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

FIRST SECTION

CASE OF KEPENEROV v. BULGARIA

(Application no. 39269/98)

JUDGMENT

STRASBOURG

31 July 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 Kepenerov v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mr G. BONELLO,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr V. ZAGREBELSKY,
Mrs E. STEINER, *judges*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 8 July 2003,

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

PROCEDURE

1. The case originated in an application (no. 39269/98) against the Republic of Bulgaria lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Ivan Raykov Kepenerov ("the applicant"), on 12 October 1997.

2. 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 his detention in a psychiatric clinic was arbitrary and unlawful.

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

5. The application was declared partly inadmissible by the Court (Fourth Section) on 1 February 2001.

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 was born in 1939 and lives in Sofia.

10. On 8 February 1995 the District Prosecutor's Office in Sofia opened an inquiry following a complaint by the director of the local telephone service that the applicant had been harassing him and other employees by making offensive statements and allegations that his telephone had been tapped.

11. On 5 June 1995 one of the applicant's children complained about her father's aggressive behaviour and requested that he be examined by a psychiatrist. She later made a further complaint in writing, stating that the applicant had beaten her. She enclosed a medical certificate as proof of this.

12. Between September and November 1995 the local police department collected written statements from employees of the telephone service, the applicant's daughter, his wife and neighbours.

13. The District Prosecutor's Office in Sofia requested the applicant to undergo a psychiatric examination on 23 January 1996. The applicant did not comply with the request.

14. On 13 February 1996 a prosecutor ordered the applicant's forced psychiatric examination and instructed the police to arrest him and bring him to the local mental health centre. These instructions did not refer to the length of time the applicant's confinement was to last.

15. The applicant was not informed of the above decisions.

16. On 22 February 1996 the applicant was arrested and brought to the Sofia mental health centre. On the same day, after a short examination, he was transferred to a psychiatric hospital.

17. It transpires from a letter written in 2001 by the director of the hospital concerning the complaints which the applicant lodged with the Court that the hospital administration believed that the prosecutor had ordered that the applicant was to be confined for thirty days.

18. On 26 February 1996 the applicant submitted a written complaint to the hospital administration requesting his release. He also complained orally that his detention was unlawful and, on at least one occasion, asked for a lawyer.

19. On 22 March 1996 the applicant was discharged. He attended voluntarily an examination held on 28 March 1996 but did not turn up when invited for another examination on 5 April 1996.

20. On 2 May 1996 the psychiatric hospital forwarded to the District Prosecutor's Office the doctors' opinion on the applicant's mental condition. The doctors noted in their opinion that the applicant was suffering from certain disorders, but concluded that the need to subject the

applicant to compulsory psychiatric treatment should be decided by the competent court following a fresh assessment of his mental condition.

21. On 5 June 1996 the prosecution authorities submitted to the Sofia District Court a request for the applicant's compulsory psychiatric treatment under section 36 of the Public Health Act. On 8 April 1997 the proceedings were terminated.

22. On an unspecified date in 1996 the applicant complained to the Sofia City Police Department about his arrest and detention as well as about the behaviour of the police officers involved in these measures.

23. On 1 September 1997 the applicant filed complaints with the Chief Public Prosecutor's Office and with the Minister of the Interior in which he described the events surrounding his arrest and subsequent detention in the psychiatric clinic. The applicant maintained that the authorities had acted unlawfully. By letter of 16 September 1997 the Third District Police Department in Sofia, to which the Ministry of the Interior had transmitted the applicant's complaints, replied that the police officers involved had acted pursuant to the order of a prosecutor order and, therefore, lawfully. In reply to the applicant's request for further information, the same police department, in a letter of 20 October 1997, stated that the police had acted lawfully in accordance with the order of a prosecutor.

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. According to section 36 §§ 3-6 read in conjunction with sections 59 § 2, 61 and 62 § 1 of the Public Health Act, a mentally ill person can be committed to compulsory psychiatric treatment by a decision of a district court.

25. The relevant judicial proceedings are instituted by a district prosecutor who is obliged to undertake a prior inquiry, including the ordering of a psychiatric examination, in order to assess the need for instituting proceedings. The prosecutor would therefore normally invite the person concerned to undergo a psychiatric examination in the framework of his inquiry.

26. The Public Health Act, as in force at the relevant time, did not contain any provision authorising a prosecutor to order that a person be brought by force to a hospital and be detained there for the purposes of a psychiatric examination.

27. In February 1997 section 61 §§ 2-4 of the Public Health Act was amended. According to the new provisions a prosecutor, in the framework of an inquiry, can order a person's confinement in a psychiatric hospital for the purposes of his medical examination if that person has refused to submit himself voluntarily to such an examination. The prosecutor is not obliged to seek a medical opinion before making a confinement order.

28. The relevant law – even after the 1997 amendment and at the time of the adoption of this judgment – does not provide for an appeal to a court in cases of persons who are detained for an examination in the framework of a district prosecutor's inquiry.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

29. The applicant complained that his detention in a psychiatric clinic had been arbitrary and unlawful.

30. This complaint falls to be examined under Article 5 § 1 of the Convention which provides, in so far as relevant:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...(e) the lawful detention of ... persons of unsound mind ..."

31. The Government reiterated their objections raised at the admissibility stage of the proceedings. In their view the applicant had not exhausted all domestic remedies as his complaints to the prosecution authorities had only been made after his release from the psychiatric hospital. Furthermore, he had introduced his application with the Court one year and seven months after his release and therefore out of time.

32. In its admissibility decision of 12 September 2002 the Court examined the Government's objections concerning the exhaustion of domestic remedies and the six months' time-limit and rejected them, having regard to the fact that the administration of the hospital where the applicant was detained had apparently failed to transmit his complaints to the competent authorities and that he had introduced his application less than six months after the receipt of the replies to the complaints which he made following his release. The Court sees no new elements requiring a re-examination of the issues under Article 35 § 1 of the Convention, and therefore dismisses the Government's objections.

33. As to the merits, the Government accepted that Bulgarian law and practice in respect of confinement for the purpose of effecting a psychiatric examination did not meet the Convention requirements, as the Court had found in *Varbanov v. Bulgaria* (no. 31165/95, ECHR 2000-X).

34. The applicant stated that he had been abducted from the street and detained arbitrarily and against his will. He considered that the events

complained were a serious encroachment on his most fundamental human rights.

35. In the *Varbanov* case the Court made the following findings relevant to the present case (see paragraphs 43-53 of that judgment):

> "[T]he Public Health Act, as in force [until February 1997], did not contain any provision empowering prosecutors to commit a person to compulsory confinement in a psychiatric clinic for the purpose of effecting a psychiatric examination.
>
> Moreover, the applicable law, as in force at the relevant time and even after its amendment in 1997, does not provide for the seeking of a medical opinion as a pre-condition to ordering detention with a view to compulsory psychiatric examination and thus falls short of the required standard of protection against arbitrariness.
>
> The Court thus finds a violation of Article 5 § 1 of the Convention on account of the fact that the applicant's deprivation of liberty was not justified under subparagraph (e) of this provision and had no basis in domestic law which, moreover, does not provide the required protection against arbitrariness as it does not require the seeking of a medical opinion."

36. The Court sees no relevant difference in the present case. The applicant was detained between 22 February and 22 March 1996 by decision of a prosecutor who did not have power to order his detention and did not seek a prior medical assessment of the need for the applicant's confinement. There was no possibility to obtain an independent review of its lawfulness. Furthermore, in this particular case the prosecutor's order and instructions even failed to specify the length of the applicant's confinement (see paragraphs 10-16 and 26-28 above).

37. Accordingly, the Court finds that the applicant's detention had no basis in domestic law, which, moreover, did not provide the required protection against arbitrariness.

38. There has therefore been a violation of Article 5 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant stated that he had suffered as a result of his unlawful detention. However, he did not quantify the amount claimed.

41. The Government stated that any award of compensation for non-pecuniary damage should not exceed 4,000 Bulgarian levs (the equivalent of about EUR 2,000), which was the amount awarded in the *Varbanov* case.

42. The Court considers that the applicant must have suffered distress as a result of his unlawful detention. It awards EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

43. The applicant, who was not legally represented, stated that he had incurred expenses in relation to the Convention proceedings without specifying the details thereof.

44. The Government noted that the applicant had been granted legal aid but had failed to appoint a lawyer.

45. The Court notes that, despite the decision to grant him legal aid, no payment has been made to the applicant since he failed to appoint a lawyer to represent him. The Court considers, nevertheless, that the applicant must have incurred expenses in having documents translated and photocopied for the purposes of the Convention proceedings. Deciding on an equitable basis it awards EUR 200 under this head.

C. Default interest

46. 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. *Dismisses* the Government's preliminary objections;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
3. *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 2,200 (two thousand two hundred euros) in respect of non-pecuniary damage and costs and expenses, plus any tax that may be chargeable and;

   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 31 July 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President