



## The arrest, detention and search at the home of parliamentarian Borislav Gutsanov breached the Convention

In today's Chamber judgment in the case of [Gutsanovi v. Bulgaria](#) (application no. 34529/10), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**A violation of Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights;**

**A violation of Article 5 § 3 (right to liberty and security) of the Convention on account of the unjustified length of detention. The Court held by a majority that there had been a violation of Article 5 § 3 (right to liberty and security) regarding Mr Gutsanov's right to be brought promptly before a judge;**

**A violation of Article 5 § 5 (right to compensation);**

**No violation of Article 6 § 2 (presumption of innocence) regarding the remarks made by the Prime Minister and the regional public prosecutor; a violation of Article 6 § 2 regarding the remarks of the Interior Minister and the reasons for the Varna Regional Court's decision of 18 May 2010;**

**A violation of Article 8 (right to respect for the home), and**

**A violation of Article 13 (right to an effective remedy) read in conjunction with Articles 3 and 8.**

The case concerned a police operation carried out at the home of Mr Gutsanov, an influential politician, leading to his arrest. The events received widespread media coverage and were followed by statements from senior figures in the Bulgarian government.

The four members of the Gutsanovi family had been subjected to a psychological ordeal which caused feelings of fear, anxiety and powerlessness and amounted to degrading treatment. Mr Gutsanov had not been brought promptly before a judge and the Court stressed that no provision existed in domestic law by which to obtain compensation for damage sustained on account of excessively lengthy detention or a delay in being brought before a judge. The newspaper interview with the Interior Minister and the reasons given by the Varna Regional Court for the decision of 18 May 2010 had infringed Mr Gutsanov's right to be presumed innocent. The Court considered that the legislation had not afforded the applicants sufficient guarantees against arbitrariness either before or after the search of their home. Lastly, the Court observed that, since the fact of inflicting psychological suffering did not constitute a criminal offence in domestic law, any criminal complaint by the applicants would have been bound to fail: the Gutsanovi family had been unable to assert their right not to be subjected to inhuman or degrading treatment and their right to respect for their home.

<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

## Principal facts

The applicants, Mr Borislav Gutsanov, his wife Mrs Monika Gutsanova and their two minor daughters, S. and B. Gutsanovi, are Bulgarian nationals who were born in 1967, 1972, 2002 and 2004 respectively and live in Varna.

Mr Gutsanov is a member of Parliament for the Socialist Party. At the relevant time he was also the chairman of Varna municipal council.

Between December 2009 and April 2010 the Ministry of the Interior conducted several police operations aimed at dismantling various criminal groups. The police arrested a number of individuals, including some political figures.

On 30 October 2009 the Sofia city public prosecutor's office commenced criminal proceedings against a person or persons unknown for abuse of office by a public servant and misappropriation of public funds. On 31 March 2010, at 6.30 a.m., the police entered the Gutsanovi family's home and proceeded to arrest Mr Gutsanov and search the premises. An order was made for Mr Gutsanov to be detained for twenty-four hours.

When Mr Gutsanov left his home at around 1 p.m. under police escort, journalists and television crews had already gathered outside the house. The Varna regional prosecutor, the police commissioner and the head of the organised crime unit gave a press conference. The next day a regional daily newspaper published the public prosecutor's comments, together with extracts from an interview with the Interior Minister concerning the case.

Still on 31 March 2010, at 10.55 p.m., the prosecutor charged Mr Gutsanov with several criminal offences including involvement, in his capacity as a public servant, in a criminal group whose activities entailed the award of contracts potentially damaging to the municipality, and abuse of office by a public servant. The prosecutor ordered Mr Gutsanov's detention for seventy-two hours in order to ensure his attendance in court.

On 3 April 2010 Mr Gutsanov appeared in court and was remanded in custody. The court did not refer to any risk that he would abscond, but found that his continued detention was justified by the risk that he would commit further offences. Mr Gutsanov appealed against that decision to the Court of Appeal, without success.

On 18 May 2010 the Regional Court rejected an application for release made by the applicant, who appealed against that decision to the Court of Appeal. The latter issued an order placing him under house arrest. On 26 July 2010 the court ordered Mr Gutsanov's release on bail.

As at 26 April 2013 the criminal proceedings against Mr Gutsanov were still pending at the preliminary investigation stage.

## Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), the applicants alleged that they had been subjected to degrading treatment as a result of the police operation at their home.

Under Article 5 (right to liberty and security), Mr Gutsanov contended that he had not been brought promptly before a judge, that he had been held in prison for an excessive length of time, that the domestic courts had not given relevant and sufficient reasons for his continued detention and that he had not had access to any domestic remedy enabling him to obtain compensation for these alleged violations.

Relying on Article 6 § 2 (presumption of innocence) and Article 13 (right to an effective remedy), Mr Gutsanov complained that the remarks made by the Prime Minister, the Minister of the Interior

and the regional prosecutor had infringed his right to be presumed innocent. He also complained of the reasons given for the decision of 18 May 2010 ordering his continued detention.

Under Article 8 (right to respect for the home and for private and family life), the Gutsanovi family contended that the search carried out in their house constituted unjustified interference with their right to respect for their home and their family life.

Relying on Article 13 (right to an effective remedy), the applicants argued that they had not had any effective domestic remedy in respect of the alleged violations of their right not to be subjected to inhuman or degrading treatment and their right to respect for their home.

The application was lodged with the European Court of Human Rights on 21 May 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Ineta **Ziemele** (Latvia), *President*,  
 Päivi **Hirvelä** (Finland),  
 George **Nicolaou** (Cyprus),  
 Ledi **Bianku** (Albania),  
 Zdravka **Kalaydjieva** (Bulgaria),  
 Krzysztof **Wojtyczek** (Poland),  
 Faris **Vehabović** (Bosnia and Herzegovina),

and also Françoise **Elens-Passos**, *Section Registrar*.

## Decision of the Court

### Article 3

The Court observed that the aims of the police operation had been an arrest, a search and a seizure of items; those aims were apt to promote the public interest in the prosecution of criminal offences.

The Court noted that although the four members of the family had not suffered any physical injuries in the course of the police operation, the latter had nonetheless entailed the use of physical force. The front door of the house had been forced open by a special intervention unit and Mr Gutsanov had been immobilised by armed officers wearing balaclavas, led downstairs by force and handcuffed.

Mr Gutsanov had been chairman of Varna municipal council and a well-known political figure in the city. There had been no evidence to suggest that he had a history of violence and could have presented a danger to the police officers. It was true that he had owned a firearm and ammunition; however, the Court considered that the presence of the weapon in the applicants' home could not in itself justify the deployment of a special intervention unit or the kind of force that had been used.

The Court stressed that the possible presence of family members at the scene of an arrest was a factor to be taken into consideration in planning and carrying out this kind of operation. Moreover, Mr Gutsanov's wife had not been under suspicion and their two daughters had been psychologically vulnerable because they were so young (5 and 7 years of age). It appeared that Mrs Gutsanova and her daughters had been very severely affected by the events. The feelings of fear and anxiety which these three applicants had experienced led the Court to conclude that they had been subjected to degrading treatment.

The police operation had been planned and carried out without consideration for a number of factors including the nature of the criminal offences of which Mr Gutsanov was suspected, the fact that he had no history of violence and the possible presence of his wife and daughters in the house. All these elements indicated clearly that the means used to arrest Mr Gutsanov at his home had been excessive; accordingly, he too had been subjected to degrading treatment.

### Article 5 §§ 3 and 5

Mr Gutsanov had been arrested on 31 March 2010 at 6.30 a.m. and had appeared before a judge three days, five hours and thirty minutes later. Firstly, the Court observed that Mr Gutsanov had been a suspect in a case concerning misappropriation of public funds and abuse of office, but that he had not been suspected of involvement in violent criminal activities. During the first day of his detention Mr Gutsanov had participated in several investigative measures; however, the Government had not adduced any argument to justify the fact that he had not been brought before a judge the day after being arrested and charged. There had therefore been a violation of Article 5 § 3.

Secondly, the Court observed that Mr Gutsanov had been deprived of his liberty for four months, two months of which had been spent under house arrest. Even at the time of his initial applications for release the domestic courts had ruled out any risk that he might abscond. They had nevertheless ordered his continued detention on the grounds that he might commit further offences, in particular by tampering with the evidence. The Court of Appeal, in its ruling of 25 May 2010, had taken the view that the latter risk had also ceased to exist in view of the applicant's resignation from his position as chair of the municipal council. Mr Gutsanov had nevertheless been placed under house arrest without the Court of Appeal giving any specific reason justifying the measure, which had remained in place for two months. Accordingly, the Court concluded that the authorities had failed in their obligation to justify the applicant's continued detention after 25 May 2010. It found a further violation of Article 5 § 3.

As to possible domestic remedies, the Court took the view that the action for damages provided for by the law on State liability could not be considered an effective domestic remedy. To the Court's knowledge, no other provision existed in domestic law by which to obtain compensation for damage sustained on account of the excessive length of detention or of a delay in being brought before a judge. The Court therefore held that there had been a violation of Article 5 § 5.

### Article 6 § 2

The Court did not consider that the Prime Minister's comments to the media had been intended to infringe Mr Gutsanov's right to be presumed innocent or that they had had that effect. Likewise, it did not find that the remarks made by the Varna regional prosecutor at a press conference had breached the principle of the presumption of innocence. By contrast, the comments made by the Interior Minister the day after Mr Gutsanov's arrest, and published in a newspaper at a time when the case was the subject of intense public interest, had gone beyond the mere conveying of information. In the Court's view, the Minister's comments had been liable to give the public the impression that Mr Gutsanov was one of the "brains" behind a criminal group which had misappropriated large sums of public money. The Court concluded that the comments had infringed Mr Gutsanov's right to be presumed innocent.

As to the reasons given for the decision ordering Mr Gutsanov's continued detention, the judge had stated that the court "remains of the view that a criminal offence was committed and that the accused was involved". In the Court's view, this phrase amounted to a declaration of guilt before any decision had been given on the merits, and had breached Mr Gutsanov's right to be presumed innocent.

### Article 8 § 2

The search had been carried out without prior authorisation by a judge. The report drawn up following the search had been submitted to a judge of the court, who had formally approved it but given no reasons.

In the Court's view, this did not constitute sufficient grounds for finding that the judge had conducted an effective review of the lawfulness and necessity of the search. Furthermore, as the

criminal investigation had been opened five months previously, the investigators could have applied for a court order before carrying out the search.

The Court considered that, in the absence of prior approval by a judge and of retrospective review of the measure in question, the procedure had not been attended by sufficient safeguards to prevent the risk of an abuse of power on the part of the criminal investigation authorities. The applicants had been effectively deprived of the requisite protection against arbitrariness and there had therefore been a violation of Article 8 § 2.

#### Article 13 in conjunction with Articles 3 and 8

The Court noted that neither a criminal complaint nor an action for damages against the State could be said to constitute an adequate domestic remedy. It pointed out that the fact of inflicting psychological suffering did not constitute a criminal offence in domestic law, with the result that a possible criminal complaint by the applicants would have been bound to fail. The applicants had not had available to them any domestic remedy by which to assert their right not to be subjected to inhuman or degrading treatment or their right to respect for their home.

The Court therefore found a violation of Article 13 read in conjunction with Articles 3 and 8.

#### Just satisfaction (Article 41)

The Court held that Bulgaria was to pay the applicants jointly 40,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,000 in respect of costs and expenses.

*The judgment is available only in French.*

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

#### Press contacts

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel: +33 3 90 21 42 08

**Denis Lambert (tel: + 33 3 90 21 41 09)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Jean Conte (tel: + 33 3 90 21 58 77)

**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.