



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

FIRST SECTION

CASE OF HRISTOV v. BULGARIA

(Application no. 35436/97)

JUDGMENT

STRASBOURG

31 July 2003

FINAL

31/10/2003

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

In the case of Hristov v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,

Mr G. BONELLO,

Mrs F. TULKENS,

Mr E. LEVITS,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mrs E. STEINER, *judges*,

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

Having deliberated in private on 8 July 2003,

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

PROCEDURE

1. The case originated in an application (no. 35436/97) against the Republic of Bulgaria lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Bulgarian national, Mr Vladimir Ivanov Hristov (“the applicant”), on 15 January 1997.

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

3. The applicant alleged, *inter alia*, violations of Article 5 §§ 3 and 4 and Article 6 § 1 of the Convention in relation to his remand in custody and the criminal proceedings against him.

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

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 19 September 2000, the Court declared part of the complaints inadmissible.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

7. By a decision of 20 June 2002, the Court declared the application partly admissible.

8. On 8 October 2002 the applicant filed an objection challenging the representative power of the Government's agent on the basis of alleged deficiencies in domestic regulations. The Court rejected that objection..

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant, Mr Vladimir Ivanov Hristov, is a Bulgarian national who was born in 1952 and lives in Plovdiv.

A. The criminal proceedings

10. The applicant was arrested on 10 September 1993 on charges that he had used forged documents in order to obtain unlawfully an excise tax refund in the amount of 15,855,800 Bulgarian leva (the equivalent of 615,175 US dollars at the relevant time). The applicant had acted in concert with three other persons all of whom later submitted applications raising complaints under Articles 5 and 6 of the Convention (see *Ilijkov v. Bulgaria*, no. 33977/96, 26 July 2001, and the cases of *Mihov v. Bulgaria*, no. 35519/97, and *Al Akidi v. Bulgaria*, no. 35825/97).

11. The charges preferred against the applicant were based on Article 212 § 4 of the Penal Code, which provided for a sentence of ten to twenty years' imprisonment. The accusations concerned alleged false certification of fictitious exports of consignments of cigarettes which in reality had been sold in the country.

12. On 5 April 1994 the preliminary investigation was completed and an indictment was submitted to the Plovdiv Regional Court. The prosecution relied on 33 witnesses and voluminous documentary material.

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

14. The first hearing took place on 12 and 13 May 1994 when the Regional Court heard the four co-accused and several witnesses. Some of the witnesses did not appear. The prosecutor and the defence lawyers requested leave to submit further evidence. The court adjourned the hearing. On 16 May 1994 the court, sitting in private, appointed a graphology expert.

15. 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.

16. 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.

17. 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.

18. The trial resumed 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 and in order to enable the accused persons to submit further evidence. Some of the witnesses who had not appeared were ordered to pay fines.

19. The next trial hearing took place on 29 and 30 November 1994. The financial expert appointed by the court stated that he had been denied access to certain documents and therefore had not finalised his report. The court ordered a bank and the customs office to provide access to the documents in question. Two additional financial experts were also appointed. Both the prosecution and the defence sought to adduce additional evidence. The hearing was adjourned.

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

21. The hearing listed for 19 April 1995 was adjourned as the presiding judge was ill.

22. The next hearing, scheduled for 9 June 1995, was adjourned as one of the lay judges had been taken ill.

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

24. The hearing listed for 21 September 1995 was adjourned owing to the illness of the lawyer of one of the co-accused. The court also observed that several witnesses had not been summoned properly and that others, albeit summoned, had not appeared.

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

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

27. After learning that the lay judges were prevented by illness 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. On that date the court appointed two additional experts.

28. The new chamber of the court held a hearing on 26 and 27 March 1996. It heard several witnesses and experts. The hearing 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.

29. 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.

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

31. 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.

32. The hearing of 30 October 1996 was further adjourned, because the medical experts considered that one of the co-accused was not in a condition to participate in the hearing as he was on a hunger strike.

33. 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.

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

35. 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.

36. 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.

37. On 31 January 1997 the applicant was found guilty of having forged tax documents with a view to obtaining an unlawful gain for himself and others and of having suborned a witness. He was sentenced to twelve years' imprisonment. His accomplices were also convicted and sentenced to terms of imprisonment of between ten and thirteen years.

38. 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.

39. On 11 February 1997 the applicant appealed to the Supreme Court of Cassation against his conviction and sentence.

40. The case was listed for a hearing on 26 September 1997. On that date the prosecutor appointed to act before the Supreme Court of Cassation declared that he had known one of the convicted persons and that he wished to withdraw. The examination of the case could not proceed and the hearing was adjourned.

41. The hearing was held on 23 January 1998.

42. By judgment of 16 March 1998 the court upheld the applicant's conviction and sentence.

43. On an unspecified date the applicant submitted a petition for review (cassation).

44. On 10 June 1998 the Supreme Court of Cassation held a hearing in the review (cassation) proceedings. As one of the co-accused joined the proceedings at that moment, the court adjourned the hearing to enable him to make the necessary submissions, which he did on 22 June 1998.

45. The hearing resumed on 9 December 1998.

46. On 22 March 1999 the Supreme Court of Cassation dismissed the petitions for review of the applicant and the other accused persons.

47. At all stages of the proceedings the applicant was legally represented.

B. The applicant's pre-trial detention

48. The applicant was arrested on 10 September 1993.

49. On 12 October 1993 he appealed to the Plovdiv Regional Court against the Public Prosecutor's decision to detain him pending trial denying the charges and stating that he had no criminal record, and that he had a family and a permanent address. On 3 November 1993 the Regional Court granted bail and the applicant was released.

50. On 15 February 1994 the applicant was charged under Article 293 § 1 of the Penal Code with having suborned a witness and was detained on the same day in connection with the proceedings relating to the main offence and to the new charges.

51. In March 1994 five persons who had been heard as witnesses in the criminal proceedings against the applicant and his accomplices were charged with perjury. Separate proceedings were brought against them.

52. On 15 July 1994 the applicant submitted a request for release on bail.

53. On 19 September 1994 the applicant renewed his application for release on bail submitting a medical report according to which he was developing a kidney disease.

54. On 6 October 1994 the Regional Court dismissed the applications for release filed by all co-accused stating that the charges carried a penalty of ten or more years imprisonment and that there were "no grounds to consider it established that the defendants would not abscond or commit a crime". The court further noted that the applicant's pre-trial detention had also been based on the new charges against him, those concerning the alleged suborning of a witness. Finally, the family situation and health condition of the accused persons did not require their release.

55. On 30 November 1994 the Regional Court refused the applicant's renewed application for release, stating that there were no new circumstances. It also noted that after his release on bail during the preliminary investigation "he had committed another offence".

56. The applicant appealed to the Supreme Court.

57. On 4 December 1994 the Plovdiv Regional Court, before transmitting the appeal to the Supreme Court, sitting in private, examined the matter again and refused to reverse its decision of 30 November 1994. The court held, *inter alia*, that according to the domestic law and the Supreme Court's practice detention pending trial was *prima facie* necessary when a person had been accused of having committed a serious wilful offence. To substitute this judicial measure by a more lenient one would only be possible if there had been "not even a hypothetical danger that the accused might abscond or commit further offences", in particular, "if he is ill or elderly".

58. On 21 February 1995 the Supreme Court dismissed the appeal against the applicant's detention.

59. The Supreme Court explained its practice in matters of pre-trial detention stating that under Article 152 §§ 1 and 2 of the Code of Criminal Procedure remand in custody 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 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.

60. 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 an appeal against remand in custody. Its only task was to examine whether the conditions for pre-trial detention under Article 152 of the Code of Criminal Procedure had been met.

61. Turning to the particular case of the applicant, which was different from that of the other co-accused, the Supreme Court took into account his behaviour, noting that he had been charged for having suborned a witness after his release on bail. That fact clearly demonstrated the danger of the applicant committing an offence if released.

62. On 12 June 1995 the applicant submitted an application for release to the Regional Court on the grounds that he had a permanent address and that there was no danger of his obstructing the course of justice. He further complained of the length of his pre-trial detention, resulting from the court's bad organisation of work and undue delays in the scheduling of the hearings.

63. Between 30 August and 12 September 1995 the applicant underwent a treatment for his kidneys at the prison hospital.

64. At the hearing on 21 September 1995 the applicant renewed his application for release on bail. He stated that he had a family and a permanent address, that the charges of suborning a witness had not been proven and that since the financial expert had completed his report there was no danger of the applicant obstructing the course of justice. He further maintained that he needed a treatment in hospital and enclosed a medical certificate.

65. The prosecutor objected, stating, *inter alia*, that under the relevant law, and regard being had to the increase in the crime rate in the country, the court was not entitled to release the applicant or the other co-accused.

66. On 21 September 1995 the Regional Court dismissed the application for bail, holding that there were no new circumstances and that domestic law required pre-trial detention to be imposed in all cases when a person had been accused of having wilfully committed a serious offence. The court further considered that it was not proven that the detention facilities had been detrimental to the applicant's health.

67. 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.

68. On 12 January 1996 the applicant submitted an application for release on the ground that his detention had been excessively lengthy, that he had a permanent address, that he did not have a previous criminal record and that there was no danger of his obstructing the course of justice. On 19 February 1996 the Regional Court dismissed the application as there was no change in the relevant circumstances and on the ground that the applicant was charged with a serious wilful crime which automatically required the imposition of pre-trial detention in accordance with Article 152 § 1 of the Code of Criminal Procedure.

69. At the hearing on 27 March 1996 the applicant submitted a fresh application for release on the ground that all evidence had already been gathered, and that therefore there was no danger of his obstructing the course of justice. The Regional Court dismissed the application on the same day, holding that there were no new facts which required his release and that the length of pre-trial detention was not limited by statute.

70. The applicant appealed to the Supreme Court, which dismissed the appeal on 28 May 1996, sitting in private.

71. The Supreme Court reiterated its position that in view of the charges against the applicant pre-trial detention was mandatory save in exceptional circumstances where even a hypothetical danger of absconding, obstructing

justice or committing an offence was objectively excluded. All other questions, such as those concerning the length of the proceedings and the soundness of the charges were irrelevant.

72. At the hearing of 29 and 30 October 1996, the applicant requested to be released on bail, referring to the alleged excessive length of his detention and the Regional Court's failure to conduct the trial speedily. The application was dismissed on the same day on grounds similar to those previously stated.

73. On 7 November 1996 the applicant filed an appeal to the Supreme Court against the decision of 29 or 30 October 1996 claiming that there was no danger of his obstructing the course of justice since all the evidence had been gathered, and that the criminal proceedings were excessively lengthy owing to bad organisation of the trial.

74. On 11 November 1996, the Regional Court, sitting in camera, re-examined the matter *ex officio* and refused to reconsider its decision. On 19 November 1996 the appeal was transmitted to the Supreme Court.

75. 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 appeals of Mr Ilijkov, Mr Hristov and Mr Mihov, which were being examined simultaneously. The comments were not communicated to the applicant.

76. On 4 December 1996 the Supreme Court sitting in private dismissed the appeals. It stated 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.

77. On 31 January 1997, the applicant was found guilty on the forgery charges and on the charge of suborning a witness. He was sentenced to twelve years' imprisonment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Penal Code

78. 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.

79. Article 293 in conjunction with Article 290 § 1 provides that a person who suborns a witness shall be sentenced to one year's imprisonment or ordered to do community service.

B. Code of Criminal Procedure

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

80. The Supreme Court has stated that it is not open to the courts, when examining an appeal against pre-trial detention, 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).

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

“(1) Pre-trial detention 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 [pre-trial detention] shall not be imposed if there is no danger of the accused evading justice or committing further offences.”

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

“(1) Pre-trial detention shall be imposed [in cases where the charges concern] a serious wilful crime.

(2) In the cases falling under paragraph 1 [pre-trial detention] may possibly not be imposed if there is no danger of the accused evading justice, obstructing the investigation, or committing further offences.”

83. According to Article 93 § 7 of the Penal Code a “serious” crime is one punishable by more than five years’ imprisonment.

84. With effect from 1 January 2000 Article 152 and other provisions concerning the grounds for pre-trial detention were amended.

85. 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 remanded in custody. An exception was only possible, in accordance with Article 152 § 2, where it was clear beyond doubt that any danger of absconding or re-offending was objectively excluded as, for example, in the case of an accused who was seriously ill, elderly, or already detained on other grounds, such as serving a sentence (Decision no. 1 of 4 May 1992 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).

3. Appeals against detention during the trial

86. 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.

87. 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.

88. 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.

89. 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.

90. 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.

4. Lay judges

91. 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."

THE LAW

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

92. The applicant complained that his detention pending trial had not been justified and had been unreasonably long. He relied on Article 5 § 3 of the Convention which provides, in so far as relevant:

"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. The parties' submissions

93. The applicant stated that the period to be considered had started on 10 September 1993, when he had been first arrested.

94. He considered that the existence of a reasonable suspicion against him and the complexity of the case had not been sufficient to justify his lengthy detention. Neither had been the seriousness of the charges, relied upon by the authorities as their main argument. The authorities had applied law and practice incompatible with the Convention. According to that law and practice the seriousness of the charges had triggered automatic detention.

95. The applicant further maintained that the Plovdiv Regional Court had been responsible for undue delays and objected against the Government's assertion that he had contributed to the delays. He stressed that the trial had re-commenced two years after its beginning owing to the authorities' failure to make use of the legal possibility to start the trial with a reserve lay judge. He referred to the above cited case of Ilijkov, one of the applicant's co-accused, where violations of Articles 5 § 3 and 6 § 1 of the Convention had been found in respect of the length of the same criminal proceedings.

96. The Government considered that the period to be considered had started on 15 February 1994.

97. As to the justification of the applicant's detention, its necessity had been presumed on the basis of the severity of the charges against him. Release had only been possible if the applicant had proven before the national authorities sufficient facts establishing that any danger of absconding or committing an offence had been excluded. He had not done so. Furthermore, he had suborned a witness.

98. The Government were of the opinion that, moreover, the authorities had handled the case with due diligence and had worked on it very actively. The preliminary investigation had lasted only six months. Among the reasons for the delays in the judicial stage of the proceedings there had been "objective" factors. In particular, the case had been very complex: it concerned four accused persons having committed customs offences and forged documents, the case-file had been in six volumes and the prosecution had relied on 33 witnesses. The national courts had been under an obligation to take every necessary step to elucidate the facts. Many adjournments had been inevitable as witnesses had not appeared despite the efforts of the Regional Court to ensure their attendance including through police assistance. Other adjournments had been caused by judges having been taken ill. Furthermore, one adjournment had been necessary owing to illness of one of the defence lawyers.

99. The Government also submitted that the applicant had on many occasions contributed to the length of the proceedings by making requests for the collection of additional evidence up until the end of the proceedings.

B. The Court's assessment

100. The Court observes that the applicant was arrested on 10 September 1993 and released on bail on 3 November 1993. He was again detained in the same proceedings on 15 February 1994 and remained in pre-trial custody until his conviction on 31 January 1997. The period to be examined is thus three years and one month and a half (see paragraphs 48-77 above).

101. 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).

102. In its partial decision of 19 September 2000 in the present case the Court rejected as manifestly ill-founded the applicant's assertion that there had been no reasonable suspicion of him having committed a crime. The applicant was held in custody on the basis of a suspicion that he had forged documents with a view to obtaining an unlawful gain.

103. As to the grounds for the continued detention, the Court finds that the present case is similar to the case of *Ilijkov v. Bulgaria* (cited above). The Court stated in *Ilijkov* :

"[T]he [authorities] applied law and practice under which there was a presumption that remand in custody was necessary in cases where the sentence faced went beyond a certain threshold of severity ...[While] the severity of the sentence faced is a relevant element the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of pre-trial detention ...

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

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

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

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

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

104. It is true that in the present case, unlike *Ilijkov*, on 15 February 1994 the applicant was charged with suborning a witness - an offence which he had committed after his release on bail on 3 November 1993 - and was again remanded in custody (see paragraphs 49 and 50 above). The Court accepts, therefore, that following these events the authorities had good cause to believe that if released the applicant would commit an offence or obstruct the course of justice.

105. However, while the authorities relied on that danger in their decisions of 1994 and the beginning of 1995 refusing bail, no references thereto can be found in the later decisions. The danger of the applicant suborning witnesses had obviously receded with the lapse of time. The applicant pleaded so in his appeals against detention of 1995 and 1996, but the courts, relying on domestic law and practice, treated most of his submissions as irrelevant (see paragraphs 54-76 and 80-85 above).

106. Having regard to the reasons given by the domestic courts to justify Mr Hristov's continuing detention, the Court considers that in the second half of 1995 and in 1996 the authorities, 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, prolonged the applicant's detention on grounds which cannot be regarded as sufficient.

107. The Court therefore finds that for at least a part of the period under consideration the applicant's pre-trial detention was prolonged on grounds

which cannot be seen as sufficient. It follows that his deprivation of liberty for a period lasting three years and one month and a half was not justified.

108. In these circumstances it is not necessary to examine whether the proceedings were conducted with due diligence.

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

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

110. The applicant complained under Article 5 § 4 of the Convention that in the examination by the Regional Court and by the Supreme Court of his appeal against detention, submitted on 30 October 1996 and dismissed by final decision of 4 December 1996, the scope of control had been limited, the proceedings had not been adversarial and had not been concluded speedily.

111. Article 5 § 4 of the Convention provides:

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

112. The applicant, referring to the Court’s judgment in the case of *Nikolova v. Bulgaria* ([GC], no. 31195/96, ECHR 1999-II), stated that contrary to Article 5 § 4 of the Convention the courts in his case - on the basis of the law and the practice at the relevant time - had refused to examine whether there had been a genuine danger of absconding or whether the charges had been supported by reliable evidence.

113. The applicant further stated that the proceedings before the Supreme Court had not been adversarial. The Supreme Court had examined his appeal in private after having received the prosecutor’s comments and without communicating them to the applicant.

114. The Government considered that the fact that the applicant had been unable to comment on the prosecutor’s written opinion inviting the Supreme Court to dismiss his appeal had not infringed the principle of adversarial proceedings as the applicant had stated all his argument in the appeal.

115. The Government also considered that the proceedings had been dealt with speedily.

116. The Court notes that it has already ruled on the same complaint in the case of Mr Ilijkov, whose appeal against detention was examined together with the applicant’s appeal by the Regional Court on 29 or 30 October and again on 11 November 1996 and by the Supreme Court on 4 December 1996 (see paragraphs 72-76 above and *Ilijkov v. Bulgaria*, cited above, §§ 51-53 and 94-106).

117. As in the *Ilijkov* case, the Court finds that the judicial examination of the applicant's detention did not meet the requirements of Article 5 § 4 of the Convention as regards the required scope of review since the Regional Court and the Supreme Court, on the basis of their practice, refused to examine arguments concerning the persistence of a reasonable suspicion against the applicant and, owing to the shift of the burden of proof under Article 152 § 1 of the Code of Criminal Procedure, disregarded certain arguments relevant to the lawfulness of the continuing detention (see paragraphs 72-76 and 80-85 above).

118. The Court also finds that in the proceedings before the Supreme Court the procedural guarantees of equality of arms were not provided as the Supreme Court examined the applicant's appeal against detention in private after receiving the prosecutor's observations which were not communicated to the applicant and he was given no opportunity of replying.

119. In view of the above findings, the Court does not deem it necessary to inquire whether or not the defective judicial review in the applicant's case was provided speedily.

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

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

121. The applicant complained that the criminal proceedings against him were unreasonably lengthy and thus in violation of Article 6 § 1 of the Convention which, in so far as relevant, provides:

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

122. The parties referred to their submissions concerning the length of the applicant's detention (see paragraphs 95, 98 and 99 above).

123. The Court has already examined the same complaint in the case of *Ilijkov*, cited above, which concerned the same criminal proceedings. The Court sees no material difference. It finds that the case was relatively complex and notes that the proceedings' total length in the applicant's case was about five years and six months (September 1993 - March 1999). The Court also finds, as in the *Ilijkov* case, that no significant delays were caused by the applicant and that there were the following delays imputable to the authorities: (i) adjournments caused by the courts' failure to announce the dates of hearings or summon witnesses; (ii) lengthy intervals between hearings; (iii) delays caused by the transmission of the file to the Supreme Court which could be avoided through better organisation; (iv) time wasted when the trial had to restart since no reserve lay judge had been appointed; and (v) other delays in the proceedings before the Supreme Court of

Cassation in 1998 and 1999 (see paragraphs 10-47 above and *Ilijkov*, cited above, §§ 111-118).

124. On that basis, as in *Ilijkov*, the Court finds that there has been a violation of the applicant's right to a trial within a reasonable time under Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

125. 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

126. The applicant claimed 10,300 United States dollars ("USD") for non-pecuniary damage. He submitted that a number of factors should be taken into consideration in the assessment of the prejudice suffered by him as a result of the violations of the Convention in his case. In particular, the conditions of detention were allegedly inhuman and degrading. Furthermore, since persons in pre-trial detention were not allowed to work, the applicant could not obtain later a sentence reduction on the basis of work in prison, an opportunity that only became available under domestic law once he was convicted and started serving his imprisonment sentence. The applicant also stated that had Article 5 § 3 of the Convention not been violated, he would have been released on bail and would have remained free till the judgment of the Supreme Court of Cassation of 18 March 1998, upholding his conviction and sentence. The applicant also referred to the Court's case-law.

127. The Government stated that the claims were excessive.

128. The Court considers that the applicant's arguments about factors to be taken into consideration in the assessment of the just satisfaction issue are partly based on facts which are not in direct causal relation to the violations found in the present case and are partly based on speculations about possible developments in the event of the applicant's release on bail.

129. Having regard to the facts of the applicant's case and, in particular, the finding that the applicant's pre-trial detention could be regarded as being justified under Article 5 § 3 of the Convention until mid-1995 (see paragraphs 104-107 above), the Court awards EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

130. The applicant claimed USD 4,637.50 for 93 hours of work by his lawyer on the Strasbourg proceedings at the hourly rate of USD 50. He also claimed an additional USD 503 in respect of translation, postal and telephone charges and photocopying expenses. He enclosed a time-sheet and postal receipts.

131. The Government disputed the time-sheet, stating that the number of hours claimed was excessive and pointing out that the alleged translation expenses have not been documented. The Government also considered that the hourly rate claimed went far beyond the rates normally charged in Bulgaria.

132. The Court considers that a reduction should be applied in view of the fact that part of the initial complaints were declared inadmissible. Also, no documentary proof has been submitted in respect of the alleged translation expenses.

133. The Court further observes that the same lawyer represented before it Mr Mr Ilijkov, Hristov and Al Akidi, who were all co-accused in the same criminal proceedings and on several occasions appealed against their detention simultaneously (see paragraphs 2 and 10-77 above and *Ilijkov*, cited above, §§ 5 and 9-54). In these circumstances, having regard to the overlap in the facts and complaints in their applications, the Court considers that a further reduction is appropriate.

134. On that basis, in the present case the Court awards EUR 2,000 in respect of costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
2. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;

- (ii) EUR 2,000 (two thousand euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President