CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF PETROV v. BULGARIA

(Application no. 15197/02)

JUDGMENT

STRASBOURG

22 May 2008

FINAL

22/08/2008

This judgment may be subject to editorial revision.

In the case of Petrov v. Bulgaria,

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

Peer Lorenzen, *President,*
Snejana Botoucharova,
Karel Jungwiert,
Volodymyr Butkevych,
Rait Maruste,
Mark Villiger,
Mirjana Lazarova Trajkovska, *judges,*
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 29 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 15197/02) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Ivan Iovchev Petrov, born in 1969 and living in Gabrovo ("the applicant"), on 29 March 2002.

2. The applicant was initially represented by Ms Z. Kalaydzhieva, a lawyer practicing in Sofia. On 31 March 2008 she withdrew from the proceedings and the applicant appointed Ms S. Razboynikova, also a lawyer practicing in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Kotseva, of the Ministry of Justice.

3. The applicant alleged, in particular, that the criminal proceedings against him had lasted unreasonably long, that his correspondence in prison had been monitored and that, while in prison, he had been prevented from talking on the telephone with his unmarried partner. He also alleged that he had not had effective remedies in respect of the first and the second of these matters.

4. On 2 October 2006 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of the proceedings against the applicant, the monitoring of his correspondence, the limitation on his telephone conversations, and the alleged lack of remedies in respect of these matters to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The criminal proceedings against the applicant

5. On 12 November 1990 the applicant and a Mr S.V. were arrested in Sofia on suspicion of having stolen a car. They were charged by a military investigator, who was competent because at the time Mr S.V. was an army private, and placed in pre-trial detention.

6. In the beginning of 1991 Mr S.V. managed to escape during a transfer from one detention facility to another. In May 1991 the applicant was released on bail.

7. On 24 July 1991 the applicant was arrested in Gabrovo on charges of theft. The case was assigned to the Pleven Regional Military Prosecutor's Office on account of Mr S.V.'s being in the army. There it was joined to other cases pending against Mr S.V., some of which also concerned the applicant.

8. On 5 February 1993 the proceedings were stayed as Mr S.V.'s whereabouts were unknown. According to the applicant, Mr S.V. had settled in Greece, but during the following years had come back to Bulgaria every summer without ever having been stopped or bothered by the authorities, and had even renewed his identity documents.

9. In 2001 the applicant enquired about the state of the proceedings against him. He was informed that Mr S.V. had not been found yet and that the proceedings were still stayed.

10. On 27 July 2001 the investigation was taken up by the Pleven Regional Military Prosecutor's Office. On 10 August 2001 this Office disjoined the cases against the applicant and assigned them to the Sofia, Varna, Plovdiv and Gabrovo District Prosecutor's Offices, in accordance with their territorial competence, and to the Sofia Regional Military Prosecutor's Office.

11. On 28 June 2002 the Plovdiv District Prosecutor's Office discontinued the investigation against the applicant because the relevant limitation period has expired. On 28 August 2002 the Sofia District Prosecutor's Office discontinued its investigation for the same reason.

12. On 5 March 2002 the Gabrovo District Prosecutor's Office dropped certain charges against the applicant and indicted him for a number of others. The case was heard by the Gabrovo District Court, which convicted the applicant in a judgment of 4 November 2002. It seems that applicant did not appeal. Certain other charges against the applicant were dropped by the Gabrovo District Prosecutor's Office on 28 October 2003.

13. It is unclear whether the cases against the applicant handled by the Varna District Prosecutor's Office and the Sofia Regional Military Prosecutor's Office have been discontinued or are still pending.

B. The monitoring of the applicant's correspondence and the restrictions on his telephone conversations in prison

14. On 4 April 2001 the applicant was taken to the Lovech Prison to serve a sentence of three and a half years' imprisonment imposed in 2000. Later this sentence was aggregated with several other punishments meted out in separate proceedings. He was released on 29 January 2003.

15. During his stay in prison, the applicant was not allowed to write to his lawyer representing him in various criminal proceedings and in the proceedings before the Court in sealed envelopes, or to talk to her on the telephone. His mail, including the letters to and from his lawyer, was systematically opened and checked. This was confirmed by a letter written on 15 November 2006 by the head of the "Execution of Punishments" directorate of the Ministry of Justice and produced by the Government before the Court. The letter said that pursuant to section 33(1)(c) of the 1969 Execution of Punishments Act (see paragraph 18 below) prisoners' correspondence was subject to monitoring by the prison administration. It further said that as the applicant had been an inmate, his correspondence had been monitored to ensure the proper implementation of section 37(2) of the Regulations for the application of the Act (see paragraph 19 below).

16. In the summer of 2001 a telephone booth was installed in the prison and the inmates were allowed to use it to call their relatives twice a month. They were told that this facility concerned parents, brothers and sisters, children and spouses. At the request of several inmates the warden apparently informally accepted to extend it to unmarried partners. At first the applicant, who before his incarceration had lived for about four years with Ms S.P. and had had a child with her just forty days before going to prison, was also able to benefit from the opportunity to call his partner on the telephone. However, in August 2001 the warden refused to allow him to avail himself of this facility. The applicant objected, but the warden replied that the law provided for a right to call spouses only and that if the applicant was so attached to his partner and their child, he could always marry her. In the beginning of 2002, following an intervention by the Child Protection Agency, which the applicant's lawyer had contacted about the matter, he was once again allowed to have telephone conversations with his partner.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The 1991 Constitution

17. Articles 30 and 34 of the 1991 Constitution read, as relevant:

Article 30 § 5

"Everyone has the right to meet in confidence with the person who defends him. The confidentiality of their communication shall be inviolable."

Article 34

"1. The freedom and secret of correspondence and other communications shall be inviolable.

2. This rule may be subject to exceptions only with the permission of the judicial authorities when necessary for uncovering or preventing serious offences."

B. The 1969 Execution of Punishments Act and the regulations for its application

1. Concerning prisoners' mail

18. Section 33 of the 1969 Execution of Punishments Act (*Закон за изпълнение на наказанията*), as in force at the relevant time, read, in so far as relevant:

"1. Prisoners are entitled ... to:

...

(c) correspondence and food parcels, which are subject to inspection by the [prison] administration."

19. Section 37(2) of the regulations for the application of the Act, as in force at the relevant time and until present, provides that if the contents of a letter are such that for security, prison regime or disciplinary reasons it cannot be delivered to the prisoner or dispatched by mail, the inmate must be informed of this and the letter must be put in his file.

20. In June 2002 new provisions regarding persons detained on remand were added to the Act. Subsection 3 of the newly enacted section 132d read as follows:

"The correspondence of the accused and the indicted is subject to inspection by the [prison] administration."

21. In a decision of 18 April 2006 (реш. № 4 от 18 април 2006 г. по конституционно дело № 11 от 2005 г., обн., ДВ, бр. 36 от 2 май 2006 г.) the Constitutional Court, acting pursuant to a request by Chief Prosecutor, declared this provision unconstitutional. After analysing in detail the relevant constitutional and Convention provisions and making, *inter alia*, reference to the cases of *Campbell v. the United Kingdom* (judgment of 25 March 1992, Series A no. 233), *Calogero Diana v. Italy* (judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V) and *Petra v. Romania* (judgment of 23 September 1998, *Reports* 1998-VII), the court held that a blanket authorisation to inspect the correspondence of all inmates without regard to their particular circumstances and the threat which they allegedly posed to society through such correspondence was contrary to Articles 30 § 5 and 34 of the 1991 Constitution.

22. The subject-matter of the case was limited to reviewing the constitutionality of section 132d(3) of the 1969 Execution of Punishments Act. For this reason section 33(1)(c) of the Act, despite having almost identical wording, was not reviewed for constitutionality.

23. Under Bulgarian law, the decisions of the Constitutional Court declaring a statutory provision contrary to the Constitution have effect only for the future (*ex nunc*).

2. Concerning prisoners' telephone conversations

24. Section 37a(1) of the Regulations for the application of the 1969 Execution of Punishments Act, added in June 2001, provides that inmates may use a payphone installed in the prison in accordance with regulations issued by the head of the "Execution of Punishments" directorate of the Ministry of Justice. Subsection 2 provides that inmates may use the telephone to call only their relatives by direct ascending or descending line, their brothers, sisters and spouses. The telephone conversations are carried out under the supervision of a prison staff member, who makes sure in advance that the conversation is indeed with its purported addressee (subsection 3).

C. The 1991 and 2004 Bar Acts

25. Section 18(2) of the 1991 Bar Act (*Закон за адвокатурата*), presently superseded by section 33(2) of the 2004 Bar Act, provided that the correspondence between lawyers and their clients was inviolable, could not be subject to interception and could not be used as evidence in court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

26. The applicant alleged that the criminal proceedings against him had lasted unreasonably long, contrary to Article 6 § 1 of the Convention, which provides, as relevant:

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

A. The parties' submissions

27. The Government did not make any observations.

28. The applicant submitted that between 1990 and 2002 the authorities had made no effort to advance the criminal cases against him. A period of twelve years to conclude a preliminary investigation was clearly excessive, especially in view of the simple nature of the charges. This length could not be explained by the absence of his co-accused, as the proceedings against the two could be disjoined.

B. The Court's assessment

1. Admissibility

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

2. Merits

30. The period to be taken into consideration did not begin to run in November 1990 or July 1991, when the applicant was arrested and charged, but only on 7 September 1992, when the Convention entered into force in respect of Bulgaria. However, in order to determine whether the time which has elapsed following this date is reasonable, it is necessary to take account of the stage which the proceedings had reached at that point (see, among other authorities, *Rachevi v. Bulgaria*, no. 47877/99, § 70, 23 September 2004).

31. After the cases against the applicant were disjoined in August 2001 (see paragraph 10 above), the proceedings in two of them ended in June and August 2002 (see paragraph 11 above). One case apparently partly ended in

November 2002 and partly – in October 2003 (see paragraph 12 above). It is unclear whether the remaining two cases against the applicant have been disposed of or are still pending (see paragraph 13 above). The Court thus finds that the period under consideration lasted at least nine and half years in respect of all charges against the applicant, and in some cases even longer.

32. The reasonableness of the length of the proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicants and of the relevant authorities (see, among many other authorities, *Iovchev v. Bulgaria*, no. 41211/98, § 118, 2 February 2006).

33. The Court finds that the case was factually complex, as it concerned numerous offences committed in different places. However, it does not appear that this was the principal reason for the delays in the investigation. Nor does it seem that the applicant contributed in any way to the protraction of the proceedings, which was apparently mainly the result of the authorities' inability to track down and summon his co-accused, Mr S.V. (see paragraphs 8 and 9 above). The Court has certain doubts as to whether the authorities were making a serious effort in that direction. However, even assuming that they were, the absence of a co-accused cannot justify a period of inactivity as long as the one obtaining in the present case, where almost no investigative actions were carried out for a period of about nine years (ibid., § 119), especially since, in view of the delay, the authorities could have envisaged separating the cases against the applicant and Mr S.V. (see *Kemmache v. France (no. 1 and no. 2)*, judgment of 27 November 1991, Series A no. 218, p. 30, § 70).

34. There has therefore been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

35. The applicant alleged that the authorities had systematically opened and checked all his correspondence in prison, and had failed to deliver some of his letters. He relied on Articles 8 and 10 of the Convention. The Court considers that this complaint falls to be examined under Article 8 of the Convention, which provides, in so far as relevant:

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

A. The parties' submissions

36. The Government did not make any observations.

37. The applicant submitted that the interception of his mail in prison, although formally based on the relevant provisions of the 1969 Execution of Punishments Act, had been unlawful, because it had been contrary to the provisions of Articles 34 and 35 § 5 of 1991 Constitution and of section 18(2) of the 1991 Bar Act. A provision similar to the one in the applicant's case, but applicable only to remand prisoners, had been declared invalid by the Supreme Administrative Court in 2000. Moreover, section 132g of the 1969 Execution of Punishments Act had been declared unconstitutional and contrary to Article 8 of the Convention in 2006. However, as this declaration had had only prospective effect, it had not impacted on the applicant's situation. His mail with his lawyer had been opened and read by the prison authorities, which had caused him to feel vulnerable and had obliged the lawyer to visit him in prison. That measure had not been authorised by a judicial authority and had not been intended to uncover or prevent offences.

B. The Court's assessment

1. Admissibility

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

2. Merits

39. The Court observes that the entirety of the applicant's incoming and outgoing correspondence, including with his lawyer, was subject to inspection under section 33(1)(c) of the 1969 Execution of Punishments Act (see paragraph 18 above). Indeed, the prison authorities confirmed that the applicant's correspondence had been monitored (see paragraph 15 above). In these circumstances, he can claim to be a victim of an interference with his right to respect for correspondence under Article 8 of the Convention (see *Campbell*, cited above, p. 16, § 33).

40. Such interference gives rise to a breach of Article 8 unless it can be shown that it was "in accordance with the law", pursued one or more legitimate aim or aims as defined in paragraph 2 and was "necessary in a democratic society" to achieve those aims.

41. Concerning the first of these requirements, the Court observes that section 18(2) of the 1991 Bar Act, as in force at the relevant time, provided

that the correspondence between lawyers and their clients was inviolable and could not be subject to interception (see paragraph 25 above). It does not seem that there exists any reported case-law clarifying the exact purport of this provision and, in particular, how it interplayed with section 33(1)(c) of the 1969 Execution of Punishments Act (see, *mutatis mutandis*, *Soini and Others v. Finland*, no. 36404/97, §§ 55 *in fine* and 56, 17 January 2006). The Court further notes that in 2006 the Bulgarian Constitutional Court found that a provision whose wording was almost identical with that of section 33(1)(c) – the newly added section 132d(3) of the 1969 Execution of Punishments Act – was contrary to Articles 30 § 5 and 34 of the 1991 Constitution (see paragraphs 17 and 21 above). It is therefore open to doubt whether the monitoring of the applicant's correspondence, including that with his lawyer, was "in accordance with the law". However, the Court does not find it necessary to determine this point, as, for the reasons which follow, it considers that this measure was incompatible with Article 8 of the Convention in other respects (see, *mutatis mutandis*, *Funke v. France*, judgment of 25 February 1993, Series A no. 256-A, p. 23, § 51; *Crémieux v. France*, judgment of 25 February 1993, Series A no. 256-B, p. 61, § 34; and *Miailhe v. France (no. 1)*, judgment of 25 February 1993, Series A no. 256-C, p. 88, § 32).

42. Despite the applicant's allegations to the contrary, the Court is satisfied that the monitoring of his correspondence was carried out to ensure, *inter alia*, that it did not contain material which was harmful to prison security or the safety of others or was otherwise of a criminal nature (see *Campbell*, cited above, p. 17, § 41). This is borne out by the wording of section 37(2) of the Regulations for the application of the 1969 Execution of Punishments Act (see paragraph 19 above). It can thus be said that the interference pursued the legitimate aim of "the prevention of disorder or crime" within the meaning of Article 8 § 2.

43. It remains to be established whether the systematic interception of prisoners' correspondence envisaged by section 33(1)(c) of the 1969 Execution of Punishments Act was "necessary in a democratic society". On this point, the Court observes that some measure of control over this correspondence is called for and is not of itself incompatible with the Convention, regard being had to the ordinary and reasonable requirements of imprisonment (see *Silver and Others v. the United Kingdom*, judgment of 25 March 1983, Series A no. 61, p. 38, § 98; and *Campbell*, cited above, p. 18, § 45). However, correspondence with lawyers, whether it concerns contemplated or pending proceedings or is of a general nature, is in principle privileged under Article 8 of the Convention and its routine scrutiny is not in keeping with the principles of confidentiality and professional privilege attaching to relations between a lawyer and his client (see *Campbell*, cited above, p. 19, §§ 47 and 48). The prison authorities may open a letter from a lawyer to a prisoner solely when they have reasonable

cause to believe that it contains an illicit enclosure which the normal means of detection have failed to disclose. The letter should, however, only be opened and should not be read. Suitable guarantees preventing the reading of the letter should be provided, such as opening the letter in the presence of the prisoner. The reading of a prisoner's mail to and from a lawyer, on the other hand, should only be permitted in exceptional circumstances when the authorities have reasonable cause to believe that the privilege is being abused in that the contents of the letter endanger prison security or the safety of others or are otherwise of a criminal nature. What may be regarded as "reasonable cause" will depend on all the circumstances but it presupposes the existence of facts or information which would satisfy an objective observer that the privileged channel of communication is being abused (see *Campbell*, cited above, p. 19, § 48).

44. By contrast, section 33(1)(c) of the 1969 Execution of Punishments Act, as construed by the competent domestic authorities, calls for indiscriminate monitoring of the entirety of the prisoners' correspondence (see paragraphs 15 and 18 above). It does not draw any distinction between the different categories of persons with whom the prisoners correspond. Nor does it, or the regulations for its application, lay down any rules – for instance, concerning time-limits – governing the implementation of this monitoring. Moreover, the authorities are not bound to give any reasons in a particular case (see, *mutatis mutandis*, *Calogero Diana*, cited above, p. 1775, § 32; *Domenichini v. Italy*, judgment of 15 November 1996, *Reports* 1996-V, p. 1799, § 32; *Petra*, cited above, p. 2854, § 37; and *Niedbała v. Poland*, no. 27915/95, § 81, 4 July 2000). Even allowing for a certain margin of appreciation in this domain, the Court finds that the monitoring of the entirety of the applicant's correspondence addressed to and coming from the outside world – including the letters to and from his lawyer – cannot be considered as corresponding to a pressing social need or proportionate to the legitimate aim pursued. Neither the competent domestic authorities, nor the Government have sought to explain why such all-embracing monitoring was indispensable (see *Jankauskas v. Lithuania*, no. 59304/00, § 21, 24 February 2005). On the contrary, the Bulgarian Constitutional Court voiced serious concerns in this regard (see paragraph 21 above).

45. There has therefore been a violation Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 8

46. The applicant alleged that unlike married prisoners, he had not been allowed to use the telephone installed in the Lovech Prison to call his long-term partner with whom he had had a child. He relied on Article 14 of

the Convention taken in conjunction with Article 8. These provisions read, as relevant:

Article 8

"1. Everyone has the right to respect for his private and family life, ... and his correspondence.

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

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. The parties' submissions

47. The Government did not make any observations.

48. The applicant submitted that the prohibition to contact by telephone his partner had also affected his relations with his baby son. No legitimate aim had been put forward for this restriction, which had placed him at a net disadvantage vis-à-vis inmates wishing to converse by telephone with their wives.

B. The Court's assessment

1. Admissibility

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

2. Merits

50. Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence, since it has effect solely in relation to the "rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of one or more of such provisions, and to this extent it is

autonomous, there can be no room for its application unless the facts of the case fall within the ambit of one or more of the latter (see, among many other authorities, *Sahin v. Germany* [GC], no. 30943/96, § 85, ECHR 2003-VIII).

51. The Court must thus establish whether the matter of which the applicant complains falls within the purview of Article 8. On this point, it first observes that while any detention which is lawful under Article 5 of the Convention entails by its nature a limitation on private and family life, it is an essential part of an inmate's right to respect for family life that the prison authorities assist him in maintaining contact with his close family (see *Messina v. Italy (no. 2)*, no. 25498/94, § 61, ECHR 2000-X; *Kalashnikov v. Russia* (dec.), no. 47095/99, ECHR 2001-XI (extracts); and *Aliev v. Ukraine*, no. 41220/98, § 187, 29 April 2003). The Court further notes that a couple who have lived together for many years constitute a "family" for the purposes of Article 8 § 1 of the Convention and are entitled to its protection notwithstanding the fact that their relationship exists outside marriage (see *Velikova v. Bulgaria* (dec.), no. 41488/98, ECHR 1999-V (extracts)). Finally, the Court observes that telephone conversations, whether they be made from a person's home or from other premises, are covered by the notions of "private life" and "correspondence" within the meaning of Article 8 § 1 (see, *mutatis mutandis*, *Halford v. the United Kingdom*, judgment of 25 June 1997, *Reports* 1997-III, p. 1016, § 44). Seeing that the person with whom the applicant wished to converse by telephone, Ms S.P., had been his unmarried partner for a number of years and had had a child with him, the prohibition to contact her by telephone undoubtedly affected the enjoyment of his right to respect for his private and family life, and as such fell within the ambit of Article 8. It is also clear that this prohibition concerned the applicant's right to respect for his "correspondence" within the meaning of paragraph 1 of that Article. Article 14 is therefore applicable.

52. Article 14 does not forbid every difference in treatment in the exercise of the rights and freedoms recognised by the Convention. It safeguards persons who are in analogous or relevantly similar positions against discriminatory differences in treatment that have as their basis or reason a personal characteristic ("status") by which persons or a group of persons are distinguishable from each other (see, as a recent authority, *Kafkaris v. Cyprus* [GC], no. 21906/04, § 160, ECHR 2008-...). The Court must therefore determine whether the applicant – who had an established long-term *de facto* relationship with Ms S.P. (see paragraph 16 above) – was in an analogous situation with married prisoners as regards the possibility to contact their partners by telephone.

53. It is true that the situations of unmarried and married couples are not fully analogous and that there still exist differences between them, in particular, differences in legal status and legal effects (see *Shackell v. the*

United Kingdom (dec.), no. 45851/99, 27 April 2000, citing *Lindsay v. the United Kingdom*, no. 11089/84, Commission decision of 1 November 1986, Decisions and Reports 49, p. 181). The Court is also mindful that marriage remains an institution which is widely accepted as conferring a particular status on those who enter it and, indeed, is singled out for special treatment under Article 12 of the Convention (ibid.). However, it fails to see any difference between the situations of inmates who wish to have telephone conversations with their spouses and inmates who wish to have such conversations with their unmarried partners with whom – like the applicant – they have an established family life. It therefore concludes that their situations are substantially similar in this regard.

54. For the purposes of Article 14, a difference in treatment between persons in relevantly similar situations is discriminatory if it has no objective and reasonable justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *Sahin*, cited above, § 93). No such justification has been advanced in the instant case, either by the competent domestic authorities or by the Government in the proceedings before the Court. The obtaining situation was the result of the wording of section 37a(2) of the Regulations for the application of the 1969 Execution of Punishments Act and its particularly strict application by the prison authorities vis-à-vis the applicant in late 2001 and early 2002 (see paragraphs 16 and 24 above).

55. While the Contracting States may be allowed a certain margin of appreciation to treat differently married and unmarried couples in the fields of, for instance, taxation, social security or social policy (see, for example, *Shackell* and *Lindsay*, both cited above; *McMichael v. the United Kingdom*, judgment of 24 February 1995, Series A no. 307-B, pp. 58-59, § 98; and *Sahin*, cited above, § 94), it is not readily apparent why married and unmarried partners who have an established family life are to be given disparate treatment as regards the possibility to maintain contact by telephone while one of them is in custody.

56. There has therefore been a violation of Article 14 of the Convention taken in conjunction with Article 8.

IV. ALLEGED VIOLATIONS OF ARTICLE 13 OF THE CONVENTION

57. The applicant alleged that he had not had effective remedies in respect of the excessive length of the criminal proceedings against him. He further alleged that he had not had such remedies in respect of the monitoring of his correspondence. He relied on Article 13 of the Convention, which provides:

"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."

A. The parties' submissions

58. The Government did not make any observations.

59. The applicant submitted that, despite his numerous efforts, he had been unable to obtain the speeding up of the criminal proceedings against him; no remedy existed in this respect under Bulgarian law. Nor was there a possibility of obtaining compensation for their length, in view of the grounds on which they had been discontinued. This situation had been already noted by the Court in previous judgments against Bulgaria, but no efforts had been made by the State to rectify it.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) The length of the criminal proceedings against the applicant

61. Article 13 of the Convention guarantees an effective remedy before a national authority in respect of an arguable complaint of a breach of the requirement of Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, §§ 146-57, ECHR 2000-XI).

62. In several cases against Bulgaria the Court found that at the relevant time no formal remedy existed under Bulgarian law whereby an accused could have expedited the determination of the criminal charges against him (see *Osmanov and Yuseinov v. Bulgaria*, nos. 54178/00 and 59901/00, §§ 38-40, 23 September 2004; *Sidjimov v. Bulgaria*, no. 55057/00, § 41, 27 January 2005; and *Nalbantova v. Bulgaria*, no. 38106/02, § 34, 27 September 2007). It sees no reason to reach a different conclusion in the present case.

63. As regards compensatory remedies, the Court has not found it established that under Bulgarian law there exists an avenue whereby an applicant could obtain damages or other redress for excessively lengthy criminal proceedings (see *Osmanov and Yuseinov*, § 41; *Sidjimov*, § 42; and

Nalbantova, § 35, all cited above; see also *Staykov v. Bulgaria*, no. 49438/99, § 89 *in fine*, 12 October 2006).

64. There has therefore been a violation of Article 13 of the Convention in this respect.

(b) The monitoring of the applicant's correspondence

65. The Court observes that the monitoring of the applicant's correspondence in prison did not result from an individual decision of the prison administration or another authority (as, for instance, in *Calogero Diana*, p. 1770, §§ 8 and 10, pp. 1771-72, §§ 12-14 and 16, pp. 1772-73, § 18, and pp. 1776-78, §§ 39-41; and *Domenichini*, pp. 1794-95, §§ 9 and 10, p. 1796, §§ 14 and 18, and pp. 1801-02, §§ 40-42, both cited above), but was systematic and directly resulting from the application of the express wording of section 33(1)(c) of the 1969 Execution of Punishments Act (see paragraph 15 above). Article 13 of the Convention does not go so far as to guarantee a remedy allowing a Contracting State's primary legislation to be challenged before a national authority on grounds that it is contrary to the Convention (see, as a recent authority, *Klyakhin v. Russia*, no. 46082/99, § 114, 30 November 2004).

66. There has therefore been no violation of Article 13 of the Convention in this respect.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. Article 41 of the Convention provides:

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

A. Damage

68. The applicant claimed 4,000 euros (EUR) in respect of non-pecuniary damage. He submitted that the monitoring of his correspondence and the ban on using the telephone to call his partner had made him feel isolated, unable to confer freely with his lawyer, and at the mercy of the prison authorities. He also said that the excessive length of the criminal proceedings against him had caused him distress.

69. The Government did not comment on the applicant's claim.

70. The Court considers that the applicant must have suffered anguish and frustration on account of the breaches of Articles 6 § 1, 8, 13 and 14 of the Convention found in the present case, and that an award of compensation is therefore called for. Ruling in equity, as required under

Article 41 of the Convention, it awards the applicant the full amount claimed by him, plus any tax that may be chargeable.

B. Costs and expenses

71. The applicant sought the reimbursement of EUR 2,450 incurred in legal fees before various domestic authorities and in the proceedings before the Court. He also claimed EUR 210 in travel expenses for his lawyer, translation and office expenses, and postage. In support of his claim he submitted a fees' agreement with his lawyer and a number of invoices and payment documents. He requested that any amount awarded under this head be paid into the bank account of his legal representative.

72. The Government did not comment on the applicant's claim.

73. According to the Court's case-law, applicants are entitled to the reimbursement of their costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, having regard to the information in its possession and the above criteria, and noting that part of the application was declared inadmissible (see paragraph 4 above), the Court considers it reasonable to award the sum of EUR 2,000, plus any tax that may be chargeable to the applicant, covering costs under all heads. This amount is to be paid into the bank account of the applicant's representative.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Article 8;

5. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of remedies in respect of the excessive length of the criminal proceedings against the applicant;

6. *Holds* that there has been no violation of Article 13 of the Convention in respect of the monitoring of the applicant's correspondence;

7. *Holds*

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

(i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the bank account of the applicant's representative;

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

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

Done in English, and notified in writing on 22 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President