CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF GAVAZOV v. BULGARIA

(Application no. 54659/00)

JUDGMENT

STRASBOURG

6 March 2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Gavazov v. Bulgaria,

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

Peer Lorenzen, *President,*
Snejana Botoucharova,
Karel Jungwiert,
Rait Maruste,
Renate Jaeger,
Mark Villiger,
Mirjana Lazarova Trajkovska, *judges,*
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 12 February 2008,

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

PROCEDURE

1. The case originated in an application (no. 54659/00) 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 Nikolay Kirilov Gavazov who was born in 1967 and lives in Pazardzhik ("the applicant"), on 5 November 1999.

2. The applicant was represented by Mr M. Merdzhanov, a lawyer practising in Pazardzhik.

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

4. The applicant alleged, in particular, that he had been subjected to inhuman or degrading treatment while being detained in the Pazardzhik Regional Investigation Service detention facility and Pazardzhik Prison; that he had lacked an effective domestic remedy in that connection; that his detention had been unjustified and of excessive length; that there had been a lack of effective judicial proceedings in response to his appeal of 29 September 2000, a deficient scope of judicial control in response to his appeals of 30 September 1999, 22 February and 22 March 2000, and that his appeal of 30 September 1999 had not been decided speedily; that he had not had 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; and that the criminal proceedings against him had been of excessive length and that he had lacked an effective remedy in that connection.

5. In a decision of 15 May 2006 the Court declared the application partly admissible and invited the parties to submit additional observations in writing which were to cover, in particular, the questions (a) whether the

applicant had been detained in Pazardzhik Prison in inadequate conditions of detention and had been afforded proper medical care, and (b) whether he had had at his disposal an effective domestic remedy for his complaints regarding the allegedly inadequate conditions of detention.

6. The applicant filed additional observations on the merits while the Government did not (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The criminal proceedings against the applicant

7. On 9 December 1998 a woman was raped in the city of Pazardzhik. She lodged a complaint on the same day and identified the applicant as the perpetrator.

8. A search of the room where the applicant's uncle lived, which was purportedly the place where the applicant had had sexual intercourse with the victim, was performed on an unspecified date.

9. The applicant was arrested on 10 December 1998.

10. On 11 December 1998 a preliminary investigation was opened against the applicant for the offence of rape perpetrated by the use of force and after threatening the victim, an offence for which he had already been convicted. He was also placed in pre-trial detention.

11. On 14 December 1998 the applicant was charged with one count of rape and remanded in custody.

12. The applicant's uncle was questioned on 15 December 1998.

13. On 1 April 1999 the district prosecutor's office entered an indictment against the applicant with the Pazardzhik District Court on one count of rape.

14. It is unclear how many hearings were conducted before the District Court.

15. On 1 January 2000 amendments to the Code of Criminal Procedure 1974 (“the CCP”) regarding the detention regime entered into force.

16. On 17 February 2000 the District Court remitted the case to the investigation stage. It found that it could not render a judgment because it had established that the applicant had had sexual intercourse with the victim on two separate occasions on the day in question and that the case could therefore involve two counts of rape rather than one. However, the

indictment against the applicant concerned only one count of rape and it was apparently unclear to which instance of sexual intercourse it referred. The District Court considered that this ambiguity in the indictment might violate the applicant's right to mount a proper defence and remitted the case to the investigation for correction of this discrepancy.

17. The applicant contended that no investigative procedures were conducted after 2003. The Government did not dispute that contention.

18. On an unspecified date a revised indictment was entered against the applicant with the District Court.

19. As at the date of the applicant's last communication to the Court of 15 July 2006 the case was still pending before the District Court.

B. The applicant's pre-trial detention

20. The applicant was arrested at 5.30 p.m. on 10 December 1998 and detained for twenty-four hours.

21. He was placed in pre-trial detention on 11 December 1998 by an order issued by an investigator. The applicant's detention was confirmed later on the same day by the Pazardzhik district prosecutor's office, which extended the period of preliminary detention to three days.

22. On 14 December 1998, by an order issued by an investigator and confirmed by the Pazardzhik district prosecutor's office, the applicant was charged with one count of rape and remanded in custody. When remanding the applicant in custody the investigator cited, *inter alia*, his previous convictions and the ongoing investigation against him.

23. On 21 December 1998 the applicant lodged his first appeal against his detention. It was dismissed by the District Court on 28 December 1998 on the ground, *inter alia*, that the applicant was charged with a serious offence and, more generally, that he might abscond, obstruct the investigation or reoffend.

24. On 17 February 1999 the Pazardzhik regional prosecutor's office extended the deadline for completing the preliminary investigation by thirty days and confirmed the applicant's pre-trial detention without citing any grounds.

1. The appeal of 30 September 1999

25. On 30 September 1999 the applicant lodged another appeal against his detention, which the District Court dismissed on 8 November 1999, citing, *inter alia*, the nature of the perpetrated offence, the applicant's personality and his purported criminal tendencies.

2. The applicant's petition for release of 18 February 2000

26. On 18 February 2000 the applicant petitioned the district prosecutor's office seeking his immediate release due to the expiration of the statutory maximum period of pre-trial detention, which in his case was one year. He claimed that with the entry into force of the amendments to the CCP and the decision of the District Court to remit the case, he had spent more than one year in pre-trial detention and should therefore be released immediately as required by the amended CCP.

27. In a decision of 21 February 2000 the district prosecutor's office refused to release the applicant. It found that the statutory maximum period of pre-trial detention, which in the applicant's case was one year, had not expired and considered that only the period from 14 December 1998 to 31 March 1999 should be considered as pre-trial detention because the remaining period of his detention had been during the trial phase of the proceedings. On that basis the district prosecutor's office considered that the applicant had been in pre-trial detention only three months and seventeen days, which did not warrant his release.

28. On appeal on an undetermined date, the decision of the district prosecutor's office was upheld by the regional prosecutor's office, also on an unspecified date.

3. The appeal of 22 February 2000

29. On 22 February 2000 the applicant lodged an appeal with the District Court against his detention. He claimed that it had exceeded the statutory maximum period of pre-trial detention and requested that the measure for securing his appearance in court be amended.

30. In a decision of 24 February 2000 the District Court dismissed the applicant's appeal against his detention as it found that his detention had not exceeded the statutory maximum period of pre-trial detention, as this did not include the time during which the case had been pending before the domestic courts. It also referred to the fact that the applicant had a previous conviction for the same offence, which justified his continued detention. On 25 February 2000 the applicant appealed against that decision.

31. In a decision of 2 March 2000 the Pazardzhik Regional Court dismissed the appeal by the applicant against his detention and upheld the lower court's decision on grounds similar to those of the District Court.

4. The applicant's petition for release of 9 March 2000

32. On 9 March 2000 the applicant again petitioned the district prosecutor's office for his immediate release due to the expiration of the statutory maximum period of pre-trial detention.

33. In a decision of 16 March 2000 the district prosecutor's office refused to release the applicant on grounds similar to those in its decision of

21 February 2000. On the same day the applicant appealed against the decision to the regional prosecutor's office and requested that the measure for securing his appearance in court be amended.

34. In a decision of 30 March 2000 the regional prosecutor's office found partially in favour of the applicant. It considered that in calculating whether the statutory maximum period of pre-trial detention had been exceeded, the whole period of the applicant's detention should be taken into account. Accordingly, the regional prosecutor's office found that in the case of the applicant that period had been exceeded as, at that time, he had already been in detention for more than fifteen months as of 14 December 1998. However, the regional prosecutor's office did not order the applicant's immediate release but changed the measure for securing his appearance in court to bail in the amount of 1,500 Bulgarian levs (BGN) (approximately 760 euros) and ordered that he be released subject to the provision of a recognizance.

35. On 6 April 2000 the applicant appealed against the decision of the regional prosecutor's office. He contended that the prosecutor's office, upon establishing that the statutory maximum period of pre-trial detention had been exceeded, should have ordered his immediate release and that it did not have the power to subject it to the provision of a recognizance. In addition, the applicant claimed that the amount of the bail was too high and that his lack of income and assets had not been taken into account.

36. On 13 April 2000 the Plovdiv appellate public prosecutor's office found partly in favour of the applicant. It took into account that he and his parents lacked sufficient assets and lowered the bail to BGN 1,000 (approximately 505 euros). However, the appellate public prosecutor's office did not order the applicant's release as it found that his continued detention, pending the provision of a recognizance, was lawful.

37. Both the applicant and the district prosecutor's office appealed against this decision. The applicant's appeal was received by the Supreme Cassation Prosecutor's Office on 2 May 2000.

38. In response to the appeal lodged by the district public prosecutor's office, the Supreme Cassation Prosecutor's Office gave a decision on 17 August 2000 upholding the decision of the appellate public prosecutor's office of 13 April 2000.

39. The Supreme Cassation Prosecutor's Office never responded to the appeal lodged by the applicant. Therefore, on 12 September 2000 the applicant lodged a request with the Chief Public Prosecutor's Office for the public prosecutor's office to examine and respond to his appeal of 2 May 2000. He received no response to his request.

5. The appeal of 22 March 2000

40. In the meantime, following the decision of 16 March 2000 of the district public prosecutor's office, the applicant lodged an appeal with the

District Court on 22 March 2000 against his detention. He once again argued that his detention had exceeded the statutory maximum period of pre-trial detention and requested that the measure for securing his appearance in court be amended.

41. In a decision of 28 March 2000 the District Court dismissed the applicant's appeal as it found that his detention had not exceeded the statutory maximum period of pre-trial detention because this did not include the time during which the case was pending before the courts. In addition, it considered that there was still a danger that the applicant might abscond or reoffend but did not cite any specific evidence in that respect.

6. The appeal of 29 September 2000

42. On 29 September 2000 the applicant lodged another appeal with the District Court against his detention and requested that it order his release due to the expiration of the statutory maximum period of pre-trial detention. He maintained that his continued detention was unlawful, that the set bail was unreasonably high – as evidenced by his inability to deposit it for more than six months – and that there was a danger that his detention could, as a result, continue indefinitely.

43. On 5 October 2000 the District Court rejected the applicant's appeal. It found that his appeal lacked legal grounds in so far as there was no longer an order for the applicant's detention, but bail had been set. The court argued, therefore, that the applicant had nothing to appeal against and considered his continued detention as irrelevant to the proceedings before it.

44. On 9 October 2000 the applicant appealed against the decision of the District Court. He relied, *inter alia*, on Article 5 § 4 of the Convention and argued that the courts had an obligation to rule on his appeal against his continued detention.

45. On 12 October 2000 the Regional Court rejected the appeal on grounds similar to those of the District Court, whereby it found that in so far as the applicant's pre-trial detention had been changed to bail it could no longer examine an appeal against his detention. It considered that only the public prosecutor's office was competent to rule on the question of his continued detention.

46. On 3 November 2000 the applicant was released on bail after entering into the required recognizance.

C. The conditions of detention

47. Between 10 December 1998 and 4 March 1999 the applicant was detained at the Pazardzhik Regional Investigation Service detention facility. From 4 March 1999 to his release on 3 November 2000 he was detained at the Pazardzhik Prison.

1. Pazardzhik Regional Investigation Service detention facility

48. The applicant contended that he was held in four different cells during his detention in the Pazardzhik Regional Investigation Service detention facility. The first, in which he spent two days, measured ten square metres and had four wooden beds, only one of which was occupied. The second, where the applicant was held for about fifteen days, was the same size but had only three wooden beds. In both cells there was insufficient fresh air and natural light. The third and fourth cells measured approximately six square metres. The applicant remained in the third cell until approximately twenty days before his transfer to the Pazardzhik Prison, when he was moved to the fourth cell. Both of these cells were without windows and lacked fresh air.

49. The bed sheets in the cells were dirty, old and torn. There were no mattresses. Often there were lice, fleas, cockroaches and mice.

50. The applicant had to use a bucket for his sanitary needs, the contents of which were thrown away each morning and evening. As a result, the air was stale and there was a strong stench.

51. The applicant was allowed to wash for five minutes in the morning and evening. He bathed and shaved once a week, usually with cold water.

52. Every twenty-four hours the applicant was given five hundred grams of bread which was often gnawed by mice. The food was insufficient and substandard. No cutlery was provided and the food was served in dirty plastic dishes.

53. The applicant was not allowed out of his cell for exercise, nor could he read newspapers, books, magazines, listen to the radio or maintain active correspondence.

2. Pazardzhik Prison

54. Following his transfer to the Pazardzhik Prison, the applicant was placed in a cell with seven wooden beds, measuring twenty-four square metres. There were electric radiators in the cell, but it was still very cold in winter because the two windows, each fifty centimetres by a hundred centimetres, were badly insulated. Sometimes there were mice and cockroaches in the cell. There was a separate toilet in the cell with running water, but its windows were broken and it was very cold in winter.

55. Initially, the food was of the same inferior quality as that in the Pazardzhik Regional Investigation Service detention facility. Sometime in 2000 the food improved somewhat even though the daily bread ration remained the same, which the applicant considered insufficient. At the same time, the daily exercise in the prison yard was increased from an hour and fifteen minutes to two hours.

56. The applicant had access to newspapers, but not to radio or television. Access to a phone was provided and the applicant could maintain

active correspondence. Visits by relatives of the applicant were permitted twice a month and he could meet with his lawyer.

57. The applicant maintained that the medical services provided in the Pazardzhik Prison were inadequate; that he had heart-related complaints which were incorrectly treated by a psychiatrist rather than being referred to a specialist; and that he suffered from a broken arm which was improperly diagnosed and treated.

58. Following his release on 3 November 2000 the applicant was hospitalised between 6 and 11 November 2000 with heart-related complaints. He was diagnosed with an "ischemic heart condition".

3. Statement of Mr B.B.

59. The applicant's contentions in respect of the conditions of detention at the above detention facilities are corroborated by a signed statement from another detainee, Mr B.B. The latter was detained at the Pazardzhik Regional Investigation Service detention facility during February 1999 in a cell separate from that of the applicant. He was later transferred, on an unspecified date, to the Pazardzhik Prison where he shared a cell with the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Grounds for detention

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

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

62. The CCP was replaced in 2006 by a new code of the same name.

B. Scope of judicial control of pre-trial detention

63. On the basis of the relevant law before 1 January 2000, when ruling on applications for release of a person charged with having committed a "serious" offence, the domestic courts generally disregarded facts and arguments concerning the existence or absence of a danger of the accused person's absconding or committing offences and stated that every person accused of having committed a serious offence must be remanded in custody unless exceptional circumstances dictated otherwise (see decisions of the domestic authorities criticised by the Court in the cases of *Nikolova* and *Ilijkov*, both cited above, and *Zaprianov v. Bulgaria*, no. 41171/98, 30 September 2004).

64. As of 1 January 2000 the legal detention regime under the CCP was amended with the aim of ensuring its compliance with the Convention (TR 1-02 SCC). The relevant part of the amended Article 152 provided:

> "(1) Detention pending trial shall be ordered [in cases concerning] offences punishable by imprisonment..., where the material in the case discloses a real danger that the accused 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's imprisonment;
>
> 3. where the charges concern an offence punishable by not less than ten years' imprisonment or a heavier punishment.
>
> (3) Detention shall be replaced by a more lenient measure of control where there is no longer a danger that the accused person may abscond or commit an offence."

65. Divergent interpretations of the above provisions were observed in the initial period of their application, upon their entry into force on 1 January 2000.

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

C. Statutory maximum period of detention

67. Statutory maximum periods of pre-trial detention, whose duration depended on the gravity of the charges, were introduced with effect from 12 August 1997 (paragraph 3 of Article 152 as in force between 12 August 1997 and 1 January 2000 and paragraph 4 of the same Article from 1 January 2000 to 29 April 2006).

68. They concerned only detention during the investigation. Detention at the trial stage was not limited by a statutory maximum period.

69. In June 2002 the SCC, clarifying that the statutory maximum periods of detention were aimed at protecting the accused person's rights and exerting pressure on the investigation authorities for a "disciplined approach" on their part, stated that where a case was referred back by the trial court for further investigation, the relevant statutory time-limit was not renewed but resumed, the period during which the case was pending before the courts not being counted (TR 1-02 SCC).

70. The maximum period of pre-trial detention in the applicant's case was one year, in view of the gravity of the charges against him.

71. Article 152 § 5 of the CCP, as in force from 1 January 2000 to 29 April 2006, provided:

> "On expiration of the [statutory maximum period of pre-trial detention] the detainee shall be immediately released by order of the [competent] prosecutor."

D. Release on bail

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

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

E. Request to have a case examined by a court

72. By an amendment of June 2003 the new Article 239a of the CCP introduced the possibility for an accused person to request to have his case examined by a court if the preliminary investigation had not been completed within the statutory time-limit (two years in investigations concerning serious crimes and one year in all other investigations). In such instances the courts would remit the case to the prosecutor's office with instructions to either enter an indictment against the accused within two months or discontinue the criminal proceedings. If the prosecutor's office failed to take action, the courts would then terminate the criminal proceedings themselves.

F. State and Municipalities Responsibility for Damage Act 1988

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

74. In respect of the detention regime and conditions of detention, the relevant domestic law and practice under sections 1 and 2 of the SMRDA have 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).

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

75. The CPT visited Bulgaria in 1995, 1999, 2002, 2003 and 2006. All but its most recent visit report have since been made public.

76. The Pazardzhik Regional Investigation Service detention facility and Pazardzhik Prison were visited in 1995.

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

1. General observations

77. 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.

78. 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.

79. 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.

80. 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.

81. 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 detention facility

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

83. 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

84. 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)

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

86. 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.

87. 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)

88. 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.

89. 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 ARTICLES 3 AND 13 OF THE CONVENTION

90. The applicant complained under Articles 3 and 13 of the Convention that he had been subjected to inhuman or degrading treatment while being

detained at the Pazardzhik Regional Investigation Service detention facility and the Pazardzhik Prison and that he had lacked an effective remedy in that connection.

Article 3 of the Convention provides:

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

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."

91. The Government did not submit observations on the merits of the applicant's complaints and, in particular, failed to respond to the Court's questions of 15 May 2006 (see paragraph 5 above).

92. The applicant restated his complaints and referred to other similar cases against Bulgaria where the Court found that there had been violations.

A. Complaints under Article 3 of the Convention

1. Establishment of the facts

93. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, it 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 v. Russia*, no. 5140/02, § 59, 25 October 2005).

94. 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, which is corroborated by the statement of Mr B.B. (see paragraph 59 above).

95. 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).

96. In the present case the Government did not submit observations on the admissibility and merits of the applicant's complaints regarding the

conditions of detention in the Pazardzhik Regional Investigation Service detention facility and the Pazardzhik Prison (see paragraph 91 above). Moreover, they did not offer a convincing explanation for their failure to submit relevant information regarding the two detention facilities (see *Fedotov*, cited above, § 61).

97. In these circumstances the Court will examine the merits of the applicant's complaints in respect of the conditions of detention at these facilities solely on the basis of his submissions (see *Fedotov*, cited above, § 61, and *Staykov v. Bulgaria*, no. 49438/99, § 75, 12 October 2006).

98. While not directly relevant, because the CPT visited the Pazardzhik Regional Investigation Service detention facility and Pazardzhik Prison three and four years, respectively, prior to the period of detention complained of by the applicant (see paragraphs 47 and 76 above), the Court considers that the relevant observations of the CPT in respect of the conditions of detention at these facilities during its visits may also inform it in its assessment (see paragraphs 75-89 above and, for a similar approach, *Iovchev*, § 130, and *Staykov*, §§ 75 and 79, both cited above).

2. General principles

99. 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, among others, *Kudła v. Poland* [GC], no. 30210/96, § 90, ECHR 2000-XI, and *Poltoratskiy v. Ukraine*, no. 38812/97, § 130, ECHR 2003-V).

100. 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 *Kudła*, § 91, and *Poltoratskiy*, § 131, both cited above).

101. 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*, cited above, § 92). 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 *Kalashnikov v. Russia*, no. 47095/99, §§ 95 and 101, ECHR 2002-VI).

102. 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 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 by, among other things, providing him with the requisite medical assistance (see *Kudła*, cited above, § 92-94).

103. When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions and the duration of the detention (see *Kalashnikov*, cited above, §§ 95 and 102; *Kehayov v. Bulgaria*, no. 41035/98, § 64, 18 January 2005; and *Iovchev*, cited above, § 127). In particular, the Court must have regard to the state of health of the detained person (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3296, § 135).

104. 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 *Kehayov*, § 65, and *Iovchev*, § 128, both cited above; and, *mutatis mutandis*, *Van der Ven v. the Netherlands*, no. 50901/99, § 51, ECHR 2003-II).

3. Application of these principles to the present case

(a) Pazardzhik Regional Investigation Service detention facility

105. The Court observes that the applicant was detained on the premises of the Pazardzhik Regional Investigation Service detention facility between 10 December 1998 and 4 March 1999, that is, a period of two months and twenty-three days.

106. The applicant contended that he had been held in four different cells during his detention at this facility. The first two cells had measured ten square metres each. In both of them, there had been insufficient fresh air and natural light. The first cell, in which the applicant spent two days, had had four wooden beds only one of which had been occupied by another detainee. The second cell, in which he had been held alone for about fifteen days, had had three wooden beds. The third and fourth cells had measured some six square metres each. Both of these cells had been without windows and had lacked fresh air. The applicant had remained in the third cell until approximately twenty days before his transfer to the Pazardzhik Prison when he had been moved to the fourth cell.

107. The Court further notes that the applicant contended that the material conditions in the cells had been unsatisfactory – no mattresses had been provided; the bed sheets had been dirty, old and torn; and often there had been lice, fleas, cockroaches and mice.

108. The applicant further submitted that he had been allowed to wash for five minutes in the morning and evening and that he had bathed and shaved once a week, usually with cold water. He also stated that he had had to use a bucket for his sanitary needs, the contents of which had been thrown away each morning and evening. The Court considers that 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 (see *Peers v. Greece*, no. 28524/95, § 75, ECHR 2001-III; *I.I. v. Bulgaria*, no. 44082/98, § 75, 9 June 2005; *Kalashnikov*, § 99; and *Kehayov*, § 71, both cited above) cannot be deemed warranted, except in specific situations where allowing visits to the sanitary facilities would pose concrete and serious security risks. In so far as the Government failed to submit observations on the admissibility and merits of this complaint, no such risks have been invoked as grounds for the limitation on the visits to the toilet by the detainees in the Pazardzhik Regional Investigation Service detention facility during the period in question.

109. The applicant contended that he had not been permitted to go out of his cell for exercise. The Court considers that as no possibility for outdoor or out-of-cell activities had been provided, the applicant would have had to spend practically all his time in his cell, which was situated in the basement (see *Peers*, § 75, and *I.I. v. Bulgaria*, § 74, both cited above). The Court considers that the fact that the applicant was confined to his cell for more than two-and-a-half months practically twenty-four hours a day without sufficient 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 restrictions. In so far as the Government failed to submit observations on the admissibility and merits of this complaint, no such considerations have been put forward for assessment by the Court.

110. The applicant contended that the food provided had been of insufficient quantity and substandard. He had been given five hundred grams of bread, often gnawed by mice, every twenty-four hours. No cutlery had been provided and the food had been served in dirty plastic dishes.

111. The applicant further contended that he had not been allowed to read newspapers, books, magazines, listen to the radio or maintain active correspondence. Accordingly, his access to and knowledge of the outside world had been substantially restricted.

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

113. The Government failed to challenge any of the applicant's assertions.

114. While there is no indication that the detention conditions or regime 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.

115. 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 held for almost three months, the Court considers that the distress and hardship he endured 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.

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

(b) Pazardzhik Prison

117. The Court observes that the applicant was detained in the Pazardzhik Prison between 4 March 1999 and 3 November 2000, that is, a period of one year, seven months and twenty-seven days.

118. The applicant submitted that for the duration of his detention at this facility he had been held in a cell measuring twenty-four square metres with seven wooden beds. There had been electric radiators in the cell, but it had still been very cold because the two windows, each fifty centimetres by a hundred centimetres, had been badly insulated. Sometimes there had been mice and cockroaches. There had been a separate toilet in the cell with running water, but its windows had been broken and it had been very cold.

119. The applicant contended that initially the food at the Pazardzhik Prison had been of the same inferior quality as that in the Pazardzhik Regional Investigation Service detention facility. He noted, however, that sometime in the year 2000 the food had improved to some extent even though the daily bread ration had remained the same, which the applicant considered insufficient.

120. The applicant submitted that exercise had been provided in the prison yard, which sometime in the year 2000 had increased from an hour and fifteen minutes to two hours.

121. During his detention at this facility the applicant had had access to newspapers, but not to radio or television. Access to a phone had also been

provided and the applicant could send and receive letters. Visits by relatives had been permitted twice a month and the applicant could meet with his lawyer.

122. The applicant stated that the medical services provided to him in Pazardzhik Prison had been inadequate. He submitted that he had had heart-related complaints which had been incorrectly treated by a psychiatrist rather than having been referred to a specialist and that he had suffered from a broken arm which had been wrongly diagnosed and treated. As a result, following his release on 3 November 2000 he had had to be hospitalised between 6 and 11 November 2000 with heart-related complaints and had been diagnosed with an "ischemic heart condition".

123. The Government failed to challenge any of the applicant's assertions.

124. In conclusion, having regard to the cumulative effects of the regime to which the applicant was subjected, the material conditions in which he was detained, the lack of adequate medical care in response to his ailments and the length of his detention, the Court finds that the distress and hardship he endured 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.

125. Therefore, there has been a violation of Article 3 of the Convention on account of the applicant's detention in the Pazardzhik Prison.

B. Complaint under Article 13 of the Convention, taken in conjunction with Article 3

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

127. Noting the Court's findings of violations in respect of the applicant's complaints under Article 3 of the Convention (see paragraphs 116 and 125 above), it remains to be established whether the applicant had available an effective remedy in Bulgarian law to raise a complaint about the inadequate conditions of detention. The Court notes in this respect that the Government did not challenge the applicant's assertion and failed to submit any information or arguments about the possible existence or effectiveness of a domestic remedy.

128. Thus, it considers that in the present case it has not been shown by the said Government that at the relevant time an effective remedy existed in Bulgarian law for the applicant to raise his complaint about the inadequate conditions of detention at the Pazardzhik Regional Investigation Service detention facility and the Pazardzhik Prison (see *Andrei Georgiev v. Bulgaria*, no. 61507/00, § 68, 26 July 2007).

II. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

129. The applicant made several complaints 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 ... 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."

130. 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. In the admissibility decision of 15 May 2006 the Court considered that this complaint fell to be examined only under Article 5 §§ 4 and 5 of the Convention, which are *lex specialis* in relation to

the more general requirements of Article 13 (see, among other authorities, *Nikolova*, cited above, § 69, and *Tsirlis and Kouloumpas v. Greece*, judgment of 29 May 1997, *Reports* 1997-III, p. 927, § 73).

A. Complaint under Article 5 § 3 of the Convention

131. The applicant complained under Article 5 § 3 of the Convention that he had not been tried within a reasonable time or released pending trial. He further claimed that the authorities had repeatedly failed to undertake a proper assessment of all factors relevant to the lawfulness of his continued detention.

132. The Government did not challenge the applicant's assertion.

133. The Court notes that the applicant was detained from 10 December 1998 to 3 November 2000, that is, one year, ten months and twenty-four days. Part of that period was while the proceedings were pending before the court of first instance from 1 April 1999 to 17 February 2000, that is, ten months and sixteen days.

134. The Court notes that the complaint is similar to those in previous cases against Bulgaria where violations were found (see, for example, *Ilijkov*, cited above, §§ 67-87, and *Shishkov v. Bulgaria*, no. 38822/97, §§ 57-67, ECHR 2003-I (extracts)). Likewise, the authorities in the present case failed to give sufficient reasons for the applicant's continued detention, relying primarily on the statutory provisions requiring mandatory detention for serious intentional offences (Article 152 §§ 1 and 2 of the Code of Criminal Procedure) and the lack of specific evidence that the applicant would not abscond, reoffend or obstruct the investigation.

135. Moreover, the Court notes that following the decision of 17 February 2000 of the District Court to remit the case to the investigation stage both the public prosecutor's office and the domestic courts failed to make a proper assessment of the justification for such continued deprivation of liberty. In particular, the authorities did not cite any specific facts or evidence indicating that the applicant might abscond or obstruct the investigation. Only the domestic courts, in their decisions determining the applicant's appeal of 22 February 2000, noted that the applicant had previously been convicted of the same offence, which they appear to have considered sufficient to justify his continued detention.

136. In view of the above, the Court considers that the authorities appear to have misinterpreted the amendments to the CCP of 1 January 2000 as regards the legal regime of pre-trial detention and the associated requirement for them to justify the applicant's continued deprivation of liberty. On the contrary, they appear to have continued to rely on the previous deficient regime of pre-trial detention, which provided for mandatory detention in such cases (see paragraphs 63-66 above).

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

B. Complaints under Article 5 § 4 of the Convention

138. The applicant complained under Article 5 § 4 of the Convention that the domestic courts had failed to examine all factors relevant to the lawfulness of his detention; that his appeal against his detention of 29 September 2000 had not been examined in substance by the courts; and that his appeals against his detention had been decided in violation of the requirement for a speedy decision under Article 5 § 4 of the Convention. The applicant also argued that the domestic courts had repeatedly disregarded the arguments he had submitted to them.

139. The Government did not challenge the applicant's assertion.

140. The Court notes at the outset that these complaints are very similar to those in previous cases against Bulgaria where violations were found (see *Nikolova*, §§ 54-66, and *Ilijkov*, §§ 88-106, both cited above).

141. The Court reiterates that Article 5 § 4 of the Convention guarantees persons arrested or detained the right to take proceedings to challenge the lawfulness of their detention and also, following the institution of such proceedings, a right to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (see *Rutten v. the Netherlands*, no. 32605/96, § 52, 24 July 2001).

1. The appeal of 29 September 2000

142. The Court notes that the applicant's appeal against his detention of 29 September 2000 was rejected by the District Court as it did not consider itself competent to examine it in substance in spite of the continuing deprivation of liberty of the applicant. In this instance, therefore, the applicant was denied access to effective judicial proceedings to challenge the lawfulness of his detention.

143. There has, therefore, been a violation of Article 5 § 4 of the Convention in that respect.

2. Scope and nature of the judicial control of lawfulness

144. The Court observes that the District Court failed to make a proper examination of all factors relevant to the lawfulness of the applicant's continued detention in response to his appeals against his detention of 30 September 1999, 22 February and 22 March 2000. In particular, it failed to refer to or rely on specific facts or evidence indicating that he might abscond or obstruct the investigation, but relied on the nature of the

perpetrated offence and on the applicant's personality and purported criminal tendencies.

145. Accordingly, the Court finds that the District Court denied the applicant the guarantees provided for in Article 5 § 4 of the Convention on account of the limited scope and nature of the judicial control of the lawfulness of his detention in response to his appeals against his detention of 30 September 1999, 22 February and 22 March 2000.

146. There has, therefore, been a violation of Article 5 § 4 of the Convention in that respect.

3. Speediness of the domestic courts' decisions

147. In view of the above findings, the Court does not deem it necessary to enquire whether the judicial reviews in response to the applicant's appeals against his detention were provided speedily (see, *mutatis mutandis*, *Nikolova*, § 65, and *Ilijkov*, § 106, both cited above).

C. Complaint that the applicant lacked an enforceable right to compensation under Article 5 § 5 of the Convention.

148. 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.

149. The Government did not challenge the applicant's assertion.

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

151. In so far as the Court has found that there have been violations of Article 5 §§ 3 and 4 of the Convention (see paragraphs 137, 143 and 146 above), Article 5 § 5 of the Convention is also applicable (see *Steel and Others v. the United Kingdom*, judgment of 23 September 1998, *Reports* 1998-VII, p. 2740, § 81). The Court must therefore establish whether or not Bulgarian law afforded the applicant an enforceable right to compensation for the breaches of Article 5 of the Convention.

152. The Court notes that by section 2(1) of the SMRDA, a person who has been remanded in custody may seek compensation only if the detention order has been set aside “for lack of lawful grounds”, which refers to unlawfulness under domestic law (see paragraphs 73 and 74 above). In the present case, the applicant's pre-trial detention was considered by the domestic courts to be in full compliance with the requirements of domestic law. Therefore, the applicant did not have a right to compensation under section 2(1) of the SMRDA.

153. It follows that in the applicant's case the SMRDA did 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 paragraphs 73 and 74 above).

154. Thus, the Court finds that Bulgarian law did not afford the applicant an enforceable right to compensation, as required by Article 5 § 5 of the Convention.

There has therefore been a violation of that provision.

III. ALLEGED VIOLATIONS OF ARTICLES 6 AND 13 OF THE CONVENTION

155. The applicant complained under Articles 6 § 1 and 13 of the Convention of the excessive length of the criminal proceedings against him and the lack of an effective remedy in that connection.

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

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

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."

156. The Government did not challenge the applicant's assertions.

157. The applicant reiterated his complaints.

A. Complaint under Article 6 § 1 of the Convention

158. The period to be taken into consideration started on 11 December 1998 and, as at the date of the applicant's last communication to the Court of 15 July 2006, the case was still pending before the District Court. Thus far, therefore, the criminal proceedings against him have lasted seven years, seven months and five days for one level of jurisdiction.

159. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

160. Having examined all the material before it and noting the Government's failure to submit observations on the merits of the complaint, the Court finds that no facts or arguments capable of persuading it that the length of the criminal proceedings in the present case has been reasonable have been put forward. Thus, having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings has been excessive and has failed to meet the "reasonable time" requirement. In

particular, the criminal proceedings against the applicant have so far lasted over seven years and are thus far only at the stage of the court of first instance.

161. There has, accordingly, been a breach of Article 6 § 1 of the Convention.

B. Complaint under Article 13 in conjunction with Article 6 § 1 of the Convention

162. The Court reiterates that Article 13 of the Convention guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 of the Convention to hear a case within a reasonable time (see *Kudła*, cited above, § 156).

163. The Court notes that in similar cases against Bulgaria it has found that at the relevant time there was no formal remedy under Bulgarian law that could have expedited the determination of the criminal charges against the applicant (see *Osmanov and Yuseinov v. Bulgaria*, nos. 54178/00 and 59901/00, §§ 38-42, 23 September 2004, and *Sidjimov v. Bulgaria*, no. 55057/00, § 41, 27 January 2005). The Court sees no reason to reach a different conclusion in the present case.

164. The Court recognises that with the introduction in June 2003 of the new Article 239a of the CCP (see paragraph 72 above) the possibility was introduced for an accused person to request to have his case brought before the courts if the preliminary investigation had not been completed within a certain statutory time-limit. However, as the Court has not been informed when the public prosecutor's office revised the indictment against the applicant (see paragraph 18 above) it is unable to assess whether this remedy could have been relevant and available to the applicant at any given moment of the proceedings.

165. In any event, any possible acceleration of the proceedings at such a moment cannot be considered to compensate for the delay of almost four-and-a-half years that had already accumulated (see *Sidjimov*, cited above, § 40). Moreover, the proceedings are still apparently pending before the court of first instance.

166. As regards compensatory remedies, the Court examined all the material before it and noted the Government's failure to submit observations on the merits of the complaint. It thus found no facts or arguments to have been put forward that would be capable of persuading it that at the relevant time there existed an action under domestic legislation that could be considered an effective, sufficient and accessible remedy in respect of the applicant's complaint in respect of the alleged excessive length of the criminal proceedings (see, likewise, *Osmanov and Yuseinov*, § 41, and *Sidjimov*, § 42, both cited above).

167. Accordingly, there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby he could enforce his right to a "hearing within a reasonable time" as guaranteed by Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

168. 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

169. The applicant claimed a total of 11,000 euros (EUR) as compensation for the various violations of his rights under the Convention, which he contended left him distraught, demoralised and depressed and with a feeling of helplessness and despair for his future and health.

170. The Government did not submit comments on the applicant's claims for damage.

171. The Court notes that it has found a considerable number of serious violations of the applicant's rights under the Convention which fall under Articles 3, 5, 6 and 13 of the Convention (see paragraphs 116, 125, 128, 137, 143, 146, 154, 161 and 167 above). In view of the foregoing; the specific circumstances of the present case; its case-law in similar cases; and deciding on an equitable basis, the Court awards EUR 6,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

172. The applicant claimed EUR 5,040 for 72 hours of legal work by his lawyer before the Court at an hourly rate of EUR 70. He also claimed EUR 380 for translation costs and other general expenses. He presented a legal fees agreement and an approved time sheet in support of his claim. The applicant requested that the costs and expenses incurred be paid directly to his lawyer, Mr M. Merdzhanov.

173. The Government did not submit any comments on the applicant's claims for costs and expenses.

174. 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 are reasonable as to quantum. In the instant case, it observes that the applicant

failed to present receipts in respect of the claimed general expenses, which have not therefore been shown to have been actually incurred. In respect of the remainder, having regard to all relevant factors, the Court considers it reasonable to award EUR 2,500 in respect of costs and expenses, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's detention in Pazardzhik Prison;

3. *Holds* that there has been a violation of Article 13, in conjunction with Article 3 of the Convention, on account of the lack of an effective remedy for the inadequate conditions of detention;

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 failure to examine the applicant's appeal against his detention of 29 September 2000;

6. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the limited scope and nature of the judicial control of the lawfulness of the applicant's detention in response to his appeals against his detention of 30 September 1999, 22 February and 22 March 2000;

7. *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;

8. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the criminal proceedings against the applicant;

9. *Holds* that there has been a violation of Article 13, in conjunction with Article 6 § 1 of the Convention, on account of the lack of an effective remedy for the excessive length of the criminal proceedings;

10. *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 6,000 (six thousand euros) in respect of non-pecuniary damage, payable to the applicant himself;

(ii) EUR 2,500 (two thousand five hundred euros) in respect of costs and expenses, payable into the bank account of the applicant's lawyer, Mr M. Merdzhanov;

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

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

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

Done in English, and notified in writing on 6 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President