CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

i

FIRST SECTION

CASE OF ZAPRIANOV v. BULGARIA

(Application no. 41171/98)

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 Zaprianov v. Bulgaria,

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

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

Having deliberated in private on 9 September 2004,

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

PROCEDURE

1. The case originated in an application (no. 41171/98) 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 Zaprian Iordanov Zaprianov ("the applicant"), on 1 February 1998.

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

3. The applicant alleged, in particular, that there had been violations of Articles 5 and 6 of the Convention in respect of 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 former Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). By partial decision of 27 April 2000 the Court declared part of the complaints 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 6 March 2003, the Court declared the remainder of the application partly admissible and partly inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicant's detention pending the preliminary investigation against him

8. The applicant was born in 1948. He worked as chief financial expert at the Municipal Privatisation Agency in Plovdiv. In the end of 1995 the competent financial control authority commenced an audit in the course of which it was established that public funds might have been misappropriated by the applicant. He was questioned several times. On 10 May 1996 criminal proceedings were opened against him.

9. On 14 May 1996 the applicant was arrested and brought before an investigator who charged him and decided to remand him in custody. The detention order was approved by a prosecutor on the same day. The charges concerned misappropriation of public funds by means of several separate acts between 1994 and 1996. Charges were also brought against two other persons.

10. On 17 June 1996 the applicant requested the Regional Prosecutor to release him. He stated that there was no danger of him absconding, committing an offence or obstructing the course of justice as he did not have a criminal record, had a permanent address and a family and, ever since his daughter's tragic death, had been taking care of his five years' old grand-daughter. The applicant's daughter had been killed by her husband. Their child, the applicant's granddaughter, had thus remained without parents, her father being in prison for the murder of her mother.

11. The request was dismissed on 21 June 1996 by the Regional Public Prosecutor who stated that the danger of absconding could not be excluded in view of the large amounts that the applicant might have misappropriated.

12. On 15 July 1996 the applicant appealed that decision to the Chief Public Prosecutor, adding that he had never attempted to abscond during the financial audit and had even collaborated actively and had arranged for the reimbursement of certain amounts. The applicant also stated that his health was unstable and that his wife was ill.

13. The appeal was dismissed by decision of the Chief Public Prosecutor's Office of 31 July 1996, registered on 2 August 1996. The

decision stated that an exception from the mandatory detention under Article 152 § 1 of the Code of Criminal Procedure was only possible on health grounds. However, no such grounds had been established.

14. On 20 December 1996 the applicant appealed against his pre-trial detention. On 11 March 1997 the Regional Prosecutor's Office confirmed the applicant's remand in custody without giving reasons.

15. On an unspecified date the applicant again requested that his pre-trial detention be substituted by a more lenient measure.

16. On 12 May 1997 the Regional Public Prosecutor dismissed the applicant's request stating that the fact that the applicant had been taking care of his grand-daughter could not lead to the conclusion that no danger of his absconding existed. Furthermore, the medical doctors who had examined the applicant had found that he was healthy.

17. The applicant's ensuing appeal of 19 May 1997, in which he submitted, *inter alia*, that the investigation had been unreasonably lengthy, was dismissed on 11 June 1997 by the Chief Public Prosecutor's Office. The decision stated that only exceptional circumstances, excluding any hypothetical danger of absconding, reoffending or obstructing the course of justice, could warrant the applicant's release. The applicant's reference to the length of the investigation, to "justice" and international treaties could not be taken into consideration.

18. On 29 June 1997 the applicant appealed to the Chief Public Prosecutor against the decision of 11 June 1997. He reiterated his arguments that during the 6-months investigation conducted by the financial authorities he had reported regularly when summoned and had never attempted to suppress evidence or evade justice. On 16 July 1997 the applicant's appeal was dismissed on the ground that no exceptional circumstances warranting release had been established.

19. In July 1997 the investigator completed his work on the case. During the preliminary investigation he questioned 23 witnesses, appointed 5 experts and examined their reports and studied numerous financial, commercial and other documents.

20. On 6 October 1997 the competent prosecutor submitted an indictment to the Plovdiv Regional Court against the applicant and two other persons.

B. The trial and the applicant's continuing remand in custody

21. The fist hearing was listed for 3 November 1997 but could not proceed as one of the accused persons had not been allowed sufficient time to prepare his defence. The case was adjourned until 10 December 1997.

22. On 24 November 1997 the applicant lodged an application for release with the Regional Court, claiming that his health had deteriorated and that he had to take care of his granddaughter. On 27 November 1997, at

a public hearing, that court dismissed the application on the ground that the criminal offence with which he was charged was very serious and that he might tamper with evidence or influence witnesses.

23. On 10 and 11 December 1997 the Regional Court began the examination of the criminal case. The applicant and the other two accused persons were questioned and nineteen witnesses and two experts were heard. The hearing was adjourned as some of the witnesses had not appeared and the parties sought to call additional witnesses.

24. At the next hearing, on 5 and 6 February 1998, the Regional Court heard twelve witnesses and several experts. Three witnesses and one expert had not been summoned which necessitated an adjournment. Before closing the hearing, the Regional Court heard the applicant's renewed appeal against detention and dismissed it, stating that remand in custody was mandatory in all cases where the charges concerned a serious offence. The case did not fall within the exception from that rule, as provided under Article 152 § 2 of the Code of Criminal Procedure.

25. The hearing resumed on 10 April 1998. The Regional Court heard an expert and accepted the request of the accused persons for the appointment of three additional experts in banking and finance. It again dismissed the applicant's application for release on the grounds that there were no new circumstances warranting release and that, since new experts would be working on the case, there was a danger of the applicant tampering with evidence.

26. On 22 April 1998 the applicant's lawyer lodged an appeal with the Appellate Court against the decision of 10 April 1998 concerning his detention. He reiterated the arguments stated in previous appeals, stressing that all facts had been clarified, that he had cooperated with the financial auditing authorities and did not dispute their findings and that he could not possibly tamper with evidence since he had been dismissed from his job. Before transmitting the appeal to the Appellate Court, on 27 April 1998 the Plovdiv Regional Court confirmed its decision.

27. On 12 May 1998 the Appellate Court, sitting in private, dismissed the appeal. It stated that Article 152 of the Code of Criminal Procedure was incompatible with Article 5 of the Convention, which was directly applicable. The applicant's appeal was however ill founded in any event. That was so because the applicant was charged with the misappropriation of approximately 16 million old Bulgarian levs (at a time when this amount was the equivalent of about 200,000 US dollars). Therefore, there was a real danger of absconding. Furthermore, the trial was close to conclusion.

28. The hearing listed for 19 and 20 May 1998 was adjourned until 17 June 1998 as the lawyer of one the applicant's co-accused could not attend.

29. On 15 June 1998 the applicant complained against his detention, arguing that it was not reasonable to believe that he could forge documents

to be examined by the experts or influence witnesses. He also invoked the fact that he had already been detained for two years and several months.

30. The appeal was dismissed at the hearing on 17 June 1998 before the Regional Court on the ground that the applicant might forge some important financial documents and obstruct the fact-finding, taking into consideration that there were more witnesses and expert-witnesses to be heard. The hearing was again adjourned as the lawyer of one of the applicant's co-accused had not appeared. The court also decided to summon another witness.

31. The applicant's ensuing appeal was dismissed on 24 July 1998 by the Appellate Court, sitting in private. Referring to the statement of one of the other accused persons that shortly before his arrest in May 1996 the applicant had asked him to forge or destroy banking documents, the court stated that the applicant could obstruct the course of justice. Further, it has not been established that no danger of the applicant's absconding or committing an offence existed. Finally, the Regional Court was trying to conduct a prompt trial, but the investigation activities and examination of evidence were too complex.

32. The next hearing in the criminal case took place on 9 September 1998. The Regional Court heard two witnesses and adjourned the hearing, as the experts had not deposited their report. The applicant renewed his appeal against detention. He reiterated that he would not abscond as he had to look after his granddaughter and stated that there was no danger of him tampering with evidence at that advanced stage of the proceedings. The appeal was dismissed on the ground that under Article 152 § 2 of the Code of Criminal Procedure release was only possible if the existence of any danger of absconding, committing an offence or obstruction was excluded beyond doubt. Furthermore, it was not true that the applicant's detention had become unreasonably lengthy.

33. On 10 September 1998 the applicant appealed to the Appellate Court reiterating detailed arguments with reference to his previous appeals. Relying on Article 5 § 4 of the Convention, he insisted that the court should reply *in concreto*.

34. On 19 October 1998 the Appellate Court, sitting in private, dismissed the applicant's appeal holding that in view of the seriousness of the case and the applicant's behaviour during the preliminary investigation, there was a danger of obstructing the course of justice. As to the allegedly excessive length of the detention, the requirements of the Convention in this respect did not mean that the provisions of domestic law on pre-trial detention could be ignored. Finally, the trial was approaching its end.

35. The hearing in the criminal case resumed on 14 December 1998 before the Regional Court but was adjourned as some important issues were yet to be tackled by the experts. In particular, no annual statement, declaration of funds or the text of certain regulations of the Privatisation

Agency could be found. Other vital documents from the Privatisation Agency and from a bank were missing and some important documents could only be obtained as copies.

36. At that hearing the applicant's renewed request for release on bail was dismissed as he was charged with a serious criminal offence for which pre-trial detention was mandatory by law. He could not rely on the exception provided for under Article 152 § 2 of the Code of Criminal Procedure as the experts had yet to prepare their report and, therefore, there was a danger of the applicant obstructing the course of justice. The length of the applicant's detention was not excessive in view of the gravity of the charges.

37. On 21 December 1998 the applicant filed an appeal against the above decision with the Appellate Court.

38. On 26 January 1999 that court, sitting in chambers, dismissed the applicant's appeal. The court stated that under the Code of Criminal Procedure preventive measures were imposed on the basis of the gravity of the charges. It was for the prosecution authorities to charge the accused and to decide on the corresponding preventive measures, having regard to the gravity of the charges and the personal circumstances of the accused. The trial court, pending the determination of the criminal charges, was bound by the terms of the indictment as there was a presumption that the prosecution authorities had the necessary evidence to charge the accused. Therefore, since the applicant was charged with a serious offence and no exceptional circumstances under Article 152 § 2 of the Code of Criminal Procedure had been established, there were no grounds to order release on bail. In any event, the case would soon be decided.

39. The next hearing before the Regional Court took place on 9 February 1999. A completed expert's report was examined. The applicant sought an adjournment as his second lawyer was absent. The court noted that no good cause had been shown for his absence, but acceded to the request in view of the applicant's insistence that his second lawyer should make final oral pleadings on his behalf.

40. The applicant again requested to be released, considering that the detention exceeded the reasonable time and that it was unreasonable to believe that he could commit further offences or evade justice. The court again dismissed the applicant's request.

41. On 10 February 1999 the applicant filed an appeal with the Appellate Court against the refusal of the Regional Court to release him. On 19 March 1999 that court dismissed the applicant's appeal on the ground that the fact that the expert's report was completed did not constitute a new fact in favour of the applicant's release. It further held that there were no exceptional circumstances within the meaning of Article 152 § 2 of the Code of Criminal Procedure. The length of the detention could not be relied

upon by the applicant as the applicant's lawyer had caused a delay by failing to appear in court.

42. The next hearing was scheduled for 12 April 1999 and then adjourned to 12 May 1999, apparently owing to the failure of the Appellate Court to return the case file in due time.

43. On 12 May 1999 the Regional Court heard the final oral pleadings of the parties and dismissed the applicant's request for release on bail.

44. On 17 May 1999 the applicant was found guilty and sentenced to seven years' imprisonment.

C. Proceedings on appeal and before the Supreme Court of Cassation

45. Upon the applicant's appeal, on 14 December 1999 the Plovdiv Appellate Court upheld his conviction and mitigated the sentence to five years' imprisonment.

46. On 12 January 2000 the applicant filed a petition for review with the Supreme Court of Cassation.

47. On 6 July 2000 the Supreme Court of Cassation upheld the Appellate Court's judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

THE LAW

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

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

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

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

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power..."

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

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

53. The present case also concerns detention pending trial before 1 January 2000. Upon his arrest the applicant was brought before an investigator who did not have power to make a binding decision to detain him (see paragraph 9 above). In any event, neither the investigator nor the prosecutor who confirmed the detention were sufficiently independent and impartial for the purposes of Article 5 § 3, in view of the practical role they played in the prosecution and their potential participation as a party to the criminal proceedings. The Court refers to its analysis of the relevant domestic law contained in its *Nikolova* judgment cited above (see paragraphs 28, 29 and 49-53 of that judgment).

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

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

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

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

1. The parties' submissions

56. The applicant stated that the investigation had been excessively lengthy and that, at the trial stage, the intervals between hearings had been too long. He submitted that several adjournments had been caused by the failure of the court-appointed experts to finalise their reports in time and that the failure of the Appellate Court to examine speedily the applicant's requests for release had also contributed to the delay. He admitted that he had been responsible for one adjournment.

57. The Government stated that the applicant's detention had been necessary and justified throughout in view of the seriousness of the charges against him and the context in which the offences under investigation had been committed. In particular, the charges concerned a number of criminal offences committed by the applicant, a civil servant in charge of privatisation of state enterprises, in complicity with others. Therefore, the authorities' finding that there existed a danger that the applicant would obstruct the course of justice if released was justified. There were no medical reasons to release the applicant.

58. In the Government's view the case had been complex. Seven handwriting analysis reports and four accounting reports had been necessary at the preliminary investigation stage and more at the trial stage. Numerous witnesses had been questioned. The Government submitted that there had been no delays attributable to the authorities. Certain delays had been inevitable as witnesses or experts had not appeared, but the trial court had taken all possible measures to minimise the consequences. By contrast, in the Government's view, the applicant's disorganised defence had been at the origin of many delays. In particular, the applicant had not objected when the other accused persons had requested adjournments or sought to adduce additional evidence. The applicant himself had requested the collection of

additional evidence on several occasions at the advanced stage of the trial, although he could have done that earlier.

2. The Court's assessment

59. The applicant's remand in custody lasted from 14 May 1996 until 17 May 1999. The period to be taken into consideration is therefore three years and three days (see paragraphs 8 and 44 above).

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

61. In its partial decision of 27 April 2000 in the present case the Court rejected as manifestly ill-founded the applicant's assertion that there had been no reasonable suspicion of him having committed a crime. The applicant was held in custody on the basis of a suspicion that he had misappropriated a sum of money.

62. As to the grounds for the continued detention, the Court finds that the present case discloses no material difference from the case of *Ilijkov v. Bulgaria* (cited above). The Court stated in *Ilijkov*:

> "[T]he [authorities] applied law and practice under which there was a presumption that remand in custody was necessary in cases where the sentence faced went beyond a certain threshold of severity ...[While] the severity of the sentence faced is a relevant element .... the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of pre-trial detention...
>
> That is particularly true in the present case where under the applicable domestic law and practice the characterisation in law of the facts - and thus the sentence faced by the applicant - was determined by the prosecution authorities without judicial control of the question whether or not the evidence supported reasonable suspicion that the accused had committed an offence attracting a sentence of the relevant length...
>
> The only other ground for the applicant's lengthy detention was the domestic courts' finding that there were no exceptional circumstances warranting release. However, that finding was not based on an analysis of all pertinent facts. The authorities regarded the applicant's arguments that he had never been convicted, that he had a family and a stable way of life, and that after the passage of time any possible danger of collusion or absconding had receded, as irrelevant.
>
> They did so because by virtue of Article 152 of the Code of Criminal Procedure and the Supreme Court's practice the presumption under that provision 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 was bound to remain in detention on remand throughout the proceedings...

The Court reiterates that continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty. Any system of mandatory detention on remand is per se incompatible with Article 5 § 3 of the Convention (see the *Letellier v. France* judgment of 26 June 1991, Series A no. 207, §§ 35-53; the *Clooth v. Belgium* judgment of 12 December 1991, Series A no. 225, § 44; the *Muller v. France* judgment of 17 March 1997, *Reports* 1997-II, §§ 35-45; the above cited *Labita* judgment, §§ 152 and 162-165; and *Ječius v. Lithuania*, [no. 34578/97, ECHR 2000-IX] §§ 93 and 94).

Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases."

63. Having regard to the reasons given by the domestic authorities to justify Mr Zaprianov's lengthy pre-trial detention, the Court notes that with one exception – the decision of 24 July 1998 (see paragraph 31 above) - they only relied on the gravity of the charges. Assessing the authorities approach as it transpires from the facts as a whole (see, in particular, paragraph 38 above and, in general, paragraphs 10-43 above), the Court finds, as in the *Ilijkov* case, that by failing to address concrete relevant facts and by relying solely on a statutory presumption based on the gravity of the charges and which shifted to the accused the burden of proving that there was not even a hypothetical danger of absconding, re-offending or collusion, the authorities prolonged the applicant's detention on grounds which cannot be regarded as sufficient.

64. The authorities thus failed to justify the applicant's remand in custody for the period of three years and three days. In these circumstances it is not necessary to examine whether the proceedings were conducted with due diligence.

65. There has been therefore a violation of Article 5 § 3 of the Convention.

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

66. The applicant complained that the scope of judicial review in the examination of his appeals against detention had been too narrow, that the appeals had not been dealt with speedily and that on some occasions no hearings were held.

67. Article 5 § 4 of the Convention 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."

68. The Government stated, *inter alia*, that a court examining an appeal against detention of a person accused of a serious offence could only examine, in accordance with Article 152 § 2 of the Code of Criminal Procedure, whether or not release was necessary on health grounds. All other arguments were irrelevant.

69. The Court observes that the domestic courts deciding on the applicant's appeals against his detention, as in the cases of *Nikolova* and *Ilijkov* (cited above), refused to examine whether or not there existed a reasonable suspicion against the applicant. Furthermore, with one arguable exception - the decision of 24 July 1998 (see paragraph 31 above) -, they limited their consideration of the matters before them to a verification of whether or not the investigator and the prosecutor had charged the applicant with a "serious intentional crime" within the meaning of the Criminal Code (see paragraphs 24, 25, 32, 36, 38 and 41 above).

70. In his appeals, however, the applicant had advanced arguments questioning the grounds for his detention. He had referred to concrete facts, for example that he would not abscond as he had to look after his granddaughter and that with the passage of time there could be longer a danger of him obstructing the course of justice since all facts had been established and undisputed and he had been dismissed from his job (see paragraphs 26, 29, 32, 33 and 40 above). In their decisions, the domestic courts devoted little or no consideration to these arguments, apparently treating them as irrelevant to the question of the lawfulness of the applicant's pre-trial detention.

71. The Court reiterates that arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the "lawfulness", in the sense of the Convention, of their deprivation of liberty. This means that the competent court has to examine not only compliance with the procedural requirements set out in domestic law but also the reasonableness of the suspicion grounding the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, pp. 34-35, § 65 and *Grauslys v. Lithuania*, no. 36743/97, §§ 51-55, 10 October 2000).

72. While Article 5 § 4 of the Convention does not impose an obligation to address every argument contained in the detainee's submissions, the judge examining appeals against detention must take into account concrete facts invoked by the detainee and capable of putting in doubt the existence of the conditions essential for the "lawfulness", in the sense of the Convention, of the deprivation of liberty (see *Nikolova*, cited above, § 61).

73. The submissions of the applicant contained such concrete facts and did not appear implausible or frivolous. By not taking them into account the domestic courts failed to provide a judicial review of the scope and nature required by Article 5 § 4 of the Convention.

74. There has therefore been a violation of Article 5 § 4 of the Convention.

75. The applicant also complained that his appeals against detention had not been disposed of speedily and that the no hearings had been held. Having found that the scope and nature of the judicial review afforded to the applicant by the domestic courts did not satisfy the requirements of Article 5 § 4 of the Convention, the Court does not need to examine whether other requirements of the same provision were also breached.

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

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

77. Article 6 § 1 of the Convention 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..."

78. The parties referred to their submissions under Article 5 § 3 of the Convention. The applicant added that the Appellate Court and the Supreme Court of Cassation had not decided the case within a reasonable time.

79. The Court notes that the period to be examined started either in the end of 1995, when the applicant was informed that he was suspected of misappropriation, or in May 1996, when criminal proceedings against him were instituted. The proceedings ended on 6 July 2000 (see paragraphs 8 and 47 above). The period to be examined is therefore between four years and two months and four years and seven months.

80. The Court observes that the criminal proceedings against the applicant were factually complex. They involved three accused persons and required the examination of many witnesses and voluminous documentary material (see paragraphs 9, 19, 24 and 25 above).

81. The proceedings went through three levels of jurisdiction. While at the trial stage there were delays of several months attributable to the authorities (see paragraphs 24 and 42 above), the case was dealt with speedily by the Appellate Court and the Supreme Court of Cassation (see paragraphs 45 and 46 above). The applicant was also responsible for certain delay (see paragraph 39 above).

82. Having regard to the criteria established in its case-law for the assessment of the reasonableness of the length of proceedings (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94,

ECHR 1999-II and *Pedersen and Baadsgaard v. Denmark*, no. 49017/99, 19 June 2003), the Court finds that the length of the criminal proceedings against the applicant did not violate the reasonable time requirement of Article 6 § 1 of the Convention.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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

85. The applicant claimed EUR 10,600 in respect of non-pecuniary damage. The Government stated that the claims were excessive.

86. The Court, having regard to awards made in previous similar cases (see *Mihov v. Bulgaria*, no. 35519/97, 31 July 2003, *Hristov v. Bulgaria*, no. 35436/97, 31 July 2003, *Al Akidi v. Bulgaria*, no. 35825/97, 31 July 2003, *Belchev v. Bulgaria*, no. 39270/98, 8 April 2004 and, *Hamanov v. Bulgaria*, no. 44062/98, 8 April 2004) and deciding on an equitable basis, awards EUR 3,500 under this head.

B. Costs and expenses

87. The applicant claimed EUR 5,500 for approximately 110 hours of legal work at the hourly rate of EUR 50. He submitted a legal fees agreement between him and his lawyer and a time sheet. The applicant claimed an additional EUR 525 for the translation of 71 pages of text, postal and other expenses. He submitted copies of postal receipts. The applicant requested that the costs and expenses incurred should be paid directly to his lawyer, Mr M. Ekimdjiev.

88. The Government stated that the claims were excessive and that the translation costs claimed were not documented.

89. The Court considers that the number of hours of legal work claimed is excessive. It also considers that a reduction should be applied on account of the fact that some of the applicant's complaints were declared inadmissible and that no violation of Article 6 § 1 of the Convention was found (see paragraphs 5, 7 and 83 above). Also, the claim in respect of translation costs has not been supported by relevant documents.

90. Having regard to all relevant factors and taking into account EUR 630 received in legal aid from the Council of Europe, the Court awards EUR 2,500 in respect of costs and expenses, to be paid directly to the applicant's legal representative, Mr M. Ekimdjiev.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 3 of the Convention in that upon his arrest the applicant was not brought promptly before a judge or other officer authorised by law to exercise judicial power;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention in that the applicant's pre-trial detention was not justified throughout the whole period;
3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
4. *Holds* that there has been no violation of Article 6 § 1 of the Convention;
5. *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 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage, to be paid to the applicant himself;
      (ii) EUR 2,500 (two thousand five hundred euros) in respect of costs and expenses, to be paid to the applicant's 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;
6. *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