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

FIRST SECTION

CASE OF HAMANOV v. BULGARIA

(Application no. 44062/98)

JUDGMENT

STRASBOURG

8 April 2004

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

In the case of Hamanov v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 18 March 2004,

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

PROCEDURE

1. The case originated in an application (no. 44062/98) against the Republic of Bulgaria lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Nikolai Tomov Hamanov ("the applicant"), on 7 July 1998.

2. The applicant was represented by Mr M. Ekimdjiev, a lawyer practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agents, Ms G. Samaras and Ms M. Pasheva, of the Ministry of Justice. In a letter of 8 April 2003 the applicant objected to the representative powers of the Agents and invited the Court to ignore the observations submitted by them on the Government's behalf. On 18 March 2004 the Court decided to reject the applicant's objection.

3. The applicant alleged, in particular, that there had been no sufficient reasons justifying his lengthy pre-trial detention, that the judicial review of his detention had been only a formality, that the appeals against his detention had not been examined speedily and had been examined in private, that he had had no enforceable right to compensation in respect of the alleged breaches of Article 5 of the Convention and that the criminal proceedings against him had lasted unreasonably long.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was originally allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber

that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 11 May 2000 the Court (Fourth Section) declared the application partly inadmissible.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

8. By a decision of 6 February 2003 the Court (First Section) declared the remainder of the application admissible.

9. The parties did not file observations on the merits.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant was born in 1963 and lives in Plovdiv.

A. The criminal proceedings against the applicant

1. The preliminary investigation

11. On 11 March 1996 the Plovdiv District Prosecutor's Office opened an investigation against the applicant, who was a bank branch manager, and several others, in connection with a number of financial transactions effected by them allegedly in breach of the law (see *Yankov v. Bulgaria*, no. 39084/97, § 11, 11 December 2003, and *Belchev v. Bulgaria*, no. 39270/98, § 11, 8 April 2004).

12. On 12 March 1996 the applicant was charged with having authorised thirty-five wire transfers abroad in breach of his professional duties and with a view to an unlawful gain for others.

13. In the course of the investigation the applicant was also accused of having guaranteed on behalf of the bank nine promissory notes issued by companies related to a Mr Belchev, and of unlawfully possessing firearm ammunition.

14. Eight persons were charged in all. The charges were modified several times in the course of the investigation.

15. During the investigation, which lasted about fourteen months, the investigator heard forty-seven witnesses, examined numerous financial and banking documents, commissioned expert reports, and undertook searches.

16. On 5 May 1997 the investigation was completed and the case file was sent to the prosecutor.

17. On 1 July 1997 the prosecutor submitted to the Plovdiv District Court a thirty-two-page indictment accompanied by twenty binders of documentary evidence.

2. The trial

18. The first hearing took place from 17 to 30 September 1997. The District Court heard the accused as well as several witnesses and experts. Some witnesses did not appear. Both the prosecution and the defence requested an adjournment.

19. The trial resumed on 25 November 1997. The District Court heard several witnesses. Ten other witnesses were absent as they had not been subpoenaed properly and others, albeit subpoenaed, did not show up. The trial was adjourned until 7 January 1998.

20. The trial resumed on 7 and 8 January 1998. The court adjourned it to 9 April, as some witnesses did not appear, and ordered an additional financial report.

21. The hearing listed for 9 April 1998 was adjourned to 6 July and then again to 19 October by reason of the ill health of one of the applicant's co-accused.

22. On 19 October 1998 the District Court held its last hearing. It heard the closing argument of the parties.

23. On 30 October 1998 the District Court found the applicant guilty. It sentenced him to nine years' imprisonment and banned him from holding the post of a director of a bank's branch for a period of twelve years.

24. The reasoning of the District Court's judgment was deposited in the registry of that court on an unspecified date in late January 1999.

25. Several times during the proceedings the case file was unavailable as it would be transmitted to the competent court for the examination of appeals submitted by the applicant's co-accused against their detention. In practice, upon such an appeal, the entire case file would be transmitted together with the appeal.

26. Throughout the proceedings the District Court and later the Regional Court sought police assistance to establish the addresses of witnesses and ensure their attendance.

3. The appeal proceedings

27. On an unspecified date in November 1998 the applicant appealed against his conviction and sentence.

28. More than a year later, on 6 December 1999, the Plovdiv Regional Court held its first hearing, which was adjourned to 13 March 2000 because of health problems of one of the applicant's co-accused.

29. On 13 and 14 March 2000 the Regional Court resumed its hearing in the case.

30. On 5 June 2000 the Regional Court quashed the lower court's judgment and remitted the case to the preliminary investigation stage.

4. Renewed preliminary investigation

31. The Regional Prosecutor's Office, considering that the Regional Court's judgment was unclear or erroneous, sought to appeal against it or request its interpretation. There ensued a dispute about the time-limit for such an appeal, which was brought by the prosecution authorities to the Supreme Court of Cassation. On 27 November 2000 that court dismissed the prosecution's request.

32. Nothing was done in the case thereafter, at least until April 2003, date of latest information from the parties. At that time the investigation in the applicant's case was pending before the prosecution authorities.

B. The applicant's detention

33. On 12 March 1996 the applicant was arrested and brought before an investigator who decided to detain him. The decision was later confirmed by a prosecutor.

34. On 26 September 1997, during the first trial hearing, the applicant applied to the District Court for release. He submitted that he could not abscond because he had a wife and a child of whom he had to take care. He could not interfere with the investigation either, because all evidence had already been gathered. Finally, there was no risk of him committing an offence, because he had been dismissed from the bank where he had worked. The application was rejected by the District Court with the following reasoning:

> "[The applicant] has been charged with a serious intentional crime. There is still evidence to be gathered. [T]he court therefore considers that there is a real risk that the [applicant] will hinder the investigation."

35. On 7 October 1997 the applicant appealed. On 9 October the District Court, finding no reasons to alter its decision, transmitted the appeal to the Regional Court. On 20 October the Regional Court upheld the impugned decision, finding that that applicant had been charged with a serious intentional crime and hence had to be detained.

36. On 25 November 1997, during the second trial hearing, the applicant made a fresh request for release. He argued that the facts of the case had been elucidated: there were only two more witnesses to be questioned. There was hence no risk of him obstructing the investigation. There was no risk of him re-offending either. The District Court refused, reasoning succinctly that the applicant had been charged with a serious intentional crime, that there were no new circumstances, and that he should hence remain in detention. On 4 December the applicant appealed, arguing that

there was no indication that he would flee, obstruct the investigation – especially in view of the fact that the case had progressed to trial –, or try to suborn witnesses or experts. On 5 December the District Court, finding no reasons to alter its decision, transmitted the appeal to the Regional Court. On 15 December the Regional Court dismissed the appeal, finding that the applicant had been charged with a serious intentional crime and that hence his remaining in detention was justified, especially in view of the gravity of the alleged offence.

37. On 8 January 1998, during the third trial hearing, the applicant again requested release. He averred that in view of the adjournment of the case his detention should not be prolonged any further. There was no risk of him obstructing the investigation or fleeing. The obduracy of the court to refuse his release made pre-trial detention a form of punishment. Indeed, the other accused persons were on bail. The District Court refused in the following terms:

> "The court finds the [applicant's] request for release ill-founded. [He] has been charged with a serious intentional crime and thus has to be kept in detention. ... The fact that the other accused are not detained has nothing to do with the [applicant's] detention."

38. On 16 January 1998 the applicant appealed, averring that the facts of the case had already been clarified, that he had a permanent address and that his family seriously suffered from his continuing detention. On 22 January the District Court confirmed its decision and transmitted the appeal to the Regional Court. On 23 January that court dismissed the appeal, holding that the applicant had been charged with a serious intentional crime. Detention was therefore lawful under Article 152 of the Code of Criminal Procedure ("CCP"), under which persons charged with serious intentional crimes had to be detained, barring special circumstances. There had to be real facts establishing that there was no risk of the applicant absconding, re-offending or hindering the investigation for the exception of Article 152 § 2 to apply. The applicant's arguments relating to his lack of criminal record, permanent address etc. were not of a nature to prove the lack of such a risk.

39. On 17 April 1998 the applicant filed an application for release, arguing that he had a permanent address and that he had no intention of absconding or interfering with the investigation. On 23 April the District Court held a hearing on the application and denied it in the following terms:

> "The court finds that the [applicant's] request for release is ill-founded. The charges against [him] concern a serious intentional crime and there is a risk that he may interfere with the investigation or commit another crime[.]"

40. On 29 April 1998 the applicant appealed, arguing that his lengthy detention – more than two years – was not warranted. The following day the District Court confirmed its decision and forwarded the appeal to the Regional Court, which in turn dismissed it on 11 May, holding that there

were no objective circumstances which could lead to the conclusion that the applicant would not interfere with the investigation. The length of detention was no reason to deviate from the strict requirements of Article 152 of the CCP.

41. During the trial hearing which took place on 6 July 1998 the applicant again applied for release. He argued that there was no risk of him absconding, re-offending or fleeing. Moreover, given the adjournment of the case, his detention would exceed two and a half years, thus becoming a sort of punishment. The District Court rejected the request, finding briefly that the applicant had been accused of a serious intentional crime and that there had been no change of circumstances. On 15 July the applicant appealed, asserting that the facts of the case had been established and that he had no criminal record. On 22 July the District Court declined to alter its decision and forwarded the appeal to the Regional Court. On 27 July the Regional Court dismissed the appeal in the following terms:

> "[The applicant is charged with] a serious intentional crime. Under Article 152 [of the CCP] this is sufficient for the imposition of detention. The exceptions of Article 152 § 2 are not present, as [the applicant] may flee or obstruct the investigation."

42. On 12 August 1998 the applicant filed an application for release. He maintained that there were no facts indicating that he could abscond, re-offend or hinder the investigation. On 10 September the District Court held a hearing on the application and rejected it. It held that the applicant had been accused of a serious intentional crime and that there was a risk of him impeding the investigation or re-offending. Moreover, the trial was about to finish. The applicant did not appeal to the Regional Court.

43. All appeals filed by the applicant against the refusals of the District Court to release him were examined by the Regional Court in private, without the participation of the parties.

44. The applicant has not alleged that his detention continued after the Regional Court quashed his conviction by a judgment of 5 June 2000.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The offences with which the applicant was charged

45. Article 282 § 1 of the Criminal Code ("CC") provides:

> "A person [exercising a function of managing another's property or an official function], who acts in breach or dereliction of his professional duties or exceeds his power or rights with a view to a pecuniary gain for himself or another or damage to another, and thus causes significant harm, shall be punished by up to five years' imprisonment..."

46. Article 282 § 3, read in conjunction with the first and the second paragraphs of the same provision, provides for three to ten years' imprisonment in very grave cases when the resulting damage is substantial or the offender holds a high ranking post.

47. Article 339 § 1 provides that whoever possesses firearm ammunition without a permit is punishable by up to six years' imprisonment.

B. Provisions relating to pre-trial detention

1. Legal criteria and practice regarding the requirements and justification for pre-trial detention

48. Pre-trial detention was governed by Article 152 of the CCP, which read in relevant part:

> "1. Pre-trial detention shall be imposed [in cases where the charges concern] a serious intentional crime.
>
> 2. In the cases falling under paragraph 1 [detention] may be dispensed with if there is no risk of the accused evading justice, obstructing the investigation, or committing further crimes. ..."

49. A "serious" crime is defined by Article 93 § 7 of the CC as one punishable by more than five years' imprisonment.

50. The Supreme Court has held that it was not open to the courts, when examining an appeal against pre-trial detention, to inquire whether there existed sufficient evidence to support the charges against the detainee. The courts had to examine only the formal validity of the detention order (опред. № 24 от 23 май 1995 г. по н.д. № 268/95 г. на ВС I н.о.).

51. According to the Supreme Court's practice at the relevant time (it has now become at least partly obsolete as a result of amendments in force since 1 January 2000), Article 152 § 1 required that a person charged with a serious intentional crime be detained. An exception was only possible, in accordance with Article 152 § 2, where it was clear beyond doubt that any risk of absconding or re-offending was objectively excluded as, for example, in the case of a detainee who was seriously ill, elderly, or already in custody on other grounds, such as serving a sentence (опред. № 1 от 4 май 1992 г. по н.д. № 1/92 г. на ВС I н.о.; опред. № 48 от 2 октомври 1995 г. по н.д. № 583/95 г. на ВС I н.о.; опред. № 78 от 6 ноември 1995 г. по н.д. 768/95 г.).

2. Judicial review of detention during the trial

52. The detainee's appeals against detention at the trial stage are examined by the trial court. Such appeals may be examined in private,

without the participation of the parties, or at an oral hearing. The law does not require the court to decide within a particular time-limit.

53. The trial court's decision is subject to appeal to the higher court (Article 344 § 3 of the CCP). The appeal must be filed within seven days (Article 345) with the trial court (Article 318 § 2 in conjunction with Article 348 § 4). After receiving the appeal, the trial court, sitting in private, decides whether there exist grounds to annul or vary its decision. If it does not find this to be the case, it forwards the appeal to the higher court (Article 347).

54. Before doing so, the trial court must communicate the appeal to the other party (the prosecutor) and receive its written observations (Articles 320 and 321 in conjunction with Article 348 § 4). The law does not provide for the prosecutor's observations to be communicated to the appellant.

55. The higher court may examine the appeal in private without the parties being present or, if it deems necessary, at an oral hearing (Article 348 § 1). The law does not require the court to decide within a particular time-limit.

C. The State Responsibility for Damage Act

56. Section 2 of the State Responsibility for Damage Act of 1988 („Закон за отговорността на държавата за вреди, причинени на граждани“) provides, as relevant:

> “The State shall be liable for damage caused to [private persons] by the organs of ... the investigation, the prosecution, the courts ... for:
>
> 1. unlawful pre-trial detention ..., if [the detention order] has been set aside for lack of lawful grounds[.]”

57. The reported case-law under section 2(1) of the Act is scant. In two recent judgments the Supreme Court of Cassation held that pre-trial detention orders must be considered as being “set aside for lack of lawful grounds” – and that State liability arises – where the criminal proceedings have been terminated on grounds that the charges have not been proven (реш. № 859/ 2001 г. от 10 септември 2001 г. г.д. № 2017/2000 г. на ВКС) or where the accused has been acquitted (реш. № 978/2001 г. от 10 юли 2001 г. по г.д. № 1036/2001 г. на ВКС). The view taken appears to be that in such cases the pre-trial detention order is retrospectively deprived of its lawful grounds as the charges were unfounded.

58. On the other hand, the Government have not informed the Court of any successful claim under section 2(1) of the Act in respect of unlawful pre-trial detention orders in connection with pending criminal proceedings or proceedings which have ended with final convictions. It appears that rulings putting an end to pre-trial detention in pending criminal proceedings

have never been considered as decisions to "set aside for lack of lawful grounds" within the meaning of section 2(1) of the Act. Also, the terms "unlawful" and "lack of lawful grounds" apparently refer to unlawfulness under domestic law.

59. By section 2(2) of the Act, in certain circumstances a claim may be brought for damage occasioned by the "unlawful bringing of criminal charges". Such a claim may be brought only where the accused person has been acquitted by a court or the criminal proceedings have been discontinued by a court or by the prosecution authorities on the ground that the accused person was not the perpetrator, that the facts did not constitute a criminal offence or that the criminal proceedings were instituted after the expiry of the relevant limitation period or despite a relevant amnesty. In contrast with the solution adopted under section 2(1) (see paragraph 57 above), the Supreme Court of Cassation has held that no liability arises under section 2(2) where the criminal proceedings were discontinued at the pre-trial stage on the ground that the accusation was not proven (реш. № 1085/2001 г. от 26 юли 2001 г. по г.д. № 2263/2000 г. на ВКС IV г.о.).

60. Persons seeking redress for damage occasioned by decisions of the investigating and prosecuting authorities or the courts in circumstances falling within the scope of the State Responsibility for Damage Act have no claim under general tort law as the Act is a *lex specialis* and excludes the application of the general regime (section 8(1) of the Act; реш. № 1370/1992 г. от 16 декември 1992 г., по г.д. № 1181/1992 г. на ВС IV г.о.). The Government have not referred to any successful claim under general tort law in connection with unlawful pre-trial detention.

THE LAW

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

61. The applicant complained under Article 5 § 3 of the Convention that his detention had been unreasonably lengthy, that there had been no sufficient reasons justifying it and that there had been delays in the proceedings.

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

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

63. The applicant submitted that the authorities had not established the existence of any risk of him absconding or committing an offence. As he

had never been convicted, had a family, an established professional life and a permanent residence, he should have not been kept in detention.

64. The applicant stated that he was prepared to accept the Government's contention that the investigation had been concluded promptly, but that there had been excessive delays during the trial.

65. The Government submitted that the necessity of pre-trial detention had been presumed on the basis of the severity of the charges against the applicant. Release had only been possible if he had substantiated that any risk, however remote, of absconding or committing an offence had been excluded. He had not done so.

66. The Government further submitted that the authorities had worked on the case with the required diligence. The case had been very complex: it had concerned eight persons accused of offences relating to complex financial operations. The case file had ran to twenty binders. At the trial the prosecution had relied on approximately sixty witnesses and the defence had called more. The difficulties in summoning so many persons had inevitably led to adjournments. The applicant and some of his co-accused had been responsible for a number of adjournments because they had sought to adduce additional evidence and because of illness. Furthermore, the case file had been transmitted to the higher court eight times for the examination of appeals against detention. The District Court had taken all necessary measures to reduce the delay: it had listed hearings in three-months intervals and had sought police assistance for summoning witnesses.

67. The Court notes that the applicant was arrested on 12 March 1996 and was convicted by the District Court on 30 October 1998 (see paragraphs 23 and 33 above). The period to be examined is therefore two years, seven months and eighteen days.

68. The persistence of a 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 (see *Labita v. Italy* [GC], no. 26772/95, §§ 152-53, ECHR 2000-IV).

69. In its partial decision of 11 May 2000 in the present case the Court rejected as manifestly ill-founded the applicant's assertion that there had been no reasonable suspicion of his having committed an offence. The applicant was held in custody on the basis of a suspicion that he had filled in banking documents in breach of financial and banking regulations and breached his professional duties in order to transfer large sums of money out of Bulgaria with a view to obtaining an unlawful gain.

70. As to the grounds for the continued detention, the Court finds that the present case is similar to the case of *Ilijkov v. Bulgaria* (no. 33977/96, 26 July 2001). The Court held in *Ilijkov*:

> "79. [T]he [authorities] applied law and practice under which there was a presumption that remand in custody was necessary in cases where the sentence faced went beyond a certain threshold of severity ...
>
> 80. [While] the severity of the sentence faced is a relevant element ... the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of [pre-trial] detention ...
>
> That is particularly true in the present case where under the applicable domestic law and practice the characterisation in law of the facts – and thus the sentence faced by the applicant – was determined by the prosecution authorities without judicial control of the question whether or not the evidence supported reasonable suspicion that the accused had committed an offence attracting a sentence of the relevant length ...
>
> 82. The only other ground for the applicant's lengthy detention was the domestic courts' finding that there were no exceptional circumstances warranting release.
>
> 83. However, that finding was not based on an analysis of all pertinent facts. The authorities regarded the applicant's arguments that he had never been convicted, that he had a family and a stable way of life, and that after the passage of time any possible danger of collusion or absconding had receded, as irrelevant ...
>
> They did so because by virtue of Article 152 of the Code of Criminal Procedure and the Supreme Court's practice the presumption under that provision was only rebuttable in very exceptional circumstances where even a hypothetical possibility of absconding, re-offending or collusion was excluded due to serious illness or other exceptional factors.
>
> It was moreover incumbent on the detained person to prove the existence of such exceptional circumstances, failing which he was bound to remain in detention ... throughout the proceedings ...
>
> 84. The Court reiterates that continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty. Any system of mandatory [pre-trial] detention ... is per se incompatible with Article 5 § 3 of the Convention (see *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, pp. 18-21, §§ 35-53; *Clooth v. Belgium*, judgment of 12 December 1991, Series A no. 225, p. 16, § 44; *Muller v. France*, judgment of 17 March 1997, *Reports of Judgments and Decisions* 1997-II, pp. 388-90, §§ 35-45; *Labita*, cited above, §§ 152 and 162-165; and *Ječius v. Lithuania*, [no. 34578/97, ECHR 2000-IX], §§ 93 and 94). ...
>
> 85. ... Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases."

71. Having regard to the reasons given by the domestic courts to justify Mr Hamanov's lengthy pre-trial detention (see paragraphs 34-42 above), the Court finds, as in *Ilijkov*, that by failing to address concrete relevant facts and by relying solely on a statutory presumption based on the gravity of the charges and which shifted to the accused the burden of proving that there was not even a hypothetical danger of absconding, re-offending or collusion, the authorities prolonged the applicant's detention on grounds which cannot be regarded as sufficient (see also the summaries of the relevant domestic law in paragraphs 48-51 above and of the Government's submission in paragraph 65 above).

72. The Court thus finds that the authorities failed to justify the applicant's remand in custody for the period of two years and more than seven months. In these circumstances it is not necessary to examine whether the proceedings were conducted with due diligence.

73. There has therefore been a violation of Article 5 § 3 of the Convention in that the applicant's pre-trial detention was not justified throughout and was excessively lengthy.

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

74. The applicant complained under Article 5 § 4 of the Convention that the judicial review of his detention had been only a formality, that his appeals against detention to the competent court had not been examined speedily and had been examined in private, without him being present.

75. Article 5 § 4 of the Convention provides:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

76. The applicant stated that according to the domestic law and practice at the relevant time the scope of judicial review of pre-trial detention had been very limited. As a result, none of the decisions in the applicant's case had included a proper analysis of all factors determining the lawfulness of the detention.

77. The applicant further stated that his appeals had not been examined speedily and that the requirements of adversarial proceedings were violated in that the Regional Court had examined all his appeals in private without him being present.

78. The Government argued that this complaint was manifestly ill-founded as the courts had taken into account all relevant factors and had acted lawfully and diligently.

79. The Court observes that the domestic courts, as in the cases of *Nikolova (v. Bulgaria* [GC], no. 31195/96, ECHR 1999-II) and *Ilijkov* (cited above), when examining the applicant's appeals against his detention,

followed the case-law of the Supreme Court at that time and thus limited their consideration of the matters before them to a verification of whether or not the investigator and the prosecutor had charged the applicant with a "serious intentional crime" within the meaning of the CC (see paragraphs 34-42 above).

80. In his appeals, however, the applicant had advanced arguments questioning the grounds for his detention. He had referred to concrete facts, for example that all the evidence had been collected during the first few months of the investigation, which minimised any danger of him obstructing the course of justice and that there was no danger of his absconding in view of his age, family ties and way of life.

81. In their decisions, the domestic courts devoted no consideration to these arguments, apparently treating them as irrelevant to the question of the lawfulness of the applicant's pre-trial detention.

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

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

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

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

86. The applicant also complained that his appeals against detention had not been disposed of speedily and that the principle of equality of arms had been infringed. Having found that the scope and nature of the judicial review afforded to the applicant by the domestic courts did not satisfy the requirements of Article 5 § 4 of the Convention, the Court does not need to examine whether other requirements of the same provision were also breached.

III. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

87. The applicant complained under Article 5 § 5 of the Convention that he had no enforceable right to compensation in respect of the alleged breaches of Article 5.

88. Article 5 § 5 of the Convention provides:

> "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."

89. The applicant submitted that under Bulgarian law it was not possible to obtain compensation for detention which violated the Convention but was effected in accordance with the requirements of the CCP. He stressed that there had never been a single precedent of a detainee obtaining compensation in such circumstances.

90. The Government did not comment on this complaint.

91. The Court notes that the applicant's pre-trial detention infringed his right to trial within a reasonable time or release pending trial (see paragraph 73 above) and his right to take proceedings by which all elements relevant to the lawfulness of detention could be decided by a court (see paragraph 85 above).

92. It follows that Article 5 § 5 of the Convention is applicable. 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 in his case.

93. By section 2(1) of the State Responsibility for Damage Act, 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 paragraphs 57-58 above).

94. In the present case the applicant's pre-trial detention was considered by the courts as being in full compliance with the requirements of domestic law and the proceedings against him are still pending. Therefore, the applicant has no right to compensation under section 2(1) of the State Responsibility for Damage Act. Nor does section 2(2) of the Act apply (see paragraph 59 above).

95. It follows that in the applicant's case the State Responsibility for Damage Act does not provide for an enforceable right to compensation.

96. Furthermore, it does not appear that such a right is secured under any other provision of Bulgarian law (see paragraph 60 above).

97. 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.

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

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

99. 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..."

100. The applicant referred to his submissions under Article 5 § 3 and added that a long time had elapsed between the delivery of the District Court's reasoning in January 1999 and the first hearing before the Regional Court. Furthermore, the case had been remitted to the investigation stage and was likely to continue for several more years.

101. The Government also referred to their submissions under Article 5 § 3 and stressed the complexity of the case which had required more time.

102. The Court notes that the proceedings started in March 1996. In April 2003, the date of the latest information from the parties, they were pending at the preliminary investigation stage following the Regional Court's judgment of 5 June 2000 which quashed the applicant's conviction and sentence and remitted the case for renewed investigation (see paragraphs 11 and 32 above).

103. The proceedings have therefore lasted at least seven years and one month and, according to the latest information, are still pending.

104. The Court observes that the criminal proceedings against the applicant were factually and legally complex. They involved several persons accused of having committed offences in relation to a number of financial transactions (see paragraphs 11-14 above).

105. Until October 1998, when the applicant was convicted by the District Court, there were no significant delays imputable to the authorities. However, the Regional Court held its first hearing on the applicant's appeal in December 1999, more than one year after the appeal was submitted. Furthermore, nothing has been done in the case since 5 June 2000. It is still pending at the preliminary investigation stage (see paragraph 32 above).

106. Having regard to the criteria established in its case-law for the assessment of the reasonableness of the length of proceedings (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, ECHR 1999-II and *Pedersen and Baadsgaard v. Denmark*, no. 49017/99, 19 June 2003), the Court finds that the length of the criminal proceedings

against the applicant failed to satisfy the reasonable time requirement of Article 6 § 1 of the Convention.

107. It follows that there has been a violation of that provision.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

108. 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

109. The applicant claimed 7,700 euros ("EUR") in non-pecuniary damages. He made detailed submissions in respect of each violation of the Convention in his case, emphasising the gravity of the case and referring to some of the Court's judgments.

110. Referring to some of the Court's judgments in previous similar cases against Bulgaria, the Government submitted that the claim was excessive, in particular in view of the living standards in Bulgaria.

111. Having regard to all the circumstances of the case, and deciding on an equitable basis, the Court awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

112. The applicant claimed EUR 3,875 for 76 hours and 30 minutes of legal work on the Strasbourg proceedings, at the hourly rate of EUR 50. He claimed an additional EUR 386 for translation costs (49 pages), copying, mailing and overhead expenses. The applicant submitted a fees' agreement between him and his lawyer, a time-sheet and postal receipts. He requested that the amounts awarded by the Court under this head should be paid directly to his legal representative, Mr M. Ekimdjiev.

113. The Government stated that: (i) the claim for translation and other expenses, with the exception of postage, was not supported by documents; (ii) the number of hours claimed was excessive as the work done by the lawyer could have been completed in half of the time claimed; and (iii) the hourly rate of EUR 50 was excessive, regard being had to the living standards in Bulgaria.

114. The Court notes that the applicant has submitted a fees agreement and his lawyer's time sheet concerning work done on his case and that he

has requested that the costs and expenses incurred should be paid directly to his lawyer, Mr M. Ekimdjiev.

115. The Court considers that the number of hours claimed seems to be excessive and that a reduction is necessary on that basis. It also considers that a reduction should be applied on account of the fact that some of the applicant's complaints were declared inadmissible (see paragraph 6 above). Also, the claim for translation expenses is not supported by relevant documents. The Court further observes that the same lawyer represented before it Mr Yankov, Mr Hamanov and Mr Belchev, who were all co-accused in the same criminal proceedings (see paragraph 2 above, *Yankov*, cited above, § 2 and *Belchev*, cited above, § 2). In these circumstances, having regard to the overlap in the facts and complaints in their applications, the Court considers that a further reduction is appropriate.

116. Having regard to all relevant factors and deducting EUR 630 received in legal aid from the Council of Europe, the Court awards EUR 2,000 in respect of costs and expenses, to be paid directly to the applicant's legal representative, Mr M. Ekimdjiev.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

2. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 5 of the Convention in that Bulgarian law did not afford the applicant an enforceable right to compensation;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

5. *Holds*

   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:

(i) EUR 4,000 (four thousand euros) in respect of non-pecuniary damage, to be paid to the applicant himself;
(ii) EUR 2,000 (two thousand five hundred euros) in respect of costs and expenses, to be paid directly to the applicant's legal representative, Mr M. Ekimdjiev;
(iii) any tax that may be chargeable on the above amounts;

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

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

Done in English, and notified in writing on 8 April 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President