CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF I.I. v. BULGARIA

(Application no. 44082/98)

JUDGMENT

STRASBOURG

9 June 2005

FINAL

09/09/2005

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 I.I. 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, *Section Registrar*,

Having deliberated in private on 19 May 2005,

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

PROCEDURE

1. The case originated in an application (no. 44082/98) 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 Mr I.I., a Bulgarian national born in 1962 and living in Shoumen ("the applicant"), on 30 July 1998. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Ms D. Rouseva, a lawyer practising in Shoumen. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. The applicant alleged, in particular, that he had been kept in poor conditions of detention, that his detention between 31 January and 2 February 1998 had been unlawful, that after his arrest he had not been brought before a judge or a judicial officer, and that he could not obtain a fully-fledged and speedy judicial review of his detention.

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 First 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 25 March 2004 the Court (First Section) declared the application partly admissible.

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

8. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1962 and lives in Shoumen.

A. The criminal proceedings against the applicant and his detention

10. At approximately 2 a.m. on 31 January 1998 the applicant allegedly took part in a violent incident in a bar in his home town of Shoumen. It seems that the police were alerted about the incident, intervened and questioned some of the participants and the other persons present on the spot, without making arrests.

11. At approximately 7.30 p.m. on 31 January 1998 the applicant allegedly took part in another violent incident in a restaurant in Shoumen. Apparently during this second incident a Mr P.P. was beaten, robbed, abducted and threatened with violence. Later that evening Mr P.P. complained to the police.

12. In the late evening of 31 January 1998 the applicant went to the Regional Police Department in Shoumen for questioning in connection with the incidents. At 11.55 p.m. he was questioned as a witness. He submits that during the following days he was kept under arrest in the police department. According to the Government, the applicant was not deprived of his liberty at that time.

13. On 1 February 1998 criminal proceedings were opened against the applicant and seven other persons on suspicion that they had robbed Mr P.P., had deprived him of his liberty and had coerced him to pay them money.

14. On 2 February 1998 an investigator ordered the applicant's preliminary detention for a period of twenty-four hours, starting to run at 3.30 p.m. on that day, on suspicion that on 31 January 1998 he had committed abduction and unlawful deprivation of liberty, contrary to Article 142 § 2 of the Criminal Code (“the CC”). The order stated that the applicant had been arrested immediately after having committed the alleged offence, in accordance with Article 202 § 1 (1) of the Code of Criminal

Procedure ("the CCP"). Despite the applicant's insistence to meet the investigator, he was not brought before him at that time.

15. On 3 February 1998 a prosecutor extended the applicant's preliminary detention for three more days, starting to run from the day of the extension. The same day the applicant was allowed to meet a lawyer.

16. At 3 p.m. on 5 February 1998 the applicant was brought before an investigator and charged with having instigated others to commit unlawful deprivation of liberty in a manner endangering the health of the victim and also to commit extortion through threats of murder accompanied by light bodily injury. The investigator ordered his pre-trial detention. The same day a prosecutor from the Shoumen Regional Prosecutor's Office confirmed the investigator's decision to detain the applicant.

17. Immediately after the charging the applicant was questioned in the presence of his counsel. The applicant stated that he understood the charges against him. His counsel asked to be allowed access to the case-file. The investigator allegedly refused.

18. On 11 February 1998 the applicant submitted an appeal against his pre-trial detention. He claimed that he had not committed the alleged offences and that the accusation against him was not supported by the available evidence.

19. The Shoumen Investigation Service sent the applicant's appeal to the Shoumen Regional Court on 12 February 1998 together with the case-file. It arrived in the court on 16 February 1998.

20. The appeal was examined by the Shoumen Regional Court on 4 March 1998 in an open hearing in the presence of the applicant and his counsel. Counsel referred to the alleged lack of evidence against the applicant and, in addition, noted that the applicant had a permanent address, a job, and two children. Counsel also presented a medical certificate issued by the Shoumen Regional Hospital which indicated that the applicant was suffering from myasthenia and post-traumatic encephalopathy, for which he had been hospitalised in June 1997, and also from psoriasis. Counsel argued that the latter required better sanitary conditions than those in the cell of the Investigation Service where the applicant was being held.

21. The court rejected the appeal. It held that in proceedings against the imposition of detention it could not go into issues relating to the accusation and the evidence against the applicant, as that had to do with the merits of the criminal case against him. The only relevant arguments of the applicant were those pertaining to his health. The court further held that the applicant had failed to prove that he was suffering from psoriasis and that the other diseases indicated by him were neurological and required no particular conditions of treatment. It also briefly noted that the applicant had been detained under Article 152 § 4 (1) of the CCP and that there were no grounds for releasing him, in view of the impending investigative actions and the ascertaining of the truth.

22. On 30 April 1998 the Shoumen Regional Prosecutor's Office decided to release the applicant on bail, reasoning that the applicant's health had worsened during his stay in custody. In particular, his psoriasis had intensified due to the poor sanitary conditions and the lack of sunlight in his cell. Moreover, the investigation had almost been completed and the applicant had a permanent address and a job, which reduced the chances of him absconding or impeding the investigation.

The applicant posted bail the same day and was released.

23. On 19 April 1999 the Shoumen Regional Prosecutor's Office decided to discontinue the criminal proceedings against the applicant and to drop the charges against him. It reasoned that the accusation against the applicant had not been proven.

B. The conditions of the applicant's detention

24. After he appeared for questioning in the evening of 31 January 1998 the applicant remained on the premises of the Shoumen Regional Police Department. The following day or the day after that he was transferred to the detention facility of the Shoumen Regional Investigation Service. He remained there until 30 April 1998, when he was released.

25. There the applicant was held in an underground cell with no windows. Its door was made of solid metal, with a small aperture allowing the guards to inspect the cell. There was an opening above the door which was closed with a wire-net; that was the only conduit for fresh air to the cell. The floor of the cell was nearly eighty centimetres below the floor of the hallway.

26. According to the applicant, the size of the cell was approximately six square meters. During the time which the applicant spent in the cell it was occupied by three to four detainees.

27. One of the walls of the cell was oozy and covered with mould.

28. The cell was lighted by a single electric bulb situated above the door. Its switch was in the hallway and it allegedly remained on twenty-four hours a day. According to the applicant, the light coming from the bulb was not sufficient to allow him to read.

29. The detainees were sleeping on a concrete platform which was about forty centimetres above the floor level and was covered with wooden planks. The planks were covered only with blankets. There was no bed linen. It seems that the cell contained no other pieces of furniture.

30. The applicant, as well as the other detainees, was allowed to go out of the cell for five minutes two or three times a day – in the morning and in the late afternoon – to wash themselves and to use the toilet. It seems that the detainees could also leave the cell when they wished to write a request to the investigator, the prosecutor or the court. In that case they were allowed to stay in the hallway to write.

31. The size of the toilet room, which was at the other end of the hallway, was approximately six square meters and there were three Asian-type toilets in it, with no screens between them and between them and the three sinks, with the result that all inmates had to relieve themselves in each other's presence.

32. The detainees had to use a bucket in the cell to relieve themselves outside the toilet visits. They had to empty the bucket and clean it themselves when leaving the cell to use the sanitary facilities.

33. The toilet was also used as a bathroom. The detainees were allowed to bathe once a week, for ten minutes. There was no shower and they had to take hot water from a pail containing fifteen or twenty litres, which they mixed with cold water from the tap. The detainees had to pour water over their bodies with the mugs they were using for eating.

34. According to the applicant, the food, which was served in the cell twice a day, was of poor quality.

35. On the third or fourth day after his arrest the applicant's psoriasis aggravated. His skin got covered with massive eczema. He informed the facility's paramedic about this and asked to have medicines brought from his home. It seems that he had to apply his medication five or six times a day, but was not allowed to keep it in the cell and could only apply it twice a day, during the toilet visits. The applicant alleges that, as a result, he started to develop psoriatic arthritis: his joints swelled, he started feeling pain in his ankles, and could not move the fingers of his right hand.

36. On 17 March 1998 the applicant requested to be examined by a dermatologist. His request was granted. During the examination the doctor found that as a result of the bad sanitary conditions in which the applicant was being kept the rashes on his skin had aggravated. The applicant was prescribed injections, which apparently were regularly administered by the detention facility's paramedic at the door of the applicant's cell.

C. Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT")

37. The CPT visited Bulgaria in 1995 and again in 1999 and 2002. Although the Shoumen Investigation Service detention facility was not visited on any of these occasions, all reports included general observations about problems in all Investigation Service facilities.

1. Relevant findings of the 1995 report (made public on 6 March 1997)

38. In this report (CPT/Inf (97) 1) the CPT found that most, albeit not all, of the Investigation Service detention facilities were overcrowded. With the exception of one detention facility where conditions were better, the conditions were as follows: detainees slept on mattresses on sleeping

platforms on the floor; hygiene was poor and blankets and pillows were dirty; cells did not have access to natural light, the artificial lighting was too weak to read by and was left on permanently; ventilation systems were in poor condition; detainees could use a toilet and washbasin twice a day (morning and evening) for a few minutes and could take a weekly shower; outside of the two daily visits to the toilets, detainees had to satisfy the needs of nature in the cell bucket; although according to the establishments' internal regulations detainees were entitled to a "daily walk" of up to thirty minutes, it was often reduced to 5-10 minutes or not allowed at all; no other form of out-of-cell activity was provided to persons detained.

39. The CPT further noted that food was of poor quality and in insufficient quantity. In particular, the day's "hot meal" generally consisted of a watery soup (often lukewarm) and inadequate quantities of bread. At the other meals, detainees only received bread and a little cheese or khalva. Meat and fruit were rarely included on the menu. Detainees had to eat from bowls without cutlery – not even a spoon was provided.

40. The CPT also noted that family visits were only possible with permission and that as a result detainees' contact with the outside world was very limited. There was no radio or television.

41. The CPT concluded that the Bulgarian authorities had failed in their obligation to provide detention conditions which were consistent with the inherent dignity of the human person and that "almost without exception, the conditions in the Investigation Service detention facilities visited could fairly be described as inhuman and degrading." In reaction, the Bulgarian authorities had agreed that the [CPT] delegation's assessment had been "objective and correctly presented" but had indicated that the options for improvement were limited by the country's difficult financial circumstances.

42. In 1995 the CPT recommended to the Bulgarian authorities, *inter alia*, that sufficient food and drink and safe eating utensils be provided, that mattresses and blankets be cleaned regularly, that detainees be provided with personal hygiene products (soap, toothpaste, etc), that custodial staff be instructed that detainees should be allowed to leave their cells during the day for the purpose of using a toilet facility unless overriding security considerations required otherwise, that the regulation providing for 30 minutes' exercise per day be fully respected in practice, that cell lighting and ventilation be improved, that the regime of family visits be revised and that pre-trial detainees should be more often transferred to prison even before the preliminary investigation was completed. The possibility of offering detainees outdoor exercise was to be examined as a matter of urgency.

2. Relevant findings of the 1999 report (made public on 28 January 2002)

43. In this report (CPT/Inf (2002) 1) the CPT noted that new rules, providing for better conditions, had been enacted but had not yet resulted in significant improvements.

44. In most places visited in 1999 (with the exception of a newly opened detention facility in Sofia), the conditions of detention in Investigation Service premises had remained generally the same as those observed during the CPT's 1995 visit, including as regards hygiene, overcrowding and out-of-cell activities. In some places the situation had even deteriorated.

3. Relevant findings of the 2002 report (made public on 24 June 2004)

45. In this report (CPT/Inf (2004) 21) the CPT noted that most Investigation Service detention facilities were undergoing renovation but that a lot remained to be done. The cells remained generally overcrowded.

46. Despite the CPT's recommendations in the report on their 1999 visit, no proper regime of activities had been developed for detainees spending long periods in the investigation detention facilities. Those facilities did not have areas for outdoor exercise. At some of the establishments (e.g. Botevgrad), attempts were being made to compensate for the lack of outdoor exercise facilities by allowing detainees to stroll in the corridor several times a day. The CPT stated that "in this respect, the situation remain[ed] of serious concern".

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The offences of which the applicant was suspected and with which he was charged

47. Article 142 § 2 of the CC provides that the offences of abduction and false imprisonment carry a penalty of up to ten years' imprisonment.

48. By Article 142a § 4 of the CC, the offence of false imprisonment in a manner endangering the health of the victim is punishable by three to ten years' imprisonment.

49. By Article 213a § 2 (1), (2) and (4) of the CC, extortion through threats of murder or severe bodily injury, when it is accompanied with light bodily injury and is committed by two or more persons, is an offence punishable by to two to eight years' imprisonment and a by a fine of three to five thousand levs.

50. Article 21 § 1, read in conjunction with Article 20 § 3 of the CC, provides, as relevant, that a person who instigates another to commit an

offence is subject to the same punishment as the principal, account being taken of the nature and the degree of his participation.

B. Preliminary detention

51. The general rule of Bulgarian criminal procedure is that a person may be deprived of liberty within the context of pending criminal proceedings if he or she has been charged with an offence. By Article 146 of the CCP, a measure to secure appearance before the competent authority has to be imposed in respect of every person charged with having committed a publicly prosecutable offence. Pre-trial detention (see paragraphs 55-58 below) and house arrest are those measures which involve deprivation of liberty.

52. However, a person may also be taken into custody if he or she is suspected of having committed a publicly prosecutable offence punishable with imprisonment (at the relevant time), but there is not enough evidence to bring charges. The circumstances in which this may occur are limited and, as relevant here, include the case where a person "has been caught during or immediately after the commission of the [alleged] offence ..." (Article 202 § 1 (1) of the CCP).

53. The arrestee has to be brought immediately before an investigator who has to inquire into the circumstances surrounding the arrest, to institute or refuse to institute criminal proceedings, and to make an order for the "preliminary detention" or for the release of the arrested person (Стефан Павлов, *Наказателен процес, Особена част*, Сиби, 1996, стр. 46-47). By Article 203 §§ 1 and 2 of the CCP, the investigator may impose "preliminary detention" for a maximum of twenty-four hours, which could, in certain circumstances, be extended by a prosecutor to up to three days. If no charges are brought against the detainee within this time-limit, he has to be released immediately upon its expiry (Article 203 § 3).

C. Police arrest

54. Section 70(1)(1) of the Ministry of Internal Affairs Act allows the detention of a person who is suspected of having committed a criminal offence. The detention may not last longer than twenty-four hours (section 71 of the Act) and must be based on a written order (section 72(1) of the Act).

D. Pre-trial detention

1. Power to order pre-trial detention

55. 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

56. Article 152 of the CCP, as in force at the relevant time, provided as follows:

> "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.
>
> 3. ...
>
> 4. In cases [where the charges do not concern a serious intentional crime] pre-trial detention shall be imposed if the charges concern a crime punishable with imprisonment, if:
>
> (1) there is a danger of the accused's absconding, obstructing the course of justice, or committing further crimes. ..."

57. According to the Supreme Court's practice, Article 152 § 1 required that a person charged with a "serious intentional crime" be detained pending trial. The only exception was provided for by Article 152 § 2, under which an accused could be released if it was clear beyond doubt that there was no danger of his absconding or committing further crimes. By contrast, where detention was imposed under Article 152 § 4 (1), the danger of the accused's absconding or committing an offence had to be "real", as opposed to "hypothetical" (опред. № 1 от 4 май 1992 г. по н.д. 1/1992 г. на ВС II н.о.; опред. № 24 от 23 май 1995 г. по н.д. № 268/1995 г. на ВС I н.о.).

58. Article 93 § 7 of the CC provides that a "serious crime" is one punishable by more than five years' imprisonment.

3. Appeals against detention before the trial

59. Article 152a of the CCP, as in force at the material time, provided as follows:

> "(1) The detainee shall be immediately provided with a possibility of filing an appeal with the competent court against the [imposition of detention]. [The appeal must be filed] not later than seven days after the [imposition of detention]. The court shall consider the appeal in an open hearing to which the [detainee] shall be summoned. The hearing shall take place not later than three days after the receipt of the appeal at the court.
>
> (2) The appeal shall be filed though the organ which has ordered the detention ... .
>
> (3) The court['s ruling shall not be] subject to appeal ..."

60. The Supreme Court has held that it was not open to the courts, when examining appeals 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. № 268/1995 г. на ВС I н.о.).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

61. The applicant complained under Article 3 of the Convention about the conditions of his detention. Article 3 provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. The submissions of the parties

62. The Government conceded that the sanitary conditions in the detention facility of the Shoumen Regional Investigation Service during the relevant period had been below the minimum standards for such facilities. It further conceded that the facility had been overcrowded, that the cells did not have direct access to sunlight and fresh air, that the detainees were allowed to visit the toilet only three times a day, while using a bucket to relieve themselves during the rest of the time, and that they were bathing themselves with buckets, because there were no proper shower and bathing facilities.

63. However, referring to the Court's judgment in the case of *Assenov and Others v. Bulgaria* (judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII), which related to the conditions in the same detention facility in 1995, the Government submitted that although the conditions, as well as the regime of the detainees, had been bad, they had not been harsh and unbearable to the point of constituting inhuman and degrading treatment. In the Government's view, the applicant's additional suffering caused by his psoriasis did not alter this conclusion. The applicant had been provided with medication and specialised treatment. The Government further stated that in 1999 and 2000 the conditions in the detention facility of the Shoumen Regional Investigation Service, as well as those in all Investigation Service detention facilities in the country, had been markedly improved.

64. The applicant stated that the conditions of his detention had constituted inhuman and degrading treatment, in breach of Article 3.

B. The Court's assessment

1. General principles

65. The Court reiterates at the outset that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, as recent authorities, V*an der Ven v. the Netherlands*, no. 50901/99, § 46, ECHR 2003-II, and *Poltoratskiy v. Ukraine*, no. 38812/97, § 130, ECHR 2003-V).

66. To fall within the scope of Article 3, ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (V*an der Ven*, § 47, and *Poltoratskiy*, § 131, both cited above)

67. Treatment has been held by the Court to be “inhuman” because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be “degrading” because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudla v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI). The question whether the purpose of the treatment was to humiliate or debase the victim is a further factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a violation of Article 3 (see *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III, and *Kalashnikov v. Russia*, no. 47095/99, § 101, ECHR 2002-VI).

68. The suffering and humiliation involved must go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that detention pending trial in itself raises an issue under Article 3. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured. When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions and the duration of the detention (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II, and *Kalashnikov*, cited above, § 102). In particular, the Court must have regard to the state of health of the detained person (see *Assenov and Others*, cited above, p. 3296, § 135)

69. An important factor, along with the material conditions, is the detention regime. In assessing whether a restrictive regime may amount to treatment contrary to Article 3 in a given case, regard must be had to the particular conditions, the stringency of the regime, its duration, the objective pursued and its effects on the person concerned (see *Messina v. Italy* (dec.), no. 25498/94, ECHR 1999-V, *Van der Ven*, cited above, § 51, *Iorgov v. Bulgaria*, no. 40653/98, §§ 82-84 and 86, 11 March 2004, and *G.B. v. Bulgaria*, no. 42346/98, §§ 83-85 and 87, 11 March 2004).

2. Application of these principles to the present case

70. The Court takes note of the information provided by the Government about the improvement of the conditions in the detention facility of the Shoumen Regional Investigation Service and the overall improvement of all Investigation Service detention facilities in 1999 and 2000 (see paragraph 63 above). However, the Court's task is to assess the actual circumstances of the applicant's case (see *Nikolova*, § 52, and *Kalashnikov*, § 99 *in fine*, both cited above).

71. The Court also observes that the 1995 report of the CPT contains no information about the Shoumen Investigation Service detention facility (see paragraph 37 above). The report points to general problems in Investigation Service detention facilities in Bulgaria and states that the conditions in other similar facilities which had been inspected could be described as inhuman and degrading (see paragraph 41 above). That conclusion was confirmed in the CPT's 1999 report on Bulgaria, no significant improvement having been noted (see paragraph 44 above). These two reports, while not containing information which is directly relevant to the actual conditions of the applicant's detention (see, as an example to the contrary, *Dougoz*, cited above, §§ 40, 41, 46 and 47) may nevertheless inform the judgment of the

Court through providing an accurate picture of the overall situation in the Investigation Service detention facilities in Bulgaria during the period in issue.

72. Turning to the specific circumstances of the present case, the Court notes that the applicant was detained for three months in a cell of six square metres apparently occupied by three to four detainees.

73. The Court further notes that the sanitary conditions in which the applicant was kept were very unsatisfactory. The cell was dark, poorly ventilated and apparently damp (see paragraphs 25, 27 and 28 above). The conditions in which the detainees had to relieve themselves in the toilet and attend to their personal hygiene were also unacceptable (see paragraphs 31 and 33 above).

74. Also, as no possibility for outdoor or out-of-cell activities was provided, the applicant had to spend in the cell – which had no window and was lighted by a single electric bulb – practically all his time, except for two or three short visits per day to the sanitary facilities or the times when he would write a request to the competent authorities, in which case he was allowed to stay in the hallway (see paragraph 30 above and *Peers*, cited above, § 75). The Court considers that the fact that the applicant had to spend practically twenty-four hours a day during nearly three months in an overcrowded cell without exposure to natural light and without any possibility for physical and other out-of-cell activities must have caused him intense suffering. The Court is of the view that in the absence of compelling security considerations there was no justification for subjecting the applicant to such limitations.

75. Furthermore, subjecting a detainee to the humiliation of having to relieve himself in a bucket in the presence of his cellmates and of being present while the same bucket was being used by them (see paragraph 32 above, *Peers*, cited above, § 75, and *Kalashnikov*, cited above, § 99) cannot be deemed warranted, except in specific situations where allowing visits to the sanitary facilities would pose a concrete and serious security risk. However, no such risks were invoked by the Government as grounds for the limitation on the daily visits to the toilet by the detainees in the Shoumen Regional Investigation Service during the period in issue.

76. Regarding the impact of the conditions of detention on the applicant's health, the Court notes that his skin disease (psoriasis), which apparently required good hygiene and exposure to sunlight, severely aggravated during his detention and that he apparently even started to develop psoriatic arthritis (see paragraph 35 above). Indeed, it seems that this was the main reason for the applicant's release on 30 April 1998 (see paragraph 22 above). It is true that in mid-March 1998 he was allowed to consult a dermatologist and was thereafter regularly administered injections (see paragraph 36 above), but the Court is struck by the fact that he was not

allowed – without any legitimate reason being put forward – to apply his psoriasis medication as often as he needed (see paragraph 35 above).

77. While the Court does not underestimate the financial difficulties invoked by the Government before the CPT (see paragraph 41 above), it observes that many of the shortcomings outlined above could have been remedied even in the absence of considerable financial means. In any event, the lack of resources cannot in principle justify detention conditions which are so poor as to reach the threshold of severity contrary to Article 3 (see *Poltoratskiy*, cited above, § 148).

78. The Court is mindful of the fact that a complaint relating to the conditions in the same detention facility as in the present case was examined by it in the case of *Assenov and Others* (cited above, pp. 3295-96, §§ 128-36). In that case the Court found no violation of Article 3 on account of the condition of detention of Mr Assenov, but it reached that conclusion because he had not sufficiently substantiated his allegations and, as a result, the Court had before it very limited information about the specific conditions in which he had been kept and the impact of these conditions on him (see *Assenov and Others*, cited above, pp. 3275-76, §§ 35 and 37). Moreover, the precise conditions of Mr Assenov's detention were disputed between him and the Government, particularly the dimensions of the cell in which he had been held and the number of cellmates with whom it had been shared, and the Commission – which under the Convention system prior to 1 November 1998 was primarily responsible for the establishment and verification of the facts (see *Poltoratskiy*, cited above, § 118) – had made no findings in respect of these detailed facts (see *Assenov and Others*, cited above, p. 3295, § 133). Finally, in that case the Court noted that despite the poor conditions of detention Mr Assenov had apparently remained healthy (ibid., p. 3296, § 136).

79. In conclusion, having regard to the cumulative effects of the unduly stringent regime to which the applicant was subjected, the material conditions in which he has kept and to the specific impact which these conditions and regime had on the applicant's health, the Court considers that the conditions of detention of the applicant amounted to inhuman and degrading treatment contrary to Article 3 of the Convention.

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

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

81. The applicant alleged that his deprivation of liberty between the evening of 31 January 1998 and 3.30 p.m. on 2 February 1998 had been without a legal basis.

82. The Court considers that this complaint falls to be examined under Article 5 § 1 (c) of the Convention, which provides:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ..."

83. The Court must firstly consider whether the applicant was in fact deprived of his liberty during the period in question.

84. The Government submitted that on 31 January 1998 the applicant had voluntarily appeared for questioning. He had not been detained until the order for his detention issued at 3.30 p.m. on 2 February 1998. Before that the applicant had been present voluntarily on the premises of the Shoumen Regional Police Department while questioning and other investigative actions were being carried out, but his freedom of movement had not been restricted.

85. The applicant replied that from the time he had appeared at the police department until the time when he had been transferred to the premises of the Shoumen Regional Investigation Service he had been handcuffed to a pipe in the department's detention room. His freedom of movement had therefore been restricted.

86. According to the Court's case-law, in order to determine whether there has been a deprivation of liberty, the starting-point must be the specific situation of the individual concerned and account must be taken of a whole range of factors arising in a particular case such as the type, duration, effects and manner of implementation of the measure in question (see *Guzzardi v. Italy*, judgment of 6 November 1980, Series A no. 39, p. 33, § 92). The Court must look behind appearances and investigate the realities of the situation complained of (see *Van Droogenbroeck v. Belgium*, judgment of 24 June 1982, Series A no. 50, p. 20, § 38). Finally, the right to liberty is too important for a person for him or her to lose the benefit of the protection of Article 5 for the single reason that he or she gave himself or herself up to be taken into detention (see *De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971, Series A no. 12, p. 36, § 65).

87. The Court notes that it is not disputed by the parties that the applicant was present on the premises of the police as early as 11.55 p.m. on 31 January 1998, when he was questioned (see paragraph 12 above) and that he remained there after that. The salient issue is whether he was in fact deprived of his liberty before 3.30 p.m. on 2 February 1998. In this connection, the Court notes that the investigator's order for the applicant's preliminary detention of 2 February 1998 stated that his *de facto* arrest had taken place immediately after the commission, on 31 January 1998, of the offence alleged against him (see paragraph 14 above). Even taking account of the fact that apparently the applicant voluntarily appeared for questioning

(see paragraph 12 above) and assuming that he was not handcuffed, placed in a locked cell, or otherwise physically restrained while on the premises of the police during the period in question, it would be unrealistic to assume that he was free to leave, particularly bearing in mind that the competent authorities apparently considered him as having been arrested and were carrying out investigative actions in the criminal proceedings which were instituted against him the day after his questioning, 1 February 1998 (see paragraphs 13 and 84 above). In these circumstances, the Court concludes that between 11.55 p.m. on 31 January and 3.30 p.m. on 2 February 1998 the applicant was deprived of his liberty within the meaning of Article 5 § 1.

88. The Court must therefore determine whether the disputed detention was "lawful", including whether it complied with "a procedure prescribed by law". The Convention here essentially refers back to national law and states, as a minimum, the obligation to conform to the substantive and procedural rules thereof (see *Benham v. the United Kingdom*, judgment of 10 June 1996, *Reports* 1996-III, pp. 752-53, § 40). Since under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with (ibid., p. 753, § 41).

89. For the applicant's deprivation of liberty to be lawful with respect to the requirements of Bulgarian law, it had to fall within one of the exhaustive categories of detention permitted in respect of persons suspected of criminal offences: police arrest under section 70(1)(1) of the Ministry of Internal Affairs Act (see paragraph 54 above), preliminary detention under Article 202 of the CCP (see paragraphs 51-53 above), or pre-trial detention under Article 152 of the CCP (see paragraphs 55-58 above). There is no indication, and it has not been argued by the Government, that on 31 January 1998 or thereafter the applicant was placed under police arrest. The applicant's preliminary detention for twenty-four hours started at 3.30 p.m. on 2 February 1998 (see paragraph 14 above) and was extended to three days on 3 February 1998 (see paragraph 15 above). Finally, the applicant was placed in pre-trial detention at 3 p.m. on 5 February 1998 (see paragraph 16 above). It thus seems that the applicant's detention between 11.55 p.m. on 31 January 1998 and 3.30 p.m. on 2 February 1998 did not come within the ambit of any of these provisions.

90. Even accepting that Bulgarian law apparently allows a short period to elapse between a person's *de facto* arrest and the issuing of the order for his "preliminary detention" by the competent investigator (see paragraph 53 above), the Court cannot overlook the fact that the applicant remained in custody for approximately thirty-nine and a half hours – during which time the competent authorities opened criminal proceedings against him and performed various investigative actions – without any such order being issued. It must also be noted that the order for the applicant's preliminary detention stated that the twenty-four hour period, during which such

detention is permitted when initially ordered by an investigator, started to run at 3.30 p.m. on 2 February 1998, not earlier. It thus appears that the applicant's deprivation of liberty between 11.55 p.m. on 31 January 1998 and 3.30 p.m. on 2 February 1998 had no legal basis in domestic law.

91. There has therefore been a violation of Article 5 § 1 of the Convention.

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

92. The applicant contended that his arrest, ordered by an investigator and confirmed by a prosecutor, had entailed a breach of Article 5 § 3 of the Convention, which reads, 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..."

93. The Government submitted that the applicant's right under Article 5 § 3 had not been breached.

94. The applicant replied that he had not been brought promptly before a judge. His appeal against detention had been examined by a court twenty-one days after he had filed it.

95. The Court notes that in previous judgments which concerned the system of detention pending trial, as it existed in Bulgaria until 1 January 2000, it found that neither investigators before whom the accused persons were brought, nor prosecutors who approved detention orders, could be considered as "officer[s] authorised by law to exercise judicial power" within the meaning of Article 5 § 3 (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, 9 January 2003).

96. The present case likewise concerns pre-trial detention imposed before 1 January 2000. It also concerns preliminary detention under Article 202 of the CCP. The applicant's preliminary detention was ordered by an investigator and prolonged by a prosecutor (see paragraphs 14 and 15 above) and his pre-trial detention was ordered by an investigator and confirmed by a prosecutor (see paragraph 16 above), in accordance with the provisions of the CCP then in force (see paragraphs 53 and 55 above). The applicant was brought before the investigator who remanded him in custody only on 5 February 1998 (see paragraph 16 above) and was never brought before a prosecutor. In any event, neither the investigator, nor the prosecutor were sufficiently independent and impartial for the purposes of Article 5 § 3, in view of the practical role they played in the investigation and the prosecution and the prosecutor's potential participation as a party to the criminal proceedings (see paragraph 55 above). The Court refers to the

analysis of the relevant domestic law contained in its *Nikolova* judgment (cited above – see paragraphs 28, 29 and 49-53 of that judgment).

97. 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.

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

98. The applicant alleged that he could not obtain an appropriate and speedy judicial review of his pre-trial detention, contrary to Article 5 § 4 of the Convention, which reads as follows:

> "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."

99. The Government stated that the applicant's appeal against detention had been examined by the Shoumen Regional Court at a public hearing. The court's decision to reject the appeal had been based on its finding that the prerequisites of Article 152 of the CCP, namely the existence of a reasonable suspicion and of a risk of re-offending, had been present. Moreover, the court had examined the applicant's appeal speedily.

100. The applicant replied that the Shoumen Regional Court had not reviewed the lawfulness of his detention, but had focused solely on issues relating to his health. Moreover, even this had been done selectively, as the court had ignored all evidence relating to his psoriasis.

101. The Court must firstly examine whether the applicant benefited from a judicial review of his detention of a scope satisfying the requirements of Article 5 § 4.

102. In this connection, the Court reiterates that arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the lawfulness, in the sense of the Convention, of their deprivation of liberty. This means that the competent court has to examine not only compliance with the procedural requirements set out in domestic law, but also the reasonableness of the suspicion grounding the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see *Nikolova*, cited above, § 58).

103. While Article 5 § 4 of the Convention does not impose an obligation on a judge examining an appeal against detention to address every argument contained in the appellant's submissions, its guarantees would be deprived of their substance if the judge could treat as irrelevant, or disregard, particular facts invoked by the detainee which could cast doubt on the existence of the conditions essential for the "lawfulness", in the sense of the Convention, of the deprivation of liberty (ibid., § 61).

104. In the case at hand, the Shoumen Regional Court held that it could not inquire into issues relating to the sufficiency of the evidence against the applicant. Neither did the court give specific reasons why it considered that the applicant presented a risk of re-offending, impeding the investigation or fleeing. It held that it could solely focus on issues relating to the applicant's health, only briefly noting – without giving any reasons for this holding – that there were no grounds for releasing the applicant in view of the impending investigative actions (see paragraph 21 above).

105. In sum, the domestic court did not provide judicial control over the applicant's detention on remand of the scope required by Article 5 § 4 of the Convention. There has therefore been a violation of that provision.

106. In view of this finding the Court does not deem it necessary to inquire whether or not that defective judicial review was provided speedily (see *Nikolova*, cited above, § 65).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

107. 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

108. The applicant claimed 12,000 euros (EUR) as compensation for the non-pecuniary damage he had sustained as a result of the violations of the Convention in his case. He submitted that he had been kept in extremely poor conditions of detention which had humiliated him, and that he had felt desperate on account of the illegality of his initial detention and the lack of adequate procedural safeguards against his continued detention.

109. The Government did not comment on the applicant's claim.

110. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of his detention for approximately three months in conditions which were inhuman and degrading and also as a consequence of the violation of his rights under Article 5 §§ 1, 3 and 4 of the Convention. Having regard to the specific circumstances of the case and ruling on an equitable basis, the Court awards the applicant EUR 4,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

111. The applicant claimed EUR 3,450 for 69 hours of legal work, at the hourly rate of EUR 50. The applicant submitted a fees' agreement between him and his lawyer and a time-sheet.

112. The Government did not comment on the applicant's claim.

113. The Court considers that a reduction should be applied on account of the fact that some of the applicant's complaints were declared inadmissible (see paragraph 6 above). Having regard to all relevant factors, the Court awards the applicant EUR 2,000 in respect of costs and expenses, plus any tax that may be chargeable on this amount.

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 3 of the Convention;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

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

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

5. *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, to be converted into Bulgarian levs at the rate applicable at the date of settlement:

(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;

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

Done in English, and notified in writing on 9 June 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President