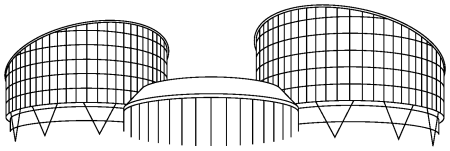

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF PETKOV AND PROFIROV v. BULGARIA

(Applications nos. 50027/08 and 50781/09)

JUDGMENT

STRASBOURG

24 June 2014

FINAL

17/11/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Petkov and Profirov v. Bulgaria,

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

Ineta Ziemele, *President,*
George Nicolaou,
Ledi Bianku,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Paul Mahoney,
Faris Vehabović, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 3 June 2014,

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

PROCEDURE

1. The case originated in two applications 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 two Bulgarian nationals, Mr Stanislav Dimitrov Petkov ("the first applicant") and Mr Petko Yankov Profirov ("the second applicant"). Application no. 50027/08 was lodged on 24 September 2008 by both applicants, and application no. 50781/09 was lodged on 8 September 2009 solely by the first applicant.

2. The applicants were represented by Mr S. Karov, a lawyer practising in Burgas. The Bulgarian Government ("the Government") were represented by their Agent, Ms K. Radkova, from the Ministry of Justice.

3. The applicants alleged that their twenty-four-hour detention by the police had violated their right to liberty.

4. On 23 November 2012 the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1981 and 1980 respectively and live in Burgas.

A. Detention of the two applicants in Stara Zagora (application no. 50027/08)

6. On the morning of 4 March 2007, while the applicants and a third person, Mr V., were in a hotel in Stara Zagora, the police entered their room and arrested Mr V., whose name was on a national list of wanted persons.

7. At around 4 p.m. on the same day, when the two applicants were back in their hotel room, several police officers entered and searched the room. The applicants were taken to a police station, where they were questioned for about ten minutes on what business had brought them to Stara Zagora. No records were taken of the interviews.

8. At around 6 p.m. the applicants were presented with written orders for their twenty-four-hour detention, drawn up under section 63(1)(1) of the Ministry of Internal Affairs Act ("the MIAA", see paragraph 25 below). The orders merely referred to section 63(1)(1) and to the Criminal Code provision concerning theft. They did not mention any factual grounds justifying a suspicion that the applicants had committed an offence.

9. Upon being presented with the orders, the applicants stated that they wished to telephone a lawyer. The first applicant indicated the name and telephone number of his lawyer. According to the applicants, their lawyers were not contacted by the police and when, nonetheless, their relatives contacted another lawyer and he arrived at the police station the following morning, he was not allowed to see them.

10. While in custody, the applicants were not questioned further or summoned for any other reason. They were released at 5.15 p.m. on 5 March 2007.

11. On 9 August 2007 the applicants applied for judicial review of the detention orders of 4 March 2007, pointing out that the orders did not refer to any factual circumstances justifying a suspicion against them.

12. In the course of the ensuing two sets of proceedings the police stated that the applicants had been arrested because they had been with Mr V., whose name was on a list of wanted persons and who, during his initial questioning, had not explained in a satisfactory manner what the three of them had been doing in Stara Zagora. In addition, on unspecified dates there had been several thefts in the city, which appeared to have been committed by persons coming from elsewhere. The applicants had already been suspected of having committed other thefts. Accordingly, it had been necessary to question them in order to verify what they had been doing in Stara Zagora and whether they had alibis. In addition, the police explained that it had been necessary to check "in detail" the applicants' involvement in the thefts, because they had been behaving "rudely, arrogantly and in manifest disrespect of the set rules".

13. In two judgments dated 31 October 2007, containing largely identical reasoning, the Stara Zagora Administrative Court found that the

detention orders were lawful. It considered that the reference to the Criminal Code provision on theft amounted to an indication of the relevant factual circumstances, and that the police had held sufficient information to justify a suspicion of a criminal offence. Moreover, the detention had served the legitimate purpose of "facilitating the carrying out of a police check-up unhindered".

14. In addition, the Administrative Court found that the applicants' complaints that they had not had access to a lawyer were irrelevant, as they did not concern the lawfulness of the detention orders but merely their enforcement.

15. Following appeals by the applicants, in two final judgments – of 24 April 2008 in the case of the first applicant and 3 July 2008 in the case of the second applicant – the Supreme Administrative Court ("the SAC") upheld the lower court's judgments, confirming its findings.

B. Detention of Mr Petkov in Burgas (application no. 50781/09)

16. At around 3 a.m. on 6 December 2007 the first applicant and a friend of his, Mr D., were arrested on a street in Burgas and taken to a police station, where the police issued orders for their twenty-four-hour detention. The order concerning the first applicant indicated that it had been issued on the basis of section 63(1) of the MIAA (see paragraph 25 below) and that he was suspected of having committed an offence. It mentioned no factual grounds justifying such a suspicion.

17. Upon receipt of the detention order the applicant stated that he wished to contact a lawyer. However, he contended that he had not been allowed to do so and had only managed to call secretly from his mobile phone; the lawyer arrived at the police station and was allowed to meet him briefly.

18. While in custody the first applicant was not questioned or summoned for any reason. He was kept at the police station until 2 a.m. on the next day, 7 December 2007, when he was released.

19. On the day of his release the first applicant applied for judicial review of the detention order, pointing out that it contained no reasoning and that it had been unclear why he had been detained.

20. In the course of the ensuing proceedings the police explained that the applicant and Mr D. had been seen by a police patrol carrying a plastic bag, which, on seeing the police, they had discarded in a nearby yard. When checked by the police, the bag had contained a pair of pliers. The officers had also found a pair of gloves close by. The first applicant and Mr D. had been suspected of several earlier thefts.

21. The objects mentioned by the police – a pair of pliers and gloves – were apparently never seized for the purposes of a criminal investigation.

22. In a judgment of 18 February 2008 the Burgas Administrative Court found the disputed detention order lawful, noting that the police's explanations showed that there had been a reasonable suspicion that the first applicant had committed theft. Following an appeal lodged by the applicant, in a final judgment of 9 March 2009 the SAC upheld the lower court's judgment.

23. In a judgment of 20 March 2008, which entered into force on an unspecified date, the Burgas Administrative Court allowed Mr D.'s application for judicial review of his detention order and the order was subsequently quashed. The domestic court considered that it had been unclear what offence Mr D. had been suspected of, that there were no data in that regard and that no attempts to gather such data had been made during the detention. The circumstances of Mr D.'s detention were identical to those of the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

24. The relevant provisions of the Constitution of 1991 read as follows:

Article 30

"3. The State authorities shall be free to detain citizens only in the urgent circumstances expressly stipulated by law, and shall immediately advise the judicial authorities accordingly. The judicial authorities shall rule on the legality of a detention within the next 24 hours.

4. Everyone shall be entitled to legal counsel from the moment of detention or from the moment of being charged".

B. Ministry of Internal Affairs Act

25. Under the Ministry of Internal Affairs Act ("the MIAA") of 2006 the police can, on the basis of a written order to that effect (section 65(1)), arrest an individual suspected of having committed a criminal offence (section 63(1)(1)). An individual taken into police custody is entitled to be assisted by counsel (section 63(5)). Under section 63(1)(1) police detention cannot exceed twenty-four hours (section 64 *in fine*) and cannot entail the restriction of any personal rights other than the right to free movement (section 64).

26. The SAC has systematically accepted that detention under section 63(1)(1) of the Act is a measure of administrative compulsion (*принудителна административна мярка*) which could only be imposed with the purpose of preventing the commission or the continued commission of an offence by the arrestee, or his absconding. It has observed

that the application of section 63(1)(1) is a matter of the police's "operational freedom", "with a view to establishing a possible link between the person arrested and the offence committed" and bearing in mind the police's task to prevent and investigate crime (*Решение № 4453 от 28.03.2012 г. на ВАС по адм. д. № 5390/2011 г., III о.*). The SAC has in addition held that when making an order under section 63(1) of the Act the police are not under an obligation to specify the offence which the arrestee is suspected of having committed (*Решение № 3475 от 09.03.2012 г. на ВАС по адм. д. № 5290/2011 г., V о.*; *Решение № 4453 от 28.03.2012 г. на ВАС по адм. д. № 5390/2011 г., III о.*). In some cases it has required that the detention order under section 63(1)(1) of the Act should mention the factual grounds substantiating the suspicion required (*Решение № 4410 от 02.04.2009 г. на ВАС по адм. д. № 6839/2008 г., III о.*), but in another case it has held that the order did not necessarily have to refer to the relevant factual circumstances (*Решение № 5651 от 15.05.2008 г. на ВАС по адм. д. № 9712/2007 г., III о.*).

27. Section 63(4) of the MIAA provides that the arrestee can contest the legality of his detention and that the courts are obliged to examine the application for judicial review "immediately". That provision has not been construed by the domestic courts as allowing the arrestee to apply for release prior to the expiry of the statutory limit of twenty-four hours, but only as permitting subsequent judicial review of the respective detention order, carried out in accordance with the standard rules of administrative procedure. Arrestees taken into police custody have attempted to seek to obtain immediate release relying on Article 250 of the Code of Administrative Procedure, which provides that everyone can seek the cessation of the unlawful actions of an administrative body (*Определение № 13420 от 16.10.2013 г. на ВАС по адм. д. № 13132/2013 г., V о.*). However, in one case the SAC found such an application for release inadmissible, on the ground that there was a written detention order, which precluded the applicability of Article 250 of the Code of Administrative Procedure. Moreover, the SAC noted that at the time of examination of the application for release, the actions complained of, namely the claimant's detention by the police, had already ended. It observed further that as the detention order was subject to judicial review, this would also include a review of the lawfulness of the police's actions taken in its implementation (*Определение № 12313 от 21.10.2010 г. на ВАС по адм. д. № 12343/ 2010 г., I о.*).

C. State and Municipalities Responsibility for Damage Act

28. The State and Municipalities Responsibility for Damage Act 1988 ("the SMRDA"), as worded at the relevant time, provided in section 1(1) that the State and the municipalities were liable for damage caused to

private individuals and legal entities as a result of unlawful decisions, acts or omissions on the part of their authorities or officials while discharging their administrative duties.

29. The national courts have systematically accepted that detention orders under section 63(1) of the MIAA are administrative decisions within the meaning of section 1(1) of the SMRDA and that their setting aside gives rise to entitlement for the persons affected by them to seek damages from the State (*Решение № 14976 от 8.12.2010 г. на ВАС по адм. д. № 3969/2010 г., III о.*; *Решение № 11974 от 1.10.2012 г. на ВАС по адм. д. № 1808/2012 г., III о.*; *Решение № 7915 от 10.06.2013 г. на ВАС по адм. д. № 11237/2012 г., III о.*).

THE LAW

I. JOINDER OF THE APPLICATIONS

30. Given that the two applications at hand concern similar facts and complaints and raise identical issues under the Convention, the Court decides that the they should be joined pursuant to Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

31. The applicants complained under Article 5 § 1 of the Convention that their detention by the police had not been based on reasonable suspicion that they had committed criminal offences, and under Article 5 § 2 that they had not been informed of the reasons for their detention. They complained that while in custody they had not been allowed to contact their lawyers. Relying on Articles 6 § 1 and 13 of the Convention, the applicants also complained that they had had no means at their disposal to challenge speedily the lawfulness of their detention and obtain release. They considered that the judicial review proceedings initiated by them had been unfair because the national courts had reached wrong conclusions. The applicants also referred to Article 6 §§ 2 and 3 (a) and (c) of the Convention.

32. The Court finds that the above complaints fall to be examined under paragraphs 1, 2, 4 and 5 of Article 5 of the Convention, which, in so far as relevant, reads:

> "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.

...

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.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. Admissibility

33. The Government argued that the above complaints, to the extent that they concerned the allegation that the applicants had been unable to contact their lawyers, were inadmissible for non-exhaustion of domestic remedies. According to the Government, it had been open for the applicants to bring tort actions against the State, given that their inability to contact their lawyers was not related to the alleged unlawfulness of the detention orders. Therefore, the unsuccessful challenges against the orders did not predetermine the outcome of any tort actions concerning specifically access to a lawyer.

34. The applicants contested the above arguments.

35. The Court notes that the remedy proposed by the Government concerns specifically the applicants' access to a lawyer, which is only an aspect of their complaints under Article 5 § 1, examined below. Moreover, the Court notes that the applicants pursued the most appropriate remedy in relation to their complaints, namely judicial review of the disputed detention orders, which, if successful, would have allowed them to seek damages on that account. The Court does not consider that in this situation they would have been required to pursue a further remedy as proposed by the Government (see, *mutatis mutandis*, *T.W. v. Malta* [GC], no. 25644/94, § 34, 29 April 1999, and *Kudra v. Croatia*, no. 13904/07, § 90, 18 December 2012). Accordingly, the Court dismisses the objection for non-exhaustion of domestic remedies.

36. The Court notes in addition that the complaints at issue are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor inadmissible on any other ground. They must therefore be declared admissible.

B. Merits

1. Complaint under Article 5 § 1

37. The applicants considered that their detention by the police had breached Article 5 § 1 of the Convention.

(a) Arguments of the parties

38. The Government contested the complaint. They considered that the applicants had been detained on suspicion of having committed offences, as provided for under Article 5 § 1 (c), arguing that the suspicion had been genuine and had concerned specific offences. As regards the detention in Stara Zagora, the suspicion had been based on the fact that several thefts had been committed in the city with a *modus operandi* unlike any previously known to the police. In respect of the first applicant's arrest in Burgas, the suspicion stemmed from the way he and Mr D. had behaved when approached by the police and from their alleged attempt to hide objects they had been carrying. It was not necessary at such an early stage for the police to dispose of sufficient evidence for the bringing of charges. The applicants' questioning had been the authorities' sole means of establishing their involvement in a series of thefts; accordingly, the detention had been necessary.

39. The Government considered that domestic law provided sufficient guarantees against arbitrary detention, as it provided for, most notably, the possibility for the detained to be assisted by counsel. They contested as unsubstantiated the applicants' statements that they had been denied access to such assistance.

40. The applicants disputed the Government's arguments. They considered that neither at the time of their arrest, nor subsequently, were there any grounds to suspect them of having committed a specific criminal offence, and that the sole reason for their arrest had been the fact that they had already been registered as suspects of thefts. They pointed out that the Convention required a "reasonable" suspicion, and not mere doubts, and that the Government's allegations that such a suspicion existed were "arbitrary". The applicants noted, in addition, the police's statement, in relation to their arrest in Stara Zagora, that it was necessary to check them because they had been behaving rudely and arrogantly (see paragraph 12 above). They considered this as recognition on the part of the authorities of the unfoundedness of their detention. As to the first applicant's arrest in Burgas, the applicants pointed out that in the proceedings brought by Mr D. concerning identical factual circumstances, the Burgas Administrative Court had found that it had been unclear what offence the claimant had been suspected of (see paragraph 23 above). Moreover, still in relation to that case, it was noteworthy that the objects allegedly found by the police, a pair of pliers and gloves, had never been seized for the purposes of a criminal

investigation (see paragraph 21 above). Lastly, the applicants reiterated their statements that while in custody they had not been allowed, or were allowed very briefly, to see their counsel.

(b) The Court's assessment

41. The Court reiterates that sub-paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty. No deprivation of liberty will be lawful unless it is carried out with one of the purposes listed in those paragraphs. Where the "lawfulness" of detention is at issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof (see, among many others, *Kolevi v. Bulgaria*, no. 1108/02, § 173, 5 November 2009). Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see, among others, *Mooren v. Germany* [GC], no. 11364/03, § 72, 9 July 2009, and *Creangă v. Romania* [GC], no. 29226/03, § 84, 23 February 2012).

42. No detention which is arbitrary can be compatible with Article 5 § 1. In the context of sub-paragraph (c) of Article 5 § 1, the reasoning of the decision ordering detention is a relevant factor in determining whether a person's detention must be considered as arbitrary. The Court has considered the absence of any grounds given by the judicial authorities in their decisions authorising detention to be incompatible with the principle of the protection from arbitrariness enshrined in Article 5 § 1 (see *Stašaitis v. Lithuania*, no. 47679/99, § 67, 21 March 2002; *Nakhmanovich v. Russia*, no. 55669/00, § 70, 2 March 2006, and *Belevitskiy v. Russia*, no. 72967/01, § 91, 1 March 2007).

43. Sub-paragraph (c) of Article 5 § 1 permits deprivation of liberty only in connection with criminal proceedings (see *Al Husin v. Bosnia and Herzegovina*, no. 3727/08, § 65, 7 February 2012). As regards the "reasonable suspicion" required under that provision, the Court reiterates that the fact that an applicant has not been charged or brought before a court does not necessarily mean that the purpose of his detention was not in accordance with that provision. Sub-paragraph (c) of Article 5 § 1 does not presuppose that the police should have obtained sufficient evidence to bring charges. However, the requirement that the suspicion must be based on reasonable grounds forms an essential part of the safeguard against arbitrary arrest and detention (see *İpek and Others v. Turkey*, nos. 17019/02 and 30070/02, § 29, 3 February 2009). For there to be reasonable suspicion there must be facts or information which would satisfy an objective observer that the person concerned may have committed an offence (see *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August

1990, Series A no. 182, pp. 16-17, § 32; *Labita v. Italy* [GC], no. 26772/95, § 155, ECHR 2000-IV; and *Gusinskiy v. Russia*, no. 70276/01, § 53, ECHR 2004-IV). Lastly, the Court notes that the suspicion should relate to a specific offence (see *Guzzardi v. Italy*, 6 November 1980, § 102, Series A no. 39, and *Brogan and Others v. the United Kingdom*, 29 November 1988, § 51, Series A no. 145-B).

44. Turning to the case at hand, the Court notes that the Government relied on sub-paragraph (c) of Article 5 § 1 and have not argued that the applicants' detention could be justified on any other ground provided for by that provision (see paragraph 38 above). In particular, the Government alleged that the applicants had been detained, as provided for by Article 5 § 1 (c), for the purpose of bringing them before the competent legal authority on reasonable suspicion of having committed an offence. Accordingly, the Court will limit its analysis to the question whether the applicants' detention satisfied the requirements of that proposition.

45. The Court notes that Bulgarian law, namely section 63(1)(1) of the MIAA (see paragraph 25 above), provides that the police may detain a person suspected of having committed an offence for twenty-four hours. In most cases, including those under examination, the courts have not construed section 63(1)(1) as allowing the police discretionary power to detain and have sought to establish the existence of a reasonable suspicion. However, the SAC has also held that the police had the "operational freedom" to decide whether to arrest (see paragraph 26 above). Moreover, the Court notes that section 63(1)(1) of the MIAA does not expressly provide that an arrest can only be lawful if it is carried out with the purpose of bringing the person concerned before a judicial body and instituting criminal proceedings; nor have the parties submitted information and decisions of the national courts showing that that requirement has been applied to cases concerning police detention. Thus, as will be discussed below, even though in the present cases the applicants were not detained with the purpose of a criminal investigation, the domestic courts found the detention to be in compliance with section 63(1)(1) of the MIAA.

46. The Court observes that Article 5 § 1 (c) requires that a person is detained on "reasonable suspicion" of having committed an offence. Such suspicion cannot be general and abstract. As mentioned above (see paragraph 43), this means that there must be facts or information which would satisfy an objective observer that the person concerned may have committed a specific offence.

47. It is noteworthy that no such facts and information were mentioned in the orders for the applicants' detention in the present cases, which merely referred to the applicable legal provisions and not to any specific circumstances or acts (see paragraphs 8 and 16 above). This alone could be a sufficient ground for the Court to conclude that the applicants' deprivation

of liberty was incompatible with the principle of protection from arbitrariness (see paragraph 42 above).

48. In so far as in the ensuing judicial proceedings the police provided information which, in their view, justified their "reasonable suspicion", the Court has to determine whether that information could satisfy an objective observer that the police officers could be said to have had grounds to suspect that the applicants could have committed a specific offence.

49. As transpires from the police's explanations before the courts concerning the arrest of both applicants in Stara Zagora, the suspicion was based on the fact that they had been in the company of a wanted person and that there had been thefts in the city which seemed to have been committed by persons from elsewhere (see paragraph 12 above). However, no information or data have been presented linking the applicants to these or other particular thefts, or showing that the purpose of their stay in Stara Zagora was to commit crime, either at the time of the arrest or in the subsequent court proceedings.

50. As regards the other case under examination, concerning the first applicant's arrest in Burgas, the police did not even argue that a specific offence had been committed, by the applicant or anyone else. Their "suspicion" was based on the fact that the applicant and his friend, Mr D., had been out at night and had allegedly tried to hide from the police a pair of pliers and gloves. However, as the Court has already noted (see paragraph 43 above), the "reasonable suspicion" under Article 5 § 1 (c) should relate to a specific offence. It is also noteworthy that in the judicial review proceedings brought by Mr D. concerning circumstances identical to those of the first applicant, the courts reached the conclusion that it was unclear what offence the claimant had been suspected of having committed (see paragraph 23 above).

51. In respect of both cases, the Government have not provided in the proceedings before the Court any further elements justifying a "reasonable suspicion" that the applicants had committed an offence. Accordingly, the Court is not satisfied that the applicants were arrested on any such suspicion.

52. The Court emphasises that deprivation of liberty within the meaning of Article 5 § 1 (c) is to be considered compatible with this provision where carried out with the purpose of bringing the arrested person before the competent legal authority. The fact that an arrested person was neither charged nor brought before a court does not necessarily mean that the purpose of their detention was not in accordance with Article 5 § 1 (c). The existence of such a purpose must be considered independently of its achievement and sub-paragraph (c) of Article 5 § 1 does not presuppose that the police should have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicants were in custody. There are indeed instances where such evidence may have been unobtainable or, in

view of the nature of the suspected offences, impossible to produce in court without endangering the lives of others. However, the authorities must be capable of demonstrating that in arresting an individual they pursued in good faith the purpose of further investigation by way of confirming or dispelling the concrete suspicions which grounded their arrest (see *Brogan and Others*, cited above, § 53).

53. In the instant case the Court is not convinced that the applicants were deprived of their liberty for the purpose of being brought before a competent legal authority, as required by Article 5 § 1 (c) of the Convention. The Court has already noted that this was not expressly required by the applicable domestic law (see paragraph 45 above). In the present cases the Government have not shown that the authorities intended at any time to initiate a criminal investigation into the offences allegedly committed by the applicants; as already mentioned, in the case in Burgas it was not even alleged that there was an offence to investigate. The Government pointed out, nevertheless, that it had been necessary to question the applicants in order to establish their possible involvement in a series of thefts (see paragraph 38 above). However, the Court notes that apart from a quick interview following the arrest of both applicants in Stara Zagora, of which no record was taken, the authorities did not perform any questioning, or any other investigative measure, involving the applicants or not (see paragraphs 7, 10 and 18 above). The Court is therefore not convinced that the police intended to investigate anything, or to bring the applicants before the judicial authorities. It appears that the applicants were kept in custody merely in the exercise of the discretionary power of the police until the expiry of the statutory twenty-four hour time-limit.

54. In so far as the domestic law provided for some guarantees against arbitrariness, the Court notes that the applicants were not able to benefit from them. The domestic law authorised an arrestee to challenge the lawfulness of the detention and obtain an "immediate" review; however, as will be discussed below (see paragraph 68), recourse to this remedy could not lead to release but only to the award of compensation. In addition, the domestic law provided that a person taken into police custody would immediately have access to a lawyer (see paragraph 25 above). However, the applicants were not allowed such access. After their arrest in Stara Zagora they were not permitted to see the lawyer retained by their relatives when the latter visited the police station (see paragraph 9 above), and in the case of the first applicant's arrest in Burgas, he was only allowed to meet his lawyer briefly (see paragraph 17 above). In this connection, the Court is not prepared to accept the Government's allegations that the applicants had been able to meet the lawyers, noting that those allegations are not supported by any evidence.

55. Accordingly, the Court is not convinced that the MIAA provided sufficient guarantees against arbitrariness, as required for any detention

under Article 5 § 1 of the Convention to be "lawful" within the meaning of that provision (see paragraph 41 above).

56. The Court concludes in view of the above that the domestic law did not contain sufficient guarantees against arbitrary detention and, in so far as it contained some, they were unavailable to the applicants. It finds in addition that the authorities failed to establish that the applicants were detained on "reasonable suspicion" of having committed an offence and that their detention was undertaken with the purpose of "bringing them before the competent legal authority". Accordingly, the Court cannot but conclude that the applicants' detention was arbitrary.

57. Consequently, there has been a violation of Article 5 § 1 of the Convention.

2. Complaint under Article 5 § 2

58. The applicants complained under Article 5 § 2 that they had not been informed of the reasons for their detention.

59. The Government argued that the orders for the applicants' detention contained the necessary information.

60. The Court reiterates that Article 5 § 2 contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty (see, among others, *Fox, Campbell and Hartley*, cited above, § 40).

61. The Government considered that the police orders for the applicants' detention satisfied the requirements of the Convention. However, as already discussed, those orders merely indicated the applicable legal provision of the MIAA, without mentioning any factual circumstances. The Court has held that the bare indication of the legal basis for the arrest, taken on its own, is insufficient for the purposes of Article 5 § 2 (see *Murray v. the United Kingdom*, 28 October 1994, § 76, Series A no. 300-A).

62. Nor can the Court conclude that the reasons for the applicants' arrests became known to them during any interviews with the police. Following his arrest in Burgas, the first applicant was not interviewed or summoned for any other reason (see paragraph 18 above). As to the detention of the two applicants in Stara Zagora, even though they were briefly questioned, no records were taken (see paragraph 7 above) and the Court is unable to establish whether they became aware of any suspicions against them. Moreover, the Government did not argue that the applicants had been informed of the reasons for their arrest during those interviews or that they were afforded reasonable access to a lawyer for the purposes of their defence in regard of these reasons.

63. In view of the above, the Court concludes that there has been a violation of Article 5 § 2 of the Convention.

3. Complaint under Article 5 § 4

64. The applicants also complained that they had been unable to take proceedings to obtain release. As noted above, the complaint falls to be examined under Article 5 § 4 of the Convention.

65. The Government argued that in view of the fact that police detention under section 63(1)(1) of the Ministry of Internal Affairs Act could only last up to twenty-four hours, it was impossible to provide for a judicial remedy that could result in the detainee's release. The applicants disagreed and reiterated their complaint.

66. The Court reiterates that the purpose of Article 5 § 4 is to assure to persons who are arrested and detained the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected (see, *mutatis mutandis*, *De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971, Series A no. 12, § 76). A remedy must be made available during a person's detention to allow that person to obtain speedy judicial review of the lawfulness of the detention, capable of leading, where appropriate, to his or her release. The existence of the remedy required by Article 5 § 4 must be sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required for the purposes of that provision (see, *mutatis mutandis*, *Stoichkov v. Bulgaria*, no. 9808/02, § 66 *in fine*, 24 March 2005, and *Vachev v. Bulgaria*, no. 42987/98, § 71, ECHR 2004-VIII (extracts)). The accessibility of a remedy implies, *inter alia*, that the circumstances voluntarily created by the authorities must be such as to afford applicants a realistic possibility of using the remedy (see, *mutatis mutandis*, *Čonka v. Belgium*, no. 51564/99, §§ 44 and 55, ECHR 2002-I).

67. The wording of Article 5 § 4 of the Convention indicates that it becomes operative immediately after arrest or detention and is applicable to "[e]veryone who is deprived of his liberty". Accordingly, in the cases at hand Article 5 § 4 required that a judicial remedy be made available whereby the applicants could have challenged their detention and obtained release.

68. The Ministry of Internal Affairs Act provides, in section 63(4), that anyone taken into police custody under section 63(1) of the same Act may contest the legality of the detention. It provides further that the courts are obliged to rule on the legality of the detention "immediately" (see paragraph 27 above). However, despite this wording, the courts have interpreted that provision as only permitting subsequent judicial review of the respective detention order, which, if successful, could lead to the award of compensation (see paragraphs 27 and 29 above). The provision has not been construed as allowing an arrestee to seek release. Moreover, applications under this provision are examined under the general rules of administrative procedure, which do not contain any particular requirements for speediness. Thus, when the applicants availed themselves of the remedy

under section 63(4) of the MIAA, the examination of their applications for judicial review took many months and, in the case concerning the first applicant's detention in Burgas, more than a year (see paragraphs 11, 15, 19 and 22 above). Accordingly, the remedy under section 63(4) of the MIAA does not satisfy the requirements of Article 5 § 4 of the Convention.

69. The parties have not argued that there were any other remedies available. The Court notes that in so far as arrestees have attempted to obtain release relying on other provisions of domestic law, they have been unsuccessful (see paragraph 27 above). Moreover, Bulgarian law does not provide for a general *habeas corpus* procedure applying to all kinds of deprivation of liberty (see *Stoichkov*, cited above, § 66, and *Sadaykov v. Bulgaria*, no. 75157/01, § 35, 22 May 2008).

70. The Court has not been informed of any other procedure in domestic law, which could provide the applicants with an opportunity to bring judicial proceedings to challenge the lawfulness of their detention and obtain release, as required by Article 5 § 4 of the Convention.

71. This means that there has been a violation of that provision.

4. Complaint under Article 5 § 5

72. The applicants also complained of the ineffectiveness of the judicial review proceedings they initiated, which led to their being unable to seek compensation. As indicated above, the Court is of the view that it would be appropriate to examine the complaint under Article 5 § 5 of the Convention.

73. The Government argued that the applicants would have been entitled to seek damages under section 1(1) of the SMRDA (see paragraphs 28-29 above), had the orders for their detention been set aside by the national courts. The applicants contested that argument, pointing out that the SMRDA was not applicable in their cases, since the orders had been found to be lawful at the domestic level.

74. Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 (see *Wassink v. the Netherlands*, 27 September 1990, § 38, Series A no. 185-A). The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court.

75. In the present case the Court has found that there were breaches of Article 5 §§ 1, 2 and 4 of the Convention. It must therefore establish whether or not Bulgarian law afforded the applicants an enforceable right to compensation. It notes in this regard that persons deprived of their liberty under section 63(1)(1) of the MIAA could seek damages under section 1(1) of the SMRDA; however, this was only possible where the respective detention order had been set aside as unlawful (see paragraphs 28-29 above). In the instant case the applicants' detention was considered by the

national courts as being in full compliance with the requirements of Bulgarian law; accordingly, the applicants had no right to compensation under section 1(1) of the SMRDA (see, *mutatis mutandis*, *Bochev v. Bulgaria*, no. 73481/01, § 77, 13 November 2008). It has not been argued that they were entitled to seek compensation under any other provision of domestic law.

76. It follows that there has been a violation of Article 5 § 5 of the Convention.

5. Conclusion

77. In conclusion, the Court finds that the domestic law did not require, and the authorities failed to establish in practice, that the applicants' twenty-four-hour detentions were based on reasonable suspicion of them having committed specific criminal offences and that these detentions were undertaken with the purpose of bringing the applicants "before the competent legal authority". Notwithstanding the formal requirements of the law, in practice the applicants were also deprived of the basic procedural guarantees inherent to Article 5 of the Convention: they had not been afforded information on the reasons for their detention or access to lawyer for the purposes of effective defence in view of these reasons; they were not able to undertake proceedings in order to obtain their immediate release; they were unable to seek compensation for damages resulting from their arbitrary detention. These circumstances are incompatible with the purpose of protection against arbitrary deprivation of liberty enshrined in Article 5 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

79. The applicants claimed 500 euros (EUR) for each of them in respect of non-pecuniary damage resulting from their arrest in Stara Zagora. In addition, the first applicant claimed a further EUR 500 in relation to his arrest in Burgas.

80. The Government urged the Court to conclude that the finding of a violation constituted sufficient just satisfaction in the case.

81. The Court is of the view that the applicants must have suffered anguish and frustration as a result of the breaches of their right to liberty

found above. As to quantum, the Court considers it reasonable to award the amounts claimed in their entirety. Accordingly, it awards the first applicant EUR 1,000 and the second applicant EUR 500 in respect of non-pecuniary damage.

B. Costs and expenses

82. The applicants also claimed EUR 1,110 for the work of their legal representative before the Court, for thirty-seven hours of work. In support of this claim they presented a time-sheet. For the proceedings before the Court the applicants also claimed 536 Bulgarian levs (BGN) (equivalent to EUR 275) for translation, postage and stationery. They presented invoices amounting to BGN 238.09 (equivalent to EUR 122) for postage and translation.

83. In addition, the applicants claimed BGN 2,101 for court fees and the costs of legal representation incurred in the proceedings before the domestic courts. The first applicant presented invoices and receipts amounting to BGN 1,172 (equivalent to EUR 601), and the second applicant submitted invoices for BGN 661 (equivalent to EUR 339).

84. The Government contested the above claims.

85. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum.

86. As concerns the proceedings before it, regard being had to the documents in its possession and the above criteria, the Court awards, jointly to the two applicants, EUR 1,110 for legal representation and the other expenses claimed to the extent that they have been substantiated, namely in the amount of EUR 122 (see paragraph 82 above).

87. As to the claims concerning the domestic proceedings, the Court is of the view that the expenses incurred were necessary. It thus awards them to the extent that they have been shown to be actually incurred (see paragraph 83 above); namely, it awards EUR 601 to the first applicant and EUR 339 to the second applicant.

C. Default interest

88. The Court considers it appropriate that the default interest rate 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. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 2 of the Convention;

5. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

6. *Holds* that there has been a violation of Article 5 § 5 of the Convention;

7. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:
      (i) EUR 1,000 (one thousand euros) to the first applicant and EUR 500 (five hundred euros) to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,232 (one thousand two hundred and thirty-two euros) jointly to the two applicants, EUR 601 (six hundred and one euros) to the first applicant and EUR 339 (three hundred and thirty-nine euros) to the second applicant, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (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;

8. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 24 June 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Ineta Ziemele
Deputy Registrar	President