CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF VACHEV v. BULGARIA

(Application no. 42987/98)

JUDGMENT

STRASBOURG

8 July 2004

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

In the case of Vachev v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mr K. HAJIYEV, *judges*,
and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 17 June 2004,

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

PROCEDURE

1. The case originated in an application (no. 42987/98) against the Republic of Bulgaria lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Antim Todorov Vachev, a Bulgarian national born in 1941 and living in Teteven, on 26 May 1998.

2. The applicant was represented by Mr M. Ekimdjiev, a lawyer practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agents, Ms G. Samaras and Ms M. Kotzeva, of the Ministry of Justice.

3. The applicant alleged, in particular, that upon his being placed under house arrest he had not been brought before a judge or other officer authorised by law to exercise judicial power, in breach of Article 5 § 3 of the Convention, that his house arrest had not been subject to judicial review, in breach of Article 5 § 4 of the Convention, that he had had no enforceable right to compensation for the alleged breaches of Article 5 of the Convention and that the criminal proceedings against him had lasted an unreasonably long time.

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

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 19 June 2003 the Court (First Section) declared the application partly admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1941 and lives in Teteven. He was the executive director of Elprom-EMT, a State-owned company, against which bankruptcy proceedings were opened in 1997.

A. The criminal proceedings against the applicant

9. On 14 May 1997 the Teteven District Prosecutor's Office opened criminal proceedings against the applicant and against the deputy director of Elprom-EMT and a company employee.

10. On 3 June 1997 the applicant was charged with abuse of office and making false official documents, contrary to Articles 282 § 2 and 311 § 1 of the Criminal Code ("the CC"). It was alleged that, together with the deputy director, he had abused his managerial position during the period April 1996 – March 1997 and had occasioned losses to the company in order to secure a financial benefit for a private limited liability company in which his wife was a member. The alleged loss to Elprom-EMT amounted to 23,302,275 old Bulgarian levs (BGL). It was also charged that to facilitate that offence the applicant had made false documents and had incited the deputy director and a company employee to make false documents.

11. On 6 June 1997 a prosecutor of the Lovech Regional Prosecutor's Office ordered the suspension of the applicant from his position of executive director, on the grounds that the charges against him were for job-related offences and that there were sufficient grounds to believe that he could jeopardise the investigation if he remained in office.

12. On 20 June 1997 the investigator in charge of the case ordered an expert financial report, which was assigned to two former employees of Elprom-EMT.

13. On 4 August 1997 counsel for the applicant requested to be allowed to consult the case file. The request was granted on 10 August.

14. A graphological report ordered earlier was ready on 18 September 1997.

15. On 25 September 1997 the applicant was questioned. Counsel for the applicant requested to be allowed to inspect the case file. The investigator

allowed them to consult certain documents but refused access to the whole file.

16. On 16 October 1997 the expert financial report ordered on 20 June 1997 was ready.

17. On 20 October and 25 November 1997 the investigator ordered expert reports on the prices of certain items relevant to the investigation.

18. On 10 December 1997 the applicant was questioned and was allowed, together with his counsel, to consult certain documents in the case file, including the expert reports.

19. On 29 December 1997 counsel for the applicant requested the disqualification of one of the experts who had prepared the expert financial report. They argued, *inter alia*, that one of the experts had been chief accountant of Elprom-EMT and had been dismissed for disciplinary reasons by the applicant, which cast doubt on his objectivity. The request was denied.

20. It seems that most of the witnesses in the case were questioned on dates between June and December 1997.

21. On 10 February 1998 the applicant was questioned. His request to be allowed to consult the case file was granted.

22. On 12 February 1998 counsel for the applicant again requested the disqualification of the experts who had prepared the expert financial report. They repeated their arguments in respect of the first expert and also averred that the other expert had been involved in the bankruptcy proceedings of Elprom-EMT.

23. The same day the applicant was presented with the amended charges. These included aggravated embezzlement facilitated by the making of false official documents (Article 202 in conjunction with Article 311 of the CC), embezzlement (Article 201 of the CC), abuse of office (Article 282 of the CC), deliberately entering into contracts disadvantageous to the company he was managing (Article 220 of the CC) and making false official documents (Article 311 of the CC). It was alleged that between March 1996 and February 1997, together with the deputy director of Elprom-EMT, he had embezzled company assets amounting to BGL 4,833,264.54, for the commission of which offence he had made false official documents, that in June 1995 he had misappropriated a trailer owned by Elprom-EMT, that between March 1996 and February 1997, together with the deputy director, he had abused his office to secure a financial benefit for a private company, that between August 1996 and January 1997, together with the deputy director, he had deliberately made disadvantageous contracts between Elprom-EMT and the same private company for which he had secured a financial benefit, and that in December 1994 he had made two false invoices for sums amounting to 365,000 German marks.

After the being charged the applicant was questioned in the presence of counsel. He refused to give explanations.

24. On 16 February 1998 the applicant and his counsel were allowed to consult the entire case file. The applicant objected to the expert reports and requested the disqualification of the experts. The investigator denied his requests and proposed to the prosecution that the applicant be indicted.

25. On 16 June 1998 counsel for the applicant requested that the case be remitted for additional investigation, arguing that this was necessary to rectify certain procedural violations.

26. On 9 July 1998 the Teteven District Prosecutor's Office granted the request and referred the case back for investigation. It observed that the relevant circumstances about the relations between Elprom-EMT and the private company which had allegedly benefited from it had not been fully elucidated and that the investigator had erred in the legal qualification of the offences. It gave specific instructions as to the facts which had to be established. It further expressed the view that the applicant's request for the disqualification of one of the experts who had prepared the expert financial report was well-founded, since he had been dismissed by the applicant for disciplinary reasons and the applicant had good reasons to fear his lack of objectivity. It was therefore necessary to prepare a new expert report. In addition, it asserted that it was necessary to charge the applicant anew, since the original presentation of the charges against him had not been specific enough. Finally, it noted that the applicant's counsel had also been Elprom-EMT's counsel in the bankruptcy proceedings against the company, which raised certain doubts as to a potential conflict of interests. It was therefore necessary to establish whether the applicant had reason to doubt the loyalty of his counsel, because if that issue was not elucidated, the applicant could use it as an argument that his defence rights had been infringed.

27. On 4 November 1998 the investigator, complying with the instructions of the prosecution, ordered a new financial report.

28. On 26 April 1999 the Teteven District Prosecutor's Office, finding that the investigator in charge of the case had not carried out any of its instructions apart from ordering a new financial report, replaced him with a new one.

29. On 1 June 1999 the new investigator proposed to discontinue the proceedings, on the ground that the charges against the applicant were not supported by sufficient evidence.

30. On 7 June 1999 the Teteven District Prosecutor's Office rejected the proposal and referred the case back for additional investigation. It held that the evidence was not sufficient because the investigation had not been performed thoroughly.

31. On 9 June 1999 the investigator allowed the applicant to consult the case file.

32. On 13 June 1999 the financial report ordered on 4 November 1998 was ready.

33. On 7 January 2000 counsel for the applicant informed the investigator that she would be unavailable until 18 January.

34. On 19 January 2000 the investigator charged the applicant anew. The charges included, apart from the previous ones, a new charge under Article 219 of the CC (mismanagement resulting in loss for the company). After charging the applicant the investigator questioned him and allowed him and his counsel to consult the case file.

35. On 31 January 2000 the investigator recommended that the applicant be indicted solely under Article 219 of the CC.

36. On 14 February 2000 the Teteven District Prosecutor's Office decided to discontinue the investigation in respect of the charges under Articles 202 (aggravated embezzlement), 282 (abuse of office) and 311 (making false official documents) of the CC. On 23 March 2000 the Lovech Regional Prosecutor's Office overturned that decision and referred the case back to the investigator. On appeal by the investigator on 6 April 2000 the Veliko Tarnovo Appellate Prosecutor's Office affirmed the overturning.

37. On 12 May 2000 the Lovech Regional Prosecutor's Office decided to drop the charges under Article 219 of the CC. Its decision was overturned by the Veliko Tarnovo Appellate Prosecutor's Office on 21 July 2000 and the case was referred back to the Lovech Regional Prosecutor's Office with instructions to carry out certain investigative steps (*inter alia*, to order an expert report) and elucidate certain facts relating to transactions carried out by Elprom-EMT during the period 1996-97.

38. On 4 August 2000, when the case was back at the investigation stage, the investigator ordered an additional expert report.

39. On 8 June 2001 the applicant's counsel informed the investigator that she would be unavailable until 12 June.

40. On 12 June 2001 the investigator allowed the applicant and his counsel to consult the case file.

41. On 19 June 2001 the investigator recommended that the applicant be indicted under Articles 219 (mismanagement resulting in loss), and 311 (making false official documents) of the CC.

42. On 20 July 2001 the Lovech Regional Prosecutor's Office decided to drop the charges under Article 219 of the CC and to transfer the case to the Teteven District Prosecutor's Office for continuation of the proceedings under the remaining charges.

43. On 5 September 2001 the Teteven District Prosecutor's Office remitted the case for additional investigation, holding that the investigative steps carried out up until then had not established all relevant circumstances.

44. On 24 September 2001 the investigator ordered a new expert report, assigning it to new experts.

45. On 26 February 2003 the applicant and the prosecution entered into a plea-bargain agreement. The criminal proceedings against him were apparently discontinued soon after.

B. The applicant's house arrest

46. On 3 June 1997 the applicant was put under house arrest by an investigator who saw him in person and questioned him.

47. On 12 June 1997 the applicant lodged with the Teteven District Prosecutor's Office a request to be released on bail. On 16 June 1997 the Teteven District Prosecutor's Office denied the applicant's request. The applicant appealed to the Lovech Regional Prosecutor's Office. The appeal was dismissed by an order of 8 July 1997. The applicant appealed to the Chief Prosecutor's Office. On 3 September 1997 the Chief Prosecutor's Office dismissed the appeal. The applicant lodged an appeal with the Head of the Investigations Division of the Chief Prosecutor's Office. On 31 October 1997 the Head of the Investigations Division dismissed the appeal.

48. In the meantime, on 7 August and 2 September 1997, the Teteven District Prosecutor's Office had denied two requests by the applicant to be allowed to leave his home for one day. Another request by the applicant to be allowed to leave his home for one day was denied on 29 October 1997. On 12 November 1997 the Teteven District Prosecutor's Office allowed the applicant to leave his home for one day.

49. On 19 November 1997 the Teteven District Prosecutor's Office denied a renewed application for release by the applicant.

50. On 4 December 1997 the applicant submitted a new request for release on bail. On 16 December 1997 the Teteven District Prosecutor's Office granted bail, setting the amount at BGL 3,000,000. On an unspecified date in December 1997 the applicant paid the amount of the bail and was released from house arrest.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. House arrest

51. By Article 146 of the Code of Criminal Procedure ("the CCP"), a measure to secure appearance before the competent authority has to be imposed in respect of every person accused of having committed a publicly prosecutable offence. One such measure is house arrest.

52. Article 151 of the CCP, as in force at the material time, defined house arrest as follows:

"House arrest shall consist in prohibition for the accused to leave his home without permission by the relevant authorities."

In its interpretative decision no. 10/1992 (реш. № 10 от 27 юли 1992 г. по конституционно дело № 13 от 1992 г., обн., ДВ брой 63 от 4 август 1992 г.) the Constitutional Court held as follows:

"... [H]ouse arrest is also a form of detention and [constitutes] an interference with the inviolability [of the person]."

53. At the relevant time and until 1 January 2000 house arrest at the pre-trial stage of criminal proceedings could be ordered by an investigator or by a prosecutor. The investigator or prosecutor was not under an obligation to interview the accused in person when ordering house arrest. The role of investigators and prosecutors under Bulgarian law has been summarised in paragraphs 25-29 of the Court's judgment in the case of *Nikolova v. Bulgaria* ([GC], no. 31195/96, ECHR 1999-II).

54. At the relevant time the CCP did not provide for judicial review of house arrest. Thus, the only possibility for a person put under house arrest was to apply to a prosecutor who could order his release. If the prosecutor refused to release the person under house arrest, he or she could appeal to a higher prosecutor (Articles 181 and 182 of the CCP).

55. The CCP was amended with effect from 1 January 2000 and at present provides, in the newly introduced paragraph 2 of its Article 151, for full initial and subsequent judicial review of house arrest.

B. Decision No. 1 of 1997 of the Assembly of the Criminal Divisions of the Supreme Court of Cassation

56. On 21 March 1997 the Assembly of the Criminal Divisions of the Supreme Court of Cassation decided to request the Constitutional Court to rule on the compatibility of Article 152 of the CCP, governing pre-trial detention, with, *inter alia*, Article 5 of the Convention. It reasoned that by virtue of Article 5 § 4 of the Constitution the Convention was incorporated into Bulgarian law and that all statutory provisions should therefore be in compliance with it. It also stated that when deciding cases before them the Bulgarian courts should take into account the case-law of the European Court of Human Rights (опред. № 1 от 21 март 1997 г. по н.д. № 1/ 1997 г. на ОСНК на ВКС).

C. The State Responsibility for Damage Act

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

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

The reported case-law under section 2(1) of the Act is scant. However, all judgments in which State liability was found to arise under this provision related specifically to pre-trial detention under Article 152 of the CCP, not house arrest under Article 151 of the CCP or any other form of deprivation of liberty ordered in the context of criminal proceedings (реш. № 859/ 2001 г. от 10 септември 2001 г. г.д. № 2017/2000 г. на ВКС, реш. № 978/2001 г. от 10 юли 2001 г. по г.д. № 1036/2001 г. на ВКС). The reported case-law also suggests that the terms "unlawful" and "lack of lawful grounds" refer to unlawfulness under domestic law.

58. By section 2(2) of the Act, in certain circumstances a claim may be brought for damage occasioned by the "unlawful bringing of criminal charges". Such a claim may be brought only where the accused person has been acquitted by a court or the criminal proceedings have been discontinued by a court or by the prosecution authorities on the ground that the accused person was not the perpetrator, that the facts did not constitute a criminal offence or that the criminal proceedings were instituted after the expiry of the relevant limitation period or despite a relevant amnesty.

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

THE LAW

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

60. The applicant complained that his house arrest, which had been ordered by an investigator, had entailed a breach of Article 5 § 3 of the Convention, which reads, as relevant:

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

61. Referring to the cases of *Assenov and Others v. Bulgaria* (judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII) and *Nikolova* (cited above), the applicant maintained that the investigator who had put him under house arrest could not be considered a "judge" or "other officer authorised by law to exercise judicial power".

62. The Government did not comment on this complaint.

63. In previous judgments which concerned the system of detention pending trial as it existed in Bulgaria until 1 January 2000, the Court has found that neither investigators before whom accused persons were brought, nor prosecutors who approved detention orders could be considered to be "officer[s] authorised by law to exercise judicial power" within the meaning of Article 5 § 3 of the Convention (see *Assenov and Others,* cited above, pp. 3298-99, §§ 144-50, *Nikolova*, cited above, §§ 49-53 and *Shishkov v. Bulgaria*, no. 38822/97, §§ 52-54, 9 January 2003).

64. The present case does not concern detention pending trial, but house arrest. Nevertheless, the Court finds no material difference with the cases cited above. It has not been disputed by the parties that the applicant's house arrest constituted deprivation of liberty within the meaning of Article 5 (see paragraph 52 above and also *N.C. v. Italy*, no. 24952/94, § 33, 11 January 2001). Therefore, in accordance with paragraph 3 of that Article, he was entitled to be brought promptly before a judge or other officer authorised by law to exercise judicial power. The investigator who ordered the applicant's house arrest (see paragraph 46 above) cannot be considered such an officer as he was not sufficiently independent and impartial for the purposes of Article 5 § 3, in view of the practical role that he played in the prosecution. The Court refers to its analysis of the relevant domestic law contained in its *Nikolova* judgment (see *Nikolova*, cited above, §§ 50-51).

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

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

66. The applicant complained that, contrary to Article 5 § 4 of the Convention, he had not had an opportunity to take proceedings by which the lawfulness of his house arrest could be decided. Article 5 § 4 reads as follows:

> "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."

67. The Government raised a preliminary objection of failure to exhaust domestic remedies. They argued that according to the Bulgarian Constitution international treaties, including the Convention, were part of

domestic law and took priority over the provisions of domestic law which went against them. More and more often the Bulgarian courts relied on the Convention in deciding the cases before them. As an example the Government cited decision No. 1 of 1997 of the Assembly of the Criminal Divisions of the Supreme Court of Cassation, in which it had decided to refer a provision of the CCP to the Constitutional Court, considering that it was contrary to Article 5 of the Convention. Given these facts, the applicant could have applied to a court, relying directly on the Convention. The court would have been obliged, by virtue of the Convention itself, to examine and rule on his application for release. Moreover, while the CCP was silent on the issue, there was no express prohibition of judicial review of house arrest.

68. The applicant replied that at the relevant time the CCP did not contain a procedure whereby a person could challenge his or her house arrest before a court. The national courts could not be expected to "produce" and apply a non-existent procedure to conform to the requirements of Article 5 § 4 of the Convention. It was true that the Convention was part of the domestic law of Bulgaria, but that did not make an application based directly on Article 5 § 4 an effective domestic remedy.

69. In its admissibility decision of 19 June 2003 the Court noted that the question of exhaustion of domestic remedies was so closely related to the merits of the complaint that it could not be detached from them. Accordingly, the Court will examine the Government's preliminary objection in the context of the merits of the applicant's complaint.

70. It has not been disputed that the applicant's house arrest constituted deprivation of liberty within the meaning of Article 5 § 4 (see paragraph 52 above and also *N.C.*, cited above, § 33). The applicant was therefore entitled to the guarantees of that provision.

71. The Court reiterates that the remedy required by Article 5 § 4 must be of a judicial nature, which implies that the person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation, failing which he will not have been afforded the fundamental guarantees of procedure applied in matters of deprivation of liberty (see *Winterwerp v. the Netherlands*, judgment of 24 October 1979, Series A no. 33, p. 24, § 60). The Court further notes that the existence of a remedy must be sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required for the purposes of Article 5 § 4. There is no requirement that remedies that are neither adequate nor effective should be used (see *Sakık and Others v. Turkey*, judgment of 26 November 1997, *Reports* 1997-VII, p. 2625, § 53; *Kadem v. Malta*, no. 55263/00, § 41, 9 January 2003; and, *mutatis mutandis*, *Van Droogenbroeck v. Belgium*, judgment of 24 June 1982, Series A no. 50, p. 30, § 54; *De Jong, Baljet and Van den Brink v. the Netherlands*, judgment of 22 May 1984, Series A

no. 77, p. 19, § 39; and *Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, p. 17, § 42).

72. The Court notes that the Convention is indeed incorporated in Bulgarian law and is directly applicable in Bulgaria (see paragraph 56 above). However, it also notes that at the relevant time the Bulgarian CCP did not provide for judicial review of house arrest (see paragraph 54 above) and that there is no other provision of domestic law which establishes a procedure whereby a person can apply to a court to review the lawfulness of his or her house arrest. In these circumstances, it is not entirely clear whether a remedy satisfying the requirements of Article 5 § 4 exists in theory.

73. However, the Court does not consider itself to be required to determine this question of Bulgarian law. It notes that the Government have not furnished any example of a judicial decision in which a person put under house arrest has successfully relied on Article 5 § 4 to apply to a court for his or her release. The Government relied only on a decision of the Assembly of the Criminal Divisions of the Supreme Court of Cassation to refer the provisions of the CCP governing pre-trial detention to the Constitutional Court as being contrary to Article 5 of the Convention (see paragraphs 56 and 67 above). The Court does not consider that this decision represents a precedent indicating that a person put under house arrest could successfully apply to a court for his or her release, relying solely on Article 5 § 4.

This lack of precedents indicates the uncertainty of this remedy in practice (see *Sakık and Others*, cited above, p. 2625, § 53). Furthermore, the Court notes that it is unclear – and the Government have not explained – which would have been the competent court, what procedure it would have had to follow, and on the basis of what criteria it would have had to take its decision.

74. In conclusion, the Court dismisses the Government's preliminary objection in respect of Article 5 § 4 and holds that there has been a violation of that provision.

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

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

Article 5 § 5 provides:

> "Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

76. The applicant submitted that under Bulgarian law it was not possible to obtain compensation for deprivation of liberty which had violated the Convention but had been effected in accordance with the requirements of the CCP, which had been the case with his house arrest. He also submitted that the State Responsibility for Damage Act spoke only of pre-trial detention, which term referred to a specific kind of deprivation of liberty, remand in custody. As house arrest was a different kind of deprivation of liberty, it did not fall within the ambit of the Act.

77. The Government did not comment on this complaint.

78. The Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 (see *Wassink v. the Netherlands*, judgment of 27 September 1990, Series A no. 185-A, p. 14, § 38). The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court.

79. In this connection, the Court notes that in the present case it has found that the applicant's right to be brought promptly before a judge or other officer authorised by law to exercise judicial power, as well as his right to take proceedings whereby the lawfulness of his house arrest could be decided by a court were infringed (see paragraphs 65 and 74 above). It follows that Article 5 § 5 of the Convention is applicable. The Court must therefore establish whether or not Bulgarian law afforded the applicant an enforceable right to compensation for the breaches of Article 5 in his case.

80. By section 2(1) of the State Responsibility for Damage Act, only persons who have been placed in "pre-trial detention" may seek compensation, and only if the detention order has been set aside "for lack of lawful grounds", the latter expression apparently referring to unlawfulness under domestic law (see paragraph 57 above). In the present case the applicant was not in pre-trial detention; his deprivation of liberty consisted of house arrest. Moreover, there is nothing to indicate that this house arrest was unlawful under domestic law. Therefore, the applicant had no right to compensation under section 2(1) of the State Responsibility for Damage Act. Nor does section 2(2) of the Act apply (see paragraph 58 above).

It follows that in the applicant's case the State Responsibility for Damage Act does not provide for an enforceable right to compensation for his deprivation of liberty in breach of Article 5 §§ 3 and 4.

81. Furthermore, it does not appear that such a right is secured under any other provision of Bulgarian law (see paragraph 59 above).

82. The Court thus finds that Bulgarian law did not afford the applicant an enforceable right to compensation, as required by Article 5 § 5 of the Convention.

There has therefore been a violation of that provision.

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

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

Article 6 § 1 provides, as relevant:

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

A. Period to be taken into consideration

84. The proceedings were opened on 14 May 1997. The applicant was charged and placed under house arrest on 3 June 1997 (see paragraphs 9, 10 and 46 above). On 26 February 2003 the applicant entered into a plea-bargain agreement with the prosecution and soon thereafter the proceedings were discontinued (see paragraph 45 above). The period to be taken into consideration thus lasted approximately five years and nine months. Throughout this time the proceedings remained at the preliminary investigation stage.

B. Reasonableness of the length of the proceedings

85. The Court will assess the reasonableness of the length of the proceedings in the light of the 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 was at stake for the applicant has also to be taken into account (see *Portington v. Greece*, judgment of 23 September 1998, *Reports* 1998-VI, p. 2630, § 21; and *Kudła v. Poland* [GC], no. 30210/96, § 124, ECHR 2000-XI).

1. Complexity of the case

86. The applicant conceded that the case had been complex, but maintained that nevertheless the amount of time taken by the authorities to deal with it had been excessive, going far beyond the time-limits laid down in the CCP.

87. The Government submitted that the proceedings had been complex, involving a number of different charges against different persons for continued criminal activity. The investigation authorities had questioned forty-seven witnesses coming from all parts of the country and some of these witnesses had to be questioned twice. Numerous other investigative steps had been carried out: complex forensic reports, gathering of hundreds of documents, inspections, confrontations, etc. The complexity of the case

was illustrated by the fact that the case file ran to 2022 sheets bound in eight volumes.

88. The Court agrees that criminal proceedings against the applicant were factually and legally complex. They involved several persons accused of having committed numerous financially related offences during a prolonged period of time (see paragraphs 10 and 23 above).

2. Conduct of the applicant

89. The applicant submitted that he had requested the disqualification of the experts who had prepared the expert financial report quite early on, but that his requests had been denied. The only delays stemming from his conduct had been between 7 and 18 January 2000 and between 6 and 8 June 2001, when his counsel had been unavailable.

90. The Government submitted that the applicant had failed to request the disqualification of the experts who had prepared the financial expert report in a timely manner, thus making it necessary for the prosecutor to remit the case back to the investigation for the appointment of new experts. This had also been necessary because the counsel retained by the applicant, being also counsel of Elprom-EMT in the bankruptcy proceedings against the company, had a potential conflict of interests and needed to be replaced.

91. The Court is not convinced that the applicant's alleged failure to request the disqualification of the two experts in a timely manner was the source of any delay. It was rather incumbent on the authorities to comply from the outset with the rules of criminal procedure and appoint experts whose impartiality would not be open to doubt. Moreover, when the applicant requested the disqualification of the experts, his request was denied twice by the investigation authorities (see paragraphs 19 and 24 above). It was only when he raised the matter before the Teteven District Prosecutor's Office that the experts were replaced (see paragraphs 26 and 27 above).

92. As regards the need to replace the applicant's counsel, it does not appear that this was the main reason why the Teteven District Prosecutor's Office decided to refer the case back to the investigation in July 1998. This had become necessary essentially because certain facts had not been fully elucidated, the investigator had erred in the legal qualification of the offences alleged against the applicant and one of the experts who had prepared an expert financial report needed to be replaced (see paragraph 26 above).

93. Finally, concerning the other delays attributable to the applicant, which amounted in total to approximately two weeks (see paragraphs 33 and 39 above), the Court considers that they did not have a significant impact on the length of the proceedings as a whole.

3. Conduct of the authorities

94. The applicant argued that the bulk of the delay had resulted from the poor coordination between the prosecution and the investigation. In particular, the prosecution had referred the case back to the investigation three times. In one of those instances there had ensued a dispute as to whether some of the charges against the applicant should be dropped, which had taken additional time to resolve. Also, the authorities had generally failed to display great diligence in dealing with the case. The Government's argument that the preparation of the expert reports had been time-consuming was not very convincing because the investigator in charge of the case could have performed all other investigative steps while awaiting their preparation.

95. The Government averred that the authorities had acted diligently. In particular, the first phase of the proceedings had been completed within the statutory deadline of nine months. An important reason for the delay after 2001 had been the need to find a suitably qualified expert to prepare a forensic report needed for the purposes of the investigation. The authorities could not be blamed for the difficulties in finding such an expert in view of the specific field of expertise needed.

96. The Court notes that during the entire period to be taken into consideration – more than five years and nine months – the proceedings remained at the preliminary investigation stage. Even taking into account the fact that the case was legally and factually complex, such a time-span appears excessive. The Court further notes that there were lengthy periods during which no activity seems to have taken place. Such gaps occurred between 4 November 1998 and 1 June 1999 (see paragraphs 27-29 above), between 13 June 1999 and 7 January 2000 (see paragraphs 32 and 33 above), between 14 February 2000 and 12 May 2000 (see paragraphs 36 and 37 above) and between 4 August 2000 and 8 June 2001 (see paragraphs 38 and 39 above).

Finally, the Court notes that there was apparently poor coordination between the various bodies involved in the case, as evidenced by the numerous reformulations of the charges against the applicant (see paragraphs 10, 23, 34-37, 41 and 42 above). This, together with the many remittals of the case from the prosecution to the investigation authorities for additional investigation or for the rectification of procedural irregularities (see paragraphs 26, 30, 36, 37 and 43 above), was a major factor contributing to the delay.

4. Conclusion

97. Having regard to the criteria established in its case-law for assessment of the reasonableness of the length of proceedings, the Court finds that the length of the criminal proceedings against the applicant failed

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

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

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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

99. The applicant claimed 11,800 euros (EUR) as compensation for non-pecuniary damage. He made detailed submissions in respect of each violation of the Convention, emphasising the gravity of the case and referring to some of the Court's judgments.

100. Referring to some of the Court's judgments in previous cases against Bulgaria, the Government submitted that the claim was excessive, in particular in view of the living standards in Bulgaria. Moreover, some of the damage for which compensation was sought was not related to the breaches of the Convention.

101. Having regard to all the circumstances of the case, and deciding on an equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

102. The applicant claimed EUR 3,050 for 61 hours of legal work on the Strasbourg proceedings, at the hourly rate of EUR 50. He claimed an additional EUR 377 for translation costs (51 pages), copying, mailing and overhead expenses. The applicant submitted a fees agreement between him and his lawyer, a time-sheet and postal receipts. He requested that the amounts awarded by the Court under this head be paid directly to his legal representative, Mr M. Ekimdjiev.

103. The Government stated that some of the applicant's complaints had been declared inadmissible; the applicant could therefore claim only partial reimbursement of his lawyer's fees. They also argued that the claim for translation and other expenses, with the exception of postage, was not supported by documents.

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

has requested that the costs and expenses incurred should be paid directly to his lawyer, Mr M. Ekimdjiev. The Court considers that a reduction should be applied on account of the fact that some of the applicant's complaints were declared inadmissible (see paragraph 6 above). It also notes that the claim for translation expenses is not supported by relevant documents. Having regard to all relevant factors and deducting EUR 660 received in legal aid from the Council of Europe, the Court awards EUR 2,000 in respect of costs and expenses, to be paid directly to the applicant's legal representative, Mr M. Ekimdjiev.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Dismisses* the Government's preliminary objection in respect of the applicant's complaint under Article 5 § 4 and *holds* that there has been a violation of that provision;

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

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

5. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:
      (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to the applicant himself;
      (ii) EUR 2,000 (two thousand euros) in respect of costs and expenses, to the applicant's legal representative, Mr M. Ekimdjiev;
      (iii) any tax that may be chargeable on the above amounts;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President