CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF KOLEV v. BULGARIA

(Application no. 50326/99)

JUDGMENT

STRASBOURG

28 April 2005

FINAL

28/07/2005

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 Kolev v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Registrar*,

Having deliberated in private on 31 March 2005,

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

PROCEDURE

1. The case originated in an application (no. 50326/99) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Vladimir Metodiev Kolev ("the applicant"), on 30 March 1999.

2. The applicant was represented by Mr M. Chatalbashev, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Mrs M. Dimova, of the Ministry of Justice.

3. On 7 July 2003 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The criminal proceedings

4. The applicant was born in 1958 and lives in Sofia.

5. On 11 May 1994 he was arrested and remanded in custody on charges of fraud. He was accused of having obtained in February 1994 a bank credit

in the amount of 300,000 Bulgarian levs (which, at the relevant time were the equivalent of approximately 10,000 US dollars) by presenting himself under a false identity and through the use of forged documents. Three other persons, the applicant's alleged accomplices, were also charged in the same proceedings in relation to a number of separate counts of fraud and forgery.

6. The applicant had a criminal record which included convictions for thefts dating from 1991, when he was sentenced to four years and two months' imprisonment. As a result, the charges brought against him in 1994 concerned a case of aggravated recidivism, punishable by three to fifteen years' imprisonment.

7. The preliminary investigation was completed in the beginning of 1996 when an indictment was submitted to the Sofia City Court.

8. The court held hearings on 24 June and 16 October 1996, 14 January, 18 March, 13 June and 3 November 1997, 13 January, 8 April and 11 November 1998, 3 May, 29 June and 8 October 1999. The hearings were adjourned as witnesses or representatives of the civil plaintiffs did not appear or could not be found and summoned. On some occasions adjournments were necessary as one or more of the co-accused persons had not appeared. The applicant's absence was the reason for one adjournment, of the hearing held on 18 March 1997.

9. On 8 October 1999 the presiding judge, Mrs M., withdrew from the case. The reason for her withdrawal was pressure brought to bear by the Sofia City Prosecutor in relation to Mrs M.'s decisions to release the applicant on bail (see paragraph 32 below). The examination of the case restarted.

10. The hearings listed for 10 April, 22 June, 28 September and 21 December 2000 could not proceed as some of the co-accused persons had not appeared. The applicant was present at those hearings.

11. On 23 February 2001 the hearing was adjourned as the applicant's lawyer withdrew from the case shortly before the start of the hearing.

12. The hearings scheduled for 25 April, 18 May and 22 October 2001 and 22 February 2002 were also adjourned as several of the persons summoned had not appeared and additional evidence ought to be collected.

13. The applicant and another accused person did not appear at the hearing listed for 25 June 2002. The Sofia City Court ordered the applicant's arrest and remand in custody and adjourned the hearing. The applicant was not found before the date of the next hearing, 25 November 2002, which caused another adjournment.

14. The applicant appeared at the hearings on 27 March 2003 and 8 September 2003, but the case was adjourned as another accused person had been unable to attend.

15. At the hearing on 21 and 24 November 2003 the Sofia City Court heard several witnesses and adjourned the case as some of the witnesses had not appeared.

16. As of February 2005 the criminal proceedings against the applicant were still pending before the Sofia City Court, a hearing having been listed for 1 March 2005.

17. Throughout the proceedings the Sofia City Court sought police assistance to secure the presence of the persons summoned for the hearings and imposed fines or ordered the arrest of persons who had not appeared without good cause.

B. The applicant's pre-trial detention

18. On 11 May 1994 the applicant was arrested and remanded in custody.

19. The applicant appealed several times against his detention. Release on bail was repeatedly refused on the basis of Article 152 of the Code of Criminal Procedure and the relevant practice, according to which remand in custody was mandatory in all cases where the sentence faced went beyond a certain threshold of severity. In the present case the authorities also relied on paragraph 3 of Article 152 of the Code, as in force between 1995 and 1997, which provided that remand in custody was mandatory without exception where, *inter alia*, the accused person was a recidivist.

20. On 14 January 1997 the Sofia City Court decided to release the applicant on bail. Noting that to release the applicant would run contrary to the letter of Article 152 § 3 of the Code of Criminal Procedure, the court stated that nevertheless the continuation of the applicant's detention could not be reasonably justified. The court stated that numerous inexcusable delays had been caused by failure of witnesses or injured parties to appear or owing to police inaction and that the applicant should not bear the consequences. The court also noted that according to a medical report the applicant's mental health had deteriorated. In particular, he was passive, depressed and his behaviour revealed a high risk of a suicidal crisis.

21. The applicant paid the recognisance and was released on 21 January 1997.

22. Upon the prosecutor's appeal, on 5 March 1997 the Supreme Court of Cassation quashed the Sofia City Court's order of 14 January 1997 and ordered the applicant's remand in custody. The court found that there were no exceptional circumstances warranting release, regard being had to the fact that the applicant had a criminal record and could re-offend or abscond.

23. The applicant remained free until 18 March 1997. On that day he failed to appear at the hearing in the criminal case against him and was arrested several hours later, apparently at his home address.

24. Between September 1997 and November 1998 the applicant unsuccessfully sought release on bail stating, *inter alia*, that he had had no intention to abscond, which was allegedly demonstrated by the fact that he had been found by the police at his address. The courts based their refusals

on Article 152 of the Code of Criminal Procedure and the relevant practice, while also noting that the applicant had not appeared at the hearing of 18 March 1997 and that therefore there was a risk of absconding.

25. On 11 November 1998 the Sofia City Court ordered the applicant's release on bail stating that the continuation of his pre-trial detention - which had exceeded four years - was unjustifiable.

26. The applicant paid the recognisance and was released on an unspecified date in November 1998.

27. Upon the prosecutor's appeal, on 26 February 1999 the Sofia Appellate Court quashed the City Court's decision of 11 November 1998 and ordered the applicant's remand in custody, reiterating that there was a danger of absconding.

28. Despite the Appellate Court's decision the applicant remained free. On 3 May and 29 June 1999 he appeared at the hearings in the criminal case.

29. On 29 June 1999 the Sofia City Court issued a new order for the applicant's release.

30. Upon the prosecutor's appeal, on 2 August 1999 the Sofia Appellate Court again ordered the applicant's remand in custody. The court relied on Article 152 of the Code of Criminal Procedure and the relevant practice.

31. The applicant was arrested on 3 August 1999 pursuant to the Appellate Court's decision.

32. At the hearing held on 8 October 1999 the Sofia City Court found that it was unable to rule on the applicant's request for release on bail. That was so because the prosecutor had requested from the Supreme Judicial Council, the body which appoints, promotes and dismisses judges, an authorisation to prosecute Mrs M., the presiding judge, in relation to her decisions to release the applicant on bail.

33. On 20 December 1999 the applicant appealed against his continuing pre-trial detention.

34. On 21 January 2000 the Sofia City Court dismissed the appeal. The court noted that the applicant was a recidivist and that therefore the danger of his absconding and re-offending was presumed under the new wording of Article 152 § 2 of the Code of Criminal Procedure, as in force since 1 January 2000 (see paragraph 42 below). Since the available evidence did not establish facts capable of overturning the presumption, the applicant should remain in custody.

35. Upon the applicant's appeal, on 25 February 2000 the Sofia Appellate Court quashed the Sofia City Court's decision and ordered the applicant's release on bail, criticising the lower court for having interpreted the relevant new provisions wrongly. The applicant was released on the same day.

36. All decisions of the Sofia Appellate Court were taken in private. On at least one occasion the Appellate Court decided after having received

comments by the Appellate Prosecutor's Office which were not communicated to the applicant.

37. The applicant was arrested again on 31 March 2003, pursuant to the order of the Sofia City Court of 25 June 2002, as he had failed to appear at the hearing listed on that day (see paragraph 13 above).

38. On 31 March 2003 the applicant appealed against his detention. On 7 April 2003 his appeal was granted and he was released. The court accepted that the applicant's failure to appear on 25 June 2002 did not disclose a danger of him absconding, taking into consideration the applicant's explanation and his diligent behaviour in the proceedings. The court also took into account the fact that the applicant had already spent an excessively lengthy period in pre-trial detention, which ran contrary to the Code of Criminal Procedure and the Convention.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Legal grounds for pre-trial detention and practice before 1 January 2000

39. According to the practice of the Supreme Court, Article 152 § 1 required that a person charged with a serious wilful offence had to be remanded in custody. Under Article 152 § 2 an exception was only possible where it was clear beyond doubt that any danger of absconding or reoffending was objectively excluded since, for example, the accused was seriously ill. The detainee bore the burden to prove the existence of such exceptional circumstances.

40. Article 93(7) of the Penal Code provides that a “serious offence” is one punishable by more than five years' imprisonment.

41. Under paragraph 3 of Article 152, as in force between 1995 and 1997, pre-trail detention was mandatory without exception where another preliminary investigation was pending against the accused person as well as in the cases of recidivism.

B. Legal grounds for pre-trial detention after 1 January 2000

42. In accordance with the amended Article 152 §§ 1-3 of the Code of Criminal Procedure, accused persons may be remanded in custody only where it is established that there is a real danger of them absconding or committing an offence. For purposes of the initial decision to detain the accused person, such a danger is presumed, *inter alia*, where the charges concern an offence punishable by more than ten years' imprisonment or where the accused person was a recidivist. However, this presumption does not shift the burden of proof: the authorities must verify in each case

whether or not a real danger exists of the accused person absconding or re-offending. Also, for purposes of subsequent decisions to extend pre-trial detention, the persistence of a real danger of the accused person absconding or re-offending must be established (see Interpretative decision no. 1 of 25 June 2002 of the Supreme Court of Cassation).

C. Damages under the State Responsibility for Damage Act for delays in the examination of appeals against detention

43. In a judgment of 8 November 2001 in case no. 1384/01, the Pazardjik Regional Court awarded damages to the plaintiff, whose appeal against detention had been examined 50 days following its submission. The court found that that excessive delay had breached Article 152a of the Code of Criminal Procedure and Article 5 § 4 of the Convention. It further considered that damages were due despite the fact that the exact legal characterisation of the claim under the State Responsibility for Damage Act was unclear. In assessing the case, the court took into account the fact that the plaintiff had suffered a serious psychological trauma as a result of her continued detention and had tried to commit suicide by knocking her head against the wall.

44. In a judgment of 24 March 2004 in case no. 1691/03, the Sofia Appellate Court noted that the plaintiff's request for release had been examined 42 days following its submission, in violation of Article 152a of the Code of Criminal Procedure. Nevertheless, the court considered that it was not possible to speculate whether or not the plaintiff's release would have been ordered had his application been examined within the relevant time-limit. Therefore, no damages were due on account of the delay.

THE LAW

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

45. The applicant complained that his pre-trial detention had been unjustified and excessively lengthy, in violation of Article 5 § 3 of the Convention which reads, 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. Admissibility

46. The Government stated that the complaint was inadmissible as being manifestly ill-founded. The applicant disagreed.

47. The Court considers that the above complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and notes that it is not inadmissible on any other grounds. The complaint must therefore be declared admissible.

B. Merits

1. The parties' submissions

48. The Government stated that the applicant's detention had not been in breach of domestic law since the two years' statutory maximum period of pre-trial detention under the Code of Criminal procedure only concerned detention pending the preliminary investigation. There was no statutory limit on detention at the trial stage of the proceedings.

49. The Government further stated that the applicant had been arrested on a reasonable suspicion of having committed an offence and that there had been no circumstances excluding any danger of him absconding or committing an offence. In particular, the applicant had previously committed criminal offences and the charges concerned a serious offence. The courts had taken these facts into account in their decisions. Therefore, there had been relevant and sufficient reasons justifying the applicant's deprivation of liberty pending trial.

50. As to the due-diligence requirement, the Government maintained that the authorities had acted in a meticulous and well organised manner. The delays in the proceedings were caused by objective difficulties. In particular, the case was complex and involved several accused persons.

51. The applicant stated that the Government's observations contained nothing more than vague general statements. The applicant offered his detailed analysis of the relevant factors and concluded that there had been no danger of him absconding, interfering with the course of justice or committing an offence. Also, excessive delays in the proceedings had been caused by the fact that the police had not secured the presence of some of the accused persons and witnesses. Therefore, in the applicant's view, the conduct of the authorities and not the relative complexity of the case had been at the origin of the excessive length of his detention.

2. The Court's assessment

52. The Court notes that the applicant spent four periods in pre-trial detention: 11 May 1994 - 21 January 1997, 18 March 1997 – unspecified

date in November 1998, 3 August 1999 – 25 February 2000 and 31 March – 7 April 2003 (see paragraphs 18-38 above).

53. Where an accused person is detained for two or more separate periods pending trial, the reasonable time guarantee of Article 5 § 3 requires a global assessment of the cumulated period (see *Kemmache v. France (no. 1 and no. 2)* judgment of 27 November 1991, Series A no. 218, § 44, *Vaccaro v. Italy*, no. 41852/98, 16 November 2000, §§ 31-33 and *Mitev v. Bulgaria*, no. 40063/98, 22 December 2004, § 102).

54. The period to be examined is therefore approximately four years and eleven months.

55. 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 authorities continued to justify the deprivation of liberty. Where such grounds were relevant and sufficient, the Court must also ascertain whether the competent authorities displayed special diligence in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152-53, ECHR 2000-IV).

56. It is undisputed that the applicant was held in custody on a reasonable suspicion that he had committed fraud.

57. As to the grounds for the continued detention, the Court observes that until 1 January 2000 the Bulgarian authorities 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, such as 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 throughout the proceedings (see paragraphs 39-41 above). In the case of *Ilijkov v. Bulgaria* (no. 33977/96, §§ 84-87, 26 July 2001) and in a number of other Bulgarian cases, the Court found that the above practice was incompatible with Article 5 § 3 of the Convention.

58. At the time of the applicant's detention, with the exception of a short period after 1 January 2000, the defective provisions were still in force and the same practice prevailed. The Court must nevertheless examine whether they were actually applied in the instant case.

59. Until 1997 the applicant's requests for release on bail were refused routinely, on the basis that his remand in custody had been mandatory in the absence of exceptional circumstances such as serious illness. The authorities also relied on paragraph 3 of Article 152 of the Code of Criminal Procedure, as in force between 1995 and 1997, which provided that remand in custody was mandatory without exception where, *inter alia*, the accused person was

a recidivist (see paragraph 19 above). That approach was incompatible with Article 5 § 3 of the Convention.

60. It is true that in some of their decisions, the authorities referred to the applicant's criminal record and to the fact that on at least two occasions he had failed to appear in court (see paragraphs 22, 24 and 27 above). It was not unreasonable to consider that those facts disclosed the existence of a danger of the applicant committing an offence or absconding.

61. The Court observes, however, that in November 1998, June 1999, February 2000 and again in April 2003 the Bulgarian courts apparently accepted the applicant's explanations about his failure to appear at three hearings and considered that he had displayed a diligent procedural conduct (see paragraphs 23, 24, 25, 35 and 38 above). It is obvious, therefore, that there was no longer any real danger of the applicant absconding. It is also significant that the charges against the applicant and his previous conviction concerned non-violent offences (see paragraphs 5 and 6 above).

62. Furthermore, after January 1997 the Sofia City Court was of the opinion that the applicant's detention was no longer justified and that there had been numerous delays imputable to the authorities (see paragraph 20 above). Nonetheless, and despite the fact that he had complied with all summonses when he had been at liberty between November 1998 and August 1999, on 3 August 1999 the applicant was recalled into custody on the sole ground that his pre-trial detention was mandatory in the absence of exceptional factors (see paragraphs 26-31 above). In January 2000, even after the entry into force of the new provisions of the Code of Criminal Procedure (see paragraph 42 above), the applicant's detention was again prolonged with reference to the defective practice that required mandatory pre-trial detention regardless of the existence of any real danger of the accused person absconding or committing an offence. The authorities thus authorised the applicant's detention for nearly five years, an inordinately excessive period in itself (see paragraphs 34 and 54 above).

63. In sum, as in the *Ilijkov* case, the Court considers that the applicant's lengthy deprivation of liberty, with the exception of the periods when he was detained for his failure to appear in court, was not based on relevant and sufficient grounds as the authorities failed to address concrete relevant facts and relied exclusively on a statutory presumption based on the gravity of the charges.

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

II. ALLEGED VIOLATION OF ARTICLE 5 § 4

65. The applicant complained that the principle of equality of arms had been violated in the examination by the Sofia Appellate Court of the lawfulness of his detention. Furthermore, the applicant submitted that the

"speediness" requirement had been breached in the proceedings instituted by the prosecutor against the Sofia City Court's decision of 11 November 1998 to release the applicant on bail as it took several months for the Sofia Appellate Court to issue a decision. Article 5 § 4 of the Convention provides:

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

A. Admissibility

66. The Government stated that in so far as the applicant complained that his appeal against detention had not been examined within a reasonable time, it was open to him to bring an action for damages under the State Responsibility for Damage Act. In the Government's view, anyone claiming that the authorities had failed to comply with a time-limit under the Code of Criminal Procedure or under the Convention – which was directly enforceable in Bulgaria – could bring an action under section 1 § 1 of the Act. It followed that the applicant had not exhausted all domestic remedies in this respect.

67. The Government stated that all complaints under Article 5 § 4 were in any event inadmissible as being manifestly ill-founded.

68. The applicant replied that the Government's reference to the State Responsibility for Damage Act was irrelevant since the applicant's complaint concerned the lawfulness of his detention. It did not concern compensation issues. Also, it was not true that the Convention was directly enforceable in so far as procedural matters were concerned.

69. The applicant further objected to the Government's statement that the complaints were manifestly ill-founded.

70. The rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged.

71. For reasons set out below, in the present case the Court may leave open the question whether or not an applicant alleging a violation of his right under Article 5 § 4 of the Convention to a "speedy" decision on the lawfulness of his detention should be required under Article 35 § 1 of the Convention to bring *ex post factum* an action for damages in relation to the alleged delay, if he had not had at his disposal remedies capable of speeding up the examination of the appeal at the time when he was in detention (see *G.K. v. Poland* (dec.), no. 38816/97, 12 November 2002 and *I.I. v. Bulgaria* (dec.), no. 44082/98, 25 March 2004, with further references, implying that bringing a civil action for damages is not required in respect of complaints

under Article 5 §§ 1, 2, 3 and 4; see also, *Tám v. Slovakia*, no. 50213/99, §§ 44-54, 22 June 2004, implying that in certain circumstances the exhaustion of civil remedies might be required in the context of Article 5 complaints).

72. The Court reiterates that it is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicant has not had recourse and to satisfy the Court that the remedies were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1211, §§ 65-68, *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 77, § 35, *Djavit An v. Turkey*, no. 20652/92, §§ 28 and 29, ECHR 2003-III).

73. In the present case, the Government have not supported their objection under Article 35 § 1 of the Convention with examples from judicial practice. It appears that there are no relevant judgments of the Supreme Court of Cassation. Two recent judgments of appellate courts appear to indicate that the judicial practice in Bulgaria on the issue under examination is not settled (see paragraphs 43 and 44 above). The Court also recalls that in a number of Bulgarian cases it noted the relatively narrow scope of the remedies under the State Responsibility for Damage Act with regard to violations of the Convention requirements on pre-trial detention (see the following judgments: *Yankov v. Bulgaria*, no. 39084/97, §§ 189-198, ECHR 2003-XII (extracts), *Mitev*, cited above, §§ 127-140, and *Bojilov v. Bulgaria*, no. 45114/98, §§ 76-83, 22 December 2004). Finally, the Government's reference to a "time-limit under the Code of Criminal Procedure" whose non-observance would allegedly engender State liability under the Act, has not been substantiated.

74. In sum, in the absence of a clear judicial practice demonstrating the practicability of bringing a civil action in Bulgaria in relation to excessive delays in the examination of appeals against detention, the Court cannot accept that the applicant was required to bring such an action (cf. *Tám,* cited above).

75. The Government's objection under Article 35 § 1 of the Convention must therefore fail.

76. The Court further considers that the applicant's complaints under Article 5 § 4 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 and notes that they are not inadmissible on any other grounds. The complaints must therefore be declared admissible.

B. Merits

77. The Government stated that the applicant's appeals against his detention had been examined speedily and that the courts had examined all relevant aspects.

78. The applicant reiterated his complaints and stated that the Government had failed to address his allegation that the proceedings had not been adversarial.

79. The Court observes that in the present case, as in previous Bulgarian cases (see, among others, *Ilijkov,* cited above, §§ 101-104 and *Kuibishev v. Bulgaria*, no. 39271/98, § 76, 30 September 2004), the parties to the proceedings before the Sofia Appellate Court concerning the applicant's remand in custody 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 paragraph 36 above). The proceedings were therefore not adversarial.

80. The Court further notes that on a number of occasions the examination of the applicant's appeals against his detention was delayed. In particular, on 8 October 1999 his appeal was not examined (see paragraph 32 above). The applicant's appeal of 20 December 1999 was examined by the Sofia City Court more than a month later, on 21 January 2000. The applicant's ensuing appeal to the Sofia Appellate Court was decided on 25 February 2000, another month later (see paragraphs 34 and 35 above). Those appeals were not, therefore, examined "speedily", as required by Article 5 § 4 of the Convention.

81. It follows that there has been a violation of Article 5 § 4 of the Convention.

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

82. The applicant complained that the criminal proceedings against him were excessively lengthy. He relied on Article 6 § 1 of the Convention, which reads, in so far as relevant:

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

A. Admissibility

83. The Government stated that the complaint was manifestly ill-founded. The applicant objected.

84. The Court considers that the applicant's complaint under Article 6 § 1 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

85. The Government stated that the case was very complex in that it concerned charges about a number of separate fraudulent acts allegedly committed by several accused persons in different places and time. Therefore, the authorities had to hear tens of witnesses and collect and examine voluminous documentary material. In particular, seventy witnesses and seven expert witnesses were listed in the indictment. In the Government's submission, the difficulties encountered by the authorities in summoning so many witnesses were objective and inevitable and the ensuing delays were not, therefore, imputable to the authorities. Furthermore, some of the adjournments were caused by the failure of some of the accused persons to appear.

86. The Government were of the opinion that the delay occasioned by the fact that the trial had to restart in October 1998, when the presiding judge withdrew, was not imputable to the authorities as the presiding judge had had good cause to withdraw.

87. As to the applicant's behaviour, the Government maintained that he had been responsible for four adjournments: he had failed to appear at three hearings and his first lawyer's withdrawal had occasioned another adjournment.

88. By contrast, the authorities had taken all possible measures to speed up the proceedings. The hearings had been scheduled within reasonable intervals and had sought to secure the attendance of the witnesses and the accused persons.

89. The applicant replied that the absence of an adequate and effective system of summoning witnesses and the insufficient coordination in this respect between the courts and other State institutions was the major reason for the excessive length of the proceedings in his case. In particular, the Sofia City Court had held at least thirty hearings and most of them had been adjourned for procedural reasons related to defective summoning. Another major problem was the burdensome system of appointment of experts under Bulgarian procedural law.

90. The applicant acknowledged that he had failed to appear at three hearings but stated that the adjournments of those hearings had been inevitable anyway, as several witnesses and accused persons had not appeared. In any event, the adjournment in question had engendered short delays and could not explain the overall length of the proceedings.

91. The Court notes that the applicant was arrested and charged on 11 May 1994 and that as of the time of the latest information from the parties, February 2005, the proceedings were still pending before the trial court (see paragraphs 5 and 16 above).

92. The relevant period is therefore at least ten years and nine months.

93. The Court considers that the case against the applicant was not complex (see paragraph 5 above). Despite that fact, the preliminary investigation lasted for two years and the trial has been pending for more than eight years, a period which is excessive in itself (see paragraphs 7-16 above).

94. The applicant was responsible for delays of approximately one year, when the case was adjourned owing to his failure to appear at three hearings and his lawyer's late withdrawal from one hearing (see paragraphs 8, 11 and 13 above).

95. However, most of the delays were caused by the inability of the authorities to secure the presence of the witnesses and the accused persons (see paragraphs 8, 10, 12, 14 and 15 above). While it is true that in a case involving several accused persons and numerous witnesses there might be some inevitable delay, it is for the domestic authorities to ensure, if necessary through legislative amendments to the relevant procedural rules or by way of administrative and organisational measures, that such delays are brought to a minimum.

96. In the present case, although the Sofia City Court sought police assistance to secure the presence of the persons summoned for the hearings, those measures were clearly ineffective in practice. It is not for the Court to suggest to the Bulgarian authorities the means to address that problem. For purposes of the present case, it notes that they failed to devise appropriate procedural or other means to minimise the delays.

97. The Court also observes that following the withdrawal of the presiding judge the trial had to recommence, as no reserve judge had been appointed at the outset (see paragraph 9 above). The ensuing delay is imputable to the authorities (cf. *Ilijkov*, cited above*,* § 116).

98. The foregoing considerations are sufficient to enable the Court to conclude, in the light of the criteria established in its case-law, that the length of the criminal proceedings against the applicant exceeded "reasonable time".

99. There has accordingly been a violation of Article 6 § 1 of the Convention

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

100. 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

101. The applicant claimed 10,500 euros (EUR) as compensation in respect of non-pecuniary damage. He emphasised that he had been detained for an usually excessive period and that he had suffered a deterioration of his mental health as a result. The repeated recalls into custody, which had been fully unjustified, had been particularly painful. The applicant had felt helpless in the face of the arbitrary and unpredictable acts of the criminal justice system. Also, the continuation of the criminal proceedings for more than ten years caused him endless anxiety.

102. The Government did not reply.

103. The Court, having regard to awards made in similar cases (see *Mihov v. Bulgaria*, no. 35519/97, 31 July 2003, and *Ilijkov*, cited above), considers that the applicant's claim is excessive. It also notes, however, that the violations of Article 5 § 3 and of Article 6 § 1 found in the present case concern particularly lengthy detention and excessively protracted criminal proceedings, still pending at the trial stage more than ten years after they had started. The Court further observes that in 1997 the Sofia City Court noted that the applicant's mental health had deteriorated, apparently as a result of his lengthy detention (see paragraph 20 above). Having regard to all relevant factors, the Court awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

104. The applicant also claimed EUR 4,950 for 110 hours of legal work by his lawyer in relation to the proceedings before the Court, at the hourly rate of EUR 45. He submitted a fees' agreement between him and his lawyer and a time-sheet. The applicant requested that the costs and expenses incurred should be paid directly to his lawyer, Mr M. Chatalbashev.

105. The Government did not comment.

106. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,500 in respect of costs and expenses, plus any tax that may be chargeable on that amount.

C. Default interest

107. 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. *Declares* the application admissible;

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

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

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 to 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, to be converted into Bulgarian levs at the rate applicable on the date of settlement :
      (i) EUR 6,000 (six thousand euros) in respect of non-pecuniary damage, payable to the applicant himself;
      (ii) EUR 2,500 (two thousand and five hundred euros) in respect of costs and expenses, payable into the bank account of the applicant's lawyer in Bulgaria;
      (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 28 April 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President