FIFTH SECTION

CASE OF TOSHEV v. BULGARIA

(Application no. 56308/00)

JUDGMENT

STRASBOURG

10 August 2006

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 Toshev 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 V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 10 July 2006,

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

PROCEDURE

1. The case originated in an application (no. 56308/00) 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 Dimitar Ermenkov Toshev ("the applicant"), on 17 February 2000.

2. The applicant was represented by Mr V. Vasilev, a lawyer practising in Sofia.

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

4. On 15 November 2004 the Court decided to communicate 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.

5. The Government did not submit observations on the admissibility and merits of the application, but did comment on the applicant's claims for just satisfaction.

6. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1956 and lives in Sofia. He had a previous criminal record, had been convicted for theft in 1975, 1978, 1982 and 1987 and had served out the respective sentences.

A. The criminal proceedings against the applicant

1. The preliminary investigation

8. On 5 July 1993 the applicant was arrested. On the next day, 6 July 1993, he was charged with two robberies of items worth approximately 47,000 old Bulgarian levs [BGL: approximately 2,974 German marks (DEM) at the relevant time]. Two other persons were also arrested and charged as his accomplices.

9. Between 6 July and 28 December 1993 the investigator in charge of the preliminary investigation conducted sixteen questionings of witnesses and two confrontations between witnesses whose testimonies were contradictory. On 27 July 1993 an analysis of the applicant's handwriting was conducted. On 2 August 1993 a psychiatric evaluation of one of the alleged accomplices was performed. On 12 August 1993 a valuator's expert opinion was requested, which was received on 6 September 1993. The applicant was questioned on 6 and 8 July 1993 and then again on 22 October 1993 when he gave detailed testimony and confessed to the two robberies.

10. On 8 December 1993 the applicant was released on bail.

11. On 4 and 5 January 1994 the applicant was questioned, the charges against him and his alleged accomplices were amended and the results of the preliminary investigation were presented to them. The case file was then transferred to the Sofia City Prosecutor's Office.

12. On 8 March 1994 the applicant was apprehended at the scene of another robbery and was arrested. On the same day, a preliminary investigation into this robbery was opened against the applicant and two other persons.

13. On 9 March 1994 the applicant was charged with the robbery of the previous day in respect of items valued at BGL 23,400 (approximately DEM 944 at the relevant time). The applicant was questioned and denied any involvement in the robbery. When questioned, the applicant's alleged accomplices confessed to the robbery.

14. Between 8 and 18 March 1994 an examination of the crime scene was performed, various items were seized, each suspect was questioned twice and four witnesses were interrogated.

15. On 25 and 29 March 1994 the results of the preliminary investigation were presented to the applicant and his alleged accomplices. The case file was then transferred to the Sofia City Prosecutor's Office.

16. On 13 May 1994 the Sofia City Prosecutor's Office joined the two preliminary investigations against the applicant and his alleged accomplices. The case was then remitted to the investigation stage.

17. On 29 July 1994 the results of the preliminary investigation were presented to the applicant and his alleged accomplices. The case file was then transferred to the Sofia City Prosecutor's Office.

18. Between 31 August 1994 and 28 February 1996 Sofia City Prosecutor's Office remitted the case to the investigation stage on five separate occasions due to various deficiencies in the preliminary investigation and for non-compliance with its instructions. On several occasions during this period the applicant and his alleged accomplices were questioned and the charges against them were amended.

2. The proceedings before the Sofia City Court

19. On 23 September 1996 the Sofia City Prosecutor's Office filed an indictment against the applicant and his two accomplices for the continuing criminal offence of robbery, stemming from the three robberies, in respect of items valued at BGL 228,015 (approximately DEM 1,477 at the relevant time).

20. On 15 October 1996 the judge-rapporteur of the Sofia City Court scheduled hearings for 25 and 26 February 1997.

21. The Sofia City Court's hearings of 25 February 1997, 12 June 1997, 16 December 1997 and 16 March 1998 were adjourned due to non-attendance of various persons – on two occasions the applicant's attorney, once the attorney of one of his alleged accomplices and once a victim to the robberies, who had been improperly summoned. In the last case, the adjournment was requested by the prosecutor in order to allow that party to file a civil claim for damages, if he so desired.

22. At a hearing on 30 June 1998 the Sofia City Court discontinued the proceedings and remitted the case to the Prosecutor's Office for further investigation. It found that (a) the indictment was incomplete in terms of the technical means used by the accused persons to perpetrate the offences; (b) there were inconsistencies between the indictment and the charges brought against the applicant in respect of the dates and the alleged victims of the robberies, the value of the stolen items and the legal classification of the offences; and (c) the indictment was incomplete in respect of the involvement of one of the alleged accomplices against whom the criminal proceedings had been terminated.

3. The remittance of the case to the investigation stage

23. Between 13 July 1998 and 22 June 1999 the Sofia City Prosecutor's Office remitted the case to the investigation stage on two separate occasions and demanded that the instructions of the court be fulfilled. During this period the applicant and his alleged accomplices were again questioned, the charges against them were amended and the results of the preliminary investigation were presented to them before the case file was sent back to the Sofia City Prosecutor's Office.

24. On 1 September 1999 the Sofia City Prosecutor's Office partially terminated the criminal proceedings against the applicant as a result of a reclassification of the charges against him. Rather than treating the three robberies as one continuing criminal offence of robbery it considered that they should be treated as three separate offences. The case file was then sent to the Sofia District Prosecutor's Office with instructions for the latter to enter three separate indictments against the accused in respect of each of the robberies.

25. The subsequent development of the criminal proceedings is unclear and no further information in respect of them has been provided by the parties following the applicant's initial complaint of 17 February 2000. As of the date of the said letter, the criminal proceedings against the applicant were still pending at the investigation stage.

B. The applicant's detention

1. The first period of remand in custody

26. On 5 July 1993, under an order of an investigator, approved by a prosecutor on the next day, the applicant was arrested for a period of twenty-four hours.

27. On 6 July 1993, under an order issued by an investigator and approved by the Prosecutor's Office, the applicant was remanded in custody without specific facts or evidence being cited to justify it.

28. On an unspecified date the applicant appealed against his detention. On 30 July 1993 the Sofia City Prosecutor's Office dismissed his appeal on the grounds that, *inter alia*, the applicant did not have a permanent address and might abscond. Upon further appeal, on 1 December 1993 the Chief Prosecutor's Office dismissed the applicant's appeal on similar grounds.

29. In the meantime, the health of the applicant deteriorated and on an unspecified date he filed another appeal against his detention on medical grounds. By decision of the Sofia City Prosecutor's Office of 25 November 1993 the applicant was granted bail in the amount of BGL 10,000 (approximately DEM 545 at the relevant time). After the amount was deposited by friends of the applicant he was released on 8 December 1993.

2. The second period of remand in custody

(a) Detention between 8 March 1994 and 3 August 1998

30. On 8 March 1994, under an order of an investigator, approved by a prosecutor on the next day, the applicant was arrested for a period of twenty-four hours.

31. On 9 March 1994, under an order issued by an investigator and approved by the Prosecutor's Office, the applicant was remanded in custody on the basis of, *inter alia*, that he did not have a permanent address and might abscond.

32. Between 13 May 1994 and 22 July 1998 the detention of the applicant was extended ten times by the Prosecutor's Office and, on one occasion on 15 October 1996, by a judge-rapporteur. The decisions to extend the applicant's detention either lacked any reasoning or were based on his alleged lack of a permanent address

33. On 22 July 1998 the applicant appealed against his detention. The appeal was heard by the Sofia City Court on 3 August 1998. The court found in favour of the applicant and granted him bail in the amount of BGL 500,000 (DEM 500 at the relevant time). In setting the amount, the court did not seek nor collect any evidence in respect of the applicant's assets and his ability to provide recognizance.

34. Thereafter, the applicant was not released because he did not deposit the bail.

(b) Detention following the decision to release the applicant on bail

35. On 12 November 1998 the applicant filed another appeal against his detention with the Sofia City Court. He argued that his remand in custody was in effect continuing because of the inappropriate amount of the bail set by the court on 3 August 1998. The applicant sought a reduction of the bail to an amount corresponding to his financial ability to pay it.

36. On 27 November 1998 a judge-rapporteur with the Sofia City Court rejected the appeal. He found that the procedure for appeal against a detention could not be utilised by the applicant to seek a reduction of his bail. He considered that the applicant was no longer remanded in custody, because he had been granted bail, and that he was in detention on the basis of a different legal provision, which provided for release only after the bail has been deposited. The judge-rapporteur argued that it was up to the Prosecutor's Office to rule on the applicant's request for a reduction of the bail.

37. On an unspecified date the applicant filed a request with the Prosecutor's Office to have the amount of the bail reduced. By decision of 3 December 1998 the Sofia District Prosecutor's Office reduced the bail to BGL 50,000 (DEM 50 at the relevant time).

38. On 23 December 1998 the decision was sent to the warden of the Sofia Prison for execution. The applicant deposited the bail, but was not released immediately, because of a misunderstanding stemming from the joining of the preliminary investigations on 13 May 1994 as it was not clear under which case he was being held.

39. On 8 January 1999 the Sofia City Prosecutor quashed the decision of 3 December 1998 for lowering the applicant's bail. He found that the Prosecutor's Office did not have the power to amend the amount of the bail as it had been set by the courts. Upon appeal, the decision of 8 January 1999 was upheld by the Sofia Appellate Prosecutor's Office on 19 May 1999.

40. On an unspecified date the applicant filed a new appeal with the Sofia City Court, which on 28 April 1999 was again rejected. The court found that its decision of 3 August 1998 was not subject to appeal and that the Prosecutor's Office did not have the power to amend the amount of the applicant's bail. In its decision, the court stated that

> "there [is] no instance, which [could] quash or amend [its previous] decision".

(c) The applicant's release

41. On 12 August 1999 the applicant filed another appeal against his detention with the Sofia City Court. He argued that he was still remanded in custody and that he should be released because the two-year statutory maximum period of pre-trial detention had expired.

42. The applicant's appeal was heard by the Sofia City Court on 24 August 1999. The court found in favour of the applicant, ordered his release and imposed a restriction on him not to leave his place of residence without the authorisation of the Prosecutor's Office. Following the decision of the court the applicant was released.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Legal regime of detention before 1 January 2000

43. The relevant provisions of the Code of Criminal Procedure (the "CCP") and the Bulgarian courts' practice at the relevant time 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. Measures securing a defendant's appearance in court and the judicial control of such measures

44. The relevant provisions of the CCP and the practice at the relevant time are summarised in the Court's judgment in the case of *Asenov v. Bulgaria* (no. 42026/98, §§ 45-50, 15 July 2005).

45. In particular, Article 150 §§ 2 and 5 of the CCP provided at the relevant time the following:

> "2. In setting the bail, account has to be taken of the financial status of the defendant.
>
> ...
>
> 5. When the measure for securing [a person's appearance in court] is amended from a more [restrictive] one to bail, the [person] shall be released following provision of recognisance."

C. Statutory maximum period of detention

46. Statutory maximum periods of pre-trial detention, whose duration depend on the gravity of the charges, were introduced with effect from 12 August 1997 (paragraph 3 of Article 152 of the CCP as in force between 12 August 1997 and 1 January 2000). They only concerned remand in custody pending the investigation. Detention at the trial stage was not limited by a statutory maximum period.

47. In particular, Article 152 § 3 of the CCP (as in force between 12 August 1997 and 1 January 2000) provided the following:

> "... remand in custody at the preliminary investigation [phase] cannot exceed one year, [unless] the charges concern offences which envisage a sentence of more than fifteen-years' imprisonment, life imprisonment or death[, in which case it cannot] exceed two years."

48. In addition, paragraph 4a of the Transitional and Concluding Provisions of the CCP stated that the above periods start to run from the date of entry into force of the amendment of the Act – 12 August 1997.

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

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 5 §§ 1, 3 and 4 OF THE CONVENTION

50. 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;
>
> ...
>
> 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."

51. The Government did not submit observations on the admissibility and merits of the complaints.

52. The applicant reiterated his complaints.

A. Complaint under Article 5 § 3 of the Convention that the applicant was not brought promptly before a judge

53. The applicant complained that when he was arrested on 3 July 1993 and again on 8 March 1994 he was not brought promptly before a judge or other officer authorised by law to exercise judicial power.

54. The Court notes, however, that in respect of the first arrest and detention of the applicant, the date of his release is the point when the six-month period started to run, for the purposes of Article 35 § 1 of the Convention. In respect of his second arrest, it is clear from the applicant's submissions that a court hearing was held at the latest on 25 February 1997 (see paragraph 21 above) when he was brought before a judge and could

have submitted an appeal against his detention. That day is, therefore, the point when the six-month period started to run, for the purposes of Article 35 § 1 of the Convention (see *Al Akidi v. Bulgaria* (dec.), no. 35825/97, 19 September 2000 and *Hristov v. Bulgaria* (dec.), no. 35436/97, 19 September 2000). The applicant introduced his first letter with the Court on 17 February 2000.

55. It follows that, in respect of both detentions of the applicant, the complaint has been 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 (c) of the Convention that the applicant was detained unlawfully

56. The applicant claimed that part of his remand in custody was unlawful, because the statutory maximum period of pre-trial detention was exceeded. In particular, he submitted that following the amendments to the Criminal Code of 4 August 1997 the classification of a "continuing" offence was removed. He argued, therefore, that if the charges against him had been changed sooner than on 1 September 1999 and he had been charged with three separate robberies instead of with one continuing criminal offence of robbery, then a one-year statutory maximum period of pre-trial detention would have applied to him. In turn, he claimed that this would have required his release on 12 August 1998. However, in so far as he was released on 24 August 1999, the applicant argued that he was held unlawfully for a period of one year and twelve days. As an alternative, he argued that even if the two-year statutory maximum period of pre-trial detention was applicable to him then he should have been released on 12 August 1999 rather then on 24 August 1999.

57. The Court reiterates that the main issue to be determined in the context of the complaint under Article 5 § 1 of the Convention is whether the disputed detention was "lawful", including whether it complied with "a procedure prescribed by law". The Convention here essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof, but it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5 of the Convention, namely to protect individuals from arbitrariness (see *Benham v. the United Kingdom*, judgment of 10 June 1996, *Reports* 1996-III, pp. 752-53, § 40).

58. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 of the Convention failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with (see *Benham*, cited above, § 41).

59. In the present case, the Court finds that the applicant's detention 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 for imposing the detention were not observed.

60. The Court notes that the applicant was detained from 5 July 1993 to 8 December 1993 and then again from 8 March 1994 to 24 August 1999, a total period of five years, ten months and twenty-two days. During part of the period, the proceedings were pending before the court of first instance from 23 September 1996 to 30 June 1998. Statutory maximum periods of pre-trial detention, which concerned remand in custody pending the investigation and not at the trial stage, were introduced with effect from 12 August 1997 (see paragraphs 46-49 above). Finally, on 24 August 1999 the Sofia City Court found that the applicant's detention had exceeded the two-year statutory maximum period of pre-trial detention and ordered his release (see paragraph 42 above).

61. Notwithstanding the above and noting the substance of the complaint raised under Article 5 § 1 of the Convention, the Court is not convinced by the applicant's arguments in so far as it is speculative to consider how the charges against him could or should have been amended following the amendments to the Criminal Code of 4 August 1997, what would have been the applicable maximum period of pre-trial detention if they had been and when it would have expired.

62. Accordingly, taking into account that the charges against the applicant had not in fact been amended prior to his release on 24 August 1999, the competent authorities could reasonably consider that the two-year maximum period of pre-trial detention at the investigation stage continued to apply to him. Bearing in mind that the proceedings had been pending before the court of first instance until 30 June 1998, the Court finds no indication that the applicable two-year maximum period of pre-trial detention had been exceeded prior to Sofia City Court's decision of 24 August 1999.

63. Consequently, the Court concludes that in respect of this complaint there is no appearance of a violation of Article 5 § 1 of the Convention. 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 § 3 of the Convention that the applicant's detention was unjustified and unreasonably lengthy

64. The applicant complained that his detention was unjustified, excessively lengthy and that the amount of the bail was set arbitrarily and without taking into account his ability to pay it, which resulted in his

detention being extended from 3 August 1998 to 24 August 1999, a period of one year and twenty-one days.

1. Period to be taken into account

65. The Court observes that the applicant was detained from 5 July 1993 to 8 December 1993 and then again from 8 March 1994 to 24 August 1999, a total period of five years, ten months and twenty-two days.

2. 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.

3. Merits

67. The Court notes, at the outset, that the complaint is similar to those in previous cases against Bulgaria where violations were found (see, for example, *Ilijkov v. Bulgaria*, cited above, §§ 67-87 and *Shishkov v. Bulgaria*, no. 38822/97, §§ 57-67, ECHR 2003-I). Likewise, in most of the decisions of the authorities to extend the applicant's detention they failed to assess specific facts and evidence about possible danger of the applicant absconding, re-offending or obstructing the investigation. In some decisions they did refer to his lack of a permanent address (see paragraphs 28, 31 and 32 above), while in others no grounds were cited at all (see paragraphs 27 and 32 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.

68. As regards the period after the decision to release the applicant on bail, the Court reiterates that the guarantee provided for by Article 5 § 3 of the Convention is designed to ensure the presence of the accused at the hearing. Its amount must therefore be "assessed principally by reference to him [and] his assets... in other words to the degree of confidence that is possible that the prospect of loss of the security... in case of his non-appearance at the trial will act as a sufficient deterrent to dispel any wish on his part to abscond" (see *Neumeister v. Austria*, judgment of 27 June 1968, Series A no. 8, p. 40, § 14). The accused whom the judicial authorities declare themselves prepared to release on bail must faithfully furnish sufficient information, that can be checked if need be, about the amount of bail to be fixed. As the fundamental right to liberty as guaranteed by Article 5 of the Convention is at stake, the authorities must take as much care in fixing appropriate bail as in deciding whether or not the accused's

continued detention is indispensable (see *Iwańczuk v. Poland*, no. 25196/94, § 66, 15 November 2001 and *Bojilov v. Bulgaria*, no. 45114/98, § 60, 22 December 2004 with reference to *Schertenleib v. Switzerland*, no. 8339/78, Commission's report of 11 December 1980, Decisions and Reports 23, p. 196, §171).

69. In the present case, on 3 August 1998 the Sofia City Court decided to release the applicant on bail of BGL 500,000 (DEM 500 at the relevant time; see paragraph 33 above). In setting the amount, the court did not make an assessment of the applicant's wealth or assets at the time nor did it seek any information or evidence as to whether he could provide recognizance (see paragraph 33 above). The applicant did not have the financial ability to pay his bail and remained in detention for a further year and twenty-one days (see paragraphs 35-42 above).

70. Admittedly, in 1993 he had been able to provide recognizance of BGL 10,000 (approximately DEM 545 at the relevant time), but that had not been paid by him but by friends of his (see paragraph 29 above). However, that had been five years prior to the decision of the Sofia City Court of 3 August 1998 and the applicant had been in detention for most of the subsequent years. His financial situation had undoubtedly changed over the given period, which required a reassessment by the authorities of the applicant's wealth and assets in order to determine the amount of recognizance he could provide. As noted above, however, such an assessment was not undertaken by the Sofia City Court.

71. In this respect, it should also be noted that the Sofia District Prosecutor's Office, in its decision of 3 December 1998, assessed that the applicant did not have the ability to provide the aforementioned recognizance set by the Sofia City Court and reduced the bail to BGL 50,000 (DEM 50 at the relevant time), an amount which the applicant provided almost immediately but was not released due to a misunderstanding under which case he was being held (see paragraphs 37-38 above). In any event, this decision was subsequently quashed because it was found that the Prosecutor's Office could not amend the bail set by the Sofia City Court and the applicant's detention continued (see paragraph 39 above).

72. Finally, the Court considers that remand in custody lasting almost six years on charges of non-violent offences may be construed incompatible as such with Article 5 of the Convention.

73. 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 and the domestic court's failure to assess the applicant's ability to provide recognizance.

D. Complaint under Article 5 § 4 of the Convention that the applicant was unable to challenge the amount of the bail and, thereby, the continued lawfulness of his detention

74. The applicant maintained that there was no procedure available to him by which he could challenge the amount of the bail set by the Sofia City Court on 3 August 1998 and, thereby, the continued lawfulness of his detention. He relied on Articles 5 § 4 and 13 of the Convention.

75. In respect of the applicant's reliance on Article 13 of the Convention, the Court considers that this complaint should be understood as referring to the applicant's alleged inability to effectively challenge his detention under Article 5 § 4 of the Convention. In addition, the Court observes that Article 5 § 4 of the Convention constitutes a *lex specialis* in relation to the more general requirements of Article 13 (see, among other authorities, *Nikolova*, cited above, § 69). Accordingly, the Court must examine the complaint only under Article 5 § 4 of the Convention.

1. Admissibility

76. 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

77. The Court reiterates that, by virtue of Article 5 § 4 of the Convention, arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the "lawfulness", in the sense of the Convention, of their deprivation of liberty (see *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, pp. 34-35, § 65). This guarantee applies whatever the grounds for detention and the mere absence of any proceedings satisfying Article 5 § 4 of the Convention can result in a finding of violation (see *De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971, Series A no. 12, pp. 39-40, § 73).

78. Returning to the specifics of the present case, the Court finds this complaint to be identical to that examined in the case of *Asenov* (cited above, §§ 73-79).

79. Likewise, the Court notes that in the present case the applicant had no judicial procedure by which he could challenge the lawfulness of his detention after the decision of 3 August 1998 to release him on bail. The applicant's attempts to have the authorities review the amount of the bail because he had no ability to pay it proved futile (see paragraphs 35-40 above). As a result, he remained in detention for an additional year and twenty-one days. Only on 24 August 1999 did a court decide to hear an

appeal from the applicant and subsequently ordered his release (see paragraphs 41-42 above).

80. It follows, that the applicant was denied the right to have the continued lawfulness of his detention reviewed by a court following the decision of 3 August 1998 to release him on bail. Thus, there has been a violation of Article 5 § 4 of the Convention in that respect.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION CONCERNING THE LENGTH OF THE CRIMINAL PROCEEDINGS

81. 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..."

82. The Government did not submit observations on the admissibility and merits of this complaint.

83. The applicant reiterated his complaint.

A. The relevant period

84. The Court observes that the preliminary investigation against the applicant was opened on 6 July 1993, which is the start of the period to be taken into account. As to its end, the Court notes that the applicant did not provide information nor did he substantiate any complaints for any period after 17 February 2000, at which time the proceedings were still pending at the investigation stage (see paragraph 25 above).

85. It follows, that the Court can only assess the length of the criminal proceedings against applicant from 6 July 1993 to 17 February 2000, a period of six years, seven months and seventeen days.

B. Admissibility

86. 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.

C. Merits

87. The Court reiterates that it must assess the reasonableness of the length of the proceedings in the light of the particular circumstances of the case and having regard to the criteria laid down in its case-law, in particular

the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what is at stake for the applicant has also to be taken into account (see *Philis v. Greece (no. 2)*, judgment of 27 June 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1083, § 35). The Court further reiterates that only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (see *H. v. France*, judgment of 24 October 1989, Series A no. 162-A, pp. 21-22, § 55).

88. The Court considers that the case was relatively complex as it involved several accused and related to three counts of robbery.

89. There do not appear to have been any significant delays attributable to the applicant, the other defendants and parties to the proceedings. It is true that four hearings before the Sofia City Court were postponed on account of their or their lawyers' failure to appear (see paragraph 21 above). This resulted in a delay lasting from 25 February 1997 to 30 June 1998, a period of one year, four months and five days. However, as noted below, the Court considers that this delay could have been avoided by the Sofia City Court remitting the case to the Prosecutor's Office quicker rather than postponing the four hearings and then doing so (see paragraph 90 below).

90. As to the conduct of the authorities, the Court observes that between 31 August 1994 and 28 February 1996, a period of one year, five months and twenty-nine days, the Sofia City Prosecutor's Office remitted the case back to the investigation stage on five separate occasions due to various deficiencies in the preliminary investigation (see paragraph 18 above). In addition, between 25 February 1997 and 30 June 1998, a period of one year, four months and five days, the Sofia City Court adjourned four court hearings due to non-attendance of various persons only in the end to remit the case to the Prosecutor's Office due to various deficiencies in the indictment and the charges brought against the accused (see paragraphs 21-22 above). A further delay was caused by the Sofia City Prosecutor's Office remitting the case to the investigation stage on two separate occasions between 13 July 1998 and 22 June 1999 demanding that the instructions of the Sofia City Court be fulfilled (see paragraph 23 above). In any event, the Court notes that as of 17 February 2000 the preliminary investigation against the applicant had still not definitively concluded, which was six years, seven months and seventeen days after it had been opened (see paragraph 25 above).

91. Finally, the Court observes that what was at stake for the applicant was significant as he risked imprisonment and had been in remanded custody for almost six years during the course of the proceedings.

92. Considering the above, the Court is of the opinion that the "reasonable time" requirement of Article 6 § 1 of the Convention was breached in the present case. Thus, there has been a violation of Article 6 § 1 of the Convention in that respect.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

93. 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

94. The applicant claimed 10,100 French francs [1,540 euros (EUR)] in respect of pecuniary damage as a result of loss of employment income during the two periods of his detention when he was allegedly unable to work. He based the amount of his claim on the statutory minimum monthly salary in force over the given periods and claimed that if had he been at liberty, he could have worked and therefore derived the stated income.

95. The applicant also claimed EUR 30,000 in respect of non-pecuniary damage. He argued that he had felt anguish and despair having been deprived of his liberty for a considerable period of time and for having to endure criminal proceedings of excessive length. In addition, he claimed that the continuation of the criminal proceedings against him denied him the opportunity to apply for certain types of employment, where the absence of such proceedings was a prerequisite for candidates.

96. The Government did not comment on the applicant's claims in respect of pecuniary damage, but challenged his claim for non-pecuniary damage. They argued that they were unfounded, excessive and that they did not correspond to the awards made by the Court in previous similar cases.

97. The Court finds that the applicant's claims in respect of pecuniary damage are hypothetical and unsubstantiated in so far as he did not present any documents or evidence to show that he had been employed prior to any of the periods of his detention or that he had offers of employment for the stated periods. Accordingly, the Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, noting its finding of violations of Article 5 §§ 3 and 4 and Article 6 of the Convention (see paragraphs 73, 80 and 92 above) and deciding on an equitable basis, it awards the applicant EUR 3,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

98. The applicant claimed 6,480 United States dollars (USD: approximately EUR 5,028) for work by his lawyer on the case. He also claimed EUR 135 in respect of translation, postal and telephone charges, as

well as photocopying and office supplies' expenses. The applicant submitted a legal fees agreement, a timesheet which reflected 108 hours of legal work at the hourly rate of USD 60 (approximately EUR 47) and two receipts for 1,771 new Bulgarian Levs (BGN: approximately EUR 908) for payments made to his lawyer by the Bulgarian Lawyers for Human Rights Foundation as compensation for the legal work on the case. He also enclosed an agreement for the translation expenses, a receipt for BGN 60 (approximately EUR 31) for the payment made to the translator and a postal receipt for BGN 147.30 (approximately EUR 76) all of which were on the account of the Bulgarian Lawyers for Human Rights Foundation.

99. The Government disputed the timesheet, stating that the number of hours claimed was excessive.

100. 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 were reasonable as to quantum. In the instant case, the Court considers that the number of hours claimed seems excessive and that a reduction is necessary in that respect. In addition, the Court finds that the applicant's lawyer failed to keep it informed of the subsequent development of the criminal proceedings against his client (see paragraph 25 above), circumstances which are directly relevant to the application (Rule 47 § 6 of the Rules of Court). Accordingly, having regard to all relevant factors, the Court considers it reasonable to award the sum of EUR 2,000 in respect of costs and expenses, plus any tax that may be chargeable on that amount.

C. Default interest

101. 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 length of, and justification for, the applicant's detention; (b) his inability to challenge the amount of the bail and, thereby, the continued lawfulness of his detention; and (c) the alleged excessive length of the criminal proceedings against him;

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 and the court's failure to assess the applicant's ability to provide recognizance;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the applicant being denied the right to have the continued lawfulness of his detention reviewed by a court following the decision of 3 August 1998 to release him on bail;

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

6. *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 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage;
(ii) EUR 2,000 (two thousand euros) in respect of costs and expenses;
(iii) any tax that may be chargeable on the above amounts;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President