CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 41035/98
by Ivan Ivanov KEHAYOV
against Bulgaria

The European Court of Human Rights (First Section), sitting on 13 March 2003 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mr G. BONELLO,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER, *judges*,
and Mr S. NIELSEN, *Deputy Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 28 January 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 partial decision of 26 October 2000,

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 is a Bulgarian national who was born in 1971 and lives in Plovdiv. He was represented before the Court by Mr M. Ekimdjiev, a lawyer practising in Plovdiv. The respondent Government were represented by Mrs V. Djidjeva, co-Agent, 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 applicant's detention pending trial and his appeals against detention

On 27 December 1997 the applicant was arrested and detained on rape charges. Later in the course of the investigation he was also charged with abduction.

It was alleged that, after having consumed alcohol, at approximately 4 a.m. on 27 December 1997 the applicant had entered the room of Ms D. and her husband, who were his parents' tenants, and, threatening them with a gun, had forced Ms D. to come to his apartment, on the upper floor of the same house, where he had raped her. The police, alerted by Ms D.'s husband, had broken into the applicant's apartment and had arrested him on the spot.

On 27 December 1997 the applicant was brought before the investigator who ordered that the applicant be detained pending trial. A prosecutor confirmed the detention on the same day.

On 27 and 29 December 1997 the investigator conducted searches in the applicant's apartment and ordered expert analysis of various traces and objects. Ms D. was directed to undergo medical examinations.

On 5 and 12 January 1998 the applicant was questioned in the presence of his lawyer.

On 5 January 1998 the applicant appealed to the Plovdiv District Court against the detention order on the grounds that he had a wife and a one-year old child and that there was no danger of his absconding or committing offences.

In accordance with the established practice, the appeal was submitted through the investigation authorities, which transmitted it to the District Court on 15 January 1998. The matter was listed for a hearing on 19 January 1998.

On 19 January 1998 the applicant's lawyer requested access to the case file, which was refused by the judge on the same day.

At the hearing on 19 January 1998 the applicant's lawyer requested the withdrawal of the president of the bench as she had recently sought his

prosecution for alleged defamatory statements. The lawyer was concerned that the judge's hostility towards him might prejudice his client's interests. The request for the judge's withdrawal was granted and the case adjourned.

On 21 January 1998 the case was assigned to another bench and listed for hearing on 23 January 1998.

On 21 January 1998 the applicant's lawyer reiterated his request for access to the case file. The request was refused on the same day.

The applicant's appeal against his detention was eventually heard on 23 January 1998.

At the opening of the hearing the judge refused to allow the participation of the applicant's lawyer, considering that his written authority form was invalid. The judge stated that the authority had only been signed by the applicant's wife and not by the applicant, that it bore no indication of the lawyer's fees and that it had not been made on a sheet from the usual lawyers' receipt-books.

Thereupon, the applicant, who was also present, handed the judge another written authorisation, signed by him. The court refused to accept it as the case file number had not been marked on it. As a result, the applicant had to present his case without legal representation.

Having heard the applicant, the court dismissed his appeal against detention, stating that he was charged with a serious criminal offence. The court went on to conclude that the fact that the applicant had refused to sign the minutes of his first interrogations and to comment on the charges right away had demonstrated that he lacked critical judgment of his behaviour, which in turn revealed a danger that he would abscond and re-offend.

On different dates between February and April 1998 the investigator commissioned a number of expert reports and requested information about the applicant's criminal record.

In April 1998 reports were submitted by chemistry and ballistics experts and by experts in psychiatry who had examined the applicant.

The psychiatry experts noted that a year or two previously the applicant had been depressed and had displayed violent and inadequate behaviour. He had been admitted for a day to a psychiatric hospital on suspicion of suffering from paranoid schizophrenia. However, the experts concluded that the applicant's mental condition was sound.

On 13 April 1998 the applicant filed a new appeal against detention, referring to passages in the psychiatrists' report. On 13 April 1998 the applicant also filed a request for the replacement of the president of the bench, arguing that his partiality had been demonstrated by his behaviour at the hearing on 23 January 1998. The lawyer did not enclose a power of attorney and did not indicate his address and telephone number.

On 27 April 1998 the appeal was forwarded by the prosecution authorities to the District Court, where it was registered on 6 May 1998. A

hearing was listed for 11 May 1998. The applicant, but not his lawyer, was summoned.

At the hearing on 11 May 1998 the applicant requested an adjournment as his lawyer was not present. The District Court, sitting in a new composition, noted that the applicant's lawyer had not been summoned as he had not indicated his address. It nevertheless decided to adjourn the case in view of the applicant's request. A second hearing was listed for 21 May 1998.

On 12 May 1998 the applicant's lawyer requested to be given access to the case file.

On 21 May 1998 the Plovdiv District Court heard the prosecutor, the applicant and two lawyers acting for him. The District Court dismissed the lawyers' request for an adjournment to allow consultation of the case file, referring to "the practice" and endorsing the prosecutor's view that it was for the investigator to decide what material should be provided to lawyers.

As to the merits, the applicant argued that his health was unstable, that the conditions of detention were unacceptable and that he had to help his parents, one of whom was ill, in their seasonal agricultural work.

The District Court dismissed the applicant's appeal against detention noting the psychiatrists' conclusion that the applicant was mentally healthy and that other relatives had been taking care of the applicant's sick mother. The court also had regard to the fact that the charges concerned a serious offence, allegedly committed during the operational period of the applicant's suspended sentence for a previous conviction, and concluded that there was a danger that he might obstruct the course of justice and re-offend. As to the conditions of the applicant's detention, the court stated that a transfer to another detention facility could be recommended.

On 8 June 1998, before completing the investigation, the investigator gave the applicant and his lawyer access to all the material in the case. On 11 June 1998 the investigator drew up a report proposing that the applicant be indicted.

The indictment on charges of rape and abduction was prepared by a prosecutor and submitted to the District Court on 28 July 1998.

At the first hearing, held on 1 October 1998, the District Court heard the applicant, six witnesses and two experts.

It also examined the applicant's renewed appeal against his detention and dismissed it, noting that he was charged with a serious wilful offence which required his remand in custody and that, in any event, the charges concerned an offence allegedly committed during the operation period of the applicant's previous suspended sentence for another offence. This latter fact left no doubt that there was a danger that the applicant would commit further offences. Finally, the court also endorsed the prosecutor's position that there was a reasonable suspicion against the applicant and that the fact that the charges concerned a violent offence should be taken into account.

The court scheduled a second hearing for 23 November 1998 as some of the witnesses had not been properly summoned and had not appeared.

The hearing resumed on 23 November 1998. Three witnesses and two experts were heard.

At that hearing, the applicant submitted another application for release on the grounds that his detention was unreasonably long, that the court failed to conduct a prompt trial and that there was no convincing evidence against him. Ms D., the victim, stated that she feared that if released the applicant may hurt her. She had learned that the applicant's parents had been asking others about her new address. The court ruled against the applicant's release. It noted that under the relevant law remand in custody was required in all cases where the charges concerned serious offences. It further stated that there was a danger that the applicant would obstruct the course of justice in view of the fact that he had been charged with more than one offence and that he had a criminal record. Therefore, the applicant's statements about his good character and family circumstances did not warrant release.

The court fined two witnesses who had failed to appear without good cause and ordered police assistance to have them brought to court for the next hearing listed for 18 December 1998.

On 18 December 1998 the Plovdiv District Court heard the last witnesses and the parties' pleadings. The court found the applicant guilty of rape, sentenced him to two years' imprisonment and acquitted him of the charges of abduction.

On 30 April 1999 the Plovdiv Regional Court upheld the first instance judgment.

2. Correspondence in 1998 between the courts and the Bar Association in Plovdiv regarding access to case files

The applicant produced copies of correspondence in January and March 1998 from the presidents of the Plovdiv District Court and of the Plovdiv Regional Court to the local Bar Association, apparently in reaction to complaints made by lawyers about an existing practice of barring access to case files in cases concerning appeals against pre-trial detention.

The president of the District Court acknowledged that the complaints were well-founded and stated, *inter alia*, that, "[r]egrettably, District Court judges rely on the hitherto prevailing practice and do not share my opinion ..."

The president of the Regional Court informed the Bar Association that the matter had been discussed at length and that the judges had agreed that, contrary to the opinion of the Chief Public Prosecutor's Office and the Regional Prosecutor's Office in Plovdiv, there were no legal grounds for refusing access to case files in appeals against detention proceedings.

3. Conditions of the applicant's detention

Between 25 December 1997 and 16 June 1998 the applicant was kept in a lock-up at the Regional Investigation Office in Plovdiv.

The cell, where the applicant was detained together with three other people, measured 3/3.5m (a surface of 10.5 m^2). Since there were no beds, the detainees slept on mattresses on the floor. According to the applicant, the blankets were not washed regularly. The Government disputed that allegation. The cell did not have access to daylight and was equipped with a 100W electric lamp. There was a ventilation system. According to the applicant the ventilation system was only installed "in 1998". He also submitted that in winter the temperature in his cell did not rise above 10-12 C^o. According to the Government, the cell was centrally heated and the temperature therein was normal.

The applicant and the other detainees were allowed to leave the cell when they received visits or when brought for questioning or taken to court. They were also allowed to leave the cell twice a day, at 6.30 a.m. and 6.30 p.m., for toilet purposes and washing with hot water. They showered once per week in winter and twice per week in summer. To relieve themselves outside the time earmarked for toilet visits, the detainees had to use a bucket. They had to empty the bucket and clean it themselves when leaving the cell to use the sanitary facilities. They were provided with detergents. Once per week the buckets were disinfected chemically.

Food was provided three times per day in the cell. It was served in pots or mugs which the detainees had to wash after every meal and which were collected and disinfected periodically. For security reasons, no forks or knives were provided. According to the applicant, the food was of bad quality. The Government stated that meat was available at least once per day.

On 16 June 1998 the applicant was transferred to the Plovdiv prison where the conditions were better.

4. 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 Plovdiv Investigation Service detention facility was only visited in 1999, both the 1995 and 1999 reports included general observations about problems in all Investigation Service facilities.

(a) 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 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.

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.

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.

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.

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.

(b) 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. Arrest and detention pending trial

At the relevant time and until the reform 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 *Nikolova v. Bulgaria* judgment ([GC], no. 31195/96, ECHR 1999-II).

Paragraphs 1 and 2 of Article 152 of the Code of Criminal Procedure, as worded at the material time, provided as follows:

> "(1) Detention pending trial shall be ordered [in cases where the charges concern] a serious intentional offence.
>
> (2) In cases falling under paragraph 1 [detention pending trial] may be dispensed with if there is no danger of the accused's absconding, obstructing the investigation, or committing further offences."

According to Article 93 § 7 of the Penal Code a "serious" offence is one punishable by more than five years' imprisonment.

The Supreme Court's practice at the relevant time (which has since become obsolete as a result of the amendments in force since 1 January 2000) was to construe Article 152 § 1 of the Code of Criminal Procedure as requiring that a person charged with a serious intentional offence had to be remanded in custody. An exception was only possible, in accordance with Article 152 § 2, where it was clear and beyond doubt that any danger of absconding or reoffending was objectively excluded, for example, if the accused was seriously ill, elderly, or already detained on other grounds,

such as serving a sentence (Decision no. 1 of 4 May1992, case no. 1/92, II Chamber, Bulletin 1992/93, p. 172; Decision no. 4 of 21 February 1995, case no. 76/95, II Chamber; Decision no. 78 of 6 November 1995, case no. 768/95, II Chamber; Decision no. 24, case no. 268/95, I Chamber, Bulletin 1995, p. 149).

In some other decisions, the Supreme Court nevertheless embarked on an analysis of the particular facts to justify findings that there existed a danger of absconding or of offending (Decision No. 76 of 25.07.1997, case no. 507/97 II Chamber, Bulletin no. 9-10/97, p. 5; Decision no. 107 of 27.05.1998, case no. 257/98, II Chamber, Bulletin no. 3-4/98, p. 12).

2. Appeals against remand in custody

The Supreme Court has stated that it is not open to the courts, when examining an appeal against detention on remand, to inquire whether there exists sufficient evidence to support the charges against the detainee. The courts must only examine the lawfulness of the detention order under domestic law (Decision no. 24 of 23 May 1995 in case no. 268/95, I Chamber, Bulletin 1995, p. 149).

In accordance with Article 152a of the Code of Criminal Procedure, as in force at the relevant time, during the preliminary investigation stage of the criminal proceedings appeals against detention were examined by the local District Court whose decisions were final.

Under Article 304 § 1 of the Code of Criminal Procedure, the detainee's requests for release at the trial stage of the criminal proceedings are examined by the trial court whose decision is subject to appeal to a higher court (Article 344 § 3).

3. Legal representation before the criminal courts

Article 69 § 2 of the Code of Criminal Procedure provides that a power of attorney shall be prepared in writing and signed by the defendant and his legal counsel.

COMPLAINTS

1. The applicant complained under Article 3 of the Convention that the conditions in the detention facility where he had been locked up until 16 June 1998 amounted to inhuman and degrading treatment since, in particular, the cell was overcrowded and the sanitary conditions very poor.

2. The applicant complained under Article 5 § 3 of the Convention that he had not been brought promptly before a judge.

3. Relying on the same provision, Article 5 § 3, the applicant complained that his detention had been unjustified and unreasonably long.

4. He further complained under Article 5 § 4 of the Convention that his lawyer had been refused access to the case file and on one occasion had not been allowed to represent him, that the courts examined his appeals against detention with substantial delays and that the District Court's review of the lawfulness of his detention had been purely formal.

THE LAW

1. The Government's objections as regards exhaustion of domestic remedies and alleged abuse

The Government stated that the applicant had not made use of the possibilities to appeal to the competent prosecutors against his detention or to complain of its conditions. In their view, he should have also brought civil actions for damages. As he had filed an application in Strasbourg without having done so, he had abused the right of petition under the Convention. Furthermore, the applicant had attempted to mislead the Court as he had stated that his lawyer had been refused access to the case file whereas in reality he had been regularly informed by the investigator about all procedural steps taken in the criminal proceedings.

The applicant replied that the prosecution authorities had no power to improve the conditions of his detention. As to the possibility to file a civil action for damages in this respect, the applicant stated that the relevant law and practice were extremely restrictive and that no successful cases had been reported. The applicant also submitted that he had exhausted all effective remedies in respect of the alleged violations of Article 5 § 3 of the Convention and that his lawyer had not been allowed to study the case file, as evidenced by the District Court's repeated written refusals.

The Court finds that the Government have not established convincingly that the prosecutors could effectively remedy the problems concerning the material conditions of the applicant's detention or that there was a judicial practice of awarding damages in cases where it was claimed that conditions of detention were inhuman or degrading. As regards the complaint that the applicant was not brought before a judge or other officer exercising judicial power, this grievance is directed at the institutional structure and functions of the prosecution and investigation services under Bulgarian law, which could not be remedied through appeals.

The Court also finds that by filing several judicial appeals against his detention, the applicant made normal use of the remedies provided for under Bulgarian law in respect of the justification for and length of his detention.

Finally, the allegation of abuse is groundless.

It follows that the Government's objections must be dismissed.

2. Complaint under Article 3 of the Convention of the allegedly inhuman and degrading conditions of detention

The applicant complained under Article 3 of the Convention of the conditions of his detention until 16 June 1998.

Article 3 provides:

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

The Government stated that the applicant had not raised complaints under Article 3 of the Convention and that it was surprising that the Court had included the issue in its partial decision of 26 October 2000.

The Government also disputed some of the applicant's allegations about the material conditions of his detention and stated that the complaint under Article 3 of the Convention was manifestly ill-founded.

The applicant reiterated his complaint and stated that at the relevant time he had been suffering from a psychiatric problem, as established by the psychiatric experts who had examined him for the purposes of the criminal proceedings against him. He should not therefore have been kept in the appalling conditions of the detention facility of the Plovdiv Investigation Service. Furthermore, he had not been treated by psychiatrists.

The applicant also submitted copies of newspaper articles according to which various officials had admitted that the conditions in the Plovdiv Investigation Service detention facility had been designed to torture the detainees and bring pressure to bear on them. The applicant also referred to the 1995 report of the CPT on their visit to Bulgaria in which the conditions obtaining in similar detention facilities were described as inhuman and degrading.

The Court notes that the application form submitted by the applicant contains the applicant's detailed description of his conditions of detention and his complaint under Article 3 of the Convention. Therefore, the Court must examine his allegation that those conditions amounted to inhuman and degrading treatment.

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 should depend on 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. Complaint under Article 5 § 3 of the Convention that upon his arrest the applicant was not brought before a judge or other officer authorised by law to exercise judicial power

Article 5 § 3 provides, in so far 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 stated that at the relevant time it was widely believed by legal professionals and scholars in Bulgaria that the investigators and prosecutors, before whom arrested persons were brought, could be regarded as "officer[s] authorised by law to exercise judicial power" despite their participation in the prosecution of the detainee. That opinion changed after the Court's *Assenov and Others v. Bulgaria* judgment (28 October 1998, *Reports* 1998-VIII) and the system was reformed with effect from 1 January 2000.

The applicant referred to the Court's case-law in similar cases against Bulgaria and stated that investigators and prosecutors in Bulgaria could not be regarded as officers authorised by law to exercise judicial power within the meaning of Article 5 § 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 should depend on 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.

4. Complaint under Article 5 § 3 of the Convention of the alleged lack of justification and the alleged excessive length of the applicant's detention

The relevant part of Article 5 § 3 provides:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article ... shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

The Government stated that the applicant's detention had been necessary and justified throughout in view of the seriousness of the charges against him. The applicant had not established the existence of circumstances excluding any danger that he would abscond, re-offend or obstruct the course of justice. Furthermore, there were no delays attributable to the authorities. The case was examined within a reasonable time.

The applicant stated that there had been no proof of any danger that he would abscond or commit an offence and that the authorities had not acted with due diligence. In particular, a period of forty-eight days for the preparation of the indictment had been excessive as the case had not been

complex. Furthermore, the intervals between the District Court's hearings had also been excessively long.

The Court observes that the applicant was arrested on 27 December 1997 and was convicted on 18 December 1998. The period under consideration is thus one year less nine days.

It has not been disputed before the Court that the applicant's remand in custody was based on a reasonable suspicion that he had committed an offence. Indeed, the applicant was arrested at the scene of the crime.

In these circumstances the Court must establish whether after a certain lapse of time the other grounds given by the judicial authorities justified his deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (*Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV).

The Court notes that, unlike the case of *Ilijkov v. Bulgaria* (no. 33977/97, §§ 59 and 79, 26 July 2001, unreported) where the authorities had only relied on Article 152 §§ 1 and 2 of the Code of Criminal Procedure – which, as construed by the Supreme Court, contained a presumption that detention on remand was always necessary barring special circumstances –, in the case at hand the District Court in its decisions of 21 May, 1 October and 23 November 1998 embarked on an analysis *in concreto* of the relevant circumstances (see, for a similar exception from the *Ilijkov* facts, *D.E. and Others v. Bulgaria* (dec.), no. 44625/98, 14 November 2002, unreported).

In particular, the District Court referred to the applicant's previous conviction and to the fact that the charges concerned an offence committed during the operational period of the suspended sentence imposed after that conviction. The District Court also upheld the prosecutor's arguments that there had been a reasonable suspicion against the applicant and that the charges concerned a violent offence. In this latter respect the District Court had before it the statements of Ms D., the victim, who feared that if released the applicant might hurt her. The District Court concluded that there existed "undoubtedly" a danger that the applicant might re-offend and obstruct the course of justice. Finally, the District Court also examined in detail the applicant's personal circumstances and, in particular, his arguments about his health, his family and his sick mother.

It can therefore be considered that there existed "relevant" and "sufficient" grounds justifying the applicant's detention, including during its last several months. This conclusion cannot be affected by the unfortunate reasoning of the earlier decision on the applicant's detention, that of 23 January 1998.

The Court must also establish whether the proceedings were conducted with the requisite diligence. In this connection, it finds that their total length – less than one year from commencement to conviction – was not of itself

excessive. The preliminary investigation proceeded at a good pace. The facts concerning the proceeding before the District Court do not reveal excessive delays attributable to the authorities.

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

5. Complaints under Article 5 § 4 of the Convention

The applicant complained that his lawyer had been refused access to the case file and on one occasion had not been allowed to represent him. He further maintained that the courts examined his appeals against detention with substantial delays and that the District Court's review of the lawfulness of his detention had been purely formal.

Article 5 § 4 of the Convention provides:

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

As regards access to the case file, the Government submitted that the applicant's lawyer had been regularly informed by the investigator about all procedural steps and had had full knowledge of the relevant material.

The Government also maintained that on 23 January 1998 the District Court had rightly refused to allow the participation of the applicant's lawyer as the written authorisation form presented by him had not been made in conformity with the relevant rules and "the established practice".

Disputing the applicant's claim that his appeals against detention were not examined speedily, the Government stated that the appeal of 5 January 1998 could not be transmitted to the District Court immediately since the investigator had already scheduled the applicant's questioning for 12 January 1998 and needed the case file. Furthermore, the applicant's lawyer was responsible for the delay between 19 and 23 January 1998 as he had requested the withdrawal of the president of the bench.

The appeal of 13 April 1998 could not be transmitted to the District Court immediately as the investigator had to finalise certain procedural steps which he had planned in advance. The May Day holidays had also caused an inevitable delay.

The Government also maintained that the District Court had dealt with all aspects of the detention's lawfulness.

The applicant replied that his lawyer had been repeatedly refused access to the case file, in accordance with the predominant practice at the time. The fact that the lawyer had been present during his client's questioning did not mean that he had been allowed to study the case file. The material pertaining to the investigation carried out between 27 December 1997 and 5 January 1998 and, in particular, all documents concerning the searches in the applicant's apartment, had remained inaccessible during the first few

months of the applicant's detention. However, those documents contained important information relevant to the question as to whether or not there existed a reasonable suspicion against the applicant.

The applicant further stated that the only requirement Bulgarian law laid down in respect of representation in court by lawyers was the production of a written authorisation signed by the accused or through a representative. Therefore, the refusal of the District Court to allow the lawyer's participation at the hearing on 23 January 1998 had been arbitrary.

As to the "speediness" aspect, the applicant stated that he had not contributed to the allegedly excessive delays.

The Court considers, in the light of the parties' submissions, that the above complaints raise serious issues of fact and law under the Convention, the determination of which should depend on an examination of the merits. The Court concludes therefore that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints under Article 3 of the Convention of the conditions of his detention until 16 June 1998, under Article 5 § 3 of the Convention that upon his arrest he was not brought promptly before a judge or other officer authorised by law to exercise judicial power and his complaints under Article 5 § 4 that the courts examined his appeals against detention with substantial delays and only formally and that the applicant's lawyer was refused access to the case file and on one occasion was not allowed to represent him in the proceedings concerning his pre-trial detention;

Declares the remainder of the application inadmissible.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President