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

FIRST SECTION

CASE OF KEHAYOV v. BULGARIA

(Application no. 41035/98)

JUDGMENT

STRASBOURG

18 January 2005

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 Kehayov v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 14 December 2004,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 41035/98) 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 Ivan Ivanov Kehayov ("the applicant"), on 28 January 1998.

2. The applicant, who had been granted legal aid, was represented by Mr M. Ekimdjiev, a lawyer practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their agents, Mrs V. Djidjeva and Mrs M. Dimova, of the Ministry of Justice.

3. The applicant alleged, in particular, that he had been detained in inhuman and degrading conditions, that after his arrest he had not been brought before a judge or other officer authorised by law to exercise judicial power, that his lawyer had been refused access to the case file and on one occasion had not been allowed to represent him in the proceedings concerning his pre-trial detention and that his appeals against detention had been examined with substantial delays and only formally.

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 allocated to the former Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 26 October 2000 the Court declared the application partly inadmissible and adjourned the remainder.

6. By a decision of 13 March 2003, the Court declared the remainder of the application partly admissible.

7. On 23 May 2003 the applicant filed an objection challenging the representative power of the Government's agent on the basis of alleged deficiencies in domestic regulations. The Court rejected that objection.

8. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1971 and lives in Plovdiv.

A. The applicant's detention pending trial and his appeals against detention

10. On 27 December 1997 the applicant was arrested, brought before an investigator and detained on rape charges. A prosecutor confirmed the detention on the same day. Later in the course of the investigation he was also charged with abduction.

11. Between 27 December 1997 and 5 January 1998 the investigator conducted searches in the applicant's apartment, ordered an expert analysis of various traces and objects and questioned the applicant.

12. On 5 January 1998 the applicant appealed to the Plovdiv District Court against the detention order.

13. In accordance with the established practice, the appeal was submitted through the investigation authorities, which transmitted it to the District Court on 15 January 1998. The matter was listed for a hearing on 19 January 1998.

14. On 19 January 1998 the applicant's lawyer requested access to the case file, which was refused by the judge on the same day.

15. At the hearing on 19 January 1998 the applicant's lawyer requested the withdrawal of the president of the bench as she had recently sought his prosecution for alleged defamatory statements. The lawyer was concerned that the judge's hostility towards him might prejudice his client's interests. The request for the judge's withdrawal was granted and the case adjourned.

16. On 21 January 1998 the case was assigned to another bench and listed for hearing on 23 January 1998.

17. On 21 January 1998 the applicant's lawyer reiterated his request for access to the case file. The request was refused on the same day.

18. The applicant's appeal against his detention was eventually heard on 23 January 1998.

19. At the opening of the hearing the judge refused to allow the participation of the applicant's lawyer, considering that his written authority form was invalid. The judge stated that the authority had only been signed by the applicant's wife and not by the applicant, that it bore no indication of the lawyer's fees and that it had not been made on a sheet from the usual lawyers' receipt-books.

20. Thereupon, the applicant, who was also present, handed to the judge another written authorisation, signed by him. The court refused to accept it as the case file number had not been marked on it. As a result, the applicant had to present his case without legal representation.

21. Having heard the applicant, the court dismissed his appeal against detention, stating that he was charged with a serious criminal offence. The court went on to conclude that the fact that the applicant had refused to sign the minutes of his first interrogations and to comment on the charges right away had demonstrated that he lacked critical judgment of his behaviour, which in turn revealed a danger that he would abscond and re-offend.

22. On 13 April 1998 the applicant filed a new appeal against detention, referring to passages in a psychiatrists' report concerning his mental state (see paragraph 41 below). On 13 April 1998 the applicant also filed a request for the replacement of the president of the bench, arguing that his partiality had been demonstrated by his behaviour at the hearing on 23 January 1998. The lawyer did not enclose a power of attorney and did not indicate his address and telephone number.

23. On 27 April 1998 the appeal was forwarded by the prosecution authorities to the District Court, where it was registered on 6 May 1998. A hearing was listed for 11 May 1998. The applicant, but not his lawyer, was summoned.

24. At the hearing on 11 May 1998 the applicant requested an adjournment as his lawyer was not present. The District Court, sitting in a new composition, noted that the applicant's lawyer had not been summoned as he had not indicated his address. It nevertheless decided to adjourn the case in view of the applicant's request. A second hearing was listed for 21 May 1998.

25. On 12 May 1998 the applicant's lawyer requested to be given access to the case file.

26. On 21 May 1998 the Plovdiv District Court heard the prosecutor, the applicant and two lawyers acting for him. The District Court dismissed the lawyers' request for an adjournment to allow consultation of the case file, referring to "the practice" and endorsing the prosecutor's view that it was for the investigator to decide what material should be provided to lawyers.

27. As to the merits, the applicant argued that his health was unstable, that the conditions of detention were unacceptable and that he had to help his parents, one of whom was ill, in their seasonal agricultural work.

28. The District Court dismissed the applicant's appeal against detention noting the psychiatrists' conclusion that the applicant was mentally healthy and that other relatives had been taking care of the applicant's sick mother. The court also had regard to the fact that the charges concerned a serious offence, allegedly committed during the operational period of the applicant's suspended sentence for a previous conviction, and concluded that there was a danger that he might obstruct the course of justice and re-offend. As to the conditions of the applicant's detention, the court stated that a transfer to another detention facility could be recommended.

29. On 8 June 1998, before completing the investigation, the investigator gave the applicant and his lawyer access to all the material in the case. On 11 June 1998 the investigator drew up a report proposing that the applicant be indicted.

30. The indictment on charges of rape and abduction was prepared by a prosecutor and submitted to the District Court on 28 July 1998.

31. At the first hearing, held on 1 October 1998, the District Court examined the applicant's renewed appeal against his detention and dismissed it, noting that he was charged with a serious wilful offence which required his remand in custody and that, in any event, the charges concerned an offence allegedly committed during the operational period of the applicant's previous suspended sentence for another offence. This latter fact left no doubt that there was a danger that the applicant would commit further offences. Finally, the court also endorsed the prosecutor's position that there was a reasonable suspicion against the applicant and that the fact that the charges concerned a violent offence should be taken into account.

32. At the hearing held on 23 November 1998 the applicant submitted another application for release on the grounds that his detention was unreasonably long, that the court failed to conduct a prompt trial and that there was no convincing evidence against him. Ms D., the victim, stated that she feared that if released the applicant may hurt her. She had learned that the applicant's parents had been asking others about her new address. The court ruled against the applicant's release. It noted that under the relevant law remand in custody was required in all cases where the charges concerned serious offences. It further stated that there was a danger that the applicant would obstruct the course of justice in view of the fact that he had been charged with more than one offence and that he had a criminal record. Therefore, the applicant's statements about his good character and family circumstances did not warrant release.

33. On 18 December 1998 the Plovdiv District Court found the applicant guilty of rape, sentenced him to two years' imprisonment and acquitted him

of the charges of abduction. On 30 April 1999 the Plovdiv Regional Court upheld the conviction and sentence.

B. Correspondence in 1998 between the courts and the Bar Association in Plovdiv regarding access to case files

34. The applicant produced copies of correspondence in January and March 1998 from the presidents of the Plovdiv District Court and of the Plovdiv Regional Court to the local Bar Association, apparently in reaction to complaints made by lawyers about an existing practice of barring access to case files in cases concerning appeals against pre-trial detention.

35. The president of the District Court acknowledged that the complaints were well-founded and stated, *inter alia*, that, "[r]egrettably, District Court judges rely on the hitherto prevailing practice and do not share my opinion ..."

36. The president of the Regional Court informed the Bar Association that the matter had been discussed at length and that the judges had agreed that, contrary to the opinion of the Chief Public Prosecutor's Office and the Regional Prosecutor's Office in Plovdiv, there were no legal grounds for refusing access to case files in appeals against detention proceedings.

C. Conditions of the applicant's detention

37. Between 25 December 1997 and 16 June 1998 the applicant was kept in a lock-up at the Regional Investigation Office in Plovdiv.

38. The cell, where the applicant was detained together with three other people, measured 3 x 3.5m (a surface of 10.5 m^2). Since there were no beds, the detainees slept on mattresses on the floor. According to the applicant, the blankets were not washed regularly. The Government disputed that allegation. The cell did not have access to daylight and was equipped with a 100W electric lamp. There was a ventilation system. According to the applicant the ventilation system was only installed "in 1998". He also submitted that in winter the temperature in his cell did not rise above 10-12 C^o. According to the Government, the cell was centrally heated and the temperature therein was normal.

39. The applicant and the other detainees were allowed to leave the cell twice a day, at 6.30 a.m. and 6.30 p.m., for toilet purposes and washing. To relieve themselves outside the time earmarked for toilet visits, the detainees had to use a bucket. They had to empty the bucket and clean it themselves when leaving the cell to use the sanitary facilities. They were provided with detergents. Once per week the buckets were disinfected chemically. No possibility for spending time in the open or physical exercise was provided. The detainees could also leave the cell when they received visits or were

brought for questioning or taken to court. They showered once per week in winter and twice per week in summer. Apparently hot water was available.

40. Food was provided three times per day in the cell. It was served in pots or mugs which the detainees had to wash after every meal and which were collected and disinfected periodically. For security reasons, no forks or knives were provided. According to the applicant, the food was of bad quality. The Government stated that meat was available at least once per day.

41. In April 1998 psychiatry experts who had examined the applicant with a view to verifying his legal capacity to stand trial submitted their report. They noted that a year or two earlier the applicant had undergone periods of depression and violent or inadequate behaviour. He had been admitted for a day to a psychiatric hospital on suspicion of suffering from paranoid schizophrenia. However, the experts concluded that the applicant's mental condition was sound.

42. On 16 June 1998 the applicant was transferred to the Plovdiv prison where the conditions were better.

D. Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT")

43. The CPT visited Bulgaria in 1995 and again in 1999 and 2003. The Plovdiv Investigation Service detention facility was visited in 1999 and 2003. All reports included general observations about problems in all Investigation Service facilities.

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

44. In this report 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 better, the conditions were as follows: detainees slept on mattresses on sleeping platforms on the floor; hygiene was poor and blankets and pillows were dirty; cells did not have access to natural light, the artificial lighting was too weak to read by and was left on permanently; ventilation systems were in poor condition; detainees could use a toilet and washbasin 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 the cell bucket; although according to the establishments' internal regulations detainees were entitled to a "daily walk" of up to thirty minutes, it was often reduced to 5-10 minutes or not allowed at all; no other form of out-of-cell activity was provided to persons detained.

45. The CPT further noted that food was of poor quality and in insufficient quantity. In particular, the day's "hot meal" generally consisted

of a watery soup (often lukewarm) and inadequate quantities of bread. At the other meals, detainees only received bread and a little cheese or khalva. Meat and fruit were rarely included on the menu. Detainees had to eat from bowls without cutlery - not even a spoon was provided.

46. The CPT also noted that family visits were only possible with permission and that as a result detainees' contact with the outside world was very limited. There was no radio or television.

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

48. In 1995 the CPT recommended to the Bulgarian authorities, *inter alia*, that sufficient food and drink and safe eating utensils be provided, that mattresses and blankets be cleaned regularly, that detainees be provided with personal hygiene products (soap, toothpaste, etc), that custodial staff be instructed that detainees should be allowed to leave their cells during the day for the purpose of using a toilet facility unless overriding security considerations required otherwise, that the regulation providing for 30 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 should be more often transferred to prison even before the preliminary investigation was completed. The possibility of offering detainees outdoor exercise was to be examined as a matter of urgency.

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

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

50. In most places visited in 1999 (with the exception of a newly opened detention facility in Sofia), the conditions of detention in Investigation Service premises had remained generally the same as those observed during the CPT's 1995 visit, including as regards hygiene, overcrowding and out-of-cell activities. In some places the situation had even deteriorated.

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

52. In the same detention facility medical supervision was provided by a medical doctor on the premises.

3. Relevant findings of the 2003 report (made public in 2004)

53. The CPT noted that most investigation detention facilities were undergoing renovation but that a lot remained to be done. The cells remained generally overcrowded.

54. In Plovdiv, only a third of the cells had benefited from a refurbishment which involved making windows in the cell doors, improving the artificial lighting and installing wash basins in the cells. However, the majority of the cells remained in the same inadequate condition as in 1999. The sanitary facilities were not in a satisfactory state of repair.

55. Despite the CPT's recommendations in the report on their 1999 visit, no proper regime of activities had been developed for detainees spending long periods in the investigation detention facilities. Those facilities did not have areas for outdoor exercise. At some of the establishments (e.g. Botevgrad), attempts were being made to compensate for the lack of outdoor exercise facilities by allowing detainees to stroll in the corridor several times a day. The CPT stated that "in this respect, the situation remain[ed] of serious concern".

II. RELEVANT DOMESTIC LAW

56. Article 69 § 2 of the Code of Criminal Procedure provides that a power of attorney shall be prepared in writing and signed by the defendant and his legal counsel.

57. The relevant provisions of the Code of Criminal Procedure concerning the powers and functions of investigators and prosecutors are summarised in the Court's judgment in the case of *Nikolova v. Bulgaria* ([GC], no. 31195/96, §§ 25-29, ECHR 1999-II).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

58. The applicant complained under Article 3 of the Convention of the conditions of his detention until 16 June 1998. Article 3 provides:

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

A. The parties' submissions

59. The applicant stated that at the relevant time he had been suffering from a psychiatric problem, as established by the psychiatric experts who had examined him for the purposes of the criminal proceedings against him. Despite that fact he had been detained in the appalling conditions of the detention facility of the Plovdiv Investigation Service without psychiatric treatment.

60. The applicant also submitted copies of newspaper articles according to which various officials had admitted that the conditions in the Plovdiv Investigation Service detention facility had been designed to torture the detainees and bring pressure to bear on them. The applicant also referred to the 1995 report of the CPT on their visit to Bulgaria in which the conditions obtaining in similar detention facilities were described as inhuman and degrading.

61. The Government disputed some of the applicant's allegations about the material conditions of his detention and stated that the complaint under Article 3 of the Convention was ill-founded.

B. The Court's assessment

1. *General principles*

62. 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, among other authorities, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

63. The Court has considered treatment 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, for example, *Kudla v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI). In considering whether a particular form of treatment is “degrading” within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see, for example, *Raninen v. Finland*, judgment of 16 December 1997, *Reports of Judgments and Decisions*, 1997-VIII,

pp. 2821-22, § 55, and *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III).

64. 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 on remand in itself raises an issue under Article 3 of the Convention. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured. When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions and the duration of the detention (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II and *Kalashnikov v. Russia*, no. 47095/99, § 102, ECHR 2002-VI).

65. An important factor, along with the material conditions, is the detention regime. In assessing whether a restrictive regime may amount to treatment contrary to Article 3 in a given case, regard must be had to the particular conditions, the stringency of the regime, its duration, the objective pursued and its effects on the person concerned (see *Messina v. Italy* (dec.), no. 25498/94, ECHR 1999-V, *Van der Ven v. the Netherlands*, no. 50901/99, § 51, ECHR 2003-II and *Iorgov v. Bulgaria*, no. 40653/98, §§ 83-87, 11 March 2004).

2. Application of these principles to the present case

66. Since the applicant was detained in the premises of the Plovdiv Investigation Service between 25 December 1997 and 16 June 1998, the findings of the CPT, in particular, in their 1995 and 1999 reports, provide a reliable basis for the assessment of the conditions in which he was imprisoned. The Court notes in this respect that the CPT described the conditions in many investigation detention facilities as inhuman and degrading (see paragraphs 37 and 43-55 above).

67. The applicant was detained in a cell of 10.5 square metres occupied by four detainees. As no possibility for outdoor or out-of-cell activities was provided, he had to spend in the cell – which had no window and was illuminated by a single electrical bulb – practically all his time, except for two short visits per day to the sanitary facilities (see paragraphs 38-40 above).

68. The applicant was 26 years old at the time and was apparently physically healthy. As to his mental condition, the Court is unable to arrive at safe conclusions. The authorities were aware that he had been admitted to a psychiatric hospital a year or two earlier. While the psychiatrists who

examined him in April 1998 found that he was mentally healthy, their conclusion only concerned the applicant's legal capacity to stand trial (see paragraph 41 above). On the other hand, the applicant has not shown that he had been in need of psychiatric help while in detention and that such help had been denied.

69. At all events, the Court considers that the fact that the applicant had to spent practically 24 hours per day during nearly six months in an overcrowded cell without exposure to natural light and without any possibility for physical and other out-of-cell activities must have been detrimental to his health and must have caused intense suffering. Indeed, in May 1998 the Plovdiv District Court, having heard the applicant's request to be released in view of, *inter alia*, the unacceptable conditions, recommended his transfer to another detention facility (see paragraphs 26-28 above).

70. While the Court does not accept the applicant's contention that the detention conditions were intended to degrade or humiliate him, there is little doubt that certain aspects of the stringent regime could be seen as humiliating.

71. In particular, subjecting a detainee to the humiliation of having to relieve himself in a bucket in the presence of other inmates can have no justification, except in specific situations where allowing visits to the sanitary facilities would pose a concrete and serious safety risk. However, no security risks were invoked by the Government as grounds for the restrictive regime to which the applicant was subjected at the premises of the Plovdiv Investigation Service.

72. The Court also considers that in the absence of compelling security considerations there was no justification for depriving the applicant from any possibility of out-of-cell activity and physical exercise for nearly six months.

73. While the Court does not underestimate the financial difficulties invoked by the Government before the CPT, it observes that a number of improvements recommended by the CPT did not require significant resources but were not implemented (see paragraphs 47, 48, 50, 51, 54 and 55 above).

74. Having regard to the cumulative effects of the unjustified stringent regime to which the applicant was subjected, the material conditions in the cell and the time spent therein, the Court considers that the hardship he endured exceeded the unavoidable level inherent in detention and finds that the resulting suffering went beyond the threshold of severity under Article 3 of the Convention.

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

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

76. The applicant complained that upon his arrest he had not been brought before a judge or other officer authorised by law to exercise judicial power within the meaning of Article 5 § 3 of the Convention, which provides, in so far as relevant:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power..."

77. The Government stated that at the relevant time legal professionals and scholars in Bulgaria believed that the investigators and prosecutors, before whom arrested persons were brought, could be regarded as "officer[s] authorised by law to exercise judicial power" despite their participation in the prosecution of the detainee. That opinion changed after the Court's *Assenov and Others v. Bulgaria* judgment (28 October 1998, *Reports* 1998-VIII) and the system was reformed as from 1 January 2000.

78. In cases which concerned the system of detention pending trial as it existed in Bulgaria until 1 January 2000, the Court found that neither investigators before whom accused persons were brought, nor prosecutors who approved detention orders, could be considered to be "officer[s] authorised by law to exercise judicial power" within the meaning of Article 5 § 3 of the Convention (see *Assenov and Others v. Bulgaria,* cited above, *Nikolova v. Bulgaria*, cited above, and *Shishkov v. Bulgaria*, no. 38822/97, ECHR 2003-I (extracts).

79. The present case also concerns detention pending trial before 1 January 2000. Upon his arrest the applicant was brought before an investigator who did not have power to make a binding decision to detain him. In any event, neither the investigator nor the prosecutor who confirmed the detention were sufficiently independent and impartial for the purposes of Article 5 § 3, in view of the practical role they played in the prosecution and their potential participation as a party to the criminal proceedings (see paragraphs 10 and 48 above). The Court refers to its analysis of the relevant domestic law contained in its *Nikolova* judgment (see paragraphs 28, 29 and 45-53 of that judgment).

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

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

81. The applicant complained that his lawyer had been refused access to the case file and on one occasion had not been allowed to represent him. He further maintained that the courts had examined his appeals against

detention with substantial delays and that the District Court's review of the lawfulness of his detention had been purely formal. 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."

82. The Court observes that at the relevant time it was the Plovdiv District Court's prevailing practice to refuse access to case files in appeals against pre-trial detention (see paragraphs 34-36 above). In the case of *Shishkov v. Bulgaria*, cited above, § 77-81, the Court found a violation of Article 5 § 4 on account of that practice.

83. The Government submitted that the applicant's lawyer had been regularly informed by the investigator about all procedural steps and had had full knowledge of the relevant material. The applicant replied that he had been refused access to the case file and that as a result the material pertaining to the investigation carried out between 27 December 1997 and 5 January 1998 had remained inaccessible despite the fact that it contained relevant information about the existence of a reasonable suspicion against the applicant.

84. A court examining an appeal against detention must provide guarantees of a judicial procedure. The proceedings must be adversarial and must always ensure "equality of arms" between the parties, the prosecutor and the detained person. Equality of arms is not ensured if counsel is denied access to those documents in the investigation file which are essential in order effectively to challenge the lawfulness, in the sense of the Convention, of his client's detention (see, among other authorities, *Lamy v. Belgium*, judgment of 30 March 1989, Series A no. 151, pp. 16-17, § 29, *Nikolova v. Bulgaria,* cited above, § 58, and *Garcia Alva v. Germany*, no. 23541/94, §§ 39-43, 13 February 2001, unreported).

85. In the present case, on 19 and 21 January and 21 May 1998 the requests of the applicant's lawyer to consult the case file were refused (see paragraphs 14-17, 25 and 26 above). The applicant's lawyer was thus unable to study any of the documents that were essential for determining the lawfulness of his client's detention (see paragraph 11 above). At the same time the prosecutor, who supervised the investigation, had confirmed the detention order of 27 December 1997 and opposed the appeal against it, had the advantage of full knowledge of the file. The resulting situation was incompatible with the equality-of-arms requirement of Article 5 § 4 of the Convention.

86. The Court also notes that at the hearing on the applicant's appeal against his detention on 23 January 1998 his lawyer was prevented from representing him although he had handed to the judge a written authorisation form signed by the applicant in the courtroom, in the judge's presence (see paragraphs 19 and 20 above). The alleged defect in that

document – that the case number had not been indicated thereon – was of such a minor nature that it could not possibly justify, under the relevant domestic law (see paragraph 56 above) and the principles underlying Article 5 of the Convention, a decision to deprive the applicant of the benefit of legal representation. In particular, the judge could have asked the applicant whether or not the authorisation form concerned the case under examination.

87. The Court finds, therefore, that there has been a violation of Article 5 § 4 of the Convention in that the applicant's lawyer was refused access to the case file on 19 and 21 January and 21 May 1998 and was prevented from representing him on 23 January 1998.

88. In view of this finding the Court does not consider it necessary to examine whether there have been further violations of Article 5 § 4 of the Convention in the same proceedings.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. 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

90. The applicant claimed EUR 7,000 in non-pecuniary damages for the violations of his rights under Articles 3 and 5 §§ 3 and 4 of the Convention. The Government stated that the claim was excessive.

91. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of his detention for approximately six months in conditions which were inhuman and degrading and, also, as a consequence of the violation of his rights under Article 5 § 4 of the Convention. Having regard to the specific circumstances of the present case and deciding on an equitable basis, the Court awards EUR 2,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

92. The applicant claimed EUR 3,850 for 77 hours of legal work in the domestic proceedings and the proceedings before the Court at the hourly rate of EUR 50. In addition, he claimed EUR 511 for the translation of 71 pages and for postal and overhead expenses. He submitted a legal fees agreement between him and his lawyer, a time sheet and postal receipts. The

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

93. The Government stated that the legal work claimed to have been done would normally require half of the time allegedly spent on it by the applicant's lawyer. Also, the claim for translation costs was not supported by documents.

94. The Court considers that the number of hours allegedly spent by the applicant's lawyer on the case is excessive. A reduction is also appropriate on account of the fact that some of the initial complaints were declared inadmissible (see paragraphs 5 and 6 above). The claim in respect of translation costs must be rejected as it has not been supported by copies of relevant documents.

95. Having regard to the above and taking into account EUR 635 paid in legal aid from the Council of Europe, the Court awards EUR 1,500 in respect of costs and expenses, plus any tax that may be chargeable on that amount.

C. Default interest

96. 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;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
4. *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 2,000 (two thousand euros) in respect of non-pecuniary damage, payable to the applicant himself;

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

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

   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 18 January 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President