



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

FIRST SECTION

CASE OF DIMITRIOS DIMOPOULOS v. GREECE

(Application no. 49658/09)

JUDGMENT

STRASBOURG

9 October 2012

FINAL

09/01/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Dimitrios Dimopoulos v. Greece,

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

Nina Vajić, *President*,
Peer Lorenzen,
Elisabeth Steiner,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 18 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 49658/09) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Greek national, Mr Dimitrios Dimopoulos (“the applicant”), on 4 September 2009.

2. The applicant was represented by Mr V. Vasiliadis, a lawyer practising in Thessaloniki. The Greek Government (“the Government”) were represented by their Agent’s delegates, Mrs F. Dedousi, Legal Adviser at the State Legal Council, and Mr D. Kalogiros, Legal Representative at the State Legal Council.

3. The applicant alleged that his conditions of detention amounted to inhuman and degrading treatment under Article 3. He also complained that his application challenging his provisional detention before the Indictment Division of the Thessaloniki Criminal Court was not decided speedily and that his request to appear in person before it was tacitly refused, in violation of Article 5 § 4.

4. On 19 November 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicant's placement in pre-trial detention and recourses brought in this regard

5. The applicant was born in 1969 and lives in Thessaloniki.

6. On 16 January 2009 he was arrested by the Greek police for drug trafficking and criminal charges were brought against him.

7. On 21 January 2009, with the concurring opinion of the Prosecutor of the Criminal Court of Thessaloniki, the investigating judge remanded him in custody with effect from 16 January 2009, the date of his arrest (order no. 4/2009).

8. Subsequently, the applicant was transferred to the premises of the Thessaloniki General Police Headquarters.

9. On 26 January 2009 he lodged an application with the Indictment Division of the Thessaloniki Criminal Court, according to Article 285 of the Code of Criminal Procedure, challenging his provisional detention. He also included in his application a request to appear personally before the Indictment Division to support his request for release.

10. On 14 May 2009 the Indictment Division of the Thessaloniki Criminal Court – after hearing the prosecutor – dismissed the application (order no. 506/2009). No reference was made to the applicant's request to appear in person before the Indictment Division. It was noted that the evidence gathered during the investigation of the case confirmed that the applicant was selling drugs on a commercial basis. Further it was considered that, taking into account the circumstances of the case, the provisional detention of the applicant was lawful, since it was likely that the applicant would commit more crimes if released.

11. Subsequently, on 25 June 2009, by order no. 700/2009, the Indictment Division of the Thessaloniki Criminal Court decided to extend the applicant's detention until 16 January 2010. No information was provided as to whether the applicant is still in detention.

B. The conditions of detention

12. Between 16 January and 22 April 2009 the applicant was detained at the Thessaloniki General Police Headquarters.

13. He claims that the conditions of detention there were deplorable. In particular, he notes the lack of sanitary products and sleeping facilities. He submitted that the detention area was overcrowded, with poor ventilation and insufficient natural light. In particular, the applicant noted that there

were ten inmates per cell, which was over two times its design capacity. Some detainees were forced to sleep on the floor. There was no space to walk around. The cells and sanitary facilities were dirty. The poor quality of the food offered forced inmates to order food from outside. The prisoners had no opportunity to see doctors, even though some were affected by infectious diseases and others were drug users suffering from withdrawal.

14. In particular, as far as the lack of medical care is concerned, the applicant stressed that he has been drug-addicted for many years and he submitted a medical certificate to support his allegation. In this connection, he claimed that he was deprived of sufficient pharmaceutical treatment and regular supervision by a physician.

15. On 22 April 2009 the applicant was transferred to Diavata Prison.

II. RELEVANT DOMESTIC LAW AND PRACTICE AND COUNCIL OF EUROPE DOCUMENTS

A. Domestic legislation

16. Article 285 of the Code of Criminal Procedure, which concerns the right to lodge an application challenging remand in custody, reads as follows:

“1. An accused may lodge an objection to a remand order with the indictment division of the criminal court. The application shall be made within five days of the date of detention ... The application is transmitted to the First Instance Prosecutor and is submitted without delay to the indictment division, which decides definitively on the issue ...

4. The indictment division may overturn the remand order or replace it with preventive measures ...”

17. Further, as far as the provisions relating to the procedure before indictment divisions are concerned, in accordance with Article 306 of the Code of Criminal Procedure, the deliberations of indictment divisions are not public. Decisions are taken by a majority, after the prosecutor has been heard and has left the room (Article 138).

18. Article 572 of the Code of Criminal Procedure, reads as follows:

“1. The First Instance Prosecutor of the place where the sentence is served, shall exercise the powers provided by the Code [of Criminal Procedure] regarding the treatment of prisoners, and shall monitor the execution of sentences and the application of security measures in accordance with this Code, the Criminal Code and other related laws.

2. To perform the above functions, the First Instance Prosecutor visits the prison at least once a week. During these visits, meetings are held with inmates who have previously requested them ...”

B. Relevant national and international documents regarding conditions of detention in Greek police stations

1. The report of the Greek Ombudsman on 11 May 2007 entitled “Detention on police premises of prisoners convicted of criminal offences”

19. From 15 to 16 March 2007 the Ombudsman visited the Thessaloniki General Police Headquarters in order to examine, *inter alia*, the prisoners’ conditions of detention.

20. The Ombudsman noted that there had been a significant increase in the number of inmates detained on police premises of the Thessaloniki General Police Headquarters since 2005. In particular, he emphasised that there was a large number of aliens for whom deportation proceedings were pending. He added that they were detained in police stations for periods varying between ten days and three months. The Ombudsman observed that the infrastructure of the Thessaloniki Police Headquarters and of police stations in general was quite unlike that of detention centres, and therefore they were only suitable for detentions of very short duration. The Ombudsman made reference to a police document (no. 1026/5/22/1-0/30.3.2007) which acknowledges a lack of sufficient space in police stations, total absence of space to walk around, hygiene problems, deficiencies with respect to medical care, and security problems. In addition, the Ombudsman notes the lack of infrastructure for feeding the prisoners. It was observed that, instead of providing food to inmates, each one received from the authorities the amount of 5.87 euros (EUR) per day. For the Ombudsman, this amount would not always be sufficient, since this depended on the pricing of the dishes offered by the restaurant, which was the sole meal provider for the police station.

21. The Ombudsman concluded that detention in police stations for long periods constituted a violation of Article 3 of the Convention. He recommended that the competent authorities ensure as soon as possible for each person detained for more than twenty-four hours the opportunity to exercise in the open air and receive proper meals.

2. The Greek Ombudsman’s letter of 13 May 2009 to the Ministry of Justice, entitled “Detention of prisoners convicted of criminal offences on the premises of the police”

22. The Ombudsman reminded the Ministry about his report dated 11 May 2007 (see paragraphs 19-21 above) and underlined again the problem of long periods of detention in police stations. According to the Ombudsman, this problem proved to be more important in northern Greece because of the refusal of the Thessaloniki judicial prison to accept a greater number of inmates. The Ombudsman noted that the conditions of detention had not improved in the two year period that had elapsed since May 2007.

He noted that the situation was critical for both detainees and police officers, as it was also confirmed by a report of the Police Directorate of Imathia. The Ombudsman had already received complaints on the subject from the Thessaloniki Bar Association and the Greek League of Human Rights. At the same time, a group of detainees began a hunger strike. In conclusion, the Ombudsman asked the Ministry to take all necessary steps to tackle the issue in question.

3. The findings of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment ("CPT") following its visits to police stations and detention centres for foreigners in 2008 (from 23 to 29 September 2008)

23. The CPT visited, among others, the Thessaloniki immigration detention premises. It noted the lack of beds in the cells and that detainees were sleeping on dirty mattresses on the floor. In addition, the report observed the absence of space to walk and do physical exercise, and stressed that each inmate was entitled to EUR 5.87 per day to order meals delivered to them from outside prison. On this point, the CPT referred to the prisoners' complaints alleging that with this amount of money they could not buy more than two sandwiches per day. The CPT recommended to the national authorities to ensure that everyone detained in places for aliens awaiting deportation was served a dish (preferably hot), at least once a day.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

24. The applicant complained about his conditions of detention in so far as the premises of the Thessaloniki General Police Headquarters are concerned. He relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. The parties' submissions

25. The Government submitted that the complaint concerning conditions of detention should be dismissed, because the applicant had failed to exhaust domestic remedies. They contended that, according to the law, the

applicant had had the opportunity to bring an application under Article 572 of the Code of Criminal Procedure, in order to inform the prosecutor of the Thessaloniki Criminal Court about the conditions of his detention. He could also lodge a complaint concerning his conditions of detention with the chief of police.

26. The applicant pointed out that he had lodged an application challenging his provisional detention and that, if his request had been granted, he would have been released immediately. Further, relying on *Zajac v. Poland* (no. 19817/04, § 80, 29 July 2008), he observed that, in cases where the national law provides for several parallel remedies in various branches of law, Article 35 § 1 of the Convention does not require the person concerned, necessarily to try all other means after an attempt to obtain redress through one such remedy, and accordingly the Government's objection should be dismissed.

2. The Court's assessment

27. The Court reiterates that the purpose of Article 35 § 1, which sets out the rule on exhaustion of domestic remedies, is to afford the Contracting States the opportunity to prevent or put right the violations alleged against them before those allegations are submitted to the Court (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). However, the only remedies which Article 35 of the Convention requires to be exhausted are those which relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness. It is incumbent on the respondent State to demonstrate that these requirements are satisfied (see, *inter alia*, *Dalia v. France*, 19 February 1998, § 38, *Reports of Judgments and Decisions* 1998-I, and *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

28. The Court notes that the Government refers to two remedies available to the applicant: the application before the First Instance Prosecutor according to Article 572 of the Code of Criminal Procedure and the complaint to the chief of police.

29. As regards the remedy provided by Article 572 of the Code of Criminal Procedure, the Court notes that the applicant's main arguments are not related to the specific conditions of detention applied to him personally, but they mostly referred to the general conditions of detention in the Thessaloniki General Police Headquarters as far and to the extent that they affected him. In view of the above, no measures could have been taken by the Prosecutor (see *Nisiotis v. Greece*, no. 34704/08, § 29, 10 February 2011; *Samaras and Others v. Greece*, no. 11463/09, § 48, 28 February 2012).

30. With regard to the second remedy, the Court reiterates that it has repeatedly found that referral to the chief of police cannot be considered an

effective remedy within the meaning of Article 35 § 1 of the Convention (see *A.A. v. Greece*, no. 12186/08, §§ 45-46, 22 July 2010; *Rahimi v. Greece*, no. 8687/08, § 77, 5 April 2011; *R.U. v. Greece*, no. 2237/08, § 59, 7 June 2011; and *Efraimidi v. Greece*, no. 33225/08, § 28, 21 June 2011). In the aforementioned cases, the Court emphasised the lack of clarity regarding procedures which may be brought before the chief of police and the type of complaints that may be submitted. Doubts were also expressed about the impartiality and objectivity of the latter, which could have an impact on the effectiveness of the remedy.

31. In the light of the foregoing, the Court considers that the Government's objection on the ground of non-exhaustion cannot be accepted.

32. The Court notes that the present complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

33. The Government submitted that the applicant's allegations were vague and generic and that he had not proved that the conditions of detention complained of reached the threshold of severity which would bring the matter within the scope of Article 3.

34. In particular, regarding the applicant's allegations of insufficient medical consultation, the Government stressed that he had twice been taken to hospital for treatment. Further, concerning the catering at the Police Headquarters, they noted that from 23 April 2009, following an order of the Head of the Directorate of Internal Affairs of Thessaloniki police, all inmates could have lunch and dinner in the canteen of the police station, where police officers and civilian staff took their meals.

35. The applicant contended that the deplorable conditions of detention had been demonstrated by the relevant report and the letter from the Greek Ombudsman (see paragraphs 19-22 above) and the findings of the CPT (see paragraph 23 above). He referred in particular to the lack of medical care. He stressed that he had been a drug addict for many years and submitted a medical certificate to support this. In this connection, he claimed that he needed to be placed in a rehabilitation facility where he could be monitored by appropriate medical staff. He further stressed that a total of two check-ups at a local hospital were not adequate. He was deprived of sufficient pharmaceutical treatment and supervision by a physician.

2. *The Court's assessment*

36. The Court reiterates that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. 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, among other authorities, *Van der Ven v. the Netherlands*, no. 50901/99, § 47, ECHR 2003-II).

37. Furthermore, in considering whether a 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 him or her personally in a manner incompatible with Article 3 (see *Raninen v. Finland*, 16 December 1997, § 55, *Reports* 1997-VIII).

38. Measures depriving a person of his liberty inevitably involve an element of suffering and humiliation. Although this is an unavoidable state of affairs which in itself does not infringe Article 3, that provision nevertheless requires the State to ensure that all prisoners are detained in conditions which are compatible with respect for their human dignity, that the manner of their detention does not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in such a measure, and that, given the practical demands of imprisonment, their health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI, and *Ramirez Sanchez v. France* [GC], no. 59450/00, § 119, ECHR 2006-IX); furthermore, the measures taken in connection with the detention must be necessary to attain the legitimate aim pursued (see *Ramirez Sanchez*, *ibid.*).

39. As far as the present case is concerned, the Court notes from the outset that the applicant was detained for approximately three months in a place intended for detentions of very short duration. As the Court has already considered, such a place was not adequate for the needs of a prolonged imprisonment (see *Dougoz v. Greece*, no. 40907/98, § 48, ECHR 2001-II, and *Kaja v. Greece*, no. 32927/03, § 49-50, 27 July 2006). Moreover, the Court has already considered the conditions of detention at the Thessaloniki General Police Headquarters, where the applicant was detained, in previous cases, and a violation of Article 3 of the Convention was found (see *Vafiadis v. Greece*, no. 24981/07, §§ 30-39, 2 July 2009, and *Shuvaev v. Greece*, no. 8249/07, §§ 28-41, 29 October 2009). In this respect, the Court observes that, even though the present case does not refer to the same period as the aforementioned cases, the Government do not dispute the applicant's allegations regarding the general conditions of detention, and they did not submit any evidence that the conditions had been substantially improved, especially with regard to the problem of overcrowding. Further, the problematic conditions about which the applicant complains are also confirmed by the report and the letter of the

Greek Ombudsman (see paragraphs 19-22 above) and the findings of the CPT (see paragraph 23 above).

40. In particular, the Court observes deficiencies regarding the lack of sufficient space, the total absence of an exercise area and the hygiene problems. Moreover, even if the Government's submission that meals were provided for detainees after the 22 April 2009 was accepted, it is noted that the applicant was transferred to Diavata Prison on that date. Thus, the problem of poor catering did exist, as the applicant had been subject to the previous catering regime, and meals began to be offered after he had been transferred to another prison (see *Vafiadis*, cited above, § 35, and *Shuvaev*, cited above, §§ 37 and 39).

41. The foregoing considerations are sufficient to enable the Court to conclude that the conditions of detention of the applicant on the premises of the Thessaloniki Police Headquarters, combined with the inordinate length of his detention in those conditions, amounted to inhuman and degrading treatment contrary to Article 3.

42. Accordingly, there has been a violation of Article 3 of the Convention.

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

43. The applicant complained that, in two respects, the procedure through which he challenged his provisional detention before the Indictment Division of the Thessaloniki Criminal Court did not comply with the requirements of Article 5 § 4 and Article 6 of the Convention. The Court considers that these complaints fall to be examined under Article 5 § 4, which is the *lex specialis* for matters of deprivation of liberty (see *Reinprecht v. Austria*, no. 67175/01, § 55, ECHR 2005-XII). Article 5 § 4 reads as follows:

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

A. Regarding the tacit refusal of the request to appear in person

1. Admissibility

44. The Court notes that the present complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

2. *Merits*

(a) *The parties' submissions*

45. The Government submitted that the applicant's request for leave to appear in person was not clear, as no specific reasons justifying his request were mentioned. They further noted that no reference was made in order no. 506/2009 to the applicant's request to appear as, apparently, the Indictment Division considered that no such request had been submitted.

46. The applicant referred to the following judgments: *Kampanis v. Greece* (13 July 1995, Series A no. 318-B); *Kotsaridis v. Greece*, (no. 71498/01, 23 September 2004); and *Giosakis v. Greece (no. 1)*, (no. 42778/05, 12 February 2009) and contended that, while the Prosecutor had been heard, he himself had not had this opportunity and thus had not been able to elaborate further on his reasons for seeking release. According to the above, he was denied the opportunity to submit an appropriate and reasoned justification by providing his opinion on his continued detention.

(b) *The Court's assessment*

47. The Court reiterates that the opportunity for a detainee to be heard, either in person or through some form of representation, features among the fundamental guarantees of procedure applied in matters of deprivation of liberty (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 204, ECHR-2009). That is the case specifically where the prisoner's appearance can be regarded as a means of ensuring respect for equality of arms, one of the main safeguards inherent in judicial proceedings conducted in conformity with the Convention (see *Giosakis v. Greece (no. 2)*, no. 36205/06, § 61, 12 February 2009). In particular, in proceedings in which an appeal against a detention order is being examined, "equality of arms" between the parties - the prosecutor and the detained person - must be ensured (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II).

48. The Court reiterates that, according to well-established case-law, the detainee's right to be heard is already applied in proceedings before Indictment Divisions related to applications for release (see *Kampanis*, cited above, § 58) and also in proceedings before an investigating judge in which he has to decide whether provisional detention should be extended or not (see *Giosakis (no. 2)*, cited above, § 62). In particular, the Court observes that in *Kampanis* it was noted that "to ensure equality of arms it was necessary to give the applicant the opportunity to appear at the same time as the prosecutor, so that he could reply to his arguments". Further, it was concluded that "as they did not afford the applicant an adequate opportunity to participate in proceedings whose outcome determined whether his detention was to continue or to be terminated, the Greek rules in force at the

material time, as applied in the instant case, did not satisfy the requirements of Article 5 § 4” (see *Kampanis*, *ibid.*).

49. In view of the above, the Court considers that the aforementioned jurisprudence should also be applicable in the present case, where the applicant lodged an application with the Indictment Division challenging his detention. The Court notes that it is not in dispute that the law does not entitle either the applicant or his lawyer to attend the session in which it was examined whether his detention was lawful and justified (see *Giosakis* (*no. 2*), cited above, § 62). Moreover, the applicable provisions of law on criminal procedure did not require that the prosecutor’s submissions in support of the applicant’s detention be communicated, either to the applicant or to his lawyer. Consequently, the applicant or his counsel did not have any opportunity to comment on those arguments in order to contest the reasons given by the prosecuting authorities for his detention, either by disputing them directly before the Indictment Division or by way of written submissions (see *Kawka v. Poland*, *no. 25874/94*, § 60, 9 January 2001).

50. At the same time, the Court observes that under the applicable provisions it was possible for the prosecutor to be present at the session in which the lawfulness of the applicant’s detention was examined. It is also to be noted that the prosecutor in fact availed himself of this opportunity, by attending the session when it was examining the applicant’s request for release, while neither the applicant nor his counsel were present. In the light of these considerations, the Court is of the view that to ensure equality of arms it was necessary to give not only the prosecutor but also the applicant the opportunity to appear and elaborate his views. Lastly, it is noted that in the decision subsequently taken (order *no. 506/2009*), no reference was made to the applicant’s written and clear request to be heard, and thus no reply was given to the applicant’s arguments.

51. Accordingly, the Court considers that the authorities did not afford the applicant an adequate opportunity to participate in proceedings whose outcome determined whether his detention was to continue or to be terminated, and they did not reply to his request for appearance in the decision given. Thus, there has been a violation Article 5 § 4 in this respect.

B. The alleged failure of the authorities to have the applicant’s request decided speedily

1. Admissibility

52. The Government submitted that the application under Article 285 of the Code of Criminal Procedure does not fall to be examined under Article 5 § 4 of the Convention, as under the latter only remedies brought against administrative or judicial decisions, where deprivation of liberty is ordered automatically, may be challenged.

53. The applicant referred to *Stafford v. the United Kingdom* ([GC], no. 46295/99, ECHR 2002-IV) and contended that it was possible to implement the provisions of Article 5 § 4 throughout criminal proceedings where deprivation of liberty is ordered without assessing the specific facts of the case or when the detention imposed is based primarily on risks associated with the offender in custody. Further, it was observed that these elements may change with the course of time, and thus new issues of lawfulness may arise which require determination.

54. The Court would state that, according to its case-law, Article 5 § 4 is applicable to proceedings brought before the Indictment Division challenging the lawfulness of pre-trial detention of an accused, as in the present case (see *Giosakis (no. 1)*, cited above, §§ 50-55).

55. In the light of the foregoing, the Court considers that the Government's allegations cannot be accepted and the objection must be rejected.

56. The Court notes that the present complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, or inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

57. The Government contended that the period of three months and seventeen days taken for the examination of his application was not excessive, considering the circumstances of the case.

58. The applicant contested that argument and observed that the protracted length of the proceedings was not consistent with the logic of Article 285, which provides the detained person with only five days in order to explain all the reasons for a challenge to the lawfulness of the provisional detention imposed. The applicant alleged that an application under Article 285 gives him the opportunity to seek that the Indictment Division review and decide whether the detention should be continued. Moreover, it was stressed that the fact that the particular application had to be lodged within five days of the date of detention itself shows the urgency of this remedy, and presupposes that the Indictment Division has to make a speedy decision regarding his detention.

(b) The Court's assessment

59. The Court reiterates that Article 5 § 4 of the Convention, in guaranteeing detainees the right to institute proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and to an order for its termination if it proves unlawful (see *Van der Leer v. the Netherlands*, 21 February 1990, § 35,

Series A no. 170-A; *Musiał v. Poland* [GC], no. 24557/94, § 43, ECHR 1999-II; and *Mathieu v. France*, no. 68673/01, § 35, 27 October 2005). The requirement that a decision be given “speedily” is undeniably one such guarantee, and Article 5 § 4, concerning issues of liberty, requires particular expedition (see *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 79, ECHR 2003-IV).

60. The question whether a person’s right under Article 5 § 4 has been respected has to be determined in the light of the circumstances of each case (see *Rehbock v. Slovenia*, no. 29462/95, § 84, ECHR 2000-XII), including the complexity of the proceedings, their conduct by the domestic authorities and by the applicant and what was at stake for the latter (see *Mooren v. Germany* [GC], no. 11364/03, § 106, 9 July 2009). In principle, considering that the freedom of the applicant comes into play, there is a special need for a swift decision determining the lawfulness of detention (see *Fuchser v. Switzerland*, no. 55894/00, § 43, 13 July 2006).

61. Taking into account the aforementioned criteria, the Court has found, for example, that the requirement for a decision to be given “speedily” was violated in the following cases: *Rehbock*, cited above, § 84, twenty-three days; *Mamedova*, cited above, § 96, thirty-six days; and *Kostadinov v. Bulgaria* (no. 55712/00, § 88, 7 February 2008), twenty-six days.

62. The Court observes that, in the present case, the authorities’ decision was taken more than a hundred days after the proceedings in question had been lodged. It is further noted that, according to the aforementioned paragraph, violations were found by the Court in cases where proceedings had lasted for far shorter periods.

63. Thus the Court considers that there has been a violation of Article 5 § 4 of the Convention because of the national authorities’ failure to decide on the lawfulness of the applicant’s detention “speedily”.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

66. The Government considered the amount claimed exorbitant and submitted that the finding of a violation would constitute sufficient just satisfaction.

67. The Court considers that the applicant has suffered non-pecuniary damage which is not sufficiently compensated for by the finding of a violation of the Convention. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 10,000 under this head.

B. Costs and expenses

68. The applicant also claimed EUR 18,000 for costs and expenses incurred before the Court. He did not produce any documents in support of his claim.

69. The Government contested the applicant's claim and submitted that it was unsubstantiated.

70. According to the Court's established case-law, costs and expenses will not be awarded under Article 41 unless it is established that they have been actually and necessarily incurred and are reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). In the present case, the Court notes that the applicant's claims were not supported by any invoice or bill of costs on the basis of which the Court can assess precisely the cost and expenses actually incurred.

71. Regard being had to the above-mentioned criteria, the Court considers it reasonable to reject the applicant's claim under this head.

C. Default interest rate

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 4 as regards the applicant's absence from the appeal hearing of 14 May 2009 and the lack of a speedy review of the applicant's appeal of 26 January 2009;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), plus

any tax that may be chargeable on this amount, in respect of non-pecuniary damage;

(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;

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

Done in English, and notified in writing on 9 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President