CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 38822/97
by Krasimir SHISHKOV
against Bulgaria

The European Court of Human Rights (Fourth Section) sitting on 31 August 1999 as a Chamber composed of

Mr M. Pellonpää, *President*,
Mr G. Ress,
Mr A. Pastor Ridruejo,
Mr L. Caflisch,
Mr J. Makarczyk,
Mr V. Butkevych,
Mrs S. Botoucharova, *Judges*,

with Mr V. Berger, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 10 October 1997 by Krasimir Shishkov against Bulgaria and registered on 28 November 1997 under file no. 38822/97;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 6 November 1998 and the observations in reply submitted by the applicant on 7 January 1999;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Bulgarian national born in 1970 and residing in Rakovski, the region of Plovdiv. Before the Court he is represented by Mr Dimitar Marinov, a lawyer practising in Plovdiv.

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

A. Particular circumstances of the case

On 22 August 1997 at about 3.30 p.m. the applicant was arrested on the suspicion of having stolen from a Ms S. half a kilogram of golden jewellery, 800 American dollars, 20 East Caribbean dollars, 5,000 German marks and one million Bulgarian levs. The total value of the stolen objects and bank notes was later estimated at 20,110,448 Bulgarian levs (about 70,000 FF). The charges against the applicant concerned a "serious" crime, within the meaning of the Penal Code (Наказателен кодекс) (see below, Relevant domestic law and practice).

According to the indictment, the applicant, who was employed by a private security company to watch over the house of Ms S., profited from her and her family's departure on holidays and stole the above valuables on 2 August 1997. On the same day he brought part of the jewellery and bank notes to his sister's home and told her to store them. Some ten days later, having learned that Ms S. had discovered the theft, the applicant travelled to the nearby city of Plovdiv, sold some of the valuables to jewellers and returned home. On 19 August 1997 the applicant's family (his wife and a two months' old baby) visited the applicant's mother in the town of Perushtiza. There the applicant gave to his mother the remaining money.

On 22 August 1997, shortly after his arrest, while in the police car, the applicant admitted to the theft and directed the police to the persons who had bought from him some of the stolen jewellery. Most of the valuables were recovered by the police on the same day. Some of the money was voluntarily returned by the applicant's mother.

On 23 August 1997 the applicant was brought before an assistant investigator (помощник следовател) who charged him officially and decided that he should be detained on remand. The detention order, which stated that there existed a danger of absconding or of committing other crimes without specifying further details, was approved on the same day by a prosecutor.

On 25 August 1997 the applicant appointed a lawyer to represent him.

On 26 August 1997 the assistant investigator transmitted the file to the District Prosecutor's Office (Районна прокуратура) inviting it to reclassify the proceedings, which had been opened as summary investigation (дознание), into an ordinary investigation (следствие).

On 5 September 1997 the District Prosecutor's Office transmitted the case-file to the Regional Prosecutor's Office (Окръжна прокуратура) considering that the proceedings fell under the latter's competence. By decision dated 10 September 1997 a prosecutor from the Regional Prosecutor's Office found that the case fell to be dealt with by the District Prosecutor's Office and referred it back. On 12 September 1997 the case-file was transmitted to the District Prosecutor's Office.

On 3 September 1997 the applicant's lawyer prepared an appeal to the Plovdiv District Court (Районен съд) against his client's detention on remand. The appeal was submitted through the District Prosecutor's Office, as required by Article 152a § 2 of the Code of Criminal Procedure (Наказателно процесуален кодекс). There is a dispute between the parties as to the date on which the appeal was actually submitted to the District Prosecutor's Office. The applicant maintains that the appeal was handed over to the prosecutor on duty on 3 September 1997 who, according to the usual practice, transmitted it to the registry without registering it himself. According to the Government the date on which the appeal was registered at the registry, 8 September 1997, should be considered as the date of its submission, there being no evidence supporting the applicant's version of the facts.

On 15 September 1997, having established that his appeal against the applicant's detention had not arrived at the District Court, the applicant's lawyer submitted another copy thereof directly to the District Court.

On 16 September 1997 the District Prosecutor's Office transmitted the applicant's appeal against his detention to the District Court. On the same day a judge at the District Court listed the case for a hearing on 19 September 1997. The applicant's lawyer was summoned by telephone on the same day.

The District Court held a hearing on 19 September 1997 in the presence of the applicant, his lawyer and a prosecutor.

The prosecutor stated that the appeal should be rejected on formal grounds as it had been submitted after the expiry of the seven days' time-limit under Article 152a § 1 of the Code of Criminal Procedure. The applicant's lawyer explained that he had been refused access to the case-file, which had prevented him from preparing a timely appeal.

By decision of 19 September 1997 the District Court rejected the appeal as inadmissible. The Court found that the applicant's appeal was dated 3 September 1997 whereas the decision to detain him had been taken and notified to him on 23 August 1997. Furthermore, on 25 August 1997 the applicant had authorised a lawyer to represent him. On this basis the court found that the appeal had been submitted after the expiry of the relevant seven days' time-limit and was inadmissible. The Court further stated that "there [had] been no change of circumstances" within the meaning of Article 152a § 4 of the Code of Criminal Procedure.

By letter dated 19 September 1997 the applicant's lawyer submitted to the Regional Prosecutor's Office a request for the removal of the district prosecutor dealing with the case. The lawyer stated *inter alia* that nothing had been done in the case since 23 August 1997 and that the prosecutor was delaying its examination. The lawyer also complained that he was unable to obtain detailed information about the accusation.

On 25 September 1997 the applicant's request together with the case-file was transmitted to the Regional Prosecutor's Office. On 1 October 1997 the request for the prosecutor's removal was refused and the case-file was transmitted back to the District Prosecutor's Office.

On 6 October 1997 the District Prosecutor's Office decided to reclassify the proceedings from a summary investigation into an ordinary investigation. On 8 October 1997 the case was assigned to an investigator with the instruction to handle it on an urgent basis in view of the fact that the accused was detained on remand.

Between 13 October 1997 and 8 December 1997 the investigator questioned the applicant twice, summoned three witnesses, requested from the National Bank information about the exchange rates of certain currencies, appointed an expert to assess the value of the stolen objects, and brought charges against the applicant's sister, Ms K., who had allegedly aided the applicant in selling the stolen objects. No further action was taken between 8 December 1997 and 21 January 1998. On the latter date the investigator put an additional question to the expert.

It appears that throughout the proceedings the investigation was centred on clarifying the exact number, weight, quality and value of certain pieces of jewellery, all remaining relevant facts having been established in the first days of the proceedings. The difficulty as regards the jewellery arose from the fact that there were discrepancies between their descriptions given by the applicant and by the owners.

On 30 January 1998 the investigator reformulated the charges against the applicant, notified him accordingly and heard him briefly. On 5 February 1998 the investigator concluded his work on the case and transmitted the file to the District Prosecutor's Office.

On an unspecified date between 2 and 11 February 1998 the applicant's lawyer submitted through the District Prosecutor's Office a second appeal against his client's detention on remand. He stated *inter alia* that the applicant had admitted to the theft, had directed the police to recover the stolen objects and had been co-operative. Also, there was no danger of absconding because the applicant had a wife and a young baby, and there was no danger of committing crimes because he had no prior criminal record and had shown that he regretted his acts. The lawyer further stated that the relevant facts had already been established, the applicant not being responsible for the difficulties in determining the exact value of the jewellery, and that therefore there was no justification for the applicant's continuing detention.

The lawyer, who had been appointed by the applicant in October 1997 and replaced his previous lawyer, did not indicate his address and telephone number on the appeal papers. The parties have not clarified whether this information figured on other documents in the case-file.

On 11 February 1998 the appeal was transmitted to the District Court. By order of Friday, 13 February 1998, the Court listed the matter for Monday, 16 February 1998, at 9.00 a.m., and summoned the applicant in person and the prosecutor. The applicant was summoned through the prison authorities.

On 16 February 1998 the District Court heard the applicant and the prosecutor. The applicant's lawyer was not present. The applicant stated that he had admitted to the crime, that he had a seven months' old child and that he wanted to preserve his family. He explained that when he had committed the theft he was suffering from depression due to his financial problems.

The District Court refused to release the applicant. It noted that the charges against him concerned a serious wilful crime punishable by a period of three to fifteen years' imprisonment in which case Article 152 § 1 of the Code of Criminal Proceedings required that the accused be detained on remand. Furthermore, the investigation was still pending and, therefore, there existed a danger of absconding and obstructing justice. The fact that the applicant had made full confessions did not affect in any way the question whether he should be detained on remand.

The court further stated that the applicant's argument concerning his family could not serve as a ground for his release and added that he should have thought about his family before committing the crime.

The court did not mention that there had been a previous appeal against the applicant's detention and did not state whether since September 1997 there had been a "change of circumstances", within the meaning of Article 152a § 4 of the Code of Criminal Procedure.

On 26 February 1998 the District Prosecutor's Office referred the case back to the investigator instructing him to appoint another expert to assess the value of the jewellery and to modify the charges. On 23 March 1998 the investigator appointed an expert. On 27 March 1998 the investigator modified the charges against the applicant and his sister, notified them accordingly and heard them briefly.

On 23 March 1998 the investigator addressed to the Regional Prosecutor's Office a request for the prolongation of the time-limit for the investigation. The request, which was submitted through the District Prosecutor's Office, was transmitted to the Regional Prosecutor's Office on 30 March 1998. Apparently the case-file was enclosed thereto. The request was granted and the case-file was returned on an unspecified date in the beginning of April 1998.

On 1 April 1998 the applicant submitted through the District Prosecutor's Office a third appeal against his detention on remand. On 8 April 1998 the District Prosecutor's Office transmitted the appeal to the District Court.

The District Court heard the appeal on 13 April 1998 in the presence of the applicant and his lawyer. The prosecutor stated that the applicant should be released.

The District Court granted the request and decided to release the applicant on bail. It noted that the applicant had a permanent address, that he had not obstructed the investigation, and that he did not have a criminal record. The District Court further stated that the investigator had expressed the opinion that the applicant's detention on remand "had produced its effects". Furthermore, there was no danger of obstructing justice because the investigation had been concluded and there was no danger of absconding in view of the applicant's family situation.

The applicant posted bail and was released on an unspecified date in April 1998.

On 14 May 1998 an indictment was submitted to the District Court. On 27 July 1998 the District Court referred the case back to the prosecutor for further investigation. On 19 August 1998 the prosecutor, after having estimated that the value of the stolen objects was lower than that initially indicated, terminated the criminal proceedings for the difference and submitted a fresh indictment. The District Court listed the case for a hearing on 19 December 1998. The parties have not informed the Court of any further developments.

B. Relevant domestic law and practice

1. "Serious" crimes

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

2. Legal criteria about detention on remand

Article 152 §§ 1 and 2 of the Code of Criminal Procedure provide as follows:

> "(1) Detention on remand shall be imposed [in cases where the charges concern] a serious wilful crime.
>
> (2) In the cases falling under paragraph 1 [detention on remand] may not be imposed if there is no danger of the accused evading justice, obstructing the investigation, or committing another crime."

According to the Supreme Court's practice Article 152 § 1 requires that a person charged with a serious crime shall be detained on remand. The only exception is provided for under Article 152 § 2, which entitles the authorities not to detain an accused in case it is clear, beyond doubt, that there may be no danger of absconding or re-offending. Such danger must be objectively excluded as, for example, in the case of an accused who is seriously ill, or of an old age, or who is detained on other grounds, such as serving a sentence (опред. No. 1 от 4.5.1992г. по н.д. 1/92г. на ВС II н.о., Сб. 1992/93, стр. 172; опред. No. 4 от 21.2.1995 по н.д. 76/95г. на ВС II н.о.; опред. No. 78 от 6.11.1995 по н.д. 768/95г. на ВС II н.о.; опред. No. 24 по н.д. 268/95г. на ВС, I н.о., Сб.1995, стр. 149).

3. Appeals against detention on remand

Article 152a of the Code of Criminal Procedure is a new provision, in force since 11 August 1997. It provides as follows:

> "(1) The detained person shall be provided immediately with a possibility to file an appeal to a judge at the competent court against the [detention on remand], not later than seven days following its imposition. The judge shall summon the parties and decide at an open hearing not later than three days following the receipt of the appeal at the court. [An amendment in force since 24 October 1997 replaced the words "a judge at the competent court" by the words "the competent first instance court".]
>
> (2) The appeal shall be lodged through the body which has ordered the detention. On the day it has been lodged, the appeal, accompanied by the decision under Article 148 § 1 [the decision imposing the detention] and all materials in the case, shall be transmitted to the court.
>
> (3) The court shall deliver a decision which is not subject to appeal. The court shall either quash the detention order and impose another measure of control [of the accused] or dismiss the appeal.
>
> (4) In case there has been a change of circumstances the detained person may again appeal to the court against the [detention on remand]."

According to Article 181 § 2 of the Code of Criminal Procedure, also a new provision in force since 11 August 1997, an accused person detained on remand can appeal against his detention only to the competent court. It appears that, therefore, a prosecutor cannot order release of a person detained on remand.

COMPLAINTS

1. The applicant submits that there has been a violation of Article 5 § 1 of the Convention as there was no danger of absconding to justify his detention. Thus, the applicant did not have a criminal record, he is married and has a child who was two months' old at the time of his arrest. Also, he has high school education and a job and has served in the army.

The applicant further alleges violations of Article 5 § 3 of the Convention in that he was not brought before a judge or other officer exercising judicial power and that his right to a trial within a reasonable time or to release pending trial was not respected.

2. The applicant complains, invoking Article 5 § 4 and Article 6 of the Convention, that his first appeal against detention was not examined speedily, that the District Court refused to examine it on the merits, that he had no access to the case-file from the moment of his arrest and until 9 October 1997, and that his lawyer was not summoned for the hearing of 16 February 1998, when the District Court examined his second appeal against detention.

3. The applicant also complains under Article 6 of the Convention of the length of the criminal proceedings against him.

PROCEDURE

The application was introduced on 10 October 1997 before the European Commission of Human Rights and registered on 28 November 1997.

On 16 April 1998 the Commission decided to communicate the application to the respondent Government.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

The Government's written observations were submitted on 6 November 1998, after an extension of the time-limit fixed for that purpose. The applicant replied by letter postmarked 7 January 1999.

On 18 February 1999 the Court granted the applicant legal aid.

THE LAW

1. The Government invite the Court to reject the application as being an abuse of the right to petition. They allege that the applicant makes use of unsubstantiated and untrue statements thus "tarnishing Bulgaria's international prestige".

The applicant rejects these allegations and submits that the very fact that every Bulgarian is free to submit an application to the Court in Strasbourg serves to maintain Bulgaria's prestige.

The Court finds that the Government's objection that there has been an abuse of the right to petition within the meaning of Article 35 § 3 of the Convention is unsubstantiated, there being no indication that the application was knowingly based on untrue facts (cf. the Akdivar and Others v. Turkey judgment of 16 September 1996, *Reports of judgments and decisions* 1996-IV, pp. 1210 and 1211, §§ 53 and 54).

2. The applicant alleges, invoking Article 5 §§ 1(c) and 3 of the Convention, that upon his arrest he was not brought before a judge or other officer exercising judicial power, that his deprivation of liberty was not justified from the outset, and that it was unreasonably lengthy.

Article 5 of the Convention, insofar as relevant, provides as follows:

"Article 5 – Right to liberty and security

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;
…

3. 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 and 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 submit that the applicant was detained on remand by an assistant investigator who, after having obtained the prosecutor's approval, personally informed the applicant of his decision. The Government contend that the assistant investigator is an "officer authorised by law to exercise judicial power" because he is independent from the executive and the parties to the proceedings. He is not independent from the investigator and the prosecutor who supervise his work. However, under Bulgarian law investigators and prosecutors form part of the judicial branch of government. Furthermore, the assistant investigator examines all arguments militating for or against detention. The fact that his decision is subject to approval by an investigator and a prosecutor has no impact on his independence.

The Government further maintain that the applicant's detention was in conformity with the criteria provided for under Article 152 § 1 of the Code of Criminal Procedure. This provision is based on the understanding that in case of charges concerning "serious crimes" the danger of the accused person's unlawful behaviour occurs by the very fact of his being charged. The gravity of the charges itself may motivate the accused person to abscond or commit a crime. Detention on remand is therefore the rule in such cases. A derogation of this rule, as provided for under Article 152 § 2 of the Code, may be applicable only where there

are circumstances eliminating even the slightest danger of absconding, obstructing justice, or committing another crime. Such may be a case where, for example, the accused person is seriously ill, of an old age, or is already under detention on other grounds. The Government stress that the above interpretation of the relevant provisions has been developed by the Supreme Court.

The Government contend that there existed a reasonable suspicion of the applicant having committed a crime. Furthermore, when examining his second appeal against detention, the District Court, in its decision of 16 February 1998, discussed all his arguments and found that it could not be considered that any danger of absconding, obstructing justice or committing other crimes was excluded. In the Government's view the reasons given to justify the applicant's detention were, therefore, relevant and sufficient as required according to the Court's case-law.

The Government further submit that criminal proceedings may be expedited insofar as this does not affect their effectiveness and fairness. In the applicant's case the Bulgarian authorities proceeded with due diligence and with a reasonable pace. In particular, the investigation authorities had to retrieve stolen objects from four persons. They questioned 16 witnesses, interrogated the applicant and his sister on nine occasions, and ordered three consecutive expert reports on the value of the stolen jewellery. This was necessary in view of the difference in the testimony of several witnesses about the type, quality and weight of the golden jewellery. Furthermore, the case-file had to be transmitted on several occasions between the District Prosecutor's Office, the Regional Prosecutor's Office and the District Court due to hesitation on the exact legal classification of the offence and because of the applicant's appeals and complaints.

The applicant replies that under Bulgarian law assistant investigators, investigators and prosecutors cannot be regarded as independent judicial officers. He refers in particular to the case of Assenov and Others v. Bulgaria (judgment of 28 October 1998).

The applicant contends that a careful analysis of the relevant facts, if it were undertaken by the domestic authorities, would have led them to conclude that there was no danger of him absconding or committing other crimes. He is married, has a child who, at the time of his arrest, was a two months' old baby, did not have a criminal record, had a job, and a good reputation. When arrested he admitted to the theft and actively assisted the police in recovering the stolen valuables. Furthermore, the authorities never discussed the fact that the applicant, being in possession of a considerable sum of money, did not attempt to abscond even when he learned that the theft had been discovered. Their formalistic approach was the consequence of the provision of Article 152 §§ 1 and 2 of the Code of Criminal Procedure and the Supreme Court's practice, which are not compatible with the Convention.

The applicant further invites the Court to analyse the reasons given in the District Court's decision of 13 April 1998 ordering his release on bail and, in particular, to compare them to the reasons given in the decision of 16 February 1998. On 13 April 1998 the District Court ordered the applicant's release on bail because: i) he had a permanent address; ii) he did not obstruct the investigation; iii) did not have a criminal record: iv) had a wife and a young baby; and v) the preliminary investigation had been completed. It is evident that all but the last of these facts existed at the time of his arrest. However, they were not taken into account at that time. They were not taken into account even in the decision of 16 February 1998 when the District Court considered the applicant's family situation and co-operative attitude as being irrelevant. Moreover, the fact that the applicant was released

only after nearly eight months, and certain remarks contained in the District Court's decisions, reveal that the applicant's detention on remand was viewed as a form of punishment rather than as a measure necessary to prevent him from absconding or committing crimes.

The applicant also contends that the length of his detention on remand is imputable to the authorities. Analysing the Government's arguments in this respect he points out that the retrieval of the stolen objects and the applicant's questioning date from the first two days following his arrest, 22 and 23 August 1997. Then followed a period of complete inactivity until 10 October 1997 as the authorities' hesitated about the legal classification of the offence and, as a result, about the competence of the District Prosecutor's Office to deal with the matter. Furthermore, for three months the case-file was apparently with the expert appointed to assess the value of the stolen jewellery.

Having examined the above complaints, the Court finds that they raise serious questions of fact and law which are of such complexity that their determination should depend on an examination of the merits. This part of the application cannot, therefore, be regarded as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and no other grounds for declaring it inadmissible have been established.

3. The applicant complains, invoking Article 5 § 4 and Article 6 of the Convention, that his first appeal against detention was not dealt with promptly and was not examined on the merits, that he did not have access to the case-file, and that the examination of his second appeal was procedurally flawed.

Article 5 § 4 of the Convention 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 submit that the applicant's first appeal against detention was dealt with promptly. It was submitted on 8 September 1997, at a moment when the case-file was at the Regional Prosecutor's Office which was examining the question of the legal classification of the offence. The case-file was returned to the District Prosecutor's Office on 12 September 1997 and on 16 September 1997 the appeal was transmitted to the District Court, which immediately listed the case for 19 September 1997. The applicant's lawyer was summoned by telephone and was present at the hearing. His statements that he was denied access to the case-file are not supported by any evidence. In particular, the lawyer has not presented a registered written request for access to the case-file.

The Government further maintain that the decision of the District Court to reject the appeal as being out of time was in conformity with Article 152a § 1 of the Code of Criminal Procedure. Following its rejection it was open to the applicant to submit another appeal whenever there was a change of circumstances. In the Government's view the very fact that the detention had continued could be regarded as a "change of circumstances". Furthermore, the applicant could appeal relying on the direct applicability of the Convention in Bulgarian law. The Government conclude that the applicant could have submitted a second appeal against his detention immediately after the rejection of his first appeal and that he failed to do so.

In respect of the second appeal against detention the Government maintain that it was examined promptly and that the applicant's lawyer was not summoned because he failed to indicate his address and telephone number. In these circumstances the District Court summoned the applicant who could have contacted his lawyer. Furthermore, the applicant did not request the adjournment of the hearing to allow the attendance of his lawyer.

The applicant replies that his first appeal was submitted on 3 September 1997 to the prosecutor on duty who, according to the usual practice, does not register the incoming documents but hands them to the registry of the District Prosecutor's Office. It was not before 16 September 1997 that the District Prosecutor's Office transmitted the appeal to the competent court. Therefore, the appeal was not dealt with speedily.

The applicant further submits that Article 5 § 4 of the Convention requires not only that the detained person be able to "take proceedings", but also that in these proceedings "the lawfulness of his detention … be decided … and his release ordered if the detention is not lawful". In violation of this provision the District Court rejected his first appeal, thus abandoning its duty to examine whether the detention was lawful. The District Court considered that Article 152a § 1 of the Code of Criminal Procedure imposed a seven days' time-limit for the submission of an appeal against detention. In the applicant's view that provision should be interpreted as requiring the authorities to secure to the detained person, within seven days, a possibility to appeal. Construing it as a limitation on the right of a detained person to challenge the lawfulness of his detention leads inevitably to a violation of the Convention.

The applicant further submits that following the District Court's decision of 19 September 1997 he could not submit a new appeal against his detention unless there was a change of circumstances. In reality, in view of Article 152 § 1 of the Code of Criminal Procedure, which provides that, as a rule, anyone charged with a "serious" crime should be detained, only a modification of the legal classification of the charges would have made a second appeal possible and likely to succeed.

The applicant also contends that according to the usual practice lawyers and accused persons are refused access to the case-file during the preliminary investigation, allegedly for the preservation of investigation secrets. The applicant's lawyer made unsuccessful attempts to see the case-file. He complained in this respect at the hearing of the District Court on 19 September 1997 and in his request of the same date to the Regional Prosecutor's Office for the removal of the supervising prosecutor. It should be noted that the proxy whereby the applicant appointed his lawyer on 25 August 1997 contains no reference to the number of the investigation proceedings and that his first appeal against detention and his request of 19 September 1997 bear reference to a wrong case number, the number of the prosecutor's file, because neither the applicant, nor his lawyer could obtain even the number of the investigation file. The applicant emphasises that the reality of a lawyer's everyday work must be taken into account and qualifies as inappropriate the Government's insistence that his attempts to gain access to the case-file be proven by the presentation of duly registered written requests.

As regards his second appeal against detention, the applicant submits that he did not have sufficient time to contact his lawyer, the hearing having been listed for 9.00 a.m. on a Monday.

Having examined the applicant's complaints concerning the examination of his appeals against detention, the Court finds that they raise serious questions of fact and law which are of such complexity that their determination should depend on an examination of the merits. This part of the application cannot, therefore, be regarded as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and no other grounds for declaring it inadmissible have been established.

4. In his reply of 7 January 1999 to the Government's observations the applicant, for the first time, invokes Article 5 § 5 of the Convention stating that he did not have a possibility to obtain compensation for his unlawful and unjustified detention.

The Court notes that the above complaint was introduced after the expiry of the six months' time-limit under Article 35 § 1 of the Convention. It must be therefore rejected in accordance with Article 35 § 4 of the Convention.

5. The applicant complains under Article 6 § 1 of the Convention of the length of the criminal proceedings against him.

The Court notes that as of January 1999, the time of the latest information submitted by the parties, the proceedings had lasted for one year and five months. The investigation having been completed, the case was under examination by the District Court. Furthermore, the applicant has not substantiated any details about the course of the proceedings apart from his submissions concerning the alleged delays at the time of the applicant's detention. In these circumstances the Court finds that the complaint under Article 6 § 1 of the length of the criminal proceedings against the applicant is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with paragraph 4 of the same provision.

For these reasons, the Court, unanimously,

DECLARES ADMISSIBLE, without prejudging the merits, the applicant's complaints that he was not brought before a judge or other officer authorised by law to exercise judicial power, that his deprivation of liberty was not justified and was unreasonably lengthy, and that his right to bring judicial proceedings concerning the lawfulness of his detention was violated;

DECLARES INADMISSIBLE the remainder of the application.

Vincent Berger
Registrar

Matti Pellonpää
President