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. 39269/98
by Ivan KEPENEROV
against Bulgaria

The European Court of Human Rights (Fourth Section), sitting on 12 September 2002 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mr G. BONELLO,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr V. ZAGREBELSKY,
Mrs E. STEINER, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 12 October 1997 and registered on 9 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 1 February 2001,

Having regard to the parties' observations,

Having deliberated, decides as follows:

THE FACTS

The applicant is a Bulgarian national, born in 1939 and living in Sofia. The respondent Government were represented by their co-agent Mrs G. Samaras, 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.

On 8 February 1995 the District Prosecutor's Office in Sofia opened an inquiry pursuant to a complaint by the director of the local telephone service who had stated that the applicant had been harassing him and other employees with offensive statements and allegations that his telephone had been tapped.

On 5 June 1995 one of the applicant's children complained of her father's aggressive behaviour and requested his examination by a psychiatrist. She later wrote again, stating that the applicant had beaten her and enclosed a medical certificate.

Between September and November 1995 the local police department collected written statements by employees of the telephone service, the applicant's daughter, his wife and neighbours.

The District Prosecutor's Office in Sofia invited the applicant to undergo a psychiatric examination on 23 January 1996. The applicant did not comply.

On 13 February 1996 a prosecutor ordered the applicant's forced psychiatric examination and instructed the police to arrest him and bring him to the local mental health centre. These instructions did not state the length of the applicant's confinement.

The applicant was not informed of the above decisions.

On 22 February 1996 the applicant was arrested and brought to the Sofia mental health centre. On the same day, after a short examination, he was transferred to a psychiatric hospital.

As it transpires from a letter written in 2001 by the director of the hospital in relation to the applicant's complaints before the Court, the hospital administration had believed that the prosecutor had ordered the applicant's confinement for thirty days.

On 26 February 1996 the applicant submitted a written complaint addressed to the hospital administration requesting his release. He also complained orally stating that his detention was unlawful. At least on one occasion the applicant asked for a lawyer.

On 22 March 1996 the applicant was discharged and went home. He appeared voluntarily for an examination on 28 March 1996 but did not appear when invited for another examination on 5 April 1996.

On 2 May 1996 the psychiatric hospital sent to the District Prosecutor's Office the doctors' opinion on the applicant's mental health. They noted certain disorders but concluded that the question whether forced psychiatric treatment was necessary should be decided by the competent court following a renewed assessment.

On 5 June 1996 the prosecution authorities submitted to the Sofia District Court a request for the applicant's compulsory psychiatric treatment under section 36 of the Public Health Act. On 8 April 1997 the proceedings were terminated.

On an unspecified date in 1996 the applicant complained to the Sofia City Police Department against his arrest and detention and the behaviour of the police officers involved. On 11 November 1996, in the framework of the proceedings before the Sofia District Court - a party to which were the prosecution authorities -, the applicant again complained about the events of February and March 1996 and enclosed a copy of his complaint to the police.

On 1 September 1997 the applicant submitted complaints to the Chief Public Prosecutor's Office and to the Minister of the Interior describing the events surrounding his arrest and detention in the psychiatric clinic and stating that the authorities had acted unlawfully. By letter sent on 16 September 1997 the Third District Police Department in Sofia, to which the Ministry of the Interior had transmitted the applicant's complaint, replied that the police officer involved had acted in accordance with a prosecutor's order and therefore lawfully. In response to the applicant's request to meet the director of the district police and obtain other information the same police department, in a letter of 20 October 1997, stated that the police had acted lawfully, under a prosecutor's order. The applicant has not substantiated whether he had received an answer to his complaint addressed to the prosecution authorities.

B. Relevant domestic law

According to Section 36 §§ 3-6 read in conjunction with Section 59 § 2, Section 61 and Section 62 § 1 of the Public Health Act, a mentally ill person can be committed to compulsory psychiatric treatment by a decision of a district court.

Such judicial proceedings are instituted by a district prosecutor who is under the obligation to undertake a prior inquiry, including a psychiatric examination, in order to assess the need for instituting proceedings. The prosecutor therefore would normally invite the person concerned to undergo an examination in the framework of his inquiry.

The Public Health Act, as in force at the relevant time, did not contain a provision authorising a prosecutor to order a person being brought by force to a hospital and his detention at the hospital for purposes of such a

psychiatric examination. Under Section 62 § 2 a prosecutor could issue an order for a compulsory examination, but only in respect of alcoholics or drug addicts.

Certain powers were given to the prosecutor in case the person's state of health required emergency measures. In this situation the chief medical doctor of a hospital could order a person's temporary compulsory treatment. The doctor had to inform immediately the competent prosecutor, who had to institute proceedings before the competent court (Section 36 § 5 of the Act and Section 70 of the Regulations to the Act). According to Section 70 § 2 of the Regulations to the Act, if the prosecutor refused to institute judicial proceedings, the chief medical doctor had to release the patient immediately.

The relevant law does not provide for an appeal to a court in cases of persons detained for an examination in the framework of a district prosecutor's inquiry. Section 105 § 4 of the Public Health Act, read in conjunction with the Administrative Procedure Act, provided for a judicial appeal, but only against orders for compulsory treatment of persons suffering from a contagious disease (Section 36 § 2) and against "[other orders] of the public health authorities", not of the prosecution authorities.

Certain amendments to the Public Health Act were introduced in February 1997. These amendments, in paragraphs 2 - 4 of Section 61, provide that a prosecutor, in the framework of his inquiry, can order confinement to a psychiatric hospital for the medical examination of a person who has refused to undergo such an examination voluntarily. However, no provision allowing judicial review of the prosecutor's order was introduced.

The Code of Criminal Procedure, by virtue of an amendment in force since 1 January 2000, introduced a judicial procedure for confinement in a psychiatric clinic of a person against whom criminal proceedings have been brought. This procedure, however, does not concern persons who have been confined in a clinic for a psychiatric examination pursuant to a prosecutor's order under Section 61 of the Public Health Act.

COMPLAINTS

The applicant complained that his detention in a psychiatric clinic had been arbitrary and unlawful.

THE LAW

The applicant's complaint falls to be examined under Article 5 § 1 of the Convention which provides, insofar as relevant:

> "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:
>
> ...(e) the lawful detention of ... persons of unsound mind ..."

The Government submitted that the applicant had not exhausted all domestic remedies as his complaints to the prosecution authorities had only been made after his release from the psychiatric hospital. Furthermore, he had introduced his application one year and seven months after his release and therefore out of time.

As to the merits, the Government accepted that Bulgarian law and practice in respect of psychiatric confinement did not meet the Convention requirements, as the Court had found in *Varbanov v. Bulgaria* (no. 31165/95, ECHR 2000-X).

The applicant reiterated his complaint.

The Court observes that the applicant requested the hospital administration to release him and insisted to consult a lawyer. It does not appear that the hospital administration, which held the applicant in execution of a prosecutor's order, transmitted these complaints to the competent authorities or that the latter examined them.

After his release the applicant wrote to the prosecution authorities and to the police and introduced his application less than six months after the receipt of replies from the police. Having regard to all relevant circumstances, the Court thus finds that the applicant has made normal use of the available domestic remedies and has complied with the six months' time-limit under Article 35 § 1 of the Convention.

The Court considers, having regard to all the material in its possession, that the applicant's complaint that his detention was unlawful and arbitrary requires an examination of the merits and 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.

For these reasons, the Court unanimously

Declares the remainder of the application admissible, without prejudicing the merits of the case.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President