FIFTH SECTION

CASE OF DANOV v. BULGARIA

(Application no. 56796/00)

JUDGMENT

STRASBOURG

26 October 2006

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 Danov v. Bulgaria,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *judges,*

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 2 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 56796/00) 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 Hristo Georgiev Danov ("the applicant"), on 12 December 1999.

2. The applicant was represented by Ms I. Loultcheva, a lawyer practising in Sofia.

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

4. On 15 November 2004 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1954 and lives in Plovdiv. He was a member of the Board of Directors of a local bank and a director of a private brokerage firm.

A. The criminal proceedings against the applicant

7. On 1 April 1998 the Plovdiv District Prosecutor's Office charged the applicant and Mr A. (the "accused") with malfeasance. The charge was later dropped, on an unspecified date, due to lack of a punishable offence.

8. The Plovdiv District Prosecutor's Office also charged the accused with embezzlement on 8 July 1998 and transferred the case to the Plovdiv Regional Prosecutor's Office.

9. On the next day, 9 July 1998, the Plovdiv Regional Prosecutor's Office imposed on each of the accused bail in the amount of 5,000,000 old Bulgarian levs [approximately 2,560 euros (EUR)].

10. The preliminary investigation against the accused continued for the next year with various investigative procedures being conducted in the meantime.

11. Sometime in October 1999 the applicant's co-accused, Mr A., absconded.

12. On 5 November 1999 the applicant was detained on remand under an order of the Plovdiv Regional Prosecutor's Office.

13. The preliminary investigation against the accused was concluded in December 1999.

14. At the beginning of January 2000 an indictment for embezzlement of 2,051,819.44 United States dollars was filed against the accused with the Plovdiv Regional Court.

15. The criminal proceedings continued at the trial stage where an undisclosed number of hearings were held before the Plovdiv Regional Court.

16. In a judgment of 21 June 2005 the Plovdiv Regional Court found the accused innocent of the charges brought against them. It is unclear whether the Prosecutor's Office appealed against this judgment and whether it subsequently entered into force.

B. The applicant's detention and house arrest

1. The applicant's detention

17. In October 1999 the authorities established that the applicant's co-accused, Mr A., could not be found and suspected that he had left the country.

18. On 5 November 1999 the Plovdiv Regional Prosecutor's Office ordered that the applicant be detained on remand despite recognising that he had always punctually and voluntarily attended the investigative procedures conducted during the proceedings. In justifying the detention, the Plovdiv Regional Prosecutor's Office referred to intelligence data received from the Plovdiv Regional Police Directorate on 4 November 1999 that the applicant

was purportedly planning to abscond. The applicant was detained on the same day.

19. On 8 November 1999 the applicant appealed against his detention whereby he challenged the need and justification to amend the measure for securing his appearance in court to detention on remand. In addition, he contested the legal grounds for relying on unverified intelligence data in justifying his detention.

20. In a letter of 17 November 1999 the Plovdiv Regional Police Directorate once again informed the Plovdiv Regional Court that on 3 November 1999 it had received intelligence data that the applicant was intending to abscond. It also noted that without authorisation from the Minister of Internal Affairs it could not provide the intelligence data to the Prosecutor's Office.

21. A hearing was held before the Plovdiv Regional Court on 22 November 1999 at which the prosecutor informed the court that his office did not have access to the intelligence data of 3 November 1999, because the police had refused to provide it without the prior approval of the Minister of Internal Affairs. The court considered that it was essential for it to obtain the intelligence data as this affected the rights of the detained to challenge it. The court ordered that the intelligence data be obtained from the police. The applicant insisted that the court rule on his appeal and challenged the possibility of using such intelligence data as evidence. The hearing was adjourned without a ruling on the applicant's appeal.

22. In a letter of the same day to the Plovdiv Regional Police Directorate the Vice-President of the Plovdiv Regional Court requested that the police provide the court with the facts on which they based their information that the applicant was intending to abscond. In its response of 23 November 1999 the Plovdiv Regional Police Directorate reiterated the statement contained in its letter of 17 November 1999.

23. The hearing of 26 November 1999 was postponed because the Plovdiv Regional Court considered that it was vital for the police to provide the intelligence data before it ruled on the appeal. The applicant maintained that the Prosecutor's Office had failed to prove the applicant's intention to abscond, challenged the need to postpone the hearing and insisted that the court rule on his appeal on the basis of the facts before it. The hearing was adjourned without a ruling on the applicant's appeal.

24. In two letters to the Minister of Internal Affairs and the Plovdiv Regional Police Directorate of 29 November 1999, the Vice-President of the Plovdiv Regional Court once again requested that the police provide the court with the facts on which they based their information that the applicant was intending to abscond. In its response of 30 November 1999 the Plovdiv Regional Police Directorate reiterated its previous statements and informed the court that it had received intelligence data that in a conversation on 3 November 1999 the applicant had declared his intention to leave the

country because he was worried about the outcome of the criminal proceedings against him and in view of the absconding of his co-accused. The police refused to provide the source of the data.

25. At the next hearing on 3 December 1999, the Plovdiv Regional Court examined and dismissed the applicant's appeal against his detention. It found that, in view of the charges against him, his detention on remand was mandatory and, moreover, that there was evidence that he would abscond.

26. After the preliminary investigation was concluded the applicant filed an appeal on 15 December 1999 against his detention arguing that this was a change in circumstances which required a reassessment of his detention on remand. At a hearing held on 21 December 1999 the Plovdiv Regional Court dismissed the applicant's appeal. It considered that there was no change in circumstances and, in any event, that his detention was mandatory in view of the charges against him and the likelihood that he would abscond.

27. On 1 January 2000 amendments to the Code of Criminal Procedure entered into force concerning the regime of detention on remand (see below, Relevant domestic law and practice).

28. The first two hearings at the trial stage of the proceedings were held on 25 January and 22 February 2000. On both occasions the applicant appealed against his detention, which the Plovdiv Regional Court dismissed by essentially relying on the intelligence data that he would abscond, that he was charged with a serious intentional offence for which detention on remand was mandatory and that he had another preliminary investigation opened against him. At the hearing of 22 February 2000 a medical expert's report was presented to the court concerning the applicant's deteriorating state of health, but it was found that his treatment could be continued in prison. The applicant appealed against the ruling of 22 February 2000 for dismissing his appeal, which the Plovdiv Regional Court upheld in a formal decision of 7 March 2000.

29. In a decision of 13 March 2000 the Plovdiv Court of Appeals found that there was no evidence that the applicant would abscond or re-offend and that he had always cooperated with the investigation. In addition, it noted that the police in its letters to the courts had never indicated that the applicant had undertaken any specific actions to abscond. The court also found that the applicant's health condition required treatment and a special diet, which could only be provided in a home environment. As a result, it replaced the applicant's detention on remand with house arrest but without citing any specific reasons for placing the latter restriction on the applicant.

2. The applicant's house arrest

30. On an unspecified date, the applicant appealed against the imposed house arrest.

31. The Plovdiv Regional Court dismissed the applicant's appeal at a hearing on 11 December 2000 as it found that there were no new circumstances warranting a re-evaluation of the imposed restriction on the applicant. On further appeal, the Plovdiv Court of Appeals upheld the decision on 28 December 2000.

32. On an unspecified date, the applicant filed a second appeal against the imposed house arrest.

33. On 28 May 2001 the Plovdiv Regional Court dismissed the second appeal of the applicant as it found that there were no new circumstances warranting a re-evaluation of the imposed restriction and also because he had another preliminary investigation opened against him.

34. On further appeal, in a decision of 15 June 2001 the Plovdiv Court of Appeals quashed the lower court's decision of 28 May 2001 and amended the measure for securing the applicant's appearance in court to bail in the amount of 5,000 new Bulgarian levs (approximately EUR 2,560). The court found that the applicant had always attended court hearings and had never been the cause for any delays or postponements. Thus, it considered that the imposition of house arrest on the applicant had never been justified and that its overall length (one year and seven months) represented a new circumstance warranting a re-evaluation of the imposed restriction. The court also found that the Plovdiv Regional Court had mistakenly relied on the statutory provisions governing detention on remand when dismissing the applicant's appeal against his house arrest but did not find the imposed house arrest to have been unlawful as such.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Detention on remand

1. Before 1 January 2000

35. The relevant provisions of the Code of Criminal Procedure (the "CCP") and the Bulgarian courts' practice at the relevant time 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)).

2. After 1 January 2000

36. As of that date the legal regime of detention under the CCP was amended with the aim to ensure compliance with the Convention (TR 1-02 Supreme Court of Cassation).

37. The relevant part of the amended Article 152 provided, as in force at the material time and until 30 April 2001:

> "(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 person 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 person has a previous conviction for a serious offence and a non-suspended sentence of not less than one year 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 person may abscond or commit an offence."

38. It appears that divergent interpretations of the above provisions were observed in the initial period of their application upon their entry into force on 1 January 2000.

39. In June 2002 the Supreme Court of Cassation clarified that the amended Article 152 excluded any possibility of a mandatory detention. In all cases the existence of a reasonable suspicion against the accused and of a real danger of him absconding or committing an offence had to be established by the authorities. The presumption under paragraph 2 of Article 152 was only a starting point of analysis and did not shift the burden of proof to the accused (TR 1-02 Supreme Court of Cassation).

B. House arrest

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

41. Article 147 of the CCP, as in force at the material time, provided that the measures to secure appearance were imposed to prevent the accused from absconding, re-offending or impeding the enforcement of a judgment. When imposing a particular measure, the competent authority had to have regard to the dangerousness of the alleged offence, the evidence against the

accused, his or her health, family status, profession, age, etc. (Article 147 § 2 of the CCP).

42. Article 151 § 1 of the CCP, as in force at the material time, defined house arrest as follows:

> "House arrest shall consist in prohibition for the accused to leave his home without permission by the relevant authorities."

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

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

43. The CCP, as in force at the relevant time, provided in its Article 151 § 2 for full initial and subsequent judicial review of house arrest.

C. The State Responsibility for Damage Act

44. The State Responsibility for Damage Act of 1988 (the "SRDA") provides that the State is liable for damage caused to private persons by (a) the illegal orders, actions or omissions of government bodies and officials acting within the scope of, or in connection with, their administrative duties; and (b) the organs of the investigation, the prosecution and the courts for unlawful pre-trial detention, if the detention order has been set aside for lack of lawful grounds (sections 1-2).

The relevant domestic law and practice under sections 1 and 2 of the SRDA has been 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).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

45. The applicant made several complaints falling under Article 5 of the Convention.

In particular, the applicant complained under Article 5 § 1 of the Convention that he was detained unlawfully on 5 November 1999, because there was a lack of reliable evidence that he would abscond. He also maintained that his detention and house arrest were unjustified.

The applicant complained under Article 5 § 2 of the Convention that he was not informed promptly of the reasons for his arrest in that he was not

presented with the intelligence data on which the authorities relied in ordering his detention.

The applicant complained under Article 5 § 3 of the Convention that his detention was ordered by the Prosecutor's Office.

Finally, the applicant complained that the appeal proceedings concerning his deprivation of liberty were unfair. He submitted that the courts based their decisions on facts which were inadmissible as evidence under domestic rules of procedure, notably the intelligence data obtained by the police, that he was never presented with that data and that he was denied therefore the opportunity to examine and challenge the assertions made against him. Separately, he contended that the courts were biased.

The relevant part of Article 5 of the Convention provides:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
>
> 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."

A. Admissibility

1. Exhaustion of domestic remedies

46. The Government submitted that the applicant had failed to exhaust the available domestic remedies. They claimed that, based on the findings of the Plovdiv Court of Appeals in its decision 15 June 2001, the applicant could have initiated an action under the SRDA as he would have obtained damages for unlawfully having been placed under house arrest.

47. The applicant disagreed with the Government's contention and claimed that he could not have sought damages for his prolonged detention and house arrest under the SRDA. He noted that in its decision of 15 June 2001 the Plovdiv Court of Appeals never made a finding that his detention or house arrest had been unlawful but only that the latter had been unjustified and had simply changed it to bail. This allegedly precluded him from filing a successful action under the SRDA. Accordingly, he considered that he should not be required to have exhausted this remedy.

48. The Court reiterates that the purpose of Article 35 § 1 of the Convention, which sets out the rule on exhaustion of domestic remedies, is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). The rule in Article 35 § 1 of the Convention is based on the assumption, reflected in Article 13 (with which it has close affinity), that there is an effective domestic remedy available in respect of the alleged breach of an individual's Convention rights (see *Giuseppina and Orestina Procaccini v. Italy* [GC], no. 65075/01, § 37, 29 March 2006).

49. Nevertheless, the only remedies which Article 35 of the Convention requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Giuseppina and Orestina Procaccini*, cited above, § 38).

50. In the present case, the Court notes that neither the Plovdiv Court of Appeals in its decision of 15 June 2001 nor any other domestic court ever found the applicant's detention or house arrest to have ever been "unlawful" under domestic legislation nor did they "set [them] aside for lack of lawful grounds", which was a recognised prerequisite for a successful action under the SRDA (see paragraph 44 above and the case references quoted therein).

51. Accordingly, considering the lack of domestic case-law to support the Government's argument that the applicant could nevertheless have initiated a successful action under the aforesaid act, the Court is not convinced that the SRDA represented an effective remedy which the applicant should have exhausted.

52. The Government's objection must therefore be dismissed.

2. Compliance with the six-month time-limit under Article 35 § 1 of the Convention

53. The Government also submitted that the applicant had failed to submit his application to the Court within six months after the date on which the final domestic court decision was taken, or the date on which he

was released, but rather had filed his complaints much sooner, on 12 December 1999, while he was still detained on remand.

54. The applicant disagreed with the Government's contention and claimed that his application related to a continuing situation. He noted that his initial communication to the Court of 12 December 1999 was followed by a completed application form, which detailed his complaints and contained additional facts and information. Separately, he claimed that Article 35 § 1 of the Convention does not preclude an applicant from submitting an application prior to the date on which a final decision by a domestic court is taken, or the date on which he is released, but rather stipulates the last day by which such an application must be made, following which the Court is barred from examining it as it would, in such case, be submitted out of time.

55. The Court reiterates, at the outset, that the object of the six-month time-limit is to promote legal certainty, by ensuring that cases raising issues under the Convention are dealt with in a reasonable time, and past judgments are not continually open to challenge. Further, the rule also affords the prospective applicant time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised (see *Worm v. Austria*, judgment of 29 August 1997, *Reports of Judgments and Decisions* 1997-V, p. 1547, § 32 and *Keenan v. the United Kingdom*, no. 27229/95, Commission decision of 22 May 1998).

56. The Court further reiterates that Article 35 § 1 of the Convention provides that the Court may only deal with a matter where it has been introduced within six months from date of the final decision in the process of exhaustion of domestic remedies. Where no effective remedy is available to the applicant, the time-limit expires six months after the date of the acts or measures complained of, or after the date of knowledge of that act or its effect or prejudice on the applicant (see *Younger v. the United Kingdom* (dec.), no. 57420/00, ECHR 2003-I). This approach is especially appropriate in circumstances where it is clear from the outset that no effective remedy was available to the applicant in respect of the act or decision complained of within the relevant domestic law (see *Keenan*, cited above).

57. In the case of a continuing situation, meanwhile, the time-limit expires six months after the end of the situation concerned (see, among many other authorities, *Agrotexim Hellas S.A. and Others v. Greece*, no. 14807/89, Commission decision of 12 February 1992, Decisions and Reports 72, p. 148). Similarly, in respect of a complaint about the absence of a remedy for a continuing situation, such as a period of detention, the time-limit under Article 35 § 1 of the Convention also expires six months after the end of that situation – for example, when an applicant is released from custody (see *Ječius v. Lithuania*, no. 34578/97, § 44, ECHR 2000-IX). In any event, however, if an applicant submits his complaints to the Court

while he is still in detention, the case cannot be dismissed as being out of time (*ibid.*).

58. Lastly, if it is not clear from the outset that no effective remedy was available to the applicant, then the time-limit expires six months after the date on which the applicant first became or ought to have become aware of the circumstances which rendered the remedy ineffective (see *Keenan*, cited above).

59. In the present case, the Court observes that the applicant's initial communication was dated 12 December 1999. Subsequently, he submitted a completed application form on 5 April 2000 and sent letters on 26 April 2001 and 16 September 2002 with which he informed the Court of further developments in the case.

60. The Court further observes that the applicant's complaints under Article 5 §§ 1 and 2 of the Convention relate to his detention on 5 November 1999. This represented an instantaneous act and, in so far as no effective remedy has been shown to have been available to the applicant, the six-month time-limit started to run as of the date in question in respect of these complaints.

61. The applicant's complaints which fall under paragraphs 3 and 4 of Article 5 of the Convention, meanwhile, relate to certain alleged deficiencies of the relevant provisions of the CCP, in force at the relevant time, as construed by the competent authorities and as applied to the applicant, which gave rise to a continuing situation against which no effective remedies were available at the time.

However, in respect of the applicant's complaint that his detention was ordered by the Prosecutor's Office and that he was allegedly not brought promptly before a judge, the Court finds that the continuing situation ended at the latest on 22 November 1999 when the applicant appeared before a judge (see paragraph 21 above). Thus, the time-limit for submitting his complaints to the Court expired six months after the aforementioned date (see *Al Akidi v. Bulgaria* (dec.), no. 35825/97, 19 September 2000, and *Hristov v. Bulgaria* (dec.), no. 35436/97, 19 September 2000).

In respect of the remainder of the applicant's complaints, the Court finds that the continuing situation ended with the amendment of the relevant provisions of the CCP effective 1 January 2000, which preceded the transformation of the applicant's detention into house arrest on 13 March 2000. The fact that the form of the applicant's deprivation of liberty mutated from pre-trial detention to house arrest – which also falls within the scope of Article 5 (see *Mancini v. Italy*, no. 44955/98, § 17, ECHR 2001-IX, *Vachev v. Bulgaria*, no. 42987/98, §§ 64 and 70, ECHR 2004-VIII (extracts), and *Nikolova v. Bulgaria (No. 2)*, no. 40896/98, §§ 60 and 74, 30 September 2004) – appears to be of no relevance, as it did not put an end to the alleged violations of Article 5 § 3 concerning the justification of the applicant's deprivation of liberty and of Article 5 § 4 concerning the availability of a

judicial procedure satisfying the requirements for a full-fledged judicial review thereof (see, *mutatis mutandis*, *Pekov v. Bulgaria*, no. 50358/99, § 60, 30 March 2006). In any event, this does not preclude the applicant from submitting his complaints to the Court while the continuing situation persists (see *Ječius*, cited above, § 44).

62. In view of the above and taking into account the date of introduction of the applicant's complaints and his subsequent communications, the Court finds that he has complied with the six-month time-limit under Article 35 § 1 of the Convention.

The Government's objection must therefore be dismissed.

3. Complaint under Article 5 § 1 of the Convention regarding the lawfulness of the applicant's detention

63. The Court reiterates that the main issue to be determined in the context of the complaint under Article 5 § 1 of the Convention 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).

64. In the present case, the Court finds that the applicant's detention fell within the ambit of Article 5 § 1 (c) of the Convention, as it was imposed for the purpose of bringing him before the competent legal authority on suspicion of having committed an offence. There is nothing to indicate that the formalities required by domestic law for imposing the detention were not observed.

65. In respect of the applicant's assertion that the intelligence data obtained by the police represented insufficient grounds for detaining him which made his detention unlawful, the Court is not convinced by this argument. It considers that the Plovdiv Regional Prosecutor's Office acted within the scope of its authority and in observance of domestic law when it ordered that the applicant be detained on remand following receipt of information that he was planning to abscond, especially considering the fact that the other accused, Mr A., had already fled.

66. Consequently, the Court concludes that in respect of this complaint there is no appearance of a violation of Article 5 § 1 of the Convention. It follows that the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

4. Complaint under Article 5 § 2 of the Convention that the applicant was not informed promptly of the reasons for his arrest

67. The Court reiterates that Article 5 § 2 of the Convention contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. This provision is an integral part of the scheme of protection afforded by Article 5: by virtue of paragraph 2 any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with paragraph 4. Whilst this information must be conveyed "promptly", it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features (see *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A no. 182, p. 19, § 40 and *H.B. v. Switzerland*, no. 26899/95, § 47, 5 April 2001).

68. The Court observes that in the present case the applicant was charged with embezzlement on 8 July 1998 but was detained on remand on 5 November 1999 after the Plovdiv Regional Prosecutor's Office received information that he was planning to abscond (see paragraphs 8, 12 and 18 above).

69. The Court further observes that the applicant did not contend that he was not provided with any reasons for his detention on 5 November 1999, but submitted that he was not presented with the intelligence data on which the authorities relied to order his detention. Thus, it is evident that the applicant was made aware that he was being detained in order to curtail an apparent attempt on his part to abscond. The fact that he was not presented with the content and source of the intelligence data relied on by the authorities does not change the fact that he was informed, in a language that he understood, the essential grounds for his detention on remand, which allowed him to challenge its lawfulness. In fact, the information he received was sufficient to allow the applicant to file an appeal against his detention within a couple of days and to attempt to challenge the validity of the intelligence data relied upon by the authorities in ordering his detention. Thus, the Court finds that the authorities did not fail to comply with the requirement under Article 5 § 2 of the Convention and informed the applicant upon his detention on 5 November 1999 of the "essential legal and factual grounds for his arrest".

70. Consequently, the Court concludes that there is no appearance of a violation of Article 5 § 2 of the Convention. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

5. Complaints under Article 5 §§ 3 and 4 of the Convention

71. The Court finds that the applicant's complaints (a) that his detention was ordered by the Prosecutor's Office; (b) that his detention and house arrest were unjustified; and, (c) that the appeal proceedings concerning his deprivation of liberty were unfair are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, or inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Complaint under Article 5 § 3 of the Convention that the applicant's detention was ordered by the Prosecutor's Office

72. The Government did not submit observations on the merits of the complaint.

73. The Court finds that by complaining that only the Prosecutor's Office ordered his detention, the applicant is in substance objecting to the fact that when he was detained on remand on 5 November 1999 he was not brought promptly before a judge or other officer authorised by law to exercise judicial power within the meaning of Article 5 § 3 of the Convention.

74. Accordingly, the Court reiterates that in previous judgments which concerned the system of detention pending trial, as it existed in Bulgaria until 1 January 2000, it had found that neither investigators before whom the accused persons 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* 1998-VIII, p. 3298-99, § 144-50; *Nikolova*, cited above, §§ 49-53, and *Shishkov v. Bulgaria*, no. 38822/97, §§ 52-54, ECHR 2003-I (extracts)).

75. The present case, likewise, concerns detention on remand imposed before 1 January 2000. The applicant's detention on remand was ordered by a prosecutor (see paragraphs 12 and 18 above), in accordance with the provisions of the CCP then in force (see paragraph 35 above). However, the prosecutor was not sufficiently independent and impartial for the purposes of Article 5 § 3 of the Convention, in view of the practical role he played in the investigation and the prosecution, and his potential participation as a party to the criminal proceedings (see paragraph 35 above). The Court refers to the analysis of the relevant domestic law contained in its *Nikolova* judgment (cited above – see paragraphs 28, 29 and 49-53 of that judgment).

76. Finally, the Court notes that the applicant appeared before a judge only on 22 November 1999 in the course of the appeal proceedings he had

initiated against his detention, which was seventeen days after he was detained on remand (see paragraph 21 above).

77. In view of the above, the Court finds that there has been a violation of the applicant's right to be brought promptly before a judge or other officer authorised by law to exercise judicial power within the meaning of Article 5 § 3 of the Convention.

2. Complaint that the applicant's deprivation of liberty was unjustified

78. The Court considers that this complaint, raised by the applicant under Article 5 § 1 (c) of the Convention, falls to be examined under Article 5 § 3 of the Convention.

79. The Government did not submit observations on the merits of the complaint.

80. The Court notes that the applicant was detained on 5 November 1999. On 13 March 2000 his deprivation of liberty took the form of house arrest, which lasted until 15 June 2001 (see paragraphs 12, 18, 29 and 34 above). The Court has already held that house arrest constitutes deprivation of liberty within the meaning of Article 5 (see *Mancini*, § 17; *Vachev*, §§ 64 and 70; and *Nikolova (No. 2)*, §§ 60 and 74, all cited above). Accordingly, it is necessary to assess the authorities' justification for the applicant's deprivation of liberty between 5 November 1999 and 15 June 2001, a period of one year, seven months and ten days.

81. The Court reiterates that 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, it is necessary to establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV and *Ilijkov*, cited above, §§ 67-87).

82. In the present case, as regards the period from 5 November 1999 to 13 March 2000 when the applicant was detained on remand, the authorities, in justifying the continuation of his detention, relied both on their understanding that it was mandatory in view of the charges against him and also that there were indications that he might abscond (see paragraphs 25, 26 and 28 above). The latter conclusion was based on the intelligence data obtained by the police to which neither the courts nor the Prosecutor's Office ever received full access. Admittedly, on 30 November 1999 they were informed of the contents of the information about the applicant's alleged intentions to abscond, but the source of the information was never disclosed (see paragraph 24 above).

83. Thus, the Court finds that in respect of the justification of the applicant's detention on remand during this period, the case is similar to previous cases against Bulgaria where violations were found (see, for example, *Ilijkov*, cited above, §§ 67-87 and *Shishkov*, cited above, §§ 57-67). Likewise, the Court finds that in the decisions of the authorities to extend the applicant's detention they essentially failed to assess specific facts and evidence about the possible danger of the applicant re-offending or obstructing the investigation, but merely relied on the content of the intelligence data obtained by the police about an expressed intention of the applicant to abscond without obtaining or accessing its source and, therefore, the trustworthiness of the said information. Moreover, the authorities principally relied on the mandatory nature of the applicant's detention on remand in view of the charges against him (see paragraphs 25, 26 and 28 above). Accordingly, the Court finds that the authorities failed to justify the continuation of the applicant's detention on each and every occasion during this period.

84. In respect of the justification of the applicant's house arrest from 13 March 2000 to 15 June 2001, the Court considers the present case similar to *Nikolova (no. 2)* (cited above, §§ 57-70). It notes, in this respect, that on 13 March 2000 the Plovdiv Court of Appeals replaced the applicant's detention on remand with house arrest even though it found that there was no evidence that he would abscond or re-offend and that he had always cooperated with the investigation. In addition, the court noted that the police in their letters had never indicated that the applicant had ever undertaken any specific actions to abscond (see paragraph 29 above). Despite its findings, the Plovdiv Court of Appeals imposed house arrest on the applicant without justification for its need.

85. The Court further notes that the relevant text, Article 147 of the CCP, did not set forth a general rule on the conditions and prerequisites for imposing house arrest similar to that of Article 152 §§ 1 and 2 for detention on remand (see paragraphs 40 and 37 above). However, the issue which needs to be determined in the present case is not whether the law was compatible with the requirements of Article 5 § 3 of the Convention, but whether the authorities gave relevant and sufficient reasons for keeping the applicant deprived of his liberty. In this connection, the Court notes that the courts refused to examine the applicant's subsequent appeals against his house arrest because they found in their decisions of 11 and 28 December 2000 and also of 28 May 2001, that there were no new circumstances warranting a re-evaluation of the imposed restriction on the applicant (see paragraphs 31 and 33 above).

86. Thus, in view of the lack of any justification for imposing the restriction of house arrest on the applicant on 13 March 2000 and the subsequent failures by the courts to justify the continuation of the said restriction on each and every occasion, the Court finds that the authorities

lacked relevant and sufficient grounds to keep the applicant under house arrest.

87. In view of the above findings in respect of the applicant's detention on remand and house arrest, the Court finds that the authorities failed to justify his deprivation of liberty for a period of over one year and seven months.

88. The Court therefore finds that there has been a violation of the applicant's right under Article 5 § 3 of the Convention.

3. Complaints in respect of the fairness of the proceedings in response to the applicant's appeals against his detention

89. The Court considers that this complaint falls to be examined under Article 5 § 4 of the Convention.

90. The Government did not submit observations on the merits of the complaint.

91. The Court reiterates that a court examining an appeal against detention must provide guarantees of a judicial procedure. Thus, the proceedings must be adversarial and must adequately ensure "equality of arms" between the parties, the prosecutor and the detained (see *Nikolova*, § 58 and *Ilijkov*, § 103, both cited above). Equality of arms is not ensured if counsel is denied access to those documents in the investigation file which are essential in order effectively to challenge the lawfulness of his client's detention (see the *Lamy v. Belgium*, judgment of 30 March 1989, Series A no. 151, pp. 16-17, § 29 and *Nikolova*, cited above, § 58).

92. In the present case, the Court observes that the applicant's complaint essentially relates to the fact that the defence was never informed of the source of the intelligence data obtained by the police and that the applicant was therefore denied the opportunity to effectively challenge its credibility. Moreover, none of the parties to the proceedings, including the courts and Prosecutor's Office, were ever provided with this information. Nevertheless, the courts dismissed the applicant's appeals by partly relying on the contents of the intelligence data against the applicant to justify their conclusion that there was a risk that he might abscond or, subsequently, by simply stating that there were no new circumstances warranting a re-evaluation of the imposed restriction.

93. The Court finds that the above issue overlaps and is linked to the one examined above under Article 5 § 3 of the Convention regarding the lack of justification of the applicant's deprivation of liberty and the reliance of the courts and the Prosecutor's Office on intelligence data to which neither had full access. Accordingly, having regard to its finding pertaining to the aforementioned provision (see paragraph 88 above), the Court considers that in the present case there has also been a violation of Article 5 § 4 of the Convention on account of the applicant having been denied access to a judicial procedure satisfying the requirements of this provision as a result of

having been refused access to, and thereby the possibility to effectively challenge, the intelligence data used by the authorities to justify his continued deprivation of liberty.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. 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

96. The applicant claimed euros (EUR) 150,000 in respect of non-pecuniary damage. He argued that he had felt anguish and despair for having been deprived of his liberty for over nineteen months without justification. The applicant noted that while he was in detention he was denied access to his family and his health had deteriorated. The subsequent house arrest also allegedly placed an undue burden and stress on his family and business relationships.

97. The Government challenged the applicant's claim for non-pecuniary damage. They argued that they were arbitrarily determined, excessive and that they did not correspond to the awards made by the Court in previous similar cases.

98. Having regard to all the circumstances of the case and to its case-law in similar cases, and deciding on an equitable basis, the Court awards the applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may chargeable on that amount.

B. Costs and expenses

99. The applicant also claimed EUR 5,000 for the costs and expenses incurred before the Court, including EUR 4,000 for the work by his lawyer on the case for which he submitted a legal fees agreement with her for that amount.

100. The Government challenged the applicant's claim for costs and expenses and maintained that they were unsubstantiated. In particular, they stated that he had not present any documents to show that he had ever actually incurred any costs and expenses, such as for example receipts, invoices or a timesheet for the lawyer's fees. Accordingly, the Government

asserted that he had failed to satisfy the requirements of Rule 60 § 2 of the Rules of Court.

101. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads, plus any tax that may chargeable on that amount.

C. Default interest

102. 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. *Declares* admissible the complaints concerning (a) the applicant not being promptly brought before a judge or other officer authorised by law to exercise judicial power; (b) the justification for his deprivation of liberty; and (c) the alleged lack of fairness of the appeal proceedings in response to the applicant's appeals against his deprivation of liberty;

2. *Declares* the remainder of the application inadmissible;

3. *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;

4. *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;

5. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the applicant having been denied the right to have the continued lawfulness of his detention reviewed effectively by a court;

6. *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 4,000 (four thousand euros) in respect of non-pecuniary damage;

(ii) EUR 2,000 (two thousand euros) in respect of costs and expenses;

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

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 26 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President