CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF MIHOV v. BULGARIA

(Application no. 35519/97)

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 Mihov 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 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. 35519/97) 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 Mihail Simeonov Mihov ("the applicant"), on 8 December 1996.

2. The applicant was represented by Mr Y. Grozev, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their agents, Mrs V. Djidjeva and Mrs M. Dimova, of the Ministry of Justice.

3. The applicant alleged, *inter alia*, that his detention pending trial had not been justified and had been unreasonably long in violation of Article 5 § 3 of the Convention and that the proceedings before the Supreme Court for the examination of his appeal against detention had been in breach of the requirements of Article 5 § 4 of the Convention.

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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant, Mr Mihail Simeonov Mihov, is a Bulgarian national who was born in 1966.

A. The criminal proceedings

9. On 11 September 1993, the applicant, who worked as a custom officer, was questioned in relation to a preliminary investigation opened on 10 September 1993 by the Plovdiv Regional Public Prosecutor against persons suspected of having obtained unlawfully excise tax refunds through forged documents.

10. On 19 November 1993 the applicant was arrested and remanded in custody on suspicion of having aided and abetted those persons and having forged documents in contravention of Article 212 §§ 2 and 4 of the Criminal Code, which provided for a sentence of ten to twenty years' imprisonment.

11. Four persons, including the applicant, were eventually prosecuted and convicted in one trial. All of them 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 *Hristov v. Bulgaria*, no. 35436/97 and *Al Akidi v. Bulgaria*, no. 35825/97).

12. The accusations against the applicant concerned the alleged false certification, made by him on 9 May 1993, of a fictitious export of consignments of cigarettes which in reality had never left the country. That false certification had enabled Mr Ilijkov to obtain unlawfully 6,249,600 Bulgarian levs (the equivalent of 200,417 US dollars at the relevant time).

13. The applicant's defence was apparently based on his assertion that on the relevant day he had been working in his office on the basis of documents only and that his colleagues had been checking the actual traffic of lorries.

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

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

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

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

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

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

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

26. 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.

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

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

29. 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.

30. 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.

31. 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.

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

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. On 31 January 1997 the applicant was found guilty of having made a false certification on 9 May 1993 thus enabling Mr Ilijkov to obtain unlawfully excise tax refund. He was sentenced to ten years' imprisonment. His accomplices were also convicted and sentenced to terms of imprisonment of between eleven and thirteen years.

40. 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.

41. On 10 February 1997 the applicant appealed to the Supreme Court of Cassation against his conviction and sentence.

42. 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.

43. The hearing was held on 23 January 1998.

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

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

46. 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.

47. The hearing resumed on 9 December 1998.

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

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

B. The applicant's pre-trial detention

50. On 19 November 1993 the applicant was arrested and remanded in custody.

51. On 1 March 1994 the applicant's application for release was dismissed by the Plovdiv Regional Court, sitting in private, on the grounds that he was charged with a serious offence committed with intent and that there was a prima facie danger of his absconding, committing further offences or obstructing the course of justice. The court held that the state of health of the applicant's wife and child was not a ground for ordering his release under the relevant law.

52. On 14 March 1994 the applicant complained of his detention to the Chief Public Prosecutor on the ground that he had not committed the offence in question. He did not receive an answer.

53. 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.

54. At the hearing on 13 May 1994 the Regional Court dismissed the applicant's application for release made on the same day. On 18 May 1994

the applicant appealed to the Supreme Court. On 30 June 1994 the appeal was dismissed at a sitting in private in the presence of the prosecutor. The Supreme Court held that the applicant's detention was imperative as he had been charged with a serious offence with intent.

55. 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 family situation and health condition of the accused persons did not require their release.

56. At the trial hearing of 29 and 30 November 1994, the applicant applied for release on bail on the grounds that there was no danger that he would abscond and that he had a permanent address. The court dismissed the application holding that there were no new facts to justify his being released.

57. The applicant appealed to the Supreme Court. He stated that he had been detained for more than one year, that most evidence had been collected, that he had a family and two small children one of whom was seriously ill and that therefore there was no danger of absconding or committing an offence.

58. On 4 December 1994, the 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".

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

60. 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.

61. 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 pre-trial detention. Its only task was to examine whether the conditions for detention under Article 152 of the Code of Criminal Procedure had been met.

62. At the hearing on 21 September 1995 the applicant again appealed against his detention on the ground that there was no danger of his absconding. In particular, he pointed out that he had continued to work at the customs office although he had been aware of the preliminary investigation. Furthermore, no steps had been taken by the authorities for almost a whole year.

63. 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.

64. On 21 September 1995 the Regional Court dismissed the application for bail, holding that there were no new circumstances and that pre-trial detention was required as a matter of law in all cases where the charges concerned a serious offence with intent.

65. On 28 September 1995 the applicant appealed to the Supreme Court.

66. On 6 November 1995 the Supreme Court sitting in private, upon receipt of the prosecutor's observations which had not been communicated to the applicant, dismissed the appeal stating 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.

67. On 19 February 1996 the applicant again submitted an application for release to the Plovdiv Regional Court. It was dismissed on the same day as there had been no new facts 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.

68. At the hearing of 27 March 1996 the applicant renewed his application for release on bail which was refused on the same day by the Regional Court as there had been no new circumstances.

69. On 24 September 1996 the applicant submitted a request for release. The Regional Court dealt with the appeals of the applicant and two of the other co-accused persons at the hearing on 29 and 30 October 1996 and dismissed them on grounds similar to those previously stated. On 1 November 1996 the applicant appealed against that decision to the Supreme Court. He stated, *inter alia*, that his detention had been continuing for three years only because the Regional Court had failed to conduct the trial promptly. In particular, it had not replaced the lay judge who had been ill.

70. 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.

71. 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.

72. 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.

73. On 31 January 1997 the applicant was found guilty and sentenced to ten years' imprisonment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Penal Code

74. 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.

B. Code of Criminal Procedure

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

75. 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).

76. 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."

77. 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."

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

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

80. 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).

2. Appeals against detention during the trial

81. 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.

82. 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.

83. 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.

84. 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.

85. 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.

THE LAW

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

86. 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

87. The applicant stated that the domestic law and practice at the relevant time, as applied in his case and referred to by the Government, had been in direct violation of the Convention which required that long periods of detention should be justified by the authorities on the basis of existing dangers of absconding or committing an offence. The applicant had not sought to abscond or obstruct the proceedings after 11 September 1993, when he had been interrogated as a witness and had remained free. He had a family and children. All those relevant factors had been disregarded by the authorities who had kept him in custody on the basis of deficient domestic legislation and practice.

88. Further, the applicant considered that the authorities had been responsible for excessive delays as on many occasions they had not ensured the attendance of witnesses, had allowed long intervals for the judges' summer holidays and had failed to appoint reserve lay judges. The applicant objected against the Government's position that he had been responsible for delays resulting from his applications for release and appeals.

89. 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 remanded in custody. 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. It was incumbent on the detainee to produce sufficient evidence that there existed exceptional circumstances warranting release on bail. The applicant had failed to submit persuasive evidence in this respect. The reasons for the applicant's detention were thus relevant and sufficient.

90. The Government were of the opinion that, furthermore, 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.

91. 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

92. The applicant's detention on remand lasted from 19 November 1993 to 31 January 1997. The period to be taken into consideration is therefore three years, two months and twelve days (see paragraphs 51-74 above).

93. 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).

94. 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.

95. As to the grounds for the continued detention, the Court finds that the present case discloses no material difference from 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."

96. Having regard to the reasons given by the domestic courts to justify Mr Mihov's lengthy pre-trial detention (see paragraphs 51-74 and 76-81 above), the Court finds, as in the *Ilijkov* case, that by failing to address concrete relevant facts and by relying solely on a statutory presumption based on the gravity of the charges and which shifted to the accused the

burden of proving that there was not even a hypothetical danger of absconding, re-offending or collusion, the authorities prolonged the applicant's detention on grounds which cannot be regarded as sufficient.

97. The authorities thus failed to justify the applicant's remand in custody for the period of three years, two months and twelve days. In these circumstances it is not necessary to examine whether the proceedings were conducted with due diligence.

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

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

99. The applicant complained that the proceedings before the Supreme Court on 4 December 1996 in the examination of his appeal against detention had been unfair as they had been conducted in private, without a hearing or the participation of the applicant or his lawyer. The applicant relied on 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."

100. The Government submitted that the Supreme Court had acted on appeal from a decision of the Regional Court which had examined the matter in an open hearing. Holding a hearing before the second level jurisdiction, the Supreme Court in the particular case, would be burdensome and would slow down the procedure.

101. The applicant reiterated his complaint.

102. 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 Supreme Court on 4 December 1996 (see paragraphs 72 and 73 above and *Ilijkov v. Bulgaria*, cited above, §§ 51-53 and 101-104)

103. As in the *Ilijkov* case, the Court, noting that 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 that he was given no opportunity of replying, finds that the parties to the proceedings before the Supreme Court were not on equal footing. As a matter of domestic law and established practice the prosecution authorities had the privilege of addressing the judges with arguments which were not communicated to the applicant (see paragraphs 72, 73 and 85 above). The proceedings were therefore not adversarial.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

105. 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

106. The applicant claimed 10,000 Bulgarian levs (the equivalent of about EUR 5,000) for non-pecuniary damage.

107. The Government stated that the amount was excessive in view of the living standard in Bulgaria.

108. The Court, deciding on an equitable basis, awards EUR 4,000 for non-pecuniary damage.

B. Costs and expenses

109. The applicant claimed EUR 3,320 for 83 hours of legal work, at a rate of EUR 40 per hour. He submitted a time sheet and a fees' agreement with his lawyer.

110. The Government disputed the time-sheet, stating that the number of hours claimed was excessive and pointing out that it included 13 hours for translations, which should not be charged at the same rate as legal work. The Government also considered that the hourly rate claimed went far beyond the rates normally charged in Bulgaria.

111. The Court considers that a reduction should be applied in view of the fact that part of the initial complaints were declared inadmissible. It awards EUR 2,800 in respect of costs and expenses.

C. Default interest

112. 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*
   (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 4,000 (four thousand euros) in respect of non-pecuniary damage;
      (ii) EUR 2,800 (two thousand and eight hundred 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;
4. *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	Christos ROZAKIS
Deputy Registrar	President