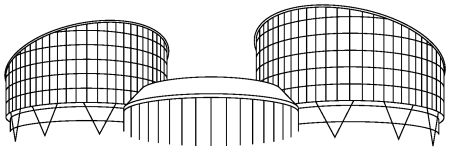

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KIRIL ANDREEV v. BULGARIA

(Application no. 79828/12)

JUDGMENT

STRASBOURG

28 January 2016

FINAL

28/04/2016

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

In the case of Kiril Andreev v. Bulgaria,

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

Angelika Nußberger, *President,*
Khanlar Hajiyev,
Erik Møse,
André Potocki,
Yonko Grozev,
Síofra O'Leary,
Carlo Ranzoni, *judges,*
and, Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 5 January 2016,

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

PROCEDURE

1. The case originated in an application (no. 79828/12) 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 Kiril Dimitrov Andreev ("the applicant"), on 5 December 2012.

2. The applicant was represented by Mr S. Arnaudov, a lawyer practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Ms D. Dramova, of the Ministry of Justice.

3. The applicant alleged, in particular, that his forty-three-hour detention between 7 and 9 June 2012 had been unlawful, and that he had not had any means of contesting it.

4. On 26 May 2014 the aforementioned complaints were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1980 and lives in Pleven.

6. On 25 April 2012 he was arrested in Sofia and subsequently charged with the unlawful possession of firearms and ammunition. He remained in detention on remand throughout the pre-trial proceedings. Eventually he entered into a plea agreement with the prosecution, acknowledging that he

had committed the offence he had been charged with and accepting a suspended sentence of two years' imprisonment.

7. The plea agreement was approved at a court hearing before the Sofia District Court on 7 June 2012. The court's decision was final. At the end of the hearing, at 5.16 p.m., the court ordered the discontinuation of the applicant's pre-trial detention.

8. After the hearing the applicant was brought to the Sofia Investigative Service, where his pre-trial detention was formally discontinued at about 7 p.m. However, he was not released but was instead taken to a police station, where he remained throughout the night and the next day. On the morning of 9 June 2012 he was transferred to the city of Pleven where, by an order issued at 12.10 p.m., he was once again formally placed in police custody. That measure was taken in the context of another set of criminal proceedings against the applicant which had been instigated in April 2012. On 10 June 2012 the investigator in charge of that case brought charges against the applicant in connection with another count of unlawful possession of firearms.

9. In the proceedings before the Court, the Government submitted an order dated 8 June 2012, issued by the investigator in charge of the case in Pleven and requiring that the applicant be taken by the police to appear before her in order to have charges brought against him. The order referred, in particular, to Article 71 §§ 1, 2 and 3 of the Code of Criminal Procedure (see paragraph 12 below) and, by way of justifying the need to bring the applicant by force, stated that there was a risk of his absconding. The Government explained that by the time that order had been received by the police in Sofia, it had become impossible to organise the applicant's transfer to Pleven the same day. That is why the applicant had been kept in the police station overnight and was only transported to Pleven the next day, 9 June 2012.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Code of Criminal Procedure

10. Article 383 § 1 of the Code of Criminal Procedure provides that a plea agreement which has been approved by the court has the same legal effect as a conviction and sentence which have become final.

11. Under Article 309 § 2 of the Code, whenever an accused has been acquitted by means of a judgment, or has been convicted but has received a suspended sentence or a sentence not involving imprisonment, he must be released "in the courtroom".

12. Article 71 of the Code authorises investigative bodies and courts to order that an accused be brought before them using force where his or her presence is mandatory or the respective body considers it necessary.

However, this is permissible only where the accused has been summoned and has failed to appear without a valid reason. An exception to that rule is permitted when the accused has previously absconded or has no permanent address (Article 71 §§ 1 and 2). The order authorising the bringing of a person before an investigative body using force is to be served on the individual concerned (Article 71 § 8, previously 71 § 7). Save in exceptional circumstances, that person's transfer is to be carried out during the day (Article 71 § 3).

13. A witness may also be brought before an investigative body or court using force if, having been duly summoned, he or she has failed to appear without a valid reason (Article 120 § 3 of the Code).

B. The State and Municipalities Responsibility for Damage Act

14. Section 1 of the State and Municipalities Responsibility for Damage Act ("the SMRDA") provides that the State is liable for damage suffered by private persons as a result of unlawful decisions, actions or omissions by civil servants committed in the course of or in connection with the performance of their duties.

15. Before December 2012, section 2 of SMRDA – in so far as it concerned detention ordered by the investigative authorities, the prosecution authorities or the courts – provided that the State would be liable for damage in cases of

> "unlawful pre-trial detention, including when imposed as a preventive measure, when it [has] been set aside for lack of lawful grounds."

16. The relevant practice of the domestic courts in the application of this provision has been summarised in the Court's judgments in the cases of *Kandzhov v. Bulgaria* (no. 68294/01, §§ 35-39, 6 November 2008) and *Bochev v. Bulgaria* (no. 73481/01, §§ 37-39, 13 November 2008).

17. After amendments published on 11 December 2012, effective as of 15 December 2012, the relevant parts of section 2 of the SMRDA read:

> "The State shall be liable for damage caused to individuals by the investigative bodies, the prosecution authorities or the courts in the event of:
>
> 1. pre-trial detention [...] or house arrest, when such detention or house arrest has been set aside, [...] as well as any other deprivation of liberty in breach of Article 5 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms [...];
>
> 2. breach of the rights guaranteed by Article 5 §§ 2-4 of the Convention [...]."

18. The context of the adoption of the December 2012 amendments has been described in the Court's judgment in the case of *Toni Kostadinov v. Bulgaria* (no. 37124/10, § 49, 27 January 2015).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 5 §§ 1 AND 4 OF THE CONVENTION

19. The applicant, relying on Article 5 §§ 1 and 3 and Article 6 of the Convention, complained that his detention between 7 and 9 June 2012 had had no basis in domestic law, and that he had not had any means of contesting it.

20. The Court is of the view that the complaints fall to be examined under Article 5 §§ 1 and 4 of the Convention, which read:

> "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:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
>
> ...
>
> 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."

A. Admissibility

1. Arguments of the parties

(a) The Government

21. The Government argued that the applicant had failed to exhaust the available domestic remedies because he had failed to claim damages under sections 1 or 2 of the SMRDA.

22. The Government referred in particular to the amendments to section 2 of the SMRDA introduced in December 2012, pointing out that they had been expressly aimed at creating a domestic remedy for breaches of Article 5 of the Convention, in accordance with the Court's case law.

23. In support of their argument that the remedy above was effective, the Government presented several recent judgments of the national courts.

24. The first one, a judgment of the Varna Regional Court of 4 March 2014 (*Решение № 317 от 4.03.2014 г. на ОС-Варна по гр. д. № 967/2013 г.*), concerned the claimant's thirty-two-hour detention by the police on 19 and 20 February 2012. The Regional Court referred to the provision of section 2 (1) of the SMRDA, as worded after December 2012, without explaining why it considered it applicable to events which had occurred prior to the December 2012 amendments. The domestic court found that the detention at issue had been unlawful and that this gave rise to a liability on the part of the State to pay damages. Its judgment was partially quashed on 3 July 2014 by the Varna Court of Appeal (*Решение № 101 от 3.07.2014 г. на ВнАС по в. гр. д. № 265/2014 г.*), which reduced the amount of damages awarded to the claimant. It is to be noted that the Court of Appeal referred to the relevant part of section 2 (1) of the SMRDA as worded before December 2012. It is unclear whether the Court of Appeal's judgment has become final.

25. In a judgment of 5 March 2014 (*Решение № 101 от 5.03.2014 г. на ОС-Пазарджик по в. гр. д. № 1051/2013 г.*) the Pazardzhik Regional Court, acting as second-instance court, quashed an earlier judgment of the Pazardzhik District Court concerning a claim for damages related to detention in 2010 and remitted the case, instructing the lower court to examine the matter under section 2 (1) of the SMRDA and citing the provision's wording after December 2012. That judgment has become final, but the course of the proceedings after the remittal is unclear.

26. Lastly, in a judgment of 13 December 2013, which was upheld upon appeal and has become final (*Решение № 1176 от 13.12.2013 г. на РС-Велико Търново по гр. д. № 1838/2013 г.*), the Veliko Tarnovo District Court found the provision in section 2 (1) of the SMRDA, as worded after December 2012, inapplicable to facts dating back to 2010. It pointed out that the SMRDA did not expressly envisage the new provision's retroactive application. It noted in addition that, even though it could be accepted that before December 2012 Article 5 § 5 of the Convention – considered to be directly applicable in Bulgarian law – created an entitlement to damages for persons whose rights under the remaining paragraphs of Article 5 had been breached, during that period of time that entitlement had remained "unenforceable" and "indefensible" before the courts.

27. The Government argued that the aforementioned judgments were indicative of a "constant and coherent" practice of the domestic courts concerning the application of section 2 (1) of the SMRDA.

28. Lastly, the Government contended that even as worded before the December 2012 amendments, the SMRDA allowed persons in the applicant's position to successfully seek damages for unlawful detention.

(b) The applicant

29. The applicant acknowledged that section 2 (1) of the SMRDA, as worded after December 2012, could represent an effective remedy in cases of alleged breaches of Article 5 §§ 1-4 of the Convention. However, he contended that the remedy was inapplicable to his particular circumstances, because it had been created after his allegedly unlawful detention had been terminated and there was no provision envisaging its retroactive applicability.

30. The applicant also argued that there was no practice of the domestic courts awarding damages in circumstances such as the ones in his case on the basis of section 2 (1) of the SMRDA, as worded before December 2012.

2. The Court's assessment

(a) Exhaustion of domestic remedies

31. The Court reiterates that the rule requiring the exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the alleged breaches. The existence of the remedies must be sufficiently certain, in practice as well as in theory. Recourse should be had to remedies which are adequate and effective (see, among many other authorities, *Salman v. Turkey* [GC], no. 21986/93, § 81, ECHR 2000-VII). It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy they are relying on was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints, and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V).

32. Under the Court's case-law, the availability of effective domestic remedies is normally assessed by reference to the date on which the application was lodged. However, this rule is subject to exceptions where justified by the circumstances (see *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04 and 21819/04, § 87, ECHR 2010). The Court has considered such an exception justified in a number of cases (for example *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX; *Balakchiev and Others v. Bulgaria* (dec.), no. 65187/10, 18 June 2013; *Łatak v. Poland* (dec.), no. 52070/08, 12 October 2010). Confirming the subsidiary role of the Convention system, in these cases the Court took into account the repetitive character of the

alleged violations, the existence of systemic problems at national level, and the introduction by the Government of remedies aimed at addressing the situation.

33. The present application was lodged with the Court on 5 December 2012, shortly before the adoption of amendments to the SMRDA introducing a domestic remedy aimed at providing compensation for alleged breaches of Article 5 §§ 1-4 of the Convention (see paragraphs 1 and 17-18 above). The Government have not shown that the SMRDA, as in force at the time the application was introduced – and in particular its section 2, dealing, *inter alia*, with detention ordered by the investigating or the prosecution authorities – offered the applicant reasonable chances of obtaining compensation for the allegedly unlawful detention between 7 and 9 June 2012.

34. As to the remedy introduced in December 2012, several days after the present application was lodged with the Court (see paragraph 17 above), the Court points out that in the case of *Toni Kostadinov* (cited above, §§ 68-71) it was not satisfied as to its effectiveness in the applicant's circumstances. In particular, the Court noted that the Government had not presented a single decision of the national courts showing that the remedy could apply to events which had occurred prior to the remedy's introduction in December 2012.

35. By contrast, in the present case the Government presented several domestic judgments (see paragraphs 24-26 above) concerning the new remedy's application.

36. However, the Court observes that one of them, namely the judgment of the Veliko Tarnovo District Court of 13 December 2013 (see paragraph 26 above), stated plainly that the remedy introduced with the December 2012 amendments to section 2 (1) of the SMRDA did not apply retroactively, and that prior to that date any compensation claim relating to alleged breaches of Article 5 of the Convention had been "indefensible" before the courts.

37. As to the remaining judgments, the Court observes that they did not settle the matters raised in them in a final manner. Moreover, in the case examined by the Varna Regional Court and the Varna Court of Appeal (judgments of 4 March and 3 July 2014, see paragraph 24 above), the two courts took diverging views on the applicable provision, one of them referring to the wording of section 2 (1) of the SMRDA after December 2012 and the other one to the one in force before that date.

38. The Court also takes into account the fact, referred to by the Veliko Tarnovo District Court (see paragraph 26 above) and relied on by the applicant (see paragraph 29 above), that the SMRDA did not expressly provide for the retroactive application of the remedy at issue (see *Toni Kostadinov*, cited above, § 70).

39. In the light of the foregoing, and reiterating that it is incumbent on the Government to satisfy the Court that the remedy under examination could be effective in practice in the applicant's case – and in particular that it could apply to events which occurred before the remedy's introduction in domestic law – the Court is of the view that this has not been shown. Accordingly, the Court does not find it justifiable to make an exception to the aforementioned rule that the availability of effective domestic remedies is to be assessed by reference to the date on which the application was lodged.

40. Consequently, the Court dismisses the Government's objection for non-exhaustion of domestic remedies.

41. As in *Toni Kostadinov* (cited above, § 72), the Court points out that the above conclusions are limited to the circumstances of the present case, and should not be seen as prejudging the outcome of applications which the Court may have to examine in future. The development of the national courts' case law will remain an important factor in assessing the admissibility of Article 5 complaints of the type examined here.

(b) Conclusion as to admissibility

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

B. Merits

1. Arguments of the parties

(a) The Government

43. The Government argued that the applicant's detention fell within the scope of subparagraph (c) of Article 5 § 1 of the Convention. They also contended that the detention had been lawful.

44. As concerns the applicant's initial detention after the hearing of 7 June 2012 – namely until 7 p.m. on the day when his previously-ordered pre-trial detention was formally discontinued – the Government considered that the time taken had been necessary in order to arrange the relevant administrative formalities, in particular to await the receipt by fax of the decision taken during the court hearing. Distinguishing the present case from the cases of *Petyo Petkov v. Bulgaria* (no. 32130/03, 7 January 2010) and *Bojinov v. Bulgaria* (no. 47799/99, 28 October 2004), the Government claimed that the delay of less than two hours (from 5.16 p.m. to 7 p.m.) before the discontinuation of the initial pre-trial detention had not been excessive.

45. As to the period after that, namely from 7 p.m. on 7 June to 12.10 p.m. on 9 June 2012, the Government considered that the applicant had been lawfully detained on the strength of the order, described in paragraph 9 above, requiring that he be brought before a police investigator in Pleven. In the Government's view, that order was justified by the risk of the applicant's absconding. It was issued in accordance with the law, in particular Articles 71 and 120 § 3 of the Code of Criminal Procedure. Furthermore, it was significant that after being transferred to Pleven, the applicant had been charged with a criminal offence, which meant that the purpose of his detention for the period at issue had been to facilitate the administration of justice.

46. As regards the applicant's complaint that he did not have any means of challenging the lawfulness of his detention, the Government pointed out that the period under examination was too short to allow for the effective examination of any request for release.

(b) The applicant

47. The applicant argued that he should have been released "in the courtroom", as provided for by Article 309 § 2 of the Code of Criminal Procedure, that is to say at 5.16 p.m. on 7 June 2012, immediately after the end of the court hearing of the same day. He thus considered that his detention until 7 p.m. on 7 June 2012 had been unlawful.

48. The applicant contended that the authorities had once again acted in breach of the law as regards the next period of detention. He considered that the requirements of Article 71 of the Code of Criminal Procedure had not been complied with and that there had been no valid grounds to justify the police bringing him before the investigator. He noted in that regard that Article 71 of the Code was applicable to the "accused" in criminal proceedings, whereas he had in fact only been classified as such after being brought to Pleven. The remaining requirements of Article 71 of the Code of Criminal Procedure had not been met either. In particular, it was a requirement to have been summoned to appear before a competent body and then to have failed to do so, which was not the case; he had not absconded and he had had a known address in Pleven.

49. Lastly, the applicant reiterated his complaint that he had not had any means by which to contest the legality of his detention.

2. The Court's assessment

(a) Article 5 § 1 of the Convention

50. The first requirement of Article 5 § 1 is that any detention must be in accordance with "a procedure prescribed by law". In stating this, the Convention is essentially referring to national law and lays down the obligation to comply with the substantive and procedural rules thereof (see

Mooren v. Germany [GC], no. 11364/03, § 72, 9 July 2009; *Del Río Prada v. Spain* [GC], no. 42750/09, § 125, ECHR 2013). While it is normally incumbent on national authorities, first and foremost, to interpret and apply domestic law, the Court is also competent to review whether the requirements thereof have been observed, in particular in cases where failure to comply with domestic law may entail a breach of the Convention (see *Creangă v. Romania* [GC], no. 29226/03, § 101, 23 February 2012).

51. 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.

52. Under subparagraph (c) of Article 5 § 1, a person may be detained – in the context of criminal proceedings only – for the purpose of bringing him before the competent legal authority on suspicion of having committed an offence (see *Jėčius v. Lithuania*, no. 34578/97, § 50, ECHR 2000-IX).

53. As to subparagraph (b), it allows, *inter alia*, detention to "secure the fulfilment" of any obligation prescribed by law. There must therefore be an unfulfilled obligation incumbent on the person concerned and the arrest and detention must be for the purpose of securing its fulfilment (see *Vasileva v. Denmark*, no. 52792/99, § 36, 25 September 2003).

54. In the present case, the parties were, most importantly, in disagreement over the question of whether or not the applicant's detention under examination was in compliance with "a procedure prescribed by law", as required by Article 5 § 1 of the Convention.

55. In answering that question, the Court will first deal with the applicant's detention between 5.16 p.m. and 7 p.m. on 7 June 2012. It notes in this connection that, as pointed out by the applicant (see paragraph 47 above), Article 309 § 2 of the Code of Criminal Procedure – applicable to his situation by virtue of Article 383 § 1 of the Code – indeed required that, once a suspended sentence had been agreed upon, the applicant should have been released "in the courtroom" (see paragraphs 10-11 above). Despite this wording, the Court accepts that the applicant could not have been released immediately after the end of the court hearing, that is to say at 5.16 p.m., and that his release inevitably required that some administrative formalities be complied with (see *Petyo Petkov*, cited above, § 74). It considers that a period of time of somewhat less than two hours might reasonably have been necessary to accomplish the formalities in the case. Accordingly, the applicant's detention between 5.16 p.m. and 7 p.m. on 7 June 2012 does not appear to have been in breach of domestic law.

56. Secondly, the Court regards the applicant's detention for this initial period of time as falling within the scope of sub-paragraph (c) of Article 5 § 1, given that it was a continuation of the pre-trial detention ordered earlier in the context of the criminal proceedings which ended with the plea agreement approved on 7 June 2012 (see paragraphs 6-7 above).

57. Accordingly, the applicant's detention between 5.16 p.m. and 7 p.m. on 7 June 2012 was not in breach of Article 5 § 1 of the Convention.

58. The next detention period, namely between 7 p.m. on 7 June and 12.10 p.m. on 9 June 2012, was based on the police investigator's order (see paragraph 9 above) instructing the police to bring the applicant before her. However, the Court observes that the order was not issued until 8 June 2012, whereas the period of detention under examination started during the evening of the previous day, 7 June 2012. Accordingly, the applicant's detention had no valid legal basis for the period preceding issuance of the order.

59. In addition, Article 71 of the Code of Criminal Procedure which was relied on by the investigator in the order of 8 June 2012, does not appear applicable to the applicant's case. It authorises the use of measures of force against the "accused" in criminal proceedings (see paragraph 12 above); however, the applicant was not classified as such at the time when the order was issued and used as a basis for his detention – it was only during the criminal proceedings against him in Pleven on 10 June 2012 (see paragraph 8 above) that he became classified as such. Furthermore, it has not been shown that the applicant was summoned to appear before the investigator in Pleven and failed to do so, nor that he had absconded or had no permanent address; accordingly, it appears that the remaining preconditions for the application of Article 71 of the Code of Criminal Procedure (see paragraph 12 above) were likewise not fulfilled.

60. In justifying the applicant's detention during the period at issue, the Government relied in the alternative on Article 120 § 3 of the Code of Criminal Procedure, which concerns measures involving the use of force against a witness in criminal proceedings (see paragraph 45 above). However, this provision was not relied on by the authorities at domestic level. In addition, even assuming that the applicant might have been considered a witness in the proceedings at issue before having had charges brought against him on 10 June 2012, the use against him of any measures involving force should, once again, have been justified by his having been duly summoned before a competent body, and having failed to appear without a valid reason (see paragraph 13 above). As already noted, it has not been shown that this was the case.

61. In the light of the foregoing, the Court does not consider that the applicant's deprivation of liberty from 7 p.m. on 7 June to 12.10 p.m. on 9 June 2012 was undertaken in accordance with the rules of domestic law permitting a person to be detained in order to be brought before an investigative body by force. The Government have not provided justification of his detention during the period at issue on any other grounds. Accordingly, the applicant's deprivation of liberty was not in compliance with "a procedure prescribed by law". This is sufficient for the Court to

conclude that it did not meet the requirements of Article 5 § 1 of the Convention.

62. It is thus not necessary for the Court to assess whether the detention fell within the scope of any of the sub-paragraphs of article 5 § 1, in particular sub-paragraphs (b) or (c) (see paragraphs 52-53 above).

63. In the light of the foregoing, the Court concludes that there has been a violation of Article 5 § 1 of the Convention.

(b) Article 5 § 4 of the Convention

64. The applicant also complained that he had not had any means of instituting proceedings to contest the legality of his detention (see paragraph 19 above).

65. However, the Court notes that the detention at issue was carried out with the aim to bring the applicant before an investigator, a procedure which is, in principle, centred on the respective person's transportation to the body requiring his presence, and as such does not presuppose a separate procedure to seek and obtain release.

66. Accordingly, the Court does not find it necessary to examine the merits of the applicant's complaint under Article 5 § 4.

II. COMPLAINT RAISED AFTER NOTICE OF THE APPLICATION WAS GIVEN TO THE GOVERNMENT

67. In reply to the observations submitted by the Government after notice of the application had been given to them, the applicant complained under Article 5 § 5 of the Convention, arguing that he had been unable to seek compensation for the other alleged violations of Article 5.

68. The Court is of the view that this complaint is a new one, rather than an extension of the applicant's initial complaints before the Court, raised in the application of 5 December 2012. The Court therefore considers that it is not appropriate to take this matter up separately at this stage (see, among many others, *Melnik v. Ukraine*, no. 72286/01, §§ 61-63, 28 March 2006, and *Shesti Mai Engineering OOD and Others v. Bulgaria*, no. 17854/04, §§ 93-94, 20 September 2011).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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. Non-pecuniary damage

70. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage, pointing out that he had suffered distress and frustration and had felt helpless in the face of the alleged violations of his rights.

71. The Government contested the claim and considered it exaggerated.

72. The Court is of the view that the applicant must have suffered non-pecuniary damage as a result of the violation of his right to liberty protected by Article 5 § 1 of the Convention. However, it agrees with the Government that the applicant's claim in that regard is exaggerated. Judging on an equitable basis, it awards the applicant EUR 3,500 under this head.

B. Costs and expenses

73. The applicant also claimed 2,375.71 Bulgarian levs (BGN) in respect of the costs and expenses incurred at domestic level in the context of the criminal proceedings against him.

74. The applicant claimed another BGN 1,170.31 in respect of the proceedings before the Court. Of this amount, BGN 1,000 was paid to his lawyer, Mr Arnaudov, and the remainder was to cover other expenses and taxes. In respect of the proceedings before the Court, the applicant also claimed the reimbursement of BGN 24.80 for postage. In support of the above claims the applicant submitted a contract for legal representation, wherein he had undertaken to pay Mr Arnaudov BGN 1,000 (EUR 525), and an invoice showing that he had paid BGN 12.40 (EUR 6) for postage.

75. The Government contended that the costs and expenses incurred in the domestic proceedings were unrelated to the alleged violations of the Convention in the case, and that the amount claimed for legal representation before the Court was exaggerated.

76. 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.

77. In the present case, regard being had to the above criteria, the Court rejects the claim for the costs and expenses incurred in the domestic proceedings (see paragraph 73 above), as it sees no link between them and the violation of the applicant's right to liberty as described above.

78. As to the costs and expenses for the proceedings before the Court, the Court considers them necessary, and awards them to the extent that they have been established, namely in the amount of EUR 531 (see paragraph 74 above *in fine*).

C. Default interest

79. 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. *Declares* the application admissible;

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

3. *Holds* that it is unnecessary to examine the applicant's complaint under Article 5 § 4 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, 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 3,500 (three thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 531 (five hundred and thirty-one euros), plus any tax that may be chargeable to the applicant, 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;

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

Done in English, and notified in writing on 28 January 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Registrar	Angelika Nußberger President