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

COURT (CHAMBER)

**CASE OF LUKANOV v. BULGARIA**

*(Application no. 21915/93)*

JUDGMENT

STRASBOURG

20 March 1997

**In the case of Lukanov v. Bulgaria[1],**

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A[2], as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr F. MATSCHER,
Mrs E. PALM,
Sir John FREELAND,
Mr J. MAKARCZYK,
Mr D. GOTCHEV,
Mr B. REPIK,
Mr U. LOHMUS,
Mr J. CASADEVALL,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 2 December 1996 and 20 February 1997,

Delivers the following judgment, which was adopted on the last-mentioned date:

## PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 11 March 1996, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 21915/93) against the Republic of Bulgaria lodged with the Commission under Article 25 (art. 25) by a Bulgarian citizen, Mr Andrei Karlov Lukanov, on 1 September 1992. The applicant was shot dead on 2 October 1996.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Bulgaria recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by

[1] The case is numbered 25/1996/644/829. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

[2] Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

the respondent State of its obligations under Articles 5 para. 1 and 18 of the Convention (art. 5-1, art. 18).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mr D. Gotchev, the elected judge of Bulgarian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 4 (b)). On 30 March 1996, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Matscher, Mrs E. Palm, Mr F. Bigi, Sir John Freeland, Mr J. Makarczyk, Mr U. Lohmus and Mr J. Casadevall (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43). Subsequently Mr B. Repik, substitute judge, replaced Mr Bigi, who had died (Rules 22 para. 1 and 24 para. 1).

4. As President of the Chamber (Rule 21 para. 6), Mr Ryssdal, acting through the Deputy Registrar, consulted the Agent of the Bulgarian Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the orders made in consequence on 5 July and 21 October 1996, the Registrar received the applicant's memorial on 3 October 1996 and the Government's written observations on 8 October and 12 November 1996. On 22 November 1996 the Secretary to the Commission indicated that the Delegate would submit his observations at the hearing.

5. Following the applicant's death on 2 October 1996, the Registrar received on 5 October a declaration to the President of the Court to the effect that the applicant's widow, Mrs Lilia Gerassimova-Lukanova, and two children, Ms Anna Andreeva Lukanova and Mr Karlo Andreev Lukanov, wished to pursue the proceedings on his behalf.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 28 November 1996. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mrs S. MARGARITOVA, Ministry of Justice, *Agent*;

(b) for the Commission

Mr S. TRECHSEL, *Delegate*;

(c) for the applicant

Mrs I. LOULTCHEVA, lawyer practising in Sofia, *Counsel*,

Mr S.E. ENTCHEV, *Assistant*.

The Court heard addresses by Mr Trechsel, Mrs Loultcheva and Mrs Margaritova.

# AS TO THE FACTS

## I. PARTICULAR CIRCUMSTANCES OF THE CASE

7. The applicant was a Bulgarian citizen. Formerly a Minister, then Deputy Prime Minister and, in 1990, Prime Minister of Bulgaria, he was a member of the Bulgarian National Assembly at the time of the events giving rise to the present case. On 2 October 1996 he was shot dead outside his home.

8. On leaving Sofia for Moscow on 7 March 1992, the applicant was informed by the border police at Sofia Airport that an order had been made to withdraw his diplomatic passport. As the order was not shown to him, he refused to hand over his passport. Following a similar incident on 11 March, the applicant lodged an appeal with the Supreme Court, which rejected the appeal on the ground that no administrative decision had been taken which could form the subject of an appeal. Subsequently, the applicant brought proceedings to obtain compensation for non-pecuniary damage sustained as a result of the unlawful order to withdraw his passport (see paragraph 24 below).

9. On 1 July 1992 the Prosecutor-General requested the National Assembly to authorise the institution of criminal proceedings against the applicant on suspicion of having contravened Articles 203 and 219 para. 3 of the Criminal Code (see paragraphs 25 and 27 below). The suspicion related in particular to his participation as a Deputy Prime Minister between 1986 and 1990 in a number of decisions granting sums, totalling 34,594,500 US dollars (USD) and 27,072,000 convertible Bulgarian leva, in assistance and loans to certain developing countries, including Nicaragua, Cuba, Laos, Kampuchea, Afghanistan, Angola and Yemen. The request stated:

> "The decisions ... have dramatically affected the country's economic potential, its economic resources and export capacity, and have objectively speaking made it unable to repay its foreign debt. It should be emphasised that, due to decisions of this nature causing prejudice to the country and other illegal measures taken by party and government leaders during this period, our foreign debt rose from USD 4,119,700 in 1986 to USD 10,656,900,000 in 1989 ...
>
> The situation described is covered by the definition of the offence of `taking advantage of one's position' in respect of very large amounts of money, which constitutes a particularly serious matter falling within the provisions in Article 203 and Article 219 para. 3 of the Criminal Code.
>
> The offences mentioned are `serious' within the meaning of Article 93 para. 7 of the Code."

10. On 7 July 1992 the National Assembly waived the applicant's parliamentary immunity under Article 70 of the Bulgarian Constitution and

authorised criminal proceedings against him and his arrest and detention on remand.

11. On 9 July 1992 the public prosecutor, Mr Doychev, of the Investigation Department of the Prosecutor-General's Office, charged the applicant under Article 203, in conjunction with Articles 201, 202 and 282, of the Criminal Code (see paragraphs 25 and 28 below) with having misappropriated, in concert with the chairperson and the other vice-chairpersons of the then Council of Ministers, the funds allocated to certain developing countries as mentioned in paragraph 9 above. In breach of his official duties, he had facilitated the misappropriation in order to obtain an advantage for a third party, thereby causing considerable economic damage. In view of the very large amounts of money involved, the case was a particularly serious one.

The prosecutor in addition ordered the applicant's detention on remand, citing as grounds the need to show to the public the danger that the offences in question represented to society, the applicant's identity and the need to secure his appearance before the trial court. The decision referred, inter alia, to Articles 147 and 152 para. 1 of the Code of Criminal Procedure (see paragraphs 29 and 30 below).

On 9 July 1992 the applicant was arrested and remanded in custody at the premises of the National Investigation Service in Sofia.

12. On the same date the applicant's lawyer lodged an appeal with the Bulgarian Supreme Court, requesting his release. She maintained that, contrary to Article 148 para. 1 of the Code of Criminal Procedure, the arrest warrant had failed to specify the grounds for his arrest. The fact that he risked a sentence of more than ten years' imprisonment could not in itself justify his detention since, under paragraph 2 of Article 152, it was also a condition that there should be a risk of his absconding or of his committing a further crime (see paragraph 30 below). In addition, the measures had been taken on the basis of the applicant's identity, notably the fact that he was a member of the National Assembly, a consideration which was not covered by any of the grounds that were exhaustively listed in Article 147 para. 1 (see paragraph 29 below).

13. At a court session held on 13 July 1992, at which the public prosecutor but not the applicant or his lawyer was present, the Supreme Court dismissed the appeal. Its decision included the following reasoning:

> "Under Article 152 para. 1 of the Code of Criminal Procedure a suspect is to be detained on remand if the offence is punishable by ten years' imprisonment or more or by the death penalty. Offences under Article 203 para. 1, of the Criminal Code carry such sentences.
>
> [The above provision] lays down two cumulative conditions - the misappropriation must have occurred on a large scale and must have been particularly serious.

[Whether the misappropriation has occurred] on a particularly large scale depends on the value of the public property involved. The seriousness of the case is determined on the basis of whether the misappropriation was carried out with the complicity of others, the level of the threat to society involved in the [measures] and the subject matter (Article 93 para. 8, of the Criminal Code). The argument that the eventuality envisaged in Article 152 para. 2 ... applies in the instant case is unfounded.

When the accusation was made the applicant was a member of the National Assembly. By virtue of Article 72 of the Bulgarian Constitution he holds this status until such circumstances occur as may warrant the suspension from his functions as a member of the National Assembly. In his capacity as member of the National Assembly the [applicant] represents the people as a whole. It is precisely in this capacity that the [risk] mentioned in Article 152 para. 2 ... will materialise, and the likelihood of this is greater than in the case of an appellant who is not a member of the National Assembly.

Furthermore, the applicant has lodged a judicial appeal against the administrative measure resulting in the withdrawal of his diplomatic passport ... The fact that he has taken such a step gives good grounds for fearing that he will not refrain from committing acts of the type mentioned in Article 152 para. 2 ...

According to Article 70 of the Constitution `..., except in cases of serious crimes and where permission has been given by the National Assembly, its members may not be detained and no charges may be brought against them ...'. A logical and systematic interpretation of the aforesaid provision suggests that [what is decisive for] the measure of restraint, `detention', [to be applied] in the context of the Criminal Code is whether the act entails a great danger to society and the particular status of the person who has committed it - a member of the National Assembly.

For this reason the legislature envisaged ... detention in [such] cases. The prosecutor's office has power to impose such a measure."

14. On 23 August 1992 the applicant was hospitalised at Sofia Penitentiary Hospital, where he received treatment.

15. On 4 September 1992 the applicant, relying on a change in circumstances concerning his state of health, filed a request with the Prosecutor-General for his release.

16. On 5 September 1992 his lawyer appealed to the Supreme Court against the Prosecutor-General's implied refusal to grant the request of 4 September 1992.

The Supreme Court dismissed the appeal on 17 September 1992 on the grounds that the applicant had already appealed against his detention and that, under the relevant Bulgarian law, he was not entitled to lodge a further appeal.

17. Subsequently, the applicant's lawyer made a request for his release to the public prosecutor.

At a meeting on 28 October 1992 between the public prosecutor and the applicant and his lawyer at the Military Hospital in Sofia, the lawyer invited the prosecutor to take a decision on the request for release. The applicant himself maintained that it was unreasonable to base his detention on the fact

that he had complained about the withdrawal of his passport. He did not have any other passport. Nor was there any danger of his repeating the offence, as he was no longer in a position to do so.

On 2 November 1992 the public prosecutor dismissed the applicant's request for release. He gave as reasons that the Prosecutor-General had already dealt with it and had been of the view that, notwithstanding the medical reports concerning the applicant, there were no new circumstances warranting his release. His lawyers had been informed of the Prosecutor-General's decision of 22 October 1992 and had been advised that no further appeal was possible.

18. By letter of 9 November 1992 the applicant's lawyer asked the Prosecutor-General to terminate the investigation. She recalled that it had commenced on 8 July 1992 and, after the expiry of the statutory period of two months, had been extended for another two months until 8 November 1992. Under Article 222 para. 3 of the Code of Criminal Procedure, a further extension could only be justified in "exceptional" cases, which condition had not been satisfied in the applicant's case. Nor had the Prosecutor-General obtained any new evidence during the four months which had elapsed since the investigation had started.

The lawyer also contested the charges against the applicant. The decisions of the Council of Ministers had been taken collectively in accordance with the Constitution and the budget voted by the National Assembly. The decisions in question had been taken simply with a view to implementing policies of the government in power at the time and it was the government, not the applicant as a Deputy Prime Minister, which had administered the relevant funds. In any event, it had not been established that the applicant had committed the offences in issue for his own benefit or for that of a third party.

19. On 10 November 1992 the applicant's lawyer lodged a request for his release with the Prosecutor-General, maintaining, inter alia, that the further prolongation of his detention breached Article 5 para. 3 of the Convention (art. 5-3) and that, contrary to Article 5 para. 1 (c) (art. 5-1-c), no grounds had been given for his detention. The argument that the applicant had appealed against the order to withdraw his passport was unfounded as he had only exercised his rights under Bulgarian law. The lawyer refused to comment on the allegation that the applicant constituted a particular danger to society on account of his position as member of the National Assembly.

20. On 11 November 1992 the Prosecutor-General informed the applicant's lawyer orally that his request of 10 November 1992 had been dismissed in the absence of any new circumstances justifying modification of the decision to detain him on remand.

21. In a letter of 18 November 1992 to the Prosecutor-General the applicant, referring to Article 180 of the Code of Criminal Procedure,

complained about the prosecutor's failure to reply to his requests in writing. He asserted that the criminal proceedings against him had no legal basis and amounted to an overt act of political reprisal.

22. In a letter of 20 November 1992 to the public prosecutor, the applicant's lawyer queried the outcome of the request of 10 November 1992 (see paragraph 19 above), stating that the information was important for the application filed with the Commission.

On 25 November 1992 the public prosecutor replied that his decision of 11 November had been transmitted to the applicant's lawyer on 16 November and that minutes relating to these measures had been prepared in accordance with Article 100 of the Code of Criminal Procedure.

23. On 29 December 1992 the Bulgarian National Assembly reversed its decision of 7 July 1992 authorising the applicant's detention on remand. On 30 December 1992 the prosecutor decided to release the applicant on bail.

24. On 12 March 1994 the Sofia City Court awarded the applicant compensation for non-pecuniary damage suffered as a result of the attempts made by the border police to withdraw his passport in the absence of a lawful order to this effect. The decision was confirmed by the Supreme Court on 9 February 1995.

## II. RELEVANT DOMESTIC LAW

### A. The Bulgarian Criminal Code of April 1968, as in force at the relevant time

25. Under Article 201 of the Criminal Code, public servants who misappropriate public or private funds which are in their possession in their capacity as public servants or which they have been entrusted with to keep secure or administer are liable to up to eight years' imprisonment. If a further offence has been committed in order to facilitate the misappropriation or if the offence has been committed with the complicity of others, between one and ten years' imprisonment may be imposed (Article 202).

Where an offence under Articles 201 or 202 involves particularly large amounts of public funds and is serious, Article 203 para. 1 provides for terms of between ten and thirty years' imprisonment.

26. As appears from a number of rulings by the Supreme Court (D 133-77-II, p. 80; D 63-79-I, p. 61; D 271-85-II, p. 87; D 172-88-I, bull. no. 12/88, p. 4; D 144-79-I, p. 73; D 315-75-II, p. 52; and D 5-83-Pl., p. 17) supplied by the applicant's lawyer in consultation with the Agent of the Government before the Court's hearing, at the material time a condition for the offence of misappropriation under Article 201 of the Criminal Code was

that the person concerned had disposed of the means in question as though they were his or her own, in order to obtain an advantage for himself or herself or for a third party.

In a judgment of 1995 (no. 17/95) the Constitutional Court declared unconstitutional an amendment by the National Assembly to make it an express condition in Article 201 that the person concerned had used the funds to his own advantage or that of a third party. In the opinion of the Constitutional Court, such a limitation on the scope of the offence of misappropriation would entail too weak a protection of the right to property guaranteed by the Constitution of 1991. It should be decisive for the offence, not that there had been personal enrichment, but that the person had disposed of the means as though they were his own and had thereby harmed the owner's interests.

In connection with the above, the Constitutional Court stated that the amendment in question had been in line with the Supreme Court's interpretation of Article 201.

According to the Government, there was no example at the relevant time of a member of a government having been prosecuted under Articles 201 and 203 of the Criminal Code for his or her participation in collective decision-making by the government.

27. Article 219 para. 1 provides:

> "If a public servant, in his administration of assets or of money in his possession or in the execution of work which he has been ordered to do, negligently causes considerable material damage, or the destruction or dispersal of the assets, to the disadvantage of the service concerned or the national economy, he will be punished by a term of imprisonment of not more than three years or by forced labour in the public interest."

According to paragraph 3, up to eight years' imprisonment may be imposed if the offence is committed wilfully.

28. Article 282 provides:

> "(1) A public servant who does not fulfil his professional obligations or who commits an abuse of power with the aim of obtaining a material advantage for himself or for a third party or of causing damage to others, and if not insignificant material damage could arise, shall be punished by a term of not more than five years' imprisonment ...
>
> (2) If the act results in considerable material damage or has been committed by a person occupying a senior administrative post, the person concerned shall be liable to a term of imprisonment of eight years ...
>
> (3) If such an act is particularly serious the term of imprisonment shall be between three and ten years ..."

### B. The Bulgarian Code of Criminal Procedure of November 1974, as in force at the material time

29. Under Article 147 para. 1 of the Code of Criminal Procedure, an accused may be placed under court supervision in order to ensure that he or she does not abscond or commit a new offence or to prevent collusion. The kind of measure imposed depends on the evidence against the accused, his or her state of health, family situation, profession and any other information concerning his or her character.

30. Article 152 provides, in so far as relevant:

> "(1) Detention on remand shall be imposed if the charges concern crimes punishable by a term of imprisonment of ten years or more or by capital punishment.
>
> (2) The measure envisaged in the previous paragraph shall not be imposed if there is no danger of the accused evading justice or committing another crime.
>
> ...
>
> (4) The detained person may immediately lodge an appeal with the court against his detention. The Court shall decide within three days by means of a decision which is final."

## PROCEEDINGS BEFORE THE COMMISSION

31. In his application (no. 21915/93) to the Commission of 1 September 1992 the applicant complained that his arrest and detention on remand had been incompatible with Article 5 para. 1 (c) of the Convention (art. 5-1-c), in that there was no reasonable suspicion of his having committed a crime and that the measures were not necessary in order to prevent him from committing an offence or fleeing. He further complained that while remanded in custody he had suffered inhuman and degrading treatment in breach of Article 3 (art. 3) and that, contrary to Article 6 (art. 6), he had not been afforded a public hearing before the Supreme Court. In addition, he complained that the criminal proceedings against him concerned acts which did not constitute a criminal offence at the material time and thus gave rise to a breach of Article 7 (art. 7). He alleged that there had been a breach of Article 10 of the Convention (art. 10) on account of an order by the public prosecutor prohibiting him from writing articles about matters related to the investigations. Finally, he contended that there had been a breach of Article 18 of the Convention (art. 18).

32. On 12 January 1995, the Commission declared the application admissible in so far as it concerned the applicant’s complaints under

Articles 5 para. 1 and 18 of the Convention (art. 5-1, art. 18) and declared the remainder of his application inadmissible.

In its report of 16 January 1996 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 5 para. 1 of the Convention (art. 5-1) and that no separate issue arose under Article 18 (art. 18). The full text of the Commission's opinion is reproduced as an annex to this judgment[3].

## FINAL SUBMISSIONS TO THE COURT

33. At the hearing on 28 November 1996, the Government, as they had done in their written observations to the Court, conceded that there had been violations of Article 5 para. 1 of the Convention (art. 5-1).

34. On the same occasion the lawyer for the applicant reiterated his request in his memorial to find that there had been violations of Article 5 para. 1 (art. 5-1) and to award him just satisfaction under Article 50 of the Convention (art. 50).

## AS TO THE LAW

### I. PRELIMINARY OBSERVATION

35. The applicant was shot dead outside his home on 2 October 1996, while the case was pending before the Court (see paragraph 7 above). It has not been disputed that his widow and two children (see paragraph 5 above) were entitled to pursue the application on his behalf and the Court sees no reason to hold otherwise (see, for instance, the Ahmet Sadik v. Greece judgment of 15 November 1996, Reports of Judgments and Decisions 1996-V, p. 1652, para. 26).

### II. ALLEGED VIOLATION OF ARTICLE 5 PARA. 1 OF THE CONVENTION (art. 5-1)

36. The applicant alleged that there had been a violation of Article 5 para. 1 of the Convention (art. 5-1), which, in so far as relevant, reads:

[3] Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1997-II), but a copy of the Commission's report is obtainable from the registry.

"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;

..."

37. The applicant, with whom the Commission agreed, was of the opinion that the facts which had been invoked against him at the time of his arrest and during his continued detention (see paragraphs 9, 11 and 13 above) could not, in the eyes of an objective observer, be construed as misappropriation of funds or as a breach of official duties aimed at facilitating the commission of such an offence. Accordingly, there had been no "reasonable suspicion of [his] having committed an offence" within the meaning of Article 5 para. 1 (c) (art. 5-1-c). Nor could the detention be "reasonably considered necessary to prevent his committing an offence or fleeing after having done so".

In these circumstances, the Commission did not find it necessary to examine whether the detention was "lawful" under domestic law.

The applicant, for his part, stressed that the decisions leading to the charges against him and his being detained on remand had been taken collectively by the government at the time and in a manner which was consistent with the relevant law, including the then Bulgarian Constitution; the allocation of the funds in question had been effected in accordance with the national budget as adopted by the National Assembly and had subsequently been approved by the latter. The measures had been in keeping not only with the policies of the government at the time but also with relevant United Nations resolutions on development assistance. They had not benefited any members of the government or any third parties; the funds had been received in their entirety by the addressee countries.

38. The Government maintained before the Commission that the applicant's detention had been effected on the grounds of suspicion of his having committed a crime and had been in conformity with Bulgarian law. Although it was true that the allocation of development aid had not as such constituted a criminal offence, the charges in question had been brought because the transfers of funds had, under the cover of development assistance, involved improper "deals" causing damage to Bulgaria's economic interests. The Government were, however, not in a position to provide any details of such "deals" as it would adversely affect the

confidentiality of the criminal proceedings instituted against the applicant and eight other former government members.

Before the Court the Government stated that they were prepared to accept the Commission's opinion that there had been a violation of Article 5 para. 1 of the Convention (art. 5-1), whilst at the same time informing the Court of the views of the Prosecutor-General, the authority which had ordered the applicant's detention on remand (see paragraph 11 above). In this regard the Government pointed out that it was not within their competence to assess the measures taken in this case by the prosecution and the Supreme Court which, under the Constitution, were both independent judicial authorities.

39. The Prosecutor-General's submission on the applicant's complaints included the following observations.

It was a key element of the offence of misappropriation under Bulgarian law that the offender had dealt with someone else's property as though it had been his or her own and had thereby infringed the owner's interests; it was not decisive whether he or she had sought to obtain an advantage for himself or herself or for a third party (see paragraph 26 above). Furthermore, members of a body could by reason of their joint decisions and actions be found guilty if they had thereby knowingly committed acts which amounted to an offence. In the present case, since the collective decisions concerned had caused economic loss, criminal proceedings had been instituted against each member of the body which had taken those decisions (see paragraphs 9 and 11 above). The prosecutor had believed that the funds concerned had been spent in a manner which was unlawful since there was no information as to whether they had appeared in the budget as an expenditure.

Admittedly, the Prosecutor-General had not been in a position at the time to ascertain whether there was criminal intent. He had considered, having regard to the circumstances and complexity of the case, that this could only be determined in the course of the preliminary investigations.

Although not expressly stated in the order to detain the applicant on remand, the decision had been taken in view of who the applicant was and the gravity of the offence committed (see paragraphs 9 and 11 above). The Supreme Court too had laid stress on the applicant's status as a member of the National Assembly (see paragraph 13 above). The extremely wide powers which he had enjoyed by virtue of his position had given him greater opportunities to abscond or commit further offences than he would have had otherwise. Furthermore, his position in society, his numerous contacts abroad and his repeated requests that the authorities return his passport, were all considerations which went to justify placing him in pre-trial detention. As stated by the Supreme Court, the fact that the applicant had appealed against the withdrawal of his passport had given rise to a justified suspicion that he might commit a further offence, within the

meaning of Article 152 para. 2 of the Code of Criminal Procedure (see paragraph 13 above).

In the view of the Prosecutor-General, the contested pre-trial detention was in accordance with domestic law, including the Bulgarian Constitution, and had been entirely in keeping with Article 5 para. 1 (c) of the Convention (art. 5-1-c).

40. The Court observes at the outset that it has jurisdiction to examine the facts and circumstances of the applicant's complaints in so far as they related to the period after 7 September 1992, when Bulgaria ratified the Convention and recognised the Court's compulsory jurisdiction. In doing so, it will take into account the state of the proceedings as of that date (see, for instance, the Hokkanen v. Finland judgment of 23 September 1994, Series A no. 299-A, p. 19, para. 53; and the Yagci and Sargin v. Turkey judgment of 8 June 1995, Series A no. 319-A, p. 16, para. 40), in particular the fact that the grounds for his detention, stated in the detention order of 9 July and the Supreme Court judgment of 13 July upholding the order, remained the same until his release on 30 December 1992 (see paragraphs 11 and 13 above). This has not been disputed before the Court.

As to the observations made by the Government concerning the independence of the authorities which had taken the measures giving rise to the applicant's Convention complaints (see paragraph 38 above), it should be emphasised that the Governments are answerable under the Convention for the acts of such authorities as they are for those of any other State agency. In all cases before the Court, what is in issue is the international responsibility of the State (see, mutatis mutandis, the Foti and Others v. Italy judgment of 10 December 1982, Series A no. 56, p. 21, para. 63). Notwithstanding the Government's acceptance of the Commission's opinion that there had been a violation of Article 5 para. 1 (art. 5-1), the Court considers it appropriate to examine this question for itself.

41. Article 5 para. 1 of the Convention (art. 5-1) contains an exhaustive list of permissible grounds for deprivation of liberty which must be interpreted strictly (see, for instance, the Ciulla v. Italy judgment of 22 February 1989, Series A no. 148, p. 18, para. 41).

The Court is of the view that the central issue in the case under consideration is whether the applicant's detention from 7 September to 30 December 1992 was "lawful" within the meaning of Article 5 para. 1 (art. 5-1), including whether it was effected "in accordance with a procedure prescribed by law". The Court reiterates that the Convention here refers essentially to national law, but it also requires that any measure depriving the individual of his liberty be compatible with the purpose of Article 5 (art. 5), namely to protect the individual from arbitrariness (see, for instance, the Bozano v. France judgment of 18 December 1986, Series A no. 111, p. 23, para. 54; and the Benham v. the United Kingdom judgment of 10 June 1996, Reports 1996-III, pp. 752-53, para. 40).

Where the Convention refers directly back to domestic law, as in Article 5 (art. 5), compliance with such law is an integral part of the obligations of the Contracting States and the Court is accordingly competent to satisfy itself of such compliance where relevant (Article 19) (art. 19); the scope of its task in this connection, however, is subject to limits inherent in the logic of the European system of protection, since it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see, inter alia, the above-mentioned Bozano judgment, p. 25, para. 58; and the Kemmache v. France (no. 3) judgment of 24 November 1994, Series A no. 296-C, p. 88, para. 42).

42. Turning to the particular circumstances of the case, the Court observes that it is undisputed that the applicant had, as a member of the Bulgarian Government, taken part in the decisions - granting funds in assistance and loans to certain developing countries - which had given rise to the charges against him.

43. However, none of the provisions of the Criminal Code relied on to justify the detention - Articles 201 to 203, 219 and 282 (see paragraphs 11 and 13 above) - specified or even implied that anyone could incur criminal liability by taking part in collective decisions of this nature. Moreover, no evidence has been adduced to show that such decisions were unlawful, that is to say contrary to Bulgaria's Constitution or legislation, or more specifically that the decisions were taken in excess of powers or were contrary to the law on the national budget.

In the light of the above, the Court is not persuaded that the conduct for which the applicant was prosecuted constituted a criminal offence under Bulgarian law at the relevant time.

44. What is more, the public prosecutor's order of detention of 9 July 1992 and the Supreme Court's decision of 13 July upholding the order referred to Articles 201 to 203 of the Criminal Code (see paragraphs 13 and 25 above). As appears from the case-law supplied to the Court, a constituent element of the offence of misappropriation under Articles 201 to 203 of the Criminal Code was that the offender had sought to obtain for himself or herself or for a third party an advantage (see paragraph 26 above). The order of 9 July in addition referred to Article 282 which specifically makes it an offence for a public servant to abuse his or her power in order to obtain such advantage (see paragraphs 9 and 28 above).

However, the Court has not been provided with any fact or information capable of showing that the applicant was at the time reasonably suspected of having sought to obtain for himself or a third party an advantage from his participation in the allocation of funds in question (see, for instance, the Murray v. the United Kingdom judgment of 28 October 1994, Series A no. 300-A, p. 25, para. 51). In this connection it is to be noted that the Government's submission that there had been certain "deals" was found by the Commission to be unsubstantiated and was not reiterated before the

Court. Indeed, it was not contended before the Convention institutions that the funds had not been received by the States concerned.

45. In these circumstances, the Court does not find that the deprivation of the applicant's liberty during the period under consideration was "lawful detention" effected "on reasonable suspicion of [his] having committed an offence".

Having reached this conclusion, the Court does not need to examine whether the detention could reasonably be considered necessary to prevent his committing an offence or fleeing after having done so.

46. Accordingly, there has been a violation of Article 5 para. 1 (art. 5-1) in the present case.

## III. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION (art. 18)

47. Before the Commission, the applicant alleged that there had also been a violation of Article 18 of the Convention (art. 18), which reads:

> "The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

48. The Commission, having regard to its findings with respect to Article 5 para. 1 of the Convention (art. 5-1) (see paragraph 37 above), concluded that no separate issue arose under Article 18 (art. 18). On this point too the applicant agreed with the Commission.

49. The Court, bearing in mind its conclusions with regard to Article 5 para. 1 (art. 5-1), likewise considers that no separate issue arises under Article 18 (art. 18).

## IV. APPLICATION OF ARTICLE 50 OF THE CONVENTION (art. 50)

50. In his memorial to the Court, Mr Andrei Lukanov sought just satisfaction under Article 50 of the Convention (art. 50), which reads:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Non-pecuniary damage

51. The applicant claimed no compensation for pecuniary damage but asked the Court to award him compensation for the moral and physical injury which he had suffered as a result of the detention.

52. The Government left the matter to the discretion of the Court, whereas the Commission's Delegate suggested that the Court make an award of 115,000 French francs (FRF), on the basis that a compensation of FRF 1,000 for each of the 115 days during which the applicant had been unlawfully detained would be adequate.

53. The Court considers that sufficient just satisfaction would not be provided solely by the finding of a violation and that compensation has thus to be awarded. Making an assessment on an equitable basis, it awards FRF 40,000, to be converted into Bulgarian leva at the rate applicable on the date of settlement, to his widow and two children, who are pursuing his application on his behalf.

### B. Costs and expenses

54. The applicant further requested the reimbursement of costs and expenses, in an amount in Bulgarian leva corresponding to the totals of 13,456 US dollars (USD) and FRF 7,067, which were incurred in respect of the following items:

(a) USD 3,100 for his lawyer Mrs Loultcheva's work in connection with the case before the Commission;

(b) USD 3,272 and FRF 1,600 for his own and his lawyer's travel and subsistence expenses in connection with the hearing before the Commission;

(c) USD 2,000 for his lawyer's work in connection with the case before the Court;

(d) USD 1,800 for Mr Entchev's work in connection with translation and interpretation in the proceedings before the Court;

(e) USD 3,284 and FRF 5,467 for Mrs Loultcheva's and Mr Entchev's travel and subsistence expenses in connection with their appearance at the Court's hearing.

55. The Government left it to the Court's discretion to make an award for costs and expenses. The Commission's Delegate considered the claims under items (a) to (c) to be reasonable and that an amount would also have to be awarded with respect to such costs and expenses as mentioned in items (d) and (e).

56. The Court is satisfied that the costs and expenses claimed were actually and necessarily incurred in the stated currencies and were reasonable as to their quantum. In accordance with its case-law it awards to the applicant's widow and his two children the entirety of the claim made under this head.

### C. Default interest

57. The Court considers it appropriate that default interest should be payable at the rate of 4% per annum with regard to the sums awarded in French francs and 5% per annum with respect to the sum awarded in US dollars.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 5 para. 1 of the Convention (art. 5-1);

2. Holds that no separate issue arises under Article 18 of the Convention (art. 18);

3. Holds
   (a) that the respondent State is to pay the applicant's widow and two children within three months the following sums, to be converted into Bulgarian leva at the rate applicable on the date of settlement:
      (i) 40,000 (forty thousand) French francs, in compensation for non-pecuniary damage, and
      (ii) for legal costs and expenses, 13,456 (thirteen thousand, four hundred and fifty-six) US dollars and 7,067 (seven thousand and sixty-seven) French francs;
   (b) that simple interest at the following annual rates shall be payable from the expiry of the above-mentioned three months until settlement:
      (i) 4% per annum in relation to the sums awarded in French francs, and
      (ii) 5% per annum in relation to the sum awarded in US dollars;

4. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 20 March 1997.

Rolv RYSSDAL
President

Herbert PETZOLD
Registrar