



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

FIRST SECTION

CASE OF AL AKIDI v. BULGARIA

(Application no. 35825/97)

JUDGMENT
(rectified)

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 Al Akidi 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. 35825/97) 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 an Iraqi national, Mr Mohamed Nuri Al Akidi (“the applicant”), on 20 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 Article 6 § 1 of the Convention in relation to his pre-trial detention 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 10 September 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 Mohamed Nuri Al Akidi, was born in 1961.

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. The amount at stake, in respect of which the applicant was eventually convicted, was 15,294,000 Bulgarian leva (the equivalent of 558,236 US dollars at the relevant time). The applicant had acted in concert with three other persons all of whom later submitted applications 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. 35346/97, and *Mihov v. Bulgaria*, no. 35519/97).

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 applicant's lawyer. 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. He was sentenced to eleven 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 7 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 27 March 1998 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. On 10 September 1993 the applicant was arrested and detained pending trial.

49. On 22 September 1993 the applicant's lawyer filed an application for his client's release with the Regional Public Prosecutor. The application was dismissed on 1 October 1993 on the grounds that the charges concerned a crime punishable by more than ten years imprisonment and that there were no circumstances excluding the necessity of the detention. In particular, the applicant was a foreign citizen and, therefore, there was a danger of his absconding.

50. On 26 October 1993 the applicant appealed to the Regional Court stating that he was a political emigrant and could not return to Iraq and that his passport had been confiscated by the Bulgarian authorities. Furthermore, he had been living in Bulgaria for more than 12 years and his Bulgarian wife was expecting a child.

51. On 3 November 1993 the Regional Court sitting in private dismissed the appeal holding that the applicant had been charged with a serious wilful offence and that there was a danger of his absconding, committing further offences or obstructing the course of justice.

52. 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.

53. At the hearing on 6 October 1994 the applicant requested his release on bail stating that he had been detained for more than one year and that he had a family and a permanent address. On the same day 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.

54. On 30 November 1994 the Regional Court refused the applicant's renewed application for release, stating that there were no new circumstances.

55. The applicant appealed to the Supreme Court. He stated that the authorities had not provided any evidence as to the existence of a danger of his absconding, re-offending or obstructing the course of justice and that the charges against him had been weak. He also submitted that all relevant evidence had already been collected.

56. 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".

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

58. 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. The Supreme Court referred to its practice on the matter.

59. 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 pre-trial detention under Article 152 of the Code of Criminal Procedure had been met.

60. At the hearing on 21 September 1995 before the Plovdiv Regional Court the applicant again appealed against his detention on the grounds that he had not committed an offence, that he had a permanent address and had been fully co-operating with the authorities during the preliminary investigation.

61. 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.

62. On 21 September 1995 the Regional Court dismissed the application for bail, holding that there were no new circumstances and that the 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.

63. Another application for release was dismissed on 19 February 1996 at the trial hearing before the Plovdiv Regional Court 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.

64. At the hearing on 27 March 1996 the applicant renewed his application for release on bail arguing, *inter alia*, that since all evidence in his case had already been gathered, there was no danger of his absconding or obstructing the course of justice. He also invoked the Convention. 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.

65. On 28 January 1997, at the trial hearing, the applicant applied for release on bail.

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

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Penal Code

67. 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

68. 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).

69. 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.”

70. 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.”

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

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

73. 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. Lay judges

74. 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

75. 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

76. The applicant 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.

77. 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.

78. The Government considered that the necessity of the applicant's detention 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.

79. 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.

80. 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. Furthermore, one adjournment had been necessary owing to illness of his lawyer.

B. The Court's assessment

81. The Court observes that the applicant was arrested on 10 September 1993 and remained in pre-trial custody until his conviction on 31 January 1997. The period to be examined is thus three years, four months and twenty-one days (see paragraphs 48-66 above).

82. 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).

83. 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.

84. 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."

85. It is true that in the present case, unlike *Ilijkov*, the national authorities mentioned the fact that the applicant was a foreigner and might therefore abscond. However, the courts did not reply to his arguments that he had been living in Bulgaria for 12 years, that he had a Bulgarian wife and a new-born child, and that he would never return to Iraq. Instead, the courts treated most of the applicant's submissions as to the justification of his continued detention as irrelevant (see paragraphs 50-64 and 68-73 above).

86. Having regard to the reasons given by the domestic courts to justify Mr Al Akidi's detention, the Court considers that by failing to address concrete relevant facts and by relying exclusively 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 courts prolonged the applicant's detention on grounds which cannot be regarded as sufficient.

87. It follows that the applicant's remand in custody for a period lasting three years, four months and twenty-one days was not justified.

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

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

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

90. 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...”

91. The parties referred to their submissions concerning the length of the applicant's detention (see paragraphs 77, 79 and 80 above).

92. 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).

93. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. 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

95. The applicant claimed 9, 400 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.

96. The Government stated that the claims were excessive.

97. 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.

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

B. Costs and expenses

99. The applicant claimed USD 4,545 for work by his lawyer on the case. He submitted a time-sheet which reflected about 82 hours of work at the hourly rate of USD 50 and about 15 hours at the hourly rate of USD 30.

100. The applicant also claimed an additional USD 470 in respect of translation, postal and telephone charges, travel expenses between Plovdiv and Sofia for consulting the case-file with the Supreme Court of Cassation and photocopying expenses. He enclosed postal receipts.

101. The Government disputed the time-sheet, stating that the number of hours claimed was excessive and considering that the hourly rates reflected therein went far beyond the rates normally charged in Bulgaria.

102. 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.

103. 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 10-66 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.

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

C. Default interest

105. 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 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 4,000 (four 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;
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
Deputy Registrar

Christos ROZAKIS
President