CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

**CASE OF BELCHEV v. BULGARIA**

*(Application no. 39270/98)*

JUDGMENT

STRASBOURG

8 April 2004

**FINAL**

*08/07/2004*

*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 Belchev v. Bulgaria,**

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

Mr C.L. ROZAKIS, *President*,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 18 March 2004,

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

# PROCEDURE

1. The case originated in an application (no. 39270/98) 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 Anton Belchev Belchev ("the applicant"), on 24 September 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, Ms V. Djidjeva and Ms M. Dimova, of the Ministry of Justice. In a letter of 8 April 2003 the applicant objected to the representative powers of the Agents and invited the Court to ignore the observations submitted by them on the Government's behalf. On 18 March 2004 the Court decided to reject the applicant's objection.

3. The applicant alleged, in particular, that after his arrest he had not been brought before a judge or another officer authorised by law to exercise judicial power, that the reasons relied on by the national authorities to keep him in custody had been insufficient, that he had had no enforceable right to compensation in respect of the alleged breaches of Article 5 of the Convention and that the criminal proceedings against him had lasted unreasonably long.

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 originally allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber

that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 11 May 2000 the Court (Fourth Section) declared the application partly inadmissible.

7. 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).

8. By a decision of 6 February 2003 the Court (First Section) declared the application partly admissible.

9. The applicant, but not the Government, filed observations on the merits (Rule 59 § 1).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

10. The applicant was born in 1957 and lives in Plovdiv.

### A. The criminal proceedings against the applicant

#### *1. The preliminary investigation*

11. On 11 March 1996 the Plovdiv District Prosecutor's Office opened an investigation against Mr Hamanov, a bank branch manager, and several others, in connection with a number of financial transactions effected by them (see *Yankov v. Bulgaria*, no. 39084/97, § 11, 11 December 2003 and *Hamanov v. Bulgaria*, no. 44062/98, § 11, 8 April 2004).

12. In the course of the investigation Mr Hamanov was accused, *inter alia*, of having guaranteed on behalf of the bank – without having the right to do so – nine promissory notes issued by companies related to the applicant.

13. On an unspecified date in November 1996, in the course of questioning, Mr Hamanov stated that the applicant had prompted him to guarantee the promissory notes. On the basis of this statement the investigator decided to accuse the applicant of having incited and abetted Mr Hamanov to commit the alleged crime.

14. On 14 November 1996 the applicant was charged under Article 282 §§ 2 and 3 in conjunction with Article 20 §§ 3 and 4 of the Criminal Code ("CC") with having incited and abetted Mr Hamanov to breach his professional duties with a view to an unlawful gain for himself and others.

15. Eight persons were charged in all. The charges were modified several times in the course of the investigation.

16. During the investigation, which lasted about fourteen months, the investigator heard forty-seven witnesses, examined numerous financial and banking documents, commissioned expert reports, and undertook searches.

17. On 5 May 1997 the investigation was completed and the case file was sent to the prosecutor.

18. On 1 July 1997 the prosecutor submitted to the Plovdiv District Court a thirty-two-page indictment accompanied by twenty binders of documentary evidence.

*2. The trial*

19. The first hearing took place from 17 to 30 September 1997. The Plovdiv District Court heard the accused as well as several witnesses and experts. Some witnesses did not appear. Both the prosecution and the defence requested an adjournment.

20. The trial resumed on 25 November 1997. The District Court heard several witnesses. Ten other witnesses were absent as they had not been subpoenaed properly and others, albeit subpoenaed, did not show up. The trial was adjourned until 7 January 1998.

21. The trial resumed on 7 and 8 January 1998. The court adjourned it to 9 April, as some witnesses did not appear, and ordered an additional financial report.

22. The hearing listed for 9 April 1998 was adjourned to 6 July and then again to 19 October by reason of the ill health of one of the applicant's co-accused.

23. On 19 October 1998 the District Court held its last hearing. It heard the closing argument of the parties.

24. On 30 October 1998 the District Court found the applicant guilty of having incited and abetted Mr Hamanov to guarantee on behalf of the bank, without having the right to do so, nine promissory notes. It sentenced him to six years' imprisonment and banned him from engaging in financial dealings for a period of nine years.

25. The reasoning of the District Court's judgment was deposited in the registry of that court on an unspecified date in late January 1999.

26. Several times during the proceedings the case file was unavailable as it would be transmitted to the competent court for the examination of appeals submitted by the applicant's co-accused against their detention. In practice, upon such an appeal, the entire case file would be transmitted together with the appeal.

27. Throughout the proceedings the District Court and later the Regional Court sought police assistance to establish the addresses of witnesses and ensure their attendance.

*3. The appeal proceedings*

28. On 26 November 1998 the applicant appealed against his conviction and sentence.

29. More than a year later, on 6 December 1999, the Plovdiv Regional Court held its first hearing, which was adjourned to 13 March 2000 because of health problems of the applicant.

30. On 13 and 14 March 2000 the Regional Court resumed its hearing in the case.

31. On 5 June 2000 the Regional Court quashed the lower court's judgment and remitted the case to the preliminary investigation stage.

*4. Renewed preliminary investigation*

32. The Regional Prosecutor's Office, considering that the Regional Court's judgment was unclear or erroneous, sought to appeal against it or request its interpretation. There ensued a dispute about the time-limit for such an appeal, which was brought by the prosecution authorities to the Supreme Court of Cassation. On 27 November 2000 that court dismissed the prosecution's request.

33. Nothing was done in the case thereafter, at least until April 2003, date of the latest information from the parties. At that time the investigation in the applicant's case was pending before the prosecution authorities.

## B. The applicant's detention

34. On 14 November 1996 the applicant was arrested and brought before an investigator who decided to detain him. That decision was confirmed the same day by the District Prosecutor's Office.

35. On an unspecified date towards the end of November or the beginning of December 1996 the applicant applied for release to the District Prosecutor's Office. He asserted that there was no evidence of him having committed a crime. Also, he had a permanent address and could not obstruct the investigation.

36. On 3 December 1996 the District Prosecutor's Office dismissed the application on the ground that the applicant had been charged with a serious intentional crime, in which case the law provided for pre-trial detention. The testimony of two of the witnesses and certain documents indicated that the applicant had engaged in unlawful conduct. The District Prosecutor's Office also found a likelihood that the applicant would try to hide important documents relating to the facts of the crime of which he was accused.

37. On 4 December 1996 the applicant appealed to the Regional Prosecutor's Office. He argued that there was no danger of him absconding, as he had a permanent address, nor of him impeding the investigation.

38. The appeal was dismissed on 18 December 1996. The Regional Prosecutor's Office held that since the applicant had been charged with a serious intentional crime, he had to be detained by virtue of paragraph 1 of Article 152 of the Code of Criminal Procedure ("CCP"). He could only be released if the exception of paragraph 2 of that Article was applicable. However, this was not the case, because there was a risk that if released he might impede the investigation by suborning witnesses and hiding documents, regard being had to the complexity of the case, the high number of witnesses to be questioned and the need to organise confrontations between the applicant and certain witnesses.

39. On 20 December 1996 the applicant appealed to the Chief Prosecutor's Office. He argued that there was no evidence of him having committed a crime and that the Regional Prosecutor's Office had not relied on any specific facts justifying the conclusion that the applicant might abscond or tamper with evidence.

40. On 17 January 1997 the Chief Prosecutor's Office dismissed the appeal. It subscribed to the reasoning of the lower prosecutor's offices, but also relied on the fact that there was another investigation pending against the applicant which, pursuant to Article 152 § 3 of the CCP, barred any possibility for release. That investigation had been opened during the 1980s and in 1997 was still pending without having proceeded to trial.

41. On 18 February 1997 the applicant applied for release, arguing, *inter alia*, that his state of health was such that detention could be dangerous for him.

42. On 26 February 1997 the applicant was sent to a hospital for a medical examination.

43. On 4 March 1997 the Regional Prosecutor's Office dismissed the applicant's request for release on the ground of ill health but ordered his transfer to hospital. It referred to its earlier findings about the reasons for the applicant's continuing in detention.

44. On 14 March 1997 the applicant applied to the Chief Prosecutor's Office for release on health grounds. The application was referred to the Regional Prosecutor's Office.

45. After examining the application, on 25 March 1997 the Regional Prosecutor's Office ordered the applicant's release on bail. It relied on the conclusions of the medical experts, noting that the applicant would not be able to maintain the required dietary regime and undergo the necessary medical supervision if he were returned from hospital to the detention facility. In addition, the supervising prosecutor and the investigator had come to the opinion that all documentary evidence had been gathered and the facts of the case had been clarified. Therefore, there was no risk of the applicant tampering with evidence. The investigation was continuing only in view of the fact that there were difficulties in summoning certain witnesses. Finally, there was no indication that the applicant would abscond.

As to the fact that another investigation was pending against him, the Prosecutor's Office found that this should not be used to the applicant's detriment as the investigation in question had already been pending for more than ten years.

46. On 28 March 1997 the applicant posted bail and was released.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. The offence with which the applicant was charged

47. Article 282 § 1 of the CC provides:

> "A person [exercising a function of managing another's property or an official function], who acts in breach or dereliction of his professional duties or exceeds his power or rights with a view to a pecuniary gain for himself or another or damage to another, and thus causes significant harm, shall be punished with up to five years' imprisonment..."

48. Article 282 § 3, read in conjunction with the first and the second paragraphs of the same provision, provides for three to ten years' imprisonment in very grave cases when the resulting damage is substantial or the offender holds a high ranking post.

49. Article 20 § 3 of the CC defines an "inciter" as one who has intentionally incited another to commit a crime. Article 20 § 4 defines an "abettor" as one who has intentionally aided another in the commission of a crime, by counselling, advising, offering help etc. Both inciters and abettors are accomplices in the crime and are punishable in the same manner as the principal, account being taken of the nature and the degree of their participation (Article 21 § 1).

### B. Provisions relating to pre-trial detention

#### *1. Power to order pre-trial detention*

50. At the relevant time and until the reform of the CCP of 1 January 2000 an arrested person was brought before an investigator who decided whether or not the accused should be remanded in custody. The investigator's decision was subject to approval by a prosecutor. The role of investigators and prosecutors under Bulgarian law has been summarised in paragraphs 25-29 of the Court's judgment in the case of *Nikolova v. Bulgaria* ([GC], no. 31195/96, ECHR 1999-II).

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

51. Pre-trial detention was governed by Article 152 of the CCP, which read in relevant part:

> "1. Pre-trial detention shall be imposed [in cases where the charges concern] a serious intentional crime.
>
> 2. In the cases falling under paragraph 1 [detention] may be dispensed with if there is no risk of the accused evading justice, obstructing the investigation, or committing further crimes. ..."

52. A "serious" crime is defined by Article 93 § 7 of the CC as one punishable by more than five years' imprisonment.

53. The Supreme Court has held that it was not open to the courts, when examining an appeal against pre-trial detention, to inquire whether there existed sufficient evidence to support the charges against the detainee. The courts had to examine only the formal validity of the detention order (опред. № 24 от 23 май 1995 г. по н.д. № 268/95 г. на ВС I н.о.).

54. According to the Supreme Court's practice at the relevant time (it has now become at least partly obsolete as a result of amendments in force since 1 January 2000), Article 152 § 1 required that a person charged with a serious intentional crime be detained. An exception was only possible, in accordance with Article 152 § 2, where it was clear beyond doubt that any risk of absconding or re-offending was objectively excluded as, for example, in the case of a detainee who was seriously ill, elderly or already in custody on other grounds, such as serving a sentence (опред. № 1 от 4 май 1992 г. по н.д. № 1/92 г. на ВС I н.о.; опред. № 48 от 2 октомври 1995 г. по н.д. № 583/95 г. на ВС I н.о.; опред. № 78 от 6 ноември 1995 г. по н.д. 768/95 г.).

55. Paragraph 3 of Article 152, as in force until August 1997, provided that remand in custody was mandatory without exception where other criminal proceedings for a publicly prosecutable crime were pending against the accused person, or where he was a recidivist.

56. On 21 March 1997 the Supreme Court of Cassation examined a request by the Chief Prosecutor for an interpretative decision on Article 152 of the CCP. The Supreme Court of Cassation considered that Article 152 § 3 of the Code was incompatible with the Constitution, the Convention and the International Covenant on Civil and Political Rights. It therefore decided to submit the matter to the Constitutional Court which is competent to rule on the compatibility of legislation with the Constitution and international treaties. Ultimately, the Constitutional Court did not decide the point as the impugned provision was repealed with effect from 11 August 1997.

## C. The State Responsibility for Damage Act

57. Section 2 of the State Responsibility for Damage Act of 1988 („Закон за отговорността на държавата за вреди, причинени на граждани“) provides, as relevant:

> “The State shall be liable for damage caused to [private persons] by the organs of ... the investigation, the prosecution, the courts ... for:
>
> 1. unlawful pre-trial detention ..., if [the detention order] has been set aside for lack of lawful grounds[.]”

58. The reported case-law under section 2(1) of the Act is scant. In two recent judgments the Supreme Court of Cassation held that pre-trial detention orders must be considered as being “set aside for lack of lawful grounds” – and that State liability arises – where the criminal proceedings have been terminated on grounds that the charges have not been proven (реш. № 859/2001 г. от 10 септември 2001 г. по г.д. № 2017/2000 г. на ВКС) or where the accused has been acquitted (реш. № 978/2001 г. от 10 юли 2001 г. по г.д. № 1036/2001 г. на ВКС). The view taken appears to be that in such cases the pre-trial detention order is retrospectively deprived of its lawful grounds as the charges were unfounded.

59. On the other hand, the Government have not informed the Court of any successful claim under section 2(1) of the Act in respect of unlawful pre-trial detention orders in connection with pending criminal proceedings or proceedings which have ended with final convictions. It appears that rulings putting an end to pre-trial detention in pending criminal proceedings have never been considered as decisions to “set aside for lack of lawful grounds” within the meaning of section 2(1) of the Act. Also, the terms “unlawful” and “lack of lawful grounds” apparently refer to unlawfulness under domestic law.

60. By section 2(2) of the Act, in certain circumstances a claim may be brought for damage occasioned by the “unlawful bringing of criminal charges”. Such a claim may be brought only where the accused person has been acquitted by a court or the criminal proceedings have been discontinued by a court or by the prosecution authorities on the ground that the accused person was not the perpetrator, that the facts did not constitute a criminal offence or that the criminal proceedings were instituted after the expiry of the relevant limitation period or despite a relevant amnesty. In contrast with the solution adopted under section 2(1) (see paragraph 58 above), the Supreme Court of Cassation has held that no liability arises under section 2(2) where the criminal proceedings were discontinued at the pre-trial stage on the ground that the accusation was not proven (реш. № 1085/2001 г. от 26 юли 2001 г. по г.д. № 2263/2000 г. на ВКС IV г.о.).

61. Persons seeking redress for damage occasioned by decisions of the investigating and prosecuting authorities or the courts in circumstances

falling within the scope of the State Responsibility for Damage Act have no claim under general tort law as the Act is a *lex specialis* and excludes the application of the general regime (section 8(1) of the Act; реш. № 1370/1992 г. от 16 декември 1992 г., по г.д. № 1181/1992 г. на ВС IV г.о.). The Government have not referred to any successful claim under general tort law in connection with unlawful pre-trial detention.

# THE LAW

## I. ALLEGED VIOLATIONS OF ARTICLE 5 § 3 OF THE CONVENTION

### A. Alleged violation of the right to be brought before a judge or other officer authorised by law to exercise judicial power within the meaning of Article 5 § 3 of the Convention

62. The applicant complained under Article 5 § 3 of the Convention that upon his arrest he had not been brought promptly before a judge or other officer authorised by law to exercise judicial power.

63. Article 5 § 3 of the Convention provides, as relevant:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power..."

64. The applicant stated that neither the investigator who had decided to detain him, nor the prosecutor who had confirmed that decision could be deemed independent officers authorised by law to exercise judicial power. He referred to the Court's findings in the cases of *Assenov and Others* (judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3299, §§ 147-150) and *Nikolova* (cited above, §§ 50-51).

65. The Government accepted that Bulgarian law at the relevant time could not be regarded as being in conformity with Article 5 § 3. They contended, however, that introducing judicial control of arrests of suspects was not feasible without changing the legislation first. In this connection, they informed the Court that amendments to the CCP, effective 1 January 2000, introduced full judicial control in respect of any measure affecting the individual's rights during the pre-trial stage of criminal proceedings.

66. In previous judgments which concerned the system of detention pending trial as it existed in Bulgaria until 1 January 2000, the Court found that neither investigators before whom accused persons were brought, nor prosecutors who approved detention orders could be considered to be

"officer[s] authorised by law to exercise judicial power" within the meaning of Article 5 § 3 of the Convention (see *Assenov and Others,* cited above, pp. 2298-99, §§ 144-50; *Nikolova*, cited above, §§ 49-53; and *Shishkov v. Bulgaria*, no. 38822/97, §§ 52-54, ECHR 2003-... (extracts)).

67. The present case also concerns detention pending trial before 1 January 2000. Upon his arrest the applicant was brought before an investigator who did not have power to make a binding decision to detain him. In any event, neither the investigator, nor the prosecutor who confirmed the detention were sufficiently independent and impartial for the purposes of Article 5 § 3, in view of the practical role they played in the prosecution and their potential participation as a party to the criminal proceedings (see paragraphs 34 and 50 above). The Court refers to its analysis of the relevant domestic law contained in its *Nikolova* judgment (see paragraphs 28, 29 and 49-53 of that judgment).

68. It follows that there has been a violation of the applicant's right to be brought before a judge or other officer authorised by law to exercise judicial power within the meaning of Article 5 § 3 of the Convention.

### B. Alleged violation of the right to trial within a reasonable time or to release pending trial

69. The applicant complained under Article 5 § 3 of the Convention that his detention had been unjustified and unreasonably lengthy.

70. Article 5 § 3 of the Convention provides, 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. ..."

71. Referring to the Court's judgments in the cases of *Shishkov* (cited above, §§ 57-67) and *Nikolov v. Bulgaria* (no. 38884/97, §§ 66-77, 30 January 2003), the applicant claimed that the reasons relied on by the national authorities to keep him in custody had been insufficient.

72. The Government did not comment on this complaint.

73. The Court notes that the applicant was arrested on 14 November 1996 and was released on bail on 28 March 1997 (see paragraphs 34 and 46 above). The period to be examined is therefore four months and fourteen days.

74. The persistence of a 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 (see *Labita v. Italy* [GC], no. 26772/95, §§ 152-53, ECHR 2000-IV).

75. In its final admissibility decision of 6 February 2003 in the present case the Court rejected as manifestly ill-founded the applicant's assertion that there had been no reasonable suspicion of his having committed an offence. The applicant was held in custody on the basis of a suspicion that he had incited and abetted Mr Hamanov to breach his professional duties with a view to an unlawful gain for himself and others.

76. As to the grounds for the continued detention, the Court notes that in the case of *Ilijkov v. Bulgaria* (no. 33977/97, 26 July 2001), it observed that during the period in question the authorities had applied law and practice establishing a presumption that detention pending trial was always necessary in cases where the sentence faced went beyond a certain threshold of severity. The presumption 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 pending trial throughout the proceedings. The above principles were based on Article 152 §§ 1 and 2 of the CCP, as worded at the material time, and the Supreme Court's practice at that stage.

77. At the time of the applicant's detention those provisions were still in force and the same practice prevailed.

78. The Court must nevertheless examine whether those provisions and practice, which were clearly incompatible with Article 5 § 3 of the Convention (see *Ilijkov*, cited above, §§ 84-87), were actually applied in the instant case.

79. It notes that when rejecting the applicant's request for release the District Prosecutor's Office mentioned that presumption in its reasons. The Regional Prosecutor's Office also relied on the presumption (see paragraphs 36 and 38 above). It is true that in order to exclude the application of the exception of paragraph 2 of Article 152 of the CCP the prosecution authorities stated that there was a likelihood that the applicant would try to hide documents and suborn witnesses. However, they did not provide any reasoning in support of these findings which were, therefore, of a purely declaratory nature (see *Nikolov*, cited above, § 73). In this connection the Court recalls that "[w]here the needs of the investigation are invoked in ... a general and abstract fashion they do not suffice to justify the continuation of detention (see *Clooth v. Belgium*, judgment of 12 December 1991, Series A no. 225, p. 16, § 44).

80. Moreover, when examining the applicant's appeal against the Regional Prosecutor's Office refusal to release him, the Chief Prosecution Office applied another provision of the CCP, paragraph 3 of Article 152, which excluded any possibility of the release of a person against whom

more than one investigation was pending (see paragraph 40 above). It is noteworthy in this respect that the separation or joinder of criminal investigations was a matter determined by the prosecution authorities without judicial control. That approach was incompatible with Article 5 § 3 of the Convention (see *Nankov v. Bulgaria*, no. 28882/95, §§ 83 and 84, Commission report of 25 May 1998 and *Yankov*, cited above, § 173).

81. The Court thus finds that the authorities failed to justify the applicant's remand in custody for the period of four months and fourteen days. In these circumstances it is not necessary to examine whether the proceedings were conducted with due diligence.

82. The Court is not unmindful of the fact that the majority of length-of-detention cases decided in its judgments concern longer periods of deprivation of liberty and that against that background four months and fourteen days may be regarded as a relatively short period in detention. Article 5 § 3 of the Convention, however, cannot be seen as authorising pre-trial detention unconditionally provided that it lasts no longer than a certain period. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities. That has not happened in this case.

83. The Court therefore finds that there has been a violation of the applicant's right under Article 5 § 3 of the Convention to trial within a reasonable time or to release pending trial.

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

84. The applicant complained under Article 5 § 5 of the Convention that he had no enforceable right to compensation in respect of the alleged breaches of Article 5.

85. Article 5 § 5 of the Convention provides:

> "Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

86. The applicant stated that under Bulgarian law it was not possible to obtain compensation for detention which violated the Convention but was effected in accordance with the requirements of the CCP. He stressed that there had never been a single precedent of a detainee obtaining compensation in such circumstances.

87. The Government submitted that since there had been no violation of the preceding paragraphs of Article 5, no issue arose under Article 5 § 5. In the alternative, they submitted that the applicant was free to bring an action for damages either under the general tort law or under the State Responsibility for Damage Act.

88. The Court notes that the applicant's pre-trial detention infringed his right to be brought promptly before a judge or other officer authorised by

law to exercise judicial power (see paragraph 68 above) and his right to trial within a reasonable time or release pending trial (see paragraph 83 above).

89. It follows that Article 5 § 5 of the Convention is applicable. The Court must therefore establish whether or not Bulgarian law afforded the applicant an enforceable right to compensation for the breaches of Article 5 of the Convention in his case.

90. By section 2(1) of the State Responsibility for Damage Act, a person who has been remanded in custody may seek compensation only if the detention order has been set aside "for lack of lawful grounds". This expression apparently refers to unlawfulness under domestic law. As far as it can be deduced from the scant practice reported under this provision, section 2(1) has only been applied in cases where the criminal proceedings have been terminated on the basis that the charges were unproven or where the accused has been acquitted (see paragraphs 57-59 above).

91. In the present case the applicant's pre-trial detention was considered by the courts as being in full compliance with the requirements of domestic law and the proceedings against him are still pending. Therefore, the applicant has no right to compensation under section 2(1) of the State Responsibility for Damage Act. Nor does section 2(2) of the Act apply (see paragraph 60 above).

92. It follows that in the applicant's case the State Responsibility for Damage Act does not provide for an enforceable right to compensation.

93. Furthermore, it does not appear that such a right is secured under any other provision of Bulgarian law (see paragraph 61 above).

94. The Court thus finds that Bulgarian law did not afford the applicant an enforceable right to compensation, as required by Article 5 § 5 of the Convention. There has therefore been a violation of that provision.

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

95. The applicant complained under Article 6 § 1 of the Convention about the length of the criminal proceedings against him.

96. Article 6 § 1 of the Convention provides, as relevant:

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

97. The applicant submitted that the investigation had been completed within a reasonable time but stated that there had been delays during the trial and the appeal. In particular, the hearings before the District Court had been held at unreasonably long intervals. Also, a long time had elapsed between the delivery of the District Court's reasoning in January 1999 and the first hearing before the Regional Court. Furthermore, the case had been remitted to the investigation stage and was likely to continue for several

more years. As to the applicant's conduct, not a single hearing had been adjourned solely on his account.

98. In the Government's view, the authorities had worked on the case with the required diligence, particularly during the investigation. The case was very complex: it concerned eight persons accused of offences relating to complex financial operations. The case file ran to twenty binders. At the trial stage the prosecution had relied on approximately sixty witnesses and the defence had called more witnesses. The difficulties in summoning so many witnesses had inevitably caused adjournments. The applicant or some of the other co-accused had been responsible for a number of adjournments because of illness and where they had sought to adduce additional evidence. The District and the Regional Courts had taken all necessary measures to reduce the delay: they had listed hearings in three-month intervals and had sought police assistance for subpoenaing witnesses.

99. The Court notes that the applicant was involved in the proceedings on 14 November 1996. In April 2003, the date of the latest information from the parties, the proceedings were pending at the preliminary investigation stage following the Regional Court's judgment of 5 June 2000 which quashed the applicant's conviction and sentence and remitted the case for renewed investigation (see paragraphs 13-14 and 33 above).

100. The period to be examined has therefore lasted more than seven years thus far.

101. The Court observes that the criminal proceedings against the applicant were factually and legally complex. They involved several persons accused of having committed offences in relation to a number of financial transactions (see paragraphs 11-15 above).

102. Until October 1998, when the applicant was convicted by the District Court, there were no significant delays imputable to the authorities. However, the Regional Court held its first hearing on the applicant's appeal in December 1999, more than one year after the appeal was submitted. Furthermore, nothing has been done in the case since 5 June 2000. It is still pending at the preliminary investigation stage (see paragraph 33 above).

103. Having regard to the criteria established in its case-law for the assessment of the reasonableness of the length of proceedings (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, ECHR 1999-II and *Pedersen and Baadsgaard v. Denmark*, no. 49017/99, 19 June 2003), the Court finds that the length of the criminal proceedings against the applicant failed to satisfy the reasonable time requirement of Article 6 § 1 of the Convention.

104. It follows that there has been a violation of that provision.

## IV. 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 6,800 euros ("EUR") in non-pecuniary damages. He made detailed submissions in respect of each violation of the Convention in his case, emphasising the gravity of the case and referring to some of the Court's judgments.

107. Referring to some of the Court's judgments in previous similar cases against Bulgaria, the Government submitted that the claim was excessive, in particular in view of the living standards in Bulgaria.

108. Having regard to all the circumstances of the case, and deciding on an equitable basis, the Court awards the applicant EUR 2,500 in respect of non-pecuniary damage.

### B. Costs and expenses

109. The applicant claimed EUR 4,675 for 93 hours and 30 minutes of legal work on the Strasbourg proceedings, at the hourly rate of EUR 50. He claimed an additional EUR 439 for translation costs (58 pages), copying, mailing and overhead expenses. The applicant submitted a fees' agreement between him and his lawyer, a time-sheet and postal receipts. He requested that the amounts awarded by the Court under this head should be paid directly to his legal representative, Mr M. Ekimdjiev.

110. The Government stated that: (i) the claim for translation and other expenses, with the exception of postage, was not supported by documents; (ii) the number of hours claimed was excessive as the work done by the lawyer could have been completed in half of the time claimed; and (iii) the hourly rate of EUR 50 was excessive, regard being had to the living standards in Bulgaria.

111. The Court notes that the applicant has submitted a fees agreement and his lawyer's time sheet concerning work done on his case and that he has requested that the costs and expenses incurred should be paid directly to his lawyer, Mr M. Ekimdjiev.

112. The Court considers that the number of hours claimed seems to be excessive and that a reduction is necessary on that basis. It also considers that a reduction should be applied on account of the fact that some of the applicant's complaints were declared inadmissible (see paragraphs 6 and 8

above). Also, the claim for translation expenses is not supported by relevant documents. The Court further observes that the same lawyer represented before it Mr Yankov, Mr Hamanov and Mr Belchev, who were all co-accused in the same criminal proceedings (see paragraph 2 above, *Yankov*, cited above, § 2 and *Hamanov*, cited above, § 2). 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.

113. Having regard to all relevant factors and deducting EUR 630 received in legal aid from the Council of Europe, the Court awards EUR 2,000 in respect of costs and expenses, to be paid directly to the applicant's legal representative, Mr M. Ekimdjiev.

### C. Default interest

114. 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 in that upon his arrest the applicant was not brought promptly before a judge or other officer authorised by law to exercise judicial power

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention in that the applicant's pre-trial detention was not justified throughout the whole period;

3. *Holds* that there has been a violation of Article 5 § 5 of the Convention in that Bulgarian law did not afford the applicant an enforceable right to compensation;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:
      (i) EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage, to be paid to the applicant himself;

(ii) EUR 2,000 (two thousand euros) in respect of costs and expenses, to be paid directly to the applicant's legal representative, Mr M. Ekimdjiev;

(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;

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

Done in English, and notified in writing on 8 April 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President