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

FIRST SECTION

CASE OF YANKOV v. BULGARIA

(Application no. 39084/97)

JUDGMENT

STRASBOURG

11 December 2003

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 Yankov v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Ms N. VAJIC,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER
Mr V. ZAGREBELSKY, *judges*,
and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 20 November 2003,

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

PROCEDURE

1. The case originated in an application (no. 39084/97) against the Republic of Bulgaria lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Todor Antimov Yankov ("the applicant"), on 5 September 1997.

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

3. The applicant alleged, *inter alia*, that there had been a violation of Article 3 of the Convention in that his hair had been shaved off and he had been detained for seven days in an isolation cell in bad conditions, that there had also been an unjustified interference with his freedom of expression as he had been punished for writing statements critical of the authorities, that there had been violations of his rights under Article 5 of the Convention and that the criminal proceedings against him had been too lengthy.

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. On 11 May 2000 the Court (Fourth Section) declared the application partly inadmissible.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1). Within that Section, the Chamber that would consider

the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

7. By a decision of 12 September 2002, the Court declared the remainder of the application admissible.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant, Mr Todor Antimov Yankov, is a Bulgarian national who was born in 1943 and lives in Plovdiv.

A. The criminal proceedings against the applicant

1. The preliminary investigation

10. The applicant was the executive director of an agricultural investment fund and a financial company. He also used to teach economics, an area in which he has a doctorate.

11. On 11 March 1996 a preliminary investigation (no. 300/96) was opened by the Plovdiv District Public Prosecutor against him and other persons in respect of a number of financial transactions. The applicant was charged under Article 282 §§ 2 and 3 of the Criminal Code of dereliction of his professional duties with a view to obtaining an unlawful gain for himself and others.

12. In the course of the investigation the charges were altered several times. In all, eight persons were charged.

13. During the investigation, which lasted one year and nearly two months, the investigator heard 47 witnesses, examined numerous financial and banking documents, commissioned reports, and undertook searches.

14. On 5 May 1997 the preliminary investigation was completed and the file was transmitted to the competent prosecutor.

15. On 1 July 1997 the prosecutor submitted a 32-page indictment to the Plovdiv District Court, accompanied by 20 binders of documents.

2. The trial

16. The first hearing took place from 17 to 30 September 1997. The District Court heard the accused persons, several witnesses and experts. Some witnesses did not appear. Both the prosecution and the defence requested an adjournment.

17. The trial resumed on 25 November 1997. The District Court heard several witnesses. Ten other witnesses had not been summoned properly and others, although summoned, did not appear. The trial was adjourned until 7 January 1998.

18. On 1 December 1997 the court, sitting in private, granted a request by one of the accused persons for additional questions to be put to the experts. The experts submitted their report on 5 January 1998.

19. The trial resumed on 7 and 8 January 1998. The court adjourned the hearing as some witnesses had not appeared and ordered an additional financial report.

20. The hearing scheduled for 9 April 1998 was put off until 6 July 1998 and then until 19 October 1998 due to the applicant's ill health.

21. On 19 October 1998 the District Court held its last hearing. It heard the final pleadings of the parties.

22. On 30 October 1998 the Plovdiv District Court found the applicant guilty of ordering money transfers abroad in breach of the relevant financial regulations. The transfers had been ordered without proof of a lawful purpose and on behalf of clients of the applicant's financial company whom he had not fully identified. The applicant was also found guilty of issuing a power of attorney conferring wide-ranging powers to another person in breach of his duties as the manager of the financial company. The applicant was acquitted on the remainder of the charges against him and sentenced to five years' imprisonment.

23. The reasoning of the District Court's judgment was served on the applicant on an unspecified date in February 1999.

24. Several times during the proceedings the case file was unavailable as it was repeatedly transmitted to the competent court for examination of appeals by the applicant and his co-accused against their pre-trial detention. In practice, whenever such an appeal was lodged, the case file was transmitted together with the appeal.

25. Throughout the proceedings the District Court and, later, the Regional Court (see below) had to seek police assistance to establish the addresses of witnesses and bring them before the court.

3. Appeal proceedings

26. On 19 November 1998 the applicant appealed against his conviction and sentence.

27. On 6 December 1999 the Plovdiv Regional Court held its first hearing, which was adjourned to 13 March 2000, as one of the co-appellants had health problems.

28. On 5 June 2000 the Regional Court quashed the applicant's conviction and sentence and remitted the case to the preliminary investigation stage.

4. Renewed preliminary investigation

29. The Regional Public Prosecutor's Office in Plovdiv, considering that the Regional Court's judgment was unclear or erroneous, sought to appeal against it or request its interpretation. There ensued a dispute about the relevant time-limit, a question submitted by the prosecution authorities to the Supreme Court of Cassation. On 27 November 2000 that court dismissed the prosecution's request.

30. Nothing was done in the case thereafter, at least until November 2002, the time of the latest information from the parties. The preliminary investigation in the applicant's case was still pending before the prosecution authorities in Plovdiv.

B. The applicant's detention

1. Detention pending the preliminary investigation

31. On 12 March 1996 the applicant was arrested and detained pending trial in connection with investigation no. 300/96 by decision of an investigator, confirmed by a prosecutor.

32. On 18 March 1996 the applicant appealed against his pre-trial detention to the Plovdiv Regional Public Prosecutor. He alleged, *inter alia*, that the acts on account of which he had been charged did not constitute a criminal offence (under the banking and currency regulations in force at the relevant time) and that he had therefore been charged unlawfully. He also alleged that there had been no danger of his absconding or committing further offences. On 27 March 1996 the appeal was dismissed by the Regional Public Prosecutor who stated, *inter alia*:

> "Since Yankov has been charged under Article 282 § 2 of the Criminal Code, pre-trial detention is mandatory in accordance with Article 152 § 1 of the Code of Criminal Procedure. The possibility of not imposing pre-trial detention is to be considered by the preliminary investigation bodies only if, regard being had to the nature of the case and the particular circumstances relating to the accused, there is no

danger that he might abscond, commit further offences, or obstruct the course of justice.

The material in the case indicates that if Yankov is released, there is a danger that he might abscond, commit further offences or obstruct the course of justice... The preliminary investigation bodies are not under any obligation to set out the facts on the basis of which the above conclusions have been made."

33. On 18 April 1996 the applicant requested the District Court to order his release on the ground that the charges laid against him did not contain particulars of the alleged offence and that the provisions invoked were inapplicable as he was not an employee or an officer of the bank whose funds were at stake. The parties have not provided further information on the examination of this appeal.

34. On 29 April 1996 a prosecutor from the Chief Public Prosecutor's Office upheld the Regional Public Prosecutor's decision of 27 March 1996 while adding that the danger of absconding, committing offences or obstructing the course of justice stemmed from the fact that the applicant had financial and other relations with persons who had left the country. The arguments of the applicant, based on an analysis of the relevant banking and currency regulations, that he had not committed a crime, were to be assessed only by the investigator and then in the process of examination of the criminal case on the merits.

35. On 11 September 1996 a further appeal was dismissed by a higher ranking prosecutor at the Chief Public Prosecutor's Office on the ground that, as the preliminary investigation was still pending, there was a risk that the applicant would seek to obstruct the course of justice. Furthermore, arguments going to the substance of the charges could only be examined once the necessary evidence had been collected.

36. On 12 September 1996 the applicant submitted to the District Prosecutor's Office another request for release. He stated, *inter alia*, that he had been detained for a long period and that all the relevant evidence had been collected.

37. On 15 November 1996 the applicant asked to be examined by doctors as his health was deteriorating because of the long period of detention.

38. On 12 December 1996 the applicant lodged further applications for release with the District and Chief Public Prosecutors.

39. On 13 December 1996 the District Public Prosecutor dismissed the applications noting, *inter alia*, that the applicant had been charged with a serious intentional offence and that another preliminary investigation was also pending against him. This was investigation no. 929/96 which had been opened on an unspecified date in 1996 and was being dealt with by the authorities in separate criminal proceedings.

40. On 28 December 1996 the applicant complained to the Regional Public Prosecutor that his pre-trial detention was unlawful.

41. This complaint was dismissed on 30 January 1997 on the ground that under paragraph 3 of Article 152 of the Code of Criminal Procedure release was not possible since a second preliminary investigation (no. 929/96) was pending against the applicant. The detention of the accused person was thus mandatory. Moreover, the investigation in the case under examination, no. 300/96, was progressing and was soon to be completed.

42. On 13 February 1997 the applicant complained against his pre-trial detention to the District Court, on the ground that the statutory maximum period for the investigation had been exceeded and that, the accusation being based on documents already examined, there was no danger of him tampering with evidence. In addition, although he had been questioned on several occasions prior to his arrest, he had never attempted to abscond.

43. The application was submitted to the District Prosecutor's Office which, according to the established practice, had to transmit it to the District Court together with the case file. On 25 February 1997, when the applicant's lawyer complained to the District Prosecutor's Office, his appeal had not yet been transmitted to the court.

44. On an unspecified date the applicant complained to the prosecution authorities that his pre-trial detention ordered in connection with preliminary investigation no. 929/96, the second investigation pending against him, had been unlawful. On 11 March 1997 the Regional Public Prosecutor examined the above appeal and decided to terminate the applicant's pre-trial detention in connection with investigation file no. 929/96, as the applicant was detained pending trial in connection with the preliminary investigation no. 300/96.

45. The applicant's pre-trial detention ordered in connection with preliminary investigation no. 300/96 was extended by the District Public Prosecutor on 23 April 1997.

46. On 24 and 26 March 1997 the applicant's lawyer reiterated his request for a medical examination of his client. He stated that upon his visit on 21 March 1997 he had found the applicant in an apparently bad state of health. It appears that a medical examination was carried out on an unspecified date in the following weeks.

47. On 23 April 1997 the District Prosecutor refused to release the applicant. She took into consideration the medical report, which apparently concluded that the applicant suffered from high blood pressure, arterio-sclerosis, a kidney stone, diabetes, problems with his lungs and the prostate, problems with the blood vessels and depression. The prosecutor noted, after examining the treatment prescribed by the doctor, that the applicant could be treated in a pre-trial detention facility with a moderate risk for his health and that his state of health should be carefully followed. She also emphasised that the applicant had been charged with a serious offence which in her opinion made his release impossible.

2. Continued detention after the applicant's committal for trial

48. On 1 July 1997 the applicant was committed for trial. On 23 July 1997 he appealed against his pre-trial detention to the District Court on the ground that the charges against him were weak. He further claimed that his detention had become unnecessary as all the evidence had been collected. He reiterated that he had a family and a permanent address, that he was a respected citizen, and that there had never been convincing evidence of a danger of absconding, committing offences or obstructing the course of justice. He further complained about his bad health and enclosed medical reports of 10 January and 19 and 27 June 1997. The applicant's lawyer also invoked the Convention and asked the court to give reasoned replies to each of his arguments.

49. After examining the applicant's case in private, the District Court dismissed the application for release on 28 July 1997. The court stated:

> "The defendant Todor Antimov Yankov is indicted under section 282 § 3 of the Criminal Code with an aggravated case of dereliction of his professional duties. In accordance with Article 152 § 1 of the Code of Criminal Procedure pre-trial detention must be imposed when a person is accused of having committed a serious intentional offence. In the case of the defendant Todor Yankov, he is suspected of having committed a serious intentional offence. The grounds for the exception provided for under paragraph 2 [of Article 152] [allowing a detainee to be released from pre-trial detention] are not present in the [applicant's] case, since there exists a real danger of his obstructing the course of the proceedings or absconding. In addition, according to Article 152 § 3 of the Code of Criminal Procedure, the exception laid down in its § 2 cannot avail a defendant in a case where preliminary investigations for another criminal offence are pending against him. It is apparent from the documents in the case that the Plovdiv Dictrict Public Prosecutor's Office had separated and transmitted to the Sofia Regional Public Prosecution material in relation to another offence. Therefore, there is no valid ground for the applicant's release."

50. On 29 July 1997 the applicant appealed to the Regional Court. On 30 July 1997, before transmitting the appeal, the District Court sitting in private confirmed its refusal to release the applicant. On 4 August 1997 the file was transmitted to the Regional Court. On 11 August 1997 the Plovdiv Regional Court sitting in private dismissed the applicant's appeal on the same grounds. After examining the medical report, that court held that the conditions of detention were not damaging for his health.

51. At the first trial hearing before the Plovdiv District Court on 17 September 1997 the applicant appealed against his detention. The appeal was dismissed on the ground that the applicant had been charged with a serious intentional offence for which detention was mandatory and that the exception provided by Article 152 § 2 of the Code of Criminal Procedure could not avail a defendant in a case where preliminary investigations for another criminal offence were pending against him.

52. On 25 November 1997, at the second hearing before the Plovdiv District Court, the applicant appealed against his detention on the ground

that he could not obstruct the course of justice, as all the evidence and relevant testimony had already been examined by the court. He also stated that there was no danger of his absconding in view of his social status and family ties. The court dismissed his appeal on the same day, reasoning that the applicant had been charged with a serious intentional crime and that there were no new circumstances. On 1 December 1997 the applicant appealed to the Regional Court. On 15 December 1997 that appeal was dismissed by the Regional Court sitting in private on grounds that the applicant had been charged with a serious intentional crime and hence that his continued detention was justified, especially in view of the gravity of the alleged offence.

53. The applicant's renewed application for bail, in which he pleaded, *inter alia*, that there was no danger of him absconding, regard being had to his age, was dismissed by the District Court at its hearing on 8 January 1998 as he had been charged with a serious intentional crime and there was another case pending against him.

54. On 13 January 1998 the applicant appealed to the Regional Court. Before transmitting that appeal, on 14 January 1998 the District Court sitting in private re-examined and confirmed its refusal to release the applicant. On 19 January 1998 the Regional Court sitting in private dismissed the appeal.

55. On 9 February 1998 the applicant's lawyer requested a medical examination for the applicant as his health had deteriorated and he had to spend four days in hospital. On 27 February 1998 the applicant was examined by a doctor who recommended that he should be sent to a hospital specialising in cardiology and that he should undergo specialised medical treatment.

56. On 9 March 1998 the applicant requested his release on the basis of that medical report. He further complained that there was no evidence of any danger that he might abscond or commit further offences.

57. Between 10 and 17 March 1998 the applicant was detained in a disciplinary isolation cell (see below).

58. On 19 March 1998 the District Court examined the appeal of 9 March 1998 in the presence of the applicant. The court dismissed it holding that the health risk for the applicant was the same whether he was in prison or at home. On 24 March 1998 the applicant appealed to the Regional Court. On 25 March 1998, before transmitting the appeal, the District Court sitting in private re-examined the matter and confirmed its refusal to release the applicant. The appeal was dismissed on 30 March 1998 by the Regional Court sitting in private. It found that there had been no change of circumstances or facts capable of demonstrating that the applicant would not commit offences, obstruct the course of justice or abscond if released.

59. In the meantime, on 20 March 1998, the applicant was again examined by three doctors who found that he was suffering from thrombosis which might endanger his life and recommended rest and regular check-ups by a specialist. On 25 March 1998 the applicant was taken in hospital.

60. On 9 April 1998 the applicant submitted a renewed bail application mainly on the ground of his ill health. It was dismissed on 23 April 1998 by the District Court at a hearing at which the court heard evidence from three doctors and found that the applicant's health was adequately monitored and that he received medical treatment.

61. On 29 April 1998 the applicant appealed to the Regional Court. On 30 April 1998, before transmitting the appeal, the District Court sitting in private confirmed its refusal to release the applicant. The appeal was dismissed on 11 May 1998 by the Regional Court sitting in private. It held that there were no objective circumstances which could warrant the conclusion that the applicant would not interfere with the investigation. The court further found that "the length of the detention could not serve as an argument for a deviation from the strict provisions of Article 152 of the Code of Criminal Procedure" and that the applicant's medical problems could be adequately addressed by his transfer to Sofia Prison, where the medical service was presumably better. On 19 May 1998 the applicant was transferred to Sofia Prison.

62. On 30 June 1998 the applicant was admitted to hospital.

63. On 6 July 1998 the applicant asked again to be released on bail, pleading his ill health and the excessive length of his detention.

64. On 9 July 1998 the District Court held a hearing and decided to release the applicant on bail on health grounds. The applicant lodged a security and was released on 10 July 1998.

C. The punishment of the applicant by confinement in an isolation cell and the shaving off of his hair in March 1998

65. On 10 March 1998, during a search of the applicant before a meeting with his lawyers, the prison administration seized typewritten material. According to the applicant, it was the draft of a book he had been writing, describing events concerning his detention and the criminal proceedings against him. He had intended to read some passages to his lawyers. According to the prison officer who seized the material, the applicant had intended to transmit it to his lawyer.

66. The Government submitted several pages of the seized material. It transpires that the manuscript was in a rough form and was not ready for publication. Relevant passages read as follows:

> "The charges against me did not contain any facts or evidence indicating any criminal intention on my part or an offence committed by me... I can only regard the acts of the authorities against me as unjustified and unlawful...

The ... door clicked ... we stood up, hands behind our backs and backs to the warders: they are afraid that we might attack them, with our plastic cups... I never understood why these well-fed idlers were afraid, always two or three of them being present when the food was distributed... I used to eat only two to three crusts of bread and as many spoonfuls of the slops they called soup. We used to hear how they diluted the soup ... How painful were these moments - to see the eyes of a hungry fellow prisoner ... to see how human beings are turned into beasts... It is true that the economic situation in Bulgaria was difficult... But giving so little and such bad food to detained people was inhuman ..., even more so when we smelt the aroma of roasted or fried meat coming from the warders' quarters. This is sadism...

It was very difficult when they prohibited meetings with relatives and friends. That was not done everywhere: in Plovdiv magistrates had decided to break a record for the inhuman treatment of detainees...

[In the beginning] I did not know and never suspected what the investigative and judicial organs of democratic Bulgaria were like. For a long time I hoped that there had been a misunderstanding...

The search [in the apartment] was conducted by police officer [B.] His inexperience was betrayed by his behaviour; he was a provincial parvenu...

Could I imagine, when I worked 15-16 hours per day ... that the time would come when everything that I had done ... would be rejected ... by several powerful unscrupulous people, 'servants of law and order' ?

Toilet time is 1.5 - 2 minutes ... If someone stays longer, there follow shouting, cursing, clattering on the door, truncheon blows... You can't believe that? Well, I did not believe either that such conditions of life could exist in this country ...

The warders, most of whom are simple villagers and are paid ... better than teachers, doctors and engineers, 'work' 24 hours and then have a 72-hour rest ...They are the authority in prison, they are everything, we depend on them. It is true that there are younger and more intelligent boys, but they are a minority...

Whenever we complained about all these disgraceful matters, there was no effect ... Twice there were inspections ...., all the officers were running here and there, it was necessary to clean, to put the detention centre in a better shape; they were afraid of complaints by prisoners. But the inspectors came, made a formalistic visit and went away."

67. On 10 March 1998, after having heard the applicant and the prison officers involved, the Governor of Plovdiv Prison issued order no. 99 which read as follows:

"In accordance with section 76(k) of the Execution of Sentences Act, the detainee Todor Yankov shall be punished by seven days' confinement in an isolation cell ... for having made offensive and defamatory statements against officers, investigators, judges, prosecutors and state institutions."

68. Order no. 99 was not served on the applicant. It was enforced immediately, on 10 March 1998.

69. It appears that before his transfer to the disciplinary isolation cell the applicant was examined by a doctor.

70. Also before being brought to the cell his hair was shaved off.

71. According to the applicant, the solitary-confinement facility had no toilet and he had to use a bucket which was not emptied regularly. Hygiene was poor and there was insufficient light.

72. On an unspecified date the applicant's lawyers, having learned about the punishment, telephoned the General Director of Prisons and Detention Facilities, in whom appropriate powers are vested to examine appeals against confinement in an isolation cell.

73. On 17 March 1998 the applicant left the isolation cell.

74. On 19 March 1998 he appeared at an open hearing of the District Court. The fact that his head had been shaved nine days earlier was noticeable.

75. On 20 March 1998 the applicant's lawyers complained against the prison governor to the Deputy Minister of Justice. They conveyed, *inter alia*, the applicant's concern that the prison governor had repeatedly demonstrated personal hostility towards him and had acted unlawfully.

76. On 29 April 1998 the Deputy Minister of Justice replied to the applicant's lawyers. She stated, *inter alia*:

> "An inquiry was conducted in connection with your appeal against the allegedly unlawful acts of the [prison governor]... By an order N/ 99 of 10 March 1998 ... the accused Yankov was condemned to seven days' confinement in an isolation cell. This disciplinary measure was imposed because the papers seized contained expressions and descriptions which were offensive for the Ministry of the Interior's employees, the investigation bodies, the judiciary, the prosecution, the prison authorities and state bodies and institutions (section 46 of the Regulations). He was not punished because he had written the paper in question and wanted to take it out from the prison, which is, indeed, his right. That paper was given back to the accused Yankov.
>
> The accused suffers from a chronic disease - thrombophlebitis. He has been constantly supervised and treated in the prison. He was twice sent for outside treatment and he will be sent again for outside treatment if the need arises".

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Criminal Code

77. Article 282 § 1 provides

> "A person [exercising the function of managing another person's property or an official function], who acts in breach or dereliction of his professional duties, or exceeds his power or rights with a view to obtaining a material gain for himself or others or inflicting damage on others, and thus causes harm or substantial damage, shall be punished with up to five years' imprisonment..."

78. The third paragraph of Article 282, read in conjunction with the first and the second paragraphs of the same provision, provides for a punishment of three to ten years' imprisonment in very serious cases if the resulting damage is very substantial or the offender holds a high-ranking post.

B. The Code of Criminal Procedure

1. Power to order pre-trial detention

79. At the relevant time and until the reform of 1 January 2000 an arrested person was brought before an investigator who decided whether or not the accused should be remanded in custody. The investigator's decision was subject to approval by a prosecutor. The role of investigators and prosecutors under Bulgarian law has been summarised in paragraphs 25-29 of the Court's *Nikolova v. Bulgaria* judgment ([GC], no. 31195/96, ECHR 1999-II).

2. Legal criteria and practice regarding the requirements and justification for pre-trial detention

80. At the relevant time paragraphs 1 and 2 of Article 152 read:

> "(1) Detention on remand shall be imposed [in cases where the charges concern] a serious intentional offence.
>
> (2) In the cases falling under paragraph 1 [detention on remand] shall not be mandatory if there is no danger of the accused evading justice, obstructing the investigation, or committing further offences."

81. According to Article 93 § 7 of the Penal Code a "serious" offence is one punishable by more than five years' imprisonment.

82. According to the Supreme Court's practice at the relevant time (it has now become at least partly obsolete as a result of the amendments in force since 1 January 2000) Article 152 § 1 required that a person charged with a serious intentional offence had to be detained on remand. An exception was only possible, in accordance with Article 152 § 2, where it was clear beyond doubt that any danger of absconding or re-offending was objectively excluded as, for example, in the case of an accused who was seriously ill, elderly, or already detained on other grounds, such as serving a sentence (Dec. 1 of 4.5.1992 in case no. 1/92, Bulletin 1992/93, p. 172; Dec. no. 4 of 21.2.1995 in case no. 76/95; Dec. no. 78 of 6.11.1995 in case no. 768/95; Dec. no. 24 in case no. 268/95, Bulletin 1995, p. 149).

83. Paragraph 3 of Article 152, as in force until August 1997, provided that remand in custody was mandatory without exception where other criminal proceedings for a publicly prosecutable crime were pending against the accused person, or where he was a recidivist.

84. On 21 March 1997 the Supreme Court of Cassation examined a request by the Chief Public Prosecutor for an interpretative decision on Article 152 of the Code of Criminal Procedure. The Supreme Court of Cassation considered that Article 152 § 3 of the Code was incompatible with the Constitution, the Convention and the International Covenant on Civil and Political Rights. It therefore decided to submit the matter to the Constitutional Court which is competent to rule on the compatibility of legislation with the Constitution and international treaties. Ultimately, the Constitutional Court did not decide the point, as the impugned provision was repealed with effect from 11 August 1997.

3. Judicial review of detention

85. At the relevant time the Supreme Court considered that it was not open to the courts, when examining an appeal against pre-trial detention, to inquire whether there existed sufficient evidence to support the charges against the detainee. Their task was only to examine the lawfulness of the detention order (Dec. no. 24 of 23.5.1995 in case no. 268/95, Bulletin 1995, p. 149).

86. According to the general rules laid down in Articles 39 and 40 of the Code of Criminal Procedure and the existing practice, the detainee's applications for release at the trial stage of the criminal proceedings are examined by the trial court, in private or at an oral hearing.

87. The trial court's decision is subject to appeal in the court above (Article 344 § 3). The appeal must be lodged within seven days (Article 345) with the trial court (Article 348 § 4 in conjunction with Article 318 § 2). According to Article 347, after receiving the appeal, the trial court, sitting in private, must decide whether there exist grounds to annul or vary its decision. If it does not find a reason to do so the trial court transmits the appeal to the court above.

88. Article 348 provides that the appellate court may examine the appeal in private or, if it considers it necessary, at an oral hearing.

C. The Execution of Sentences Act and regulations implementing it, as in force at the relevant time

89. According to section 76(k) of the Act a prisoner who has committed a disciplinary offence may be punished by, *inter alia*, confinement in an isolation cell for up to 14 days.

90. Rule 46 of the regulations provides that when a prisoner's writings and appeals contain denigrating and offensive language he may be subject to disciplinary and criminal punishment.

91. At the relevant time, according to Rules 43(2) and 98, a prisoner punished by confinement in an isolation cell could appeal to the General Director of Prisons and Detention Facilities through the prison's governor.

All appeals had to be transmitted by the prison authorities within 24 hours, together with the governor's comments. The General Director was required to reply within three days. Filing an appeal did not suspend the execution of the punishment.

92. In 2002 the new section 78b of the Act introduced the possibility of a judicial appeal against disciplinary confinement in an isolation cell.

D. The State Responsibility for Damage Act 1988

93. Section 2(1) provides:

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

94. The reported case-law under section 2(1) of the Act is scant. In two recent judgments the Supreme Court of Cassation held that pre-trial detention orders must be considered as being "set aside for lack of lawful grounds" - and State liability arises - where the criminal proceedings were terminated on grounds that the charges were not proven (Decision no. 859, 10 September 2001, case no. 2017/00) or where the accused was acquitted (Decision no. 978, 10 July 2001, case no. 1036/01). The view taken appears to be that in such cases the pre-trial detention order is retrospectively deprived of its lawful grounds as the charges were unfounded.

95. On the other hand, the Government have not informed the Court of any successful claim under section 2(1) of the Act in respect of unlawful pre-trial detention orders in connection with pending criminal proceedings or proceedings which have ended with final convictions. It appears that rulings putting an end to pre-trial detention in pending criminal proceedings have never been considered as decisions to "set aside for lack of lawful grounds" within the meaning of section 2(1) of the Act. Also, the terms "unlawful" and "lack of lawful grounds" apparently refer to unlawfulness under domestic law.

96. Under section 2(2) of the Act, in certain circumstances a claim may be brought for damage occasioned by "unlawful bringing of criminal charges". Such a claim may be brought only where the accused person was acquitted by a court or the criminal proceedings were discontinued by a court or by the prosecution authorities on grounds 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. In contrast with the solution adopted under section 2(1) (see paragraph 94 above), the Supreme Court of Cassation has held that no liability under section 2(2) arises where the criminal proceedings were discontinued at the pre-trial stage on grounds that

the accusation was not proven (Decision No. 1085, 26 July 2001, case no. 2263/00, Supreme Court of Cassation-IV).

97. 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 State Responsibility for Damage 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; Dec. No. 1370, 16.12.1992, civil case no. 1181/92 г., Supreme Court-IV). The Government have not referred to any successful claim under general tort law in connection with unlawful pre-trial detention.

E. The comments of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") on the forced shaving of prisoners' heads

98. In their report on the visit to the former Yugoslav Republic of Macedonia in 1998, published on 11 October 2001, the CPT noted:

> "...[T]he CPT wishes to draw attention to ... practices observed by its delegation...[in one prison]. The first was the shaving of the heads of newly-arrived residents and of those who had been returned to the institution after escapes. Senior staff at that establishment accepted that such a procedure has no medical justification and could be considered degrading...
>
> The CPT recommends that the authorities of "the former Yugoslav Republic of Macedonia" put an end to these practices."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

99. The applicant complained under Article 3 of the Convention that his hair had been shaved off and that he had been placed in an isolation cell for seven days.

100. 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

101. The applicant stated that the shaving of his head had been a barbaric act lacking any legal basis. The measure had not been necessary for hygienic reasons as there had been no allegation that a vermin problem had existed in the particular detention centre at the relevant time. The humiliation suffered by the applicant, 55 years old at the time, a person with higher education and a doctorate, had been particularly painful. Although no one had been present when hair was shaved off, the result had remained visible for a long period after that. The applicant further stated that the conditions in the disciplinary cell had been inhuman, particularly for a person who suffered from a serious chronic decease.

102. The Government stated that the shaving of the applicant's head had been a hygienic measure against parasites and had not been intended to humiliate him. In particular, the shaving had not taken place in front of other detainees.

B. The Court's assessment

1. General principles

103. 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, for example, *Labita v. Italy* [GC], no 26772/95, § 119, ECHR 2000-IV).

104. 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 diminish the victims' human dignity or to arouse in them feelings of fear, anguish and inferiority capable of humiliating and debasing them (see, *mutatis mutandis*, the Tyrer v. the United Kingdom judgment of 25 April 1978, Series A no. 26, p. 15, § 30; the Soering v. the United Kingdom judgment of 7 July 1989, Series A no. 161, p. 39, § 100; see *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX; and *Valasinas v. Lithuania*, § 117, no. 44558/98, ECHR 2001-VIII).

105. In considering whether treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. Even the absence of such a purpose cannot conclusively rule out a finding of a violation of Article 3 (see, for

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

106. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity 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, Ireland v. the United Kingdom. judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

107. The Court has consistently stressed that 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. The State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (*Kudła v. Poland* [GC], no. 30210/96, §§ 93-94, ECHR 2000-XI).

2. Application of those principles in the present case

108. The Court notes that the applicant's hair was shaved off before his placement in an isolation cell (see paragraph 70 above).

109. The Court has not had occasion to rule on whether or not the forced shaving off of a prisoner's hair may constitute degrading treatment contrary to Article 3 of the Convention.

110. In respect of other acts affecting the dignity of detainees, the Court has held that whilst strip searches may be necessary on occasion to ensure prison security or prevent disorder or crime, they must be conducted in an appropriate manner and must be justified. Even single occasions of strip-searches have been found to amount to degrading treatment in view of the manner in which the strip-search was carried out, the possibility that its aim was to humiliate and debase and the lack of justification (see *Valasinas*, cited above and *Iwanczuk v. Poland*, no. 25196/94, 15 November 2001). In the case of *Van der Ven v. the Netherlands* (no. 50901/99, ECHR 2003-...), strip-searches, albeit carried out in a "normal" manner, had a degrading effect and violated Article 3 of the Convention as they were performed systematically on a weekly basis as a matter of practice which lacked clear justification in the particular case of the applicant.

111. On the other hand, the Court has also held that handcuffing does not normally give rise to an issue under Article 3 of the Convention where the measure was imposed in connection with lawful arrest or detention and did not entail use of force, or public exposure, exceeding what was

reasonably considered necessary in the circumstances. Even where handcuffing was not made necessary by the detainee's own conduct and there was a short public exposure, the minimum threshold of severity under Article 3 of the Convention was not reached in the case of *Raininen v. Finland* (no. 20972/92, *Reports of Judgments and Decisions* 1997-VIII), as the police officer had acted in the belief that he had complied with relevant regulations; there was therefore no intention to humiliate and it had not been shown that the applicant had been adversely affected.

112. A particular characteristic of the treatment complained of, the forced shaving off of a prisoner's hair, is that it consists in a forced change of the person's appearance by the removal of his hair. The person undergoing that treatment is very likely to experience a feeling of inferiority as his physical appearance is changed against his will.

113. Furthermore, for at least a certain period of time a prisoner whose hair has been shaved off carries a mark of the treatment he has undergone. The mark is immediately visible to others, including prison staff, co-detainees and visitors or the public, if the prisoner is released or brought into a public place soon thereafter. The person concerned is very likely to feel hurt in his dignity by the fact that he carries a visible physical mark.

114. The Court thus considers that the forced shaving off of detainees' hair is in principle an act which may have the effect of diminishing their human dignity or may arouse in them feelings of inferiority capable of humiliating and debasing them. Whether or not the minimum threshold of severity is reached and, consequently, whether or not the treatment complained of constitutes degrading treatment contrary to Article 3 of the Convention will depend on the particular facts of the case, including the victim's personal circumstances, the context in which the impugned act was carried out and its aim.

115. The Court rejects as being unsubstantiated the Government's allegation that the applicant's hair was shaved off as a hygienic measure. It has not been alleged that a problem of infestation existed in the particular detention facility. It is also unclear why the hygienic requirements for entry into the isolation cell would differ from those concerning other cells in the same detention facility.

116. The Government have not offered any other explanation. Therefore, even assuming that there was a practice of shaving off of the hair of prisoners punished by confinement in an isolation cell (see paragraph 98 above, about the practice noted by the CPT in one prison in the former Yugoslav Republic of Macedonia), the act complained of had no legal basis and valid justification.

117. The Court thus considers that even if it was not intended to humiliate, the removal of the applicant's hair without specific justification contained in itself an arbitrary punitive element and was therefore likely to appear in his eyes to be aimed at debasing and/or subduing him.

118. Furthermore, in the particular case the applicant must have had reasons to believe that the aim had been to humiliate him, given the fact that his hair was shaved off by the prison administration in the context of a punishment imposed on him for writing critical and offensive remarks about prison warders, among others (see paragraphs 65-76 above).

119. Additional factors to be taken into consideration in the present case are the applicant's age - 55 at the relevant time - and the fact that he appeared at a public hearing nine days after his hair had been shaved off (see paragraphs 9 and 74 above).

120. Having regard to the foregoing, the Court considers that in the particular circumstances of the present case the shaving off of the applicant's hair in the context of his punishment by confinement in an isolation cell for writing critical and offensive remarks about prison warders and State organs constituted an unjustified treatment of sufficient severity to be characterised as degrading within the meaning of Article 3 of the Convention.

121. It follows that there has been a violation of Article 3 of the Convention on account of the forced removal of the applicant's hair.

122. Since insufficient details were provided by the applicant about the conditions of his detention in the isolation cell and in view of its finding above, the Court does not consider it necessary to examine the remaining issues initially raised by the applicant under Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

123. Article 10 of the Convention provides:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. The parties' submissions

124. The applicant complained that his punishment for writing a book allegedly denigrating the judicial and penitentiary system and the Government and the confiscation of that manuscript amounted to unjustified

interference with his right to freedom of expression. He contested the Government's assertion that he had been punished for attempting to transmit an object to his lawyer. The punishment had been imposed in reaction to the fact that he had written critical statements against the authorities. Furthermore, under the relevant domestic law, he had been entitled to transmit uncensored correspondence to his lawyer. In any event, it was not true that his manuscript did not concern the criminal proceedings against him.

125. The Government stated that the punishment had been lawful and justified. The applicant had intended to transmit to his lawyers, without prior permission, written material unrelated to the criminal proceedings against him. That had been, *per se*, a violation of the relevant prison rules, regardless of the contents of the text. In any event, since his manuscript had contained offensive and defamatory statements, the measures against the applicant had been justified under Article 10 § 2 of the Convention to protect the reputation of others and to maintain the authority of the judiciary. It was significant that the applicant was at that time detained; he was free to publish his views after his release.

B. The Court's assessment

1. The existence of an interference

126. The Court observes that the applicant was punished by the prison administration with a seven days' confinement in a disciplinary cell "for having made offensive and defamatory statements against police officers, investigators, judges, prosecutors and state institutions" (see paragraphs 67 and 76 above). There was therefore an interference with his right to freedom of expression.

127. Such an interference entails a violation of Article 10 of the Convention unless it is prescribed by law and necessary in a democratic society in pursuance of a legitimate aim.

2. Justification

(a) Legitimate aim and lawfulness

128. The Court considers that the applicant's punishment must have been intended to pursue one or more of the legitimate aims set out in paragraph 2 of Article 10 of the Convention. Further, it is undisputed that the disciplinary punishment had a legal basis (see paragraphs 89 and 90 above).

(b) "Necessary in a democratic society"

(i) Relevant principles

129. The Court reiterates the fundamental principles underlying its judgments relating to Article 10 (see, among other authorities, the following judgments: Handyside v. the United Kingdom, 7 December 1976, Series A no. 24; Lingens v. Austria, 8 July 1986, Series A, no. 103; Jersild v. Denmark, 23 September 1994, Series A, no. 298; *Sürek v. Turkey* (no.1) [GC], no. 26682/95, ECHR 1999-IV; *Janowski v. Poland* [GC], no. 25716/94, ECHR 1999-I; *Nikula v. Finland*, no. 31611/96, 22 March 2002; and *Lešník v. Slovakia* , no. 35640/97, 11 March 2003):

(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society". As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly.

(ii) The adjective "necessary", within the meaning of Article 10 § 2, implies the existence of a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10.

(iii) In exercising its supervisory jurisdiction, the Court must look at the interference in the light of the case as a whole, including the content of the impugned statements and the context in which they were made. In particular, it must determine whether the interference in issue was "proportionate to the legitimate aims pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based themselves on an acceptable assessment of the relevant facts.

(iv) In a democratic society individuals are entitled to comment on and criticise the administration of justice and the officials involved in it. Limits of acceptable criticism in respect of civil servants exercising their powers may admittedly in some circumstances be wider than in relation to private individuals. However, it cannot be said that civil servants knowingly lay

themselves open to close scrutiny of their every word and deed to the extent to which politicians do and should therefore be treated on an equal footing with the latter when it comes to the criticism of their actions. Moreover, civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive, abusive or defamatory attacks when on duty.

(ii) Application of those principles

130. The applicant was punished for having made statements which were allegedly offensive and defamatory.

131. These statements were not identified in the disciplinary proceedings against him. Neither the prison director who issued the disciplinary order, nor the Deputy Minister of Justice who dealt with the applicant's complaint against it found it necessary to clarify which expressions or allegations in the text written by the applicant were offensive or defamatory and why (see paragraphs 67 and 76 above). There was no other relevant decision, as at the material time disciplinary punishments in prison were not amenable to judicial review (see paragraphs 91 and 92 above).

132. The Court must therefore examine the complaint under Article 10 of the Convention without the benefit of decisions by the national authorities setting out relevant arguments.

133. The excerpts from the applicant's manuscript submitted by the Government reveal that the applicant stated, *inter alia*, that prisoners were given very bad and insufficient food, that the warders shouted, cursed and hit with truncheons prisoners who stayed more than two minutes in the lavatory and that the criminal proceedings against him were unjust and unlawful (see paragraph 66 above).

134. Having regard to the particular vulnerability of persons in custody, the Court considers that the punishment of prisoners for having made allegedly false accusations concerning the conditions of detention and acts of the penitentiary authorities requires particularly solid justification in order to be considered “necessary in a democratic society”.

135. In the present case, the authorities punished the applicant without even mentioning in their decisions why they considered that his statements were defamatory. It cannot be accepted, therefore, that the factual statements contained in the applicant's manuscript, which concerned the conditions of detention and alleged practices in prison, called for his disciplinary punishment.

136. The applicant also made remarks such as “well-fed idlers” and “simple villagers” (about the prison warders), “a provincial parvenu” (about a police officer whose name was also stated) and “powerful unscrupulous people” (apparently about prosecutors and investigators generally) (see paragraph 66 above).

137. While the above statements were undoubtedly insulting, they were far from being grossly offensive. The Court also notes that they were made in a manuscript in which the applicant, in a language and style characteristic of personal memoirs or a similar literary form, recounted his arrest and detention. It was a narrative in which the applicant described moments of his life as a detainee and explained his opinion about the criminal proceedings against him, taking a critical stand as regards allegedly unlawful acts by State officials (distinguish, *Janowski v. Poland*, § 32, cited above).

138. The Court considers that since the offensive remarks were written in the context of substantive criticism of the administration of justice and officials involved in it, made in a literary form, the State authorities should have shown restraint in their reaction.

139. What is more, the Court is struck by the fact that the applicant was punished for having written down his own thoughts in a private manuscript which, apparently, he had not shown to anyone at the time it was seized. He had neither "uttered" nor "disseminated" any offensive or defamatory statements. In particular, there was no allegation that the applicant had circulated the text among the other detainees (see paragraphs 65, 67 and 76 above).

140. To that extent, the case may raise issues relating to the applicant's freedom of thought under Article 9 of the Convention or his right to respect for his private life under Article 8. However, in so far as the manuscript was seized when the applicant was about to hand it over to his lawyer and thus to "impart" its content and make it available to others, the Court does not need to decide whether it would be more appropriate to consider the case from the standpoint of those provisions.

141. Nonetheless, the fact that the applicant's remarks were never made public is relevant to the assessment of the proportionality of the interference under Article 10 of the Convention. The Court notes in this respect, in addition, that the manuscript was not in a form ready for publication and that there was no immediate danger of its dissemination, even if it had been taken out of the prison (see paragraph 66 above).

142. While the members of the prison administration who saw the applicant's manuscript after its seizure must have felt personally insulted by certain remarks which concerned them, it is difficult to accept that that was a sufficient reason to punish the applicant in response. Civil servants have a duty to exercise their powers by reference to professional considerations only, without being unduly influenced by personal feelings. The need to ensure that civil servants enjoy public confidence in conditions free of undue perturbation can justify an interference with the freedom of expression only where there is a real threat in this respect. The applicant's manuscript obviously did not pose such a threat.

143. Having regard to all the relevant circumstances, it cannot be accepted that a fair balance was struck between the competing rights and interests: the applicant's right to freedom of expression on the one hand and the need to maintain the authority of the judiciary and to protect the reputation of civil servants. By punishing the applicant, a prisoner, with seven days' confinement in a disciplinary cell for having included moderately offensive remarks in a private manuscript critical of the justice system, which had not been circulated among the detainees, the authorities overstepped their margin of appreciation.

144. The Court finds, therefore, that the interference with the applicant's freedom of expression was not necessary in a democratic society within the meaning of Article 10 § 2 of the Convention.

145. There has therefore been a violation of Article 10 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLES 3 AND 10 OF THE CONVENTION

146. The applicant complained that he did not have an effective remedy in respect of the shaving of his head and the interference with his right to freedom of expression. He relied on Article 13 of the Convention which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

147. The applicant stated that the only remedy which he had at his disposal was the possibility of filing appeals against order no. 99 to the prison administration and the Deputy Minister of Justice. However, such appeals did not suspend the execution of disciplinary punishments. Furthermore, the applicant had not been served with a copy of order no. 99 and, immediately upon the issuance of that order, he had been moved into a disciplinary isolation cell where writing or receiving letters was not allowed. Even if he had somehow succeeded in sending a complaint, the time necessary for its processing would in all likelihood have exceeded the seven days of his punishment. The applicant also stated that the prosecution authorities were not empowered to vary or quash a disciplinary order against a detainee, nor were the courts.

148. The Government stated that order no. 99 had been issued in accordance with a procedure which had afforded the applicant an opportunity to comment on the accusation against him. Furthermore, the

applicant had effective remedies at his disposal in that he could have complained to the General Director through the prison governor. He could also have complained to the prosecution authorities or filed a civil claim on the basis of general civil law.

B. The Court's assessment

149. The Court observes that the alleged lack of effective remedies complained of concerns in part the applicant's disciplinary punishment.

150. In accordance with the Court's case-law, depending on several factors, including the nature of the offence and the severity of the punishment, disciplinary proceedings may in certain circumstances be considered as proceedings determining "criminal charges" within the meaning of Article 6 of the Convention (see, *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, ECHR 2003- ; and the Campbell and Fell v. the United Kingdom judgment of 28 June 1984, Series A no. 80). In such cases, Article 6 is a *lex specialis* in relation to Article 13 of the Convention, which provides for less stringent requirements.

151. In the present case, however, the applicant's complaints are centred on the allegation that there were no remedies capable of preventing the shaving of his head - an act without legal basis and thus not directly related to the disciplinary proceedings - and that no effective redress was available in respect of the interference with his freedom of expression.

152. In these circumstances the Court considers that it is not necessary to decide whether the disciplinary proceedings against the applicant were proceedings determining a "criminal charge" within the meaning of Article 6 of the Convention, as the complaint that there were no effective remedies concerns a broader set of events and thus falls to be examined under Article 13 of the Convention in conjunction with its Articles 3 and 10.

153. As the Court has stated on many occasions, Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. Article 13 thus requires the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although the Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 also varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law (see, amongst other authorities, *T.P. and K.M v. the United Kingdom* [GC], § 107, no. 28945/95, ECHR 2001-V).

154. The Court first observes that the Government have not contended that there existed any effective remedy against the shaving of the applicant's head, which was an act without any legal basis.

155. In respect of the interference with the applicant's freedom of expression, the Court notes that his manuscript was seized on the spot and that he was placed in an isolation cell immediately after the disciplinary order against him was issued. It has not been shown that he was given a reasonable opportunity to appeal prior to the execution of the punishment. The applicant's lawyers then telephoned the General Director of Prisons and Detention Facilities, to no avail. Eventually, upon the lawyers' written complaint, the Deputy Minister of Justice replied, after more than one month, that the punishment had been justified. No reasons were given on relevant issues such as the nature of the offensive remarks, the context in which they were made, and the proportionality of the punishment (see paragraphs 68-76 above).

156. At the relevant time and until 2002 no judicial appeal lay under Bulgarian law against disciplinary confinement of a prisoner in an isolation cell. A disciplinary order could only be challenged by way of an administrative appeal to the General Director of Prisons and Detention Facilities, through the prison governor who had issued the order. The Deputy Minister of Justice in charge of prisons also exercised supervision. However, these administrative appeals did not suspend the execution of punishments. Furthermore, there were no satisfactory procedural safeguards (see paragraphs 91 and 92 above).

157. In sum, the Court considers that the above legal regime and its application in the present case infringed the applicant's right to an effective remedy against the degrading treatment to which he was subjected and the interference with his freedom of expression.

158. There has therefore been a violation of Article 13 of the Convention.

IV. ALLEGED VIOLATIONS OF ARTICLE 5 § 3 OF THE CONVENTION

159. The applicant complained under Article 5 § 3 of the Convention that upon his arrest he had not been brought promptly before a judge or other officer authorised by law to exercise judicial power and that his detention had been unjustified and unreasonably lengthy.

160. Article 5 § 3 of the Convention provides:

> "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."

A. The parties' submissions

161. The applicant stated, *inter alia*, that the authorities had not established the existence of any danger of his absconding or committing an offence. As he had never been convicted and had a family, an established professional life and a permanent residence, he should have not been kept in pre-trial detention. The applicant accepted that the preliminary investigation had been completed within a reasonable time but stated that there had been delays at the trial stage.

162. The Government did not comment on the applicant's complaint that upon his arrest he had not been brought promptly before a judge.

163. As regards the justification of the length of his detention, the Government explained that its necessity had been presumed on the basis of the severity of the charges against him. Release would only have been possible if the applicant had adduced before the national authorities sufficient evidence that any danger of his absconding or committing an offence, however remote, had been excluded. He had not done so. He had been released on bail when that became necessary on medical grounds.

164. In the Government's view, the authorities had worked on the case with the required diligence. The case had been very complex: it concerned several persons accused of offences relating to complex financial transactions. The investigator's file had run to more than a thousand pages organised in 20 binders. At the trial stage the prosecution had called 59 witnesses and the defence had listed more witnesses. The difficulties in summoning so many witnesses had inevitably caused adjournments. The applicant or some of the other co-accused had been responsible for a number of adjournments because of illness and occasions when they had sought to adduce additional evidence. Furthermore, the case-file had been transmitted to the higher court eight times, for the examination of requests for release on bail. The District Court had taken all necessary measures to reduce the delay: it had listed hearings at three-month intervals and had sought police assistance for summoning witnesses.

B. The Court's assessment

1. *Alleged violation of the 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.*

165. In previous judgments which concerned the system of detention pending trial as it existed in Bulgaria until 1 January 2000, the Court found that neither investigators before whom accused persons were brought, nor prosecutors who approved detention orders, could be considered to be "officer[s] authorised by law to exercise judicial power" within the meaning

of Article 5 § 3 of the Convention (see *Assenov and Others v. Bulgaria,* judgment of 28 October 1998, *Reports* 1998-VIII; *Nikolova*, cited above; and *Shishkov v. Bulgaria*, no. 38822/97, ECHR 2003-... (extracts).

166. The present case also concerns detention pending trial before 1 January 2000. Upon his arrest the applicant was brought before an investigator who did not have power to make a binding decision to detain him. In any event, neither the investigator nor the prosecutor who confirmed the detention were sufficiently independent and impartial for the purposes of Article 5 § 3, in view of the practical role they played in the prosecution and their potential participation as a party to the criminal proceedings (see paragraphs 31 and 79 above). The Court refers to its analysis of the relevant domestic law contained in its *Nikolova* judgment (see §§ 28, 29 and 45-53 of that judgment).

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

2. Alleged violation of the right to trial within a reasonable time or to release pending trial in accordance with Article 5 § 3

168. The applicant was arrested on 12 March 1996 and was released on bail on 10 July 1998 (see paragraphs 31 and 64 above). The period to be examined is therefore two years and almost four months.

169. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV).

170. In its partial decision of 11 May 2000 in the present case the Court rejected as manifestly ill-founded the applicant's assertion that there had been no reasonable suspicion of his having committed an offence. The applicant was held in custody on the basis of a suspicion that he had forged documents and breached his duties with a view to obtaining an unlawful gain.

171. As to the grounds for the continued detention, the Court finds that the present case is similar to the case of *Ilijkov v. Bulgaria* (no. 33977/96, 26 July 2001). The Court stated in *Ilijkov*:

> "[T]he [authorities] applied law and practice under which there was a presumption that remand in custody was necessary in cases where the sentence faced went beyond a certain threshold of severity ...[While] the severity of the sentence faced is a relevant

element .... the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of pre-trial detention ...

That is particularly true in the present case where under the applicable domestic law and practice the characterisation in law of the facts - and thus the sentence faced by the applicant - was determined by the prosecution authorities without judicial control of the question whether or not the evidence supported reasonable suspicion that the accused had committed an offence attracting a sentence of the relevant length ...

The only other ground for the applicant's lengthy detention was the domestic courts' finding that there were no exceptional circumstances warranting release. However, that finding was not based on an analysis of all pertinent facts. The authorities regarded the applicant's arguments that he had never been convicted, that he had a family and a stable way of life, and that after the passage of time any possible danger of collusion or absconding had receded, as irrelevant.

They did so because by virtue of Article 152 of the Code of Criminal Procedure and the Supreme Court's practice the presumption under that provision was only rebuttable in very exceptional circumstances where even a hypothetical possibility of absconding, re-offending or collusion was excluded due to serious illness or other exceptional factors. It was moreover incumbent on the detained person to prove the existence of such exceptional circumstances, failing which he was bound to remain in detention on remand throughout the proceedings ...

The Court reiterates that continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty. Any system of mandatory detention on remand is per se incompatible with Article 5 § 3 of the Convention (see the Letellier v. France judgment of 26 June 1991, Series A no. 207, §§ 35-53; the Clooth v. Belgium judgment of 12 December 1991, Series A no. 225, § 44; the Muller v. France judgment of 17 March 1997, *Reports* 1997-II, §§ 35-45; the above cited *Labita* judgment, §§ 152 and 162-165; and *Ječius v. Lithuania*, [no. 34578/97, ECHR 2000-IX] §§ 93 and 94).

Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases."

172. Having regard to the reasons given by the domestic courts to justify Mr Yankov's lengthy pre-trial detention (see paragraphs 32, 34, 34, 39, 41, 47, 49-53, 58 and 61 above), the Court finds, as in the *Ilijkov* case, that by failing to address concrete relevant facts and by relying solely on a statutory presumption based on the gravity of the charges and which shifted to the accused the burden of proving that there was not even a hypothetical danger of absconding, re-offending or collusion, the authorities prolonged the applicant's detention on grounds which cannot be regarded as sufficient (see also the summaries of the relevant domestic law in paragraphs 80-82 above and of the Government's submission in paragraph 163 above).

173. Moreover, in the present case the courts applied another provision of the Code of Criminal Procedure, paragraph 3 of section 152, which excluded any possibility of the release of a person against whom more than one investigation was pending. It is noteworthy in this respect that the separation or joinder of criminal investigations was a matter determined by the prosecution authorities without judicial control (see paragraphs 39, 41, 49, 83 and 84 above). That approach was incompatible with Article 5 § 3 of the Convention (see *Nankov v. Bulgaria*, no. 28882/95, §§ 83 and 84, Commission report of 25 May 1998).

174. The Court thus finds that the authorities failed to justify the applicant's remand in custody for the period of two years and almost four months. In these circumstances it is not necessary to examine whether the proceedings were conducted with due diligence.

175. There has therefore been a violation of Article 5 § 3 of the Convention in that the applicant's pre-trial detention was not justified throughout and was excessively lengthy.

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

176. The applicant complained under Article 5 § 4 of the Convention that the judicial review of his detention had been a cursory formality, that his judicial appeals against his pre-trial detention had not been examined speedily and that some of them had been examined by the courts in private. This complaint concerns proceedings after 23 July 1997.

177. Article 5 § 4 of the Convention provides:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

178. The applicant stated that under the national law and practice at the relevant time the scope of judicial review of detention was very limited and that as a result none of the decisions in his case had included a proper analysis of all the factors determining the detention's lawfulness.

179. He further considered that his appeals had not been examined speedily and that the requirements of adversarial proceedings had not been met in that the District Court on 28 July 1997, and the Regional Court on all occasions, had examined his appeals in private.

180. The Government stated that these complaints were manifestly ill-founded as the courts had taken into account all relevant factors and had acted lawfully and diligently.

181. The Court observes that the domestic courts, as in the cases of *Nikolova* and *Ilijkov*, cited above, when examining the applicant's appeals against his detention, followed the case-law of the Supreme Court at that time and thus limited their consideration of the matters before them to a

verification of whether or not the investigator and the prosecutor had charged the applicant with a "serious intentional offence" within the meaning of the Criminal Code. The only other issues examined were the questions whether or not there was another investigation pending against the applicant and whether or not his medical condition required his release (see paragraphs 49-53, 58 and 61 above).

182. In his appeals, however, the applicant had advanced arguments questioning the grounds for his detention. He had referred to concrete facts, for example that all the evidence had been collected during the first few months of the investigation, which minimised any danger of him obstructing the course of justice, that he had no criminal record and that there was no danger of his absconding in view of his age, family ties, state of health and way of life. The applicant had also asserted that the evidence against him was weak and that the charges had been based on erroneous interpretation of the relevant law (see paragraphs 48, 52 and 56 above).

183. In their decisions, the domestic courts devoted no consideration to any of these arguments, apparently treating them as irrelevant to the question of the lawfulness of the applicant's pre-trial detention (see paragraphs 49-53, 58 and 61 above).

184. The Court reiterates that 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. This means that the competent court has to examine not only compliance with the procedural requirements set out in domestic law but also the reasonableness of the suspicion grounding the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see the Brogan and Others v. the United Kingdom judgment of 29 November 1988, Series A no. 145-B, pp. 34-35, § 65; and *Grauslys v. Lithuania*, no. 36743/97, §§ 51-55, 10 October 2000).

185. While Article 5 § 4 of the Convention does not impose an obligation to address every argument contained in the detainee's submissions, the judge examining appeals against detention must take into account concrete facts invoked by the detainee and capable of putting in doubt the existence of the conditions essential for the "lawfulness", in the sense of the Convention, of the deprivation of liberty (see the *Nikolova* judgment, cited above, § 61).

186. The submissions of the applicant contained such concrete facts and did not appear implausible or frivolous. By not taking them into account the domestic courts failed to provide a judicial review of the scope and nature required by Article 5 § 4 of the Convention.

187. There has therefore been a violation of Article 5 § 4 of the Convention.

188. The applicant also complained that the proceedings had not been decided speedily and that the principle of equality of arms had been infringed. Having found that the scope and nature of the judicial review afforded to the applicant by the domestic courts did not satisfy the requirements of Article 5 § 4 of the Convention, the Court does not need to examine whether other requirements of the same provision were also breached.

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

189. The applicant complained that he did not have an enforceable right to compensation for the alleged violations of Article 5 of the Convention. Paragraph 5 of that provision states:

> "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."

190. The applicant stated that under Bulgarian law it was not possible to obtain compensation for detention which violated the Convention but was nevertheless ordered in accordance with the formal requirements of the Code of Criminal Procedure. He stressed that there had never been a single precedent of a detainee obtaining compensation in such circumstances.

191. The Government did not comment.

192. The applicant's pre-trial detention infringed his right to be brought promptly before a judge or other officer authorised by law to exercise judicial power (see paragraph 167 above), his right to trial within a reasonable time or release pending trial (see paragraph 175 above) and his right to take proceedings by which all elements relevant to the lawfulness of detention could be decided by a court (see paragraph 187 above).

193. 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 of the Convention in his case.

194. In accordance with section 2(1) of the State Responsibility for Damage Act, a person who has been remanded in custody may seek compensation only if the detention order was set aside "for lack of lawful grounds". This expression apparently refers to unlawfulness under domestic law. As far as it can be deduced from the scant practice reported under this provision, section 2(1) has only been applied in cases where the criminal proceedings were terminated on the basis that the charges were unproven or where the accused was acquitted (see paragraphs 93-95 above).

195. In the present case the applicant's pre-trial detention was considered by the courts as being in full compliance with the requirements of domestic law and the proceedings against him are still pending. Therefore, the applicant has 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 paragraphs 31-64 and 96 above).

196. It follows that in the applicant's case the State Responsibility for Damage Act does not provide for an enforceable right to compensation.

197. Furthermore, it does not appear that such a right is secured under any other provision of Bulgarian law (see paragraph 97 above).

198. 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.

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

199. The applicant complained that the criminal proceedings against him had been excessively lengthy. Article 6 § 1 of the Convention provides, in so far as relevant:

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

200. The applicant referred to his submissions under Article 5 § 3 of the Convention and added that nine months had elapsed between the delivery of the District Court's reasoning in February 1999 and the first hearing before the appellate body, the Regional Court. Furthermore, the case had been remanded to the preliminary investigation stage and nothing had been done since June 2000.

201. The Government referred to their submissions on Article 5 § 3 of the Convention and stressed the complexity of the case, which required more time.

202. The proceedings started in March 1996. In November 2002, the date of the latest information from the parties, they were pending at the preliminary investigation stage following the Regional Court's judgment of 5 June 2000 which quashed the applicant's conviction and sentence and remitted the case for renewed investigation (see paragraphs 11 and 30 above).

203. The proceedings have therefore lasted at least six years and eight months and, according to the latest information, are still pending.

204. The Court observes that the criminal proceedings against the applicant were factually and legally complex. They involved several persons accused of having committed offences in relation to a number of financial transactions (see paragraphs 11-13 and 24 above).

205. Until October 1998, when the applicant was convicted by the District Court, there were no significant delays imputable to the authorities. However, the Regional Court held its first hearing on the applicant's appeal in November 1999, more than one year after the appeal was submitted. Furthermore, nothing has been done in the case since 5 June 2000. It is still pending at the preliminary investigation stage (see paragraphs 27-30 above).

206. Having regard to the criteria established in its case-law for the assessment of the reasonableness of the length of proceedings (see, among many others, *Pélissier and Sassi v. France* [GC], no. 25444/94, 25 March 1999; and *Pedersen and Baadsgaard v. Denmark*, no. 49017/99, 19 June 2003), 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.

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

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

208. 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

209. The applicant claimed 22,400 Bulgarian levs in non-pecuniary damages (the equivalent of about EUR 11,200). He made detailed submissions in respect of each violation of the Convention in his case, emphasising the gravity of the case and referring to some of the Court's judgments.

210. The Government submitted that the claim was excessive in both absolute and relative terms, in particular in view of the living standards in Bulgaria.

211. Having regard to all the circumstances of the case, and deciding on an equitable basis, the Court awards the applicant EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

212. The applicant claimed 6,685 United States dollars ("USD") for 135 hours of legal work on the domestic proceedings concerning the lawfulness of his detention and on the Strasbourg proceedings, at the hourly rate of USD 50. He claimed an additional USD 576 for translation costs

(96 pages), copying, mailing, and overhead expenses. The applicant submitted a fees' agreement between him and his lawyer, a time-sheet and postal receipts.

213. The Government stated that: (i) the expenses incurred in relation to the proceedings before the Bulgarian courts concerning the applicant's pre-trial detention should be deducted as being outside the scope of the case; (ii) in any event, the applicant had not submitted the usual lawyers' forms of power of attorney, used in domestic proceedings; (iii) the claim for translation and other expenses was not supported by documents; (iv) the number of hours claimed was excessive as the work done by the lawyer could have been completed in 45 hours at most; (v) the hourly rate of USD 50 was excessive, regard being had to the living standard in Bulgaria; and (vi) there was a danger that bringing proceedings before the Court would become a "profitable business".

214. The Court considers that the expenses incurred by the applicant in an effort to put an end to his pre-trial detention, which was unjustifiably lengthy, were necessary and relevant to the complaints under the Convention. Further, the Court notes that the applicant has submitted a fees agreement and his lawyer's time sheet concerning work done on his case.

215. As the number of hours claimed is indeed excessive, a reduction is necessary on that basis. Also, the claim for translation expenses is not supported by relevant documents.

216. Having regard to all relevant factors and deducting EUR 630 received in legal aid from the Council of Europe, the Court awards EUR 4,000 in respect of costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 3 of the Convention;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with its Articles 3 and 10;

4. *Holds* that there have been violations of Article 5 § 3 of the Convention in that upon his arrest the applicant was not brought promptly before a judge or other officer authorised by law to exercise judicial power and that his pre-trial detention was not justified throughout the whole period and was excessively lengthy;
5. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
6. *Holds* that there has been a violation of Article 5 § 5 of the Convention;
7. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
8. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage and EUR 4,000 (four thousand euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (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;
9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 December 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President