FIFTH SECTION

CASE OF DOBREV v. BULGARIA

(Application no. 55389/00)

JUDGMENT

STRASBOURG

10 August 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 Dobrev v. Bulgaria,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 10 July 2006,

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

PROCEDURE

1. The case originated in an application (no. 55389/00) 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 Radoslav Veselinov Dobrev ("the applicant"), on 3 December 1999.

2. The applicant was represented by Mr V. Stoyanov, a lawyer practising in Pazardzhik.

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

4. On 11 October 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. The Government did not submit observations on the admissibility and merits of the application, but did comment on the applicant's claims for just satisfaction.

6. 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

A. The criminal proceedings against the applicant and his detention in the context of these proceedings

7. The applicant was born in 1978 and is a resident of Varna. At the time of the events, he lived in Plovdiv.

8. On 17 August 1999 a burglary was committed where, *inter alia*, a television and a video recorder were stolen.

9. On an unspecified date a preliminary investigation was opened.

10. On 26 August 1999 the apartment where the applicant was living was searched by the police, with the apparent subsequent approval of the Prosecutor's Office. Neither the applicant nor any other representative of the household was present. The search was conducted in the presence of two witnesses, neither of them was indicated to be the residence's manager or a representative of the municipality. Various items were seized among which were three photo cameras, a hi-fi system and a wrench.

11. On the same day, 26 August 1999, the applicant was arrested in Plovdiv and taken into police custody. He was then transferred to Pazardzhik.

12. On 28 August 1999, under an order issued by an investigator and approved by the Prosecutor's Office, the applicant was placed under twenty-four hours' preliminary detention as of 5 p.m. and held at the Pazardzhik Regional Investigation Service. The applicant was suspected of having committed the burglary on 17 August 1999 because the stolen television and a wrench, allegedly used to perpetrate the offence, had been found in his apartment. In addition, at the time of his arrest the applicant had apparently attempted to abscond.

13. On 29 August 1999 the Prosecutor's Office extended the preliminary detention of the applicant for another two days until 5 p.m. on 31 August 1999.

14. On 31 August 1999 the applicant, together with two other individuals, was charged with having committed the burglary of 17 August 1999. He was remanded in custody upon a decision of an investigator which was confirmed later in the day by the Prosecutor's Office. In ordering the remand in custody, the investigator stated that the applicant lacked a permanent address, that he had committed numerous other burglaries, that he might re-offend and that he might abscond as he had apparently done in 1998 when a national arrest warrant had been issued against him.

15. On 8 October 1999, under an order issued by an investigator, the charges against the applicant were amended to include another four burglaries and his detention on remand was maintained. In ordering the continued detention, the investigator cited the gravity of the offences with which the applicant had been charged, the likelihood that he might abscond and his personality.

16. On 12 November 1999 the applicant appealed against his detention. He maintained that his continued detention was unwarranted as there was no danger that he would abscond or re-offend because, *inter alia*, he had a permanent address in another city and his brother could pay his bail. The applicant also relied on Article 5 of the Convention in his submissions.

17. The Pazardzhik District Court dismissed the applicant's appeal on 18 November 1999. The court found that the applicant had been charged with a serious offence which warranted mandatory detention. In addition, the court concluded that the applicant might abscond because he did not have any personal identity documents, had no permanent address and was apparently residing in an apartment rented by one of his friends. It also found that it was likely that he would re-offend considering the fact that he had perpetrated the offences with which he had been charged during the operational period of a previous one-year suspended sentence. In respect of the arguments pertaining to Article 5 of the Convention, the court examined them and found that the applicant's continued detention was in conformity with the exceptions provided in the said provision.

18. The applicant filed another appeal against his detention on 22 November 1999 arguing that there was no longer a danger that he might abscond or re-offend because his brother was willing to pay his bail, support him financially and provide him with employment.

19. On 26 November 1999 the Pazardzhik District Court dismissed the applicant's appeal. The court found, *inter alia*, that the applicant had failed to provide evidence that he even had a brother and was unable to indicate where the said brother lived, what kind of business he was running and where.

20. On 22 December 1999 the applicant filed his third appeal against his detention arguing that he had been in detention for more than four months and that there was no longer a danger that he might abscond or re-offend because his brother was willing to pay his bail, support him financially and provide him with employment.

21. An indictment was filed against the applicant on an unspecified date.

22. The judge rapporteur of the Pazardzhik District Court, also on an unspecified date, ruled that the court would examine the applicant's latest appeal at its hearing scheduled for 25 February 2000. For undisclosed reasons the hearing was postponed to 4 April 2000.

23. The Pazardzhik District Court dismissed the applicant's third appeal at its hearing on 4 April 2000. The court found that the applicant had been

charged with a serious offence and that he might abscond because he did not have a permanent address and was residing in an apartment rented by one of the co-accused. It also found that it was likely that he would re-offend considering the fact that he had perpetrated the offences with which he had been charged during the operational period of a previous one-year suspended sentence. The decision was upheld on appeal by the Pazardzhik Regional Court on 13 April 2000.

24. In response to a fourth appeal of the applicant against his detention filed on an unspecified date, the Pazardzhik District Court found in his favour on 17 May 2000. On appeal by the prosecuting authorities the decision was quashed by the Pazardzhik Regional Court on 30 May 2000. The latter court found that the applicant might abscond because he did not have a permanent address and was residing in an apartment rented by one of his friends. It also found that it was likely that he would re-offend considering his past criminal tendencies and that he lacked employment.

25. The subsequent development of the criminal proceedings is unclear. It is also unknown whether, and when, the applicant was released or granted bail. However, as of the date of the applicant's submissions of March 2005, the case was still pending before the court of first instance.

B. The conditions of the applicant's detention

26. The applicant contended, which the Government did not challenge, that as from 26 August 1999 he was detained for a period of two months at the Pazardzhik Regional Investigation Service and was then transferred to the Pazardzhik Prison where he remained at least until 30 May 2000.

1. Pazardzhik Regional Investigation Service

27. In the applicant's submission the cells were small, overcrowded and below street level. There was no natural light or fresh air in the cells. Quite often there were rodents and cockroaches. A bucket was provided for the sanitary needs of the detained. There was no hot water, soap or other toiletries. The applicant was not permitted to go 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.

2. Pazardzhik Prison

28. In the applicant's submission the conditions in the Pazardzhik Prison were slightly better than those in the Pazardzhik Regional Investigation Service. Similarly, though, the food was insufficient and of the same inferior quality; the cells were small and overcrowded; fresh air and light were insufficient and a bucket was provided for the sanitary needs of the detained. Limited exercise was provided in the prison yard.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Police custody

29. Under the Ministry of Internal Affairs Act, as in force at the relevant time, the police were empowered, on the basis of an order to that affect, to arrest and take a person into custody who, *inter alia*, had committed an offence or whose identity could not been ascertained due to lack of appropriate personal identity documents (section 70 (1)). A person taken into police custody had the right to be assisted by a lawyer and to appeal against his detention to the domestic courts, which were required to immediately rule on such an appeal (section 70 (3) and (4)). Police custody could not be longer than twenty-four hours (section 71).

30. In a reported case of 2003, the Supreme Administrative Court upheld a finding of a lower court that an order for taking a person into police custody had been unlawful due to lack of legal grounds (реш. № 10516 от 21 ноември 2003 г. по адм. д. № 4159/2003 г., V отд. на ВАС).

B. Power to order pre-trial detention, grounds for pre-trial detention and appeals against detention

1. Before 1 January 2000

31. 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

32. 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).

33. The relevant part of the amended Article 152 provides:

> "(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."

34. 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.

35. 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).

C. Search of premises

1. Search of premises during an enquiry

36. At the relevant time, Article 191 of the CCP provided that in the course of an enquiry (i.e. when there is insufficient evidence to initiate formal criminal proceedings) a search of premises could be conducted only in the course of examining a crime scene and if its immediate execution was the only possibility to collect and secure evidence.

2. Search of premises during criminal proceedings

37. At the relevant time, Article 134 of the CCP provided that a search of premises may be carried out if there is probable cause to believe that objects or documents, which may be relevant to a case, would be found in them. 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).

38. A search of premises was to be conducted in the presence of witnesses and the person using them or an adult member of his family. In case the person using them or an adult member of his family could not be present, the search was to be conducted in the presence of the residence's manager or a representative of the municipality (Article 136).

39. There was no special procedure through which a search warrant issued by a prosecutor could be challenged. Thus, the only possible appeal

was a hierarchical one to the higher prosecutor (Article 182), which did not have suspensive effect (Article 183).

D. The State Responsibility for Damage Act

40. 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).

41. In respect of conditions of detention, despite some initial uncertainty as to the applicability of the SRDA in respect of such complaints, in a number of recent cases the domestic courts have ruled that the State's liability does arise under the SRDA and its section 1 in particular (реш. от 17.02.2003 г. по гр. д. № 1380/2002 г. на Пловдивският АС; реш. № 126 от 08.06.2005 г. по въззивно гр. д. № 205/2005 г. на Добричкият ОС; реш. № 380 от 19.07.2005 г. по гр. д. № 177/2005 г. на Габровският РС; реш. 04.05.2005 г. по гр. д. № 21393/2003 г. на Софийският РС; реш. № 444 от 08.07.2005 г. по гр. д. № 1031/2004 г. на Ловешкият РС; реш. № 4 от 18.02.2005 г. по гр. д. № 3267/2004 г. на Русенският РС).

42. In respect of unlawful searches of premises, the only reported case dates from 2002 where 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 home of the claimant. In that particular case, the court rescinded the judgment of the lower court and remitted the case solely because the latter court had failed to examine the action under Article 1 of the SRDA, but had rather examined it as a tort action. Accordingly, the Sofia City Court instructed the lower court to re-examine the said action solely under the SRDA (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")

43. The CPT visited Bulgaria in 1995, 1999, 2002 and 2003. The Pazardzhik Regional Investigation Service and the Pazardzhik Prison were visited in 1995. There are also general observations about the problems in

all Investigation Service detention facilities in the 1995, 1999 and 2002 reports.

A. Relevant findings of the 1995 report (made public in 1997)

1. General observations

44. The CPT found that most, albeit not all, of the Investigation Service detention facilities were overcrowded. With the exception of one detention facility where conditions were slightly better, the conditions were as follows: cells did not have access to natural light; the artificial lighting was too weak to read by and was left on permanently; ventilation was inadequate; the cleanliness of the bedding and the cells as a whole left much to be desired; detainees could access a sanitary facility twice a day (morning and evening) for a few minutes and could take a weekly shower; outside of the two daily visits to the toilets, detainees had to satisfy the needs of nature in buckets inside the cells; although according to the establishments' internal regulations detainees were entitled to a "daily walk" of up to thirty minutes, it was often reduced to five to ten minutes or not allowed at all; no other form of out-of-cell activity was provided to persons detained.

45. The CPT further noted that food was of poor quality and in insufficient quantity. In particular, the day's "hot meal" generally consisted of a watery soup (often lukewarm) and inadequate quantities of bread. At the other meals, detainees only received bread and a little cheese or halva. Meat and fruit were rarely included on the menu. Detainees had to eat from bowls without cutlery – not even a spoon was provided.

46. The CPT also noted that family visits and correspondence were only possible with express permission by a public prosecutor and that, as a result, detainees' contacts with the outside world were very limited. There was no radio or television.

47. The CPT concluded that the Bulgarian authorities had failed in their obligation to provide detention conditions which were consistent with the inherent dignity of the human person and that "almost without exception, the conditions in the Investigation Service detention facilities visited could fairly be described as inhuman and degrading". In reaction, the Bulgarian authorities agreed that the CPT delegation's assessment had been "objective and correctly presented" but indicated that the options for improvement were limited by the country's difficult financial circumstances.

48. In 1995 the CPT recommended to the Bulgarian authorities, *inter alia*, that sufficient food and drink and safe eating utensils be provided, that

mattresses and blankets be cleaned regularly, that detainees be provided with personal hygiene products (soap, toothpaste, etc.), that custodial staff be instructed that detainees should be allowed to leave their cells during the day for the purpose of using a toilet facility unless overriding security considerations required otherwise, that the regulation providing for thirty minutes' exercise per day be fully respected in practice, that cell lighting and ventilation be improved, that the regime of family visits be revised and that pre-trial detainees be more often transferred to prison even before the preliminary investigation was completed. The possibility of offering detainees at least one hour's outdoor exercise per day was to be examined as a matter of urgency.

2. Pazardzhik Regional Investigation Service

49. The CPT established that the Pazardzhik Regional Investigation Service had fifteen cells, situated in the basement, and at the time of the visit accommodated thirty detainees, including two women in a separate cell.

50. Six cells measuring approximately twelve square metres were designed to accommodate two detainees; the other nine, intended for three occupants, measured some sixteen-and-a-half square metres. This occupancy rate was being complied with at the time of the visit and from the living space standpoint was deemed acceptable by the CPT. However, all the remaining shortcomings observed in the other Investigation Service detention facilities – dirty and tattered bedding, no access to natural light, absence of activities, limited access to sanitary facilities, etc. – also applied there. Even the thirty-minute exercise rule, provided for in the internal regulations and actually posted on cell doors, was not observed.

3. Pazardzhik Prison

51. In this report the CPT found, *inter alia*, that the prison was seriously overcrowded and that prisoners were obliged to spend most of the day in their dormitories, mostly confined to their beds because of lack of space. It also found the central heating to be inadequate and that only some of the dormitories were fitted with sanitary facilities.

B. Relevant findings of the 1999 report (made public in 2002)

52. The CPT noted that new rules providing for better conditions had been enacted but had not yet resulted in significant improvements.

53. In most investigation detention facilities visited in 1999, with the exception of a newly opened detention facility in Sofia, conditions of

detention were generally the same as those observed during the CPT's 1995 visit, as regards poor hygiene, overcrowding, problematic access to toilet/shower facilities and a total absence of outdoor exercise and out-of-cell activities. In some places, the situation had even deteriorated.

54. In the Plovdiv Regional Investigation detention facility, as well as in two other places, detainees "had to eat with their fingers, not having been provided with appropriate cutlery".

C. Relevant findings of the 2002 report (made public in 2004)

55. During the 2002 visit some improvements were noted in the country's investigation detention facilities, severely criticised in previous reports. However, a great deal remained to be done: most detainees continued to spend months on end locked up in overcrowded cells twenty-four hours a day.

56. Concerning prisons, the CPT drew attention to the problem of overcrowding and to the shortage of work and other activities for inmates.

THE LAW

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

57. The applicant made several complaints falling under Article 5 of the Convention, the relevant part of which provides:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time

or to release pending trial. Release may be conditioned by guarantees to appear for trial.

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."

58. The applicant also complained under Article 13 of the Convention that he did not have at his disposal effective domestic remedies for his Convention complaints. The Court considers that, as it relates to Article 5 §§ 1-3 of the Convention, this complaint should be understood as referring to the applicant's alleged inability to effectively challenge his detention under Article 5 § 4 of the Convention and to the alleged lack of an enforceable right to compensation under Article 5 § 5 of the Convention. In addition, the Court observes that Article 5 §§ 4 and 5 of the Convention constitute *lex specialis* in relation to the more general requirements of Article 13 (see *Nikolova*, cited above, § 69 and *Tsirlis and Kouloumpas v. Greece*, judgment of 29 May 1997, *Reports of Judgments and Decisions* 1997-III, p. 927, § 73). Accordingly, the Court must examine the complaint that the applicant lacked effective domestic remedies under Article 5 §§ 4 and 5 of the Convention.

59. The Government did not submit observations on the admissibility and merits of the complaints.

60. The applicant reiterated his complaints and referred to their similarity to previous cases against Bulgaria.

A. Complaint 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

61. The applicant complained under Article 5 § 3 of the Convention that when he was detained on remand he was not brought promptly before a judge or other officer authorised by law to exercise judicial power.

62. In his submissions, the applicant also stated that neither the investigator who had decided to detain him, nor the prosecutor who had confirmed that decision could be deemed independent officers authorised by law to exercise judicial power and referred to the Court's findings in the cases of *Assenov and Others* (judgment of 28 October 1998, *Reports* 1998-VIII, p. 3299, §§ 144-50) and *Nikolova* (cited above, §§ 50-51).

1. Admissibility

63. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

64. The Court recalls 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 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*, cited above, §§ 144-50; *Nikolova*, cited above, §§ 49-53, and *Shishkov v. Bulgaria*, no. 38822/97, §§ 52-54, ECHR 2003-I (extracts)).

65. The present case likewise concerns pre-trial detention imposed before 1 January 2000. The applicant's pre-trial detention was ordered by an investigator and confirmed by a prosecutor (see paragraph 12 above), in accordance with the provisions of the CCP then in force (see paragraph 31 above). However, neither the investigator nor the prosecutor was sufficiently independent and impartial for the purposes of Article 5 § 3 of the Convention, in view of the practical role they played in the investigation and the prosecution and the prosecutor's potential participation as a party to the criminal proceedings (see paragraph 31 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).

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

B. Complaints under Article 5 § 1 of the Convention regarding the lawfulness of the applicant's detention

67. The applicant complained under Article 5 § 1 of the Convention that he was unlawfully detained. He contended that domestic legislation was breached in respect of the police custody of 26 August 1999 as he was deprived of his liberty for longer than the permitted twenty-four hours. In addition, he argued that the evidence against him was not sufficient to lead to the conclusion that he was guilty of an offence.

1. The applicant's detention between 26 and 28 August 1999

(a) Admissibility

68. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Merits

69. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the "lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion (see *Anguelova v. Bulgaria*, no. 38361/97, § 154, ECHR 2002-IV and *Fedotov v. Russia*, no. 5140/02, § 74, 25 October 2005).

70. In the present case, the Court observes that on 26 August 1999 the applicant was arrested and taken into police custody, whose term expired twenty-four hours later, which was sometime on 27 August 1999 (see paragraph 11, 29-30 above). Subsequently, he was placed under twenty-four hours' preliminary detention only as of 5 p.m. on 28 August 1999 under an order of the same date (see paragraph 12 above).

71. The Court further observes that the Government failed to provide any information and evidence to show that the applicant's deprivation of liberty was lawful under domestic law after the expiration of the term of the police custody and, accordingly, that it was effected for one of the purposes listed in Article 5 § 1 of the Convention.

72. It follows that the Court finds, based on the material before it, that the applicant's deprivation of liberty between sometime on 27 August 1999 and 5 p.m. on 28 August 1999 was not "lawful" under either domestic law or the Convention. Thus, there has been a violation of Article 5 § 1 of the Convention on account of the said period of deprivation of liberty.

2. The applicant's detention after 28 August 1999

73. The Court notes that the applicant's detention after 28 August 1999 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 were not observed.

74. 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 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).

75. In the present case, the Court considers that the authorities had sufficient information to ground a "reasonable" suspicion against the applicant as they had discovered a number of stolen items and wrench, allegedly used to perpetrate the robberies, in the apartment where he was living (see paragraph 12 above).

76. 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.

C. Complaint under Article 5 § 3 of the Convention pertaining to the applicant's right to trial within a reasonable time or release pending trial

77. The applicant complained under Article 5 § 3 of the Convention that his detention was unjustified and excessively lengthy.

78. The Court notes at the outset that, based on the applicant's submissions, his detention on remand lasted from 28 August 1999 to at least 30 May 2000. No information has been submitted nor have any complaints been substantiated in respect of any period of detention on remand subsequent to 30 May 2000 (see paragraph 25 above). The period to be taken into consideration is therefore nine months and two days.

79. 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, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (*Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV).

80. The Court notes that in the case of *Ilijkov* (cited above, §§ 67-87) it found, in respect of the period prior to 1 January 2000, that the authorities had applied law and practice establishing a presumption that detention pending trial was always necessary in cases where the sentence faced went beyond a certain threshold of severity. The presumption was only rebuttable in very exceptional circumstances where even a hypothetical possibility of absconding, re-offending or collusion was excluded, due to serious illness

or other exceptional factors. It was moreover incumbent on the detained person to prove the existence of such exceptional circumstances, failing which he was bound to remain in detention pending trial throughout the proceedings. The above principles were based on Article 152 §§ 1 and 2 of the CCP, as worded at the material time, and the Supreme Court's practice at that stage.

81. Returning to the specifics of the present case, the Court observes that during part of the applicant's detention the above cited provisions of the CCP were still in force.

82. In respect of the justification of the applicant's continued detention, the Court notes that the authorities, in addition to citing the seriousness of the offences with which he had been charged, examined other facts to ground his continued deprivation of liberty (see paragraphs 14, 17, 19, 23 and 24 above). In particular, they found that there was a likelihood that the applicant might abscond as he did not have any personal identity documents, had no permanent address and was residing in an apartment rented by one of his friends. They also concluded that it was likely that he might re-offend considering the fact that he had perpetrated the offences with which he had been charged during the operational period of a previous one-year suspended sentence and had no financial means to support himself.

83. Thus, the Court finds that unlike previous cases against Bulgaria where violations were found (see *Ilijkov*, cited above, §§ 67-87 and *Shishkov*, cited above, §§ 57-67) in the present case the authorities did not rely solely on the statutory presumption based on the gravity of the charges against the applicant but also addressed specific relevant facts and evidence, which indicated that the latter might abscond or re-offend, to justify his continued detention on remand.

84. Consequently, the Court concludes that in respect of this complaint there is no appearance of a violation of Article 5 § 3 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.

D. Complaints under Article 5 § 4 of the Convention regarding the scope and speed of the judicial review of the lawfulness of the applicant's detention

85. The applicant complained under Article 5 § 4 of the Convention that the domestic courts did not examine all factors relevant to the lawfulness of his detention. In addition, he contended that there had been a violation of the requirement for a speedy decision under Article 5 § 4 of the Convention.

1. Scope of the judicial review of the lawfulness of the applicant's detention

86. The Court reiterates that arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the lawfulness, in the sense of the Convention, of their deprivation of liberty. This means that the competent court has to examine not only compliance with the procedural requirements set out in domestic law, but also the reasonableness of the suspicion grounding the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see *Nikolova*, cited above, § 58).

87. In the present case, unlike in other cases against Bulgaria where violations were found (see *Nikolova*, cited above, §§ 54-66 and *Ilijkov*, cited above, §§ 88-106), the Court finds that when examining the applicant's applications for release, the Pazardjik District and Regional Courts did not rely solely on the statutory presumption based on the gravity of the charges against the applicant but also examined specific relevant facts and evidence which indicated that the applicant might abscond or re-offend (see paragraphs 17, 19, 23 and 24 above). In particular, the courts took into account the applicant's lack of personal identity documents, permanent address and means to support himself, his inability to provide any relevant information about his brother and the fact that he had perpetrated the offences with which he had been charged during the operational period of a previous one-year suspended sentence.

88. Thus, the domestic courts provided judicial control over the applicant's detention on remand of the scope required by Article 5 § 4 of the Convention.

89. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. Speed of the judicial review of the lawfulness of the applicant's detention

(a) Admissibility

90. The Court reiterates that Article 5 § 4 also 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).

91. In the present case, the Pazardzhik District Court examined the applicant's appeal of 12 November 1999 within six days and his appeal of 22 November 1999 within four days (see paragraphs 16-19 above).

92. The applicant has failed to indicate in his submissions on which day he filed the appeal against his detention, which was examined by the domestic courts on 17 May 2000 (see paragraph 24 above). Accordingly, it is not possible for the Court to make an assessment as to whether it was

decided in conformity with the requirement for a speedy decision under Article 5 § 4 of the Convention.

93. It follows that the complaints pertaining to the applicant's appeals against his detention of 12 November 1999, 22 November 1999 and that examined on 17 May 2000 are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

94. The Court, however, finds that the complaint pertaining to the applicant's appeal of 22 December 1999 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Merits

95. The Court notes that the applicant's appeal against his detention filed on 22 December 1999 was examined by the trial court three months and thirteen days later on 4 April 2000 (see paragraphs 20 and 23 above).

96. The Court considers this period in breach of the requirement for a speedy decision under Article 5 § 4 of the Convention (see *Bezicheri v. Italy*, judgment of 25 October 1989, Series A no. 164, p. 11, § 21, where the Court found that it was not unreasonable to repeat an appeal against detention one month following the dismissal of a previous appeal; *Kadem v. Malta*, no. 55263/00, §§ 43-45, 9 January 2003, where the Court found a period of seventeen days for examining an appeal against detention as being too long; and *Rehbock v. Slovenia*, no. 29462/95, §§ 82-86, ECHR 2000-XII, where two such periods of twenty-three days were considered excessive).

97. It follows that in respect of the applicant's appeal of 22 December 1999 there has been a violation of the applicant's right to a speedy judicial decision concerning the lawfulness of detention in breach of Article 5 § 4 of the Convention.

E. Complaint under Article 5 § 5 of the Convention

98. The applicant complained under Article 5 § 5 of the Convention 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.

1. Admissibility

99. The Court notes at the outset the similarity of the complaint to those in a number of other cases against Bulgaria where violations where found (see, for example, *Yankov*, cited above, and *Belchev v. Bulgaria*, no. 39270/98, 8 April 2004).

100. The Court further notes that the applicant's deprivation of liberty between sometime on 27 August 1999 and 5 p.m. on 28 August 1999 was unlawful (see paragraph 72 above), that he was not brought promptly before a judge or other officer authorised by law to exercise judicial power (see paragraph 66 above) and that his appeal of 22 December 1999 was not decided speedily (see paragraph 97 above). It follows that Article 5 § 5 of the Convention is applicable.

101. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

102. In view of the above, 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 in his case.

103. The Court notes that by section 2(1) of the SRDA, 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 expression apparently refers to unlawfulness under domestic law. As far as it can be deduced from the scant practice reported under this provision, section 2(1) has only been applied in cases where the criminal proceedings have been terminated on the basis that the charges were unproven or where the accused has been acquitted (see paragraph 40 above and the case-law cited therein).

104. In the present case, the applicant's detention on remand was considered by the domestic courts as being in full compliance with the requirements of domestic law. Therefore, the applicant has no right to compensation under section 2(1) of the SRDA. Nor does section 2(2) of the Act apply (see paragraph 40 above and the case-law cited therein).

105. It follows that in the applicant's case the SRDA does not provide for an enforceable right to compensation. Furthermore, it does not appear that such a right is secured under any other provision of Bulgarian law (see paragraph 40 above and the case-law cited therein).

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

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

107. The applicant complained under Article 3 of the Convention that he was subjected to inhuman or degrading treatment while being detained at the Pazardzhik Regional Investigation Service and the Pazardzhik Prison.

Article 3 of the Convention provides:

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

108. The Government did not submit observations on the admissibility and merits of this complaint.

109. The applicant reiterated his complaint and contended that the conditions of detention in which he was held in the above stated detention facilities was inadequate and amounted to inhuman and degrading treatment under Article 3 of the Convention.

A. Admissibility

110. Concerning the issue of exhaustion of domestic remedies, the Court notes at the outset that in its recent judgment in the case of *Iovchev* (cited above, §§ 138-48) it examined a complaint under Article 13 in conjunction with Article 3 of the Convention. In that case, unlike in the present one, the applicant had brought an action against the State under the SRDA, which the Court considered, in principle, an effective remedy for a complaint under Article 3 about conditions of detention. It noted the following in paragraph 145 of its judgment in the above case:

> "In the light of the information before it, the Court considers that there is nothing to indicate that an action under the [SRDA] could not in principle provide a remedy in this respect. Section 1 thereof provides for compensation for any unlawful act or omission of the administrative authorities."

111. The Court in the above-cited case went on to find a violation of Article 13 in conjunction with Article 3 of the Convention due to the length and the established deficiencies in the proceedings specific to that case which led to the "the remedy under the SRDA [losing] much of its remedial efficacy" (see *Iovchev*, cited above, § 146).

112. Returning to the specifics of the present case, the Court notes that the applicant did not initiate an action under the SRDA. Accordingly, there is ground to consider that he has failed to exhaust the available domestic remedies. However, under Rule 55 of the Rules of Court, any plea of inadmissibility must be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application. Accordingly, the normal practice of the Convention organs has been, where a case has been communicated to the respondent Government, not to declare the application inadmissible for failure to exhaust domestic remedies, unless this matter has been raised by the Government in their observations (see *Citizens of Louvain v. Belgium*, no. 1994/63, Commission decision of 5 March 1964, Yearbook 7, p. 253, at p. 261; *K. and T. v. Finland* [GC], no. 25702/94, § 145, ECHR 2001-VII; *N.C. v. Italy* [GC], no. 24952/94,

§ 44, ECHR 2002-X; and, *Sejdovic v. Italy* [GC], no. 56581/00, §§ 40-41, ECHR 2006-...). This same principle has been applied where, as in the present case, the respondent Government have not submitted any observations at all (see *Ergi v. Turkey*, no. 23818/94, Commission decision of 2 March 1995, Decisions and Reports 80, p. 157, at p. 160 and the judgment in the same case of 28 July 1998, *Reports* 1998-IV, p. 1771, §§ 65-67).

113. It follows that, despite the Court's recent finding that an action under the SRDA may be an effective remedy for a complaint under Article 3 about conditions of detention, the present application cannot be rejected by the Court on the ground that the domestic remedies have not been exhausted.

114. The complaint must therefore be declared admissible as it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and neither is it inadmissible on any other grounds.

B. Merits

1. Establishment of the facts

115. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII and *Fedotov*, cited above, § 59).

116. The Court notes that the primary account of the conditions of the applicant's detention at the two detention facilities is that furnished by him (see paragraphs 26-28 above), which is partly corroborated by the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") in its respective reports (see paragraphs 43-56 above). Moreover, the CPT's assessment of the conditions in the Pazardzhik Regional Investigation Service and the Pazardzhik Prison in 1995, its general findings in respect of the conditions in all Investigation Service detention facilities, the conclusion that these conditions could be described as inhuman and degrading and that they had not satisfactorily improved during its subsequent visits in 1999 and 2002 (see paragraphs 43-56 above) may also inform the Court's decision (see *I.I. v. Bulgaria*, no. 44082/98, § 71, 9 June 2005).

117. The Court observes that the applicant also provided a signed declaration by another detainee at the detention facilities in question. However, in so far as that individual has an application pending before the Court with identical complaints (see *Alexov v. Bulgaria* (dec.), no. 54578/00, 22 May 2006), it finds that his statement should not be considered objective and that it should not therefore be given any particular weight.

118. The Court reiterates that Convention proceedings, such as the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in certain instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. The failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004 and *Fedotov*, cited above, § 61).

119. In the present case, the Government did not submit observations on the applicant's complaints regarding the conditions of detention in the Pazardzhik Regional Investigation Service and the Pazardzhik Prison. In these circumstances the Court must examine the merits of these complaints on the basis of the applicant's submissions and the findings in the relevant reports of the CPT.

2. General principles

120. The Court reiterates at the outset that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, as recent authorities, *Van der Ven v. the Netherlands*, no. 50901/99, § 46, ECHR 2003-II and *Poltoratskiy v. Ukraine*, no. 38812/97, § 130, ECHR 2003-V).

121. To fall within the scope of Article 3, ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Van der Ven*, § 47, and *Poltoratskiy*, § 131, both cited above).

122. Treatment has been held by the Court to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused

either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudła v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI). The question whether the purpose of the treatment was to humiliate or debase the victim is a further factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a violation of Article 3 (see *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III, and *Kalashnikov v. Russia*, no. 47095/99, § 101, ECHR 2002-VI).

123. The suffering and humiliation involved must go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that detention pending trial in itself raises an issue under Article 3. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with the respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured. When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions and the duration of the detention (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II; and *Kalashnikov*, cited above, § 95). In particular, the Court must have regard to the state of health of the detained person (see *Assenov and Others*, cited above, § 135).

124. An important factor, together with the material conditions, is the detention regime. In assessing whether a restrictive regime may amount to treatment contrary to Article 3 in a given case, regard must be had to the particular conditions, the stringency of the regime, its duration, the objective pursued and its effects on the person concerned (see *Messina v. Italy* (dec.), no. 25498/94, ECHR 1999-V; *Van der Ven*, cited above, § 51; *Iorgov v. Bulgaria*, no. 40653/98, §§ 82-84 and 86, 11 March 2004; and *G.B. v. Bulgaria*, no. 42346/98, §§ 83-85 and 87, 11 March 2004).

3. Application of these principles to the present case

(a) Pazardzhik Regional Investigation Service

125. The Court observes that, according to the submissions of the applicant, he was detained on the premises of the Pazardzhik Regional Investigation Service for a period of about two months until the end of October 1999 (see paragraph 26 above).

126. The applicant contended that he was held in a cell which was small, overcrowded and below street level (see paragraph 27 above). The CPT, in its report of 1995, indicated that at the Pazardzhik Regional Investigation Service there were fifteen cells, situated in the basement and with no access to natural light. Six cells measured approximately twelve square metres and were designed to accommodate two detainees, while the other nine cells, intended for three occupants, measured some sixteen-and-a-half square metres. The occupancy rate was complied with at the time of the CPT's visit and, from the living space standpoint, was deemed acceptable by the Committee (see paragraphs 49-50 above). It is unclear in which type of cell the applicant was detained. During subsequent visits, the CPT established that the conditions of detention in Investigation Service premises had remained generally the same as those observed during its 1995 visit; however, the CPT has not re-visited the Pazardzhik Regional Investigation Service.

127. The Court further notes that the applicant contended that the material conditions in the cell were unsatisfactory (see paragraph 27 above). The CPT's 1995 visit report noted that the bedding at this facility was dirty and tattered and that the conditions were similar to those established at other Investigation Service premises (see paragraph 50 above).

128. The applicant contended that he was not permitted to go out of his cell for exercise (see paragraph 27 above). The CPT indicated in its 1995 report that the thirty-minute exercise rule, provided for in the internal regulations of the Pazardzhik Regional Investigation Service and actually posted on cell doors, was not observed (see paragraph 50 above). As no possibility for outdoor or out-of-cell activities was provided, the applicant would have had to spend in his cell – which was situated in the basement – practically all of his time, except for the two short visits per day to the sanitary facilities or the occasional taking out for questioning or to court (see *Peers*, cited above, § 75 and *I.I. v. Bulgaria*, cited above, § 74). The Court considers that the fact that the applicant was confined for practically twenty-four hours a day during two months to his cell without exposure to natural light and without any possibility for physical and other out-of-cell activities 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 limitations. In so far as the Government failed to submit observations on this complaint, no such considerations have been put forward for assessment by the Court.

129. The applicant argued that the sanitary facilities were inadequate (see paragraph 27 above). The CPT's 1995 visit report also noted that detainees at the Pazardzhik Regional Investigation Service had limited access to sanitary facilities (see paragraph 50 above). In any event, subjecting a detainee to the embarrassment of having to relieve himself in a bucket in the presence of his cellmates and of being present while the same

bucket was being used by them cannot be deemed warranted, except in specific situations where allowing visits to the sanitary facilities would pose concrete and serious security risks (see *Peers*, § 75 and *I.I. v. Bulgaria*, § 75, both cited above; *Kalashnikov*, cited above, § 99; and *Kehayov v. Bulgaria*, no. 41035/98, § 71, 18 January 2005). In so far as the Government failed to submit observations on this complaint, no such risks have been invoked as grounds for the limitation on the visits to the toilet by the detainees, in particular the applicant, in the Pazardzhik Regional Investigation Service during the period in question.

130. The applicant contended that the food provided was of insufficient quantity and substandard (see paragraph 27 above). This is corroborated by the findings of the CPT in its reports, which established that the food at the detention facilities of the Investigation Service was of poor quality and in insufficient quantity at the time of its visits (see paragraph 45 above).

131. The applicant further contended that he was not allowed to read newspapers or books (see paragraph 27 above). In its 1995 visit report, the CPT also noted that detainees had no access to radio or television; as to correspondence and access to newspapers, they required the public prosecutor's express permission (see paragraph 46 above). Accordingly, the applicant's access to and knowledge of the outside world was substantially restricted.

132. The Court notes that the applicant does not claim that his physical or mental health deteriorated during or as a result of his detention at the Pazardzhik Regional Investigation Service. Accordingly, no considerations in this respect are warranted.

(b) Pazardzhik Prison

133. The Court observes that the applicant was detained on the premises of the Pazardzhik Prison from sometime at the end of October 1999 to at least until 30 May 2000, a period of at least seven months (see paragraph 26 above).

134. The applicant contended that the conditions of detention at the Pazardzhik Prison were similar, but slightly better than those in the Pazardzhik Regional Investigation Service. Likewise, he submitted that the food was insufficient and of the same inferior quality; the cells were small; the light was insufficient and a bucket was provided for the sanitary needs of the detained; and that limited exercise was provided in the prison yard (see paragraph 28 above).

135. The CPT, during its visit in 1995, found that the Pazardzhik Prison was seriously overcrowded and that prisoners were obliged to spend most of the day in their dormitories, mostly confined to their beds because of lack of space. In addition, it found that the central heating was far from sufficient, inadequate and only some of the dormitories were fitted with sanitary facilities (see paragraph 51 above).

136. In view of the above, the analyses undertaken in respect of the conditions of detention at the Pazardzhik Regional Investigation Service apply, as relevant, to the Pazardzhik Prison.

(c) Conclusion

137. While there is no indication that the detention conditions or regime at the Pazardzhik Regional Investigation Service and the Pazardzhik Prison were intended to degrade or humiliate the applicant or that they had a specific impact on his physical or mental health, there is little doubt that certain aspects of the stringent regime described above could be seen as humiliating.

138. In conclusion, having regard to the cumulative effects of the unjustifiably stringent regime to which the applicant was subjected and the material conditions in which he was kept at both the Pazardzhik Regional Investigation Service and at the Pazardzhik Prison, the Court concludes that the distress and hardship he endured during the period of his detention at these facilities exceeded the unavoidable level of suffering inherent in detention and the resulting anguish went beyond the threshold of severity under Article 3 of the Convention.

139. Thus, there has been a violation of the Article 3 of the Convention on account of the applicant's detention at these facilities in conditions which were inadequate.

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

140. The applicant complained under Article 13 of the Convention that he lacked an effective remedy for his complaints under Article 3 of the Convention.

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."

141. The Government did not submit observations on the admissibility and merits of this complaint.

142. The applicant reiterated his complaint and argued that the applicant had no available domestic remedy to seek redress for being held in allegedly inadequate conditions of detention.

143. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may 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 complaint" under the Convention and to grant appropriate relief.

144. The scope of the Contracting States' obligations under Article 13 of the Convention varies depending on the nature of the applicant's complaint; however, the remedy required by Article 13 must be "effective" in practice as well as in law.

145. The "effectiveness" of a "remedy" within the meaning of Article 13 of the Convention does not depend on the certainty of a favourable outcome for the applicant. Nor does the "authority" referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective. Also, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see, among many other authorities, *Kudła*, cited above, § 157).

146. It remains for the Court to determine whether the means available to the applicant in Bulgarian law for raising a complaint about the allegedly inadequate conditions of detention would have been "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that had already occurred.

147. In the present case, the Court observes that the applicant never filed a formal complaint concerning the conditions of detention at either of the two detention facilities where he was held. Neither did he initiate an action for damages stemming from the said detention.

148. The Court notes, in respect of the availability of a domestic remedy, its findings in its recent *Iovchev* judgment (see paragraphs 110-11 and 113 above). Accordingly, the Court accepts that the domestic courts have examined actions for damages under the SRDA for allegedly inadequate conditions of detention. Thus, it considers it difficult to determine what the outcome of any such proceedings brought by the applicant under the SRDA would have been and whether or not the courts would have engaged the State's liability and awarded him damages. Moreover, the Court considers it speculative to accept that an action under the SRDA would have been an ineffective domestic remedy in the present case (see, *mutatis mutandis*, *Assenov and Others*, cited above, § 112; *Kamenerov v. Bulgaria* (dec.), no. 44041/98, 16 December 1999 and *Toteva v. Bulgaria* (dec.), no. 42027/98, 3 April 2003).

149. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

150. The applicant further complained of the fact that there had been an interference with his right to respect for his home. In particular, he

contended that the search on 26 August 1999 of the apartment in which he was living was performed in contravention of domestic law, because there was a lack of legal justification and it was performed in his absence. He relied on Article 8 of the Convention, which 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."

151. The Government did not submit observations on the admissibility and merits of this complaint.

152. The applicant reiterated his complaint and argued that the search carried out by the authorities was unlawful as there was no legal basis for conducting it at the time in question as no enquiry or preliminary investigation had been opened.

A. Admissibility

153. Concerning the issue of exhaustion of domestic remedies, the Court observes that the applicant never challenged the lawfulness of the search of his apartment on 26 August 1999. Nor did he ever bring an action for damages against the State under the SRDA stemming from the alleged unlawful interference with his right to respect for his home.

154. The Court notes, in this respect, that the reported domestic case-law indicates that the domestic courts look favourably on examining such actions under Article 1 of the SRDA (see paragraph 42 above). Thus, the Court considers it difficult to determine what the outcome of any such proceedings under the SRDA would have been and whether or not the courts would have engaged the State's liability and awarded the applicant damages. Moreover, the Court considers it speculative to accept that an action under the SRDA would have been an ineffective domestic remedy in the present case (see, *mutatis mutandis*, *Assenov and Others*, cited above, § 112; *Kamenerov v. Bulgaria* (dec.), cited above; and *Toteva v. Bulgaria* (dec.), cited above). Accordingly, it can be argued that the applicant failed to exhaust the available domestic remedies.

155. However, under Rule 55 of the Rules of Court any plea of inadmissibility must be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application. The Court refers in this respect to its reasoning in respect of the applicant's complaint under Article 13 in conjunction with Article 3 Of the Convention (see paragraph 112 above).

156. It follows that despite the Court's consideration that an action under the SRDA may be an effective remedy for a complaint under Article 8 concerning an allegedly unlawful search of the applicant's home, the present application cannot be rejected by the Court on the ground that the domestic remedies have not been exhausted.

157. The complaint must therefore be declared admissible as it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and neither is it inadmissible on any other grounds.

B. Merits

1. Whether there was an interference

158. The applicant claimed that the search of the apartment in which he was living, conducted by the authorities on 26 August 1999, had interfered with his right to respect for his home as guaranteed by Article 8 § 1 of the Convention.

159. In so far as the authorities also accepted that the applicant was residing in that apartment at the time in question (see paragraphs 12, 17, 23 and 24 above), the Court concludes that there has been an interference with the applicant's right to respect for his home.

2. Whether the interference was justified

160. It accordingly 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"

161. 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).

162. The Court notes that 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 37-39 above).

Such a search could also be conducted in the course of an enquiry, but only in the course of examining a crime scene and if its immediate execution was the only possibility to collect and secure evidence (see paragraph 36 above).

163. In the instant case, the Court finds that it is unclear in the context of what kind of proceedings the search of the applicant's home was conducted, in so far as at the time in question no enquiry or preliminary investigation had been opened. It notes in this respect that the Government have failed to argue otherwise. In addition, the search was conducted only in the presence of two witnesses and without the applicant, an adult representative of the household, the residence's manager or a representative of the municipality being present (see paragraph 10 above). Accordingly, it appears that the prerequisites for performing such a search were not present and its execution was not in compliance with the relevant domestic law provisions (see paragraphs 36-39 above).

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

165. In view of the above, the Court must conclude that the search of the applicant's home of 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 the said provision on account of the said search. 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 (see, *mutatis mutandis*, *Malone v. the United Kingdom*, judgment of 2 August 1984, Series A no. 82, p. 37, § 82 and *Khan v. the United Kingdom*, no. 35394/97, § 28, ECHR 2000-V).

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

166. The applicant complained under Article 13 of the Convention that he lacked an effective remedy for his complaint under Article 8 of the Convention.

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."

167. The Government did not submit observations on the admissibility and merits of this complaint.

168. The applicant reiterated his complaint and argued that there was no possibility to challenge the actions of the authorities or to seek redress for their allegedly unlawful actions.

169. 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 paragraphs 143-46 above) and to its reasoning as to the possible availability of a domestic remedy in respect of his complaint under Article 8 of the Convention (see paragraphs 153-57 above).

170. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

171. The applicant complained of a violation of his right to a fair trial in breach of Article 6 of the Convention. He argued that the Prosecutor's Office had too much power in the proceedings, namely it was both supervising the preliminary investigation and preparing the prosecution case against him.

172. Article 6 § 1 of the Convention provides, as relevant:

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

173. The Court notes that that there has been no final judgment determining the criminal charges against the applicant and that the proceedings against him are still pending before the Pazardzhik District Court (see paragraph 25 above). Accordingly, it is open to the applicant to raise, in any ensuing appeals, all arguments about the alleged breaches of his right to a fair trial. The Court cannot speculate about the outcome of the pending proceedings.

174. As regards the alleged bias of the Prosecutor's Office, the Court recalls that the guarantees of independence and impartiality under Article 6 of the Convention concern solely the courts and do not apply to the prosecution authorities, which are, as in the case at hand, mere parties to a contentious judicial proceeding (see *Rezzonico v. Italy* (dec.), no. 43490/98, 15 November 2001 and *Iovchev v. Bulgaria* (dec.), no. 41211/98, 18 November 2004).

175. In these circumstances the Court finds that the above complaints are premature, therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

176. 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

177. The applicant claimed 7,000 euros (EUR) in non-pecuniary damages for each of the alleged violations of his rights under the Convention. He argued that he had felt anguish and despair having been deprived of his liberty, in conditions which were inhuman and degrading, for a considerable length of time pending the criminal proceedings against him and without the possibility to have the grounds of his continued detention effectively examined by a court. In respect of the search of his home, he contended that the unlawful actions of the authorities damaged his reputation in the community and with the owner of the apartment, which made his reintegration into society difficult.

178. The Government stated that the claim was excessive and did not correspond to the size of the awards made by the Court in previous similar cases.

179. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of his detention for at least nine months in conditions which were inhuman and degrading and, also, as a consequence of the violation of his rights under Articles 5 § 1 and 8 of the Convention (see paragraph 72, 139 and 165 above). Having regard to the specific circumstances of the present case, its case-law in similar cases (see, *mutatis mutandis*, *Kehayov*, cited above, §§ 90-91 and *Iovchev*, cited above, §§ 156-58) and deciding on an equitable basis, the Court awards EUR 3,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

180. The applicant claimed EUR 5,000 for 100 hours of legal work in the proceedings before the Court at an effective hourly rate of EUR 50. In addition, he claimed 57.90 Bulgarian levs (approximately EUR 29.70) for translation and postal expenses of his lawyer. He submitted a legal fees agreement between him and his lawyer, an invoice for translation costs and a postal receipt. The applicant requested that the costs and expenses incurred should be paid directly to his lawyer, Mr V. Stoyanov.

181. The Government stated that the claim was excessive, that the effective hourly rate of EUR 50 for the work performed by the applicant's lawyer was determined arbitrarily and that the size of the claimed expenses did not correspond to previous such awarded by the Court in similar cases.

182. The Court reiterates that according to its 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 instant case, the Court does not consider that the hourly rate of EUR 50 is excessive (see *Anguelova v. Bulgaria*, no. 38361/97, § 176 *in fine*, ECHR 2002-IV, *Nikolov v. Bulgaria*, no. 38884/97, § 111, 30 January 2003; *Toteva v. Bulgaria*, no. 42027/98, § 75, 19 May 2004 and *Rachevi v. Bulgaria*, no. 47877/99, § 11, 23 September 2004). However, it considers that the number of hours claimed seems excessive and that a reduction is necessary on that basis. 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 1,500 in respect of costs and expenses, plus any tax that may be chargeable on that amount.

C. Default interest

183. 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 lawfulness of the applicant's deprivation of liberty between 26 and 28 August 1999; (c) the lack of speediness of the judicial review of the lawfulness of the applicant's detention in response to his appeal of 22 December 1999; (d) the lack of an enforceable right to compensation for being a victim of arrest or detention in breach of the provisions of Article 5 of the Convention; (e) the applicant's detention in allegedly inadequate conditions of detention at the Pazardzhik Regional Investigation Service and the Pazardzhik Prison; and (f) the allegedly unlawful interference with the applicant's right to respect for his home;

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 § 1 of the Convention on account of the applicant's deprivation of liberty between sometime on 27 August 1999 and 5 p.m. on 28 August 1999 not being "lawful", under either domestic law or the Convention;

5. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the applicant's appeal of 22 December 1999 not having been examined "speedily";

6. *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 arrest or detention in breach of the provisions of Article 5 of the Convention;

7. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant having been detained in inadequate conditions of detention at the Pazardzhik Regional Investigation Service and the Pazardzhik Prison;

8. *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 where he was living;

9. *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 3,000 (three thousand euros) in respect of non-pecuniary damage, payable to the applicant himself;

(ii) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, payable into the bank account of the applicant's lawyer in Bulgaria;

(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;

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

Done in English, and notified in writing on 10 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK Registrar	Peer LORENZEN President