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

FOURTH SECTION

CASE OF ILIJKOV v. BULGARIA

(*Application no. 33977/96*)

JUDGMENT

STRASBOURG

26 July 2001

This judgment may be subject to editorial revision.

In the case of Ilijkov v. Bulgaria,

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

Mr A. PASTOR RIDRUEJO, *President*,
Mr L. CAFLISCH,
Mr J. MAKARCZYK,
Mr V. BUTKEVYCH,
Mrs N. VAJIĆ,
Mr J. HEDIGAN,
Mrs S. BOTOUCHAROVA, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 10 July 2001,

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

PROCEDURE

1. The case was referred to the Court, in accordance with the provisions applicable prior to the entry into force of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")[1], by the European Commission of Human Rights ("the Commission"), on 8 March 1999 (Article 5 § 4 of Protocol No. 11 and former Articles 47 and 48 of the Convention).

2. The case originated in an application (no. 33977/96) against Bulgaria lodged with the Commission under former Article 25 of the Convention by a Bulgarian national, Mr Petar Ilijkov ("the applicant"), on 25 October 1996.

3. The applicant alleged violations of Article 5 §§ 3 and 4 of the Convention in respect of the length of his detention on remand and the examination of his appeals against detention and a violation of Article 6 § 1 of the Convention in respect of the length of the criminal proceedings against him. In his initial application the applicant also alleged violations of Articles 3, 5 § 1 and 6 § 3 of the Convention and claimed that there had been hindrance of his right to petition under former Article 25 of the Convention.

4. The Commission declared the application partly admissible on 20 October 1997. In its report of 29 October 1998 (former Article 31 of the Convention), it expressed the unanimous opinion that there had been violations of Article 5 §§ 3 and 4 and Article 6 § 1 of the Convention.

5. Before the Court the applicant was represented by Mr M. Ekimdjiev, a lawyer practising in Plovdiv. The Bulgarian Government

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1. Note by the Registry. Protocol No. 11 came into force on 1 November 1998.

("the Government") were represented by their agent Mrs G. Samaras of the Ministry of Justice.

6. On 31 March 1999 the panel of the Grand Chamber determined that the case should be decided by a Chamber constituted within one of the Sections of the Court. On 1 April 1999 the case was assigned to the Fourth Section (Rule 100 § 1, 24 § 6 and 52 § 1 of the Rules of Court).

On 24 September 1999 the applicant requested that Judge Botoucharova be required to withdraw. Having examined that request, on 9 November 1999 the Chamber rejected it.

7. The applicant and the Government each filed a memorial and written observations on the other party's memorial.

8. The Chamber decided that it was not necessary to hold a hearing (Rule 59 § 2 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The criminal proceedings

9. On 4 October 1993 the applicant was arrested on charges of forgery of documents and fraud in connection with a criminal investigation that had been opened on 10 September 1993.

It was alleged that the applicant, with the assistance of a customs officer and two other accomplices, had made false customs declarations certifying fictitious exports of consignments of cigarettes which in reality had been sold on the domestic market. On the basis of the false declarations the applicant had obtained the reimbursement of some excise tax and had attempted to obtain further reimbursements. The total amount involved, for which the applicant was eventually found guilty (see paragraph 33 below), was 15,230,400 old Bulgarian levs ("BGL") (about 3,000,000 French francs ("FRF") at the time).

The charges preferred against the applicant were based on section 212 § 4 of the Penal Code, which provided for a sentence of ten to twenty years' imprisonment.

10. During the preliminary investigation the case file was transmitted twice from the Plovdiv investigator's office to the Plovdiv Regional Court so that the appeals against detention could be examined. The case file was thus unavailable to the investigator and the supervising prosecutor for

twelve days (between 28 October and 9 November 1993) and for a further four days (between 28 February and 2 March 1994).

11. The preliminary investigation was concluded on 5 April 1994 when the indictment drawn up by the prosecutor was submitted to the Plovdiv Regional Court.

12. The Plovdiv Regional Court sat as a chamber of three judges: a president who was a professional judge and two lay judges.

It held its first hearing on 12 and 13 May 1994 when the four accused and several witnesses were heard. The prosecutor and the defence lawyers requested permission to submit further evidence. The court adjourned the hearing.

13. Several times during the proceedings the Regional Court had to wait for the case file to be returned by the Supreme Court in Sofia, where it had been sent for the examination of the appeals submitted by the applicant and his co-accused against the Regional Court's refusals to release them on bail. In practice, whenever such an appeal was submitted, the Plovdiv Regional Court transmitted the case file together with the appeal and a prosecutor's opinion.

14. The case file was sent to the Supreme Court on 28 May 1994 for one of the co-accused's appeal against detention to be examined and was returned on 30 June 1994.

The Regional Court did not deal with the case until 13 September 1994, when the presiding judge ordered the production of a piece of evidence.

15. The next hearing was held on 6 October 1994. The court heard several witnesses and adjourned the hearing as the prosecutor insisted on the examination of other witnesses who had not appeared. Some of them were ordered to pay fines for their failure to appear. The court further decided to seek the assistance of the police to establish the addresses of other witnesses who could not be found.

16. The hearing resumed on 29 and 30 November 1994. Several witnesses and experts were heard. Both the prosecution and the defence sought to adduce additional evidence. The hearing was adjourned.

17. Between 20 January and 21 February 1995 the case file was in Sofia at the Supreme Court for the examination of appeals against detention.

18. The hearing listed for 19 April 1995 was adjourned as the presiding judge was ill. The next hearing, scheduled for 9 June 1995, was adjourned as one of the lay judges had been taken ill.

19. On 12 July 1995 the court sitting in private ordered an expert report.

The hearing listed for 21 September 1995 was adjourned owing to the illness of the lawyer of one of the co-accused.

20. Between 3 October and 6 November 1995 the case file was in Sofia at the Supreme Court, which was examining appeals against detention.

21. The next hearing, listed for 12 January 1996, had to be adjourned as both lay judges were ill.

22. After learning that the lay judges were prevented by ill health from further participation in the proceedings, on 19 February 1996 the Plovdiv Regional Court recommenced the examination of the case with two new lay judges.

23. The new chamber of the court held a hearing on 26 and 27 March 1996 which was adjourned as some of the witnesses had not been summoned due to an omission on the part of the court's clerk and because the parties sought to adduce further evidence. The court fixed the date for the next hearing to 7 and 8 May 1996.

24. On 7 and 8 May 1996 the court heard several witnesses and an expert. The hearing was adjourned as further evidence had to be obtained.

25. Between 9 and 28 May 1996 the case file was at the Supreme Court in Sofia in connection with appeals against detention.

26. The hearing scheduled for 16 and 17 September 1996 was adjourned to 29 and 30 October 1996 as a lay judge had broken his leg and was unable to attend.

27. On 29 October 1996 the parties to the criminal case, including the applicant who at that time was on hunger strike, appeared before the Plovdiv Regional Court. The lawyers requested an adjournment in view of the applicant's health and the absence of the witnesses and of a defence lawyer. The court heard the medical experts who had been appointed the previous day and had examined the applicant briefly. The experts stated that the applicant needed to undergo a full examination in hospital. On 30 October 1996 the court ordered the applicant's temporary admission to hospital and adjourned the hearing. The parties disagreed over the reasons for this adjournment. The applicant submits that the absence of several witnesses was decisive, whereas the Government maintain that the only reason was the applicant's state of health, as the medical experts considered that he was not well enough to participate in the hearing.

28. Between 19 November and 4 December 1996 the case file was in Sofia at the Supreme Court in connection with appeals against detention. In its cover letter to the Supreme Court, the Regional Court drew attention to the fact that a hearing had been listed for 19 December 1996 and called for the return of the case file before that date.

29. The hearing resumed on 19 December 1996. One witness was examined. As other witnesses had not appeared, the court accepted the requests of the defence lawyers and the prosecutor for a further adjournment.

30. With two exceptions, the Plovdiv Regional Court did not, when adjourning hearings, announce in open court a date for the resumed hearing. As a result, certain witnesses and experts who were present but had to be heard again were informed about the date of the resumed hearing by a summons to attend. If the summons did not reach the person concerned the examination of the case could not be completed at the resumed hearing.

In particular, the witnesses Mrs M. H. and Mr S. Z. were present at the hearing on 13 May 1994, but were not duly summoned for the hearing on 29 November 1994. The witness Mr G.P. was present at the hearing on 26 March 1996 but was not duly summoned for the hearing on 7 May 1996. That latter hearing was adjourned to allow the examination of witnesses who had not appeared.

31. The Regional Court throughout the proceedings sought police assistance to establish the addresses of witnesses and bring them before the court. One of the witnesses was suspected of seeking to evade service of the summonses.

32. The last hearing before the Plovdiv Regional Court took place on 28-31 January 1997. The court heard witnesses and the submissions of the parties to the criminal case and examined other evidence. The applicant apparently unsuccessfully requested the adjournment of the hearing in order to question four absent witnesses whose attendance had previously been requested by both parties.

33. On 31 January 1997 the Regional Court convicted the applicant and sentenced him to thirteen years' imprisonment. His accomplices were also convicted and sentenced to terms of imprisonment of between eleven and twelve years. The court reserved the reasoning of its judgment. It was prepared on an unspecified date at least three months following the delivery of the judgment.

34. On 10 February 1997 the applicant appealed against conviction and sentence to the Supreme Court of Cassation, which under the relevant law was acting as an appellate court in cases such as the applicant's.

The Supreme Court of Cassation listed the case for hearing on 26 September 1997. On that date the prosecutor appointed to act before the Supreme Court of Cassation declared that he used to know one of the convicted persons and wished to withdraw. The court adjourned the hearing.

35. The hearing was held on 23 January 1998. On 18 March 1998 the Supreme Court of Cassation upheld the applicant's conviction and sentence.

36. Up to that point the applicant had been represented by a lawyer and, at times, by two or three lawyers simultaneously.

37. On 24 March 1998 one of the persons convicted at the same trial instituted review (cassation) proceedings.

The five-member Chamber of the Supreme Court of Cassation held a hearing on 10 June 1998 at which the applicant appeared without legal representation. He expressed the wish to join the review (cassation) proceedings, which was still possible as the statutory time-limit had not expired. The court adjourned the hearing to enable the applicant to file a petition for review (cassation) and arrange for his legal representation. The applicant lodged a petition for review on 22 June 1998.

38. The hearing resumed on 9 December 1998.

By judgment of 22 March 1999 the Supreme Court of Cassation dismissed the applicant's petition for review (cassation).

B. The applicant's detention on remand

39. On 4 October 1993, the day of his arrest, the applicant was brought before an investigator, who decided to detain him on remand. This decision was approved by a prosecutor on the same date.

On 14 October 1993, when the case was at the preliminary investigation stage, the applicant appealed to the Plovdiv Regional Court against his detention on remand. The court examined the case in private, on the basis of the investigator's file, the applicant's petition and the prosecutor's comments, which were not communicated to the applicant. By a decision of 3 November 1993 the court dismissed the applicant's appeal.

40. One of the applicant's accomplices, a Mr H., was released on bail on 6 November 1993, but was re-arrested on 15 February 1994. While on bail Mr H. attempted to induce Mr G., a witness, to give false evidence, and was later charged with and convicted of that offence.

41. Following the conclusion of the preliminary investigation in the applicant's case, and after his committal in April 1994 for trial, the applicant made before the Plovdiv Regional Court seven applications for release on bail. Appeals were made to the Supreme Court against some of the decisions of the Regional Court.

42. The first of those seven bail applications was made on 3 October 1994 and dismissed by the Regional Court on 6 October 1994.

Another request, made on an unspecified date, was dismissed by the Regional Court on 30 November 1994. The Regional Court's refusal to release the applicant was confirmed by the Supreme Court on 21 February 1995.

43. In its decision of 21 February 1995 the Supreme Court stated that under Article 152 §§ 1 and 2 of the Code of Criminal Procedure detention on remand was mandatory for everyone accused of a crime punishable by ten or more years' imprisonment, the only exception being where it was clear beyond doubt that there was no danger of the accused's absconding or re-offending. In the Supreme Court's view such would only be the case where, for example, the accused was seriously ill, elderly or in any other condition which excluded the danger of his or her absconding or re-offending. Since the applicant was charged with a crime punishable by more than ten years' imprisonment and as no special circumstances excluding the danger of his absconding or re-offending had been established, there were no grounds for ordering his release on bail. The Supreme Court referred to its practice on the matter.

The Supreme Court further refused to consider the applicant's contention that the evidence against him was weak. It found that it had no jurisdiction

to do so in connection with a bail application. Its only task was to examine whether the conditions for detention on remand under Article 152 of the Code of Criminal Procedure had been met.

44. The applicant again applied for his release on bail on 11 July 1995. That application was dismissed by the Regional Court on 21 September 1995. On appeal, the Regional Court's refusal to release the applicant was upheld by the Supreme Court sitting in private on 6 November 1995, upon receipt of the prosecutor's observations which had not been communicated to the applicant. The Supreme Court stated that the applicant could only be released if there existed unequivocal evidence establishing beyond all doubt that there was no danger of his absconding, re-offending or obstructing the investigation. However, no such evidence was available in the applicant's case.

By a decision of 4 December 1995 the Regional Court refused the applicant's request, submitted on an unspecified date, to annul or revise its previous decision concerning his detention on remand. Addressing the applicant's argument that the material in the case indicated that he had not committed a crime, the court stated that it was not open to it to analyse the evidence in the criminal proceedings. The lawfulness of the detention was to be gauged on the basis of the accusation against the applicant. The only other element to be examined was whether or not there existed exceptional circumstances demonstrating beyond all doubt that there was not even a hypothetical danger of his absconding, re-offending or obstructing the investigation. However the court had already found that no such circumstances existed.

45. A further request for release on bail, submitted on 15 January 1996, was refused by the Regional Court on 20 February 1996 as there had been no change in the circumstances.

At the hearing on 27 March 1996 before the Regional Court the applicant made an oral request for release. This was refused that same day. The court stated that there had been no change of circumstances and that the law did not lay down a time-limit for detention on remand.

46. On 1 April 1996 the applicant's lawyer lodged an appeal to the Supreme Court against the decision of 27 March 1996. Three days later, on 4 April 1996, the applicant also appealed in person. The appeals were submitted through the Regional Court, in accordance with the established practice. The grounds for appeal were, *inter alia*, that all evidence in the criminal case had already been examined and that therefore there was no danger of the applicant's perverting the course of justice. Furthermore, there was no danger of his absconding, as he had been abroad when the investigation had started and had returned voluntarily. He had never been convicted of a criminal offence, had a family and a permanent residence. The applicant also stated that the length of his detention violated the Convention.

47. By a decision of 9 April 1996 delivered in private the Regional Court, before transmitting the appeals of 1 and 4 April 1996 to the Supreme Court, confirmed its refusal of 27 March 1996 to release the applicant. The Regional Court stated *inter alia* that the applicant's arguments could not, under the settled practice of the Supreme Court, serve as a basis for a decision to release him.

48. The applicant's appeals of 1 and 4 April 1996 were transmitted to the Supreme Court on 9 May 1996. On 10 May 1996 the applicant lodged a further appeal against the Regional Court's refusal to release him. It was joined to the two earlier appeals.

49. On 22 May 1996 a prosecutor of the Chief Public Prosecutor's Office lodged written submissions on the appeals with the Supreme Court, inviting it to dismiss them. The submissions were not communicated to the applicant.

On 28 May 1996 the Supreme Court dismissed the appeals. It found that under Article 152 § 1 of the Code of Criminal Procedure the applicant's detention on remand was justified and that the case before it did not come within the exception provided by Article 152 § 2 of the Code.

The court also stated that the length of the proceedings and the question whether the accusations were well-founded were irrelevant.

50. On 15 October 1996 the applicant lodged a further application for release on bail. At that time he was on hunger strike which he had commenced on 23 September 1996 to protest against his continuing detention on remand.

The presiding judge noted on 23 October 1996 that the court could not hear the appeal as one of the lay judges had been taken ill.

At the hearing of 29 and 30 October 1996 the applicant renewed his application.

The Regional Court heard medical experts who had examined the applicant and it dismissed his application of 30 October 1996.

51. On 6 November 1996 the applicant's lawyers lodged an appeal against the decision of 30 October 1996.

On 11 November 1996, before transmitting the appeal to the Supreme Court, the Regional Court sitting in private confirmed its decision of 30 October 1996. It found *inter alia* that there had been no change of circumstances except for the applicant's worsening health. However, the medical experts had not stated that his release was necessary and his condition was being constantly monitored in hospital.

52. On 19 November 1996 the appeal was transmitted to the Supreme Court.

On 25 November 1996 a prosecutor of the Chief Public Prosecutor's Office submitted written observations to the Supreme Court, inviting it to dismiss the appeal. The comments were not communicated to the applicant.

53. On 4 December 1996 the Supreme Court sitting in private dismissed the appeal. It stated, *inter alia*, that the danger of absconding, re-offending and perverting the course of justice was presumed in view of the gravity of the crime with which the applicant was charged. The applicant's health problems, which could be dealt with at the place of detention, and the length of his detention - despite its inevitable negative consequences - did not affect that finding. The court further considered that the applicant's complaints under the Convention were unfounded. In particular, the applicant was wrong to consider that certain provisions of the Code of Criminal Procedure were contrary to the Convention.

54. On 31 January 1997 the applicant was convicted and sentenced to a term of imprisonment (see paragraph 33 above).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Provisions of the Code of Criminal Procedure and practice regarding the legal requirements and justification for detention on remand

55. The Supreme Court has stated that it is not open to the courts, when examining an appeal against detention on remand, to inquire whether there exists sufficient evidence to support the charges against the detainee. The courts must only examine the lawfulness of the detention order (Decision no. 24 of 23 May 1995 in case no. 268/95, I Chamber, Bulletin 1995, p. 149).

56. Paragraphs 1 and 2 of Article 152, as in force at the material time (and until 4 June 1995), provided as follows:

> "(1) Detention on remand shall be imposed [in cases where the charges concern] crimes punishable by ten or more years' imprisonment or capital punishment.
>
> (2) In the cases under the preceding paragraph [detention on remand] shall not be imposed if there is no danger of the accused evading justice or committing further offences."

57. These provisions, as worded from 4 June 1995 until August 1997, provided as follows:

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

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

58. With effect from 1 January 2000 Article 152 and other provisions concerning the grounds for detention on remand were amended.

59. 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 wilful crime (or with a crime punishable by ten or more years' imprisonment, according to this provision as in force before June 1995) had to be detained on remand. An exception was only possible, in accordance with section 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 (Decision no. 1 of 4 May1992 in case no. 1/92, II Chamber, Bulletin 1992/93, p. 172; Decision no. 4 of 21 February 1995 in case no. 76/95, II Chamber; Decision no. 78 of 6 November 1995 in case no. 768/95, II Chamber; Decision no. 24 in case no. 268/95, I Chamber, Bulletin 1995, p. 149).

B. Appeals against detention at the trial stage of criminal proceedings

60. According to Article 304 § 1 of the Code of Criminal Procedure, the detainee's applications for release at the trial stage of criminal proceedings are examined by the trial court.

61. It follows from Article 304 §§ 1 and 2 that such requests may be examined in private or at an oral hearing. The law does not require the trial court to decide within a particular time-limit.

The trial court's decision as regards a request for release is subject to appeal to the higher court (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, shall 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 higher court.

Before doing so, the trial court must communicate the appeal to the other party and receive its written observations (Article 348 § 4 in conjunction with Articles 320 and 321). The law does not provide for the prosecutor's observations to be communicated to the appellant.

62. Article 348 provides that the appeals court may examine the appeal in private or, if it considers it necessary, at an oral hearing. The law does not require the appeal court to decide within a particular time-limit.

C. The Penal Code

63. Article 212 § 4 lays down that it is an offence to misappropriate very large quantities of possessions by using forged documents. This offence is punishable by ten to twenty years' imprisonment.

D. Other relevant law

64. Article 259 of the Code of Criminal Procedure is entitled "Substitute judges and lay judges". Paragraph 1 provides:

> "Where the examination of the case will be lengthy, a substitute judge or lay judge may be appointed."

65. In 1997 the Supreme Court split into a Supreme Court of Cassation and a Supreme Administrative Court.

66. Article 362 of the Code of Criminal Procedure, in force since April 1998, provides that criminal proceedings may be reopened where "a violation of the Convention of substantial significance for the particular case has been established by a judgment of the European Court of Human Rights".

THE LAW

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

67. Mr Ilijkov alleged that he had been detained on remand for an unreasonably lengthy period. He invoked Article 5 § 3 of the Convention which, insofar as relevant, provides:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article 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. Arguments before the Court

1. The applicant

68. The applicant submitted that the decisions in respect of his detention on remand had been based exclusively on the gravity of the charges. The relevant domestic law and the case-law of the Supreme Court had established that the danger of absconding and re-offending - and thus the need for detention on remand - was presumed in respect of everyone

charged with a crime punishable by a term of imprisonment of a certain length.

Moreover, in violation of basic principles of criminal justice the domestic law and practice shifted the burden to prove such that the accused had to prove that there was no danger of his absconding or committing a crime. The judicial authorities in his case had thus confined themselves in their decisions to reiterating that the applicant had failed to establish that no such danger existed while disregarding concrete relevant facts such as the fact that he had a permanent address and his family situation.

The applicant thus maintained that his continued detention on remand had not been based on relevant and sufficient grounds.

69. As regards the delays in the proceedings, the applicant stated that the intervals between certain hearings, the time lost in transmission of the case file from one court to another, the repeated failure to ensure the presence of witnesses, the courts' inactivity during summer vacations and the fact that no substitute lay judges were appointed had all contributed to the excessive length of his detention.

The applicant further analysed the reasons for the adjournment of the hearings and considered that the authorities had been responsible for many of them. He disputed the Government's suggestion that he had caused delays through requests to adduce additional evidence or that his lawyers had consented to most adjournments.

70. The applicant finally considered contradictory the Government's submission regarding the complexity of the case (see paragraphs 72 and 73 below). Their statement that the case was not sufficiently difficult to warrant the appointment of substitute lay judges was inconsistent with their assertion that its length was justified by its complexity.

2. The Government

71. The Government submitted that the charges against the applicant concerned serious crimes. In such cases Article 152 of the Code of Criminal Procedure required that the accused be detained on remand. Release on bail was only possible in exceptional circumstances, where there did not exist even a theoretical possibility of absconding, re-offending or perverting the course of justice. In the absence of concrete evidence of such exceptional circumstances a presumption arose that there was a danger that the accused would abscond or commit an offence.

As regards the burden of proof in such matters, the Government asserted that it was incumbent on the prosecution authorities to establish the existence of a reasonable suspicion that the accused had committed a serious crime whereas the applicant bore the burden of proving that there existed exceptional circumstances warranting release on bail.

In the applicant's case the decisions in respect of his detention were based on the gravity of the charges and on an analysis of the evidence he

had adduced in support of his assertion that he would not abscond or re-offend. That evidence was considered unpersuasive. The reasons for the applicant's detention were thus relevant and sufficient.

Furthermore, there was no indication that he had voluntarily returned from abroad after learning about the criminal proceedings, as he claimed. On the contrary, there was information which suggested that he had not appeared when first summoned by the prosecution authorities and that the police had to trace his whereabouts.

72. In the Government's submission the factors which determined the length of the applicant's detention could be divided into two groups: "objective" and "subjective".

The most important objective difficulty stemmed form the complexity of the case, illustrated by the sixty pages of the Regional Court's judgment, the six-volume investigation case file and the fact that the prosecution had called thirty-three witnesses.

Another objective factor was the problems in respect of summoning witnesses. Five adjournments had been caused by such problems.

73. The Government further disputed the Commission's finding that the authorities could have avoided the need to recommence the trial by appointing substitute lay judges. It could not have been foreseen that the case - which only involved four accused and some thirty-three witnesses - would require a lengthy examination and that a substitute lay judge might thus be necessary. The authorities could reasonably have expected the trial to be over within a few days.

Moreover, Article 259 of the Code of Criminal Procedure allowed of the possibility of the trial being started with "a substitute judge or lay judge". Since in the applicant's case two lay judges had needed replacing, the recommencement of the trial had been unavoidable.

74. In respect of the "subjective" factors the Government referred to the applicant's behaviour and disputed the findings of the Commission concerning the reasons for several of the adjournments. The applicant had been responsible as he had made numerous requests for the admission of additional evidence, his lawyers had consented to some of the adjournments and he had gone on hunger strike, which had led to one adjournment. At the same time the Regional Court had taken all possible measures including imposing fines on witnesses who failed to appear and requesting police assistance to ensure their attendance.

3. The Commission

75. The Commission noted that the decisions concerning the applicant's detention were not based on an analysis of evidence, but solely on the fact that the applicant had been charged with a crime punishable by ten or more years' imprisonment which, according to domestic law, gave rise to a presumption that there existed a danger of his absconding, re-offending or

obstructing the investigation. The Commission considered that by failing to address facts relevant for determining whether such a danger existed and by relying solely on the seriousness of the charges the authorities had prolonged the applicant's detention on grounds which could not be regarded as sufficient.

The Commission further noted that certain delays could have been avoided or reduced, that the Regional Court had been responsible for the delay caused by the recommencement of the trial by its failure to appoint a substitute lay judge, and that the intervals between hearings had been too long. In those circumstances, even if certain delays could not be imputed to the authorities and others might have been caused by the applicant, the Commission found that the authorities had not displayed the required special diligence in the conduct of the proceedings.

B. The Court's assessment

76. The applicant's detention on remand lasted from 4 October 1993 to 31 January 1997. The period to be taken into consideration is therefore three years, three months and twenty-seven days.

77. 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 (*Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV).

78. The parties do not appear to dispute that the applicant's initial detention was based on a reasonable suspicion of him having committed a crime. The Court sees no reason to reach a different conclusion.

79. As to the grounds for the continued detention, the domestic courts applied law and practice under which there was a presumption that detention on remand was necessary in cases where the sentence faced went beyond a certain threshold of severity (ten years' imprisonment according to the law as in force until June 1995 and five years' imprisonment thereafter).

80. The severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending. The Court accepts that in view of the seriousness of the accusation against the applicant the authorities could justifiably consider that such an initial risk was established.

81. However, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention on remand

(see, as a recent authority, *Ječius v. Lithuania*, no. 34578/97, § 94, ECHR 2000-IX).

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 on the question whether or not the evidence supported reasonable suspicion that the accused had committed an offence attracting a sentence of the relevant length (see paragraphs 43, 44, 49, 53, 55 and 71 above).

82. The only other ground for the applicant's lengthy detention was the domestic courts' finding that there were no exceptional circumstances warranting release.

83. 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 and absconding had receded, as irrelevant (see paragraphs 43-47, 49 and 53 above).

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 (see paragraphs 59 and 71 above).

84. 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 of Judgments and Decisions* 1997-II, §§ 35-45; the above cited *Labita* judgment, §§ 152 and 162-165; and the above cited *Ječius v. Lithuania*, §§ 93 and 94).

Where the law provides for a presumption in respect of factors relevant to the grounds for continued detention (see the Contrada v. Italy judgment of 24 August 1998, *Reports* 1998-V, §§ 14, 16, 18, 23-30, 58-62), the existence of the concrete facts outweighing the rule of respect for individual liberty must be nevertheless convincingly demonstrated.

85. Moreover, the Court considers that it was incumbent on the authorities to establish those relevant facts. 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.

86. No other grounds have been invoked by the authorities to justify the applicant's lengthy detention.

Even though facts that could have warranted his deprivation of liberty may have existed, they were not mentioned in the courts' decisions apparently owing to the operation of the presumption and the shift of the burden of proof under Article 152 of the Code of Criminal Procedure and it is not the Court's task to establish such facts and take the place of the national authorities who ruled on the applicant's detention. It falls to them to examine all the facts arguing for or against detention and set them out in their decisions (see the above cited *Labita* judgment, § 152).

87. In the present case the Court finds 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.

The authorities thus failed to justify the applicant's detention on remand for the period of three years, three months and twenty-seven days. In these circumstances it is not necessary to examine whether the proceedings were conducted with due diligence.

There has been therefore a violation of Article 5 § 3 of the Convention.

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

88. The applicant alleged a violation of Article 5 § 4 of the Convention which 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."

A. Submissions before the Court

89. The applicant submitted that the proceedings were not adversarial, that the courts, in accordance with the applicable legislation and judicial practice, had not examined all aspects relevant to the lawfulness of his detention and that they had not decided his case speedily. He referred to the Commission's report in the present case and to the judgment in the case of *Nikolova v. Bulgaria* ([GC], no. 31195/96, ECHR 1999-II). He further noted that Bulgarian courts persistently refused to examine questions concerning

the existence of a reasonable suspicion against the detainee in habeas corpus proceedings, especially when the criminal case was at its trial stage. The trial judges considered that that would amount to pre-judging the merits of the criminal case.

90. The Government stated that the courts had examined all relevant aspects. The questions relating to the evidence in support of the charges against the applicant were questions on the merits of the criminal case and as such were an irrelevant consideration with regard to the lawfulness of the detention.

Furthermore, the applicant could only have been released if he had proved the existence of exceptional circumstances such as illness or other reasons that excluded even the slightest hypothetical danger of his absconding, committing crimes or colluding. As the onus of establishing such circumstances was borne by him and since his arguments had either been irrelevant or were unsubstantiated, the courts had rightly limited themselves to noting that there were no new elements. However, they had done so after analysing all the applicant's arguments.

91. As regards the requirement of adversarial proceedings, the Government submitted that the fact that the prosecutor's observations had not been communicated to the applicant did not breach the principle of equality of arms. The parties to the proceedings, the prosecutor and the detained person, were on an equal footing as each of them had one opportunity to express his views: the applicant in his appeal and the prosecutor in his written observations.

The Government did not comment on the complaint that the courts had not acted speedily.

92. The Commission noted that in accordance with the relevant domestic case-law the courts could not and had not inquired into whether or not there existed a reasonable suspicion against the applicant. It further found that due to the operation of the shift of the burden of proof under Article 152 §§ 1 and 2 of the Code of Criminal Procedure, the Regional Court and the Supreme Court had tended to limit their examination of the applicant's appeals to a simple verification of whether or not the charges preferred against him concerned a "serious wilful crime", the only other issue dealt with having been the applicant's health. The applicant's arguments that there was no danger of his absconding, colluding, or of committing offences, as set out in his appeal of 1 April 1996, had been left unexamined. The Commission concluded that the scope and the nature of the control exercised by the courts had not satisfied the requirements of Article 5 § 4 of the Convention.

The Commission further found that the proceedings before the Supreme Court had not been adversarial as they had been conducted in private after the receipt of the prosecutor's written observations, to which the applicant

had not been able to reply. The Commission found it unnecessary in those circumstances to examine whether the appeals had been examined speedily.

B. The Court's assessment

1. Scope of the complaint under Article 5 § 4 of the Convention

93. The Court is only competent to examine the proceedings before the Regional Court and the Supreme Court which commenced with the applicant's applications for release of 27 March and 15 October 1996 and ended with the latter court's final decisions of 28 May and 4 December 1996 respectively. The complaints in respect of the earlier proceedings were declared inadmissible by the Commission (see the Commission's admissibility decision of 20 October 1997).

2. Scope and nature of the judicial control of lawfulness

94. The Court recalls 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, unreported).

While Article 5 § 4 of the Convention does not impose an obligation on a judge examining an appeal against detention to address every argument contained in the appellant's submissions, its guarantees would be deprived of their substance if the judge, relying on domestic law and practice, could treat as irrelevant, or disregard, concrete facts invoked by the detainee and capable of putting into 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).

95. The Court observes that in the applicant's case, as in the case of Nikolova v. Bulgaria, the courts examining his appeals against detention had refused to consider his arguments concerning the persistence of a reasonable suspicion against him and the supporting evidence he had adduced.

The judges had considered that if they commented on those issues they would be pre-judging the merits of the criminal case and thus become partial. That approach, borne out in the Supreme Court's practice and

confirmed in the Government's submissions, has been followed invariably in practice (see paragraphs 43, 44, 47, 49, 55 and 90 above).

96. The Court reiterates that it is incumbent on the respondent State to devise the procedural means most appropriate in this respect and thus to secure the enjoyment of all Convention rights, including the right under Article 5 § 4 of the Convention to judicial control on all aspects of the lawfulness of detention. There exist, as illustrated by the Court's judgments in a number of cases under Article 6 § 1 of the Convention, a variety of possible procedural solutions whereby the requirement of objective impartiality would not be infringed in a similar situation (see the following judgments: Sainte-Marie v. France of 16 December 1992, Series A no. 253-A; Saraiva de Carvalho v. Portugal of 22 April 1994, Series A no. 286-B; Fey v. Austria of 24 February 1993 Series A no. 255-A; Nortier v. the Netherlands of 24 August 1993 Series A no. 267; and Padovani v. Italy of 26 February 1993, Series A no. 257-B).

97. The Bulgarian legislature has chosen in the Code of Criminal Procedure to entrust decisions relating to the accused's detention to the same trial judge who will examine the merits of the criminal case.

Even so, the mere fact that a trial judge has made decisions on detention on remand cannot be held as in itself justifying fears that he is not impartial. Normally questions which the judge has to answer when deciding on detention on remand are not the same as those which are decisive for his final judgment. When taking a decision on detention on remand and other pre-trial decisions of this kind the judge summarily assesses the available data in order to ascertain whether the prosecution have *prima facie* grounds for their suspicion; when giving judgment at the conclusion of the trial he must assess whether the evidence that has been produced and debated in court suffices for finding the accused guilty. Suspicion and a formal finding of guilt are not to be treated as being the same (see, among other authorities, the Lutz v. Germany judgment of 25 August 1987, Series A no. 123-A, pp. 25-26, § 62). Only special circumstances may in a given case be such as to warrant a different conclusion (see the Hauschildt v. Denmark judgment of 24 May 1989, Series A no. 154).

98. The Court thus finds that the authorities' concern to provide effective protection for the principle of impartiality could not justify the limitation imposed on the applicant's right under Article 5 § 4 of the Convention.

99. Furthermore, as in the Nikolova case, due to the shift of the burden of proof under Article 152 of the Code of Criminal Procedure, the courts disregarded certain of the applicant's arguments concerning the alleged danger of absconding, collusion and committing crimes as irrelevant (see paragraphs 43-47, 49 and 53 above).

100. In sum, the domestic courts did not provide judicial control over the applicant's detention on remand of the scope required by Article 5 § 4 of the Convention.

3. The guarantees of adversarial procedure

101. The applicant's complaint under this head concerned only the proceedings before the Supreme Court. It was undisputed that the Plovdiv Regional Court had provided adequate guarantees of adversarial procedure.

102. The Court observes that the Supreme Court examined the applicant's appeals against detention in private after receiving the prosecutor's observations inviting it to dismiss the appeals. Those observations were not communicated to the applicant and he was given no opportunity of replying (see paragraphs 49 and 52 above).

103. The Court recalls that Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of applications for release from detention. Nevertheless, a State which institutes such a system must in principle afford the detainees the same guarantees on appeal as at first instance (see the Toth v. Austria judgment of 12 December 1991, Series A no. 224, p. 23, § 84).

A court examining an appeal against detention must provide guarantees of a judicial procedure. Thus, the proceedings must be adversarial and must adequately ensure "equality of arms" between the parties, the prosecutor and the detained (see the following judgments: Winterwerp v. the Netherlands of 24 October 1979, Series A no. 33, p. 24, § 60; Sanchez-Reisse v. Switzerland of 21 October 1986, Series A no. 107; Kampanis v. Greece of 13 July 1995, Series A no. 318-B; Nikolova, cited above, § 63; and *Trzaska v. Poland*, no. 25792/94, § 78, 11 July 2000, unreported).

104. In the present case, it is evident that the parties to the proceedings before the Supreme Court were not on equal footing. As a matter of domestic law and established practice - still in force - the prosecution authorities had the privilege of addressing the judges with arguments which were not communicated to the applicant. The proceedings were therefore not adversarial.

4. The Court's conclusion

105. The Court concludes that the judicial review of the applicant's detention did not meet the requirements of Article 5 § 4 of the Convention as regards its scope and - in the proceedings before the Supreme Court - did not provide the procedural guarantees of equality of arms. There has therefore been a violation of that provision.

106. In view of this finding the Court, like the Commission, does not deem it necessary to inquire whether or not that defective judicial review was provided speedily (see the Nikolova judgment, *loc. cit*., § 65).

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

107. The applicant alleged under that provision that the criminal proceedings against him were unreasonably long.

Article 6 § 1 of the Convention insofar as relevant, provides as follows:

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

108. The applicant submitted that unacceptable delays had occurred between October 1998 and March 1999, even after the report of the Commission.

109. The Government referred to their arguments in respect of the length of the applicant's detention and added that the applicant's petition for review(cassation) had been lodged with delay.

110. Noting the length of the criminal proceedings according to the latest information available at the time of adoption of its report, and assessing all other relevant factors, the Commission expressed the opinion that there had been a violation of Article 6 § 1 of the Convention.

111. The Court observes that the criminal proceedings against the applicant lasted at least five years and five and a half months. It leaves the question whether the period to be examined commenced on 10 September 1993, 4 October 1993 or another date in 1993 open (see paragraph 9 above).

The Court agrees with the Government that the case was relatively complex. It concerned several co-accused who had fraudulently obtained reimbursement of excise tax through false customs declarations (see paragraphs 9 and 72 above). It went through the preliminary investigation stage and was then examined by the first instance, appellate and cassation courts.

112. The Court further notes that the preliminary investigation proceedings were conducted speedily (see paragraphs 9-11 above). It accepts the Government's submission that some delays were clearly not imputable to the authorities (see paragraph 19 above) and that some of the adjournments were necessary for evidence to be obtained (see paragraphs 12 and 16 above). The failure of witnesses who had been duly summoned to appear was another difficulty. The Regional Court on several occasions took special measures to avoid further adjournments by imposing fines on witnesses who had not appeared without good cause and seeking police assistance to ensure their attendance (see paragraphs 15, 28 and 31 above).

113. The Court notes, however, that the examination of the case by the Regional Court was adjourned on numerous occasions.

That court was responsible for certain delays by failing to announce in open court the dates for hearings (see paragraph 23 above) and - in one case - by omitting to summon witnesses as a result of a clerical error (see paragraph 30 above).

Most importantly, there were lengthy intervals between the hearings in May and October 1994, November 1994 and 19 April 1995 (the date when the case was due to resume), and between the dates fixed for two other consecutive hearings, 21 September 1995 and 12 January 1996. Only part of the time which thus elapsed was taken up by the preparation of expert reports or other procedural steps (see paragraphs 14 *in fine* and 19).

114. The Court therefore agrees with the Commission that the Plovdiv Regional Court allowed lengthy intervals without sufficient cause. It is true that after March 1996 it adopted a more active approach (see paragraphs 23-29 above). At that time however undue delays had already been accumulated.

115. Another cause of delay was the transmission of the case file to the Supreme Court in Sofia for the examination of appeals against detention. Each time the case file was unavailable to the trial court for an average of one month, with one exception at the end of 1996 (see paragraphs 13, 14, 17, 20, 25 and 28 above). While the examination of those appeals necessarily took time, it was for the national authorities to organise the proceedings in a more economical manner and reduce the delays.

116. The Court further observes that the state of health of the presiding judge and the lay judges caused very significant delays. It necessitated the adjournment of the hearings listed for 19 April 1995, 9 June 1995 and 12 January 1996 and, eventually, the trial had to be restarted (see paragraphs 18, 21, 22 and 26 above). As a result, the time between the beginning of the trial and January 1996 - one year and ten months - was wasted.

The Court cannot accept the Government's submission that those delays were inevitable in their entirety. The appointment of one substitute judge could have prevented at least one of the adjournments. Furthermore, the fact that the domestic legislation, as interpreted by the Government in their submissions, only allowed the participation of one reserve judge does not relieve the national authorities of their responsibility under the Convention. They were under an obligation to secure the enjoyment of the rights under Article 6 § 1 of the Convention through legislative or other means.

117. At the appeal stage of the proceedings seven months elapsed between the lodging of the applicant's appeal against conviction and sentence in February 1997 and the fixing of a hearing for September 1997. Another delay, caused by the adjournment of that hearing till January 1998, is imputable to the prosecutor, who did not withdraw in time to allow for the appointment of his replacement (see paragraph 34 above).

The applicant was responsible for the adjournment of the 10 June 1998 hearing before the cassation court. However, that hearing did not resume for

a further six months (December 1998) without any indication being given as to why an earlier date could not have been fixed (see paragraphs 37 and 38 above).

118. Having regard to the criteria established in its case-law and in the light of the above findings the Court holds that the criminal case against the applicant was not examined within a "reasonable time" within the meaning of Article 6 § 1 of the Convention.

There has therefore been a violation of that provision.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

119. 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

120. The applicant claimed 142,999 French francs (FRF) in respect of non-pecuniary damage.

121. The Government stated that by virtue of Article 362 of the Code of Criminal Procedure the applicant would be entitled to request the reopening of his criminal case in the event of the Court finding violations of the Convention. He had not, therefore, exhausted all domestic remedies.

In the Government's view, the finding of a violation would be sufficient in view, in particular, of the fact that the applicant had contributed to the delays in the criminal proceedings.

In the alternative, the applicant's claim was excessive, an amount of FRF 5,500 being sufficient. The Court should take into account the economic situation in Bulgaria and use the amount of the minimum monthly wages in each country as a basis for its calculations. Any other approach would encourage the abuse of the Strasbourg machinery and give rise to a negative public opinion against the Court. The Government stressed that as of 1 January 2000 an important reform of the Code of Criminal Procedure had brought it in line with the Convention.

122. The applicant described the Government's suggestion that he should request the criminal proceedings to be reopened as frivolous. It was not legally possible in the circumstances and in any event unrelated to the question of just satisfaction for the time he had spent in detention and the length of the criminal proceedings against him.

The applicant further reacted to the Government's lengthy explanations about the economic situation in Bulgaria and the alleged danger of abuse of

the Strasbourg system. He criticised the Government for doing little for the improvement of domestic law and practice and suggested that they should work on the protection of human rights in the country rather than seek to minimise the consequences of not having done so by appealing for an understanding of the economic situation.

The applicant refuted the Government's submissions about economic criteria in just-satisfaction awards and suggested another approach. He referred to a recent amendment to the Penal Code, making the slander of a public official an offence punishable by a fine of up to 15,000 new Bulgarian levs (BGN) (FRF 50,588). The qualities intended to be protected by making slander a criminal offence were a person's honour and dignity. The legislature had thus considered that an offence to a public official's honour and dignity justified the payment of more than FRF 50,000, despite the economic situation in the country. The infringement of the applicant's right to liberty, a fundamental human right, should be assessed proportionately to the "price" the Government had put on disturbances to the lives of public officials.

123. As to the Government's objection based on Article 362 of the Code of Criminal Procedure, the Court reiterates that Article 41 of the Convention does not require applicants to exhaust domestic remedies a second time in order to obtain just satisfaction if they have already done so in vain in respect of the substantive complaints. The wording of that provision - where it refers to the possibility for reparation under domestic law - establishes a rule going to the merits of the just satisfaction issue (see the De Wilde, Ooms and Versyp v. Belgium judgment (just satisfaction) of 10 March 1972, Series A no. 14, § 16).

In this respect the Court finds that the Government have failed to explain how the reopening of the criminal proceedings - if at all possible - would provide *restitutio in integrum* for the violations of the Convention found in the present case.

124. Having regard to its case-law (see the Lukanov v. Bulgaria judgment of 10 March 1997, *Reports* 1997-II, § 56; the Assenov and Others v. Bulgaria judgment of 28 October 1998; *Reports* 1998-VIII, §§ 176-178; *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II; *Ječius v. Lithuania*, *loc. cit*., § 109; *Punzelt v. the Czech Republic*, no. 31315/96, 25 April 2000, unreported; *Grauslys v. Lithuania*, *loc. cit*.; *Musial v. Poland*, 24557/94, ECHR 1999-II; *Sabeur Ben Ali v. Malta*, no. 35892/97; and *Varbanov v. Bulgaria*, no. 31365/98, § 67, ECHR 2000-X), and ruling on an equitable basis, the Court awards the global sum of BGN 6,000 under the head of non-pecuniary damage in respect of the violations of the Convention found in the present case.

B. Costs and expenses

125. The applicant claimed 8,735 US dollars (USD) for 215 hours of work on the case before the Commission and the Court and USD 1,229.50 in respect of translation costs, travel and postal expenses. The total amount claimed is broadly equivalent to BGN 21,600.

126. The Government made a detailed analysis of the evidence submitted by the applicant in support of his claims, considered that the number of hours charged was excessive and stated that not all the postal receipts clearly indicated that they concerned letters related to the present case, two of them in fact bearing reference to another case. Furthermore, no reimbursement should be awarded in respect of letters sent to Interights in London, as the applicant had not instructed his lawyer to contact foreign consultants.

As regards fees, the Government asserted that the lawyer had acted in breach of ethical and legal requirements by charging his client between USD 40 and 50 per hour, as under the Law on the Bar lawyers should possess high moral qualities and should provide free legal advice to those in need. Furthermore, no fees should be awarded in the absence of proof that the applicant had not only agreed to pay them to his lawyer, but had actually done so.

On the basis of the above the Government stated that the applicant's representative had acted in bad faith and abused the procedure before the Court for his personal enrichment.

127. The applicant's lawyer protested against the personal attacks contained in the Government's submissions. He apologised for having enclosed by mistake two receipts concerning another case and affirmed that all other costs claimed were actually incurred and necessary. He defended his schedule of fees as reasonable and referred to the award made in the case of Nikolova (*loc. cit.*), which was in his view a less complex case.

128. The Court notes that a reduction should be applied on account of the fact that some of the applicant's complaints before the Commission were declared inadmissible (see paragraphs 3 and 4 above).

It rejects the Government's accusations as regards the alleged unethical behaviour of the applicant's lawyer.

Having regard to its case-law, and deciding on an equitable basis, it awards BGN 10,000 in respect of costs and expenses before the Commission and the Court.

C. Default interest

129. According to the information available to the Court, the statutory rate of interest applicable in Bulgaria at the date of adoption of the present judgment is 14.5% per annum.

FOR THESE REASONS, THE COURT

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

2. *Holds* unanimously that there has been a violation of Article 5 § 4 of the Convention;

3. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* unanimously
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) 6,000 (six thousand) Bulgarian levs in respect of non-pecuniary damage;
      (ii) 10,000 (ten thousand) Bulgarian levs in respect of costs and expenses;
   (b) that simple interest at an annual rate of 14.5% shall be payable from the expiry of the above-mentioned three months until settlement;

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

Done in English and in French, and notified in writing on 26 July 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Antonio PASTOR RIDRUEJO
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, a partly dissenting opinion of Mrs Vajić is annexed to this judgment.

V.B.
A.P.R.

PARTLY DISSENTING OPINION OF JUDGE VAJIĆ

I have voted with the majority as to the violations of Article 5 §§ 3 and 4 of the Convention in the present case. Unfortunately, I am unable to share its opinion as to the violation of Article 6 § 1 of the Convention, namely that the criminal case against the applicant was not examined within a "reasonable time".

The facts of the case are as follows:

The first-instance proceedings against Mr Ilijkov started on 4 October 1993 when he was arrested, or on 10 September 1993 or another date in 1993 (see paragraphs 9 and 111 of the judgment), and lasted until 31 January 1997 when he was convicted (paragraph 33).

The applicant appealed on 10 February 1997 and his conviction and sentence were upheld by the Supreme Court of Cassation on 18 March 1998 (paragraph 34). On 22 June 1998 the applicant lodged a petition for review (paragraph 37). By judgment of 22 March 1999 the Supreme Court of Cassation dismissed the applicant's petition (paragraph 38).

Thus, the effective length of the criminal proceedings against the applicant amounted to not more than five years and three and a half months before three levels of jurisdiction (if the period of approximately three months for which the Government are not responsible is deducted, i.e. between the Supreme Court of Cassation's decision of 18 March 1998 and 22 June 1998, when the applicant lodged his petition for review (paragraphs 34-38)).

In my opinion this indeed shows that – having regard to the criteria established in the Court's case-law, in particular the complexity of the case and the fact that some delays were clearly not imputable to the authorities (paragraph 112) – the case against the applicant was examined within a "reasonable time" within the meaning of Article 6 § 1 of the Convention.