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

CASE OF ASSENOV AND OTHERS v. BULGARIA

(90/1997/874/1086)

JUDGMENT

STRASBOURG

28 October 1998

In the case of Assenov and Others v. Bulgaria[1],

The European Court of Human Rights, sitting, in accordance with Article 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. BERNHARDT, *President*,
Mr L.-E. PETTITI,
Mrs E. PALM,
Mr A.B. BAKA,
Mr G. MIFSUD BONNICI,
Mr J. MAKARCZYK,
Mr D. GOTCHEV,
Mr P. VAN DIJK,
Mr V. TOUMANOV,

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

Having deliberated in private on 29 June and 25 September 1998,

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 22 September 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 24760/94) against the Republic of Bulgaria lodged with the Commission under Article 25 by three Bulgarian nationals, Mr Anton Assenov, Mrs Fidanka Ivanova and Mr Stefan Ivanov, on 6 September 1993.

The Commission's request referred to Articles 44 and 48 and to the declaration whereby Bulgaria recognised the compulsory jurisdiction of the Court (Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 3, 5, 6, 13, 14 and 25 of the Convention.

Notes by the Registrar

1. The case is numbered 90/1997/874/1086. 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 of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicants stated that they wished to take part in the proceedings and designated the lawyer who would represent them (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), and Mr R. Bernhardt, who was then Vice-President of the Court (Rule 21 § 4 (b)). On 25 September 1997, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal, drew by lot the names of the other seven members, namely Mr L.-E. Pettiti, Mrs E. Palm, Mr A.B. Baka, Mr G. Mifsud Bonnici, Mr J. Makarczyk, Mr P. van Dijk and Mr V. Toumanov (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Bulgarian Government ("the Government"), the applicants' lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicants' and Government's memorials on 9 March 1998.

5. On 2 and 13 February 1998 respectively, Mr Bernhardt granted leave to submit written comments to the European Roma Rights Center and Amnesty International (Rule 37 § 2). These were received by the Registrar on 29 and 30 April 1998.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 25 June 1998. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*
Ms V. DJIDJEVA, Co-Agent, Ministry of Justice, *Agent*;

(b) *for the Commission*
Mr M.A. NOWICKI, *Delegate*;

(c) *for the applicants*
Ms Z. KALAYDJIEVA, *Counsel.*

The Court heard addresses by Mr Nowicki, Ms Kalaydjieva and Ms Djidjeva.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants are a family of Bulgarian nationals, of Roma origin, who live in Shoumen, Bulgaria.

Mr Anton Assenov was born in 1978, and his parents, Mrs Fidanka Ivanova and Mr Stefan Ivanov, were born in 1956 and 1952 respectively.

A. Events of and following 19 September 1992

1. Arrest and detention

8. On 19 September 1992, while gambling in the market square in Shoumen, Mr Assenov (then aged 14) was arrested by an off-duty policeman and taken to the nearby bus station, where the officer called for back-up.

9. Subsequently Mr Assenov's parents, who were both working at the bus station, came and asked for their son's release. Mr Ivanov, as a way of showing that he would administer any necessary punishment, took a strip of plywood and hit his son. At some point two other policemen arrived. The applicants allege that these officers hit the boy with truncheons. A dispute ensued between the boy's parents and the police, although it appears that Mr Assenov himself was unaggressive and compliant. He and his father were handcuffed and forced into a police car. They were taken to the police station, where they were detained for approximately two hours before being released without charge. Mr Assenov alleged to have been beaten with a toy pistol and with truncheons and pummelled in the stomach by officers at the police station.

2. Medical evidence

10. On 21 September 1992, the first working day following the incident, the applicants visited a forensic medical expert. They explained to him that Mr Assenov had been beaten by three policemen with a truncheon and with the handle of a pistol and that his mother had been beaten with a truncheon. The doctor examined the two applicants and issued medical certificates.

11. The certificate concerning the first applicant stated that the boy had a band-like haematoma about 5 cm long and 1 cm wide on the upper outer side of his right arm; three band-like haematomas, each about 6 cm long and 1 cm wide, on the right side of his chest; another bruise about 4 cm long on the left scapula; a haematoma 2 cm in diameter on the back of the head; and five grazes each about 5 cm long on the right chest.

The certificate concerning Mrs Ivanova stated that she had a bruise about 5 cm long on her left thigh.

The doctor concluded that the bruises could have been inflicted as described by the applicants.

3. Investigation by the District Directorate of Internal Affairs

12. On 2 October 1992, Mrs Ivanova filed a complaint with the District Directorate of Internal Affairs ("the DDIA"), alleging that her son had been beaten at the bus and police stations, and requesting the prosecution of the officers responsible (see paragraph 58 below).

13. The complaint was dealt with by Colonel P., an inspector with the personnel service of the DDIA. On 15 October 1992, Colonel P. heard each of the applicants and prepared written accounts of their oral testimony. Mr Assenov was heard in the presence of a teacher, Mr G. In their statements, the applicants gave the account of events set out in paragraphs 8–9 above.

14. Colonel P. also ordered the three police officers present at the bus station and the officer who had been on duty at the police station to submit written explanations. This they did on 21, 22 and 26 October 1992.

According to these statements, Sergeant B., who was off-duty and out of uniform, had been passing the central bus station when he saw people gambling. He had arrested Mr Assenov and taken him to the bus station from where he had called the police officer on duty. Thereupon Mr Ivanov had appeared, shouted at the boy, and had hit him two or three times on the back with a plywood strip. He and his wife, who had arrived shortly thereafter, started protesting against their son's arrest and pulling the boy. When Sergeants S. and V. arrived, the father had shouted, swore, and threatened the police officers, who told him to be quiet and asked him to come voluntarily to the police station. A crowd of about fifteen to twenty Roma had gathered; also present were approximately twenty drivers from the bus station. Since Mr Ivanov had continued his violent behaviour, the police officers had subdued him forcibly, handcuffed him and taken him and his son to the police station.

There officer S. had filled out a form recording the seizure of 100 levs from Mr Assenov and then released the two applicants. It was not true that they had been beaten at the police station.

15. On 26 October 1992 Colonel P. also obtained a written statement from the traffic manager at the bus station. She stated that a policeman had brought a boy and had asked her to telephone the police for a car. She did not remember any disturbance having occurred.

16. Based on this evidence, on 6 November 1992 Colonel P. drew up an internal note in which he made a summary of the facts and concluded that the boy had been beaten by his father.

17. On 13 November 1992 the Director of the DDIA wrote to the applicants stating that the conduct of the police officers had been lawful and that he would not, therefore, open criminal proceedings against them.

4. Investigation by the regional military prosecution office

18. On 12 December 1992 the applicants submitted a request for the criminal prosecution of the alleged offenders to the regional military prosecution office in Varna ("the RMPO").

19. On 30 December 1992 the RMPO ordered an inquiry to be carried out by investigator G. at the military investigation office in Shoumen.

20. On 8 February 1993 investigator G. wrote to the Director of Police in Shoumen, instructing him to take evidence from the applicants and the police officers and to report back. Since there had already been an inquiry on the matter, on 15 February 1993 the DDIA sent to the investigator all the material already collected.

21. It is disputed whether investigator G. heard the applicants personally. The Government allege that he did, but there is no record of this on file.

22. On 20 March 1993 investigator G. drew up a one-page internal note summarising the facts and advising that criminal proceedings should not be brought against the officers, on the grounds that the allegations had not been proved and the evidence in the case was "contradictory".

23. On 24 March 1993, the RMPO decided, on the basis of the investigator's advice, not to instigate criminal proceedings. The decision stated, *inter alia*, that Mr Ivanov had been hitting his son, shouting and pulling him, in disobedience of police orders, which had led to the applicants' arrest (see paragraph 55 below), and that the evidence taken from witnesses did not confirm the use of physical violence by the police against the boy.

5. Appeal to the general military prosecution office

24. On 15 April 1993 the applicants appealed to the general military prosecution office ("GMPO"). They stated that it was clear from the decision of non-prosecution that the only witnesses examined had been the police officers who were the suspects; that the medical certificates had not been taken into consideration; and that it was untrue that Mr Assenov and his father had disobeyed police orders.

25. The appeal was submitted through the RMPO, which forwarded it to the GMPO on 30 April 1993, enclosing a letter advising that the complaint should be dismissed. A copy of this letter was sent to the applicants.

26. On 21 May 1993 the GMPO, apparently after an examination of the file, refused to open criminal proceedings against the police officers on the same grounds as the lower prosecuting authority. The decision stated, *inter alia*:

> "A medical certificate is enclosed in the file, from which it appears that there were haematomas on the juvenile's body, indicating superficial bodily harm, and corresponding, in terms of mechanism of infliction, to blows with a band-like solid object.
>
> The deputy regional prosecutor correctly considered that even if blows were administered on the body of the juvenile, they occurred as a result of disobedience to police orders. The physical force and auxiliary means employed were in accordance with section 24(1), points 1 and 2, of the Law on National Police now in force [see paragraph 56 below]."

6. Further investigation by the regional military prosecution office

27. Apparently as a result of continued complaints from the applicants and pressure from the Ministry of Justice to re-examine the matter, on 13 July 1993 the GMPO wrote to the RMPO, stating that preliminary inquiries regarding alleged police misconduct should include the examination of independent witnesses, and that further investigations should therefore be carried out.

28. The RMPO took statements from a bus driver and a bus station employee on 29 and 30 July 1993 respectively. The driver stated that he had seen a Roma man hit his son with a lath. When the police car arrived, the father had thrown himself at the police officers and started fighting. The driver had taken the father's arm to prevent him hitting the officers. He had not seen any of the officers hitting the boy. The other witness had a vague recollection of events and could not say whether or not the father had hit his son or the policemen had beaten them.

29. These additional investigations apparently did not conclude with the delivery of a formal decision. Their results were not communicated to the applicants.

7. Appeal to the Chief General Prosecutor

30. On 20 June 1994 the applicants appealed to the Chief General Prosecutor of Bulgaria. They again set out their version of events, adding that Mr Assenov's beating had been accompanied by insults referring to the applicants' Roma origin and pointing out that there had been a number of witnesses to the incident but that no effort had been made to take evidence from any of them. They argued that there was a contradiction between the finding of the RMPO that no physical force had been used and the conclusion of the GMPO, which established that there had been use of physical force, but that it had been legal, and they alleged violations of Articles 3, 6 and 14 of the Convention.

31. This appeal was apparently transferred to the GMPO, which wrote to the applicants' lawyer on 28 June 1994 stating that there were no grounds to overturn the previous decision.

B. Mr Assenov's arrest on 27 July 1995 and subsequent detention

1. Arrest, detention and investigation

32. In January 1995, Mr Assenov was questioned by the Shoumen prosecuting authorities in connection with an investigation into a series of thefts and robberies.

33. He was arrested on 27 July 1995 and the following day, in the presence of his lawyer and a prosecutor ("K."), he was questioned by an investigator and formally charged with ten or more burglaries, allegedly committed between 9 January and 2 May 1995, and six robberies committed between 10 September 1994 and 24 July 1995, all involving attacks on passers-by on the street. Mr Assenov admitted most of the burglaries but denied having committed the robberies.

The decision was taken to detain him on remand. This decision was approved the same day by another prosecutor, "A." (see paragraph 69 below).

34. On 27 July, 2 August, 7 August and 15 August 1995, the applicant took part in identification parades, at which he was identified by four robbery victims. A lawyer was present on all occasions. On 28 August 1995 an expert appointed by the investigator submitted a report concerning the value of the objects allegedly stolen by the first applicant and his accomplices. On an unspecified date additional charges, concerning other thefts in which Mr Assenov was suspected to have been an accomplice, were joined.

It would appear that, in the course of the investigation, approximately sixty witnesses and alleged victims were examined, but that no evidence was collected after September 1995.

2. Pre-trial detention, July 1995–July 1997

35. Between 27 July 1995 and 25 March 1996, Mr Assenov was detained at the Shoumen police station.

There is a dispute between the parties as regards the conditions of his detention there. The applicant submits that he was held in a cell measuring 3 x 1.80 metres, which he shared at times with two to four other detainees; that the cell was almost entirely below ground level, with very limited light and fresh air; that he could not exercise or engage in any activity in his cell; and that he was let out of his cell only twice a day, to go to the toilet. The Government submit that the cell measured 4.60 x 3.50 metres and that the applicant shared it with only one other detainee.

36. The applicant submitted numerous requests for release to the prosecuting authorities, referring, *inter alia*, to the facts that no further evidence had to be collected and that he was suffering from health problems exacerbated by the conditions of his detention and had two young children. It appears that some of these applications were assessed individually, and that others were grouped and examined several months after their submission.

37. On 21 August 1995, Mr Assenov was examined by a doctor, who found that he was healthy. He was examined again on 20 September 1995, by a cardiologist from the Regional Hospital of Shoumen, who concluded that he did "not suffer from any cardiac disease, either congenital or acquired", and that there were "no counter-indications against him remaining in detention, as far as his cardio-vascular status is concerned".

38. On 11 September 1995, Mr Assenov submitted a petition to the Shoumen District Court requesting his release (see paragraphs 72–76 below).

On 19 September 1995 a judge sitting in camera dismissed the petition, stating, *inter alia*, that the charges against Mr Assenov concerned serious crimes, and that his criminal activity had been persistent, giving rise to a danger that he would commit further crimes if released.

39. On 13 October 1995, a district prosecutor dismissed two requests for Mr Assenov's release. This refusal was confirmed on 19 October 1995 by a regional prosecutor.

40. The applicants appealed to the Chief Public Prosecutor's Office stating, *inter alia*, that there had been a "campaign" against them because of their application to the Commission.

In its decision of 8 December 1995 the Chief Public Prosecutor's Office dismissed the applicants' arguments and stated that, although the investigation had been completed by September 1995, it was still necessary to detain Mr Assenov because there was a clear danger that he would resume his criminal activities. However, the view was expressed that prolonged detention in the premises of the Shoumen police would be harmful to the applicant's "physical and mental development" and that he should therefore be moved to the Boychinovzi juvenile penitentiary.

The transfer took place three and a half months later, on 25 March 1996.

41. On an unspecified date in 1996, Mr Assenov again challenged his detention on remand before the Shoumen District Court.

On 28 March 1996 the court requested the case file from the district prosecutor's office. Noting that an application had already been examined on 19 September 1995, it rejected the new petition as inadmissible (see paragraph 75 below).

42. On 21 March 1996 the investigator opened a separate case file to deal with the robbery charges, in connection with which he questioned Mr Assenov and ordered his continued detention on remand. The following day the investigator drew up a report summarising the facts in the robbery case and sent it to the prosecutor proposing that an indictment be prepared.

43. On 3 July 1996, a district prosecutor sent the robbery case back to the investigator with instructions to see one further witness. On 23 August 1996 the investigator returned the case file because the proposed witness had died. On 26 September 1996, the district prosecutor drew up an indictment in the case and, four days later, submitted it to the Shoumen District Court. The court held a hearing on 6 February 1997, where it heard four witnesses and adjourned the hearing to 29 May 1997 because of the non-attendance of two other witnesses.

44. In the meantime, on 20 September 1996, the investigator completed the preliminary inquiry into the burglary case. On 25 October 1996, this case was sent to the regional prosecutor's office with a proposal to indict

Mr Assenov. It appears that on 31 January 1997 the burglary case was referred back for further investigation.

45. Between 5 July and 24 September 1996, Mr Assenov was again held at Shoumen police station, before being transferred to Belene Prison.

46. Throughout 1996 the applicants continued to submit requests for Mr Assenov's release to the prosecuting authorities. By decisions of 21 February and 17 June 1996 these requests were dismissed by the district prosecutor, on the grounds that the applications raised no new arguments, that there was still a danger of the applicant reoffending if released and that the cases would soon be sent for trial. On 8 October 1996 the regional prosecution office dismissed another request for release.

47. On 4 November 1996, a District Court judge sitting in the robbery case examined in camera Mr Assenov's petition for release. The judge refused to release Mr Assenov, taking into account the seriousness and the number of the crimes with which he had been charged and the fact that the trial would soon commence.

48. In July 1997 Mr Assenov was convicted of four street robberies and sentenced to thirty months' imprisonment.

According to the information available to the Court, he has not yet been indicted in relation to the burglary charges pending against him.

C. Events following the application to the Commission

49. The applicants' complaint was lodged with the Commission on 6 September 1993. In March 1995 they signed before a notary a statement of means, prepared in Bulgarian, referring expressly to their application to the Commission, and stating that it was done for purposes of their legal aid request to the Commission.

50. On 15 May, 23 May and 8 September 1995 two daily newspapers published articles about the case. Two of the articles, under headlines stating that a Roma gambler had "put Bulgaria on trial in Strasbourg", explained *inter alia* that, in response to questions from journalists, the applicants had allegedly denied having made an application to the Commission. The articles concluded that perhaps some Roma activists had pushed the case and misled Amnesty International.

51. On an unspecified date the prosecuting authorities or the police approached the applicants and asked them to declare whether they had made an application to the Commission. On 8 September 1995, the second and third applicants visited a notary and signed a declaration in which they denied having made an application to the Commission. They further stated that they remembered having signed, in 1992 and 1993, some documents

prepared by human rights associations. However, they had not been given copies of the documents and did not know their contents. One of the documents had been in a foreign language.

52. It would appear that this declaration was then submitted to the prosecuting authorities. On 19 September 1995 the GMPO wrote about it to the Ministry of Foreign Affairs.

53. The transcript of Mr Assenov's questioning after his arrest on 28 July 1995 establishes that he spoke to the investigator about the events of 19 September 1992, saying:

> "In 1992 ... I was beaten by policemen ... [at the bus station]. Thereafter I obtained a medical certificate and my father complained to the police. They did not look at it seriously and he submitted it to the military prosecution office. They did not take it seriously either. Then my father heard that there were some people from an international human rights organisation [in town]. My father brought me there and showed them how I was beaten. In fact, after my release from the police my father brought me first to these people and then wrote to the police and to the prosecution authorities."

Since the minutes record only that said by Mr Assenov, it cannot be established whether or not his statement was made in response to questioning.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Gambling

54. Gambling is an administrative offence under Bulgarian law, for which individuals under sixteen years of age are not liable (section 2(2) of the Law against Speculation).

B. Police powers relevant to the 1992 arrests and detention

55. Section 20(1) of the Law on National Police (1976), which applied at the relevant time, provided that a police officer could take to a police station or local government office only those persons:

> "1. whose identity may not be established;
>
> 2. who behave violently and do not obey after warning;
>
> 3. who refuse to come voluntarily to a police station without serious reasons for refusal, after having been notified under section 16 of the present Act;

4. who wilfully create obstacles for the authorities of the Ministry of Internal Affairs in carrying out their duties;

5. who carry or use without lawful permission firearms, other weapons or other dangerous objects;

6. in other cases prescribed by law."

According to section 20(2) of this Law, in each of the above cases the police were required to carry out an immediate investigation and release the person held within three hours, unless it was necessary to take further lawful measures in respect of him or her.

56. Section 24(1) contained provisions on the use of force by police officers. The use of force "adequate to the character and seriousness of the offence and resistance" (section 24(2)), was permitted:

"1. to bring an end to violent conduct or other serious violation of the public order;

2. in cases of obvious disobedience to police orders or prohibition;

3. during arrest or convoy where there is danger of absconding or for the life of the person arrested or conveyed or for other persons."

C. Remedies against ill-treatment by police

1. Criminal remedies

57. Article 190 of the Code of Criminal Procedure (1974) ("CCP") states:

"There shall be considered to exist sufficient evidence for the institution of criminal proceedings where a reasonable supposition can be made that a crime might have been committed."

58. In respect of most serious crimes, and all crimes allegedly committed by civil servants in the exercise of their duties, criminal proceedings cannot be brought by a private individual, but only by the decision of a public prosecutor (CCP, Articles 192 and 282–85).

According to Articles 192 and 194 § 3 of the CCP, when a prosecutor has refused to institute criminal proceedings, such proceedings can be instituted by a higher prosecutor upon the petition of the interested person or *ex officio*.

59. The victim of an alleged crime can join criminal proceedings as a civil party in order to seek compensation (CCP, Chapter II, Articles 60–64).

2. Civil remedies

60. The Law on Obligations and Contracts provides in section 45 that a person who has suffered damage can seek redress by bringing a civil action against the person who has, through his fault, caused the damage. The Law on State Responsibility for Damage provides that a person who has suffered damage due to the unlawful act of a civil servant can bring an action against the State authority concerned.

61. The Code of Civil Procedure provides, in Articles 182(d) and 183, that a court examining a civil action:

> "182. … shall suspend the proceedings:
>
> (d) whenever criminal elements, the determination of which is decisive for the outcome of the civil dispute, are discovered in the course of the civil proceedings.
>
> 183. Proceedings which have been suspended shall be resumed *ex officio* or upon a party's petition after the respective obstacles have been removed..."

Article 222 of the Code of Civil Procedure provides:

> "The findings contained in a final judgment of a criminal court and concerning the issue whether the act in question has been committed, its unlawfulness and the perpetrator's guilt, are binding on the civil court when it examines the civil consequences of the criminal act."

62. The parties have submitted to the Court a number of decisions of the Bulgarian Supreme Court as to the effect of the above provisions.

In decision no. 3421 of 18 January 1980 in case no. 1366/79, the First Civil Division of the Supreme Court held:

> "In principle the fact of a crime may only be established under the procedures of the Code of Criminal Procedure. This is why, when an alleged civil right derives from a fact which constitutes a crime under the Criminal Code, the civil court, according to Article 182(d) of the Code of Civil Procedure, is obliged to suspend the civil proceedings.
>
> This is necessary in order to respect the decision of the criminal court. It is mandatory for the civil courts regardless of the crime in issue. The mandatory binding force of the decisions of criminal courts is set out in Article 222 of the Code of Civil Procedure."

In decision no. 12/1966, the Plenary Civil Division of the Supreme Court held as follows:

> "The decision of the prosecution to terminate the criminal prosecution based on a finding that the accused is not guilty of committing the criminal act does not bind the civil court which examines the civil consequences of this act... [T]he civil court, on the

basis of evidence [collected] in the course of the civil proceedings, can reach different factual findings, for example that the tort was in fact caused by the same person, the criminal prosecution against whom had been terminated.

If in the course of the civil proceedings, after collection of evidence, fresh criminal circumstances are discovered, the determination of which is decisive for the outcome of the civil dispute, the court is obliged to suspend the proceedings in accordance with Article 182(d) of the Code of Civil Procedure."

In interpretative decision no. 11 of 3 January 1967 (Yearbook 1967), the Civil Assembly of the Supreme Court of Bulgaria held:

"… In principle a civil court may not establish whether any particular act constitutes a crime. But when the criminal proceedings were closed under Article 6 § 21 of the Code of Criminal Procedure [where the criminal procedure was closed following the death of the alleged perpetrator, expiry of the time-limit for prosecution or where an amnesty has been granted], the criminal court does not make a decision whether the act constitues a crime. In such cases, the law – Article 97 § 4 of the Code of Civil Procedure – provides a possibility for the civil court to establish in a separate procedure whether the act constitutes a crime and who was the perpetrator."

In decision no. 817 of 13 December 1988 in case no. 725, a claim for damages arising out of a car accident, the Fourth Civil Division of the Supreme Court held:

"In dismissing the claim, the first-instance court had found that the only one responsible for the car accident was the claimant, who, at a distance of about ten metres, suddenly jumped in front of the car in order to cross the street and therefore, despite the measures taken by the driver, the collision was not avoided.

This conclusion was based on the fact that the criminal investigation against the driver had been closed on the grounds of lack of evidence, ill-foundedness, lack of some of the elements comprising a crime in the accusation and lack of guilt.

The court was not required to rely on the prosecutor's decision to terminate the criminal investigation by Article 222 of the Code of Civil Procedure [see paragraph 61 above], which states that only the final judgment of a criminal court is binding on the court which deals with the civil consequences of the act in question. The order of a prosecutor closing an investigation has no evidential weight and his/her findings are not binding on the court dealing with the civil consequences of the act. Where there is no verdict of a criminal court finding the accused not guilty of causing the injuries of the claimant, the civil court must establish whether the defendant was guilty or not guilty on the basis of all admissible evidence under the Code of Civil Procedure. Thus, in the present case, the order of the prosecutor closing the investigation had no evidential weight that the defendant was not guilty for the car accident."

D. Crimes allegedly committed by Mr Assenov 1994–1995

63. In connection with the alleged burglaries, Mr Assenov was charged with an offence the elements of which are continuous criminal activity by a minor consisting of burglaries committed with accomplices and involving breaking in to locked premises, where the amount stolen is significant. The maximum punishment for this offence is three years' imprisonment (Criminal Code 1968 ("CC"), Article 195 §§ 1(3), 1(5) and 2 in conjunction with Articles 26 § 1 and 63 § 1(3)).

64. In connection with the alleged robberies, he was charged with an offence of continuous criminal activity by a minor, committed with accomplices, consisting of robberies, defined as stealing with the use of force or threats. The punishment is up to five years' imprisonment (CC, Article 198 § 1 in conjunction with Articles 26 § 1 and 63 § 1(2)).

65. Pursuant to Articles 23–25 of the CC, the maximum sentence which Mr Assenov could have received if convicted of all the charges against him was six and a half years' imprisonment.

E. The prosecuting authorities

66. According to the relevant provisions of the CCP and legal theory and practice, the prosecutor performs a dual function in criminal proceedings.

During the preliminary stage he supervises the investigation. He is competent, *inter alia*, to give mandatory instructions to the investigator; to participate in examinations, searches or any other acts of investigation; to withdraw a case from one investigator and assign it to another, or to carry out the entire investigation, or parts of it, himself. He may also decide whether or not to terminate the proceedings, order additional investigations, or prepare an indictment and submit the case to court.

At the judicial stage he is entrusted with the task of prosecuting the accused.

67. The investigator has a certain independence from the prosecutor in respect of his working methods and particular acts of investigation, but performs his functions under the latter's instructions and supervision (CCP, Articles 48 § 2 and 201). If an investigator objects to the prosecutor's instructions, he may apply to the higher prosecutor, whose decision is final and binding.

68. Under Article 86 of the CCP, the prosecutor and the investigator are under an obligation to collect both incriminating and exonerating evidence. Throughout criminal proceedings, the prosecutor must "effect a supervisory control of lawfulness" (CCP, Article 43).

F. Provisions on pre-trial detention

1. Power of prosecuting authorities to detain on remand

69. An accused, including a minor, can be detained on remand by decision of an investigator or prosecutor, although minors may be detained on remand only in exceptional circumstances. In cases where the decision to detain has been taken by an investigator without the prior consent of a prosecutor, it must be approved by a prosecutor within twenty-four hours. The prosecutor usually makes this decision on the basis of the file, without hearing the accused (CCP, Articles 152, 172, 201–03 and 377–78).

70. A criminal investigation must be concluded within two months. A prolongation of up to six months may be authorised by a regional prosecutor and, in exceptional cases, the Chief Public Prosecutor may prolong the investigations up to nine months. If the period is prolonged, the prosecutor will decide whether to hold the accused in custody (CCP, Article 222).

71. There is no legal obstacle preventing the prosecutor who has taken the decision to detain an accused on remand, or has approved an investigator's decision, from acting for the prosecution against the accused in any subsequent criminal proceedings. In practice this frequently occurs.

2. Judicial review of pre-trial detention

72. A person detained on remand has the opportunity immediately to file an appeal with the competent court against the imposition of detention. The court must rule within three days of the filing of the appeal (CCP, Article 152 § 5).

73. According to the practice which was current at the time of Mr Assenov's arrest, the court examines appeals against detention on remand in camera, without the participation of the parties. If the appeal is dismissed, the court does not notify the detained person of the decision taken.

74. The First Criminal Division of the Supreme Court has held that, in deciding on such appeals, it is not open to the court to inquire whether there exists sufficient evidence supporting the charges against the detainee, but only to examine the lawfulness of the detention order. A detention order will

only be lawful, in cases of persons charged with crimes punishable by less than ten years' imprisonment, where there is a "real danger" of the accused absconding or reoffending (decision no. 24 in case no. 268/95).

75. In a decision of 17 September 1992, the First Criminal Division of the Supreme Court found that the imposition of detention on remand could be contested before a court only once. A new appeal was only possible where a detained person had been released and then redetained. In all other cases a detained person could request his release from the prosecuting authorities if there had been a change of circumstances (decision no. 94 in case no. 754/92).

76. Periodic judicial review of the lawfulness of detention on remand becomes possible only when the criminal case is pending before a court, which can then decide whether or not to release the accused.

PROCEEDINGS BEFORE THE COMMISSION

77. The applicants applied to the Commission on 6 September 1993. They complained, relying on Articles 3, 6 § 1 and 13 of the Convention, about Mr Assenov's alleged ill-treatment by the police in September 1992 and the lack of any effective domestic remedy in this respect; relying on Articles 3 and 5 §§ 1, 3 and 4, about his detention on remand since July 1995; and, relying on Article 25, about the measures taken by the prosecuting authorities in connection with their application to the Commission.

78. The Commission declared the application (no. 24760/94) admissible on 27 June 1996. In its report of 10 July 1997 (Article 31), it expressed the opinions, in relation to the events of September 1992, that there had been no violation of Article 3 (sixteen votes to one), that there had been a violation of Article 13 (unanimously) and that there had been no violation of Article 6 (unanimously).

In connection with the events since 1995, it expressed the unanimous opinions that there had been no violation of Article 5 § 1 and no violation of Article 3, but that there had been violations of Article 5 §§ 3 and 4 and that Bulgaria had not complied with its obligations under Article 25.

The full text of the Commission's opinion and of the partly dissenting opinion contained in the report is reproduced as an annex to this judgment[1].

1. *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* 1998), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT

79. In their memorial and at the oral hearing, the Government asked the Court to reject the applicants' claims.

Mr Assenov asked the Court to find violations of Articles 3, 5, 6, 13 and, together with his parents, 25 of the Convention, and all three applicants asked to be awarded just satisfaction under Article 50.

AS TO THE LAW

I. THE APPLICANTS

80. At the hearing before the Court, the applicants' representative explained that, although for the purposes of the proceedings before the Commission Mr Assenov's parents had joined his various complaints, they had done so only because at that time he had been a minor and thus lacking in capacity under Bulgarian law. The current position was that Mr Assenov was the sole applicant in respect of all the complaints except that under Article 25 of the Convention, which he brought jointly with his parents.

81. The Court will, therefore, in respect of all the complaints save that under Article 25, only consider whether there have been violations of Mr Assenov's rights. In respect of the Article 25 complaint it will also examine the position of Mr Ivanov and Mrs Ivanova.

II. EVENTS OF AND FOLLOWING 19 SEPTEMBER 1992

A. The Government's preliminary objections

1. Alleged non-exhaustion of domestic remedies

82. The Government contended that Mr Assenov's complaint under Article 3 concerning the events of 19 September 1992 should have been declared inadmissible due to failure to exhaust domestic remedies, pursuant to Article 26 of the Convention, which states:

> "The Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law…"

In the Government's submission, in addition to applying for a criminal prosecution to be brought against the police officers, the applicant could have brought civil proceedings under section 45 of the Law on Obligations and Contracts or administrative proceedings under the Law on State Responsibility for Damage.

83. At the hearing before the Court, the applicant stated that it was difficult to imagine what additional steps he could have been expected to take in order to trigger the remedies formally available under Bulgarian law.

84. In its decision on admissibility, the Commission recalled that civil compensation could not be deemed fully to rectify a breach of Article 3. It found that, in complaining to the District Directorate of Internal Affairs ("DDIA") and all levels of the prosecuting authorities, the applicants had done all they could to seek the institution of criminal proceedings against the police officers, thus putting their complaint in the hands of the authorities most competent to pursue it.

85. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 26 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system, thus dispensing States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal systems. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see the Aksoy v. Turkey judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275–76, §§ 51–52).

86. The Court recalls that under Bulgarian law it is not possible for a complainant to initiate a criminal prosecution in respect of offences allegedly committed by agents of the State in the performance of their duties (see paragraph 58 above). It notes that the applicants made numerous appeals to the prosecuting authorities at all levels, requesting that a full criminal investigation be carried out into Mr Assenov's allegations of ill-treatment by the police and that the officers concerned be prosecuted (see paragraphs 12–31 above).

It considers that, having exhausted all the possibilities available to him within the criminal justice system, the applicant was not required, in the absence of a criminal prosecution in connection with his complaints, to embark on another attempt to obtain redress by bringing a civil action for damages.

It follows, therefore, that the Government's preliminary objection must be rejected.

2. Alleged abuse of process

87. In addition, the Government alleged that the applicant's allegations had not been substantiated and had been designed to mislead the Commission, thus constituting an abuse of the right of petition. The application should, therefore, have been rejected under Article 27 § 2 of the Convention, which states:

> "The Commission shall consider inadmissible any petition … which it considers incompatible with the provisions of the … Convention, manifestly ill-founded, or an abuse of the right of petition."

88. Having examined the applicant's complaints, the Commission expressed the view in its decision on admissibility that they raised serious questions of fact and law which required full examination on the merits.

89. The Court finds no grounds that the present case was brought before the Commission in abuse of the right of petition.

It therefore rejects this preliminary objection of the Government.

B. Merits

1. Alleged violation of Article 3 of the Convention

90. Mr Assenov alleged that the events of 19 September 1992 had given rise to violations of Article 3 of the Convention, which states:

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

He contended that this Article had been breached on two separate grounds. First, he asked the Court itself to examine the medical evidence and witness statements which, he alleged, demonstrated that he had been severely beaten by police officers.

Secondly, joined by the interveners (see paragraph 5 above), he asked the Court to declare that wherever there were reasonable grounds to believe that an act of torture or inhuman or degrading treatment or punishment had been committed, the failure of the competent domestic authorities to carry out a prompt and impartial investigation in itself constituted a violation of Article 3.

91. The Government pointed out that the applicant's medical certificate was unreliable because it had been issued two days after the incident in question. In any case, the injuries which it described, and the absence of any

certificate relating to Mr Ivanov, were consistent with the witnesses' accounts of the father having beaten his son with a thin strip of wood.

92. In assessing the evidence before it, the Commission had regard to the principle that where an individual alleges to have been injured by ill-treatment in custody, the Government are under an obligation to provide a complete and sufficient explanation as to how the injuries were caused (see the Ribitsch v. Austria judgment of 4 December 1995, Series A no. 336, pp. 25–26, § 34, and the above-mentioned Aksoy judgment, p. 2278, § 61). It accepted, *inter alia*, that a quarrel had erupted at the bus station between the police officers and Mr Ivanov, that the latter had hit his son with a plywood strip in an effort to show that he would punish the boy himself and that both applicants were then detained at the police station for approximately two hours. However, more than four and a half years after these events, and owing to the lack of a sufficiently independent and timely investigation by the domestic authorities, the Commission was not able to establish which version of events was the more credible. It did not, therefore, find any violation of Article 3.

93. Article 3, as the Court has observed on many occasions, enshrines one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against terrorism or crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 even in the event of a public emergency threatening the life of the nation (see the above-mentioned Aksoy judgment, p. 2278, § 62).

94. The Court recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see the Tekin v. Turkey judgment of 9 June 1998, *Reports* 1998-IV, pp. 1517–18, §§ 52 and 53).

95. The Court considers that the degree of bruising found by the doctor who examined Mr Assenov (see paragraph 11 above) indicates that the latter's injuries, whether caused by his father or by the police, were sufficiently serious to amount to ill-treatment within the scope of Article 3 (see, for example, the A. v. the United Kingdom judgment of 23 September 1998, *Reports* 1998-VI, p. 2699, § 21, and the above-mentioned

Ribitsch judgment, pp. 9 and 26, §§ 13 and 39). It remains to be considered whether the State should be held responsible under Article 3 in respect of these injuries.

(a) Alleged ill-treatment by the police

96. The Court recalls that the Commission was unable, on the basis of the evidence before it, to establish how the applicant's injuries were caused (see paragraph 92 above).

97. The Court observes that the doctor who examined Mr Assenov two days after the latter was released from police custody found that the bruises on his body indicated that he had been beaten with a solid object (see paragraph 26 above). The applicant alleged that these injuries had been caused by police officers who beat him with truncheons.

98. The Court considers that, since it is not disputed that the applicant was the victim of violence from some source on 19 September 1992, and since there is no suggestion of anything untoward having occurred between that date and his medical examination, it is fair to assume that he sustained the above bruising on 19 September 1992 in connection with his arrest.

99. The Court further notes that the arresting officer testified in his witness statement that he had seen Mr Ivanov hit his son on the back two or three times with a narrow wooden stick (see paragraph 14 above). It was not denied by the applicants that Mr Ivanov hit Mr Assenov in this way, although it was denied that he did so with the force or frequency required to cause the bruising described in the medical report. Following Mrs Ivanova's complaint on 2 October 1992, an agent of the DDIA interviewed the applicants and took the above written statement from the arresting officer and statements from the other two officers involved, neither of whom had been present when Mr Ivanov hit Mr Assenov (ibid.). The only independent witness contacted by the DDIA investigator at that time could not remember any disturbance at the bus station (see paragraph 15 above).

In July 1993, unknown to the applicants, witness statements were taken from two other bystanders at the bus station. One of these had only a vague recollection of the events in question. The other, a bus driver, recalled seeing Mr Ivanov hit his son with a lath, although he did not specify how prolonged or violent a beating this had been (see paragraph 28 above).

None of the witnesses, except the applicants, said that they had seen police officers hitting Mr Assenov.

100. The Court, like the Commission (see paragraph 92 above), finds it impossible to establish on the basis of the evidence before it whether or not the applicant's injuries were caused by the police as he alleged.

(b) Adequacy of the investigation

101. The Court does, however, consider that the medical evidence, Mr Assenov's testimony, the fact that he was detained for two hours at the police station, and the lack of any account from any witness of Mr Ivanov beating his son with sufficient severity to cause the reported bruising, together raise a reasonable suspicion that these injuries may have been caused by the police.

102. The Court considers that, in these circumstances, where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in … [the] Convention", requires by implication that there should be an effective official investigation. This investigation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible (see, in relation to Article 2 of the Convention, the McCann and Others v. the United Kingdom judgment of 27 September 1995, Series A no. 324, p. 49, § 161, the Kaya v. Turkey judgment of 19 February 1998, *Reports* 1998-I, p. 324, § 86, and the Yaşa v. Turkey judgment of 2 September 1998, *Reports* 1998-VI, p. 2438, § 98). If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance (see paragraph 93 above), would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity.

103. The Court notes that following Mrs Ivanova's complaint, the State authorities did carry out some investigation into the applicant's allegations. It is not, however, persuaded that this investigation was sufficiently thorough and effective to meet the above requirements of Article 3. In this respect it finds it particularly unsatisfactory that the DDIA investigator was prepared to conclude that Mr Assenov's injuries had been caused by his father (see paragraph 16 above), despite the lack of any evidence that the latter had beaten his son with the force which would have been required to cause the bruising described in the medical certificate. Although this incident had taken place in public view at the bus station, and although, according to the statements of the police officers concerned, it was seen by approximately fifteen to twenty Roma and twenty bus drivers, no attempt appears to have been made to ascertain the truth through contacting and questioning these witnesses in the immediate aftermath of the incident,

when memories would have been fresh. Instead, at that time a statement was taken from only one independent witness, who was unable to recall the events in question (see paragraph 99 above).

104. The initial investigation carried out by the regional military prosecution office (RMPO) and that of the general military prosecution office (GMPO) were even more cursory. The Court finds it particularly striking that the GMPO could conclude, without any evidence that Mr Assenov had not been compliant, and without any explanation as to the nature of the alleged disobedience, that "even if the blows were administered on the body of the juvenile, they occurred as a result of disobedience to police orders" (see paragraph 26 above). To make such an assumption runs contrary to the principle under Article 3 that, in respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct is in principle an infringement of his rights (see paragraph 94 above).

105. The Court notes that in July 1993 the GMPO decided that in cases of alleged police misconduct it was necessary to take evidence from independent witnesses (see paragraph 27 above). However, the examination of two further witnesses, one of whom had only a vague recollection of the incidents in question, was not sufficient to rectify the deficiencies in the investigation up to that point.

106. Against this background, in view of the lack of a thorough and effective investigation into the applicant's arguable claim that he had been beaten by police officers, the Court finds that there has been a violation of Article 3 of the Convention.

2. Alleged violation of Article 6 § 1 of the Convention

107. Mr Assenov claimed to have been denied effective access to a court, in breach of Article 6 § 1 of the Convention, which provides, *inter alia*:

> "In the determination of his civil rights and obligations …, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law…"

108. The applicant submitted that the decision of the prosecuting authorities not to bring criminal proceedings against the police officers who allegedly ill-treated him had, in effect, operated to deny him access to a court in respect of his civil claim for damages arising out of the same incident. Thus, since no criminal proceedings had been instigated, it had not been open to him to join such proceedings as a civil party in order to claim compensation (see paragraph 59 above). Moreover, although he accepted

that it would in theory have been possible for him to bring an action for damages in the civil courts, he maintained that, since the damage in question arose out of an alleged criminal act, a civil court would have been obliged, under Article 182(d) of the Code of Civil Procedure (see paragraphs 61–62 above), to stay any such action until the issue of criminal liability had been decided. Given the likelihood of delay inherent in Bulgarian criminal procedure, this suspension might, in practice, have been indefinite.

109. The Commission, joined by the Government (see also paragraph 82 above), noted that the Law on Obligations and Contracts and the Law on State Responsibility for Damage provided for an action for damages to the civil courts in relation to alleged acts of police brutality. Had the applicant brought such an action, a civil court could have examined it on the basis of the evidence before it, without having first to establish criminal responsibility. According to Bulgarian case-law, the civil court would only have had to suspend the proceedings under Article 182(d) of the Code of Civil Procedure if it had discovered new "criminal elements", for example, facts of which the prosecuting authorities had not previously been aware. The Commission did not consider that this procedure would have operated to impair the very essence of the right of access to a court in the applicants' case.

110. The Court notes that none of those appearing before it disputed that any claim for damages brought by the applicant and based on alleged ill-treatment by the police would have involved "the determination of his civil rights". It agrees that Article 6 § 1 is, for that reason, applicable.

111. The Court further notes that the applicant did not deny that both the Law on Obligations and Contracts and the Law on State Responsibility for Damage provided him with causes of action which would have enabled him to commence proceedings in the civil courts. He did, however, contend that any such action would have been stayed, perhaps indefinitely, under Article 182(d) of the Code of Civil Procedure.

112. Having regard to the Bulgarian case-law which has been submitted to it by the parties (see paragraph 62 above), the Court notes that the Supreme Court has held, in a case involving a car accident, that a civil court is not bound by the decision of the prosecuting authorities terminating a criminal investigation. The applicant has argued that this rule would not have been applied in his own case, based as it was on allegations of criminal acts much more serious than careless driving. This is, however, a matter of pure speculation, since Mr Assenov did not attempt to bring civil proceedings. In these circumstances, it cannot be said that he was denied access to a court or deprived of a fair hearing in the determination of his civil rights.

113. It follows that there has been no violation of Article 6 § 1 of the Convention.

3. Alleged violation of Article 13 of the Convention

114. The applicant also claimed to have been denied an effective remedy in respect of his Convention complaints, in breach of Article 13, which states:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

He submitted that, in cases of alleged ill-treatment contrary to Article 3, the State authorities were under an obligation under Article 13 to investigate promptly and impartially.

115. The Government contended that there had been effective remedies available to the applicant in connection with his allegation of police ill-treatment. This was demonstrated by the fact that, prior to his application to the Commission, he had lodged complaints with the Regional Directorate in Shoumen, the RMPO in Varna and the GMPO in Sofia. Having examined the evidence, the prosecuting authorities had decided that it was insufficient to justify commencing criminal proceedings. In this respect it was to be noted that the applicant had not substantiated his allegations or identified witnesses who would be able to assist in the investigation.

116. The Commission found that the applicant had had an arguable claim to have been ill-treated by the police. The official investigation had not been sufficiently thorough and independent to satisfy Article 13.

117. The Court recalls that Article 13 guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of this Article is thus to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision.

The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Where an individual has an arguable claim that he has been ill-treated in breach of Article 3, the notion of an effective remedy entails, in addition to a thorough and effective investigation of the kind also required by Article 3 (see paragraph 102 above), effective access for the complainant to the investigatory procedure and the payment of compensation where appropriate (see the above-mentioned Aksoy judgment, pp. 2286 and 2287, §§ 95 and 98).

118. The Court refers to its above findings that Mr Assenov had an arguable claim that he had been ill-treated by agents of the State and that the domestic investigation of this claim was not sufficiently thorough and effective.

It follows from these findings that there has also been a violation of Article 13 of the Convention.

II. EVENTS OF AND FOLLOWING JULY 1995

A. The Government's preliminary objections

1. Alleged non-exhaustion of domestic remedies

119. The Government submitted to the Court that the complaints concerning the events of and subsequent to July 1995 should have been declared inadmissible under Article 26 of the Convention (see paragraph 82 above) since criminal proceedings were still pending against the applicant. Moreover, the applicant had not appealed to the Attorney-General against the order refusing his release of 8 December 1995 (see paragraph 40 above).

120. The Commission, in its decision on admissibility, found that the applicant had utilised every remedy available in connection with his complaints under Article 5.

121. The Court notes that Mr Assenov's complaints under this heading concern various aspects of his detention from July 1995 onwards. It is therefore immaterial that the criminal prosecution against him was still pending at the time of his application to the Commission, since these criminal proceedings would not have provided him with any remedy in respect of the alleged unlawfulness of his preceding detention.

122. The Court further notes that Mr Assenov and his parents on his behalf made numerous requests for his release to the prosecuting authorities and the Shoumen District Court. In these circumstances, it considers that the applicant has satisfied the requirements of Article 26 of the Convention (see paragraph 85 above).

It follows that the Government's preliminary objection must be rejected.

2. Alleged abuse of process

123. The Government further contended that the allegations concerning the events of and subsequent to July 1995 should have been declared inadmissible under Article 27 § 2 of the Convention (see paragraph 87 above) since they did not form part of the initial application to the Commission and were not causally linked to the matters originally complained of.

124. At the hearing before the Court, the Commission's Delegate pointed out that the Government had not raised at the admissibility stage any objection concerning the alleged absence of connection between the applicant's various complaints and observed that they should, therefore, be estopped from raising this objection before the Court. The Delegate stated that in any case applicants had the right to complain about any violation of their Convention rights; it was merely a procedural matter whether the complaints would be examined jointly or separately.

125. The Court agrees that since the Government's preliminary objection concerning an alleged abuse of process was not raised before the Commission at the admissibility stage of the proceedings, the Government is estopped from raising it before the Court (see, amongst many other authorities, the Loizidou v. Turkey judgment of 23 March 1995, (*preliminary objections*), Series A no. 310, p. 19, § 44).

126. The Government also contended that the allegations concerning the alleged failure by the State to respect the right of individual petition under Article 25 of the Convention had not been substantiated and were, therefore, manifestly ill-founded.

127. The Court finds no evidence of abuse of process in connection with the complaints in question.

It therefore rejects the Government's preliminary objection.

B. Merits

1. Alleged violation of Article 3 of the Convention

128. In the context of his complaint under Article 5 § 1 (see paragraph 137 below) the applicant complained about the conditions of his detention at Shoumen police station. He claimed to have shared with two to four adult prisoners a cell, which measured 3 by 1.8 metres and was situated below ground level, with only one bed and limited access to air and light. He stated that he was only permitted to leave the cell for half an hour twice a day to go to the toilet.

129. The Government alleged that the cell in which Mr Assenov was detained at Shoumen measured 4.6 by 3.5 metres and was shared with only one other detainee.

130. The Commission considered that the applicant's allegations concerning the conditions of his detention, although initially raised under Article 5, should be examined in relation to Article 3. Having assessed all the facts, it did not find that the level of severity required for a breach of Article 3 had been attained.

131. The Court notes that the applicant has not expressly raised any complaint under Article 3 of the Convention (see paragraph 90 above) in connection with the conditions in which he was detained following his arrest in July 1995. He has, however, made certain allegations about these conditions in the context of his complaint about the legality of his detention under Article 5 § 1.

132. The Court recalls that it is master of the characterisation to be given in law to the facts of the case as declared admissible by the Commission (see the Guerra and Others v. Italy judgment of 19 February 1998, *Reports* 1998-I, p. 242, § 44). It follows that it is open to it to consider the applicant's allegations concerning his conditions of detention in the light of the guarantees against ill-treatment provided by Article 3.

133. The Court observes that Mr Assenov, then aged 17, was detained on remand for a total of almost eleven months at Shoumen police station. It notes that the precise conditions of his detention there are disputed between the applicant and the Government, particularly the dimensions of the cell in which he was held and the number of prisoners with whom it was shared, and that the Commission made no findings in respect of these detailed facts.

134. The Court notes with concern that, while still a juvenile, the applicant was held for almost eleven months in conditions which, in the view of the Chief Public Prosecutor's Office, would be harmful to his physical and mental development if prolonged. It is noteworthy, moreover, that even after the decision was taken to move him, a further three and a half months were allowed to elapse before Mr Assenov was transferred to the Boychinovzi juvenile penitentiary (see paragraph 40 above).

135. It is the Court's task, however, to assess whether these conditions were sufficiently severe to reach the level required for a finding of violation of Article 3 (see paragraph 94 above). In doing so, it must have regard to all the circumstances, such as the size of the cell and the degree of overcrowding, sanitary conditions, opportunities for recreation and exercise, medical treatment and supervision and the prisoner's state of health.

136. Aside from the assertions of the parties, the Court has not been presented with any objective evidence relating to the applicant's conditions of detention. It notes that the Commission made an overall assessment and did not find that the applicant's conditions of detention were sufficiently severe as to violate Article 3. It further notes that the only medical report in respect of the applicant during this period to which it has been referred found, on 21 August 1995, after he had been detained for approximately one month, that he was healthy and that, despite his parents' fears in this respect, there was no reason based on heart-disease against his continued imprisonment (see paragraph 37 above).

In these circumstances, the Court does not find it established that the conditions of Mr Assenov's detention were sufficiently severe as to give rise to a violation of Article 3 of the Convention.

2. Alleged violation of Article 5 § 1 of the Convention

137. Mr Assenov alleged that his detention had been unlawful, contrary to Article 5 § 1 of the Convention, which provides (as relevant):

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> …
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> …"

He did not dispute that he had initially been detained for the purpose of bringing him before a court in compliance with Article 5 § 1 (c). However, he pointed out that the investigation into his alleged crimes had been completed by September 1995 and he alleged that thereafter his pre-trial detention had constituted a form of punishment, contrary to the presumption of innocence. Moreover, he reminded the Court that under Bulgarian law a minor should only be detained in exceptional circumstances (see paragraph 69 above).

138. The Commission noted that the time-limits contained in Article 222 of the CCP set restrictions on the length of any preliminary investigation but not of detention on remand (see paragraph 70 above). Article 222 did require that detention on remand following the prolongation of an investigation be confirmed. However, the applicant's continued detention

had complied with this requirement since it had been confirmed by the District Court on 19 September 1995 and by a number of decisions by the prosecuting authorities between October 1995 and October 1996. It did not, therefore, appear that the detention had been unlawful according to Bulgarian law or that there had been a breach of Article 5 § 1 on any other ground.

139. The Court recalls that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof; but that they require in addition that any deprivation of liberty should be in conformity with the purpose of Article 5, which is to prevent persons from being deprived of their liberty in an arbitrary fashion (see, for example, the Erkalo v. the Netherlands judgment of 2 September 1998, *Reports* 1998-VI, p. 2477, § 52).

140. In the present case the Court, like the Commission, finds no evidence that the applicant's detention was unlawful under Bulgarian law. Moreover, it is clear that Mr Assenov was detained on reasonable suspicion of having committed an offence, as permitted by Article 5 § 1 (c).

141. In conclusion, therefore, the Court finds no violation of Article 5 § 1 of the Convention.

3. Alleged violations of Article 5 § 3 of the Convention

142. Mr Assenov, who had been detained on remand for approximately two years, complained of violations of his rights under Article 5 § 3 of the Convention, which states:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

143. As observed above, the applicant did not dispute that his detention, initially at least, fell within the scope of Article 5 § 1 (c). It follows that Article 5 § 3 is applicable.

The Court will first consider whether it can be said that Mr Assenov was "brought promptly before a judge or other officer authorised by law to exercise judicial power". Secondly, it will examine whether he was afforded a "trial within a reasonable time", including whether he should have been released pending trial.

(a) Right to be brought promptly before a judge or "other officer"

144. The Government submitted that the various prosecutors who considered Mr Assenov's applications for release were "officer[s] authorised by law to exercise judicial power" within the meaning of Article 5 § 3, since under Bulgarian law a prosecutor was fully independent, under a duty to protect the public interest and authorised to decide on a number of questions arising in criminal proceedings, including whether or not to detain an accused on remand.

145. The Commission, with whom the applicant agreed, noted that although under Bulgarian law investigators were institutionally independent, in practice they were subject to the control of prosecutors with regard to every question concerning the conduct of an investigation, including whether or not to detain a suspect on remand. There was, therefore, a strong objective appearance that the investigator who dealt with Mr Assenov lacked independence from the prosecuting authorities, which were subsequently to act as the opposing party in criminal proceedings.

146. The Court reiterates that judicial control of interferences by the executive with the individual's right to liberty is an essential feature of the guarantee embodied in Article 5 § 3 (see the above-mentioned Aksoy judgment, p. 2282, § 76). Before an "officer" can be said to exercise "judicial power" within the meaning of this provision, he or she must satisfy certain conditions providing a guarantee to the person detained against any arbitrary or unjustified deprivation of liberty (see the Schiesser v. Switzerland judgment of 4 December 1979, Series A no. 34, p. 13, § 31).

Thus, the "officer" must be independent of the executive and the parties (ibid.). In this respect, objective appearances at the time of the decision on detention are material: if it appears at that time that the "officer" may later intervene in subsequent criminal proceedings on behalf of the prosecuting authority, his independence and impartiality may be open to doubt (see the Huber v. Switzerland judgment of 23 October 1990, Series A no. 188, p. 18, § 43, and the Brincat v. Italy judgment of 26 November 1992, Series A no. 249-A, p. 12, § 21). The "officer" must hear the individual brought before him in person and review, by reference to legal criteria, whether or not the detention is justified. If it is not so justified, the "officer" must have the power to make a binding order for the detainee's release (see the above-mentioned Schiesser judgment, pp. 13–14, § 31, and the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 76, § 199).

147. The Court notes at the outset that Mr Assenov's application for release was not considered by a judge until 19 September 1995 (see paragraph 38 above), three months into his detention. This was clearly insufficiently "prompt" for the purposes of Article 5 § 3 (see, for example, the Brogan and Others v. the United Kingdom judgment of 29 November 1988, Series A no. 145-B, p. 33, § 62), and indeed it has not been argued that this procedure was adequate to satisfy the requirements of this provision.

148. The Court recalls that on 28 July 1995 Mr Assenov was brought before an investigator who questioned him, formally charged him, and took the decision to detain him on remand (see paragraph 33 above). It notes that, under Bulgarian law, investigators do not have the power to make legally binding decisions as to the detention or release of a suspect. Instead, any decision made by an investigator is capable of being overturned by the prosecutor, who may also withdraw a case from an investigator if dissatisfied with the latter's approach (see paragraphs 66–69 above). It follows that the investigator was not sufficiently independent properly to be described as an "officer authorised by law to exercise judicial power" within the meaning of Article 5 § 3.

149. Mr Assenov was not heard in person by prosecutor A., who approved the investigator's decision (see paragraph 33 above), or by any of the other prosecutors who later decided that he should continue to be detained. In any case, since any one of these prosecutors could subsequently have acted against the applicant in criminal proceedings (see paragraph 66 above), they were not sufficiently independent or impartial for the purposes of Article 5 § 3.

150. The Court considers, therefore, that there has been a violation of Article 5 § 3 on the ground that the applicant was not brought before an "officer authorised by law to exercise judicial power".

(b) Right to trial within a reasonable time or release pending trial

151. The Government submitted that the preliminary investigation had been complex and time-consuming, involving the questioning of a number of alleged accomplices and witnesses and the consideration of expert evidence. On 31 January 1997 it had been necessary for the prosecuting authorities to refer the case for further investigation and re-examination of witnesses when a conflict of interest between Mr Assenov and his alleged accomplices became apparent. Throughout the investigatory process the applicant and his parents had continually filed applications for his release, each of which had led to the investigation being suspended while the application was being considered. In these circumstances it could not be said that Mr Assenov had been denied a trial within a reasonable time.

152. The Commission, attaching particular importance to the fact that between September 1995 and September 1996 the preliminary investigation had been practically dormant, found that Mr Assenov, who had then been detained on remand for over twenty-three months, had been denied a trial within a reasonable time. The applicant agreed with this conclusion.

153. The Court observes that the period to be taken into consideration commenced on 27 July 1995, when Mr Assenov was arrested, and continued until an unspecified day in July 1997, when he was convicted and sentenced in respect of four robberies (see paragraphs 33 and 48 above). His pre-trial detention therefore lasted approximately two years.

154. The Court reiterates that it falls in the first place to the national judicial authorities to ensure that the pre-trial detention of an accused person does not exceed a reasonable time. To this end, they must examine all the circumstances arguing for and against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set these out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the true facts mentioned by the detainee in his applications for release and his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3.

The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the validity of the continued detention, but, after a certain lapse of time, it no longer suffices: the Court must then establish whether the other grounds cited by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see the Toth v. Austria judgment of 12 December 1991, Series A no. 224, p. 18, § 67).

155. The Court recalls that on the two occasions when the legality of Mr Assenov's detention was reviewed by a court, his release was refused on the grounds that he was charged with a number of serious crimes and that his criminal activity had been persistent, giving rise to a danger that he would reoffend if released (see paragraphs 38 and 47 above).

156. The Court notes that on 28 July 1995 Mr Assenov was charged with sixteen or more burglaries and robberies, the latter involving some violence (see paragraph 33 above). Although he had first been questioned in connection with the investigation into this series of thefts in January 1995 (see paragraph 32 above), a number of the offences with which he was charged were committed subsequently; the last robbery having taken place on 24 July, three days before his arrest.

In these circumstances, the Court considers that the national authorities were not unreasonable in fearing that the applicant might reoffend if released.

157. However, the Court recalls that the applicant was a minor and thus, according to Bulgarian law, should have been detained on remand only in exceptional circumstances (see paragraph 69 above). It was, therefore, more than usually important that the authorities displayed special diligence in ensuring that he was brought to trial within a reasonable time.

The Government have submitted that it took two years for the case to come to trial because it was particularly complex, requiring a lengthy investigation. However, it would appear from the information available to the Court that during one of those years, September 1995 to September 1996, virtually no action was taken in connection with the investigation: no new evidence was collected and Mr Assenov was questioned only once, on 21 March 1996 (see paragraphs 34 and 42 above). Moreover, given the importance of the right to liberty, and the possibility, for example, of copying the relevant documents rather than sending the original file to the authority concerned on each occasion, the applicant's many appeals for release should not have been allowed to have the effect of suspending the investigation and thus delaying his trial (see the above-mentioned Toth judgment, p. 21, § 77).

158. Against this background, the Court finds that Mr Assenov was denied a "trial within a reasonable time", in violation of Article 5 § 3.

4. Alleged violation of Article 5 § 4 of the Convention

159. The applicant further alleged that the respondent State had failed to comply with Article 5 § 4 of the Convention, which provides:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

160. The Government pointed out that Mr Assenov had taken the opportunity provided by the law as it then stood to apply to a court for a review of the lawfulness of his detention. Although the hearing had not been in public, the Shoumen District Court had considered the written submissions of the parties as contained in the case file.

They also informed the Court that the law had been amended on 8 August 1997 and now provided in such cases for a public hearing in the presence of the parties.

161. The Commission, joined by the applicant, considered that the facts that the applicant was then a minor and that the stated reason for his continued detention was the risk of his reoffending suggested that a hearing should have been held. Instead, the Shoumen District Court, which moreover was not empowered to examine whether the accusations against Mr Assenov were supported by sufficient evidence (see paragraph 74 above), had examined the question of his continued detention in camera, without the participation of the parties (see paragraphs 38 and 73 above). Following this application, it had not been possible for him to request a further judicial review of his detention until the case had been sent for trial (see paragraphs 41, 47 and 75 above). In consequence, and in breach of Article 5 § 4, the first personal contact enjoyed by the applicant with an impartial judicial authority competent to review the lawfulness of his detention appeared to have taken place on 6 February 1997, approximately nineteen months after his arrest.

162. The Court recalls that by virtue of Article 5 § 4, an arrested or detained person is entitled to bring proceedings for the review by a court of the procedural and substantive conditions which are essential for the "lawfulness", in the sense of Article 5 § 1 (see paragraph 139 above), of his or her deprivation of liberty (see the above-mentioned Brogan and Others judgment, p. 34, § 65).

Although it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required under Article 6 § 1 of the Convention for criminal or civil litigation (see the Megyeri v. Germany judgment of 12 May 1992, Series A no. 237-A, p. 11, § 22), it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question. In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), a hearing is required (see the above-mentioned Schiesser judgment, p. 13, §§ 30–31, the Sanchez-Reisse v. Switzerland judgment of 21 October 1986, Series A no. 107, p. 19, § 51, and the Kampanis v. Greece judgment of 13 July 1995, Series A no. 318-B, p. 45, § 47).

Furthermore, Article 5 § 4 requires that a person detained on remand must be able to take proceedings at reasonable intervals to challenge the lawfulness of his detention (see the Bezicheri v. Italy judgment of 25 October 1989, Series A no. 164, pp. 10–11, §§ 20–21). In view of the assumption under the Convention that such detention is to be of strictly limited duration (see paragraph 154 above), periodic review at short intervals is called for (see the above-mentioned Bezicheri case, loc. cit.).

163. The Court recalls that the Shoumen District Court examined Mr Assenov's application for release in camera, without hearing him in person (see paragraphs 38 and 73 above). Whilst the Court notes that the relevant law has subsequently been amended to provide for an oral hearing in such cases (see paragraph 160 above), it is nonetheless required to restrict its assessment to the facts of the applicant's case (see the Findlay v. the United Kingdom judgment of 25 February 1997, *Reports* 1997-I, p. 279, § 67).

164. Moreover, the Court notes that under Bulgarian law a person detained on remand is only entitled to apply to have the lawfulness of this detention reviewed by a court on one single occasion (see paragraph 75 above). Thus a second such request on the part of the applicant was rejected on this ground by the Shoumen District Court on 19 September 1995 (see paragraph 41 above).

165. In conclusion, in view in particular of the impossibility for the applicant, during his two years of pre-trial detention, to have the continuing lawfulness of this detention determined by a court on more than one occasion, and the failure of the court to hold an oral hearing on that occasion, the Court finds that there has been a violation of Article 5 § 4 of the Convention.

5. Alleged violation of Article 25 § 1 of the Convention

166. All three applicants complained that the State had hindered the effective exercise of their right to individual petition, contrary to Article 25 § 1 of the Convention, which states:

> "The Commission may receive petitions addressed to the Secretary General of the Council of Europe from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in [the] Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right."

167. In their pleadings to the Court, the Government denied that there was any evidence to support the applicants' claim that they had felt themselves compelled by agents of the State to sign any statement before a notary.

168. The Commission found it impossible to establish whether or not, following his arrest in July 1995, Mr Assenov had been questioned about his application to Strasbourg. However, it noted that his parents had been approached in this connection by representatives of either the police or prosecuting authorities, at a time when their son was being detained on remand. It considered that the only plausible explanation for the applicants' sworn declaration was that they felt under pressure because of their application and wished to placate the authorities.

169. The Court recalls that the obligation on States under Article 25 § 1 of the Convention not to interfere with the right of the individual effectively to present and pursue his or her complaint with the Commission confers upon an applicant a right of a procedural nature which can be asserted in Convention proceedings. It is of the utmost importance for the effective system of individual petition that applicants or potential applicants are able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see the Akdivar and Others v. Turkey judgment of 16 September 1996, *Reports* 1996-IV, pp. 1218 and 1219, §§ 103 and 105, and the Kurt v. Turkey judgment of 25 May 1998, *Reports* 1998-III, pp. 1205–06, § 159).

170. The expression "any form of pressure" must be taken to cover not only direct coercion and flagrant acts of intimidation of applicants, but also other improper indirect acts or contacts designed to dissuade or discourage individuals from pursuing a Convention remedy (see the above-mentioned Kurt judgment, p. 1206, § 160).

The question whether or not contacts between the authorities and applicants are tantamount to unacceptable practices from the standpoint of Article 25 must be determined in the light of the particular circumstances in issue (ibid.). In the present case, the Court notes that the applicants' complaints to the Commission concerned serious allegations of misconduct on the part of the police and prosecuting authorities. At the relevant time, Mr Assenov was detained on remand and, given the facts which have led the Court to find violations of Article 5 § 3 and Article 5 § 4 of the Convention, his parents may legitimately have considered him to be at risk of prejudicial action taken by the prosecuting authorities. The authorities must also have been aware that the applicants were members of a minority group and had been the subject of comment in the press (see paragraph 50 above), further contributing to their susceptibility to pressure brought to bear on them.

171. In all the circumstances, the Court considers that the questioning of Mr Ivanov and Mrs Ivanova by a representative or representatives of these same authorities, which led the applicants to deny in a sworn declaration that they had made any application to the Commission (see paragraph 51 above), amounted to a form of improper pressure in hindrance of the right of individual petition.

It follows that there has been a breach of Article 25 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 50 OF THE CONVENTION

172. The applicants asked for just satisfaction pursuant to Article 50 of the Convention, which states:

> "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

173. Mr Assenov claimed compensation for the harm caused to him by the many violations of his Convention rights. Mr Ivanov and Mrs Ivanova claimed non-pecuniary damages in respect of the pressure they were placed under by the authorities in breach of Article 25 § 1.

174. The Government submitted that no compensation should be awarded under Article 50.

175. The Court considers that, given the gravity and number of violations found in this case, compensation for non-pecuniary damage should be awarded to Mr Assenov, although it takes the view that the finding of a violation of Article 25 § 1 is adequate just satisfaction in respect of any non-pecuniary damage suffered by Mr Ivanov and Mrs Ivanova.

Making an assessment on an equitable basis, it awards to Mr Assenov 6,000,000 Bulgarian levs.

B. Costs and expenses

176. The applicants claimed costs and expenses equivalent to approximately 14,860 pounds sterling (GBP) in respect of their Bulgarian representative and GBP 7,600 in respect of their United Kingdom counsel.

177. At the hearing, the Government Co-Agent submitted that these claims were excessive.

178. The Court, taking into account the number of issues arising in the present case and their complexity, awards the sums claimed in full, less the amounts already paid in legal aid by the Council of Europe. The sum awarded to Mr Assenov's Bulgarian representative should be converted into Bulgarian levs at the rate applicable on the date of settlement.

C. Default interest

179. According to the information available to the Court, the statutory rate of interest applicable in Bulgaria at the date of adoption of the present judgment is 5.08% per annum and that applicable in the United Kingdom is 7.5% per annum.

FOR THESE REASONS THE COURT

1. *Dismisses* unanimously the Government's preliminary objections;

2. *Holds* by eight votes to one that there has been no violation of Article 3 based on Mr Assenov's allegations of ill-treatment by the police;

3. *Holds* unanimously that there has been a violation of Article 3 of the Convention based on the failure to carry out an effective official investigation into Mr Assenov's allegations of ill-treatment by the police;

4. *Holds* unanimously that there has been no violation of Article 6 § 1 of the Convention;
5. *Holds* unanimously that there has been a violation of Article 13 of the Convention;

6. *Holds* by eight votes to one that there has been no violation of Article 3 of the Convention in respect of the conditions of Mr Assenov's detention from July 1995 onwards;

7. *Holds* unanimously that there has been no violation of Article 5 § 1 of the Convention;

8. *Holds* unanimously that there has been a violation of Article 5 § 3 of the Convention in that Mr Assenov was not brought promptly before a judge or other officer authorised by law to exercise judicial power;

9. *Holds* unanimously that there has been a violation of Article 5 § 3 of the Convention in that Mr Assenov was not given a trial within a reasonable time or released pending trial;

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

11. *Holds* unanimously that there has been a violation of Article 25 § 1 of the Convention in respect of all three applicants;

12. *Holds* unanimously that the respondent State is to pay, within three months:
(a) to the first applicant, in respect of non-pecuniary damage, 6,000,000 (six million) Bulgarian levs;
(b) to all three applicants, in respect of costs and expenses, 14,860 (fourteen thousand eight hundred and sixty) pounds sterling to be converted into Bulgarian levs at the rate applicable on the date of settlement, together with 7,600 (seven thousand six hundred) pounds sterling, less 38,087 (thirty-eight thousand and eighty-seven) French francs to be converted into pounds sterling at the rate applicable on the date of settlement, together with any value-added tax which may be payable; and
(c) that simple interest at an annual rate of 5.08% shall be payable on the above sums awarded in Bulgarian levs, and of 7.5% in respect of the above sums awarded in pounds sterling from the expiry of the above-mentioned three months until settlement;

13. *Dismisses* unanimously 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 28 October 1998.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 53 § 2 of Rules of Court A, the partly dissenting opinion of Mr Mifsud Bonnici is annexed to this judgment.

Initialled: R. B.
Initialled: H. P.

PARTLY DISSENTING OPINION OF JUDGE MIFSUD BONNICI

1. I am in agreement with my brother judges on all counts except two which refer to Article 3 of the Convention.

2. Anton Assenov was 14 years old when, in September 1992, during an incident with the police, he suffered various bruises which the Court considered to be "sufficiently serious to amount to ill-treatment within the scope of Article 3" (paragraph 95 of the judgment). However, the Court found it impossible to establish on the basis of the evidence whether or not the applicant's injuries were caused by the police, as he asserted (paragraph 100).

For my part, I am of the opinion that once the allegation was made that these injuries were caused by the police with their truncheons in connection with Mr Assenov's arrest, it was up to the Government "to provide a complete and sufficient explanation as to how the injuries were caused" as firmly established by the Court's jurisprudence, noted and quoted in paragraph 92 of the judgment.

The Bulgarian authorities did not provide a *complete* and *sufficient* explanation of how a boy of 14 years came to sustain those severe injuries. Of course, his father did admit that he "took a piece of plywood and hit his son" (paragraph 9) to show his disapproval of his son's behaviour, but plywood does not cause the serious injuries discovered by the doctor two days after the incident in question. Police truncheons, however, can easily inflict such injuries.

3. Similarly, I consider that the way the applicant (now approximately 17 years old) was treated in prison between July 1995 and March 1996, as described in paragraph 35 of the judgment, constitutes in itself inhuman treatment, keeping in mind, especially, that we are dealing with a minor who, in effect, was treated as a full-grown, mature criminal and lodged in a restricted cell for all those months with another, or other, full-blown criminal or criminals.

4. These facts compel me to reach the conclusion that in respect of a young person of between 14 and 17 years of age, the Bulgarian authorities have violated the terms of Article 3 of the Convention.