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. 59913/00
by Kiril Yonkov VASILEV
against Bulgaria

The European Court of Human Rights (First Section), sitting on 14 December 2004 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER, *judges*,
and Mr S. NIELSEN, *Registrar*,

Having regard to the above application lodged on 14 April 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, Mr Kiril Yonkov Vasilev, is a Bulgarian national, who was born in 1974 and lives in Vakarel. He was represented before the Court by Mr I. Yordanov, a lawyer practising in Veliko Tarnovo.

The respondent Government were represented by their agent, Ms M. Kotzeva, 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

On 20 January 1995 the applicant was charged with armed robbery and assault causing heavy injuries on one person and the death of another.

The charges, as modified later, concerned a number of robberies allegedly committed by an organised armed group who posed as traffic policemen and robbed motor vehicles and their passengers. The applicant had allegedly joined the group for its last two robberies. He was accused of being the one who had made the fatal gunshot killing the victim in one of those robberies.

The preliminary investigation was completed in August 1995 and in October 1995 an indictment was submitted to the Regional Court of Veliko Tarnovo against twelve persons, including the applicant.

The Regional Court held hearings on 11 December 1995, 3-10 January, 3-5 June and 2-12 September 1996. Numerous witnesses were heard and other evidence admitted.

On 12 September 1996 the applicant was convicted and sentenced to 16 years' imprisonment. Ten other accused persons were also convicted in the same proceedings.

On 16 September 1996 the applicant appealed to the Supreme Court.

The Supreme Court held hearings on 14 February, 25 April and 27 June 1997.

In 1997 the judicial system in Bulgaria was reformed. As a result, the applicant's case fell within the jurisdiction of the newly created appellate courts. On 1 April 1998 it was assigned to the Veliko Tarnovo Appellate Court and the file transmitted to that newly created court.

The Appellate Court held hearings on 11 January and 8 February 1999.

On 9 February 1999 the court set aside the Regional Court's judgment noting that two of the accused persons had been represented at the investigation stage by the same lawyer despite an obvious conflict of interest. In the court's view, that fact vitiated the whole procedure and warranted remitting the case to the investigation stage.

On 5 August 1999 an investigator reformulated the charges against the applicant.

On 23 September 1999 a fresh indictment was submitted to the Regional Court.

On 5 January 2000 the Regional Court remitted the case to the investigation stage.

On 2 May 2000 a third indictment was drawn up and submitted to the Veliko Tarnovo Regional Court. As all but one of the judges at that court had been involved in the examination of the case or had decided on the accused persons' applications for bail, in June 2000 the case was assigned to another court, the Lovech Regional Court.

A substitute judge and substitute jurors were designated and took part in the proceedings before the Lovech Regional Court.

The court held a hearing on 11 December 2000. It ordered a medical report and adjourned the examination of the case.

In the following three years the court fixed 16 dates for hearings, but the case could not proceed as some of the accused persons or their lawyers had not appeared (the adjourned hearings were listed for 12 February, 9 April, 10 September and 29 November 2001, 21 February, 15 April, 14 June, 1 October, 1 November and 11 November 2002, 14 January, 31 January, 14 March, 28 March, 20 May and 26 September 2003).

The court also held hearings on 18 December 2003 and 20 February and 5 March 2004. As of April 2004 the proceedings were still pending.

In the meantime, in June 2003 two of the accused persons who had been released on bail in 2001 were arrested on charges that they had committed an armed robbery in January 2003 using the same method of operation as that employed by the group in 1994-95.

2. The applicant's detention pending trial

The applicant was detained pending trial on 20 January 1995.

On 12 September 1996 the applicant was convicted and sentenced to a term of imprisonment. On 9 February 1999 the Appellate Court set aside his conviction and sentence and remitted the case to the investigation stage. The applicant remained in pre-trial detention.

Between February 1999 and his release in 2001 the applicant submitted a number of appeals against detention.

His appeal of 14 June 1999 was dismissed on 13 July 1999 by the Regional Court which noted that the applicant had been charged with very serious crimes, that the authorities had been working on the case actively and that the case was complex as it concerned several accused persons, a number of criminal acts and victims who were foreigners. Therefore, the reasonable time requirement had not been breached. As to the applicant's contention that the detention had become unjustified, there being allegedly no proof of any danger of absconding or committing an offence, that

argument was flawed, since under Article 152 § 2 of the Code of Criminal Procedure and the Supreme Court's practice the relevant issue was whether there was proof of absence of any danger of the accused person absconding or committing an offence if released. No such proof existed in the applicant's case.

On 25 August 1999 the Regional Court dismissed another appeal by the applicant against his detention.

In his renewed appeal of 11 January 2000 the applicant relied, *inter alia*, on the new provisions on pre-trial detention, as in force since 1 January 2000. In the applicant's view, under those provisions detention was only justified if there was proof of a danger that the accused person might abscond or commit offences.

The appeal was examined by the Regional Court at a hearing on 20 January 2000. According to the applicant, the prosecutor was sitting next to the judges.

On 20 January 2000 the Regional Court dismissed the appeal. It found that the new provisions in force since 1 January 2000 did not require proof of a danger that the accused person would abscond or commit an offence. The fact that the applicant was charged with a serious offence was sufficient justification.

The court also stated that it had no jurisdiction to deal with the applicant's request to be released upon the expiry of the statutory maximum period of detention. In accordance with paragraph 5 of Article 152 of the Code of Criminal Procedure, release on that ground was to be ordered by a prosecutor. The courts could only deal with the matter on appeal against a prosecutor's refusal.

On 24 January 2000 the applicant appealed to the Appellate Court against the Regional Court's decision of 20 January 2000.

The appeal was examined by the Appellate Court at a hearing on 27 January 2000. At the start of the hearing the applicant's lawyer requested that the prosecutor should not be allowed to sit next to the judges and thus overhear remarks exchanged between the judges and observe their reactions. Furthermore, it could not be excluded that the judges, knowing that the prosecutor was listening, might not feel free in their decisions. In any event, the sight of the prosecutor sitting with the judges inevitably influenced the general perception of the proceedings and, in particular, could raise doubts as to the court's independence and the equality between the parties.

The court rejected the lawyer's objection, stating that the prosecutor's physical place in the courtroom could not possibly affect the equality of the parties, which was a legal principle that was strictly observed.

The lawyer then requested the judges' withdrawal, stating that they had demonstrated partiality by accepting to sit together with the prosecutor. That motion was also rejected.

On 27 January 2000 the Appellate Court dismissed the appeal. It stated that under the relevant law as it stood until 1 January 2000 pre-trial detention had been mandatory in all cases concerning serious offences, save in exceptional circumstances. No such exceptional circumstances existed in the applicant's case: the charges concerned premeditated crimes committed by a group. Also, the nature of the offences and the manner in which they had been committed clearly pointed to a danger that the applicant might abscond or commit another offence if released.

According to the applicant, on 28 March 2000 he filed another appeal against his detention, reiterating his earlier arguments. No details as to its examination have been provided.

At the hearing on 11 December 2000 the applicant appealed against his detention. The Lovech Regional Court dismissed the appeal on the same day, stating that the case was very complex and that therefore the reasonable time requirement had not been breached.

Upon the applicant's appeal, the Regional Court's decision was upheld on 28 December 2000 by the Veliko Tarnovo Appellate Court. The court stated, *inter alia*:

> "In accordance with Article 152 § 1 of the Code of Criminal Procedure, as it was worded at the time when the applicant was initially placed in pre-trial detention, the [relevant authority] is bound to impose pre-trial detention when the charges concerned a "serious offence" [within the meaning of the Penal Code], as in the applicant's case. In such a case, as here, in accordance with Article 152 § 2 ... the real danger of the accused person's absconding or committing an offence is presumed *a priori*. Therefore, the applicant's complaint that it has not been established that there is a danger of him absconding or committing an offence is ill-founded."

At the hearing on 12 February 2001 the applicant again requested to be released. That was refused on the same day by the Lovech Regional Court on the grounds that there were no new circumstances warranting release. The applicant appealed.

On 8 March 2001 the Appellate Court dismissed the appeal. It stated, *inter alia*, that the term "reasonable time" had to be interpreted with due regard to the particular circumstances of the case, that all adjournments had been inevitable and that the charges concerned offences that were particularly dangerous. The court also stated:

> "The very fact that the [charges concern] the applicant's participation in a criminal group which has committed numerous robberies on the road – [offences] punishable by more than ten years' imprisonment – implies a danger of the applicant's absconding or committing an offence. The case file does not contain proof to the contrary and, therefore, the only lawful measure of judicial control for the [applicant] is remand in custody".

In his appeals against detention submitted between February 1999 and March 2001 the applicant repeatedly insisted that the statutory two years' maximum period of detention had been exceeded. That argument was dismissed by the courts as the statutory limitation on the duration of detention only concerned remand in custody at the stage of the investigation. Since the applicant's case had been at the trial stage for lengthy periods, the statutory limit had not been exceeded.

On 9 April 2001 the Lovech Regional Court decided to release the applicant on bail. No reasons were provided, except that in respect of some of the other accused persons release was refused in view of the greater number of robberies with which they had been charged. The amount of the recognisance was fixed at 4,000 Bulgarian levs (BGN).

The applicant appealed, considering that amount as excessive. On 27 April 2001 the Appellate Court rejected the appeal, reasoning that when examining an appeal against measures to secure appearance in court the appellate courts' power was limited to setting aside the particular measure and substituting it with a measure of another type; they had no jurisdiction to modify the amount of the recognisance fixed by the lower court.

On 31 July 2001 the applicant paid the recognisance and was released.

B. Relevant domestic law and practice

1. Grounds for pre-trial detention

(a) before 1 January 2000

Paragraphs 1 and 2 of Article 152 of the Code of Criminal Procedure, as worded at the material time and until 1 January 2000, 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 time 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).

(b) since 1 January 2000

As of that date the legal regime of detention under the Code of Criminal Procedure was amended with the aim to ensure compliance with the Convention (TR 1-02 VKS).

The relevant part of the amended Article 152 provides:

> "(1) Detention pending trial shall be ordered [in cases concerning] offences punishable by imprisonment ... , where the material in the case discloses a real danger that the accused person may abscond or commit an offence.
>
> (2) In the following circumstances it shall be considered that [such] a danger exists, unless established otherwise on the basis of the evidence in the case:
>
> 1. in cases of special recidivism or repetition;
>
> 2. where the charges concern a serious offence and the accused person has a previous conviction for a serious offence and a non-suspended sentence of not less than one year imprisonment;
>
> 3. where the charges concern an offence punishable by not less than ten years' imprisonment or a heavier punishment.
>
> (3) Detention shall be replaced by a more lenient measure of control where there is no longer a danger that the accused person may abscond or commit an offence."

It appears that divergent interpretations of the above provisions were observed in the initial period of their application, upon their entry into force on 1 January 2000.

In June 2002 the Supreme Court of Cassation clarified that the amended Article 152 excluded any possibility of a mandatory detention. In all cases the existence of a reasonable suspicion against the accused and of a real danger of him absconding or committing an offence had to be established by the authorities. The presumption under paragraph 2 of Article 152 was only a staring point of analysis and did not shift the burden of proof to the accused (TR 1-02 VKS).

2. Statutory maximum period of pre-trial detention at the investigation stage

Statutory maximum periods of pre-trial detention, whose duration depend on the gravity of the charges, were introduced with effect from 12 August 1997 (paragraph 3 of Article 152 as in force between 12 August 1997 and 1 January 2000 and paragraph 4 of the same Article since 1 January 2000).

They only concern remand in custody pending the investigation. Detention at the trial stage is not limited by a statutory maximum period.

The maximum period applicable in the applicant's case was two years, in view of the gravity of the charges against him.

In accordance with paragraph 4a of the transitory provisions to the Code of Criminal Procedure, time spent in pre-trial detention at the investigation stage prior to 12 August 1997, the date on which the statutory maximum period was introduced, is not counted.

In June 2002 the Supreme Court of Cassation, clarifying that the statutory maximum periods of detention aimed at protecting the accused person's rights and exerting pressure on the investigation authorities for a "disciplined approach" on their part, stated that where a case was referred by the trial court back for further investigation, the relevant statutory time-limit was not renewed but resumed, the period during which the case was pending before the courts not being counted (TR 1-02 VKS).

Article 152 § 5 of the Code of Criminal Procedure, as in force since 1 January 2000 provides:

> "Upon the expiry of the [statutory maximum period of detention] the detainee shall be immediately released by order of the [competent] prosecutor".

3. Scope of judicial control on pre-trial detention

On the basis of the relevant law before 1 January 2000, when ruling on appeals against pre-trial detention of a person charged with having committed a "serious" offence, the domestic courts generally disregarded facts and arguments concerning the existence or absence of a danger of the accused person's absconding or committing offences and stated that every person accused of having committed a serious offence must be remanded in custody unless exceptional circumstances dictated otherwise (see the Supreme Court's cases cited above and the decisions of the domestic authorities criticised by the Court in the cases of *Nikolova v. Bulgaria* [GC], no. 31195/96, ECHR 1999-II, *Ilijkov v. Bulgaria*, no. 33977/96, 26 July 2001 and *Zaprianov v. Bulgaria*, no. 41171/98, 30 September 2004).

In June 2002, interpreting the amended provisions on pre-trial detention, the Supreme Court of Cassation stated that when examining an appeal against pre-trial detention the courts' task was not only to verify whether the initial decision on remand in custody had been lawful but also to establish whether continued detention was still lawful and justified. In such

proceedings the courts had to examine all available evidence on all relevant aspects, including the amount of the recognisance as the case may be (TR 1-02 VKS).

COMPLAINTS

The applicant complained under Article 5 § 3 of the Convention that upon his arrest he had not been brought before a judge or other officer authorised by law to exercise judicial power.

The applicant also complained under Article 5 §§ 1 and 3 of the Convention that his detention had been unlawful under domestic law as it had exceeded the statutory maximum period and that in any event it had been excessively lengthy and unjustified.

The applicant also complained that in the proceedings concerning the lawfulness of his detention the Veliko Tarnovo Regional Court and the Appellate Court had not been impartial and independent, had not observed the principle of equality of arms between the parties and had not examined all relevant aspects. In particular, in the courtroom the prosecutor had sat close to the judges, the Appellate Court had allegedly disregarded crucial arguments and had rendered an unreasoned decision.

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

Relying on Article 3 of the Convention, the applicant complained that during the hearings before the Veliko Tarnovo Regional Court in 1995 and 1996 and before the Appellate Court in 1998 and until February 1999 he had been handcuffed to a stool in the hearing room.

THE LAW

A. Alleged violation of the applicant's right to be brought before a judge or other officer authorised by law to exercise judicial power (Article 5 § 3 of the Convention)

The Court notes that this complaint concerns the applicant's arrest in 1995 and, therefore, a situation that came to an end not later than 11 December 1995, the date on which the applicant appeared before the Regional Court, at the first hearing in the case against him. However, the present application was introduced on 14 April 2000.

It follows that the complaint was submitted outside the six months' time-limit under Article 35 § 1 of the Convention and must be rejected in accordance with Article 35 § 4.

B. Alleged violation of Article 5 § 1 of the Convention in that the statutory maximum period of detention under domestic law was allegedly exceeded

Article 5 § 1 of the Convention reads, in so far 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: ...
>
> (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 stated that only 13 months of the applicant's pre-trial detention concerned a period when his case had been at the investigation stage and that therefore the two years' statutory maximum period had not been exceeded.

The applicant replied that pre-trial detention should be limited in time regardless of the fact whether the criminal case was at the investigation stage or at the trial stage. In his view the authorities should have interpreted the relevant domestic law in that sense.

The Court notes at the outset that the applicant's detention between 12 September 1996, when he was convicted and sentenced to a term of imprisonment, and 9 February 1999, when his conviction and sentence were set aside, fell under Article 5 § 1(a) of the Convention. No issue of lawfulness arises as regards that period.

The applicant was in pre-trial detention falling under Article 5 § 1(c) of the Convention between 20 January 1995 and 12 September 1996 and again between 9 February 1999 and 31 July 2001.

In accordance with the relevant provision of the Bulgarian Code of Criminal Procedure, the statutory limitation on pre-trial detention only concerns periods when the criminal case against the detained person is pending at the investigation stage. Also, time spent in detention prior to 12 August 1997, the date on which the statutory maximum period was introduced, is not counted (see above, Relevant domestic law and practice).

Between 12 August 1997 and 9 February 1999 the applicant's case was pending before the courts, not before the investigator. Therefore, no statutory limitation on his pre-trial detention applied. The same was true as regards the periods between 23 September 1999 and 5 January 2000 and between 2 May 2000 and 31 July 2001.

The periods during which the statutory two years' maximum period applied in the applicant's case were those between 9 February and 23 September 1999 (nine months and a half) and between 5 January and 2 May 2000 (nearly four months). In sum, after August 1997, only thirteen months and several days of the applicant's detention constituted remand in custody pending the investigation stage of the criminal proceedings.

It follows that the applicant was not detained in breach of the statutory two years' maximum period under domestic law. The same conclusion was reached by the domestic courts in the applicant's case.

The Court finds, therefore, that the complaint that the applicant was detained unlawfully and in breach of Article 5 § 1 of the Convention is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with its Article 35 § 4.

C. Alleged violation of the applicant's right to a trial within a reasonable time or release pending trial (Article 5 § 3 of the Convention)

Article 5 § 3 of the Convention provides, in so far as relevant:

> "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 pre-trial detention was based on a reasonable suspicion of him having committed serious and violent criminal offences. Furthermore, there had been no specific facts excluding the presumed danger of his absconding or committing offences if released. In the Government's view, the applicant had failed to prove before the national courts that there was no danger of him absconding or committing offences.

The Government also stated that the authorities had acted as diligently as possible in the difficult circumstances of the case and that the length of the proceedings was the result of a number of objective factors.

In particular, the case was factually complex and required the examination of numerous witnesses and other evidence, some of which had to be collected elsewhere by delegation. The case file comprised of 1,211 pages organised in seventeen volumes.

Also, in the Government's submission the delay accumulated after June 2000 was not imputable to the authorities but was caused by the repeated failure of the lawyers of some of the accused persons to appear at the hearings.

The applicant replied that the authorities never examined carefully the question whether or not there was a real danger of the applicant's absconding or committing offences if released but applied the defective

automatic approach according to which persons accused of serious offences must be detained. The applicant had no previous convictions and did not commit offences or abscond after his release in 2001.

The applicant also considered that the case had been adjourned numerous times without good reason. He emphasised that none of the adjournments was caused by him or his lawyer. Also, no new evidence had been collected ever since 1996. In the applicant's view procedural errors on the part of the authorities and their failure to take measures against the persons who failed to appear at hearings were at the origin of the excessive length of the proceedings and of the applicant's detention.

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. Alleged violations of Article 5 § 4 of the Convention

The applicant complained that in the proceedings concerning the lawfulness of his detention, the Veliko Tarnovo Regional Court and the Appellate Court had not provided judicial control of full scope and had not observed the principles of impartiality and equality of arms.

The Court considers that these complaints fall to be examined under Article 5 § 4 of the Convention which 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."

The Government stated that the courts had examined all aspects of the lawfulness of his detention and had replied to the applicant's arguments. The Government emphasised that the only arguments the applicant had made before the national courts had concerned the length of his detention and his mother's ill health.

The Government also stated that the place of the prosecutor in the courtroom was unrelated to the fairness of the proceedings. The principle of equality of arms had been reinforced in Bulgarian criminal procedure by virtue of the amendments to the Code of Criminal Procedure effective as from 1 January 2000. After that date the role of the prosecutor had been modified and full equality had been guaranteed. Also, the practice concerning the physical place of the prosecutor in the courtroom was changing in recent years.

The applicant replied that the courts had not examined carefully whether there had been a danger of the applicant absconding or committing offences

if released and had refused to examine all aspects relevant to the lawfulness of his detention.

Also, in the applicant's view the prosecutor's place in the courtroom – next to the judges – violated the principle of equality of arms. The Government's statement that the relevant practice was changing allegedly constituted an implicit recognition that the previous practice had been in breach 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.

E. Alleged excessive length of the criminal proceedings (Article 6 § 1 of the Convention)

The applicant complained that the criminal proceedings against him were excessively lengthy and thus in breach of Article 6 § 1 of the Convention. That provision reads, in so far as relevant:

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

The parties' submissions are summarised above in the context of the applicant's complaint concerning the length of his pre-trial detention (Article 5 § 3).

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.

F. Alleged violations of the Convention on account of the fact that the applicant was handcuffed during court hearings

The applicant complained that during the hearings before the Regional Court in 1996 and before the Appellate Court (1998 - February 1999) he was handcuffed to a stool in the hearing room.

The Court notes that the applicant has not shown that he complained in this respect before the national authorities, as required by Article 35 § 1 of the Convention. As the criminal proceedings against the applicant are still pending, it is open to him to raise the issue before the national courts, if he considers that the fairness of the proceedings was adversely affected.

In any event, in so far as the applicant may be understood as claiming that the handcuffing constituted inhuman and degrading treatment, even assuming the unavailability of effective remedies, the Court notes that the impugned treatment ended in February 1999, whereas the present application was introduced on 14 April 2000 and thus outside the six months' time-limit under Article 35 § 1 of the Convention.

It follows that the above complaint must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints concerning

the alleged lack of justification and excessive length of his pre-trial detention (Article 5 § 3);

the alleged limited scope of judicial control on the lawfulness of his detention and alleged partiality and violation of the principle of equality of arms in proceedings concerning detention (Article 5 § 4); and

the alleged excessive length of the criminal proceedings against him (Article 6 § 1).

Declares the remainder of the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President