FIFTH SECTION

CASE OF MALECHKOV v. BULGARIA

(Application no. 57830/00)

JUDGMENT

STRASBOURG

28 June 2007

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 Malechkov v. Bulgaria,

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

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

Having deliberated in private on 5 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 57830/00) 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 Ivan Stoyanov Malechkov ("the applicant"), who was born in 1966 and lives in Aleko Konstantinovo, on 7 January 2000.

2. The applicant was represented by Mr V. Stoyanov and Mrs V. Kelcheva, lawyers practising in Pazardzhik.

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

4. The applicant alleged a number of violations of his rights under Article 5 of the Convention and claimed that he had been subjected to inhuman and degrading treatment as a result of having been detained in allegedly inadequate conditions of detention at the Pazardzhik Regional Investigation Service and the Pazardzhik Prison.

5. On 20 May 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

6. The applicant was placed in preliminary detention on 3 July 1998 under an order of an investigator on the suspicion of having raped a minor on the previous day, 2 July 1998. The arrest was undertaken on the basis of a complaint filed by the victim whereby she had identified the applicant as one of the persons who had raped her. On the same day, the preliminary detention of the applicant was extended until 6 July 1998 by order of a prosecutor.

7. Based on the complaint filed by the victim and the evidence collected by the police, a preliminary investigation was opened against the applicant on 6 July 1998. On the same day, he was charged with aggravated rape of a defenceless minor perpetrated on two occasions on 2 July 1998 together with another two individuals. By virtue of the same order, confirmed by the Prosecutor's Office later in the day, the applicant was detained on remand. He was presented with the aforesaid order and countersigned it on the same day.

8. On 13 and 15 July 1998 the applicant filed appeals against his detention, which were examined and dismissed by the Pazardzhik Regional Court by decision of 20 July 1998. The court found that because the applicant was charged with a serious intentional offence there was a risk that he might abscond.

9. The charges against the applicant were amended on 14 May and 24 June 1999. On both occasions the detention on remand was maintained on the grounds of the applicant's personality and the seriousness of the offence.

10. On 28 June 1999 the preliminary investigation was concluded with a proposal that an indictment be filed against the accused.

11. The Pazardzhik Regional Prosecutor's Office amended the charges against the applicant on 29 June 1999.

12. The Pazardzhik Regional Prosecutor's Office entered an indictment against the applicant on 7 July 1999 charging him with being an accomplice to the rape of a minor using threats or force (Article 152 § 3 (1), in conjunction with § 2 (1) and § 1 (2) of the Bulgarian Criminal Code).

13. On an unspecified date the victim joined the proceedings as a civil claimant.

14. On 10 or 11 August 1999 the applicant appealed against his detention claiming, *inter alia*, that he had a permanent address and that the worsening financial situation of his family would preclude any possibility that he might abscond. With a resolution of 10 September 1999 the Pazardzhik District Court decreed that the appeal would be examined at the next court hearing.

15. At a hearing on 4 October 1999 the Pazardzhik District Court dismissed the applicant's appeal. It considered that there were no new circumstances following his previous appeal of July 1998, that he was still charged with a serious intentional offence and, therefore, that there was still a risk that he might abscond, attempt to intimidate the victim and the other witnesses, and obstruct the discovery process in the proceedings. The lack of employment of the applicant was considered a contributory element to the risk that he might abscond. The court did not consider the length of the detention to be a reason onto itself which might justify a reassessment of the justification of the applicant's deprivation of liberty.

16. On 10 November 1999, on appeal by the applicant of 6 October 1999, the Pazardzhik Regional Court upheld the lower court's decision on similar grounds.

17. On 6 December 1999 the applicant filed another appeal against his detention.

18. At the court hearing on the same day, the Pazardzhik District Court dismissed the appeal as it considered that the seriousness of the offence still inferred that he might abscond and re-offend. The court also considered that the length of the applicant's detention could not in itself warrant his release. At the end of the hearing, the court withdrew to deliver its judgment.

19. In a judgment of 7 December 1999 the Pazardzhik District Court found the applicant and his two accomplices guilty as charged. He was sentenced to seven years' imprisonment and ordered to pay damages to the victim.

20. The applicant appealed against the judgment on 4 January 2000 claiming that the imposed sentence was unjustified and unsupported by the evidence in the case.

21. The hearings of 16 and 30 May 2000 before the Pazardzhik Regional Court were postponed due to improper summons of the civil claimant.

22. The applicant's appeal was examined at the next hearing on 27 June 2000.

23. In a judgment of 27 September 2000 the applicant's appeal was dismissed by the Pazardzhik Regional Court. The applicant did not appeal further and the aforementioned judgment became final on 27 October 2000.

B. The conditions of the applicant's detention

24. The applicant was held at the Pazardzhik Regional Investigation Service from 3 July to 10 November 1998. He was then transferred to the Pazardzhik Prison where he remained until 11 January 2001 before being moved to the Sofia Prison. It is unclear when he was released.

1. Pazardzhik Regional Investigation Service

25. The applicant claimed, which the Government subsequently challenged, that at this detention facility (1) there had been insufficient fresh air and sunlight in the cells; (2) there had been no exercise or healthy food; (3) hygiene had been lacking; (4) he had been denied access to newspapers, books, radio and television; (5) he could not meet with his representative in private, and (6) he could not maintain an active correspondence. In support of his assertions, the applicant submitted signed declarations from himself and another detainee, Mr D.G.

26. In his declaration, the applicant claimed that he had been held in isolation for the duration of his detention at this facility in a cell which measured 6-7 sq. m. There had been two wooden beds covered with worn and torn mattresses, blankets and pillows. There had been fleas, cockroaches and mice.

There had been no windows and the only fresh air entering the cell had come from the corridor through a grate above the door. There had been only artificial light which had been constantly switched on.

The applicant had to satisfy the needs of nature in a bucket inside the cell, the contents of which were removed twice a day. He had access to sanitary facilities twice a day for three to five minutes during which time he had to throw out the bucket and pour himself drinking water in a dirty plastic bottle. The applicant bathed and shaved once a week with cold water.

The food had been insufficient and lacked any meat. The applicant received half a kilogram of bread every day. He had to eat without cutlery from dirty plastic dishes.

No exercise had been provided and he had not been allowed to read newspapers, magazines and books.

27. Mr D.G., in his declaration, corroborated the applicant's statements.

2. Pazardzhik Prison

28. The applicant claimed, which the Government subsequently challenged, that at this detention facility (1) there had been insufficient fresh air and sunlight in the cells; (2) there had been no exercise or healthy food; (3) hygiene had been lacking; (4) he had been denied access to newspapers, books, radio and television; (5) he could not meet with his representative in private, and (6) he could not maintain an active correspondence. The applicant also submitted signed declarations from himself and another detainee, Mr I.S.

29. In his declaration, the applicant stated that the conditions in the Pazardzhik Prison had initially been similar to those at the Pazardzhik Regional Investigation Service, but that they had improved in 1999. In addition and contrary to some of his complaints, he stated that he had been allowed to have visitors, that the food had consisted of meat or fish several times a week, that he had the ability to watch television, listen to the radio and read books and newspapers. The applicant also stated that he had access to other pastimes at this detention facility, that the sanitary facilities had been situated in the cell itself and that pest extermination activities had been undertaken on a regular basis.

30. Mr I.S., in his declaration, corroborated the applicant's statements.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Grounds for detention

31. 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

32. On the basis of the relevant law before 1 January 2000, when ruling on appeals against pre-trial detention 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. The State Responsibility for Damage Act

33. The State Responsibility for Damage Act of 1988 (the "SRDA") provides that the State is liable for damage caused to private persons by (a) the illegal orders, actions or omissions of government bodies and officials acting within the scope of, or in connection with, their administrative duties; and (b) the organs of the investigation, the prosecution and the courts for unlawful pre-trial detention, if the detention order has been set aside for lack of lawful grounds (sections 1-2).

34. In respect of the regime of detention and conditions of detention, the relevant domestic law and practice under sections 1 and 2 of the SRDA has been summarised in the cases of *Iovchev v. Bulgaria* (no. 41211/98, §§ 76-80, 2 February 2006) and *Hamanov v. Bulgaria* (no. 44062/98, §§ 56-60, 8 April 2004).

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

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

36. The Pazardzhik Prison was visited by the CPT in 1995, while the Pazardzhik Regional Investigation Service was visited both in 1995 and in 2006. The report from the latter visit has not yet been made public.

37. There are also general observations about the problems in all Investigation Service detention facilities in the 1995, 1999 and 2002 visit reports.

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

1. General observations

38. 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.

39. 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.

40. 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.

41. 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.

42. 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

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

44. 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

45. 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)

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

47. 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.

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

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

49. During the 2002 visit some improvements were noted in the country's investigation detention facilities, severely criticised in previous

reports. However, a great deal remained to be done: most detainees continued to spend months on end locked up in overcrowded cells twenty-four hours a day.

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

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

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

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

52. The applicant also relied on Article 13 of the Convention in respect of his complaints under Article 5 of the Convention. However, the Court considers that, as it relates to Article 5 §§ 1-3 of the Convention, this complaint should be understood as referring to the applicant's inability to effectively challenge his detention under Article 5 § 4 of the Convention

and to the alleged lack of an enforceable right to compensation under Article 5 § 5 of the Convention. In addition, the Court observes that Article 5 §§ 4 and 5 of the Convention constitute *lex specialis* in relation to the more general requirements of Article 13 (see *Nikolova*, cited above, § 69, and *Tsirlis and Kouloumpas v. Greece*, judgment of 29 May 1997, *Reports of Judgments and Decisions* 1997-III, p. 927, § 73).

Accordingly, the Court will examine the complaint that the applicant lacked effective domestic remedies only under Article 5 §§ 4 and 5 of the Convention.

A. Complaint under Article 5 § 3 of the Convention that the applicant was not brought promptly before a judge or other officer authorised by law to exercise judicial power

53. The applicant complained under Article 5 § 3 of the Convention that he had not been brought promptly before a judge or other officer authorised by law to exercise judicial power after his arrest on 3 July 1998.

54. The Court notes that from the parties' submissions it is clear that in response to the applicant's appeals of 13 and 15 July 1998 a court hearing was conducted on 20 July 1998 when he was brought before a judge (see paragraph 8 above). The six-month period therefore started to run not later than on that date, for the purposes of Article 35 § 1 of the Convention (see, among others, *Hristov v. Bulgaria* (dec.), no. 35436/97, 19 September 2000). The applicant sent his first letter to the Court on 7 January 2000.

55. It follows that this complaint is introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

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

56. The applicant complained under Article 5 § 1 of the Convention that he had been unlawfully detained, that the evidence against him had not been sufficient to lead to the conclusion that he was guilty of an offence and considered that several domestic provisions had been breached.

57. The Court recognises that the applicant's detention up to 7 December 1999 fell within the ambit of Article 5 § 1 (c) of the Convention, as it was imposed for the purpose of bringing him before the competent legal authority on suspicion of having committed an offence. There is nothing to indicate that the formalities required by domestic law were not observed.

58. As regards the alleged lack of reasonable suspicion, the Court reiterates that the standard imposed by Article 5 § 1 (c) of the Convention does not presuppose the existence of sufficient evidence to bring charges, or

find guilt, at the time of arrest. Facts which raise a suspicion need not be of the same level as those necessary to bring a charge (see *O'Hara v. the United Kingdom*, no. 37555/97, § 36, ECHR 2001-X). In the present case, the Court considers that the authorities had sufficient information to ground a "reasonable" suspicion against the applicant because the victim had identified him as one of the persons who had raped her on 2 July 1998 (see paragraph 6 above).

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

C. Complaint under Article 5 § 2 of the Convention that the applicant was not informed promptly of the reasons for his arrest

60. The applicant complained under Article 5 § 2 of the Convention that he had not been informed promptly of the reasons for his arrest and of the charges against him at the time of his arrest on 3 July 1998.

61. The Court notes that from the parties' submissions it is clear that the applicant was informed of the reasons for his arrest and of the charges against him on 6 July 1998, at the latest (see paragraph 7 above). That day is, therefore, the point when the six-month period started to run, for the purposes of Article 35 § 1 of the Convention. The applicant sent his first letter to the Court on 7 January 2000.

62. It follows that this complaint is introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

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

63. The applicant complained under Article 5 § 3 of the Convention that his detention had been unjustified and excessively lengthy.

64. The Government disagreed with the applicant. They noted that the preliminary investigation had been completed on 28 June 1999 and that an indictment had been filed against the applicant on 7 July 1999. The Government also noted that the first instance court delivered its judgment on 7 December 1999, at which time they calculated the applicant to have been in detention for a year, five months and four days. Finally, they noted that the appeal proceedings had been completed within a further ten months and twenty days. The Government therefore argued that the investigation and trial stage of the criminal proceedings had been completed quickly and effectively. Thus, they considered that the applicant's right to be tried within a reasonable time had not been violated.

65. In respect of the need for the continued detention of the applicant, the Government stated that that had been justified considering that he had been charged with a serious intentional offence against a minor. Moreover, they alleged that the authorities and the courts had justifiably maintained the said detention of the applicant in the interest of the community, the likelihood that he might abscond and considering the fragile state of the victim who might have been threatened or intimidated if he had been released.

1. Admissibility

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

2. Merits

67. The Court recognises that from 3 July 1998 to 7 December 1999 the applicant's detention fell within the ambit of Article 5 § 1 (c) of the Convention, a period of one year, five months and five days.

68. The Court further 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, in the decisions of the authorities of 14 May and 24 June 1999 to maintain the applicant's detention they failed to cite any reasons and to assess specific facts and evidence about a possible danger of the applicant absconding, re-offending or obstructing the investigation (see paragraph 9 above). In so far as the authorities did not consider it necessary to justify the continuation of the applicant's detention on each and every occasion they seem to have considered his detention mandatory and to have primarily relied on the statutory provisions requiring such detention for serious intentional offences.

69. 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.

E. Complaint under Article 5 § 4 of the Convention regarding the scope and nature of the judicial control of lawfulness of the applicant's detention

70. The applicant complained under Article 5 § 4 of the Convention that the courts failed to examine all factors relevant to the lawfulness of his detention and that his appeal of 10 or 11 August 1999 had been decided in violation of the requirement for a speedy decision.

71. The Government challenged the assertions of the applicant. They noted that the Pazardzhik District Court, in its decision of 4 October 1999 for dismissing the applicant's appeal against his detention of 10 or 11 August 1999, had established that there was a risk of the applicant absconding, obstructing the investigation or intimidating the victim. In addition, the Government stressed that the court had examined the personal situation of the applicant in that he did not have stable employment which contributed to the likelihood that he might abscond. Finally, they noted that the decision of the Pazardzhik District Court had been upheld on appeal by the Pazardzhik Regional Court. The Government therefore considered that the domestic courts had examined all factors relevant to the lawfulness of the applicant's detention.

72. In respect of the speediness of the decision, the Government noted that by resolution of 10 September 1999 the Pazardzhik District Court had decreed to examine the appeal at the next public hearing rather than in camera.

1. Admissibility

73. The Court notes at the outset that the applicant sent his first letter on 7 January 2000. Accordingly, it can only assess the conformity with the requirements of Article 5 § 4 of the Convention of the domestic courts' examinations of the applicant's appeals for the period after 7 July 1999, which would be within the six months' time limit under Article 35 § 1 of the Convention.

74. Thus, the complaints under Article 5 § 4 of the Convention in respect of the applicant's appeals against his detention of detention of 13 and 15 July 1998 were introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

75. The Court, however, notes that the applicant's appeal of 10 or 11 August 1999 was introduced within the six months' time limit under Article 35 § 1 of the Convention and is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) Scope of the judicial review of the lawfulness of the applicant's detention

76. 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).

77. Likewise, the Court finds that the Pazardzhik District Court, when examining the applicant's appeal against his detention on 4 October 1999, primarily relied on the alleged lack of new circumstances following his last appeal in July 1998 and the seriousness of the charges against him (see paragraph 15 above). It did not cite any specifics facts or evidence about the possible danger of the applicant absconding, re-offending or obstructing the investigation other than the assumption that the lack of employment would allegedly be a contributory factor. The court's findings were upheld on appeal by the Pazardzhik Regional Court on 10 November 1999 (see paragraph 15 above).

78. Thus, it appears that the domestic courts predominantly relied on the statutory provisions requiring mandatory detention for serious intentional offences 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 32 above).

79. In view of the aforesaid, the Court finds that the Pazardzhik District and Regional Courts, in their decisions of 4 October and 10 November 1999, had 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 lawfulness of his detention. Thus, there has been a violation of the said provision in that respect.

(b) Speed of the judicial review of the lawfulness of the applicant's detention

80. The Court observes that the applicant's appeal of 10 or 11 August 1999 was examined by the trial court almost two months later on 4 October 1999 (see paragraphs 4 and 15 above).

81. The Court considers this period 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 for examining an appeal against detention as being too long; and *Rehbock v. Slovenia*, no. 29462/95, §§ 82-86, ECHR 2000-XII, where two such periods of twenty-three days were considered excessive).

82. It follows that in respect of the applicant's appeal of 10 or 11 August 1999 there has also been a violation of the applicant's right to a speedy

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

F. Complaint under Article 5 § 5 of the Convention

83. 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 of the Convention.

84. The Government disagreed and alleged that the applicant had available a procedure under the SRDA whereby he could have claimed and obtained compensation for having been unlawfully detained. They also stated, however, that that would not have been possible in the present case as the applicant's detention had been in conformity with domestic legislation.

1. Admissibility

85. 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).

86. The Court further observes that it has already found that the authorities failed to justify the applicant's continued detention (see paragraph 69 above) and that in response to his appeal of 10 or 11 August 1999 they denied him the guarantees provided for in Article 5 § 4 of the Convention (see paragraph 79 above) and violated his right to a speedy judicial decision (see paragraph 82 above). Thus, Article 5 § 5 of the Convention is applicable.

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

2. Merits

88. In view of the above, the Court must establish whether or not Bulgarian law afforded the applicant an enforceable right to compensation for the breaches of Article 5 of the Convention in his case.

89. The Court notes that by section 2 (1) of the SRDA, a person who has been remanded in custody may seek compensation only if the detention order has been set aside “for lack of lawful grounds”, which refers to unlawfulness under domestic law (see paragraphs 33-34 above).

90. In the present case, the applicant's detention on remand was considered by the domestic courts as being in full compliance with the

requirements of domestic law. Therefore, the applicant did not have a right to compensation under section 2(1) of the SRDA. Nor does section 2(2) apply (see paragraphs 33-34 above).

91. It follows that in the applicant's case the SRDA 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 33-34 above).

92. 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.

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

93. The applicant complained of the excessive length of the criminal proceedings against him. He relied on Article 6 of the Convention, the relevant part of which provides:

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

94. The Government disagreed and argued that the overall length of the proceedings against the applicant had been reasonable as they had lasted from 6 July 1998 to 27 October 2000, a period of two years, three months and twenty days. During this period the preliminary investigation had been concluded and the trial stage had passed through two levels of jurisdiction. In addition, the Government argued that there were no unreasonable delays attributable to the authorities, that the courts had scheduled hearings at regular intervals and had examined the case with the required level of diligence.

95. The Court notes, at the outset, that the criminal proceedings against the applicant started on 3 July 1998 when he was arrested, as it should be considered that as of this day he became substantially affected by actions taken by the prosecuting authorities as a result of a suspicion against him (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 44, ECHR 2004-XI). They ended on 27 October 2000 when the judgment of the Pazardzhik Regional Court of 27 September 2000 became final. Thus, the overall length of the criminal proceedings against the applicant was two years, three months and twenty five days for two levels of jurisdiction.

96. Applying its established case-law (see *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II; *Kudła v. Poland* [GC], no. 30210/96, § 124, ECHR 2000-XI; and *Pedersen and Baadsgaard*, cited above, § 45) to the facts of the present case and, in particular, noting that the overall length of the criminal proceedings had been two years and four

months for concluding a preliminary investigation and a trial involving two levels of jurisdiction, the Court does not find that the "reasonable time" requirement of Article 6 § 1 of the Convention was breached.

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

III. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

98. The applicant complained under Article 3 of the Convention that he had been subjected to inhuman or degrading treatment as a result of being detained at the Pazardzhik Regional Investigation Service and the Pazardzhik Prison.

Article 3 of the Convention provides:

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

A. The parties' submissions

1. The Government

99. The Government challenged the applicant's submissions. They argued that his grievances in respect of the conditions of his detention were formulated in a very general manner and that they lacked coherent and precise elements supported by evidence of a violation.

(a) Pazardzhik Regional Investigation Service

100. In respect of the Pazardzhik Regional Investigation Service the Government presented a letter, dated 5 August 2005, from the Head of the Pazardzhik Investigation Service Detention Facilities Unit of the Enforcement of Judgments Division of the Ministry of Justice (the "letter"). The letter informed of the conditions of the applicant's detention at the Pazardzhik Regional Investigation Service and is summarised herein below.

101. The applicant had been held at this detention facility from 6 July to 10 November 1998. He had been accommodated alone in a cell measuring 2.9 m long by 2.7 m wide by 3 m high, which had been ventilated naturally and by an aspirator. There had been two wooden beds in the cell, each of which had a mattress, pillow and a blanket. Detainees had been required to bathe once a week. They had been allowed access to the sanitary facilities three times a day for fifteen to twenty minutes. The heating in the detention facility had been provided by the central heating of the Pazardzhik District

Police Station. Lighting had been provided by two incandescent light bulbs of 75 W or 100 W placed above the cell's door, which had been switched on permanently. The lack of a designated area for exercise had been compensated with an extended time for visiting the sanitary facilities. The food of the detainees had been prepared at the Pazardzhik Prison and had been of sufficient quantity and quality. The possibility of having visits from a lawyer or a relative, as well as having correspondence and receiving newspapers, magazines and other literature had been subject to the permission of the investigator or the supervising prosecutor.

102. In apparent reference to the state of the detention facility in August 2005, the letter also stated that the said facility had been repainted every year and that it had a special room where detainees could meet with their lawyers and relatives. Such visits had been permitted twice a month. Each cell had been equipped with a table, chairs and a locker where detainees could keep their personal belongings. Books, newspapers and magazines could have been brought in by relatives or could have been purchased from the head of the facility. In March-April 2002 the wooden beds had been replaced with metal frame beds. In order to improve ventilation, the solid doors had also been replaced with doors made from metals bars. The lighting in the cells had been from an unspecified natural source and had been enhanced by luminescent light during the day and by an incandescent light bulb during the night. A local company had been contracted to disinfect the premises twice a month. There had been cells for women, children and for isolation on medical grounds. Three refrigerators for safekeeping of food and a telephone had also been available for use by detainees. A paramedic had been charged with taking care of their health. There had still not been a designated area for exercise which had continued to be compensated with an extended time for visiting the sanitary facilities.

(b) Pazardzhik Prison

103. To support their arguments in respect of the Pazardzhik Prison the Government presented a report from the prison warden, dated 14 September 2005, detailing the conditions of the applicant's detention at that detention facility, together with numerous supporting documents, orders, schedules, time tables and invoices (the “warden's report”). The information provided therein is summarised below.

104. The applicant was held at the Pazardzhik Prison from 10 November 1998 to 11 January 2001. He was attached to second prisoners' company and was placed in a cell with other first time offenders.

105. The second prisoners' company was accommodated in five cells with a total living area of 172.86 sq. m, designated for a maximum of twenty-eight detainees. The cells ranged in size from 17.72 sq. m to 56.70 sq. m and, depending on their size, were intended for two to eight persons. The cells were not overcrowded and afforded the required 6 sq. m of living area for each detainee, as required by the legislation then in force. In 1999 the average occupancy rate of the cells was twenty-six detainees while in 2000 it was twenty-five detainees.

106. At the time, the cells did not have sanitary facilities, so communal such facilities were provided which comprised of four separate toilet cabins and two extended sinks with four taps of running water each. Access to these facilities was possible at set periods several times during the day, usually before and after meals and the various other daily activities. As an exception, access to the sanitary facilities was also possible at other times.

107. All the cells had access to direct sunlight from windows which could be opened to allow fresh air to circulate. Artificial light was available from 10 p.m. to 6 a.m.

108. Each detainee was provided with clothes, a bed with a mattress and bed linen (sheets, a pillowcase and two blankets), which were changed every two weeks. They were also provided with a locker where they could store their personal belongings. The state of the furniture and the premises was monitored on a daily basis and any necessary repairs were noted in a special ledger, and were performed as soon as possible.

109. Detainees were required to bathe once a week. A washing machine was also available for them to wash their clothes. In 1999 boilers were installed in each corridor to provide detainees with easier access to hot water.

110. The detainees were provided free-of-charge with materials to wash and disinfect their clothes and living areas, as evidenced by an order of the prison warden of 20 January 1999. However, it was noted that the level of cleanness depended in part on the detainees who were responsible, under the supervision of the prison authorities, for maintaining their living areas clean.

111. Between 1998 and 2001 the prison authorities entered into four annual contracts with specialised anti-infestation companies to perform pest extermination activities on the premises of the prison. The Court was presented with twenty invoices for such services dating from 1999, a contract of 16 February 2000 and a further eleven invoices for such services dating from later in the same year. In September 2000, the prison authorities also commissioned the Pazardzhik branch of the State Hygiene and

Epidemiological Inspectorate to perform an assessment of the air quality in the working area of the prison in order to assess its level of fumes and gases.

112. The prison kitchen prepared the food for the detainees. The daily menus were set and controlled for quantity and quality by the prison authorities with the aim of providing for a balanced diet. As evidence, the menus for the weeks of 27 September to 3 October 1999, 7 to 13 February, 17 to 23 April and 1 to 7 May 2000 were presented to the Court. Thus, it can be observed that during the four weeks in question the detainees were provided with a meat or meat containing dish once a day for six days of each week, on the seventh day they had fish, vegetarian dishes and dairy products were provided daily, while fresh vegetables were given only once or twice per week.

113. In a specially designated area detainees were provided with outdoor exercise, which at the beginning of 2000 was increased from one hour to an hour and forty-five minutes. A sports hall with weightlifting equipment and facilities to play table tennis and badminton were also available for use by the detainees to which they had daily access for fifty minutes. Facilities for basketball, volleyball, mini football and gymnastics were also accessible during the outdoor exercise period. The prison authorities also claimed to regularly organise various internal sports' tournaments.

114. The detainees from the second prisoners' company had access to the prison library, which had over 8,500 books, for half an hour every day, as evidenced by a schedule approved by the prison warden on 26 April 1999.

115. Various newspapers were also available as the prison regularly took out a number of subscriptions, as evidenced by six invoices for the year 2000 and two for the year 2001. Individual subscriptions by detainees were also permitted.

116. In the prison there was also a chapel, a priest and organised religious services, as evidenced by a schedule approved by the warden on 10 April 2000.

117. There was also an equipped cinema hall where films were shown once a week, as evidenced by three invoices from 2000 for renting ninety-five films. In 1999 each cell and dormitory was connected to a cable television network offering over fifty channels. Detainees had to provide their own television sets.

118. At the time, the prison also had an internal radio station which transmitted to each cell, and detainees could have their own radios.

119. The correspondence of the detainees with their lawyers, relatives and friends was unrestricted and was not registered. There was also no

restriction on the number of petitions, appeals or requests they could make. Those of them addressed to the various State and judicial bodies, as well as to the Council of Europe and the United Nations Commission on Human Rights were not inspected by the prison authorities and were immediately forwarded to the respective bodies. Telephone conversations could also be organised with relatives and lawyers in accordance with the applicable legislation.

120. During working hours, detainees could also meet privately, without restriction or limitation, with their lawyers in a specially designated room.

121. Lastly, it was claimed that significant improvements had been undertaken in the prison following the CPT's visit in 1995 and that, as of the date of the report, all cells and dormitories had twenty-four hour access to sanitary facilities with running water. Separately, the prison switched from electricity to gas in 2002 which improved its central heating and hot-water-provision' capabilities. In conclusion, it was claimed that, as of the date of the warden's report, all the prescriptions for improving the conditions at this detention facility had been met with the exception of the overcrowding and the provision of medical services.

2. The applicant

122. The applicant reiterated his complaints. He claimed that the bulk of the information provided by the Government related to the period 2000-2005, which was subsequent to the applicant's period of detention, and that it related primarily to the conditions of detention at the Pazardzhik Prison. He noted, however, that he had also been detained at the Pazardzhik Regional Investigation Service for four months in complete isolation, as had allegedly been admitted by the Government. In respect of this facility, he also noted that there had been no natural light in the cells, which continued to be situated underground. In addition, the applicant alleged that it had also been admitted by the Government that visits and access to newspapers and magazines had been restricted as they had both been subject to the approval of the Prosecutor's Office. In conclusion, he asserted that the conditions of detention in which he had been held at the Pazardzhik Regional Investigation Service and the Pazardzhik Prison had been inadequate and had amounted to inhuman and degrading treatment under Article 3 of the Convention.

B. Admissibility

123. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further

notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

C. Merits

1. Establishment of the facts

124. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Fedotov v. Russia*, no. 5140/02, § 59, 25 October 2005).

125. The Court notes that the primary account of the conditions of the applicant's detention at the Pazardzhik Regional Investigation Service and the Pazardzhik Prison is that furnished by him (see paragraphs 25-26 above), which is partly corroborated by the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") in its respective reports (see paragraphs 35-50 above). Moreover, the CPT's assessment of the conditions in the Pazardzhik Regional Investigation Service and the Pazardzhik Prison in 1995, its general findings in respect of the conditions in all Investigation Service detention facilities, the conclusion that these conditions could be described as inhuman and degrading and that they had not satisfactorily improved during its subsequent visits in 1999 and 2002 (see paragraphs 35-50 above) may also inform the Court's decision (see *I.I. v. Bulgaria*, no. 44082/98, § 71, 9 June 2005).

126. The Court also takes note that the applicant provided signed declarations by another two detainees at these detention facilities (see paragraphs 25, 27-28 and 30 above). However, in so far as one of them, Mr D.G., also made an application before the Court with an identical complaint (see *Georgiev v. Bulgaria*, no. 47823/99, 15 December 2005), it finds that his statements should not be considered objective and that it should not therefore be given any particular weight (see *Dobrev v. Bulgaria*, no. 55389/00, § 117, 10 August 2006, and *Yordanov v. Bulgaria*, no. 56856/00, § 82, 10 August 2006).

127. 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).

128. The Court observes that in respect of the conditions of detention at the Pazardzhik Prison the Government submitted detailed observations, supported by corroborating documents, orders, schedules, time tables and invoices (see paragraphs 103-21 above). In respect of the Pazardzhik Regional Investigation Service, however, the Government restricted itself to a reliance on a letter from the Head of the Pazardzhik Investigation Service Detention Facilities Unit unsupported by any other evidence or supporting documents (see paragraphs 100-02 above).

129. In these circumstances, the Court will examine the merits of the applicant's complaint in respect of the conditions of detention at the Pazardzhik Regional Investigation Service on the basis of his submissions, the findings in the relevant reports of the CPT and the statements of the Government.

130. In respect of the Pazardzhik Prison, the Court will also rely on the declaration of Mr I.S. (see paragraphs 28 and 30 above) and the Government's detailed submissions and supporting documents (see paragraphs 103-21 above). Moreover, it notes that none of the Government's substantive arguments and claims regarding this detention facility were subsequently effectively challenged by the applicant (see paragraph 122 above). Accordingly, the Court must afford them the required weight when accessing the merits of the applicant's complaint.

2. General principles

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

132. To fall within the scope of Article 3, ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age

and state of health of the victim (see *Van der Ven*, § 47, and *Poltoratskiy*, § 131, both cited above).

133. 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 *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III and *Kalashnikov v. Russia*, no. 47095/99, § 101, ECHR 2002-VI).

134. The suffering and humiliation involved must go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that detention pending trial in itself raises an issue under Article 3 of the Convention. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with the respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured. When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions and the duration of the detention (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II; and *Kalashnikov*, cited above, § 95). In particular, the Court must have regard to the state of health of the detained person (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3296, § 135).

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

3. Application of these principles to the present case

(a) Pazardzhik Regional Investigation Service

136. The Court observes that the applicant was detained on the premises of the Pazardzhik Regional Investigation Service from 3 July to 10 November 1998 (see paragraph 24 above). The period to be taken into account, therefore, is four months and eight days.

137. The applicant claimed that he had been held in isolation in a cell which measured 6-7 sq. m (see paragraph 26 above). The Government confirmed that he had been accommodated alone in a cell which measured 7.83 sq. m (see paragraph 101 above). The CPT has set 7 sq. m per prisoner as an approximate, desirable guideline for a single-occupancy police cell (see "The CPT Standards" – CPT/Inf/E (2002) 1 - Rev. 2006, § 43). Thus, the living area available to the applicant appears to have been adequate.

138. The applicant also claimed that the cell had been without windows, that the only fresh air entering the cell had came from the corridor through a grate above the door and that there had been only artificial lighting which had been constantly switched on (see paragraphs 25-26 above). The CPT, in its report of 1995, indicated that the cells at the Pazardzhik Regional Investigation Service were situated in the basement and with no access to natural light (see paragraph 43 above). The Government stated that the cell had been ventilated naturally and by an aspirator and that the lighting had been provided by two incandescent light bulbs of 75 W or 100 W placed above the cell's door, which had been switched on permanently (see paragraph 101 above).

139. The Court further notes that the applicant alleged that the material conditions in the cell were unsatisfactory (see paragraphs 25-26 above). The CPT's 1995 visit report noted that the bedding at this facility was dirty and tattered and that the conditions were similar to those established at other Investigation Service premises (see paragraph 44 above).

140. The applicant argued that the sanitary facilities had been inadequate and that he had to satisfy the needs of nature in a bucket inside the cell, the contents of which were removed twice a day (see paragraphs 25-26 above). The CPT's 1995 visit report also noted that detainees at the Pazardzhik Regional Investigation Service had limited access to sanitary facilities (see paragraph 44 above). In any event and despite being accommodated alone in a cell, subjecting a detainee to the inconvenience of having to relieve himself in a bucket cannot be deemed warranted, except in specific situations where allowing visits to the sanitary facilities would pose concrete and serious security risks (see, *mutatis mutandis*, *Peers*, § 75, and *I.I. v. Bulgaria*, § 75, both cited above; *Kalashnikov*, cited above, § 99; and *Kehayov v. Bulgaria*, no. 41035/98, § 71, 18 January 2005). The Government did not invoke any such risks as grounds for the limitation on

the visits to the toilet by the applicant during the period in question (see paragraphs 99-102 above).

141. The applicant maintained that he was not permitted to go out of his cell for exercise (see paragraphs 25-26 above). The CPT indicated in its 1995 report that the thirty-minute exercise rule, provided for in the internal regulations of the Pazardzhik Regional Investigation Service and actually posted on cell doors, was not observed (see paragraph 44 above). The Government acknowledged the fact that no possibility for exercise had existed but submitted that this had been compensated with an extended time for visiting the sanitary facilities, which had been permitted three times a day for fifteen to twenty minutes (see paragraph 101 above). The Court, however, does not consider that the lack of outdoor or out-of-cell activities can in any way be compensated with an alleged extension of the time allowed for visiting the said sanitary facilities. Moreover, it notes the applicant's claims that he had access to the sanitary facilities only twice a day for three to five minutes during which time, in addition to washing, he had to throw out the bucket he used to satisfy the needs of nature in his cell and had to pour himself drinking water (see paragraph 26 above). Thus, the Court finds that as no possibility for outdoor or out-of-cell activities had in effect been provided, the applicant would have had to spend in his cell – which had been situated in the basement – practically all of his time, except for the two or three relatively short visits per day to the sanitary facilities or the occasional taking out for questioning or to court (see *Peers*, § 75, and *I.I. v. Bulgaria*, § 74, both cited above). The Court considers that the fact that the applicant had been accommodated alone in a cell and had been confined to it for practically twenty-four hours a day during more than four months 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 had not been any justification for subjecting the applicant to such limitations. In their submissions, the Government did not put forward any such considerations for assessment by the Court (see paragraphs 99-102 above).

142. The applicant alleged that the food provided had been of insufficient quantity and substandard (see paragraphs 25-26 above). This was corroborated by the findings of the CPT in its reports, which established that the food at the detention facilities of the Investigation Service had been of poor quality and in insufficient quantity at the time of its visits (see paragraph 39 above). The Government, on the other hand, claimed that it had been sufficient and of quality, but failed to present any supporting documents to corroborate their statement such as daily or weekly menus at the facility during the relevant period (see paragraphs 99-102 above).

143. The applicant further contended that he had not been allowed to read newspapers or books (see paragraphs 25-26 above). In its 1995 visit report, the CPT also noted that detainees had no access to radio or television; as to correspondence and access to newspapers, they required the public prosecutor's express permission (see paragraph 40 above). The Government acknowledged this in their submissions (see paragraph 101 above). Thus, the Court finds that the applicant's access to and knowledge of the outside world was restricted during the period of his detention.

144. The Court notes that the applicant did not complain that his physical or mental health had deteriorated during or as a result of his detention at this facility (see paragraphs 25-26 above). Accordingly, no considerations in this respect are warranted.

145. While there is no indication that the detention conditions or regime at the Pazardzhik Regional Investigation Service 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.

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

147. Thus, there has been a violation of the Article 3 of the Convention on account of the applicant's detention at the Pazardzhik Regional Investigation Service in conditions which were inadequate.

(b) Pazardzhik Prison

148. The Court observes that the applicant was detained on the premises of the Pazardzhik Prison from 10 November 1998 to 11 January 2001 (see paragraph 24 above). The period to be taken into account, therefore, is two years, two months and two days.

149. The applicant claimed that initially the conditions in the Pazardzhik Prison had been similar to those at the Pazardzhik Regional Investigation Service, but that they had improved in 1999. Thereafter, he had been allowed to have visitors and the food had consisted of meat and fish several times a week. He could watch television, listen to the radio and read books and newspapers. There had also been other pastimes at the prison. A sanitary facility had been available in the cell itself and pest control activities had been undertaken on a regular basis (see paragraph 29 above).

150. The applicant's statements were corroborated by Mr I.S. in his signed declaration (see paragraph 30 above)

151. In view of the above and based on the information provided by the Government (see paragraph 105 above), the Court notes that on average the living area available to detainees in second prisoners' company during the year 1999 was 6.65 sq. m and 6.91 sq. m during the year 2000. The CPT has set 7 sq. m per prisoner as an approximate, desirable guideline for a single-occupancy police cell (see "The CPT Standards" – CPT/Inf/E (2002) 1 - Rev. 2006, § 43), but there is no such guideline in respect of prison cells. However, the CPT has in general applied a standard of a minimum of 4 sq. m per prisoner in multiple occupancy cells (see, for example, the CPT reports on the 2002 visit to Bulgaria, CPT/Inf (2004) 21, paragraphs 82 and 87, and on the 2004 visit to Poland, CPT/Inf (2006) 11, paragraphs 87 and 111), and a minimum of 6 sq. m. per prisoner in single occupancy cells (see, for example, the CPT report on the 2004 visit to Poland, CPT/Inf (2006) 11, paragraphs 87 and 111). Separately, the Court notes that the applicant initially had access to communal sanitary facilities several times a day (see paragraph 106 above) and that later he had access to a sanitary facility in his own cell (see paragraphs 29-30 and 121 above). There was direct sunlight and the windows in the cells could be opened to allow fresh air to circulate (see paragraph 107 above). Detainees were provided with clothes, a bed with a mattress, bed linen and a locker for personal belongings. The bed linen was changed every fortnight (see paragraph 108 above). The detainees had to bathe at least once a week, had access to a washing machine and after 1999 had easier access to hot water on account of the boilers installed in each corridor (see paragraph 109 above). Detainees were provided free-of-charge with materials to wash and disinfect their clothes and living areas. Efforts were also made to exterminate any insects and rodents (see paragraphs 110-11 above). Considering the above, the Court does not find the living area available to the applicant and the material conditions to have been inadequate.

152. In respect of the food, the Court notes that at the time of the applicant's detention the prison's kitchen prepared the food and adhered to menus set and controlled for quantity and quality by the prison authorities providing for a balanced diet (see paragraph 112 above). Considering the menus presented by the Government in respect of four weeks of the applicant's detention at this facility, which were not challenged by the latter (see paragraph 122 above), the Court does not find that the food was substandard or inadequate.

153. As to the possibility for outdoor or out-of-cell activities at this detention facility, the Court notes that detainees had been provided with an hour of daily outdoor exercise, which had been increased to one hour and forty-five minutes at the beginning of 2000. An equipped sports hall had also been available for use by detainees to which they had was daily access

(see paragraph 113 above). There had also been a chapel, a priest and organised religious services (see paragraph 116 above). The applicant did not challenge these claims by the Government (see paragraph 122 above). Thus, the Court does not find the outdoor or out-of-cell activities to have been inadequate.

154. In respect of the applicant's contacts with the outside world, the Court notes that the Government claimed, which the applicant did not subsequently challenge (see paragraph 122 above), that detainees' correspondence with their lawyers, relatives and friends had not been restricted and that telephone conversations could also have been organised in certain cases (see paragraph 119 above). It further notes that there had been a prison library with a significant number of books and newspapers (see paragraphs 114-15 above). Films had also been screened on a weekly basis and there had been the possibility to watch cable television in each cell. Radios had also been permitted (see paragraphs 117-18 above).

155. As to the possibility to meet with his lawyer, the Court notes that the Government claimed, which the applicant did not subsequently challenge (see paragraph 122 above), that during working hours, detainees could meet privately, without restriction or limitation, with their lawyers in a specially designated room (see paragraph 120 above).

156. Finally, the Court notes that the applicant did not complain that his physical or mental health deteriorated during or as a result of his detention at this facility (see paragraphs 28-29 above). Accordingly, no considerations in this respect are warranted.

157. Having regard to the regime to which the applicant had been subjected and the material conditions in which he had been held at the Pazardzhik Prison for a period of two years and two months, the Court concludes that the distress and hardship he endured during the period of his detention at this facility did not exceed the unavoidable level of suffering inherent in detention and that the resulting anguish did not go beyond the threshold of severity under Article 3 of the Convention.

158. Therefore, there has been no violation of Article 3 of the Convention on account of the applicant's detention at the Pazardzhik Prison.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

159. 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

160. The applicant claimed 7,000 euros (EUR) as compensation for each of the alleged violations of his rights under the Convention.

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

162. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of his detention for four months in the Pazardzhik Regional Investigation Service in conditions which were inhuman and degrading and also as a consequence of the violations of his rights under Article 5 (see paragraphs 69, 79, 82, 92 and 147 above). Having regard to the specific circumstances of the present case, its case-law in similar cases (see, *mutatis mutandis*, *Kehayov*, §§ 90-91, *Iovchev*, §§ 156-58, *Dobrev*, §§ 177-79, and *Yordanov*, §§ 123-25, all cited above) and deciding on an equitable basis, the Court awards EUR 2,500 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

163. The applicant also claimed EUR 2,600 for the legal work by his lawyers, 15.30 Bulgarian levs (BGN: approximately EUR 7.85) for postal expenses and BGN 6 (approximately EUR 3.08) for a notary fee. The applicant requested that the costs and expenses incurred should be paid directly to his lawyers, Mr V. Stoyanov and Mrs V. Kelcheva.

164. The Government stated that the claim was excessive and that the sought expenses were not supported by any legal fees agreement, invoices or receipts to show that they had actually been incurred.

165. The Court reiterates that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents and within the time-limit fixed for the submission of the applicant's observations on the merits, “failing which the Chamber may reject the claim in whole or in part”. In the instant case, it observes that the applicant failed to present a legal fees agreement with his representatives or an approved timesheet of the legal work performed before the Court. In addition, he did not present any invoices or receipts for any other costs. In view of the applicant's failure to comply with the aforesaid requirement and noting that he has been paid EUR 850 in legal aid by the Council of Europe, the Court makes no award for costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the complaints concerning (a) the justification of the applicant's continued detention; (b) the alleged limited scope and nature of the judicial control of lawfulness of his detention in response to his appeal of 10 or 11 August 1999; (c) the alleged lack of speediness of the judicial decision in response to the applicant's appeal of 10 or 11 August 1999; (d) the alleged lack of an enforceable right to compensation for being a victim of arrest or detention in breach of the provisions of Article 5 of the Convention; (e) the applicant's detention in allegedly inadequate conditions of detention at the Pazardzhik Regional Investigation Service; and (f) his detention in allegedly inadequate conditions of detention at the Pazardzhik Prison;

2. *Declares* the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the authorities' failure to justify the applicant's continued detention;

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 lawfulness of the applicant's detention in response to his appeal of 10 or 11 August 1999;

5. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the lack of speediness of the judicial decision in response to the applicant's appeal of 10 or 11 August 1999;

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

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

8. *Holds* that there has not been a violation of Article 3 of the Convention on account of the applicant's detention at the Pazardzhik Prison;

9. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Bulgarian levs at the rate applicable on the date of settlement;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 28 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President