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EUROPEAN COURT OF HUMAN RIGHTS

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FIRST SECTION

CASE OF NIKOLOVA v. BULGARIA (No. 2)

(Application no. 40896/98)

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 Nikolova v. Bulgaria (no. 2),

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 that date:

PROCEDURE

1. The case originated in an application (no. 40896/98) 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 Ms Ivanka Markova Nikolova ("the applicant"), a Bulgarian national born in 1943 and living in Plovdiv, on 12 January 1998. This is the second application by the applicant. The first (no. 31195/96) resulted in a judgment (see *Nikolova v. Bulgaria* [GC], no. 31195/96, ECHR 1999-II).

2. The applicant was represented before the Court by Mr M. Ekimdjiev, a lawyer practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agents, Ms M. Pasheva and Ms M. Dimova, of the Ministry of Justice. In a letter of 6 December 2002 the applicant objected to the representative powers of the Agents and invited the Court to ignore the observations submitted by them on the Government's behalf. On 4 September 2003 the Court decided to reject the applicant's objection.

3. The applicant alleged, in particular, that the combined length of her pre-trial detention and subsequent house arrest had been excessive, that her house arrest had not been subject to judicial review and that the length of the criminal proceedings against her had exceeded a reasonable time.

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 First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that

would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 4 September 2003 the Court declared the application partly admissible.

7. The parties did not file observations on the merits.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1943 and lives in Plovdiv.

A. The criminal proceedings against the applicant

9. The applicant used to work as a cashier and accountant in a state-owned company.

10. An audit of the company at the beginning of 1995 revealed a cash deficit of 1,290,059 old Bulgarian levs.

11. In February 1995 the applicant was given a copy of the audit's final act, which contained the auditors' opinion that, *inter alia*, during the period 1991-94 she had deliberately made false entries in the accounting books and had thus misappropriated funds.

12. On 15 March 1995 the Plovdiv Regional Prosecutor's Office opened a preliminary investigation in respect of the applicant and three other employees of the company. It seems that the applicant became aware of the investigation soon after its opening. The case was sent for investigation to the Plovdiv Regional Investigation Service. The prosecutor in charge of the case indicated a number of specific facts which the investigator had to establish and ordered that the investigation be completed within sixty days.

13. On 10 August 1995 the Regional Prosecutor's Office, noting that no investigative steps had been taken until that moment despite its instructions of 15 March 1995, directed the investigator immediately to start working on the case and finalise the investigation within sixty days.

14. In the following months the applicant was questioned several times. The investigation authorities also questioned a number of witnesses and gathered documents and other evidence.

15. On 24 October 1995 the applicant was charged under Article 203 § 1 in conjunction with Articles 202 § 1 (1) and 201 of the Criminal Code ("CC") with particularly aggravated misappropriation of funds in particularly large amounts, the commission of which had been facilitated by

other offences (making of official documents containing false information and abuse of office) carrying a lesser penalty.

16. On 6 November 1995 the Regional Investigation Service asked the Regional Prosecutor's Office for a sixty-day extension of the time-limit for the completion of the investigation. On 14 November 1995 the Regional Prosecutor's Office granted the extension.

17. On 11 January 1996 the Regional Investigation Service asked the Chief Prosecutor's Office to extend the time-limit for the completion of the investigation with a further sixty days. It stated that all witnesses had already been questioned and a vast amount of accounting and other documents relating to the applicant's criminal activity spanning over three years had been seized. A graphological expert report had been drawn up in respect of some of these documents. An accounting expert report was in the works, but would not be ready within the time-limit previously set for the completion of the investigation, because it required the processing of a large number of accounting documents. On 18 January 1996 the Chief Prosecutor's Office acceded to this request.

18. On 25 June 1996 the investigator reformulated the charges against the applicant and notified her accordingly.

19. On 2 July 1996 the investigator allowed the applicant and her counsel to acquaint themselves with the case file.

20. A few days later the investigator concluded his work on the case and sent the file to the Regional Prosecutor's Office with the proposal to commit the applicant for trial.

21. On 27 November 1997 the Regional Prosecutor's Office found that the evidence thus far collected indicated that the misappropriation of funds allegedly committed by the applicant and by one of her co-accused was not particularly aggravated. Moreover, in the meantime she had restored part of the money. Accordingly, it decided to prosecute the applicant for non-aggravated misappropriation of funds (Article 202 of the CC). As this offence fell within the jurisdiction of the District Court, it sent the file to the District Prosecutor's Office.

22. On 30 March 1998 the District Prosecutor's Office discontinued the criminal proceedings against two of the co-accused, as it found that the minor nature of the offences allegedly committed by them allowed an administrative prosecution. It decided to pursue the case against the applicant and the fourth co-accused.

23. On 1 January 2000 amendments to the Code of Criminal Procedure ("CCP") entered into force, providing, *inter alia*, that criminal proceedings could be discontinued before the end of the trial with a plea agreement between the prosecution and the defence.

24. On 7 January 2000 the District Prosecutor's Office indicted the applicant.

25. On 25 January 2000 the prosecution and the applicant entered into a plea agreement whereby the applicant pleaded guilty and was sentenced to three years' imprisonment, suspended for five years, and occupational disbarment for a period of five years.

26. On 2 February 2000 the plea agreement was approved by the District Court and the proceedings were discontinued.

B. The applicant's pre-trial detention and subsequent house arrest

27. On 24 October 1995 the applicant was arrested and remanded in custody. As grounds for her detention the investigator cited the seriousness of the offence charged against her.

28. On 6 November 1995 the applicant appealed against her detention to the Regional Prosecutor's Office. She stated that she had not attempted to abscond or obstruct the investigation during the six months since she had become aware of the criminal charges against her, that she was no longer working as a cashier or accountant and could not, therefore, commit other offences, and that she had undergone gynaecological surgery in 1994 and had still not recovered completely.

29. On 9 November 1995 the Regional Prosecutor's Office confirmed the decision to detain the applicant. It found that she had been charged with a serious offence punishable by more than ten years' imprisonment and that "therefore, the [detention] [was] lawful: it [was] based on the imperative provision of Article 152 § 1 of the CCP". It further stated that the question whether or not Article 152 § 2 of the CCP should be applied was to be assessed by the investigator and by the supervising prosecutor. In the applicant's case the investigator and the supervising prosecutor had not applied Article 152 § 2 of the CCP "in view of the current stage of the proceedings". It followed that the applicant's detention was lawful. By a decision of 15 December 1995 the Chief Prosecutor's Office rejected the applicant's ensuing appeal against this decision.

30. A further appeal against the applicant's detention was rejected by the Chief Prosecutor's Office on 12 January 1996.

31. On 18 January 1996 the Chief Prosecutor's Office confirmed the applicant's detention of its own motion.

32. In the meantime, on 14 November 1995, the applicant appealed against her detention to the Regional Court. In his written submissions to the Court the applicant's counsel stated, in particular, that the decision to detain the applicant had been based solely on the gravity of the charges against her, whereas other important factors had not been taken into account. For instance, the applicant had a permanent address where she lived with her husband and two daughters. Also, she had known about the criminal charges against her for more than six months prior to her arrest but had made no attempt to abscond or obstruct the investigation. Furthermore,

the evidence against the applicant was weak, it having been established that six other persons had access to keys to the cashier's office. The prosecutor had blindly followed the conclusions of the auditors who had pointed to the applicant on the sole ground that she had been the person in charge. However, no proof was found that the applicant herself had made false entries in the accounting books. The applicant's counsel also referred to her medical condition and enclosed medical certificates.

33. On 11 December 1995 the court rejected the appeal. It held, *inter alia*:

> "[The charges against the applicant] concern a serious offence within the meaning of Article 93 § 7 of the CC, that is, an offence under Article 203 of the CC, punishable by ten or more years' imprisonment. In this respect there exists the requirement, under Article 152 § 1 of the CCP, that detention be imposed.
>
> ... [The medical certificates submitted by the applicant] reflect her state of health during a past period of time. No information concerning her present state of health has been submitted. It follows that at present there exist no circumstances requiring the modification of the measure 'pre-trial detention' imposed on the [applicant]. Therefore the appeal is ill-founded and must be dismissed."

34. On 11 January 1996 the applicant's counsel requested the investigator in charge of the case to order a medical examination of the applicant with a view to establishing whether the conditions of detention were dangerous for her health. On 19 January 1996 upon the investigator's order the applicant was examined by three medical experts. In a report of the same date the experts found that the problems related to the surgery which the applicant had undergone more than a year ago (in 1994) did not affect her condition and that she could remain in custody.

35. On 5 February 1996 the applicant was urgently transferred to a hospital due to pain in her gall bladder. She underwent surgery. On the same day her counsel submitted to the Regional Prosecutor's Office a request for her release in view of her poor health. In addition, he argued that there was no risk of the applicant absconding, obstructing the investigation or committing an offence, because she had become aware of the charges against her six months prior to her arrest but had not attempted to commit any of these acts.

36. On 6 February 1996 the Regional Prosecutor's Office requested the Regional Investigation Service to comment on the request for the applicant's release. In particular, the Service was requested to address the issue whether the applicant's continuing detention was justified in view of the surgery she had undergone. On 13 February 1996 the Regional Prosecutor's Office ordered the Regional Investigation Service to request an expert medical opinion on the above issue. On 15 February 1996 a group of medical experts was appointed to examine the applicant. The experts found that the applicant needed a convalescence period which was incompatible with the conditions in detention.

37. Following this opinion, on 19 February 1996 the Regional Prosecutor's Office decided to discontinue the applicant's pre-trial detention in view of her ill health, which was found incompatible with the conditions in detention. It further found that the applicant's state of health made it impossible for her to flee, obstruct the investigation or commit an offence. Also, the investigation had almost been completed.

38. The same day the applicant was released from custody and placed under house arrest.

39. On an unspecified later date the applicant submitted to the Regional Prosecutor's Office a request for release. The request was rejected on 14 March 1996. The Regional Prosecutor's Office held that the applicant's pre-trial detention had been replaced by house arrest because it had been found that the applicant's health was incompatible with the conditions in detention and, moreover, the risk of her absconding or re-offending was objectively excluded in view of her illness. Unlike pre-trial detention, house arrest was not incompatible with her state of health, because there she could undergo medical examinations and treatment. The applicant had not requested permission to leave her house for specified periods of time to undergo treatment. Thus, there was no need for her to be released.

40. Later in March 1996 the applicant appealed against her house arrest to the Chief Prosecutor's Office. She argued that there was no risk of her absconding or re-offending. She also referred to her poor health. By a decision of 5 April 1996 the Chief Prosecutor's Office rejected the appeal, apparently without giving any specific reasons.

41. On 25 June 1996 the investigator confirmed the applicant's house arrest of his own motion, without giving reasons.

42. On 27 November 1997 the Regional Prosecutor's Office confirmed the applicant's house arrest of its own motion, without giving reasons.

43. On 30 March 1998 the District Prosecutor's Office confirmed the applicant's house arrest of its own motion, without giving reasons.

44. On 7 April 1998 the applicant's counsel appealed to the Regional Prosecutor's Office against the District Prosecutor's Office's decision to confirm the house arrest. He stated that it had lasted for over two years and that there was no indication that the applicant would abscond or re-offend. Moreover, all relevant evidence had already been gathered.

45. On 16 April 1998, apparently before transmitting the appeal to the Regional Prosecutor's Office, the District Prosecutor's Office reviewed the matter and decided to grant bail. It stated that the investigation authorities had sent the case to the prosecution twice and it had been returned for further clarifications each time. As of that time the file was at the investigation and there was no indication that it would be received at the District Prosecutor's Office any time soon. The further continuation of the house arrest would amount to mere repression, since all relevant evidence had already been gathered and there was no risk of the applicant obstructing

the investigation. It also added that the requests for release submitted in early 1996 were apparently rejected because at that time the applicant's deprivation of liberty had not lasted very long.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The offences with which the applicant was charged

46. Article 203 § 1 of the CC, read in conjunction with Articles 202 § 1 (1) and 201, provides that particularly aggravated misappropriation of funds in particularly large amounts, the commission of which has been facilitated by another offence which carries a lesser penalty, is punishable by ten to thirty years' imprisonment.

47. By Article 202 § 1 (1) of the CC, read in conjunction with Article 201, misappropriation of funds in not particularly aggravated cases is punishable by one to ten years' imprisonment, if its commission has been facilitated by another offence which carries a lesser penalty.

B. Arrest and detention pending trial

48. The legal grounds for detention pending trial are set out in Article 152 of the CCP, the relevant part of which, as worded at the material time, provided as follows:

> "1. Pre-trial detention trial shall be ordered [in cases where the charges concern] a serious intentional crime.
>
> 2. In the cases falling under paragraph 1 [pre-trial detention] may be dispensed with if there is no risk of the accused absconding, obstructing the investigation or committing a further crime.
>
> ..."

49. A "serious" crime is defined by Article 93 § 7 of the CC as one punishable by more than five years' imprisonment.

50. The Supreme Court's practice at the relevant time (it has now become at least partly obsolete as a result of amendments to the CCP in force since 1 January 2000) was that Article 152 § 1 required that a person charged with a serious intentional offence be detained. An exception was only possible, in accordance with Article 152 § 2, where it was clear beyond doubt that any risk of absconding or re-offending was objectively excluded as, for example, in the case of a detainee who was seriously ill, elderly, or already in custody on other grounds, such as serving a sentence (опред. № 1 от 4 май 1992 г. по н.д. № 1/92 г. на ВС I н.о.; опред. № 48 от

2 октомври 1995 г. по н.д. № 583/95 г. на ВС I н.о.; опред. № 78 от 6 ноември 1995 г. по н.д. 768/95 г.).

C. House arrest

51. Under Article 146 of the CCP, a measure to secure appearance before the competent authority has to be imposed in respect of every person accused of having committed a publicly prosecuted offence. Apart from pre-trial detention, one such measure is house arrest.

52. Article 147 of the CCP, as in force at the relevant time, provided that measures to secure appearance were intended to prevent the accused from absconding, re-offending, or thwarting the establishing of the truth. When imposing a particular measure, the competent authority had to have regard to the dangerousness of the alleged offence, the evidence against the accused, his or her health, family status, profession, age, etc. (Article 147 § 2).

53. Article 151 of the CCP, as in force at the material time, defined house arrest as follows:

> "House arrest shall consist of a prohibition for the accused to leave his [or her] home without permission by the respective organs."

54. In its interpretative decision no. 10/1992 (реш. № 10 от 27 юли 1992 г. по конституционно дело № 13 от 1992 г., обн., ДВ брой 63 от 4 август 1992 г.) the Constitutional Court held as follows:

> "... [H]ouse arrest is also a form of detention and [constitutes] an interference with the inviolability [of the person]."

55. At the relevant time the CCP did not provide for judicial review of house arrest. Thus, the only possibility for a person put under house arrest was to apply to a prosecutor who could order his or her release. If the prosecutor refused to release the person under house arrest, he or she could appeal to a higher prosecutor (Articles 181 and 182 of the CCP).

56. The CCP was amended with effect from 1 January 2000 and at present provides, in the newly introduced paragraph 2 of its Article 151, for full initial and subsequent judicial control of house arrest.

THE LAW

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

57. The applicant contended that her pre-trial detention and subsequent house arrest were unjustified and unreasonably lengthy.

The Court considers that this complaint falls to be examined under Article 5 § 3 of the Convention, which reads, insofar 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. ..."

58. The applicant submitted that at the time of her arrest she had had a permanent place of abode, a job and a family. There had been no indication that she would abscond of re-offend and therefore the authorities had not had any reasons to detain her. Moreover, later, when she had been placed under house arrest, her ill health and subsequent hospitalisation had made it impossible for her to flee or commit an offence. There had thus been no relevant and sufficient grounds for the authorities to keep her deprived of her liberty. Finally, the applicant argued that the authorities had not acted diligently in the criminal case against her. In particular, no procedural steps had been undertaken by the Regional Prosecutor's Office between July 1996 and November 1997 and no steps had been undertaken by the District Prosecutor's Office between November 1997 and March 1998.

59. The Government maintained that the applicant's deprivation of liberty was not in breach of Article 5 § 3 of the Convention. Her pre-trial detention had been based on Article 152 of the CCP, which had stipulated that it was mandatory in cases like hers. Moreover, the time-limits set in domestic law for pre-trial detention had not been exceeded. As regards the applicant's house arrest, under domestic law there was no absolute time-limit for its duration. Nevertheless, the length of the applicant's house arrest had corresponded to her state of health and to the pace of the criminal proceedings against her.

60. The Court notes that the applicant was arrested on 24 October 1995. Her pre-trial detention was transformed into house arrest on 19 February 1996. She was released on bail on 16 April 1998 (see paragraphs 27, 38 and 45 above). There is no doubt that the applicant's house arrest constituted deprivation of liberty within the meaning of Article 5 (see paragraph 53 above and *N.C. v. Italy*, no. 24952/94, § 33, 11 January 2001). The period to be examined is therefore two years, five months and twenty-three days.

61. 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 and 153, ECHR 2000-IV).

62. The Court sees no reason to doubt that the applicant's pre-trial detention and subsequent house arrest were grounded on a reasonable

suspicion of her having committed an offence. The applicant was held in custody on the basis of a suspicion that she had misappropriated funds from the state-owned company where she had been working.

63. As to the grounds for the continued detention, the Court notes that in the case of *Ilijkov v. Bulgaria* (no. 33977/97, 26 July 2001), it observed that during the period in question the authorities had applied law and practice establishing a presumption that detention pending trial was always necessary in cases where the sentence faced went beyond a certain threshold of severity. The presumption was only rebuttable in very exceptional circumstances where even a hypothetical possibility of absconding, re-offending or collusion was excluded, due to serious illness or other exceptional factors. It was moreover incumbent on the detained person to prove the existence of such exceptional circumstances, failing which he or she was bound to remain in detention pending trial throughout the proceedings. The above principles were based on Article 152 §§ 1 and 2 of the CCP, as worded at the material time, and the Supreme Court's practice at that stage.

64. At the time of the applicant's pre-trial detention those provisions were still in force and the same practice prevailed.

65. The Court must nevertheless examine whether those provisions and practice, which were clearly incompatible with Article 5 § 3 of the Convention (see *Ilijkov*, cited above, §§ 84-87), were actually applied in the instant case during the applicant's pre-trial detention.

66. In this connection, the Court notes that in its decision of 9 November 1995 the Regional Prosecutor's Office expressly relied on the rule of Article 152 § 1 of the CCP (see paragraph 29 above). So did the Regional Court in its decision of 11 December 1995 (see paragraph 33 above). Finally, it is noteworthy that the applicant's eventual release from pre-trial detention and her placement under house arrest was not due to an independent finding that there were no relevant and sufficient reasons for her remaining in custody, but essentially to a finding that pre-trial detention was incompatible with her health (see paragraph 37 above).

67. The question remains whether this stance of the authorities continued during the applicant's house arrest. The Court notes that the relevant text, Article 147 of the CCP, did not set forth a general rule similar to that of Article 152 §§ 1 and 2 (see paragraph 52 above). However, the issue which needs to be determined in the present case is not whether the law was compatible with the requirements of Article 5 § 3 of the Convention, but whether the authorities gave relevant and sufficient reasons for keeping the applicant deprived of her liberty. In this connection, the Court notes that when the applicant applied for release in March 1996 the competent prosecutor acknowledged that there was no risk of her absconding or offending, but nevertheless rejected her application for release (see paragraph 39 above). Then, in June 1996, November 1997 and

March 1998, the applicant's house arrest was confirmed by the authorities of their own motion, apparently without any specific reasons being put forward (see paragraphs 41-43 above). It thus seems that there were no relevant and sufficient grounds on which the authorities relied to keep the applicant under house arrest.

68. The Court therefore finds that the authorities failed to justify the applicant's deprivation of liberty for the period of two years and nearly six months.

69. Moreover, it seems that the authorities did not act with the requisite diligence in the criminal proceedings against the applicant. While no significant delays occurred during the period from October 1995 until July 1996, it appears that from July 1996 until November 1997 the case lay dormant at the Regional Prosecutor's Office and after that, until March 1998, at the District Prosecutor's Office (see paragraphs 20-22 above).

70. The Court therefore finds 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 to release pending trial.

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

71. The applicant alleged that, contrary to Article 5 § 4 of the Convention, she had not had an opportunity to take proceedings by which the lawfulness of her house arrest could be decided.

Article 5 § 4 reads as follows:

> "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."

72. The applicant argued that the alleged violation of Article 5 § 4 of the Convention stemmed from the lack of a procedural possibility for judicial review of her house arrest. House arrest amounted to a deprivation of liberty within the meaning of Article 5 of the Convention, and for this reason she should have had access to a habeas corpus procedure.

73. The Government submitted that the applicant's house arrest had been ordered by a prosecutor, who at the relevant time had been the "competent legal authority" within the meaning of Article 5 § 1 of the Convention. Prior to the amendment of the CCP house arrest had been controlled by the prosecution authorities. From 1 January 2000 it was subject to judicial review.

74. The Court notes that it has not been disputed that the applicant's house arrest constituted deprivation of liberty within the meaning of Article 5 § 4 (see paragraph 53 above and *N.C. v. Italy*, no. 24952/94, § 33, 11 January 2001). The applicant was therefore entitled to the guarantees of that provision.

75. The Court reiterates that the remedy required by Article 5 § 4 must be of a judicial nature, which implies that the person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation, failing which she will not have been afforded the fundamental guarantees of procedure applied in matters of deprivation of liberty (see *Winterwerp v. the Netherlands*, judgment of 24 October 1979, Series A no. 33, p. 24, § 60). The Court further notes that the existence of a remedy must be sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required for the purposes of Article 5 § 4 (see *Sakık and Others v. Turkey*, judgment of 26 November 1997, *Reports of Judgments and Decisions* 1997-VII, p. 2625, § 53 and *Kadem v. Malta*, no. 55263/00, § 41, 9 January 2003).

76. The Court notes that at the relevant time the Bulgarian CCP did not provide for judicial review of house arrest (see paragraph 55 above) and that there is no other provision of domestic law which establishes a procedure whereby a person can apply to a court to review the lawfulness of his or her house arrest. The Court further notes that the Government conceded that until 1 January 2000 house arrest was controlled by the prosecution authorities and that judicial review of house arrest was only introduced on that date (see paragraph 73 above).

77. The Court therefore holds that there has been a violation of Article 5 § 4 of the Convention, in that the applicant could not apply to a court to review the lawfulness of her house arrest.

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

78. The applicant complained under Article 6 § 1 of the Convention about the length of the criminal proceedings against her.

Article 6 § 1 provides, as relevant:

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

A. Period to be taken into consideration

79. In February 1995 the applicant was officially informed that she was suspected of a criminal offence (see paragraph 11 above). The proceedings ended on 2 February 2000, when the District Court approved the plea agreement between the applicant and the prosecution (see paragraph 26 above). The period to be taken into account is thus approximately five years, for not even one level of court.

B. Reasonableness of the length of the proceedings

80. The Court will assess the reasonableness of the length of the proceedings in the light of the circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what was at stake for the applicant has also to be taken into account (see *Portington v. Greece*, judgment of 23 September 1998, *Reports* 1998-VI, p. 2630, § 21 and *Kudła v. Poland* [GC], no. 30210/96, § 124, ECHR 2000-XI).

1. Complexity of the case

81. The applicant conceded that the case had been based on a vast amount of documentary evidence, but insisted that it was not as complex as the Government tried to present it. In fact, initially the proceedings had involved four co-accused, but in 1998 the charges against two of them had been dropped, leaving the prosecution to deal only with the applicant and another co-accused.

82. The Government submitted that the proceedings had been complex. They had concerned complicated criminal activities and had involved a large amount of evidentiary material and numerous co-accused.

83. The Court considers that the case bore a certain degree of factual complexity, as it involved four co-accused and a criminal activity that had taken place over a three-year period (see paragraphs 11 and 12 above). However, it notes that the prosecution against two of the co-accused was discontinued on 30 March 1998 (see paragraph 22 above), which undoubtedly alleviated the task of the prosecution authorities. In any event, the complexity of the case cannot by itself explain the length of the proceedings.

2. Conduct of the applicant

84. The applicant did not comment on her conduct.

85. The Government did not claim that any delays were attributable to the applicant.

86. The Court does not find that the applicant has contributed by her conduct to the length of the proceedings.

3. Conduct of the authorities

87. The applicant disputed the Government's assertion that the only reason for the delay between June 1996 and January 2000 had been the prosecution's desire to await the reform of the CCP whereby plea bargaining was introduced. She submitted that during this time the case had remained dormant at the prosecutors' offices, contrasting this with the fast

completion of the investigation (15 March 1995 – 25 June 1996). In her view, there was no logical explanation for these three lost years. The applicant also referred to her arguments relating to the length of her deprivation of liberty.

88. The Government averred that the investigation had been completed within the time-limits set in domestic law. Later the prosecution had delayed the applicant's indictment until after 1 January 2000 in order to make it possible for her to benefit from the newly introduced plea-bargaining procedure. As to the proceedings before the District Court, they did not reveal any delay.

89. The Court notes that a gap occurred between 15 March and 10 August 1995, when, despite the prosecutor's instructions, the investigator did not undertake any investigative steps (see paragraph 13 above). It seems that the proceedings moved at a good pace between August 1995 and July 1996 (see paragraphs 14-19 above). However, from July 1996 until November 1997 the case lay dormant at the Regional Prosecutor's Office (see paragraphs 20 and 21 above) and from November 1997 until January 2000 – with one procedural act of March 1998: the discontinuation of the prosecution against two of the co-accused – it lay dormant at the District Prosecutor's Office (see paragraphs 22-24 above), which resulted in an unjustified delay of three and a half years.

4. Conclusion

90. In the light of the criteria laid down in its case-law and having regard to the delays attributable to the authorities, the Court considers that the length of the criminal proceedings against the applicant failed to satisfy the reasonable time requirement of Article 6 § 1 of the Convention.

It follows that there has been a violation of that provision.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. 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

92. The applicant claimed 12,800 euros ("EUR") in non-pecuniary damages. She made detailed submissions in respect of each violation of the Convention in her case, emphasising the gravity of the case and referring to some of the Court's judgments. She further claimed EUR 507 in pecuniary

damages, representing loss of earnings calculated on the basis of the minimum wage in Bulgaria during the time of her house arrest.

93. Referring to some of the Court's judgments in previous similar cases against Bulgaria, the Government submitted that the claim for non-pecuniary damages was excessive, in particular in view of the living standards in Bulgaria. They further submitted that the claim for pecuniary damages was ill-founded, because the applicant could have worked from her home while she had been under house arrest and because there were no indications that she had been in employment after she had been released on bail.

94. Concerning the claim for pecuniary damages, the Court considers that there is a certain causal link between the violation of Article 5 § 3 of the Convention found and the amount claimed by the applicant to compensate for her loss of earnings (see *Český v. the Czech Republic*, no. 33644/96, § 91, 6 June 2000). As regards the claim for non-pecuniary damages, in the Court's view, it is reasonable to assume that the applicant has suffered distress and frustration on account of the unreasonable length of her pre-trial detention and subsequent house arrest, the lack of a possibility to seek judicial review of her house arrest and the length of the criminal proceedings against her. Taking into account the various relevant considerations and making its assessment on an equitable basis, the Court awards the applicant EUR 4,000.

B. Costs and expenses

95. The applicant claimed EUR 2,725 for 54 hours and 30 minutes of legal work on the Strasbourg proceedings, at the hourly rate of EUR 50. She claimed an additional EUR 381 for translation costs (51 pages), copying, mailing and overhead expenses. The applicant submitted a fees' agreement between her and her lawyer, a time-sheet and postal receipts. She requested that the amounts awarded by the Court under this head be paid directly to her legal representative, Mr M. Ekimdjiev.

96. The Government stated that: (i) the claim for translation expenses was not supported by documents; (ii) the number of hours claimed was excessive as the work done by the lawyer could have been completed in one third of the time claimed, especially if account was taken of the facts that this was the applicant's second application before the Court and that she had been represented by the same lawyer in both applications, while there had been a considerable overlap in the facts of the two applications; and (iii) the hourly rate of EUR 50 was excessive.

97. The Court notes that the applicant has submitted a fees agreement and her lawyer's time sheet concerning work done on her case and that she has requested that the costs and expenses incurred should be paid directly to her lawyer, Mr M. Ekimdjiev.

98. The Court does not find that the number of hours or the hourly rate claimed are excessive. However, it considers that a reduction should be applied on account of the fact that some of the applicant's complaints were declared inadmissible (see paragraph 6 above). The Court further observes that the same lawyer represented the applicant both in her previous case (see *Nikolova*, cited above, § 7) and in the present case, while there is a certain overlap between the facts of the two cases. This calls for a further reduction. Finally, the Court notes that the claim for translation expenses is not supported by relevant documents.

99. Having regard to all relevant factors and deducting EUR 685 received in legal aid from the Council of Europe, the Court awards EUR 1,800 in respect of costs and expenses, to be paid to the applicant's legal representative, Mr M. Ekimdjiev.

C. Default interest

100. 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;

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

3. *Holds* that there has been a 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 4,000 (four thousand euros) in respect of pecuniary and non-pecuniary damage, to the applicant herself;

(ii) EUR 1,800 (one thousand eight hundred euros) in respect of costs and expenses, 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