. The applicant was charged with having stolen icons and antiquities.

38. During the preliminary investigation ten files concerning separate thefts were joined. Eventually, however, the indictment only concerned four thefts, the other charges having been dropped.

39. Some of the investigations launched in 1992, 1993 and 1994 were suspended soon after their beginning as the perpetrators were unknown at the time. They resumed in 1996, when the applicant and other persons were charged.

40. In the course of the investigations many witnesses were heard, several accused persons, including the applicant were questioned, on-site visits and searches were made and expert reports were commissioned and examined. Apparently, only a part of those investigation acts concerned charges eventually retained. According to the applicant, the relevant investigation activity was limited to the questioning of eleven witnesses, three confrontations, six expert reports, four on-site visits and one search.

41. On 13 March 1997 the investigator completed his work and submitted the file to the competent prosecutor.

42. On 23 April 1997 the prosecutor ordered additional investigation. Those were finalised on 1 August 1997.

43. After having decided to drop one of the charges, on 10 December 1997 the prosecutor again referred the case back to the investigator who complied with the instructions and submitted a revised report on 19 March 1998.

44. On 26 June 1998 the prosecutor submitted an indictment to the Sofia City Court against three accused persons, including the applicant.

45. Throughout the judicial proceedings before the Sofia City Court the applicant and his lawyer regularly appeared when summoned and did not cause any of the adjournments.

46. The first hearing before the Sofia City Court, acting as a trial court, was listed for 13 November 1998 but could not proceed as one of the accused persons had not been summoned.

47. On 10 December 1998 and 13 January 1999 the trial could not begin as no ex officio lawyer had appeared for one of the accused, despite the court's repeated requests to the Sofia Bar.

48. The hearing scheduled for 9 March 1999 could not proceed as one of the accused persons could not be brought from prison owing to his ill health.

49. The trial eventually began on 5 May 1999. On that day the Sofia City Court heard the accused persons and the witnesses who had appeared. As some of the witnesses had not shown up, the hearing was adjourned until 15 June 1999.

50. On that day another adjournment was ordered as certain witnesses and experts had not appeared.

51. The hearing could not proceed on 13 October 1999 as one of the accused persons, a prisoner, was not brought to the courtroom: the Minister of Justice had imposed a five-day ban on transfers of prisoners in view of municipal elections during that period.

52. On 12 November and 13 December 1999 the hearing was again adjourned as the lawyers of two of the accused persons had not appeared, apparently owing to ill health.

53. Throughout the relevant period the Sofia City Court sought police assistance for the establishment of the addresses of witnesses.

54. The last hearing took place on 23 December 1999. On that day the Sofia City Court convicted the applicant in respect of three thefts and acquitted him in respect of the fourth alleged theft. He was sentenced to ten years' imprisonment. The two other accused persons were also convicted and sentenced to terms of imprisonment.

55. Both the applicant and the prosecution appealed to the Sofia Appellate Court.

56. The applicant's whereabouts were unknown until 15 December 2000 when he was arrested on new charges, unrelated to the present case. As a result of the applicant's address being unknown, the Sofia Appellate Court could not proceed with the case until January 2001.

57. A hearing was listed for 30 March 2001 but was adjourned as one of the other accused persons was not legally represented. It appears that he was unable to continue paying his lawyer, which necessitated the appointment of an ex officio counsel and therefore an adjournment.

58. On an unspecified date in 2001 the Sofia Appellate Court held a hearing which was however adjourned as the report on the value of the stolen objects had not been submitted.

59. On 8 March 2002, having received the experts' opinion that the value of the icons could not be determined, the Sofia Appellate Court set aside the judgment of the Sofia City Court of 23 December 1999 and referred the case to the preliminary investigation stage of the proceedings. The Appellate Court found, *inter alia*, that there had been a number of discrepancies concerning the value of the stolen objects which affected the legal characterisation of the charges, that the lower court's judgment had not provided sufficient reasoning and that it had relied on inadmissible evidence.

60. As of 27 March 2002, the date of the latest information received from the parties in relation to the icons and antiquities case, the proceedings were pending at the investigation stage.

C. The applicant's remand in custody during the relevant period

61. On 26 November 1992 the applicant was arrested and remanded in custody on one of the charges which eventually resulted in the criminal case concerning thefts of icons and antiquities. On 11 January 1993 the applicant was released on bail.

62. On 26 October 1993 the applicant was arrested and detained pending trial in relation to the group of case files which eventually resulted in the petty thefts case against him. On 8 April 1994 he was released on bail.

63. On 5 August 1994 the applicant was again arrested in relation to the petty thefts set of case files, brought before an investigator or a prosecutor, charged with additional counts of theft and placed under pre-trial detention.

64. On 17 October 1994 the applicant's petition for release was dismissed by a prosecutor.

65. On 5 January 1995 another petition for release was dismissed on grounds that the applicant was suspected of having committed offences after his release on 8 April 1994 and that therefore there existed a danger of re-offending.

66. On 27 August 1996 a request for release submitted by the applicant was dismissed by a district prosecutor. That decision was upheld on 23 September 1996 by a regional prosecutor. The applicant's ensuing appeal was dismissed on 9 October 1996 by the Chief Public Prosecutor's Office. The decision stated, *inter alia*, that the applicant was charged with numerous serious crimes and that there were other criminal proceedings pending against him. Therefore, his detention was mandatory under Article 152 § 3 of the Code of Criminal Procedure.

67. According to the applicant, on 11 March and again on 24 April 1997 he submitted to the Sofia District Court, through the prison administration,

appeals against his detention. The applicant stated that he had obtained registration numbers under the outgoing correspondence register of the prison but had never been notified of any examination or decision on his appeals. According to the Government, there was no evidence supporting the applicant's statement that he had submitted appeals in March and April 1997

68. On 12 August 1997 the applicant appealed to the Sofia District Court against his pre-trial detention. He relied, *inter alia*, on a legislative amendment, in force since 12 August 1997, according to which pre-trial detention pending the preliminary investigation could not exceed one or two years, depending on the gravity of the charges.

69. The District Court held a hearing on 25 September 1997 and ordered the applicant's unconditional release. The District Court stated, *inter alia*, that the applicant had been diagnosed as suffering from addiction to drugs and was in need of medical treatment. Furthermore, all evidence in the case had been collected.

70. Despite the District Court's decision of 25 September 1997 the applicant was only released on 23 October 1997 owing to a misunderstanding concerning the different cases pending against him.

71. In particular, during a certain period of time, the petty thefts case had been dealt with under investigation file number 965/94. The applicant's initial detention order of 5 August 1994 carried that reference. When later another file, no. 415A/96, had been added to the set, the latter number had become the number of the joint file. In his appeal to the District Court of 12 August 1997 the applicant had referred to file number 415A/96, which also figured in the District Court's decision of 25 September 1997 ordering his release.

72. That decision was transmitted to the prison administration on 25 September 1997. The prison administration, apparently noting that there existed a detention order under investigation case number 965/94 and considering that that was a separate case, concluded that the applicant should remain in pre-trial detention. No written document was issued in this respect.

73. On 17 October 1997 the applicant submitted a complaint to the District Court stating that he was still in detention. He also stated that the two file numbers concerned the same case. The complaint was registered at the District Court on 21 October 1997.

74. On 23 October 1997 the District Court wrote to the prison administration clarifying the matter. The applicant was released on the same day.

D. The applicant's attempt to obtain compensation for his unlawful detention

75. On an unspecified date in 1997 the applicant, assisted by a lawyer, brought before the Sofia City Court a civil action against the prosecuting authorities and the Sofia District Court claiming non-pecuniary damages for his allegedly unlawful detention between 16 August 1997, the date by which his appeal of 12 August 1997 should have been decided in accordance with the statutory three-day time-limit, and 23 October 1997, the date on which he was released.

76. After several hearings, on 14 May 2001 the Sofia City Court reserved judgment.

77. By judgment of 27 February 2003 the Sofia City Court dismissed the applicant's claims on grounds that the period of his pre-trial detention had been deducted from the term of imprisonment to which he had been sentenced and that no compensation for non-pecuniary damage was due in such circumstances. The applicant appealed.

78. On 24 March 2004 the Sofia Appellate Court partly upheld the lower court's judgment, quashed it for the remainder and decided on the merits.

79. The Appellate Court noted that the fact that the applicant's request for release filed on 12 August 1997 had not been examined until 25 September 1997 was in violation of domestic law. Nevertheless, the court considered that it was not possible to speculate whether or not his release would have been ordered had his application been examined before 25 September 1997. For these reasons, the court upheld the City Court's judgment dismissing the applicant's claims for the period between 16 August and 25 September 1997.

80. The Appellate Court found, however, that from 26 September until the applicant's release on 23 October 1997 his detention had not been based on any legal ground. The court did not accept the reasoning of the Sofia City Court as regards the deduction of the time spent by the applicant in detention, since that deduction had been made from a suspended sentence and, therefore, the applicant had not benefited from a shorter stay in prison. On that basis the Appellate Court ordered the Prosecutor's Office, the body in charge of supervising the enforcement of pre-trial detention orders, to pay to the applicant 500 Bulgarian levs ("BGN") in non-pecuniary damages for his unlawful detention between 26 September 1997 and 23 October 1997. Since the applicant's claim had been for BGN 7,000 and he owed court fees in an amount proportionate to the dismissed part of his claims, the applicant was ordered to pay BGN 260 in court fees. The applicant was thus eventually entitled to BGN 240 in compensation (the equivalent of about EUR 120).

81. The applicant filed a cassation appeal with the Supreme Court of Cassation. As of July 2004 the proceedings were pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Grounds for pre-trial detention and appeals against detention

82. 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 (extracts)).

B. Article 239a of the Code of Criminal Procedure

83. In June 2003 an amendment to the Code of Criminal Procedure, the new Article 239a, introduced the possibility for an accused person to have his case examined by a trial court if the investigation has not been completed within a certain statutory time-limit (two years in investigations concerning serious crimes and one year in all other investigations).

C. The State Responsibility for Damage Act

84. Section 2 of the State Responsibility for Damage Act of 1988 („Закон за отговорността на държавата за вреди, причинени на граждани") provides, as relevant:

> "The State shall be liable for damage caused to [private persons] by the organs of ... the investigation, the prosecution, the courts ... for:
>
> 1. unlawful pre-trial detention ..., if [the detention order] has been set aside for lack of lawful grounds[.]"

85. In two recent judgments the Supreme Court of Cassation held that pre-trial detention orders must be considered as being "set aside for lack of lawful grounds" – and that State liability arises – where the criminal proceedings have been terminated on grounds that the charges have not been proven (реш. № 859/ 2001 г. от 10 септември 2001 г. г.д. № 2017/2000 г. на ВКС) or where the accused has been acquitted (реш. № 978/2001 г. от 10 юли 2001 г. по г.д. № 1036/2001 г. на ВКС). The view taken appears to be that in such cases the pre-trial detention order is retrospectively deprived of its lawful grounds as the charges were unfounded.

86. On the other hand, the Government have not informed the Court of any successful claim under section 2(1) of the Act in respect of unlawful pre-trial detention orders in connection with pending criminal proceedings or proceedings which have ended with final convictions. It appears that

rulings putting an end to pre-trial detention in pending criminal proceedings have never been considered as decisions to "set aside for lack of lawful grounds" within the meaning of section 2(1) of the Act. Also, the terms "unlawful" and "lack of lawful grounds" apparently refer to unlawfulness under domestic law.

87. By section 2(2) of the Act, in certain circumstances a claim may be brought for damage occasioned by the "unlawful bringing of criminal charges". Such a claim may be brought only where the accused person has been acquitted by a court or the criminal proceedings have been discontinued by a court or by the prosecution authorities on the ground that the accused person was not the perpetrator, that the facts did not constitute a criminal offence or that the criminal proceedings were instituted after the expiry of the relevant limitation period or despite a relevant amnesty. In contrast with the solution adopted under section 2(1) (see paragraph 57 above), the Supreme Court of Cassation has held that no liability arises under section 2(2) where the criminal proceedings were discontinued at the pre-trial stage on the ground that the accusation was not proven (реш. № 1085/2001 г. от 26 юли 2001 г. по г.д. № 2263/2000 г. на ВКС IV г.о.).

88. Persons seeking redress for damage occasioned by decisions of the investigating and prosecuting authorities or the courts in circumstances falling within the scope of the State Responsibility for Damage Act have no claim under general tort law as the Act is a *lex specialis* and excludes the application of the general regime (section 8(1) of the Act; реш. № 1370/1992 г. от 16 декември 1992 г., по г.д. № 1181/1992 г. на ВС IV г.о.). The Government have not referred to any successful claim under general tort law in connection with unlawful pre-trial detention.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 5 §§ 1 AND 3 OF THE CONVENTION

89. The applicant complained that he had not been brought before a judge or other officer exercising judicial power and that he had been deprived of liberty unlawfully and without justification.

90. The relevant part of Article 5 of the Convention provides:

> "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."

91. The Court will examine the applicant's complaints in the order in which the procedural steps on his arrest and detention were taken.

A. Alleged violation of the applicant's right under Article 5 § 3 of the Convention to be brought before a judge or other officer authorised by law to exercise judicial power

92. The Government did not comment on this complaint.

93. The Court must examine the above complaint only in so far as it concerns the applicant's arrest on 5 August 1994. The remainder of the complaint was declared inadmissible as being submitted out of the six months' time-limit under Article 35 § 1 of the Convention (see the final admissibility decision of 30 January 2003 in the present case).

94. The Court recalls that in the cases of *Assenov and Others v. Bulgaria* (judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII) and *Nikolova* (cited above), which concerned the system of detention pending trial as it existed in Bulgaria until 1 January 2000, it found 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 also *H.B. v. Switzerland*, no. 26899/95, 5 April 2001).

95. The present case also concerns detention pending trial before 1 January 2000. Following his arrest on 5 August 1994, the applicant was brought before an investigator or a prosecutor (see paragraph 63 above). However, the investigator did not have power to make a binding decision to detain him and in any event neither the investigator nor the prosecutor who authorised 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 (see §§ 28, 29 and 45-53 of that judgment).

96. 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 applicant's right to trial within a reasonable time or to release pending trial in accordance with Article 5 § 3

1. The parties' submissions

97. The applicant stated that the present case was an illustration of a widespread vicious practice according to which the police and the investigation and prosecution authorities, in an effort to improve their statistics, systematically charged arrested petty offenders with numerous offences committed by unknown perpetrators. Even though it was clear from the outset that no conviction would follow on part of the charges as no link would be found between the arrested person and the offences, the police, as well as the investigation and prosecution authorities, would report the cases as "resolved", the alleged perpetrator having been charged, indicted and put on trial. Moreover, in public discussions the courts would then be blamed for having acquitted "criminals" and would be accused of being soft on crime.

98. In the applicant's view the above practice was the main cause of the inordinate delays in his case. He had only been found guilty on some of the charges. Furthermore, there had been numerous procedural deficiencies during the investigation and factual discrepancies in the indictments which had resulted in repeated referrals back to the investigation stage. In some cases the investigation and prosecution authorities had failed to abide by the instructions of the trial court. The failure of the authorities to summon witnesses and secure their appearance had caused lengthy delays. A number of procedural errors were imputable to the trial court. At the same time, the applicant had not been responsible for any delay.

99. The Government stated that the proceedings had been procedurally and factually complex. The charges had concerned numerous thefts committed by several persons in different places, time and circumstances. That had required the examination of many witnesses, on-site visits, searches and expert reports. Some witnesses could not be found and had had to be summoned repeatedly. The courts had done everything possible to establish their addresses and limit the length of the proceedings. Certain delays had been caused by the other accused persons and their lawyers.

100. Therefore, in the Government's view, objective difficulties which could not be attributed to the authorities explained the length of the proceedings and of the applicant's detention pending trial. Furthermore, the applicant had never protested against the adjournments or requested shorter

intervals between hearings. In any event, the intervals between the hearings had been reasonable.

2. The Court's assessment

101. The applicant spent three separate periods in pre-trial detention: 26 November 1992 - 11 January 1993, 26 October 1993 – 8 April 1994 and 5 August 1994 - 23 October 1997 (see paragraphs 61-74 above).

102. Where an accused person is detained for two or more separate periods pending trial, the reasonable time guarantee of Article 5 § 3 requires a global assessment of the cumulated period (see *Kemmache v. France (no. 1 and no. 2)* judgment of 27 November 1991, Series A no. 218, § 44, *Mironov v. Bulgaria*, no. 30381/96, Commission report of 1 December 1998, § 67, and *Vaccaro v. Italy*, no. 41852/98, 16 November 2000, §§ 31-33).

103. In the specific circumstances of the present case the Court need not decide whether the first period of one month and a half (26 November 1992 - 11 January 1993), when the applicant was detained under a separate set of charges (see paragraphs 61 and 62 above), should be taken into consideration. The Court will proceed on the basis that the relevant period was at least three years and eight months (26 October 1993 – 8 April 1994 and 5 August 1994 - 23 October 1997) (see paragraphs 63-74 above).

104. The persistence of 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 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 (*Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV).

105. It has not been disputed that the applicant was detained on a reasonable suspicion that he had committed several offences.

106. As to the grounds for the continued detention, the Court accepts that the information available to the authorities about the number and type of offences committed by the applicant and, in particular, the fact that he apparently continued to commit thefts after his release on 8 April 1994, warranted a finding that there was a danger of him committing offences or absconding if released (see paragraphs 10 and 66 above). While the authorities also relied on Article 152 § 3 of the Code of Criminal Procedure – a provision that was incompatible with Article 5 § 3 of the Convention as it required the mandatory pre-trial detention of persons against whom more than one investigation was pending (see paragraphs 66 and 82 above and *Yankov*, cited above, § 173) – the Court considers that the existing danger of

the applicant committing offences constituted a relevant and sufficient ground justifying his deprivation of liberty.

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

108. The Court notes that the case against the applicant disclosed certain factual complexity as it concerned several separate thefts (see paragraphs 12 and 13 above).

109. The Court observes, however, that more than two years of the period spent by the applicant in pre-trial detention were taken up by repeated referrals of the case back to the investigation stage, owing to discrepancies in the indictment and the material prepared by the investigators and the prosecutor. As it transpires from the relevant facts, many months elapsed after each referral and the discrepancies were not remedied expeditiously. The authorities did not express any concern about the fact that the investigators' and prosecutors' omissions resulted in the applicant's lengthy pre-trial detention (see paragraphs 17-22 above).

110. The Court considers that that approach was incompatible with the requirements of Article 5 § 3 of the Convention. The Court reiterates that in the conduct of criminal proceedings against accused persons who are detained the authorities must display special diligence and reduce any delay to the minimum possible.

111. As that was not done in the present case, the Court finds that there has been a violation of the applicant's right to a trial within a reasonable time or release pending trial as guaranteed by Article 5 § 3 of the Convention.

C. Complaint under Article 5 § 1 of the Convention in respect of the applicant's detention between 25 September and 23 October 1997

112. The applicant stated that his continued detention following the District Court's decision to release him was unlawful and contrary to Article 5 § 1 of the Convention.

113. The Government stated that the authorities were not responsible for the delay in the applicant's release. In the Government's view, the applicant had contributed to the problem as in his appeal against detention he had not referred to the former file number of the criminal case against him. Since the prison administration had been aware of several investigations against the applicant, it had not been unreasonable for them to conclude that the District Court's release order had only concerned one of the cases and that the applicant had to remain in detention. Also, the applicant had waited 22 days before alerting the authorities.

114. In July 2004, in reply to a query by the Court's registry, the applicant informed the Court about the Sofia Appellate Court's judgment of

24 March 2004 which awarded him compensation for his unlawful detention between 26 September and 23 October 2004. The applicant also stated that he had appealed and that the proceedings were pending before the Supreme Court of Cassation (see paragraphs 78-81 above). A copy of the applicant's letter was sent to the Government who did not comment.

115. The Court observes that the Government have not raised an objection as to the applicant's victim status under Article 34 of the Convention following the Sofia Appellate Court's judgment of 24 March 2004. In these circumstances, and noting that the proceedings are still pending, seven years after they began, the Court will proceed on the basis that the applicant may still claim to be a victim of a violation of Article 5 § 1 in relation to his deprivation of liberty between 25 September and 23 October 1997.

116. In accordance with the Court's case-law, only a narrow interpretation of the list of exceptions to the right to liberty secured in Article 5 § 1 is consistent with the aim of that provision, to ensure that no one is arbitrarily deprived of his or her liberty. The Court must scrutinise complaints of delays in release of detainees with particular vigilance. It is incumbent on the respondent Government to provide a detailed account of the relevant facts, hour by hour. Administrative formalities connected with release cannot justify a delay of more than several hours (see *Labita*, cited above, § 170, *Giulia Manzoni v. Italy*, judgment of 1 July 1997, *Reports* 1997-IV, and *Nikolov v. Bulgaria*, no. 38884/97, §§ 80-85, 30 January 2003).

117. In the present case it is undisputed that the delay in the applicant's release was due to the fact that the relevant authorities, noting that the District Court's order to release the applicant referred to a file number different from that of the 1994 detention order, erroneously considered that the 1994 detention order remained unaffected (see paragraphs 70-74 above).

118. The Court considers that it was incumbent on the authorities – in this case the prison administration and the prosecuting authorities who were in charge of supervising the enforcement of pre-trial detention orders – to verify carefully whether or not there were valid legal grounds for the applicant's continued deprivation of liberty. That was not done and the applicant was detained unlawfully for 28 additional days despite the fact that his release had been ordered by the District Court. The same conclusion was reached by the Sofia Appellate Court in its judgment of 24 March 2004 (see paragraphs 77-80 above).

119. It follows that there has been a violation of Article 5 § 1 of the Convention in respect of the applicant's deprivation of liberty between 25 September and 23 October 1997.

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

120. The applicant complained that two of his judicial appeals against detention (those submitted in March and April 1997) were never examined and that his third appeal (submitted on 12 August 1997) was not examined speedily. Stating that as a result he did not have an effective remedy against the violations of Article 5 in his case, he relied on Articles 5 and 13 of the Convention.

121. The Court considers that those 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."

122. The Government stated that there was no conclusive proof of the applicant having submitted appeals in March and April 1997. They did not comment on the remainder of the complaints.

123. In accordance with the Court's case-law, Article 5 § 4 of the Convention, in guaranteeing to persons arrested or detained a right to institute proceedings to challenge the lawfulness of their deprivation of liberty, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (see *Baranowski v. Poland* [GC], no. 28358/95, ECHR 2000-III). The requirement of Article 5 § 4 of the Convention that decisions be taken "speedily" must - as is the case for the "reasonable time" stipulation in Articles 5 § 3 and 6 § 1 of the Convention - be determined in the light of the circumstances of each case (see *G.B. v. Switzerland*, no. 27426/95, § 33, 30 November 2000).

124. In the present case it is undisputed that the applicant's appeal against his detention, submitted on 12 August 1997, was only examined on 25 September 1997, forty-four days later (see paragraphs 68 and 69 above). The Government have not explained that inordinate delay.

125. In these circumstances the Court considers that the appeal of 12 April 1997 was not examined speedily, as required by Article 5 § 4 of the Convention. There has been, therefore, a violation of that provision.

126. In view of its finding above, the Court does not find it necessary to examine the applicant's allegation that he had submitted his appeal against his detention as early as in March and April 1997.

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

127. The applicant submitted that Bulgarian law did not provide for an enforceable right to compensation in cases of violations of Article 5 of the Convention. He relied on its paragraph 5, which provides:

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

128. The Government did not comment.

129. The applicant's pre-trial detention infringed his rights under Article 5 § 1, 3 and 4 of the Convention (see paragraphs 96, 111, 119 and 125 above). It follows that Article 5 § 5 of the Convention is applicable.

130. The Court must therefore establish whether or not Bulgarian law afforded the applicant an enforceable right to compensation for the violations of Article 5 of the Convention in his case.

131. Since the applicant's situation in domestic law and, consequently, the possibilities for obtaining compensation changed on 25 September 1997, when his release was ordered, the above issue must be examined separately in relation to the applicant's deprivation of liberty before and after that date.

A. Alleged lack of compensation for the violations that occurred during the applicant's pre-trial detention and until his release was ordered on 25 September 1997

132. During that period there were violations of the applicant's rights to be brought promptly before a judge or other officer authorised by law to exercise judicial power (see paragraph 96 above), his right to trial within a reasonable time or release pending trial (see paragraph 111 above) and his right to obtain speedily decision by a court on the lawfulness of his deprivation of liberty (see paragraph 125 above).

133. However, in accordance with section 2(1) of the State Responsibility for Damage Act, a person who has been remanded in custody may seek compensation only if the detention order was set aside "for lack of lawful grounds". This expression apparently refers to unlawfulness under domestic law. As far as it can be deduced from the scant practice reported under this provision, section 2(1) has only been applied in cases where the criminal proceedings were terminated on the basis that the charges were unproven or where the accused was acquitted (see paragraphs 84-86 above).

134. In the present case the applicant's pre-trial detention until the District Court's decision of 25 September 1997 to release him was not considered by the domestic courts as being unlawful. The applicant was eventually convicted in the petty thefts case (see paragraphs 32, 36 and 69 above). In such circumstances, in accordance with the practice of the

Bulgarian courts, no right to compensation under section 2(1) of the State Responsibility for Damage Act arises. Nor does section 2(2) of the Act apply (see paragraphs 84-87 above).

135. Moreover, in the applicant's case the Sofia Appellate Court noted that the examination of his appeal of 12 August 1997 had been delayed in breach of the domestic law, but found that no compensation for that violation was due under the relevant law (see paragraph 79 above).

136. The Court also notes that, unlike the case of *N.C. v. Italy* [GC], no. 24952/94, § 57, ECHR 2002-X, the compensation awarded to the applicant by judgment of 24 March 2004 of the Sofia Appellate Court related to another period of the applicant's deprivation of liberty and does not, therefore, constitute compensation in respect of the violations of Article 5 during his pre-trial detention (see paragraph 80 above).

137. It follows that the State Responsibility for Damage Act does not provide for an enforceable right to compensation for the violations of Article 5 that occurred during the applicant's pre-trial detention and until his release was ordered. Furthermore, such a right is not secured under any other provision of Bulgarian law (see paragraph 88 above).

138. The Court thus finds that Bulgarian law did not afford the applicant an enforceable right to compensation, as required by Article 5 § 5 of the Convention. There has therefore been a violation of Article 5 § 5 of the Convention.

B. Alleged lack of compensation for the delay in the applicant's release

139. The Court observes that in March 2004, seven years after the beginning of the civil proceedings instituted by the applicant in 1997, the Sofia Appellate Court ordered the relevant prosecuting authorities to pay to the applicant non-pecuniary damages for his unlawful detention between 26 September and 23 October 1997. The Appellate Court decided that compensation for the unlawful detention was due since the applicant had not benefited from the deduction of his suspended sentence. The proceedings are still pending before the Supreme Court of Cassation (see paragraphs 75-81 above).

140. Since the domestic proceedings are still pending, the Court considers that it is not necessary to examine whether or not there has been a separate violation of Article 5 § 5 of the Convention in relation to the applicant's compensation claim for the delay in his release.

IV. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

141. The applicant complained that the criminal proceedings against him were excessively lengthy and thus in breach of Article 6 § 1 of the Convention. Article 6 § 1 provides, in so far as relevant:

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

142. The parties referred to their submissions under Article 5 § 3 of the Convention. The Government added that in the second case against the applicant, that concerning thefts of icons and antiquities, he had been responsible for a delay in the appellate proceedings as in 2000 he had not indicated his address.

A. Alleged excessive length of the petty thefts case

143. Those proceedings began on 26 October 1993, when the applicant was charged with some of the offences that were later dealt with in one case. The proceedings ended on 12 June 2000. The global period to be examined is therefore six years and seven and a half months. During that period the case went through the investigation stage and was examined by two levels of jurisdiction (see paragraphs 12-36 above).

144. In assessing the length of the proceedings, the Court will examine the relevant period as a whole, while taking into consideration the fact that the case concerned numerous charges and that in respect of some of the charges the starting point was not in 1993, but in the following years, 1993 - 1996, when additional charges were brought (see paragraphs 12 and 13 above).

145. The Court agrees with the Government that the case was factually complex. However, more than two years were taken up by repeated referrals of the case back to the investigation stage, owing to discrepancies in the indictment and the material prepared by the investigators and the prosecutor (see paragraphs 17-22 above). Also, at least some of the adjournments of the trial hearing were imputable to the authorities as they failed to appoint ex officio counsel in time for the hearing and were unable to secure the presence of witnesses. There were no delays attributable to the applicant (see paragraphs 23-32 above).

146. Having regard to the criteria established in its case-law for the assessment of the reasonableness of the length of proceedings (see, among many others, *Pélissier and Sassi v. France* [GC], no. 25444/94, ECHR 1999-II), the Court finds that the length of the criminal proceedings against the applicant on at least some of the charges that eventually formed the petty thefts case against him failed to satisfy the reasonable time

requirement of Article 6 § 1 of the Convention. There has been, therefore, a violation of that provision.

B. Alleged excessive length of the icons and antiquities case

147. Those proceedings began in November 1992, when the applicant was charged with some of the offences that were later dealt with in one case. As of March 2002 the proceedings were still pending, the case having been referred to the investigation stage. The global period to be examined is thus at least nine years and five months (see paragraphs 37-60 above).

148. In assessing the length of the proceedings, the Court will examine the relevant period as a whole, while taking into consideration the fact that the case concerned numerous charges and that in respect of some of the charges the starting point was not in 1992, but in the following years, 1993 - 1996, when the additional charges were brought (see paragraphs 37-39 above).

149. The Court observes that the case was factually complex.

150. At the investigation stage, the authorities were responsible for excessive delays. In particular, it appears that little progress was made in the investigation between 1992 and 1996. Furthermore, a period of approximately one year, between April 1997 and March 1998, was spent in correcting omissions in the investigation. As a whole, the investigation lasted more than five years, in itself an excessive period (see paragraphs 37-44 above).

151. In the appellate proceedings the applicant was responsible for a delay of approximately one year (December 1999 - December 2000) as he did not indicate his address to the relevant authorities (see paragraphs 54-56 above).

152. Having regard to the relevant criteria in its case-law cited above (see paragraph 146 above), the Court, noting that the investigation lasted more than five years, that the proceedings as a whole continued for at least nine years and five months and in March 2002 recommenced at the investigation stage, finds that the length of the proceedings on at least some of the charges that eventually formed the icons and antiquities case against him failed to satisfy the reasonable time requirement of Article 6 § 1 of the Convention. There has been, therefore, a violation of that provision.

V. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 6 § 1 OF THE CONVENTION

153. The applicant complained that he did not have an effective remedy in relation to the excessive length of the criminal proceedings against him and relied on Article 13 of the Convention, which provides:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

154. The Government did not comment.

155. Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint. However, the remedy required by Article 13 must be "effective" in practice as well as in law (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

156. Remedies available to a litigant at domestic level for raising a complaint about the length of proceedings are "effective", within the meaning of Article 13, if they "[prevent] the alleged violation or its continuation, or [provide] adequate redress for any violation that [has] already occurred" (see *Kudła*, cited above, § 158). Article 13 therefore offers an alternative: a remedy will be considered "effective" if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigant with adequate redress for delays that have already occurred (see *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

157. Having regard to its conclusion in respect of the applicant's complaints under Article 6 § 1 (see paragraphs 146 and 152 above), the Court is of the view that the complaints were arguable. The Court must therefore determine whether, in the particular circumstances of the present case, there existed in Bulgarian law any means for obtaining redress in respect of the length of the proceedings.

158. The Court notes that in June 2003 an amendment to the Code of Criminal Procedure, the new Article 239a, introduced the possibility for an accused person to have his case brought before the trial court if the investigation has not been completed within a certain statutory time-limit (see paragraph 83 above). However, in the present case, the petty thefts case against the applicant ended in 2000, before the adoption of Article 239a. The applicant could not have used the new remedy in that case (see paragraph 36 above). As regards the icons and antiquities case, even assuming that it was still pending at the investigation stage after June 2003 and that the applicant could therefore make use of the new remedy after that date, any acceleration of the proceedings at that moment would have come too late to make up for the excessive delay already accumulated (see paragraphs 37-60 and 152 above). In these circumstances the Court does not consider it necessary to rule in the abstract whether the new Article 239a is an effective remedy for the purposes of Article 13 of the Convention (see, *mutatis mutandis*, *Djangozov v. Bulgaria,* no. 45950/99, § 52, 8 July 2004).

159. As the Court found in its *Osmanov and Yuseinov v. Bulgaria* judgment (nos. 54178/00 and 59901/00, §§ 38-42, 23 September 2004) at the relevant time there was no formal remedy under Bulgarian law that could have expedited the determination of the criminal charges against the applicant. In particular, the possibility to complain to the various levels of the prosecution authorities cannot be regarded as an effective remedy because such hierarchical complaints aim to urge the authorities to utilise their discretion and do not give the accused a personal right to compel the State to exercise its supervisory powers (see *Gibas v. Poland*, no. 24559/94, Commission decision of 6 September 1995, Decisions and Reports 82, p. 76, at p. 82, *Kuchař and Štis v. Czech Republic* (dec.), 37527/97, 23 May 2000, *Horvat v. Croatia*, no. 51585/99, §§ 47 and 64, ECHR 2001-VIII, and *Hartman v. Czech Republic*, no. 53341/99, § 66, ECHR 2003-VIII (extracts)).

160. Furthermore, as regards compensatory remedies, the Court has not found it established that in Bulgarian law there exists the possibility to obtain compensation or other redress for excessively lengthy proceedings.

161. Accordingly, there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby he could enforce his right to a "hearing within a reasonable time" as guaranteed by Article 6 § 1 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

162. 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

1. Pecuniary damage

163. The applicant claimed EUR 3,306 in lost income. That figure was calculated on the basis of the minimum wage applicable in Bulgaria for the period 5 August 1994 – 23 October 1997, when the applicant was deprived of his liberty.

164. The Government objected, stating that the applicant had not exhausted all domestic remedies as he had not sought pecuniary damages under the State Responsibility for Damage Act. Furthermore, the period of the applicant's detention had been deducted from his sentence. The

Government also stated that the applicant had not shown that he had worked and received income during the periods when he had been free.

165. The Court reiterates that Article 41 of the Convention does not require applicants to exhaust domestic remedies a second time in order to obtain just satisfaction if they have already done so in vain in respect of their substantive complaints. The wording of that provision – where it refers to the possibility of reparation under domestic law – establishes a rule going to the merits of the just satisfaction issue (see *De Wilde, Ooms and Versyp v. Belgium* (Article 50), judgment of 10 March 1972, Series A no. 14, pp. 8-9, § 16 and *A.B. v. Slovakia*, no. 41784/98, § 78, 4 March 2003). In this connection, the Court already found that the State Responsibility for Damage Act did not provide for a compensation for the applicant's pre-trial detention at least until 25 September 1997, when his release was ordered (see paragraph 138 above).

166. The Court considers, however, that the applicant has not shown that but for the violations of the Convention in his case he would have earned income in the amount of the minimum monthly wage or any other amount. In particular, he has not shown that he worked before or after his detention or that he would have done so had his detention been shorter. The claims for pecuniary damages are therefore dismissed.

2. Non-pecuniary damage

167. The applicant claimed EUR 10,000 under this head, on account of all violations of the Convention in his case. He stated that the lengthy proceedings and his unlawful and unjustified detention in very poor conditions had caused him anxiety and suffering.

168. The Government stated that the amount claimed was excessive.

169. The Court considers that the applicant must have endured anxiety and suffering because of his lengthy detention, the delay in his release, the excessive length of the criminal proceedings and the other violations of his Convention rights found in the present case. It takes into account the fact that the Sofia Appellate Court, albeit seven years after the submission of the applicant's claim, awarded a certain amount in compensation for one of those violations. Deciding on an equitable basis, the Court awards EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

170. The applicant claimed 2,600 United States dollars ("USD") for the work done by his lawyer on the domestic and the Strasbourg proceedings, and USD 200 in respect of translation and postal costs. He submitted a copy of a written fees agreement, dated 8 March 2002, between him and his

lawyer and receipts for the equivalent of approximately USD 100 paid for three packages dispatched by courier service.

171. The Government stated that some of the lawyers' fees were charged in respect of domestic proceedings unrelated to the present case and that the applicant has not presented copies of lawyer's receipts in the form normally used in domestic proceedings.

172. The Court is satisfied that the claims refer to costs actually and necessarily incurred and which are reasonable as to quantum. In particular, the domestic proceedings for which lawyer's fees were claimed were those that formed the subject matter of the present case.

173. Converting the claims into euros and having regard to the fluctuations of the relevant exchange rate since the date of the fees agreement between the applicant and his lawyer, the Court awards EUR 3,000 in respect of costs and expenses, plus ant tax that may be chargeable on that amount.

C. Default interest

174. 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 the applicant was not brought before a judge or other officer authorised by law to exercise judicial power;

2. *Holds* that there has been a violation of the applicant's right under Article 5 § 3 of the Convention to a trial within a reasonable time or release pending trial;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention in that he was detained unlawfully between 25 September and 23 October 1997;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention in that his appeal against detention filed on 12 August 1997 was not examined speedily;

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

6. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the criminal proceedings against the applicant;

7. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 6 § 1;

8. *Holds*

(a) that the respondent State is to pay the applicant, 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 4,000 (four thousand euros) in respect of non-pecuniary damage;

(ii) EUR 3,000 (three thousand euros) in respect of costs and expenses;

(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;

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

Done in English, and notified in writing on 22 December 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President