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

FIFTH SECTION

CASE OF KOSTADINOV v. BULGARIA

(Application no. 55712/00)

JUDGMENT

STRASBOURG

7 February 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 Kostadinov v. Bulgaria,

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

Peer Lorenzen, *President,*
Snejana Botoucharova,
Volodymyr Butkevych,
Margarita Tsatsa-Nikolovska,
Rait Maruste,
Javier Borrego Borrego,
Renate Jaeger, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 15 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 55712/00) 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 Stefan Lazarov Kostadinov ("the applicant") who was born in 1976 and lives in Pazardzhik, on 12 October 1999.

2. The applicant was represented by Mrs V. Kelcheva and Mr V. Stoyanov, lawyers 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 detained in the Pazardzhik Regional Investigation Service detention facility and the Pazardzhik Prison; that his detention had been unjustified and of excessive length; that in response to his application for release of 29 March 1999 the domestic courts had not examined all the factors relevant to the lawfulness of his detention and that his applications for release of 29 March and 1 July 1999 had not been decided speedily; and 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.

5. In a decision of 22 May 2006 the Court declared the application partly admissible and invited the parties to submit additional observations in writing which should cover, in particular, the question of whether the applicant was detained at the Pazardzhik Prison in inadequate conditions.

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 and his detention in the context of those proceedings

7. On 18 January 1999 a preliminary investigation was opened against the applicant for robbery. On the same day, the applicant was charged with the offence and remanded in custody upon a decision of an investigator which was confirmed by the public prosecutor's office. It was alleged that the applicant, together with another individual, had robbed an individual of 17,480,000 old Bulgarian levs (BGL; approximately 8,964 euros (EUR)) and in the process had used force and rendered the victim unconscious. In ordering that the applicant be remanded in custody the investigator referred to, *inter alia*, the personality of the detainee, the gravity of the offence and, in general terms, the likelihood that he might abscond or re-offend.

8. The applicant filed an application for release on 27 January 1999, which was dismissed by the Pazardzhik District Court on 3 February 1999. The court found, *inter alia*, that the applicant was charged with a serious intentional offence, which warranted mandatory detention, and that it was likely that he might commit offences against some of the witnesses, thereby obstructing the investigation. In conclusion, no evidence warranting an exception to the requirement of mandatory detention was found to exist.

9. On 1 March 1999 the applicant filed another application for release arguing, *inter alia*, that in the course of the preliminary investigation it had been established that the amount which he had allegedly taken from the victim had been only BGL 5,000,000 (approximately EUR 2,564) because the latter had been robbed on more than one occasion on the day in question.

10. The applicant's application for release was dismissed by the District Court on 15 March 1999, which found, *inter alia*, that the applicant was charged with a serious intentional offence, which warranted mandatory detention, that he might obstruct the investigation and that due to his lack of income he was likely to re-offend. In conclusion, no evidence warranting an exception to the requirement of mandatory detention was found to exist.

11. On 29 March 1999 the applicant filed his third application for release claiming, *inter alia*, that there was no evidence that he would abscond, re-offend or obstruct the investigation, that he suffered from jaundice and that his health was deteriorating as a result of his detention.

12. The applicant's application for release was dismissed by the District Court on 23 April 1999, which found, *inter alia*, that the applicant had been

charged with a serious intentional offence, which warranted mandatory detention, that he was in good health and that there were indications that he might commit offences against some of the witnesses, thereby obstructing the investigation. In conclusion, no evidence was established to exist warranting an exception to the requirement of mandatory detention.

13. The applicant contended that the charges against him were amended on 9 June 1999, which the Government did not challenge.

14. The preliminary investigation against the applicant was partially terminated on 30 June 1999. The only outstanding charge against him concerned common robbery of BGL 17,480,000 (approximately EUR 8,964).

15. The applicant filed his fourth application for release on 1 July 1999, which was examined by the District Court on 27 July 1999. The court found in favour of the applicant and released him on bail of 200 new Bulgarian levs (approximately EUR 102). It found, *inter alia*, that the applicant had no criminal record and had good character references, and that the preliminary investigation had already been completed.

16. The applicant was released on the same day, 27 July 1999.

17. The preliminary investigation against the applicant was further partially terminated on 8 October 1999 as a result of its findings pertaining to the amount and currency of the stolen money. The only outstanding charge against the applicant concerned common robbery of 5,000 German marks (approximately EUR 2,564).

18. An indictment against the applicant was filed with the District Court on an undetermined date.

19. In a judgment of an unspecified date the District Court acquitted the applicant. That judgment was subsequently upheld, also on an unspecified date, by the Pazardzhik Regional Court.

B. The conditions of detention

20. Between 18 January and 1 July 1999 the applicant was detained at the Pazardzhik Regional Investigation Service detention facility. From 1 July to 27 July 1999 he was detained at the Pazardzhik Prison.

21. The applicant contended, in respect of both detention facilities, that there had been (a) insufficient oxygen in the cells; (b) inadequate hygiene, the use of a bucket for the sanitary needs of the detainees and the presence of parasites (fleas and wood worms), skin infections (scabies) and rodents (mice and rats); (c) insufficient natural light; (d) no special recreational area; (e) unhealthy food; (f) no access to literature, newspapers, magazines, radio or television; (g) no possibility for the applicant to meet with his attorney in private at his initiative; and (h) no possibility to maintain active correspondence.

22. The applicant's contentions in respect of the conditions of detention at the above facilities are corroborated by the signed declarations of two other detainees, Mr D. Alexov and Mr R. Dobrev.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Grounds for detention

23. The relevant provisions of the Code of Criminal Procedure ("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)).

B. Scope of judicial control on pre-trial detention

24. 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).

C. State and Municipalities Responsibility for Damage Act 1988

25. 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 organs of the investigation, the prosecution and the courts for unlawful pre-trial detention, if the detention order has been set aside for lack of lawful grounds (sections 1-2).

26. In respect of the regime of detention and conditions of detention, the relevant domestic law and practice under sections 1 and 2 of the SMRDA has been summarised in the cases of *Iovchev v. Bulgaria* (no. 41211/98,

§§ 76-80, 2 February 2006) and *Hamanov v. Bulgaria* (no. 44062/98, §§ 56-60, 8 April 2004).

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

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

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

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

1. General observations

29. 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.

30. 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.

31. 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.

32. 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.

33. 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

34. 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.

35. 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

36. 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)

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

38. 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.

39. In the Plovdiv Regional Investigation Service 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)

40. During the 2002 visit some improvements were noted in the country's investigation service 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.

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

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

42. The applicant complained under Article 3 of the Convention that he had been subjected to inhuman or degrading treatment while detained at the Pazardzhik Regional Investigation Service detention facility and the Pazardzhik Prison.

Article 3 of the Convention provides:

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

43. The Government did not submit observations on the admissibility and merits of the applicant's complaints.

44. The applicant restated his complaints and relied on the findings of the CPT to corroborate his contentions. In respect of the conditions at the Pazardzhik Prison he also referred to the findings of the Bulgarian Helsinki Committee in its annual reports of 2001, 2004 and 2005, where they had

allegedly deemed the conditions of detention at this facility to have been inadequate. In particular, the 2001 report detailed that there was overcrowding and insufficient access to sanitary facilities as there was only one toilet per thirty to forty prisoners. The applicant also alleged that during the period of his detention in the Pazardzhik Prison he had not been allowed any visitors and had had a daily walk of only an hour and that the food had been insufficient and of substandard quality. In spite of being held at this facility for just a month he argued that the minimum level of severity had been attained and that there had therefore been a violation of Article 3 of the Convention on that account.

A. Establishment of the facts

45. 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).

46. 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.

47. The Court observes that the applicant did provide signed declarations by two other detainees at the detention facilities in question (see paragraph 22 above), but as both of these individuals have had cases before the Court with identical complaints (*Alexov v. Bulgaria* (dec.), no. 54578/00, 22 May 2006 and *Dobrev v. Bulgaria*, no. 55389/00, 10 August 2006), considers that their statements should not be considered objective and should not therefore be given any particular weight.

48. 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).

49. 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 43 above). Moreover, they did not offer a convincing explanation for their failure to

submit relevant information regarding the two detention facilities when invited to do so after the admissibility decision (see *Fedotov*, cited above, § 61).

50. 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).

51. While not directly relevant, because the CPT visited the Pazardzhik Regional Investigation Service detention facility and the Pazardzhik Prison four years before the period of detention complained of by the applicant (see paragraphs 20 and 28 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 decision (see paragraphs 27-41 above and, for a similar approach, *Iovchev*, § 130 and *Staykov*, §§ 75 and 79, both cited above).

B. General principles

52. 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).

53. 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).

54. 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).

55. 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).

56. 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).

57. 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).

C. Application of these principles to the present case

1. Pazardzhik Regional Investigation Service detention facility

58. The Court observes that the applicant was detained on the premises of the Pazardzhik Regional Investigation Service detention facility between 18 January and 1 July 1999, a period of five months and eighteen days.

59. The Court notes that the applicant did not expressly complain of the size of his cell and of overcrowding, but did contend that the cell had lacked sufficient oxygen and natural light.

60. The Court further notes that the applicant contended that the material conditions in the cell had been unsatisfactory, that hygiene had been inadequate and that there had been parasites (fleas and wood worms), skin infections (scabies) and rodents (mice and rats).

61. The applicant further argued that the sanitary facilities had been inadequate and that he had had to use of a bucket for his sanitary needs. 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 and *I.I. v. Bulgaria*, § 75, *Kalashnikov*,

§ 99 and *Kehayov*, § 71, all 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.

62. The applicant also contended that there had been no special recreational area that could be used. The Court considers that as no possibility for outdoor or out-of-cell activities was provided, the applicant had to spend in his cell – which was situated in the basement – practically all of his time (see *Peers*, § 75 and *I.I. v. Bulgaria*, § 74, both cited above). The Court considers that the fact that the applicant was confined for practically twenty-four hours a day during more than five months to his cell without exposure to natural light and without any possibility for physical and other out-of-cell activities must have caused him considerable suffering. The Court is of the view that in the absence of compelling security considerations there was no justification for subjecting the applicant to such limitations. In so far as the Government failed to submit observations on the admissibility and merits of this complaint, no such considerations have been put forward for assessment by the Court.

63. The applicant further contended that the food provided had been unhealthy.

64. He also claimed that he had not been allowed to read books, newspapers or magazines, to listen to the radio, to watch television and to maintain active correspondence. Accordingly, his access to and knowledge of the outside world had been substantially restricted.

65. 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.

66. 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.

67. In conclusion, having regard to the cumulative effects of the unjustifiably stringent regime to which the applicant was subjected and the material conditions in which he was kept, 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.

68. 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.

2. Pazardzhik Prison

69. The Court observes that the applicant was detained on the premises of the Pazardzhik Prison between 1 July and 27 July 1999, a period of twenty-six days.

70. The applicant contended that the conditions of detention at the Pazardzhik Prison had been the same as those in the Pazardzhik Regional Investigation Service detention facility. Accordingly, the analyses undertaken in respect of the conditions of detention at the Pazardzhik Regional Investigation Service detention facility apply, as relevant, to the Pazardzhik Prison. In his submissions on the merits the applicant also stressed that there had been overcrowding, insufficient access to sanitary facilities, that he had not been allowed any visitors, had had a daily exercise walk of an hour and that the food had been insufficient and of substandard quality.

71. Similar to its findings in respect of the Pazardzhik Regional Investigation Service detention facility, the Court considers that the distress and hardship endured by the applicant exceeded the unavoidable level of suffering inherent in detention. In addition, taking into account that the applicant was transferred to this detention facility after being held for more than five months at the Pazardzhik Regional Investigation Service detention facility in inadequate conditions of detention and despite the relatively short period of detention at this facility, the Court considers that the anguish resulting from the adverse conditions of detention at the Pazardzhik Prison went beyond the threshold of severity under Article 3 of the Convention.

72. Thus, there has been a violation of Article 3 of the Convention on account of the applicant's detention at the Pazardzhik Prison.

II. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

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

> "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."

74. The applicant also complained under Article 13 of the Convention that he had not had at his disposal effective domestic remedies for his Convention complaints. In the admissibility decision of 22 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

75. The applicant complained under Article 5 § 3 of the Convention that his detention had been unjustified and of excessive length.

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

77. The Court observes that the applicant was in pre-trial detention from 18 January 1999 to 27 July 1999, a period of six months and seven days.

78. 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, primarily relied 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, re-offend or obstruct the investigation.

79. The Court recognises that the majority of length-of-detention cases that have come before it concern longer periods of deprivation of liberty and that against that background six months and seven days may be regarded as a relatively short period in detention. However, Article 5 § 3 of the Convention cannot be seen as authorising pre-trial detention unconditionally provided that it lasts no longer than a certain minimum period. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov*, cited above, § 66). That does not seem to have happened in the present case.

80. 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 in respect of the applicant's applications for release of 29 March and 1 July 1999

81. The applicant complained under Article 5 § 4 of the Convention that in response to his application for release of 29 March 1999 the domestic courts had not examined all factors relevant to the lawfulness of his

detention and that his applications for release of 29 March and 1 July 1999 had been decided in violation of the requirement for a speedy decision.

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

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

1. The applicant's application for release of 29 March 1999

84. In the present case, when examining the applicant's application for release of 29 March 1999, the District Court in its decision of 23 April 1999 relied on the statutory provisions requiring mandatory detention for serious intentional offences (Article 152 §§ 1 and 2 of the Code of Criminal Procedure), and the Supreme Court's practice, which excluded any examination of the question whether there was a "reasonable suspicion" against the detainee and of facts concerning the likelihood of flight or re-offending (see paragraph 12 above). Under that practice, release was only possible if there was conclusive evidence of exceptional factors, such as illness, which would exclude any possibility of the detainee absconding or committing crimes. Only such evidence would be considered by the courts.

85. Accordingly, the Court finds that the District Court, in its decision of 23 April 1999, 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.

86. In view of the above finding, the Court does not deem it necessary to enquire whether the judicial review in response to the applicant's application for release was provided speedily (see, *mutatis mutandis*, *Nikolova*, § 65, and *Ilijkov*, § 106, both cited above).

2. The applicant's application for release of 1 July 1999

87. The Court reiterates that Article 5 § 4 also guarantees the right to a speedy judicial decision concerning the lawfulness of detention (see *Rutten v. the Netherlands*, no. 32605/96, § 52, 24 July 2001).

88. In the present case, the District Court examined the applicant's application for release of 1 July 1999 within twenty-six days. The Court considers this period to be in breach of the requirement for a speedy decision under Article 5 § 4 of the Convention (see *Kadem v. Malta*, no. 55263/00, §§ 43-45, 9 January 2003, where the Court found a period of seventeen days to be too long, and *Rehbock v. Slovenia*, no. 29462/95, §§ 82-86, ECHR 2000-XII, where two periods of twenty-three days were considered excessive).

89. It follows that in respect of the applicant's application for release of 1 July 1999 there has been an interference with his right to a speedy judicial

decision concerning the lawfulness of his detention in breach of Article 5 § 4 of the Convention.

C. Complaint under Article 5 § 5 of the Convention

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

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

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

93. In so far as the Court has found that there have been violations of Article 5 §§ 3 and 4 of the Convention (see paragraphs 80, 86 and 89 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.

94. 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 25 and 26 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.

95. 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 25 and 26 above).

96. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

97. 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

98. The applicant claimed 5,000 euros (EUR) as compensation for each of the alleged infringements of his rights under the Convention. He referred to the size of awards in other similar cases against Bulgaria and claimed that the standard of living was constantly improving in the country, which required that awards be adapted accordingly.

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

100. The Court notes that the violations established fell under Articles 3 and 5 of the Convention (see paragraph 68, 72, 80, 86 and 89 above). It further notes the applicant's argument in respect of the alleged improvements in the standard of living in Bulgaria, which the Court finds unquantifiable on the basis of the information presented but at the same time relevant when determining its award under Article 41 of the Convention. In view of the above, the specific circumstances of the present case, its case-law in similar cases and deciding on an equitable basis, the Court awards EUR 5,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

101. The applicant also claimed EUR 4,600 for each of his lawyers for their work before the Court. He submitted legal fees agreements between him and each of his lawyers and time sheets detailing the work they had done. The applicant also requested that any award made in respect of costs and expenses incurred should be paid directly to his lawyers, Mrs V. Kelcheva and Mr V. Stoyanov.

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

103. 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. Having regard to all the relevant factors, the Court considers it reasonable to award EUR 2,000 in respect of costs and

expenses, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

104. 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 conditions of the applicant's detention at 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 conditions of the applicant's detention at the Pazardzhik Prison;

3. *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 on 23 April 1999;

4. *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 application for release of 29 March 1999;

5. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the applicant's application for release of 1 July 1999 not having been examined “speedily”;

6. *Holds* that there has been a violation of Article 5 § 5 of the Convention on account of the applicant not having had available an enforceable right to compensation for being a victim of arrest or detention in breach of the provisions of Article 5 of the Convention;

7. *Holds*
   (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 5,000 (five thousand euros) in respect of non-pecuniary damage, payable to the applicant himself;

(ii) EUR 2,000 (two thousand euros) in respect of costs and expenses, payable in two equal instalments of EUR 1,000 (one thousand euros) into the bank accounts of the applicants' lawyers in Bulgaria, Mrs V. Kelcheva and Mr V. Stoyanov;

(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;

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

Done in English, and notified in writing on 7 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Registrar	Peer Lorenzen President