CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 44082/98
by I.I.
against Bulgaria

The European Court of Human Rights (First Section), sitting on 25 March 2004 as a Chamber composed of

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

Having regard to the above application introduced with the European Commission of Human Rights on 30 July 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr I.I., is a Bulgarian national who was born in 1962 and lives in Shoumen. He is represented before the Court by Ms D. Rouseva, a lawyer practising in Shoumen. The respondent Government are represented by Ms M. Dimova, co-agent, of the Ministry of Justice.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. The criminal proceedings against the applicant and his detention

Sometime after midnight during the night of 30 to 31 January 1998 the applicant 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 and intervened.

The next day, 31 January 1998, at approximately 7.30 p.m., the applicant took part in another violent incident. Apparently during the second incident a Mr P.P. was beaten, robbed, abducted and threatened with violence.

During 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. 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.

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.

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 he had committed abduction and unlawful deprivation of liberty, contrary to Article 142 § 2 of the Criminal Code ("CC"). The order stated that the applicant had been *de facto* arrested on 31 January, immediately after having committed the alleged offence. Despite the applicant's insistence to meet the investigator, he was not brought before him at that time.

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.

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 with 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.

Immediately after the charging the applicant was questioned in the presence of his counsel. The applicant stated that he understood the charges against him. Counsel asked to be allowed to acquaint himself with the case file. The investigator allegedly refused.

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 evidence.

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

The appeal was examined by the Shoumen Regional Court on 4 March 1998 in an open hearing in the presence of the applicant and of his counsel. Counsel referred to the alleged lack of evidence and, in addition, noted that the applicant had a permanent address, a job, and two children. Counsel also presented a hospitalisation 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 treated in June 1997, and also from psoriasis. Counsel argued that the latter required better hygienic conditions than those in the cell of the Investigation Service where the applicant was being held.

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. Thus, the sole relevant arguments of the applicant were those pertaining to his health. The court held that the applicant had failed to prove that he had 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 Code of Criminal Procedure ("CCP") and that there were no grounds for releasing him in view of the impending investigative actions.

Nearly two months later, on 30 April 1998, the Shoumen Regional Prosecutor's Office granted bail, holding that the applicant's health had worsened during his stay in custody. In particular, his psoriasis had intensified due to the poor hygienic conditions and the lack of sunlight in his cell. Also, the applicant had a permanent address and a job. The applicant posted bail the same day and was released.

On 19 April 1999 the criminal proceedings against the applicant were discontinued and the charges against him were dropped because the Shoumen Regional Prosecutor's Office held that the accusation against him had not been proven.

2. The conditions of the applicant's detention

(a) The actual conditions

On the day of his arrest, 31 January 1998, the applicant was put in a cell at the Shoumen Regional Police Department. The following day he was transferred to the premises of the Shoumen Regional Investigation Service.

There the applicant was held in a cell beneath ground level, which had no window or direct access to sunlight. The cell was lighted by an electric bulb which was allegedly on twenty-four hours a day. The airing of the cell was apparently very poor. One of the walls was oozy and covered with mould. The detainees were sleeping on plank-beds. It seems that the cells did not contain any other pieces of furniture.

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 go to the toilet. To relieve himself outside the time earmarked for toilet visits, the applicant had to use a bucket.

The toilet was also used as a bathroom. The detainees were allowed to take a bath once a week, for ten minutes. There was no shower or hot water and they had to take water from a pail containing twenty litres. The detainees had to pour water over their bodies using the mugs they were using for eating. The pail was not being refilled and all detainees from a cell – up to six persons at times – had to make do with the amount of water it initially contained. The detainees were allegedly not provided with detergents to clean their mugs and washed them with cold water.

According to the applicant, the food consisted of a piece of bread and approximately 100 grams of cheese for each meal.

On the third or fourth day after his arrest the applicant's psoriasis aggravated. His skin got covered with massive eczema. He informed the paramedic about this and asked to have medicines brought from his home. Allegedly he had to apply his medication five or six times a day but was allowed to do so only twice a day, when he went to the toilet. 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.

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 hygienic conditions in which the applicant was being kept the rashes on the applicant's skin had increased. The applicant was prescribed special medication, including injections, which apparently were thereafter regularly administered.

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

The CPT visited Bulgaria in 1995 and again in 1999. Although the Shoumen Investigation Service detention facility was not visited, both the 1995 and 1999 reports included general observations about problems in all Investigation Service facilities.

(i) Relevant findings of the 1995 report (made public in 1997)

In this report 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 WC and a 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 five-ten minutes or not allowed at all; no other form of out-of-cell activity was provided to persons detained.

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 halva. Meat and fruit were rarely included on the menu. Detainees had to eat from bowls without cutlery – not even a spoon was provided.

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

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 agreed that the [CPT] delegation's assessment had been "objective and correctly presented" but indicated that the options for improvement were limited by the country's difficult financial circumstances.

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 thirty 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.

(ii) Relevant findings of the 1999 report (made public in 2002)

The CPT noted that new rules, providing for better conditions, had been enacted but had not yet resulted in significant improvements.

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.

In the Plovdiv Investigation Service detention facility, as well as in two other places, detainees “still had to eat with their fingers, not having been provided with appropriate cutlery”.

In the same detention facility medical supervision was provided by a medical doctor on the premises.

B. Relevant domestic law and practice

1. The offences with which the applicant was charged

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

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

By Article 213a § 2 (1) of the CC, extortion through threats of murder accompanied with light bodily injury is an offence punishable by up to eight years' imprisonment.

Article 21 § 1 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.

2. Preliminary detention

The general rule is that a person may be deprived of liberty within the context of pending criminal proceedings if he has been charged with an offence and has been placed in pre-trial detention (Article 146 of the CCP). However, at the relevant time a person could also be taken into custody for

up to three days if he was suspected of having committed an offence but there was not enough evidence to bring charges. The circumstances in which this could occur were limited and, as relevant here, included the case where a person "ha[d] been caught during or immediately after the commission of the [alleged] offence ..." (Article 202 § 1 (1) of the CCP).

The arrestee had to immediately be brought before an investigator who had to inquire into the circumstances surrounding the arrest and to institute or refuse to institute criminal proceedings and make an order for the "preliminary detention" or for the release of the arrested person. Under Article 203 of the CCP, as in force at the material time, the investigator could order "preliminary detention" for a maximum of twenty-four hours, which could be extended by a prosecutor to up to three days. If no charges were brought against the detainee within this time-limit he had to be released immediately upon its expiry. The CCP did not provide for an appeal against the "preliminary detention" to a court.

3. Pre-trial detention

(a) Power to order pre-trial detention

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).

(b) Legal criteria and practice regarding the requirements and justification for pre-trial detention

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. ..."

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.).

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

(c) Appeals against detention before the trial

Article 152a of the CCP, as in force at the relevant 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 ..."

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.).

4. The State Responsibility for Damage Act

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

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

The reported case-law under section 2(1) of the Act is scant. However, in two recent judgments the Supreme Court of Cassation held that pre-trial detention orders must be considered as being "set aside for lack of lawful grounds" – and that State liability arises – where the criminal proceedings

have been discontinued on grounds that the charges have not been proven (реш. № 859/2001 г. от 10 септември 2001 г. по г.д. № 2017/2000 г. на ВКС) or where the accused has been acquitted (реш. № 978/2001 г. от 10 юли 2001 г. по г.д. № 1036/2001 г. на ВКС). The view taken appears to be that in such cases the pre-trial detention order is retrospectively deprived of its lawful grounds as the charges were unfounded.

COMPLAINTS

1. The applicant complained under Article 3 of the Convention about the conditions of his detention.

2. The applicant complained that between 31 January and 2 February 1998 he had been held in custody without any official order being made for that.

3. The applicant complained under Article 5 § 2 of the Convention that he had not been promptly informed of the reasons for his arrest and of the charges against him.

4. The applicant complained under Article 5 § 3 of the Convention that after his arrest he had not been brought promptly before a judge or a judicial officer. He considered that neither the investigator who had ordered his detention, nor the prosecutor who had later decided on it could be regarded as officers exercising judicial power within the meaning of that Article.

5. The applicant complained under Article 5 § 4 of the Convention that the Shoumen Regional Court had disregarded the arguments pertaining to the lawfulness of his deprivation of liberty and had instead focused solely on issues relating to his health. He also submitted that there had been a breach of that provision in that the court had not decided speedily on his request for bail.

6. In addition, the applicant complained under Article 5 § 5 of the Convention that under domestic law he has no enforceable right to compensation for his detention.

7. The applicant also complained under Article 6 of the Convention of the alleged unfairness of the criminal proceedings against him.

THE LAW

A. The Government's objection of non-exhaustion of domestic remedies

The Government maintained that the applicant had failed to exhaust domestic remedies in respect of his complaints. In particular, following the discontinuation of the criminal proceedings against him he had not instituted an action under section 2 of the State Responsibility for Damage Act. According to the constant case-law of the Bulgarian courts, compensation was due for damage sustained as a result of detention imposed in the course of criminal proceedings which had later been discontinued because the accusation had been unproven.

The applicant replied that when he had first introduced his application with the Court in 1998 the criminal proceedings against him had still been pending. On the other hand, his complaints were not about the facts that he had been detained and that criminal proceedings had been brought against him, but related to the breaches of his rights during his detention. The applicant added, with reference to his complaints under Article 5 of the Convention, that his detention had not been terminated because the competent prosecutor had found that it "lack[ed] of lawful grounds" within the meaning of the State Responsibility for Damage Act, but for other reasons. The Shoumen Regional Court's decision to reject his appeal against detention had been final and there had been no other remedy whereby the applicant could obtain review of the lawfulness of his detention.

The Court notes that the Government did not specify in respect of which of the applicant's complaints he had not exhausted the available remedies. It will therefore examine the objection with respect to all of the applicant's complaints.

B. The applicant's complaint under Article 3 of the Convention

In respect of his complaint about the conditions of his detention the applicant relied on Article 3 of the Convention, which provides:

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

1. As regards the Government's objection of non-exhaustion of domestic remedies, the Court notes that they have not demonstrated that there was a judicial practice of awarding damages in cases where it was claimed that conditions of detention were inhuman or degrading. They have not referred to any judgment given under the State Responsibility for Damage Act – or, indeed, any other provision of domestic law – awarding damages in such

circumstances (see *Dankevich v. Ukraine*, no. 40679/98, § 111, 29 April 2003 and *Kehayov v. Bulgaria* (dec.), no. 41035/98, 13 March 2003). It follows that the objection must be dismissed with regard to the complaint under Article 3.

2. Concerning the substance of the complaint, the Government conceded that the sanitary and hygienic conditions in the detention facility of the Shoumen Regional Investigation Service during the relevant period had been below the minimum standards for such facilities. 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, 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 detention facilities in the country, had been markedly improved.

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

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

C. The applicant's complaints under Article 5 of the Convention

1. (a) As regards the Government's objection of non-exhaustion of domestic remedies in respect of the complaints under Article 5 §§ 1, 2, 3 and 4 of the Convention, the Court notes that that the legal remedy suggested by the Government is directed not at the termination of detention or at remedying its other alleged flaws, but at compensation for the damage arising from detention. It therefore considers that the fact that an applicant complaining that his detention was not lawful, that he had not been informed of the reasons for his arrest and of the charges against him, that he was not brought promptly before a judge or a judicial officer and that the lawfulness of his detention has not been decided speedily by a court, has not instituted such an action bears no relation to the issue of exhaustion of domestic remedies with regard to these complaints. It has rather to do with the issue whether the applicant has been secured the right under Article 5

§ 5 to be compensated for any detention effected in breach of the preceding paragraphs of that Article (see *Egue v. France*, no. 11256/84, Commission decision of 5 September 1988, Decisions and Reports (DR) 57, p. 47, at pp. 66-67, *Navarra v. France*, no. 13190/87, Commission decision of 1 March 1991, DR 69, p. 165, *Yagci and Sargin v. Turkey*, nos. 16419/90 and 16426/90, Commission decision of 10 July 1991, DR 71, p. 253 and *Belchev v. Bulgaria* (dec.), no. 39270/98, 6 February 2003). The Government's objection must therefore be dismissed with regard to the complaints under Article 5 §§ 1, 2, 3 and 4 of the Convention.

(b) Regarding the objection of non-exhaustion of domestic remedies in respect of the complaint under Article 5 § 5 of the Convention that under domestic law the applicant has no enforceable right to compensation for his detention, the Court notes that the Bulgarian Supreme Court of Cassation has held that pre-trial detention orders must be considered as being "set aside for lack of lawful grounds" – and that State liability arises – where the criminal proceedings have been discontinued on grounds that the charges have not been proven (see above, Relevant domestic law and practice). It further notes that the criminal proceedings against the applicant were discontinued on 19 April 1999 exactly because the competent prosecutor held that the charges against him had not been proven. Following this the applicant did not try to institute proceedings under the State Responsibility for Damage Act and claim compensation for the damage arising from his detention despite the domestic courts' case-law that in these circumstances he is entitled to such compensation. The Court thus concludes that the applicant has failed to exhaust domestic remedies with respect to his complaint under Article 5 § 5 and allows this limb of the Government's objection.

2. Concerning the substance of his complaints, the applicant contended that his detention between 31 January 1998 and 3.30 p.m. on 2 February 1998 had been without a legal basis. The Court considers that this complaint falls to be examined under Article 5 § 1 of the Convention, which provides, as relevant:

> "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; ..."

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 made at 3.30 p.m. on 2 February 1998. Before that the applicant had been present on the premises of the Shoumen Regional

Police Department for questioning and other investigative actions, but his freedom of movement had not been restricted.

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 kept in handcuffs, attached to a pipe in the department's detention room. His freedom of movement had therefore been restricted.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

3. In respect of his complaint that he had not been promptly informed of the reasons for his arrest and of the charges against him the applicant relied on Article 5 § 2 of the Convention. Article 5 § 2 provides that:

> "Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

The Government maintained that the applicant's averment that he had not been informed of the reasons for his arrest and of the charges against him was unsubstantiated. The investigator's order for his preliminary detention of 2 February 1998 had explicitly mentioned Article 142 § 2 of the CC. On 5 February 1998 the applicant had been formally charged and his charging sheet had contained descriptions of the offences of which he had been accused and their legal qualification. During the questioning which followed immediately after the charging the applicant had stated that he understood the charges. Moreover, the applicant could have inferred the reasons for his detention from the questioning which took place at 11.55 p.m. on 31 January 1998.

The applicant stated that he had been of the opinion that his detention had not been lawful and that he had wished to know for what reason he had been arrested.

The Court reiterates that Article 5 § 2 contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. He must be told, in a language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features (see *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A no. 182, p. 19, § 40).

The Court notes that the fact that an applicant has been questioned in detail by an investigating judge can be sufficient for the purposes of

Article 5 § 2 (see *N.M. v. Austria*, no. 1936/63, Commission decision of 6 July 1964, Yearbook 7, pp. 225 and 244 and *Lowry v. Portugal* (dec.), no. 42296/98, 6 July 1999).

In the present case, the applicant was questioned in detail about the two incidents in which he had taken part immediately after his arrest on 31 January 1998. Also, on 2 February 1998 he was officially informed that he was suspected of having committed the offences of false imprisonment and abduction, contrary to Article 142 § 2 of the CC.

In the Court's view, the reasons for the arrest of the applicant were therefore sufficiently brought to his attention. The Court further finds that, in the context of the present case, the interval of less than forty-eight hours between the applicant's arrest and the investigator's order for his preliminary detention, which informed him of the legal characterisation of the charges against him, cannot be regarded as falling outside the constraints of time imposed by the notion of promptness in Article 5 § 2.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

4. 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..."

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

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.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

5. The applicant alleged that he could not obtain a fully-fledged 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."

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 speedily the applicant's appeal.

The applicant replied that the domestic court had not reviewed the lawfulness of his detention, instead focusing solely on issues relating to his health. Moreover, it had ignored all evidence relating his psoriasis.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

D. The applicant's complaint under Article 6 of the Convention

In respect of his complaint about the fairness of the proceedings the applicant relied on Article 6 of the Convention, which provides, insofar as relevant:

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

1. Having regard to its conclusion in respect of the applicant's complaint below, the Court considers that that it need not rule on the Government's objection of non-exhaustion of domestic remedies.

2. The Government did not comment on the substance of the complaint.

The Court considers that a person may not claim to be a victim of a violation of his right to a fair trial under Article 6 of the Convention which, according to him, took place in the course of proceedings in which he was acquitted or which were discontinued (see *X v. the United Kingdom*, no. 8083/77, Commission decision of 13 March 1980, DR 19, p. 223, *Eğinlioğlu v. Turkey*, no. 31312/96, Commission decision of 21 October 1998, unreported and *Osmanov and Husseinov v. Bulgaria* (dec.), nos. 54178/00 and 59901/00, 4 September 2003). The Court notes that on 19 April 1999 the proceedings against the applicant were discontinued by the prosecution authorities on the ground that the accusation against him had not been not proven. The Court considers that in these circumstances the applicant can no longer claim to be a victim of a violation of his right to a fair trial.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints concerning the conditions of his detention, concerning the

lawfulness of his detention between 31 January and 2 February 1998, concerning the fact that after his arrest he was not brought before a judge or a judicial officer and concerning the judicial review of his detention;

Declares inadmissible the remainder of the application.

Søren NIELSEN
Registrar

Christos ROZAKIS
President