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

FIFTH SECTION

CASE OF ALEXOV v. BULGARIA

(Application no. 54578/00)

JUDGMENT

STRASBOURG

22 May 2008

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 Alexov v. Bulgaria,

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

Peer Lorenzen, *President,*
Snejana Botoucharova,
Karel Jungwiert,
Rait Maruste,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 29 April 2008,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 54578/00) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Dragomir Dimitrov Alexov ("the applicant") who was born in 1966 and lives in Plovdiv, on 21 October 1999.

2. The applicant, who had been granted legal aid, was represented by Mr V. Stoyanov, a lawyer practising in Pazardzhik.

3. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Kotzeva, of the Ministry of Justice.

4. The applicant alleged, in particular, (a) that he had been detained in inadequate conditions at the Pazardzhik Regional Investigation Service detention facility, the Pazardzhik Prison and the Montana Regional Investigation Service detention facility and that he had no effective remedy in respect thereof, (b) that the authorities had unlawfully searched his apartment on 26 August 1999 and that he had no effective remedy thereof and (c) that his pre-trial detention had been unlawful, of excessive length and unjustified, his appeals had not been examined speedily and that he lacked an enforceable right to seek compensation for being a victim of an arrest or detention in breach of the provisions of Article 5 of the Convention.

5. By a decision of 22 May 2006 the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The Pazardzhik criminal proceedings

1. The criminal proceedings

7. On 17 August 1999 a burglary was committed and, among other items, a television and a video recorder were stolen.

8. A preliminary investigation was opened against two other suspects on 17 August 1999 and against the applicant on 28 August 1999. On the same day the applicant confessed to having committed five burglaries with his accomplices between 29 January and 20 August 1999.

9. On 31 August 1999 the applicant was charged with committing burglary on 17 August 1999 with his accomplices.

10. The applicant gave another four statements to the investigator confessing to the other burglaries and providing additional information on how they had been perpetrated.

11. On 17 September 1999 the preliminary investigation into the burglary of 17 August 1999 was joined to the preliminary investigations into the other four burglaries.

12. On 7 October 1999 the charges against the applicant were amended to include the other four burglaries.

13. The preliminary investigation was concluded on 15 October 1999 and on 21 December 1999 the Pazardzhik district public prosecutor's office issued an indictment against the applicant and his two accomplices for the five burglaries.

14. The Pazardzhik District Court conducted eleven hearings in the case, the last of which was held on 30 September 2004.

15. The Court has not been informed of any subsequent developments in or of the outcome of these proceedings.

2. The search of the applicant's apartment

16. On 26 August 1999 the police, with the approval of the public prosecutor's office, searched the apartment in which the applicant and one of his accomplices had been living. The applicant had been renting the said apartment under a lease dated 2 March 1999.

17. The search and seizure protocol indicates that the search was conducted in the presence of two witnesses. Various items were seized including three cameras, a hi-fi system, a dining set, gloves and a wrench.

3. The applicant's pre-trial detention

18. On 28 August 1999, under an order issued by an investigator and approved by the public prosecutor's office, the applicant was arrested and detained for twenty-four hours beginning at 5 p.m. The grounds for his detention were that he was suspected of having committed the burglary on 17 August 1999 because the stolen television and a wrench that had allegedly been used to perpetrate the offence had been found in his apartment, and he had attempted to abscond.

19. On 29 August 1999 the public prosecutor's office extended the applicant's preliminary detention for another two days until 5 p.m. on 31 August 1999.

20. The applicant was placed in pre-trial detention as part of the decision of 31 August 1999 to charge him and his accomplices with the burglary on 17 August 1999 (see paragraph 9 above). That decision was issued by an investigator and was confirmed later in the day by the public prosecutor's office. In ordering the applicant's pre-trial detention, the investigator referred to his alleged lack of a permanent address, the fact that he had committed a number of other burglaries and, in general terms, the risk that he might abscond, re-offend or obstruct the investigation.

21. The applicant's pre-trial detention was confirmed in the decision of 7 October 1999 to amend the charges against him (see paragraph 12 above). That decision was issued by an investigator without any indication that it was subsequently confirmed by the public prosecutor's office. In ordering the applicant's pre-trial detention, the investigator referred to the lack of a permanent address, the fact that he had committed a number of other burglaries and, in general terms, his personality, the gravity of the offences and the risk that he might abscond.

22. The report of 15 October 1999 concluding the preliminary investigation (see paragraph 13 above) indicated that the applicant was in pre-trial detention.

23. In his submissions to the Court, the applicant stated that he had appealed against the decision to order pre-trial detention on 8 October 1999. In his appeal, he had argued, *inter alia*, that there was no risk of him obstructing the investigation as it had effectively been completed, that he had made a full confession, that he had a permanent address and that his detention had not been ordered by a court, in violation of the Convention. In his submissions to the Court, the applicant further claimed that, because of a delay in scheduling a hearing for the examination of his appeal, on 18 October 1999 he had filed a complaint to that effect with the Supreme Judicial Council and the Ministry of Justice. This purportedly led to a hearing being scheduled for the very next day, 19 October 1999, to which the applicant was summoned at very short notice, while his counsel had found out about it only by chance and had not had time to prepare for the hearing or to call witnesses.

24. The Government, on the other hand, presented the Court with a copy of the applicant's appeal dated by the Pazardzhik District Investigation Service as having been deposited only on 18 October 1999.

25. On 19 October 1999 the appeal was examined by the District Court, which dismissed it on the grounds, *inter alia*, of the applicant's prior criminal record and lack of employment, the gravity of the offences and the fact that he did not appear to have a permanent address, as he had been living in rented apartments in different cities and could not provide the permanent address of his next of kin.

26. On 5 November 1999 the applicant filed another appeal against his detention and requested that bail be set. He maintained that his continued detention was in violation of the Convention, that he had a permanent address and that there was no risk that he would abscond, obstruct the investigation or re-offend.

27. A report from the Pazardzhik Prison governor dated 9 November 1999 was presented to the District Court which certified that the applicant had thus far been detained for a period of two months and twelve days calculated from 28 August to 10 November 1999.

28. The District Court examined the applicant's appeal on 10 November 1999. At the hearing the applicant presented a copy of his rental agreement and called a witness, who informed the court that he would put the applicant up and pay his bail. Taking this into account, the District Court found in favour of the applicant and ordered his release on bail of 400 Bulgarian levs. The release was to be effected once a recognizance had been provided. In reaching its decision the court referred, *inter alia*, to the fact that the applicant had been rehabilitated in respect of his previous convictions, that he had an address at which he could be contacted and that there was insufficient evidence that he might abscond, obstruct the investigation or re-offend. As evidenced by a bank receipt, the recognizance was deposited on 22 December 1999.

29. The indictment of 21 December 1999 (see paragraph 13 above) indicated that the applicant had been in pre-trial detention since 31 August 1999 and that recognizance had still not been provided.

30. A communiqué from the Pazardzhik Prison governor, dated 27 December 1999, was sent to the District Court to certify that the applicant had been released on 21 December 1999. However, the original text of the communiqué indicated 22 December as the release date which had been changed to 21 December by hand.

4. The conditions of detention

(a) Pazardzhik Regional Investigation Service detention facility

31. The applicant said that he had been detained at the Pazardzhik Regional Investigation Service detention facility from 28 August to

31 October 1999 where the cells were small, overcrowded and below street level. There was no natural light or fresh air and a strong, unbearable smell in the cells. Quite often there were rodents and cockroaches. A bucket was provided for sanitary needs. There was no hot water or soap. The applicant was not allowed out of his cell for exercise. The food provided was of insufficient quantity and substandard. The applicant was not allowed to read newspapers or books.

(b) Pazardzhik Prison

32. The applicant stated that he was detained at the Pazardzhik Prison for about two months from 1 November 1999 onwards where the conditions were slightly better than in the Pazardzhik Regional Investigation Service detention facility. Similarly, though, the food was insufficient and of the same inferior quality; the cells were small and overcrowded; the light was poor and a bucket was provided for sanitary needs. Limited exercise was provided in the prison yard.

(c) Declaration

33. The applicant's description of the conditions at the above facilities is corroborated by the signed declaration of another detainee, Mr R. Dobrev.

B. The Montana criminal proceedings

1. The criminal proceedings and the applicant's detention

34. On 18 April 1998 the applicant was arrested in a block of flats in the town of Montana where a burglary had been committed. He was questioned by the police and released.

35. At the time, the applicant was living in Montana and so was able to give the authorities his address in that town. In the summer of 1998 he moved to Plovdiv.

36. On 11 February 1999 the authorities opened a preliminary investigation against the applicant in relation to the burglary in Montana.

37. On 15 October 1999 the authorities charged the applicant with the burglary in Montana and ordered that he be placed in pre-trial detention. The decision was issued by an investigator and confirmed later in the day by the public prosecutor's office. In ordering the applicant's pre-trial detention, the investigator referred to his “personality”. As the authorities were unable to find the applicant at his Montana address, an arrest warrant for his detention was issued on the same day, 15 October 1999.

38. The preliminary investigation in relation to the burglary in Montana was suspended on 18 October 1999.

39. On 23 May 2000 the applicant was arrested in Plovdiv on the basis of the Montana arrest warrant. He was then transferred to the Montana Regional Investigation Service.

40. The preliminary investigation in relation to the burglary in Montana was resumed on 29 May 2000. It is unclear when the applicant was formally charged.

41. The preliminary investigation was completed on an unspecified date and on 5 June 2000 the investigator in charge forwarded the case file to the public prosecutor's office with a recommendation for the applicant to be indicted for the burglary in Montana.

42. On an unspecified date the applicant appealed against his pre-trial detention.

43. In a decision of 22 June 2000 the Montana Regional Court found in favour of the applicant and released him on condition that he did not leave his place of residence without the authorisation of the public prosecutor's office. The decision became final and the applicant was released on 26 June 2000.

44. On 11 September 2000 the Montana district public prosecutor's office discontinued the preliminary investigation against the applicant in respect of the Montana burglary for lack of evidence. The restriction imposed on the applicant not to leave his place of residence without the authorisation of the public prosecutor's office was also lifted.

45. The decision of the public prosecutor's office was confirmed by the Montana District Court on 21 September 2000.

2. The conditions of detention in the Montana Regional Investigation Service detention facility

46. The applicant was detained at the Montana Regional Investigation Service detention facility from 23 May to 26 June 2000.

47. He described the cells as overcrowded and lacking natural light and fresh air. The food was of insufficient quantity and substandard. He was not allowed to read newspapers or books or to go out of his cell for exercise.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Search of premises

1. Search of premises during an inquiry

48. At the relevant time, Article 191 of the Code of Criminal Procedure 1974 (“the CCP”) provided that in the course of an inquiry (that

is to say, when there is insufficient evidence to initiate formal criminal proceedings) a search of premises could be conducted only when examining the scene of the crime and if there would be no possibility of collecting and securing evidence if a search was not carried out immediately.

2. Search of premises during criminal proceedings

49. At the relevant time Article 134 of the CCP provided that a search of premises could be carried out if there was probable cause to believe that objects or documents of potential relevance to a case would be found there. Such a search could be ordered by the trial court (during the trial phase) or by the prosecutor (during the pre-trial phase) (Article 135).

50. Searches were to be conducted in the presence of witnesses and the occupier of the premises or an adult member of his or her family. If the occupier or an adult member of his or her family was unable to be present, the search was to be conducted in the presence of the manager of the property or a representative of the municipality (Article 136).

51. There was no special procedure through which a search warrant issued by a prosecutor could be challenged. Thus, the only avenue of appeal available was a hierarchical one to a higher ranking prosecutor (Article 182). Such appeals did not have suspensive effect (Article 183).

B. Grounds for detention

52. The relevant provisions of the CCP and the Bulgarian courts' practice before 1 January 2000 are summarised in the Court's judgments in several similar cases (see, among others, *Nikolova v. Bulgaria* [GC], no. 31195/96, §§ 25-36, ECHR 1999-II, *Ilijkov v. Bulgaria*, no. 33977/96, §§ 55-59, 26 July 2001; and *Yankov v. Bulgaria*, no. 39084/97, §§ 79-88, ECHR 2003-XII (extracts)).

53. After 1 January 2000 the legal detention regime under the CCP was amended with the aim of ensuring compliance with the Convention (TR 1-02 Supreme Court of Cassation ("the SCC")). The amendments and the resulting practice of the Bulgarian courts are summarised in the Court's judgments in the cases of *Dobrev v. Bulgaria* (no. 55389/00, §§ 32-35, 10 August 2006) and *Yordanov v. Bulgaria* (no. 56856/00, §§ 21-24, 10 August 2006).

C. Scope of judicial control of pre-trial detention

54. On the basis of the relevant law before 1 January 2000, when ruling on applications for release of a person charged with a "serious" offence, the domestic courts generally disregarded facts and arguments concerning

the existence or absence of a danger of the accused person's absconding or committing offences and stated that anyone accused of a serious offence was to be remanded in custody unless exceptional circumstances dictated otherwise (see decisions of the domestic authorities criticised by the Court in the cases of *Nikolova* and *Ilijkov*, both cited above, and *Zaprianov v. Bulgaria*, no. 41171/98, 30 September 2004).

55. As of 1 January 2000 the relevant part of the amended Article 152 provided:

> "(1) Detention pending trial shall be ordered [in cases concerning] offences punishable by imprisonment..., where the material in the case discloses a real danger that the accused may abscond or commit an offence.
>
> (2) In the following circumstances it shall be considered that [such] a danger exists, unless established otherwise on the basis of the evidence in the case:
>
> 1. in cases of special recidivism or repetition;
>
> 2. where the charges concern a serious offence and the accused has a previous conviction for a serious offence for which he or she received an immediate sentence of not less than one year's imprisonment;
>
> 3. where the charges concern an offence punishable by not less than ten years' imprisonment or a heavier punishment.
>
> (3) Detention shall be replaced by a more lenient measure of control where there is no longer a danger that the accused will abscond or commit an offence."

56. Divergent interpretations of the above provisions were observed in the initial period after their entry into force on 1 January 2000.

57. In June 2002, interpreting the amended provisions on pre-trial detention, the SCC stated that when examining an appeal against pre-trial detention the courts' task was not only to verify whether the initial decision on remand in custody was lawful but also to establish whether continued detention was still lawful and justified. In such proceedings the courts had to examine all available evidence on all relevant aspects, including, if applicable, the amount of the recognizance (TR 1-02 SCC).

D. Release on bail

Article 150 § 5 of the CCP, as in force at the relevant time, provided:

> "When the measure for securing [a person's appearance in court] is changed from a more [restrictive] one to bail, the [person] shall be released following provision of a recognizance."

E. State and Municipalities Responsibility for Damage Act 1988

58. The State and Municipalities Responsibility for Damage Act 1988 (the "SMRDA" – renamed in 2006) provided at the relevant time that the State was liable for damage caused to private persons by (a) the illegal orders, acts or omissions of government bodies and officials acting within the scope of, or in connection with, their administrative duties and (b) investigation bodies, the prosecution and the courts for unlawful pre-trial detention if a detention order was set aside for lack of lawful grounds (sections 1-2).

59. In respect of the detention regime and conditions of detention, the relevant domestic law and practice under sections 1 and 2 of the SMRDA were summarised in the cases of *Iovchev v. Bulgaria* (no. 41211/98, §§ 76-80, 2 February 2006) and *Hamanov v. Bulgaria* (no. 44062/98, §§ 56-60, 8 April 2004).

60. In respect of the unlawful search of premises, the only reported case is one dating from 2002 in which the Sofia City Court examined, on appeal, an action for damages stemming from an allegedly unlawful search and seizure conducted by the authorities in the claimant's home. The court quashed the judgment of the lower court and remitted the case solely because the lower court had failed to examine the action under section 1 of the SMRDA, having examined it as a tort action instead. Accordingly, the Sofia City Court instructed the lower court to re-examine the action solely under the SMRDA (реш. от 29 юли 2002 г. по гр. д. № 169/2002 г., СГС, IVб отд.).

III. REPORTS OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT ("THE CPT")

61. The CPT visited Bulgaria in 1995, 1999, 2002, 2003 and 2006.

62. The Pazardzhik Prison was visited in 1995 while the Pazardzhik Regional Investigation Service detention facility was visited both in 1995 and 2006. The Montana Regional Investigation Service detention facility has never been visited, but there are general observations about the problems in all investigation service establishments in the 1995, 1999, 2002 and 2006 reports.

63. A summary of the relevant findings and observations of the CPT, prior to its 2006 visit report, is contained in the Court's judgments in the cases of *Dobrev* (cited above, §§ 44-56) and *Malechkov v. Bulgaria* (no. 57830/00, §§ 38-50, 28 June 2007).

64. Separately, the CPT in several of its reports has recommended that States apply a minimum standard of 4 sq m per detainee in multiple-occupancy cells (see, for example, the CPT reports on the 2002

visit to Bulgaria, CPT/Inf (2004) 21, paragraphs 82 and 87, on the 2004 visit to Poland, CPT/Inf (2006) 11, paragraphs 87 and 111, and the 2006 visit to Bulgaria, CPT/Inf (2008) 11, paragraphs 55, 77 and 90).

Relevant findings of the 2006 report (made public in 2008)

Pazardzhik Regional Investigation Service

65. The CPT found that this facility was operating below its official capacity of forty-two places (e.g. there were 13 detainees at the time of the visit) and that there was no overcrowding in the cells (e.g. three persons in a cell measuring some 12 sq m). In addition to beds, the cells were fitted with a table, chairs and shelves. However, the cells were located in the basement and had limited access to natural light; further, artificial lighting was dim and ventilation left something to be desired.

66. As to the regime of available activities, the CPT found that at the time of its visit detainees were being allowed to stroll around an empty room without access to natural light. Inside their cells, in addition to books and newspapers, detainees were in principle allowed to have battery-operated radio and TV sets, but few such were witnessed.

67. Certain improvements were found in respect to detainee's access to sanitary facilities but none in respect to hygiene. Food meanwhile was provided three times a day, but there were some complaints about its quantity and/or quality.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

68. The applicant complained under Article 3 of the Convention that he had been subjected to inhuman or degrading treatment while detained at the Pazardzhik Regional Investigation Service detention facility, the Pazardzhik Prison and Montana Regional Investigation Service detention facility.

Article 3 of the Convention provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. The parties' submissions

1. The Government

(a) Pazardzhik Regional Investigation Service detention facility

69. The Government submitted that the applicant had been held in pre-trial detention at this facility from 28 August to 1 October 1999 and presented a report from the Pazardzhik Investigation Services' Detention Facilities Section of the Directorate for Execution of Sentences of the Ministry of Justice ("the Pazardzhik Investigation Service Report"). The information provided therein is summarised below.

70. The Pazardzhik Investigation Service Report indicated that the applicant had been accommodated alone in a cell measuring 3 m by 3 m by 3 m, situated in the northern section of the detention facility and had no access to direct sunlight.

71. The Pazardzhik Investigation Service Report also stated that, in accordance with the regulations in place at the relevant time, the applicant had been assigned a wooden bed with a mattress, pillow and two blankets. All the cells had central heating and light was provided by two light bulbs situated above the cell doors which were never turned off. There was natural ventilation and extractor fans were also in use. Access to sanitary facilities was provided twenty-four hours a day. Detainees could bath twice a week during the summer and were provided with soap. Food was provided by Pazardzhik Prison. Measures were taken to exterminate insects and rodents in the cells where necessary. The relevant public prosecutor had the power to allow family visits. Medical checks were performed on the detainee's arrival, and thereafter once a week and in the event of an emergency.

72. In summary, the Government argued that the detention conditions and regime had not been intended to degrade or humiliate the applicant. They also argued that the suffering and humiliation involved did not go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment, so that any ill-treatment had not attained the minimum level of severity necessary to bring it within the scope of Article 3 of the Convention. There had not, therefore, been a violation of that provision on that account.

73. In conclusion, the Government claimed that the applicant had been held at this facility in conditions of detention which completely fulfilled the requirement for respect of his human dignity, that the distress and hardship he had endured during the period did not exceed the unavoidable level of suffering inherent in detention and that the resulting anguish did not go beyond the threshold of severity under Article 3 of the Convention.

(b) Pazardzhik Prison

74. The Government submitted that the applicant had been held in pre-trial detention at this facility from 2 to 21 November 1999. They also presented a report ("the Pazardzhik Prison Report") from the deputy prison governor, dated 3 February 2005, which indicated that the applicant had been detained there from 2 November to 21 December 1999, but later in the text claimed that he had been released on 21 November 1999. The remainder of the information provided in the Pazardzhik Prison Report is summarised below.

75. The applicant had been attached to second prisoners' company, which had been accommodated in seven cells with a total living area of 182.33 sq. m. The size of the cells ranged from 6.45 sq. m to 38.85 sq. m. During the year 2000 the average number of occupants per cell in the second prisoners' company was sixty-one.

76. During the period of the applicant's detention only five of the cells had sanitary facilities, so communal facilities had been provided consisting of four separate toilet cabins and two extended sinks with four taps of running water each. Access to these facilities had been possible at set periods several times during the day, usually before and after meals and the various other daily activities. As an exception, access to the sanitary facilities had also been possible at other times.

77. All the cells had access to direct sunlight from windows which could be opened to allow fresh air to circulate. Artificial light had been available from 10 p.m. to 6 a.m.

78. Each detainee had been provided with clothes, a bed with a mattress and bed linen (sheets, a pillow cover and two blankets). They had also been provided with a locker where they could place their personal belongings. A washing machine had also been available for them to wash their clothes. In 1999 boilers had been installed in each corridor to provide detainees with easier access to hot water.

79. The detainees had been provided free-of-charge with toiletry products and materials to wash and disinfect their clothes and living areas. However, the Pazardzhik Prison Report noted that the level of cleanliness depended in part on the detainees who were responsible, under the supervision of the prison authorities, for keeping their living areas clean.

80. The prison authorities had concluded an agreement with a private anti-infestation company to monitor and, if necessary, exterminate pests, as evidenced by numerous invoices for such services dating from 1999.

81. The prison kitchen prepared the food for the detainees. The daily menus had been set and controlled for quantity and quality by the prison authorities. The menu for the week from 27 September to 3 October 1999 had been presented to the Court as an example. It could be seen that it provided for a balanced diet which included meat, fish and vegetarian dishes, dairy products and fresh vegetables.

82. During 1999 detainees had been provided with an hour of daily outdoor exercise. A sports hall with weightlifting equipment and courts for playing basketball, volleyball and mini-football had also been available.

83. Daily access to a prison library with over 8,000 books had also been provided and newspapers and magazines had been available as the prison had taken out a number of subscriptions for such media. Individual subscriptions had also been possible. The prison also had a chapel, a priest and organised religious services. It also had an equipped cinema hall where films were shown. In 1999 each cell and dormitory was connected to a cable television network offering over fifty channels and had been equipped with television sets (personal or state-owned). Detainees could also attend professional development or literacy courses.

84. Detainees' correspondence with their lawyers, relatives and friends had been unrestricted and was not registered. There had also been no restriction on the number of petitions, appeals or requests they could make. Telephone conversations could also be organised with relatives and lawyers.

85. Detainees could also meet privately, without restriction or limitation, with their lawyers in a specially designated room.

86. With regard to the applicant, the Pazardzhik Prison Report noted that while held at that detention facility he had not filed any complaints with the prison governor in respect of the conditions of detention. In addition, he had been found to be completely healthy at the medical check-up that was performed on his arrival, had not made any complaints and until his release had not sought any medical attention at the prison's infirmary.

87. In conclusion, the Government argued that the applicant had been held at the facility in conditions of detention which completely fulfilled the requirement for respect of his human dignity, that the distress and hardship he had endured during the period did not exceed the unavoidable level of suffering inherent in detention and that the resulting anguish did not go beyond the threshold of severity under Article 3 of the Convention.

(c) The Montana Regional Investigation Service detention facility

88. The Government noted that the applicant had been held in pre-trial detention at this facility from 23 May to 26 June 2000 and presented a report from the Montana Regional Investigation Services' Detention Facilities (“the Montana Investigation Service Report”). The information provided therein is summarised below.

89. The applicant had been held in cell no. 14, which was 4.30 m long by 2.4 m wide and had a window measuring 1.9 m by 0.6 m. He had been alone in the cell until 2 June 2000, when another detainee had also been placed there. On 8 June 2000 the two had been moved to cell no. 5, which was 3 m long by 2.3 m wide and had a window measuring 1.9 m by

0.95 m. Both cells had a functioning ventilation system. Access to hot water had been provided every morning and evening and to sanitary facilities upon request because none had been available in the cells at the relevant time. Owing to the lack of a designated area, detainees were permitted to exercise in the corridor of the detention facility. Pest control had also been carried out when necessary.

90. Food had been provided from the canteen of the Montana police station and had been monitored for quality by a paramedic. It consisted of three meals a day, two of which had been hot dishes including one containing meat. The applicant could also separately purchase food, soap, newspapers, magazines and cigarettes as evidenced by a record listing all such purchases he had made.

91. During his detention at this facility the applicant had not filed any complaints regarding conditions there.

92. In conclusion, the Government argued that the applicant had been held at this facility in conditions of detention which completely fulfilled the requirement for respect of his human dignity, that the distress and hardship he had endured during the period did not exceed the unavoidable level of suffering inherent in detention and that the resulting anguish did not go beyond the threshold of severity under Article 3 of the Convention.

2. The applicant

93. The applicant reiterated his complaints and contended that the conditions of detention in which he was held were inadequate and amounted to inhuman and degrading treatment under Article 3 of the Convention. He relied, *inter alia*, on the findings of the Court in other similar cases against Bulgaria (such as, for example, *Malechkov*, cited above), the assessments of the CPT in their reports, the conclusions of the Bulgarian Helsinki Committee in their annual reports and the declaration of his fellow detainee, Mr R. Dobrev (see paragraph 33 above), in respect of the conditions of detention at the Pazardzhik Regional Investigation Service detention facility and Pazardzhik Prison.

94. The applicant also claimed that in Pazardzhik Prison detainees had to use a bucket to relieve themselves because the guards did not allow them out of their cells to use the toilets. He also claimed that he was not provided with a separate bed in either the Pazardzhik or the Montana Regional Investigation Service detention facility. In addition, during the summer the temperature in the cells at the Montana Regional Investigation Service detention facility had been very high and there was no fresh air. Moreover, during the period of his detention at this facility his wife had been pregnant which had made his detention more frustrating and traumatic.

B. General principles

95. The relevant general principles under Article 3 of the Convention are summarised in the Court's judgments in the cases of *Navushtanov v. Bulgaria* (no. 57847/00, §§ 108-13, 24 May 2007), *Dobrev* (cited above, §§ 120-24) and *Yordanov* (cited above, §§ 85-89).

C. Application of the general principles to the present case

1. The declaration by Mr R. Dobrev

96. The Court notes at the outset that in respect of the conditions of detention in the Pazardzhik Regional Investigation Service detention facility and Pazardzhik Prison the applicant presented a signed declaration by another detainee, Mr R. Dobrev (see paragraph 33 above). However, in so far as that individual had an application before the Court concerning conditions of detention in the same facilities at the same time (*Dobrev*, cited above), it finds that his statement should not be considered objective and should not therefore be given any particular weight.

2. The Pazardzhik Regional Investigation Service detention facility

97. The Court notes that a discrepancy exists in respect of the period during which the applicant had been held at this facility. He claimed that he had been detained there from 28 August to 31 October 1999 and that he had then been transferred to Pazardzhik Prison (see paragraphs 31 and 32 above). The Government meanwhile asserted in their observations that he had been held at this facility only until 1 October 1999, as indicated in the Pazardzhik Investigation Service Report (see paragraph 69 above), but agreed that he had been held at Pazardzhik Prison from 2 November 1999 onwards (see paragraph 74 above), which means that the applicant's whereabouts are unaccounted for during the month of October 1999. The Court notes that the applicant appealed against his pre-trial detention on 8 or 18 October 1999 (see paragraphs 23 and 24 above), his detention was confirmed on 7 and 19 October 1999 (see paragraphs 21 and 25 above) and a number of documents noted that he had been in detention during the month of October (see paragraphs 22, 27 and 29 above). Thus, the Court finds that the applicant was detained at the Pazardzhik Regional Investigation Service detention facility from 28 August to 1 or 2 November 1999, that is, for two months and four or five days.

98. The Court notes, at the outset, that in other similar cases against Bulgaria it had the occasion to examine the conditions of detention at this facility over the relevant period and found them to have been inadequate

(see *Yordanov*, cited above, §§ 90-100 and §§ 137-39; *Dobrev*, cited above, §§ 125-32 and §§ 137-39; and *Malechkov*, cited above, §§ 136-47).

99. The Court observes that the parties disagreed as to whether the applicant had available a sufficient living area, whether there had been easy access to sanitary facilities and whether the material conditions and food were adequate. They did agree that the applicant had been accommodated in a cell which was below street level and had no direct sunlight. Nor had he been permitted out of his cell for exercise. The Court considers that the fact that the applicant was confined to his cell for practically twenty-four hours a day for over two months, in apparent isolation, without exposure to natural light and without any possibility of physical and other out-of-cell activities must have caused him considerable suffering. In the absence of compelling security considerations there was no justification for subjecting the applicant to such limitations. No such considerations have been put forward for assessment by the Court.

100. In conclusion, having regard to the stringent regime to which the applicant was subjected and the absence of any proffered justification for it, the Court considers that the distress and hardship he endured exceeded the unavoidable level of suffering inherent in detention and that the threshold of severity under Article 3 of the Convention was attained.

101. Therefore, there has been a violation of Article 3 of the Convention on account of the applicant's detention at the Pazardzhik Regional Investigation Service detention facility.

3. Pazardzhik Prison

102. The Court notes that a discrepancy also exists in respect of the period during which the applicant had been held at the prison. He claimed that he had been detained there for about two months from 1 November 1999 onwards (see paragraph 32 above). The Government meanwhile asserted in their observations that he had been held at this facility from 2 to 21 November 1999 and presented the Court with the Pazardzhik Prison Report which indicated both 21 November and 21 December 1999 as the end of the period of the applicant's detention at this facility (see paragraph 74 above). The Court notes that the applicant provided the required recognizance only on 22 December 1999 (see paragraph 28 above), which concurs with the information contained in the indictment of 21 December 1999 (see paragraph 29 above) and the communiqué from the Pazardzhik Prison governor, dated 27 December 1999 (see paragraph 30 above). Thus, the Court finds that the applicant was detained at Pazardzhik Prison from 2 November to 22 December 1999, that is, for one month and twenty days.

103. The Court notes, at the outset, that the applicant found the conditions at this facility to have been better than those at the Pazardzhik Regional Investigation Service detention facility. It also takes note of the

Government's detailed submissions and the supporting documents they have presented (see paragraphs 74-87 above) to show that the conditions of detention were materially different from what the applicant had contended. Accordingly, the Court finds that it must afford them the required weight when accessing the merits of the applicant's complaint. Lastly, it notes that in other similar cases against Bulgaria it has had the occasion to examine the conditions of detention at this facility over the relevant period and found them to have been adequate (see *Navushtanov*, §§ 124-33 and *Malechkov*, §§ 148-58, both cited above).

104. In view of the above and based on the information provided by the Government, the Court notes that on average the living area available per detainee in second prisoners' company during the year 2000 was 2.98 sq. m, which is below the standard applied by the CPT of a minimum of 4 sq. m per prisoner in multiple occupancy cells (see paragraph 64 above). However, the applicant was detained in this facility at the end of 1999 and it is unclear whether the occupancy level during that period was comparable.

105. Separately, the Court notes from the Government's contentions that during the period of the applicant's detention there were limited sanitary facilities in the cells, but that access to such facilities was provided several times daily. There was direct sunlight and the windows in the cells could be opened to allow fresh air to circulate. Detainees were provided with clothes, a bed with a mattress, bed linen and a locker for personal belongings. They had access to a washing machine and to hot water on account of the boilers installed in each corridor. Detainees were provided free-of-charge with toiletry products and materials to wash and disinfect their clothes and living areas. Efforts were also made to exterminate any insects and rodents.

106. The applicant complained that the food provided was of insufficient quantity and substandard. However, the Government claimed, and the applicant did not subsequently deny, that at the time of the applicant's detention the prison kitchen prepared the food and adhered to menus set and controlled for quantity and quality by the prison authorities. On the basis of the menu presented by the Government, the Court does not find that the food during those periods was substandard or inadequate.

107. The applicant also complained that there were only limited possibilities for outdoor or out-of-cell activities at this detention facility. The Court notes, however, that the Government claimed, and the applicant did not subsequently deny, that detainees were provided with an hour of daily outdoor exercise. An equipped sports hall and courts for playing basketball, volleyball and mini-football had also been available.

108. Having regard to the regime to which the applicant was subjected and the material conditions in which he was held at the Pazardzhik Prison for a period of just over one-and-a-half months, the Court concludes that

the distress and hardship he endured during the period of his detention at this facility did not exceed the unavoidable level of suffering inherent in detention and did not go beyond the threshold of severity under Article 3 of the Convention.

109. Therefore, there has been no violation of Article 3 of the Convention on account of the applicant's detention at the Pazardzhik Prison.

4. The Montana Regional Investigation Service detention facility

110. The Court notes that the applicant was detained at the Montana Regional Investigation Service detention facility from 23 May to 26 June 2000. The period to be taken into account, therefore, is one month and four days.

111. The Court observes, at the outset, that the parties disagreed as to whether the food available at this facility was sufficient and whether he had access to newspapers or books.

112. In any event, the Court notes that the applicant was initially afforded 10.32 sq. m of living area while alone in a cell, which became 5.16 sq. m when a second detainee was placed with him and finally 3.45 sq. m when they were both moved to a smaller cell (see paragraph 89 above). The latter period continued for eighteen days and did not meet the standard applied by the CPT of a minimum of 4 sq. m per prisoner in multiple occupancy cells (see, for example, the CPT reports on the 2002 visit to Bulgaria, CPT/Inf (2004) 21, paragraphs 82 and 87, and on the 2004 visit to Poland, CPT/Inf (2006) 11, paragraphs 87 and 111).

113. Further, the detention facility lacked a designated area for outdoor exercise, so the applicant would have been confined practically twenty-four hours a day during more than a month to his cell and, possibly, the corridor outside without exposure to natural light and without any possibility for physical and other out-of-cell activities. This situation must have caused him considerable suffering. The Court is of the view that in the absence of compelling security considerations there was no justification for subjecting the applicant to such restrictions. No such considerations have been put forward for assessment by the Court.

114. In conclusion, having regard to the cumulative effects of the stringent regime to which the applicant was subjected and the living area afforded to him, the Court considers that the distress and hardship he endured exceeded the unavoidable level of suffering inherent in detention and went beyond the threshold of severity under Article 3 of the Convention.

115. Therefore, there has been a violation of Article 3 of the Convention on account of the applicant's detention at the Montana Regional Investigation Service detention facility.

II. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 3 OF THE CONVENTION

116. The applicant complained under Article 13 of the Convention that he lacked an effective remedy for his complaints regarding the conditions of detention at the Pazardzhik Regional Investigation Service detention facility, Pazardzhik Prison and the Montana Regional Investigation Service detention facility.

Article 13 of the Convention 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."

117. The Government did not comment.

118. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 of the Convention is thus to require the provision of a domestic remedy to deal with the substance of an "arguable claim" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 of the Convention varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, p. 2286, § 95; *Aydın v. Turkey*, judgment of 25 September 1997, *Reports* 1997-VI, pp. 1895-96, § 103; and *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, pp. 329-30, § 106).

119. The Court notes that the applicant's complaints under Article 3 of the Convention were declared admissible (see paragraph 5), were examined on the merits (see paragraphs 97-115) and violations were found in respect of his detention at the Pazardzhik Regional Investigation Service detention facility and the Montana Regional Investigation Service detention facility (see paragraphs 101 and 115 above). Thus, in respect of the violations found an "arguable claim" clearly arises for the purpose of Article 13 of the Convention. Likewise and in spite of the finding that there was no violation in respect of the applicant's detention at Pazardzhik Prison (see paragraph 109 above), an "arguable claim" also arises in respect of it for the purpose of Article 13 of the Convention (see *Andrei Georgiev v. Bulgaria*, no. 61507/00, § 67, 26 July 2007 and, *mutatis mutandis*, *Ramirez Sanchez v. France* [GC], no. 59450/00, §§ 157-60, ECHR 2006). Thus, it remains to be established whether the applicant had available an effective remedy in Bulgarian law to make a

complaint about the adequacy of the conditions of detention at the above facilities.

120. The Court notes in this respect that the Government did not challenge the applicant's assertion and failed to submit any information or arguments about the possible existence or effectiveness of a domestic remedy.

121. Thus, it considers that in the present case it has not been shown by the Government that at the relevant time an effective remedy existed in Bulgarian law for the applicant to raise his complaint about the adequacy of the conditions of detention (see *Andrei Georgiev*, cited above, § 68).

Thus, in that respect there has been a violation of Article 13 in conjunction with Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

122. The applicant complained of an interference with his right to respect for his home. In particular, he contended that the search on 26 August 1999 of the apartment he had been renting was carried out in contravention of domestic legislation, because there had been no legal justification for it and it was performed in his absence. Moreover, no inquiry or preliminary investigation had been pending against him at the time. Lastly, the applicant noted that the Court already examined the lawfulness of the same search in the case of *Dobrev* (cited above, §§ 150-65).

Article 8 of the Convention provides, as relevant:

> "1. Everyone has the right to respect for his private ... life, his home...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

123. The Government did not comment.

A. Whether there was an interference

124. The Court notes that on 26 August 1999 the apartment the applicant had been renting since 2 March 1999 and had been living in with one of his accomplices had been searched by the police, with the approval of the public prosecutor's office. It finds that there was an interference with the applicant's right to respect for his home (see *Dobrev*, cited above, §§ 158-59).

B. Whether the interference was justified

125. In view of the above, it has to be determined whether the interference was justified under paragraph 2 of Article 8 of the Convention, in other words whether it was "in accordance with the law", pursued one or more of the legitimate aims set out in that paragraph and was "necessary in a democratic society" to achieve the aim or aims in question.

"In accordance with the law"

126. The Court reiterates that an interference cannot be regarded as "in accordance with the law" unless, first of all, it has some basis in domestic law. In relation to paragraph 2 of Article 8 of the Convention, the term "law" is to be understood in its "substantive" sense, not its "formal" one. In a sphere covered by the written law, the "law" is the enactment in force as the competent courts have interpreted it (see, *inter alia*, *Société Colas Est and Others v. France*, no. 37971/97, § 43, ECHR 2002-III).

127. The Court notes that the domestic legislation provided, at the relevant time, that a search of premises could be ordered by the trial court (during the trial phase) or by the prosecutor (during the pre-trial phase) only if there was probable cause to believe that objects or documents which may be relevant to a case would be found in them (see paragraphs 49-51 above). Such a search could also be conducted in the course of an inquiry, but only when examining the scene of the crime and if there would be no possibility of collecting and securing evidence if a search was not carried out immediately (see paragraph 48 above).

128. In the instant case, the Court finds that the context in which the search of the applicant's home was conducted is unclear as, at the time, no inquiry or preliminary investigation had been opened. It notes in this respect that the Government have not sought to argue otherwise. In addition, although according to the search protocol the search was conducted in the presence of two witnesses, it appears that none of the other individuals required by law to be present – the occupier or a member of his family, the manager of the property or a representative of the municipality (see paragraph 50 above) – attended. Accordingly, it appears that the prerequisites for performing such a search were not present and its execution was not in compliance with the relevant provisions of domestic law.

129. The Court further observes that the Government failed to provide any information and evidence to show that the search was ordered and conducted in accordance with the domestic legislation.

130. In view of the above, the Court must conclude that the search of the applicant's home on 26 August 1999 was not conducted "in accordance

with the law" within the meaning of paragraph 2 of Article 8 of the Convention. Thus, there has been a violation of that provision on account of the search (see *Dobrev*, cited above, § 165).

In the light of this conclusion, the Court is not required to determine whether the interference was "necessary in a democratic society" for one of the aims enumerated in paragraph 2 of Article 8 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

131. The applicant complained under Article 13 of the Convention that he had not had an effective remedy for his complaint under Article 8 of the Convention as he had no possibility of challenging the actions of the authorities or of seeking redress for their allegedly unlawful actions.

As noted above, Article 13 of the Convention provides that:

> "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."

132. The Government did not comment.

133. The Court refers to the summary of the general principles outlined above in respect of the applicant's complaint under Article 13 in conjunction with Article 3 of the Convention (see paragraph 118 above).

134. Noting the Court's finding of a violation in respect of the applicant's complaint under Article 8 of the Convention (see paragraph 130 above), it remains to be established whether the applicant had available an effective remedy in Bulgarian law to raise a complaint about the lawfulness of the interference with his right to respect for his home.

135. The Court observes that the applicant did not attempt to challenge the lawfulness of the search of his apartment on 26 August 1999. Nor did he initiate an action in damages against the State under the SMRDA on the grounds of the alleged unlawful interference with his right to respect for his home, as it appears he could have done after 2002 (see paragraph 60 above) although it is unclear whether such a remedy was available in 1999.

136. In any event, however, the Court notes that the Government did not challenge the applicant's assertion and failed to submit any information or arguments about the possible existence or effectiveness of a domestic remedy during the relevant period.

137. Thus, it considers that in the present case it has not been shown by the Government that at the relevant time an effective remedy existed in Bulgarian law for the applicant to raise his complaint about the lawfulness of the interference with his right to respect for his home.

Thus, in that respect there has been a violation of Article 13 in conjunction with Article 8 of the Convention.

V. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

138. The applicant made several complaints falling under Article 5 of the Convention, the relevant parts of which provide:

> "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.
>
> 4. 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.
>
> 5. 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."

139. The applicant also complained under Article 13 of the Convention that he had not had at his disposal effective domestic remedies for his Convention complaints. In the admissibility decision of 22 May 2006 the Court considered that this complaint fell to be examined only under Article 5 §§ 4 and 5 of the Convention, which constitute a *lex specialis* in relation to the more general requirements of Article 13 (see, among other authorities, *Nikolova*, cited above, § 69 and *Tsirlis and Kouloumpas v. Greece*, judgment of 29 May 1997, *Reports* 1997-III, p. 927, § 73).

A. Complaints under Article 5 § 3 of the Convention that the applicant was not brought promptly before a judge or other officer authorised by law to exercise judicial power

140. The applicant complained that when he was arrested on 28 August 1999 and again on 23 May 2000 he was not brought promptly before a judge or other officer authorised by law to exercise judicial power.

141. The Government did not comment.

1. The applicant's arrest on 28 August 1999

142. The Court notes that in previous judgments which concerned the system of detention pending trial, as it existed in Bulgaria until 1 January 2000, it found that neither investigators before whom the accused were brought, nor prosecutors who approved detention orders, could be considered as "officer[s] authorised by law to exercise judicial power" within the meaning of Article 5 § 3 of the Convention (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3296, §§ 144-50; *Nikolova*, cited above, §§ 49-53, and *Shishkov v. Bulgaria*, no. 38822/97, §§ 52-54, ECHR 2003-I (extracts)).

143. In the present case, the applicant's detention on 28 August 1999 was likewise ordered by an investigator and confirmed by a prosecutor (see paragraph 18 above).

144. 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 upon his arrest on 28 August 1999.

2. The applicant's arrest on 23 May 2000

145. In respect of the applicant's arrest on 23 May 2000, the Court notes that it was effected after the amendments to the CCP on 1 January 2000, but pursuant to an arrest warrant issued on 15 October 1999 by an investigator which was confirmed by the public prosecutor's office.

146. The Court notes, moreover, that the Government failed to challenge the applicant's assertion that his arrest was not compatible with Article 5 § 3 and they failed to provide any information or documents which might indicate that he had in fact been brought promptly before a judge or other officer authorised by law to exercise judicial power after his arrest on 23 May 2000.

147. It follows that on that account there has been a violation of Article 5 § 3 of the Convention.

B. Complaints under Article 5 § 1 (c) of the Convention that the applicant was detained unlawfully

148. The applicant claimed that his detentions had been unlawful, because the evidence against him had not been sufficient to lead to the conclusion that he was guilty of any offences.

149. The Court observes that the main issue to be determined in the context of this complaint is whether the disputed detention was "lawful", including whether it complied with "a procedure prescribed by law". The Convention here essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof, but it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5 of the Convention, namely to protect individuals from arbitrariness (see *Benham v. the United Kingdom*, judgment of 10 June 1996, *Reports* 1996-III, pp. 752-53, § 40). It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 of the Convention failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with (see *Benham*, cited above, § 41).

1. The applicant's detention from 10 November to 22 December 1999

150. The Court notes that on 10 November 1999 the District Court amended the measure for securing the applicant's appearance in court to bail and ordered his release subject to the provision of a recognizance (see paragraph 28 above). It recognises therefore that the statutory basis for the applicant's detention thereby changed and from that point on was the court's order under Article 150 § 5 of the CCP which provided for his continued detention pending the provision of recognizance (see *Navushtanov*, cited above, § 55). Once recognizance was provided the applicant was released on 22 December 1999 (see paragraphs 28-30 and 102 above).

151. Consequently, the Court finds that there was no violation of Article 5 § 1 (c) of the Convention.

2. The applicant's detention between 23 May and 26 June 2000

152. In respect of this period of detention the Government raised an objection of non-exhaustion and claimed that the applicant had not initiated proceedings for damages under the SMRDA. The Court reiterates that objections of this kind should be raised before the admissibility of the application is considered (see, among other authorities, *Brumărescu v. Romania* [GC], no. 28342/95, §§ 52-53, ECHR 1999-VII and *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 54, ECHR 2000-XI). However, as the Government's objection was first raised

on 31 July 2006, which is after the Court's decision declaring the application admissible (see paragraph 5 above), there is estoppel.

153. As an alternative, the Government argued that the applicant's detention had been lawful as it had been imposed for the purpose of bringing him before the competent legal authority on suspicion of having committed an offence and that all the formalities required by domestic law had been observed.

154. The Court finds that the applicant's detention from 23 May and 26 June 2000 was imposed for the purpose of bringing him before the competent legal authority on suspicion of having committed an offence and finds no indication that the formalities required by domestic law had not been observed because the arrest warrant issued in 1999 had lost effect. As regards the alleged lack of reasonable suspicion, the Court reiterates that the standard imposed by Article 5 § 1 (c) of the Convention does not presuppose the existence of sufficient evidence to bring charges, or to find guilt, at the time of arrest. Facts which raise a suspicion need not be of the same level as those necessary to bring a charge (see *O'Hara v. the United Kingdom*, no. 37555/97, § 36, ECHR 2001-X).

155. In the present case, the Court considers that the authorities had sufficient information to give rise to a "reasonable" suspicion against the applicant as they had initially arrested him in the block of flats where the burglary was committed and he had moved to another town without informing the authorities.

156. Consequently, the Court finds that there was no violation of Article 5 § 1 (c) of the Convention.

C. Complaints under Article 5 § 3 of the Convention that the applicant's detention was unjustified and unreasonably lengthy

157. The applicant complained that his detentions had been unjustified and excessively lengthy.

158. The Government did not comment.

1. The applicant's detention in the context of the Pazardzhik criminal proceedings

159. The Court notes the applicant was in held in pre-trial detention from 28 August to 10 November 1999, when the District Court ordered his release subject to the provision of a recognizance (see paragraphs 18 and 28 above). Thus, the period in question is two months and thirteen days.

160. The Court finds that, unlike in previous cases against Bulgaria where violations were found (see, for example, *Ilijkov*, cited above, §§ 67-87), in the present case the authorities made an assessment of specific facts and evidence which indicated that the applicant might abscond, obstruct the investigation or re-offend, namely that he had

previous convictions, had no apparent permanent address and had moved from town to town (see paragraphs 20-21 and 25 above).

161. In view of the above, the Court finds that there has been no violation of Article 5 § 3 of the Convention.

2. The applicant's detention in the context of the Montana criminal proceedings

162. The Court notes the applicant was in held in pre-trial detention from 23 May to 26 June 2000. The period in question therefore is one month and four days.

163. The Court reiterates that justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov*, cited above, § 66). In the present case, the authorities did not rely on any facts or evidence to justify the applicant's continued detention following his initial arrest and did not on their own initiative undertake a reassessment of the justification for his pre-trial detention after the initial arrest warrant was issued on 15 October 1999. Moreover, the justification for the applicant's detention under that warrant was only his personality and no reference was made to any facts or evidence that he might abscond, re-offend or obstruct the investigation (see paragraph 37 above). The justification for the applicant's pre-trial detention was not reassessed until the Regional Court found in his favour on his appeal and ordered his release (see paragraph 43 above).

164. In view of the above, the Court finds that there has been a violation of Article 5 § 3 of the Convention on account of the authorities' failure to justify the applicant's continued detention.

D. Complaint under Article 5 § 4 of the Convention that the applicant's appeal against his detention of 8 October 1999 was not decided speedily

165. The applicant claimed that in respect of his appeal of 8 October 1999 there had been a violation of the requirement for a speedy decision under Article 5 § 4 of the Convention.

166. The Government did not comment but presented the Court with a copy of the applicant's appeal stamped by the Pazardzhik District Investigation Service as having been deposited on 18 October 1999 (see paragraph 24 above).

167. The Court reiterates that Article 5 § 4 guarantees the right to a speedy judicial decision concerning the lawfulness of detention (see *Rutten v. the Netherlands*, no. 32605/96, § 52, 24 July 2001). In the present case, in the context of the Pazardzhik criminal proceedings, the applicant claimed to have lodged an appeal against his detention on 8 October 1999. He did not however present a copy dated as having been deposited on that

day with any relevant State institution, as the Government did by presenting a copy dated 18 October 1999. The Court therefore finds that the applicant has not convincingly substantiated his assertion that he filed his appeal on 8 October 1999 but rather accepts that it was deposited with the Pazardzhik District Investigation Service only on 18 October 1999. As the appeal was then examined by the District Court one day later on 19 October 1999, the Court considers this period to be in conformity with the requirement for a speedy decision under Article 5 § 4 of the Convention.

168. Thus, in this respect there has not been a violation of Article 5 § 4 of the Convention.

E. Complaint under Article 5 § 5 of the Convention

169. The applicant complained that he did not have an enforceable right to seek compensation for being a victim of arrest or detention in breach of the provisions of Article 5 of the Convention.

170. The Government did not comment.

171. The Court observes at the outset the similarity of this complaint to those in a number of other cases against Bulgaria where violations were found (see, for example, *Yankov*, cited above, §§ 189-198 and *Belchev v. Bulgaria*, no. 39270/98, §§ 84-94, 8 April 2004). It further observes that it has already found a number of violations of Article 5 of the Convention in respect of the applicant's detention (see paragraphs 144, 147 and 164). Thus, Article 5 § 5 of the Convention is applicable and the Court must establish whether or not Bulgarian law afforded the applicant an enforceable right to compensation for the breaches of Article 5 of the Convention established in his case.

172. The Court notes that by section 2 (1) of the SMRDA, a person who has been remanded in custody may seek compensation only if the detention order has been set aside "for lack of lawful grounds"; this refers to unlawfulness under domestic law (see paragraphs 58-59 above).

173. In the present case, the applicant's pre-trial detention was considered by the authorities to have been in full compliance with the requirements of domestic law. Therefore, the applicant did not have a right to compensation under section 2 (1) of the SMRDA. Nor does section 2 (2) apply. It follows that in the applicant's case the SMRDA did not provide for an enforceable right to compensation. Furthermore, it does not appear, and the Government did not contend, that such a right is secured under any other provision of Bulgarian law (see paragraphs 58-59 above).

174. Thus, the Court 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 that provision.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

175. 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

176. The applicant claimed 7,500 euros (EUR) as compensation for each of the alleged violations of his rights under the Convention. He referred to the size of awards in other similar cases against Bulgaria and claimed that the standard of living was constantly improving in the country, which required that awards be adapted accordingly.

177. The Government did not submit comments on the applicant's claim for damage.

178. The Court notes that in the present case violations of the Convention were found under Articles 3, 5, 8 and 13 (see paragraphs 101, 115, 121, 130, 137, 144, 147, 164 and 174 above). It further notes the applicant's argument in respect of the alleged improvements in the standard of living in Bulgaria, which though unquantifiable on the basis of the information presented are at the same time relevant when determining its award under Article 41 of the Convention. In view of the above, the specific circumstances of the present case, its case-law in similar cases and deciding on an equitable basis, the Court awards EUR 5,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

179. The applicant also claimed EUR 7,200 for 70 hours of legal work by his lawyer in the proceedings before the domestic authorities and the Court at an approximate effective hourly rate of EUR 103. In addition, he claimed 30 Bulgarian levs (approximately EUR 15) for the postal and other expenses of his lawyer. He submitted a legal fees agreement between him and his lawyers, a timesheet and receipts. The applicant requested that the costs and expenses incurred should be paid directly to his lawyer, Mr V. Stoyanov.

180. The Government did not submit comments on the applicant's claim for costs and expenses.

181. The Court reiterates that according to its case-law, an applicant is entitled to the reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Having regard to all relevant factors and

noting that the applicant was paid EUR 715 in legal aid by the Council of Europe, the Court considers it reasonable to award the sum of EUR 2,000 in respect of costs and expenses.

C. Default interest

182. 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 3 of the Convention on account of the applicant's detention at the Pazardzhik Regional Investigation Service detention facility;

2. *Holds* that there has been no violation of Article 3 of the Convention on account of the applicant's detention at Pazardzhik Prison;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's detention at the Montana Regional Investigation Service detention facility;

4. *Holds* that there has been a violation of Article 13 in conjunction with Article 3 of the Convention;

5. *Holds* that there has been a violation of Article 8 of the Convention on account of the unlawful interference with the applicant's right to respect for his home as a result of the search of the apartment he was renting;

6. *Holds* that there has been a violation of Article 13 in conjunction with Article 8 of the Convention;

7. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the applicant not having been promptly brought before a judge or other officer authorised by law to exercise judicial power after he was arrested on 28 August 1999 and on 23 May 2000;

8. *Holds* that there has been no violation of Article 5 § 1 (c) of the Convention;

9. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the authorities' failure to justify the applicant's continued detention after his arrest on 23 May 2000;

10. *Holds* that there has not been a violation of Article 5 § 4 of the Convention in respect of the speediness of the judicial decision in response to the applicant's appeal of 18 October 1999;

11. *Holds* that there has been a violation of Article 5 § 5 of the Convention on account of the applicant not having had available an enforceable right to compensation for being a victim of an arrest or detention in breach of the provisions of Article 5 of the Convention;

12. *Holds*

(a) that the respondent State is to pay to 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 on the date of settlement :

(i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, payable to the applicant himself;

(ii) EUR 2,000 (two thousand euros) in respect of costs and expenses, payable into the bank account of the applicant's lawyer in Bulgaria, Mr V. Stoyanov;

(iii) any tax that may be chargeable to the applicant 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;

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

Done in English, and notified in writing on 22 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President