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

FIFTH SECTION

CASE OF YORDANOV v. BULGARIA

(Application no. 56856/00)

JUDGMENT

STRASBOURG

10 August 2006

FINAL

10/11/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Yordanov v. Bulgaria,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mrs R. JAEGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 3 July 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 56856/00) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Nikolay Dobromirov Yordanov ("the applicant"), on 4 January 2000.

2. The applicant was represented by Mr V. Stoyanov, a lawyer practising in Pazardzhik.

3. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Karadjova, of the Ministry of Justice.

4. On 26 October 2004 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. The Government did not submit observations on the admissibility and merits of the application.

6. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The search of the applicant's apartment

7. On 29 December 1999 the applicant's apartment was searched by the police with the apparent approval of the Prosecutor's Office. It was apparently conducted following the receipt of information received as a result of the arrest of several drug addicts earlier in the day. The applicant claimed, which the Government did not challenge, that the search was conducted in the absence of the applicant or an adult representative of the household and only in the presence of two witnesses, neither of them being the residence's manager or a representative of the municipality. Various items were seized, including an unspecified quantity of drugs and three stolen automobile registration documents.

B. The criminal proceedings against the applicant and his detention in the context of these proceedings

8. Following the search of the applicant's apartment on 29 December 1999, the police arrested him and took him into custody for twenty-four hours.

9. On 30 December 1999 the applicant was charged with possession of drugs with intent to supply. He was remanded in custody upon a decision of an investigator which was apparently confirmed by the Prosecutor's Office later in the day. In ordering the remand in custody, the investigator found that the applicant might abscond or re-offend considering the fact that he had a previous conviction for drug related offences and had another three preliminary investigations opened against him.

10. The applicant appealed against his detention on the same day, 30 December 1999. He argued that that there was insufficient evidence against him and that there was no danger that he might abscond or re-offend. He claimed that he was a drug addict, that he required medical treatment for his addiction, that the drugs found in his apartment were for personal consumption, that he had a permanent address and that he had to care for his disabled mother. The appeal was sent by registered post both to the Pazardzhik Regional Court and the Pazardzhik Regional Investigation Service. It is unclear when they received it.

11. On 1 January 2000 amendments to the Code of Criminal Procedure entered into force in respect of the legal regime of detention and its justification.

12. On 4 January 2000 the applicant's lawyer requested in writing from the Pazardzhik police copies of the orders for the search of his client's home and for his arrest. In a response of 24 February 2000 the police refused to provide him with copies of the documents arguing that the applicant had received copies of the same at the time of the search and arrest.

13. In connection with the processing of the applicant's appeal of 30 December 1999, the Pazardzhik Regional Investigation Service forwarded the applicant's case file to the Pazardzhik Regional Court on 5 January 2000.

14. On 7 January 2000 the Pazardzhik Regional Court examined the applicant's appeal of 30 December 1999 and dismissed it. It found that the applicant's claim that he required medical supervision and treatment was unsubstantiated. It further considered that based on the evidence before it there was sufficient evidence that he may have committed the offence with which he had been charged and, taking into account his previous conviction and the existence of another three preliminary investigations against him, that he might abscond or re-offend. The applicant appealed against the decision on an unspecified date.

15. On 13 January 2000 the Plovdiv Court of Appeals examined the applicant's appeal. In addition to the arguments presented before the Pazardzhik Regional Court the applicant also claimed that he had an ongoing business operating a shop. The court dismissed the applicant's appeal on grounds similar to those given by the Pazardzhik Regional Court. Namely, that based on the evidence before it there was sufficient evidence to ground a reasonable suspicion that the applicant might have committed the offence with which he had been charged and, taking into account his previous conviction and the existence of another three preliminary investigations against him, that he might abscond or re-offend.

16. The subsequent development of the criminal proceedings is unclear. No further information detailing their development has been provided by the parties following the applicant's letter of 5 April 2000. As of the date of the said letter, the applicant was still in remanded custody. However, it is unknown whether, and when, he was subsequently released or granted bail.

C. The conditions of the applicant's detention

17. The applicant contended, which the Government did not challenge, that as from 29 December 1999 he was detained at the Pazardzhik Regional Investigation Service at least until 5 April 2000 (see paragraph 16 above).

18. In the applicant's submission the cells were small, overcrowded and below street level. There was no natural light or fresh air in the cells. Quite

often there were rodents and cockroaches. A bucket was provided for the sanitary needs of the detained. There was no hot water, soap or other toiletries. The applicant was not permitted to go out of his cell for exercise. The food provided was of insufficient quantity and substandard. The applicant was not allowed to read newspapers or books. The applicant also referred to his drug addiction and the need for provision of medical treatment in a medical facility.

19. In support of his assertions pertaining to the conditions of detention at the above facility, the applicant presented declarations from another two detainees, Mr D.A. and Mr. R.D., corroborating his claims.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Power to order pre-trial detention, grounds for pre-trial detention and appeals against detention

1. Before 1 January 2000

20. The relevant provisions of the Code of Criminal Procedure (the "CCP") and the Bulgarian courts' practice at the relevant time are summarised in the Court's judgments in several similar cases (see, among others, *Nikolova v. Bulgaria* [GC], no. 31195/96, §§ 25-36, ECHR 1999-II; *Ilijkov v. Bulgaria*, no. 33977/96, §§ 55-59, 26 July 2001; and *Yankov v. Bulgaria*, no. 39084/97, §§ 79-88, ECHR 2003-XII (extracts)).

2. After 1 January 2000

21. As of that date the legal regime of detention under the CCP was amended with the aim to ensure compliance with the Convention (TR 1-02 Supreme Court of Cassation).

22. 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."

23. 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.

24. 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 starting point of analysis and did not shift the burden of proof to the accused (TR 1-02 Supreme Court of Cassation).

B. Search of premises

1. Search of premises during an enquiry

25. At the relevant time, Article 191 of the CCP provided that in the course of an enquiry (i.e. when there was insufficient evidence to initiate formal criminal proceedings) a search of premises could be conducted only in the course of examining a crime scene and if its immediate execution was the only possibility to collect and secure evidence.

2. Search of premises during criminal proceedings

26. At the relevant time, Article 134 of the CCP provided that a search of premises might be carried out if there was probable cause to believe that objects or documents, which might be relevant to a case, would be found in them. Such a search could be ordered by the trial court (during the trial phase) or by the prosecutor (during the pre-trial phase) (Article 135).

27. A search of premises was to be conducted in the presence of witnesses and the person living there or an adult member of his family. In case the person living there or an adult member of his family could not be present, the search was to be conducted in the presence of the residence's manager or a representative of the municipality (Article 136).

28. There was no special procedure through which a search warrant issued by a prosecutor could be challenged. Thus, the only possible appeal was a hierarchical one to the higher prosecutor (Article 182), which did not have suspensive effect (Article 183).

C. The State Responsibility for Damage Act

29. The State Responsibility for Damage Act of 1988 (the "SRDA") provides that the State is liable for damage caused to private persons by (a) the illegal orders, actions or omissions of government bodies and officials acting within the scope of, or in connection with, their administrative duties; and (b) the organs of the investigation, the prosecution and the courts for unlawful pre-trial detention, if the detention order has been set aside for lack of lawful grounds (sections 1-2). In respect of the regime of detention and conditions of detention, the relevant domestic law and practice under sections 1 and 2 of the SRDA has been summarised in the cases of *Iovchev v. Bulgaria* (no. 41211/98, §§ 76-80, 2 February 2006) and *Hamanov v. Bulgaria* (no. 44062/98, §§ 56-60, 8 April 2004).

30. In respect of conditions of detention, despite some initial uncertainty as to the applicability of the SRDA in respect of complaints relating to conditions of detention, in a number of recent cases the domestic courts have ruled that the State's liability does arise under the SRDA and its section 1 in particular (реш. от 17.02.2003 г. по гр. д. № 1380/2002 г. на Пловдивският АС; реш. № 126 от 08.06.2005 г. по въззивно гр. д. № 205/2005 г. на Добричкият ОС; реш. № 380 от 19.07.2005 г. по гр. д. № 177/2005 г. на Габровският РС; реш. 04.05.2005 г. по гр. д. № 21393/2003 г. на Софийският РС; реш. № 444 от 08.07.2005 г. по гр. д. № 1031/2004 г. на Ловешкият РС; реш. № 4 от 18.02.2005 г. по гр. д. № 3267/2004 г. на Русенският РС).

31. In respect of unlawful searches of premises, the only reported case dates from 2002 where the Sofia City Court examined, on appeal, an action for damages stemming from an allegedly unlawful search and seizure conducted by the authorities in the home of the claimant. In that particular case, the court rescinded the judgment of the lower court and remitted the case solely because the latter court had failed to examine the action under Article 1 of the SRDA, but had rather examined it as a tort action. Accordingly, the Sofia City Court instructed the lower court to re-examine the said action solely under the SRDA (реш. от 29 юли 2002 г. по гр. д. № 169/2002 г., СГС, IVб отд.).

III. REPORTS OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT ("THE CPT")

32. The CPT visited Bulgaria in 1995, 1999, 2002 and 2003. The Pazardzhik Regional Investigation Service was visited in 1995. There are also general observations about the problems in all Investigation Service detention facilities in the 1995, 1999 and 2002 reports.

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

1. General observations

33. 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 slightly better, the conditions were as follows: cells did not have access to natural light; the artificial lighting was too weak to read by and was left on permanently; ventilation was inadequate; the cleanliness of the bedding and the cells as a whole left much to be desired; detainees could access a sanitary facility 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 buckets inside the cells; although according to the establishments' internal regulations detainees were entitled to a "daily walk" of up to thirty minutes, it was often reduced to five to ten minutes or not allowed at all; no other form of out-of-cell activity was provided to persons detained.

34. The CPT further noted that food was of poor quality and in insufficient quantity. In particular, the day's "hot meal" generally consisted of a watery soup (often lukewarm) and inadequate quantities of bread. At the other meals, detainees only received bread and a little cheese or halva. Meat and fruit were rarely included on the menu. Detainees had to eat from bowls without cutlery – not even a spoon was provided.

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

36. The CPT concluded that the Bulgarian authorities had failed in their obligation to provide detention conditions which were consistent with the inherent dignity of the human person and that "almost without exception, the conditions in the Investigation Service detention facilities visited could fairly be described as inhuman and degrading". In reaction, the Bulgarian authorities agreed that the CPT delegation's assessment had been "objective and correctly presented" but indicated that the options for improvement were limited by the country's difficult financial circumstances.

37. In 1995 the CPT recommended to the Bulgarian authorities, *inter alia*, that sufficient food and drink and safe eating utensils be provided, that mattresses and blankets be cleaned regularly, that detainees be provided with personal hygiene products (soap, toothpaste, etc.), that custodial staff be instructed that detainees should be allowed to leave their cells during the day for the purpose of using a toilet facility unless overriding security considerations required otherwise, that the regulation providing for thirty minutes' exercise per day be fully respected in practice, that cell lighting and ventilation be improved, that the regime of family visits be revised and that

pre-trial detainees be more often transferred to prison even before the preliminary investigation was completed. The possibility of offering detainees at least one hour's outdoor exercise per day was to be examined as a matter of urgency.

2. Pazardzhik Regional Investigation Service

38. The CPT established that the Pazardzhik Regional Investigation Service had fifteen cells, situated in the basement, and at the time of the visit accommodated thirty detainees, including two women in a separate cell.

39. Six cells measuring approximately twelve square metres were designed to accommodate two detainees; the other nine, intended for three occupants, measured some sixteen-and-a-half square metres. This occupancy rate was being complied with at the time of the visit and from the living space standpoint was deemed acceptable by the CPT. However, all the remaining shortcomings observed in the other Investigation Service detention facilities – dirty and tattered bedding, no access to natural light, absence of activities, limited access to sanitary facilities, etc. – also applied there. Even the thirty-minute exercise rule, provided for in the internal regulations and actually posted on cell doors, was not observed.

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

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

41. In most investigation detention facilities visited in 1999, with the exception of a newly opened detention facility in Sofia, conditions of detention were generally the same as those observed during the CPT's 1995 visit, as regards poor hygiene, overcrowding, problematic access to toilet/shower facilities and a total absence of outdoor exercise and out-of-cell activities. In some places, the situation had even deteriorated.

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

C. Relevant findings of the 2002 report (made public in 2004)

43. During the 2002 visit some improvements were noted in the country's investigation detention facilities, severely criticised in previous reports. However, a great deal remained to be done: most detainees continued to spend months on end locked up in overcrowded cells twenty-four hours a day.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

44. The applicant made several complaints falling under Article 5 of the Convention, the relevant part of which provides:

> "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;
>
> ...
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
>
> 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...
>
> 4. 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."

45. The Government did not submit observations on the admissibility and merits of the complaints.

46. The applicant reiterated his complaints relating to his detention until at least 5 April 2000, the date of his last letter to the Court providing details of the said detention (see paragraph 16 above), and referred to their similarity to previous cases against Bulgaria.

A. Complaints under Article 5 § 1 of the Convention regarding the lawfulness of the applicant's detention

47. The applicant complained under Article 5 § 1 of the Convention that he was unlawfully detained and argued that the evidence against him was not sufficient to lead to the conclusion that he was guilty of an offence.

48. The Court notes that the applicant's detention fell within the ambit of Article 5 § 1 (c) of the Convention, as it was imposed for the purpose of bringing him before the competent legal authority on suspicion of having

committed an offence. There is nothing to indicate that the formalities required by domestic law were not observed.

49. As regards the alleged lack of reasonable suspicion, the Court reiterates that the standard imposed by Article 5 § 1 (c) of the Convention does not presuppose the existence of sufficient evidence to bring charges, or find guilt, at the time of arrest. Facts which raise a suspicion need not be of the same level as those necessary to bring a charge (see *O'Hara v. the United Kingdom*, no. 37555/97, § 36, ECHR 2001-X).

50. In the present case, the Court considers that the authorities had sufficient information to ground a "reasonable" suspicion against the applicant as they had discovered an unspecified quantity of drugs and three stolen automobile registration documents in his apartment and the statements of several drug addicts (see paragraph 7 above).

51. Consequently, the Court concludes that in respect of this complaint there is no appearance of a violation of Article 5 § 1 of the Convention. It follows that the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Complaint under Article 5 § 2 of the Convention

52. The applicant complained under Article 5 § 2 of the Convention that he was not informed of the reasons for his detention on 29 December 1999. In particular, he claimed that the information provided was not specific enough and failed to identify the persons to whom he had allegedly sold drugs, when and what kind of permit he should have had allowing him to possess the drugs in question.

53. The Court reiterates that Article 5 § 2 of the Convention contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. This provision is an integral part of the scheme of protection afforded by Article 5: by virtue of paragraph 2 any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with paragraph 4. Whilst this information must be conveyed "promptly", it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features (see *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A no. 182, p. 19, § 40 and *H.B. v. Switzerland*, no. 26899/95, § 47, 5 April 2001).

54. In the present case, the Court observes that the applicant did not contend that he was not provided with any reasons for his arrest on 29 December 1999, but submitted that the information he received was not sufficiently precise. In particular, he claimed that the persons to whom he

had allegedly sold drugs were not identified, that the time and date of the alleged transactions were not specified and also that it was not indicated what kind of permit he should have had which would have allowed him to possess the drugs in question. Thus, despite of the lack of the aforesaid information, it is evident that the applicant was made aware that he was being detained for possession of drugs with the intent to supply as a result of allegedly having sold drugs to certain individuals. Whether or not those individuals were identified by their names does not change the fact that the applicant was informed, in a language that he understood, of the essential legal and factual grounds for his detention, which would allow him to challenge its lawfulness. In fact, he filed an appeal against his detention on the very next day, 30 December 1999.

55. In view of the above, the Court finds that the authorities did not fail to comply with the requirement under Article 5 § 2 of the Convention and informed the applicant upon his arrest on 29 December 1999 of the "essential legal and factual grounds for his arrest".

56. Consequently, the Court concludes that there is no appearance of a violation of Article 5 § 2 of the Convention. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Complaint under Article 5 § 3 of the Convention that the applicant was not brought promptly before a judge or other officer authorised by law to exercise judicial power

57. The applicant complained under Article 5 § 3 of the Convention that when he was detained on remand he was not brought promptly before a judge or other officer authorised by law to exercise judicial power.

58. In his submissions, the applicant also stated that neither the investigator who had decided to detain him, nor the prosecutor who had confirmed that decision could be deemed independent officers authorised by law to exercise judicial power and referred to the Court's findings in the cases of *Assenov and Others* (judgment of 28 October 1998, *Reports* 1998-VIII), *Nikolova* (cited above), *Shishkov v. Bulgaria* (no. 38822/97, ECHR 2003-I (extracts)) and *Nikolov v. Bulgaria* (no. 38884/97, 30 January 2003).

1. Admissibility

59. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

60. The Court reiterates that in previous judgments which concerned the system of detention pending trial, as it existed in Bulgaria until 1 January 2000, it found that neither investigators before whom the accused persons were brought, nor prosecutors who approved detention orders, could be considered as "officer[s] authorised by law to exercise judicial power" within the meaning of Article 5 § 3 of the Convention (see *Assenov and Others*, cited above, §§ 144-50; *Nikolova*, cited above, §§ 49-53, and *Shishkov*, cited above, §§ 52-54).

61. The present case likewise concerns pre-trial detention imposed before 1 January 2000. The applicant's pre-trial detention was ordered by an investigator and confirmed by a prosecutor (see paragraph 9 above), in accordance with the provisions of the CCP then in force (see paragraph 20 above). However, neither the investigator nor the prosecutor was sufficiently independent and impartial for the purposes of Article 5 § 3 of the Convention, in view of the practical role they played in the investigation and the prosecution and the prosecutor's potential participation as a party to the criminal proceedings (see paragraph 20 above). The Court refers to the analysis of the relevant domestic law contained in its *Nikolova* judgment (cited above – see paragraphs 28, 29 and 49-53 of that judgment).

62. It follows that there has been a violation of the applicant's right to be brought before a judge or other officer authorised by law to exercise judicial power within the meaning of Article 5 § 3 of the Convention.

D. Complaints under Article 5 § 4 of the Convention regarding the scope and speed of the judicial review of the lawfulness of the applicant's detention

63. The applicant complained under Article 5 § 4 of the Convention that the domestic courts did not examine all factors relevant to the lawfulness of his detention. In addition, he contended that there had been a violation of the requirement for a speedy decision under Article 5 § 4 of the Convention.

1. Scope of the judicial review of the lawfulness of the applicant's detention

64. The Court reiterates that arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the lawfulness, in the sense of the Convention, of their deprivation of liberty. This means that the competent court has to examine not only compliance with the procedural requirements set out in domestic law, but also the reasonableness of the suspicion grounding the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see *Nikolova*, cited above, § 58).

65. In the present case, the Court finds that when examining the applicant's applications for release, the Pazardjik Regional Court and the Plovdiv Court of Appeals examined specific relevant facts and evidence which indicated that the applicant might abscond or re-offend. In particular, the courts found that the applicant's claim that he required medical supervision and treatment was unsubstantiated, that based on the evidence before them there was sufficient evidence that he may have committed the offence with which he had been charged and, taking into account his previous conviction and the existence of another three preliminary investigations against him, that he might abscond or re-offend (see paragraphs 14-15 above). Thus, the domestic courts provided judicial control over the applicant's detention on remand of the scope required by Article 5 § 4 of the Convention.

66. Consequently, the Court concludes that in respect of this complaint there is no appearance of a violation of Article 5 § 4 of the Convention. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. Speed of the judicial review of the lawfulness of the applicant's detention

67. The Court reiterates that Article 5 § 4 also guarantees the right to a speedy judicial decision concerning the lawfulness of detention (see *Rutten v. the Netherlands*, no. 32605/96, § 52, 24 July 2001).

68. In the present case, the Court notes that the applicant's appeal was sent by registered post on 30 December 1999. It is unclear when it was actually received by the competent authorities. However, on 5 January 2000 the Pazardzhik Regional Investigation Service forwarded the applicant's case file to the Pazardzhik Regional Court (see paragraph 13 above) and the latter examined the appeal on 7 January 2000, which was eight days after its was posted (see paragraph 14 above).

69. The Court considers that in the present case the period of eight days, considering that the applicant's appeal was in transit through the postal network for an unknown number of days, does not appear excessive (see, *a contrario*, *Kadem v. Malta*, no. 55263/00, §§ 43-45, 9 January 2003, where the Court found a period of seventeen days for examining an appeal against detention as being too long, and *Rehbock v. Slovenia*, no. 29462/95, §§ 82-86, ECHR 2000-XII, where two such periods of twenty-three days were considered excessive).

70. Consequently, the Court concludes that in respect of this complaint there is no appearance of a violation of Article 5 § 4 of the Convention. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

71. The applicant complained under Article 3 of the Convention that he was subjected to inhuman or degrading treatment while being detained at the Pazardzhik Regional Investigation Service. In his initial application to the Court, the applicant made similar inferences in respect of the conditions of detention at the Pazardzhik Prison

Article 3 of the Convention provides:

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

72. The Government did not submit observations on the admissibility and merits of this complaint.

73. The applicant reiterated his complaint in respect of the Pazardzhik Regional Investigation Service and contended that the conditions of detention in which he had been held were inadequate and amounted to inhuman and degrading treatment under Article 3 of the Convention. He did not sustain or substantiate any complaints in respect of the conditions of detention at the Pazardzhik Prison.

A. Admissibility

1. Pazardzhik Regional Investigation Service

74. Concerning the issue of exhaustion of domestic remedies, the Court notes at the outset that in its recent judgment in the case of *Iovchev* (cited above, §§ 138-48) the Courts examined a complaint under Article 13 in conjunction with Article 3 of the Convention. In that case, unlike in the present one, the applicant had brought an action against the State under the SRDA, which the Court considered, in principle, an effective remedy for a complaint under Article 3 about conditions of detention. It noted the following in paragraph 145 of its judgment in the above case:

> "In the light of the information before it, the Court considers that there is nothing to indicate that an action under the [SRDA] could not in principle provide a remedy in this respect. Section 1 thereof provides for compensation for any unlawful act or omission of the administrative authorities."

75. The Court in the above-cited case went on to find a violation of Article 13 in conjunction with Article 3 of the Convention due to the length and the established deficiencies in the proceedings specific to that case which led to the "the remedy under the SRDA [losing] much of its remedial efficacy" (see *Iovchev*, cited above, § 146).

76. Returning to the specifics of the present case, the Court notes that the applicant did not initiate an action under the SRDA in respect of the conditions of detention at the Pazardzhik Regional Investigation Service.

Accordingly, there is ground to consider that he has failed to exhaust the available domestic remedies. However, under Rule 55 of the Rules of Court, any plea of inadmissibility must be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application. Accordingly, the normal practice of the Convention organs has been, where a case has been communicated to the respondent Government, not to declare the application inadmissible for failure to exhaust domestic remedies, unless this matter has been raised by the Government in their observations (see *Citizens of Louvain v. Belgium*, no. 1994/63, Commission decision of 5 March 1964, Yearbook 7, p. 253, at p. 261; *K. and T. v. Finland* [GC], no. 25702/94, § 145, ECHR 2001-VII; *N.C. v. Italy* [GC], no. 24952/94, § 44, ECHR 2002-X; and, *Sejdovic v. Italy* [GC], no. 56581/00, §§ 40-41, ECHR 2006-...). This same principle has been applied where, as in the present case, the respondent Government have not submitted any observations at all (see *Ergi v. Turkey*, no. 23818/94, Commission decision of 2 March 1995, Decisions and Reports 80, p. 157, at p. 160 and the judgment in the same case of 28 July 1998, *Reports* 1998-IV, p. 1771, §§ 65-67).

77. It follows that, despite the Court's recent finding that an action under the SRDA may be an effective remedy for a complaint under Article 3 about conditions of detention, the applicant's complaint in respect of the Pazardzhik Regional Investigation Service cannot be rejected by the Court on the ground that the domestic remedies have not been exhausted.

78. It follows that the complaint in respect of the conditions of detention at the Pazardzhik Regional Investigation Service must therefore be declared admissible as it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and neither is it inadmissible on any other grounds.

2. Pazardzhik Prison

79. Concerning the conditions of detention at the Pazardzhik Prison, the Court observes that the applicant did not sustain or substantiate any complaints under Article 3 of the Convention (see paragraph 73 above). It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Merits

1. Establishment of the facts

80. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt”.

However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII and *Fedotov v. Russia*, no. 5140/02, § 59, 25 October 2005).

81. The Court notes that the primary account of the conditions of the applicant's detention at the Pazardzhik Regional Investigation Service is that furnished by him (see paragraphs 18 above), which is partly corroborated by the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") in its respective reports (see paragraphs 32-43 above). Moreover, the CPT's assessment of the conditions in the Pazardzhik Regional Investigation Service in 1995, its general findings in respect of the conditions in all Investigation Service detention facilities, the conclusion that these conditions could be described as inhuman and degrading and that they had not satisfactorily improved during its subsequent visits in 1999 and 2002 (see paragraphs 32-43 above) may also inform the Court's decision (see *I.I. v. Bulgaria*, no. 44082/98, § 71, 9 June 2005).

82. The Court observes that the applicant also provided signed declarations by two other detainees at the detention facility in question (see paragraphs 19 above), but in so far as those individuals have applications pending before the Court with identical complaints (see *Alexov v. Bulgaria* (dec.), no. 54578/00, 22 May 2006 and *Dobrev v. Bulgaria*, no. 55389/00), finds that their statements should not be considered objective and that they should not therefore be given any particular weight.

83. The Court reiterates that Convention proceedings, such as the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in certain instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. The failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004 and *Fedotov*, cited above, § 61).

84. In the present case, the Government did not submit observations on the applicant's complaint regarding the conditions of detention in the Pazardzhik Regional Investigation Service. In these circumstances the Court must examine the merits of the complaint on the basis of the applicant's submissions and the findings in the relevant reports of the CPT.

2. General principles

85. The Court reiterates at the outset that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It

prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, as recent authorities, *Van der Ven v. the Netherlands*, no. 50901/99, § 46, ECHR 2003-II and *Poltoratskiy v. Ukraine*, no. 38812/97, § 130, ECHR 2003-V).

86. To fall within the scope of Article 3, ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Van der Ven*, § 47, and *Poltoratskiy*, § 131, both cited above).

87. Treatment has been held by the Court to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudła v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI). The question whether the purpose of the treatment was to humiliate or debase the victim is a further factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a violation of Article 3 (see *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III, and *Kalashnikov v. Russia*, no. 47095/99, § 101, ECHR 2002-VI).

88. The suffering and humiliation involved must go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that detention pending trial in itself raises an issue under Article 3. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with the respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured. When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions and the duration of the detention (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II; and *Kalashnikov*, cited above, § 95). In particular, the Court must have regard to the state of health of the detained person (see *Assenov and Others*, cited above, § 135).

89. An important factor, together with the material conditions, is the detention regime. In assessing whether a restrictive regime may amount to treatment contrary to Article 3 in a given case, regard must be had to the particular conditions, the stringency of the regime, its duration, the objective pursued and its effects on the person concerned (see *Messina v. Italy* (dec.), no. 25498/94, ECHR 1999-V; *Van der Ven*, cited above, § 51; *Iorgov*

v. Bulgaria, no. 40653/98, §§ 82-84 and 86, 11 March 2004; and *G.B. v. Bulgaria*, no. 42346/98, §§ 83-85 and 87, 11 March 2004).

3. Application of these principles to the present case

90. The Court observes that, according to the submissions of the applicant, he was detained on the premises of the Pazardzhik Regional Investigation Service from 29 December 1999 to at least until 5 April 2000 (see paragraph 17 above). The period to be taken into account, therefore, is three months and six days.

91. The applicant claimed that he was held in a cell which was small, overcrowded and below street level (see paragraph 18 above). The CPT, in its report of 1995, indicated that at the Pazardzhik Regional Investigation Service there were fifteen cells, situated in the basement and with no access to natural light. Six cells measured approximately twelve square metres and were designed to accommodate two detainees, while the other nine cells, intended for three occupants, measured some sixteen-and-a-half square metres. The occupancy rate was complied with at the time of the CPT's visit and, from the living space standpoint, was deemed acceptable by the Committee (see paragraphs 38-39 above). It is unclear in which type of cell the applicant was detained. During subsequent visits, the CPT established that the conditions of detention in Investigation Service premises had remained generally the same as those observed during its 1995 visit; however, the CPT has not re-visited the Pazardzhik Regional Investigation Service.

92. The Court further notes that the applicant alleged that the material conditions in the cell were unsatisfactory (see paragraph 18 above). The CPT's 1995 visit report noted that the bedding at this facility was dirty and tattered and that the conditions were similar to those established at other Investigation Service premises (see paragraph 39 above).

93. The applicant maintained that he was not permitted to go out of his cell for exercise (see paragraph 18 above). The CPT indicated in its 1995 report that the thirty-minute exercise rule, provided for in the internal regulations of the Pazardzhik Regional Investigation Service and actually posted on cell doors, was not observed (see paragraph 39 above). As no possibility for outdoor or out-of-cell activities was provided, the applicant would have had to spend in his cell – which was situated in the basement – practically all of his time, except for the two short visits per day to the sanitary facilities or the occasional taking out for questioning or to court (see *Peers*, cited above, § 75 and *I.I. v. Bulgaria*, cited above, § 74). The Court considers that the fact that the applicant was confined for practically twenty-four hours a day during more than three months to his cell without exposure to natural light and without any possibility for physical and other out-of-cell activities must have caused him considerable suffering. The Court is of the view that in the absence of compelling security

considerations there was no justification for subjecting the applicant to such limitations. In so far as the Government failed to submit observations on this complaint, no such considerations have been put forward for assessment by the Court.

94. The applicant argued that the sanitary facilities were inadequate (see paragraph 18 above). The CPT's 1995 visit report also noted that detainees at the Pazardzhik Regional Investigation Service had limited access to sanitary facilities (see paragraph 39 above). In any event, subjecting a detainee to the embarrassment of having to relieve himself in a bucket in the presence of his cellmates and of being present while the same bucket was being used by them cannot be deemed warranted, except in specific situations where allowing visits to the sanitary facilities would pose concrete and serious security risks (see *Peers*, § 75 and *I.I. v. Bulgaria*, § 75, both cited above; *Kalashnikov*, cited above, § 99; and *Kehayov v. Bulgaria*, no. 41035/98, § 71, 18 January 2005). In so far as the Government failed to submit observations on this complaint, no such risks have been invoked as grounds for the limitation on the visits to the toilet by the detainees, in particular the applicant, in the Pazardzhik Regional Investigation Service during the period in question.

95. The applicant alleged that the food provided was of insufficient quantity and substandard (see paragraph 18 above). This is corroborated by the findings of the CPT in its reports, which established that the food at the detention facilities of the Investigation Service was of poor quality and in insufficient quantity at the time of its visits (see paragraph 34 above).

96. The applicant further contended that he was not allowed to read newspapers or books (see paragraph 18 above). In its 1995 visit report, the CPT also noted that detainees had no access to radio or television; as to correspondence and access to newspapers, they required the public prosecutor's express permission (see paragraph 35 above). Accordingly, the applicant's access to and knowledge of the outside world was substantially restricted.

97. As regards the quality of the health care provided to the applicant, the Court notes that he was a drug addict and contended in general terms that he should have been placed in a medical facility (see paragraph 18 above). He did not substantiate, however, any specific complaints that he required and was not provided with adequate health care while being detained at the Pazardzhik Regional Investigation Service or that his physical or mental health deteriorated during or as a result of the said detention at this facility. Accordingly, the Court finds that no considerations in this respect are warranted.

98. While there is no indication that the detention conditions or regime at the Pazardzhik Regional Investigation Service were intended to degrade or humiliate the applicant or that they had a specific impact on his physical

or mental health, there is little doubt that certain aspects of the stringent regime described above could be seen as humiliating.

99. In conclusion, having regard to the cumulative effects of the unjustifiably stringent regime to which the applicant was subjected and the material conditions in which he was kept at the Pazardzhik Regional Investigation Service, the Court concludes that the distress and hardship he endured during the period of his detention at this facility exceeded the unavoidable level of suffering inherent in detention and the resulting anguish went beyond the threshold of severity under Article 3 of the Convention.

100. Thus, there has been a violation of the Article 3 of the Convention on account of the applicant's detention at the Pazardzhik Regional Investigation Service in conditions which were inadequate.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

101. The applicant further complained of the fact that there had been an interference with his right to respect for his home. In particular, he contended that the search on 29 December 1999 of his apartment was performed in contravention of domestic law, because there was a lack of legal justification, the applicable procedure was not followed and was performed in the presence of two witnesses. He relied on Article 8 of the Convention, which provides, as relevant:

> "1. Everyone has the right to respect for his private ... life, his home ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

102. The Government did not submit observations on the admissibility and merits of this complaint.

103. The applicant reiterated his complaint and argued that the search carried out by the authorities was unlawful as there was no legal basis for conducting it at the time in question as no enquiry or preliminary investigation had been opened.

A. Admissibility

104. Concerning the issue of exhaustion of domestic remedies, the Court observes that the applicant never challenged the lawfulness of the search of his apartment on 29 December 1999. Nor did he ever bring an action for damages against the State under the SRDA stemming from the alleged unlawful interference with his right to respect for his home.

105. The Court notes, in this respect, that the reported domestic case-law indicates that the domestic courts look favourably on examining such actions under Article 1 of the SRDA (see paragraph 31 above). Thus, the Court considers it difficult to determine what the outcome of any such proceedings under the SRDA would have been and whether or not the courts would have engaged the State's liability and awarded the applicant damages. Moreover, the Court considers it speculative to accept that an action under the SRDA would have been an ineffective domestic remedy in the present case (see, *mutatis mutandis*, *Assenov and Others*, cited above, § 112; *Kamenerov v. Bulgaria* (dec.), no. 44041/98, 16 December 1999 and *Toteva v. Bulgaria* (dec.), no. 42027/98, 3 April 2003). Accordingly, it can be argued that the applicant failed to exhaust the available domestic remedies.

106. However, under Rule 55 of the Rules of Court any plea of inadmissibility must be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application. The Court refers in this respect to its reasoning in respect of the admissibility of the applicant's complaint under Article 3 of the Convention (see paragraph 78 above).

107. It follows that despite the Court's consideration that an action under the SRDA may be an effective remedy for a complaint under Article 8 concerning an allegedly unlawful search of the applicant's home, the present application cannot be rejected by the Court on the ground that the domestic remedies have not been exhausted.

108. The complaint must therefore be declared admissible as it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and neither is it inadmissible on any other grounds.

B. Merits

1. Whether there was an interference

109. The applicant claimed that the search of his apartment, conducted by the authorities on 29 December 1999, had interfered with his right to respect for his home as guaranteed by Article 8 § 1 of the Convention. The Government failed to argue otherwise.

110. Thus, the Court concludes that there has been an interference with the applicant's right to respect for his home.

2. Whether the interference was justified

111. It accordingly has to be determined whether the interference was justified under paragraph 2 of Article 8 of the Convention, in other words whether it was “in accordance with the law”, pursued one or more of the

legitimate aims set out in that paragraph and was "necessary in a democratic society" to achieve the aim or aims in question.

"In accordance with the law"

112. The Court reiterates that an interference cannot be regarded as "in accordance with the law" unless, first of all, it has some basis in domestic law. In relation to paragraph 2 of Article 8 of the Convention, the term "law" is to be understood in its "substantive" sense, not its "formal" one. In a sphere covered by the written law, the "law" is the enactment in force as the competent courts have interpreted it (see, *inter alia*, *Société Colas Est and Others v. France*, no. 37971/97, § 43, ECHR 2002-III).

113. The Court notes that domestic legislation provided, at the relevant time, that a search of premises could be ordered by the trial court (during the trial phase) or by the prosecutor (during the pre-trial phase) only if there was probable cause to believe that objects or documents which may be relevant to a case would be found in them (see paragraphs 26 above). Such a search could also be conducted in the course of an enquiry, but only in the course of examining a crime scene and if its immediate execution was the only possibility to collect and secure evidence (see paragraph 25 above).

114. In the instant case, the Court finds that it is unclear in the context of what kind of proceedings the search of the applicant's home was conducted, in so far as at the time in question no enquiry or preliminary investigation had apparently been opened. It notes in this respect that the Government have failed to argue otherwise. In addition, the search was apparently conducted only in the presence of two witnesses and without the applicant, an adult representative of the household, the residence's manager or a representative of the municipality being present (see paragraph 27 above). Accordingly, it appears that the prerequisites for performing such a search were not present and its execution was not in compliance with the relevant domestic law provisions (see paragraphs 25-27 above).

115. The Court further observes that the Government failed to provide any information and evidence to show that the said search was ordered and conducted in accordance with domestic legislation.

116. In view of the above, the Court must conclude that the search of the applicant's home of 29 December 1999 was not conducted "in accordance with the law" within the meaning of paragraph 2 of Article 8 of the Convention. Thus, there has been a violation of the said provision on account of the said search. In the light of this conclusion, the Court is not required to determine whether the interference was "necessary in a democratic society" for one of the aims enumerated in paragraph 2 of Article 8 of the Convention (see, *mutatis mutandis*, *Malone v. the United Kingdom*, judgment of 2 August 1984, Series A no. 82, p. 37, § 82 and *Khan v. the United Kingdom*, no. 35394/97, § 28, ECHR 2000-V).

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

117. In his initial application to the Court, the applicant complained of a violation of his right to a fair trial in breach of Article 6 of the Convention. He argued that the Prosecutor's Office had too much power in the proceedings, as it was both supervising the preliminary investigation and preparing the prosecution case against him.

118. Article 6 § 1 of the Convention provides, as relevant:

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

119. As regards the alleged bias of the Prosecutor's Office, the Court reiterates that the guarantees of independence and impartiality under Article 6 of the Convention concern solely the courts and do not apply to the prosecution authorities, which are, as in the case at hand, mere parties to a contentious judicial proceeding (see *Rezzonico v. Italy* (dec.), no. 43490/98, 15 November 2001 and *Iovchev v. Bulgaria* (dec.), no. 41211/98, 18 November 2004).

120. In any event, however, the Court notes that the applicant failed to sustain or substantiate this complaint in his subsequent communications and observations. In fact, he entirely failed to inform the Court of the subsequent development of the criminal proceedings against him following his communication of 5 April 2000 (see paragraph 16 above). It is unclear, therefore, whether they resulted in the applicant's conviction and whether he exhausted the available domestic remedies by raising his complaints for any alleged breaches of his right to a fair trial in any appeals before the domestic courts.

121. Accordingly, considering the lack of information in respect of the development of the criminal proceedings and in view of the applicant's failure to sustain his complaint, the Court finds that the applicant's complaint under Article 6 of the Convention is unsubstantiated, therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

122. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

123. The applicant claimed 15,000 euros (EUR) in non-pecuniary damages for each of the alleged violations of his rights under the Convention. He argued that he had felt anguish and despair having been deprived of his liberty, in conditions which were inhuman and degrading, for a certain length of time pending the criminal proceedings against him and without the possibility to have the grounds of his continued detention effectively examined by a court.

124. The Government did not submit comments on the applicant's claims for damage.

125. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of his detention for at least three months in conditions which were inhuman and degrading and, also, as a consequence of the violation of his rights under Articles 5 § 3 and 8 of the Convention (see paragraphs 62, 100 and 116 above). Having regard to the specific circumstances of the present case, its case-law in similar cases (see, *mutatis mutandis*, *Kehayov*, cited above, §§ 90-91 and *Iovchev*, cited above, §§ 156-58) and deciding on an equitable basis, the Court awards EUR 2,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

126. The applicant also claimed 5,000 US Dollars (approximately EUR 3,915) for the costs and expenses incurred before the domestic courts and the Court. This included 62 hours for the legal work of his lawyer in respect of which he presented a timesheet. The applicant requested that the costs and expenses incurred should be paid directly to his lawyer, Mr V. Stoyanov.

127. The Government did not submit comments on the applicant's claims for costs and expenses.

128. The Court reiterates that according to its case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the instant case, it does not consider that the applicant's claims meet the aforesaid standard. In addition, the Court finds

that the applicant's lawyer failed to keep it informed of the subsequent development of the criminal proceedings against his client and of any subsequent periods of detention (see paragraph 16 above), circumstances which are directly relevant to the application (Rule 47 § 6 of the Rules of Court). Accordingly, having regard to all relevant factors, the Court considers it reasonable to award the sum of EUR 1,000 in respect of costs and expenses, plus any tax that may be chargeable on that amount.

C. Default interest

129. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY

1. *Declares* admissible the complaints concerning (a) the applicant not being promptly brought before a judge or other officer authorised by law to exercise judicial power; (b) the applicant's detention in allegedly inadequate conditions of detention at the Pazardzhik Regional Investigation Service; and (c) the allegedly unlawful interference with the applicant's right to respect for his home;

2. *Declares* the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the applicant not having been promptly brought before a judge or other officer authorised by law to exercise judicial power;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant having been detained in inadequate conditions of detention at the Pazardzhik Regional Investigation Service;

5. *Holds* that there has been a violation of Article 8 of the Convention on account of the unlawful interference with the applicant's right to respect for his home as a result of the search of his apartment;

6. *Holds*
   (a) that the respondent State is to pay to the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable on the date of settlement :

(i) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, payable to the applicant himself;

(ii) EUR 1,000 (one thousand euros) in respect of costs and expenses, payable into the bank account of the applicant's lawyer in Bulgaria;

(iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President