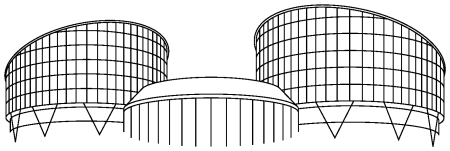

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF HARAKCHIEV AND TOLUMOV v. BULGARIA

(Applications nos. 15018/11 and 61199/12)

JUDGMENT

STRASBOURG

8 July 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Harakchiev and Tolumov v. Bulgaria,

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

Ineta Ziemele, *President*,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Paul Mahoney,
Krzysztof Wojtyczek, *judges*,
and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 24 June 2014,

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

PROCEDURE

1. The case originated in two applications (nos. 15018/11 and 61199/12) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Bulgarian nationals, Mr Mitko Georgiev Harakchiev and Mr Liudvik Slavov Tolumov ("the applicants"), on 22 February 2011 and 11 September 2012 respectively.

2. The applicants were represented by Mr M. Ekimdzhiev and Ms S. Stefanova, lawyers practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agents, Ms I. Stancheva-Chinova and Ms K. Radkova, of the Ministry of Justice.

3. The applicants alleged, in particular, that Mr Harakchiev's whole life sentence (*доживотен затвор без замяна*) amounted to inhuman and degrading punishment, that the regime and material conditions of their detention amounted to torture or inhuman and degrading treatment, and that they did not have an effective domestic remedy in respect of the material conditions of their detention.

4. On 19 February 2013 the Court decided to join the applications, declare them partly inadmissible, and give the Government notice of the complaints concerning (a) Mr Harakchiev's sentence to whole life imprisonment; (b) the regime and conditions of the applicants' detention; (c) the alleged monitoring of Mr Tolumov's correspondence in prison; and (d) the alleged lack of an effective domestic remedy in respect of the material conditions of the applicants' detention.

5. On 17 July 2013 the Court invited the parties to deal with an additional point in their respective observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant in the first application (no. 15018/11), Mr Harakchiev, was born in 1968. He is currently serving a whole life sentence (see paragraphs 58-60 and 65 below) in Stara Zagora Prison.

7. The applicant in the second application (no. 61199/12), Mr Tolumov, was born in 1954. He is currently serving a life sentence (see paragraphs 56 and 65 below) in Plovdiv Prison.

A. Mr Harakchiev

1. Mr Harakchiev's criminal background and his whole life sentence

8. Between 1992 and 2005 Mr Harakchiev, a driver and car mechanic by profession, was convicted eight times of non-violent offences: theft and aggravated theft (four convictions), and fraud and aggravated fraud (three convictions). He was given sentences ranging from two to five years' imprisonment.

9. On 21 January 2003 the Haskovo Regional Court convicted Mr Harakchiev of illegal possession of a firearm and four armed robberies of motor vehicles carried out between 14 October and 6 November 2001, two of which had been accompanied by attempted murder and two by murder. It sentenced him to whole life imprisonment.

10. On 26 June 2003 the Plovdiv Court of Appeal upheld Mr Harakchiev's conviction and sentence.

11. In a final judgment of 23 November 2004 (реш. № 476 от 23 ноември 2004 г. по н. д. № 901/2003 г., ВКС, III н. о.) the Supreme Court of Cassation likewise upheld Mr Harakchiev's conviction and sentence. It held, *inter alia*, that in view of the gravity of his offences – in particular, the determination and cruelty with which they had been carried out – a more lenient sentence, such as life imprisonment (*доживотен затвор със замяна*), would not be adequate. That conclusion could not be altered by the fact that Mr Harakchiev had confessed and had helped the investigating authorities to uncover his criminal activities.

2. Conditions of detention in Stara Zagora Prison and prison regimes applied to Mr Harakchiev

12. Mr Harakchiev has been detained in Stara Zagora Prison since 18 January 2002. He was initially placed under the "enhanced regime" (see paragraph 115 below). With the entry into force of the Execution of Punishments and Pre-Trial Detention Act on 1 June 2009, that regime was replaced by the "severe regime" (see paragraph 118 below) by operation of

law. On 17 June 2009 the Execution of Punishments Commission (see paragraph 121 below) proposed to the Stara Zagora Regional Court to place Mr Harakchiev under the "special regime" normally applicable to life prisoners, citing his "negative attitude" and lack of respect for internal order, as well as the fact that he should in any case have been placed under that regime from the outset. On 21 July 2009 the Stara Zagora Regional Court accepted the proposal. Mr Harakchiev's legal challenge against that decision, filed on 12 July 2010, was rejected by the Stara Zagora Regional Court and the Plovdiv Court of Appeal as being out of time. The Government submitted that there was at present no intention on the part of the prison authorities to make further changes to Mr Harakchiev's prison regime.

13. Between December 2005 and March 2013 Mr Harakchiev was given nine disciplinary punishments. The latest such punishments, in August 2012 and March 2013, were imposed in relation to (a) a scuffle between himself and another inmate during the daily walk in the morning of 4 August 2012, and (b) the theft on 18 February 2013 of food that another inmate had left in the communal toilet. In relation to the former, Mr Harakchiev was given a reprimand, and in relation to the latter isolation in a disciplinary cell for three days.

14. Mr Harakchiev's cell – in which he is currently alone but which he apparently shared with another inmate between 2002 and 2007 – is in the prison's high-security wing, reserved for life prisoners. According to Mr Harakchiev, the cell was quite small, especially bearing in mind that the furniture alone occupied 4.50 square metres, and was lit at night by a 60-watt incandescent light bulb that was constantly on. According to the Government, the cell was not undersized. It measured 4.30 x 1.81 square metres and was 3.95 metres high, with a total floor space of 7.78 square metres. It was furnished with a metal locker, a double metal bunk bed, two stools and a small table, all of which were attached to the floor for security reasons. It had a window, facing south, that measured 1.76 x 1.25 metres. Artificial lighting in the cell consisted of two 36-watt luminescent light bulbs. According to Mr Harakchiev, the incandescent bulbs had been replaced with luminescent bulbs only in 2012. He also pointed out that the cell did not have any low-intensity night lighting.

15. Stara Zagora Prison does not have a ventilation or air-conditioning system. Mr Harakchiev claimed that as a result temperatures in his cell were very high in summer and there was no fresh air. In winter, heating was only turned on for periods of one hour in the morning, at noon and in the evening. According to the Government, the cell window could be opened, which allowed the cell to be aired at any time. The prison had its own heating installation with two boilers and a heat exchanger. The boilers were fired for nine hours a day, but the water that they heated circulated in the heating installation permanently. According to Mr Harakchiev, the radiator

in his cell was hot for only thirty minutes each day and the poor state of repair of the cell window and the metal door were factors contributing to the low temperature in the cell in winter. Mr Harakchiev also submitted that as he had to dry his clothes in the cell, it was very damp. As a result, the paint and rendering were peeling off the walls.

16. According to Mr Harakchiev, the common areas of the prison could only be kept clean by bleaching with calcium hypochlorite, and the cells were only cleaned with water. In support of that assertion, Mr Harakchiev relied on the witness statement of one of his co-inmates made in the course of proceedings brought by him. According to the Government, the common areas of the prison were not merely cleaned with bleach. They were cleaned daily with detergents, and at least twice a year subjected to pest and rat control, as evident from fourteen invoices for such services carried out during the last four years. Mr Harakchiev replied that those invoices did not prove that the detergents had indeed been used as alleged by the Government. He also submitted that his cell was constantly infested by cockroaches and mice, and that all his complaints to the prison administration in that respect had remained unheeded. He submitted further that since the window of his cell was not covered with a net, insects came into the cell all the time, drawn by the smell of excrement and the constant lighting at night, and bit him.

17. There is no toilet or running water in the cell. Mr Harakchiev submitted that as a result, apart from the three daily visits to the communal toilets, he had to use a plastic bucket to relieve himself. During the period he had had to share his cell with another inmate, he had had to do so in his presence. The lack of running water prevented him from washing his hands or the bucket after relieving himself. The Government pointed out that the toilet and bathroom in the high-security unit were accessible to inmates three times a day, and also whenever they asked the guards. It could not therefore be said that Mr Harakchiev was forced to use the bucket to relieve himself; that was his own choice. In fact he had more than ten buckets in his cell, in which he stored clothes, laundry and other items. Mr Harakchiev replied that, apart from the three daily visits to the toilet, between 5.30 a.m. and 8 p.m. the guards never opened his cell to let him visit the toilet. It was therefore not his choice to resort to the bucket for his sanitary needs.

18. Apart from his one-hour daily walk, Mr Harakchiev can go out of his cell to visit the toilet three times a day. During each of those visits, he can also empty the bucket, wash his hands, and fill plastic bottles with water for drinking and sanitary needs. According to him, the visits to the toilet lasted no more than three minutes in the morning and no more than ten minutes at lunch and in the evening, and did not coincide with the visits of the other inmates in the unit.

19. According to Mr Harakchiev, inmates in Stara Zagora Prison could only take a shower once every fourteen or fifteen days. According to the

Government, all inmates in the prison's high-security unit could take a shower twice a week.

20. According to Mr Harakchiev, visits by relatives or lawyers took place in a special room. Prisoners and visitors were separated by a wire net, and prisoners had to remain seated. A prison officer was always present. According to the Government, the prison officer present during visits was only there to ensure good order and could not overhear conversations. Visits by lawyers took place in a separate room, in which no other person was present. The only form of control there was visual monitoring. In that context, the Government drew attention to the fact that as a result of the many claims that he had brought against the prison authorities, until mid-2009 Mr Harakchiev had spent 97 days outside Stara Zagora Prison, and between 1 January 2010 and 18 May 2012 had spent 255 days, or 54 per cent of the time, outside the prison.

21. According to Mr Harakchiev, food in the prison was poorly prepared, of low quality, tasteless, served cold and in bad hygienic conditions, and insufficient in quantity. Meat was served once a week. The rest of the time food consisted of beans, lentils, cabbage and potatoes, served as soups or stews. According to the Government, the quantity and the chemical and calorie content of the food were fully adequate. The daily portion had 2,662 calories, and meat was present in the meals at least once a day. Mr Harakchiev replied that "meat" in effect meant boiled bones or canned meat. Both parties submitted menus and tables in support of their respective assertions.

22. According to Mr Harakchiev, medical care in Stara Zagora Prison consisted of routinely giving all inmates aspirin or analgin, and inmates had to purchase all other medicines themselves. According to the Government, the prison's medical centre was staffed by a general practitioner, three feldshers (one for the main prison building and one for each of the two separate prison hostels), a nurse, a psychiatrist and a dentist. Medical examinations were carried out daily, and in cases of emergency inmates could be taken to the emergency ward of Stara Zagora Hospital. Medical examinations in the high-security unit were normally carried out on Fridays. Inmates could also consult outside specialists, or be treated in the prison hospitals in Sofia and Lovech. Medicines were normally provided by the prison medical centre, or could be obtained from outside the prison. The only medicine that Mr Harakchiev had had to obtain himself, because the centre had not had any in stock, had been Rivotril (clonazepam), at a unit cost of 7.31 Bulgarian levs (BGN). Mr Harakchiev replied, without giving further details, that he routinely had to purchase medicines himself. He also submitted that his dental care had consisted merely in extracting teeth; in spite of the obvious need to provide him with dental prostheses, the prison authorities had failed to take any action in that respect. The Government replied that dental prostheses did not form part of the standard medical

cover for any health-insured person in Bulgaria, and could not be obtained free of charge.

23. The Government also asserted that Mr Harakchiev could see the social inspector in charge of his unit daily. He could also ask to see a psychologist, the prison governor or deputy governor, the prison legal officer, or another member of the prison staff. He could also socialise with other inmates of the same category during his daily walk and during meal times. He also had access to cable television, with fifty channels, to the prison library, and to religious services. For his part, Mr Harakchiev submitted that, in spite of having expressed his desire to do so, he had not been given any opportunity to work or take part in sport, cultural or educational activities. The Government asserted, further, that in November 2006 Mr Harakchiev had been allowed to take part in a yoga course in order to reduce his stress levels.

24. The annual psychological assessments of Mr Harakchiev for 2009, 2010, 2011 and 2013, submitted by the Government, are very similar. All of them say, often using the same language, that his conduct was characterised by the "campaign that he ha[d] mounted" against the institutions and prison officials with whom he had had contacts, which chiefly consisted in his bringing various legal challenges and in inciting other prisoners to give "false evidence" in his favour. Dialogue with him was very difficult, chiefly because of his lack of respect for authority, acute awareness of his own rights, stubbornness, and tendency to call the officials concerned to give evidence in the cases that he was bringing against the prison authorities. The risk of serious harm was high in view of his personality, the nature of his offences and the rigidity of his conduct. He had been verbally aggressive to prison staff.

3. Claims for damages brought by Mr Harakchiev in relation to various aspects of the conditions of his detention in Stara Zagora Prison

25. Since his incarceration in 2002 Mr Harakchiev has brought a number of claims for damages against the authorities under section 1 of the State and Municipalities Liability for Damage Act 1988 (see paragraph 136 below).

26. In a final judgment of 12 February 2009 (реш. № 1993 от 12 февруари 2009 г. по адм. д. № 9586/2008 г., ВАС, III о.) the Supreme Administrative Court dismissed a claim for damages brought by Mr Harakchiev under that provision in relation to the failure of the prison administration to provide him with newspapers. The court held that Mr Harakchiev had not proved that he had suffered any non-pecuniary damage as a result of that failure.

27. In a final judgment of 26 May 2009 (реш. № 6892 от 26 май 2009 г. по адм. д. № 14849/2008 г., ВАС, III о.) the Supreme

Administrative Court dismissed a claim for damages brought by Mr Harakchiev under the above-mentioned provision in relation to a failure by the prison administration to organise his daily walk in such a way as to compensate him for one he had previously missed on account of bad weather. The court – overturning the lower court's ruling on that point – held that Mr Harakchiev had failed to establish that he had suffered any non-pecuniary damage; he could not simply be assumed to have sustained damage on the basis of the prison administration's failure to organise a daily walk.

28. In a final judgment of 18 January 2010 (реш. № 695 от 18 януари 2010 г. по адм. д. № 8404/2009 г., ВАС, III о.) the Supreme Administrative Court dismissed a claim for damages brought by Mr Harakchiev under the above-mentioned provision in relation to the refusal of the prison administration to allow him to watch films in the prison's video-projection room. The court held that that would have been incompatible with the requirement, imposed by the "special regime" under which Mr Harakchiev was serving his sentence (see paragraphs 115 and 118 below), that he remain isolated in a locked cell at all times. The prison administration's refusal had therefore not been unlawful.

29. In a final judgment of 9 November 2010 (реш. № 13333 от 9 ноември 2010 г. по адм. д. № 6668/2009 г., ВАС, III о.) the Supreme Administrative Court allowed a claim for damages brought by Mr Harakchiev under the above-mentioned provision in relation to the failure of the prison administration, for about five years, to provide him with shoes free of charge, as required by statute. Relying on Article 3 of the Convention, the court held that that failure had humiliated Mr Harakchiev and had diminished his human dignity. The court went on to say that Mr Harakchiev's feelings of humiliation had been exacerbated as a result of his solitary confinement, and awarded him BGN 3,000 (the equivalent of 1,533.88 euros (EUR)), plus interest.

4. The 2009-14 proceedings in relation to the claims for damages by Mr Harakchiev against the Ministry of Justice and the Chief Directorate for the Execution of Sentences

30. On 27 October 2009 Mr Harakchiev brought nine claims for damages against the Ministry of Justice and nine identical claims for damages against the Chief Directorate for the Execution of Sentences, which is a unit within that Ministry. He considered that the Ministry bore responsibility for all acts and omissions relating to his imprisonment before 1 June 2009, the date of entry into force of the Execution of Punishments and Pre-Trial Detention Act of 2009 (see paragraph 117 below), and that the Chief Directorate bore responsibility for all acts and omissions relating to his imprisonment after that date.

31. In a judgment of 21 December 2010 (реш. № 370 от 21 декември 2010 г. по адм. д. № 564/2010 г., АС-Стара Загора) the Stara Zagora Administrative Court, having carried out an inspection on the spot, allowed Mr Harakchiev's claims against the Ministry of Justice and the Chief Directorate for the Execution of Sentences in relation to (a) the material conditions of his detention; (b) the failure of the prison administration to provide him with clothing, shoes and bed linen; (c) the failure of the prison administration to put in place conditions in which he could keep in good physical shape; and (d) the failure of the prison administration to enable him to take his outdoor exercise. The court dismissed the remaining claims, which concerned (a) the failure of the prison administration to provide Mr Harakchiev with toiletries; (b) the quality and quantity of the food that had been provided to him; (c) the failure of the prison administration to provide him with dental prostheses; (d) the failure of the prison administration to provide him with conditions allowing him to keep his mental health intact; and (e) the failure of the prison administration to provide him with work. The court awarded Mr Harakchiev a total of BGN 8,200 (the equivalent of EUR 4,192.59). It held, in particular, that the conditions of his detention had been in breach of Article 3 of the Convention and that he had accordingly suffered non-pecuniary damage. However, the court also held that the claim relating to the material conditions of detention was time-barred on the ground that it related to a period of time that predated the claim by five years.

32. In its findings of fact the court noted, *inter alia*, that under the regime in the ward where Mr Harakchiev was being detained, he had to spend about twenty-three hours in his cell and could only leave it during his daily walk and three visits to the toilet. He was not allowed to go to the prison canteen or library. His cell was adequate in size for one prisoner, but too small for two, and did not have a toilet or running water. As result, outside toilet times, Mr Harakchiev had to use a bucket. In winter the cell was too cold owing to inadequate heating, and in summer full of insects as a result of the lack of a window net. The cell was infested with cockroaches, moles and even rats, and there was no indication that the prison administration had disinfested it regularly. When the cell was locked, the only way to call the guards was to bang continuously on the metal door; the guards did not always respond, especially at night. Mr Harakchiev did not have adequate materials with which to clean his cell, and evidence of the provision of cleaning products was inconclusive. It was undisputed that the prison administration had not provided him with work; that had indeed been very difficult in view of the limitations imposed by his prison regime. Social work with all life prisoners had been very restricted, consisting essentially of meetings whenever a problem occurred. Relations between Mr Harakchiev and the prison social worker assigned to deal with him were difficult, and their meetings rare. The prison psychologist had met with Mr

Harakchiev several times, but had stopped the meetings because he was displeased that they were taking place in the presence of a guard.

33. Mr Harakchiev, the Ministry of Justice and the Chief Directorate for the Execution of Sentences all appealed. However, as Mr Harakchiev had failed to pay the requisite court fee, the Supreme Administrative Court refused to examine his appeal (see опр. № 8931 от 21 юни 2011 г. по адм. д. № 5865/2011 г. ВАС, III о., upheld by опр. № 14723 от 14 ноември 2011 г. по адм. д. № 10633/2011 г., ВАС, петчл. с-в). As a result, the only part of the case that remained pending were the claims concerning the material conditions of Mr Harakchiev's detention and the failure of the prison administration to provide him with clothing, shoes and bed linen.

34. In a judgment of 8 January 2013 (реш. № 179 от 8 януари 2013 г. по адм. д. № 5865/2011 г., ВАС, III о.) the Supreme Administrative Court quashed the lower court's judgment in the part still under appeal and remitted the case to the lower court. It held that the lower court had failed to address in sufficient depth the conflicting witness statements of inmates on the one hand, and prison staff on the other hand, and analyse them in the light of the voluminous written evidence in the case. It had also failed to subject the expert report that it had obtained in the course of the proceedings to proper scrutiny, and had uncritically accepted it as correct.

35. In a judgment of 5 April 2013 (реш. № 38 от 5 април 2013 г. по адм. д. № 17/2013 г., АС-Стара Загора) the Stara Zagora Administrative Court found that the claims against the Ministry, which concerned the period before 1 June 2009, following which the 2009 Act had come into force, were inadmissible, but that the claims against the Chief Directorate for the Execution of Sentences, which concerned the period after that date, were admissible and, when analysed by reference to, *inter alia*, Article 3 of the Convention and this Court's case-law under that provision, well-founded. It awarded Mr Harakchiev BGN 400 (EUR 204.52). The court found that Mr Harakchiev's cell did not have ventilation and was damp, and that the cell window was not equipped with an insectproof net. In winter the cell was cold owing to the lack of adequate heating, and in summer too hot. The court went on to note that the cell did not have a toilet or running water, and that access to the communal toilets was very restrictive, with no real possibility to use them outside the three brief daily visits. It also observed that, in spite of the efforts of the prison authorities, the prison was infested with cockroaches and rats; that the authorities were not providing Mr Harakchiev with adequate cleaning products; and that the furniture in the cell was old and worn. It was true that work had been carried out in the cell in 2001 and then in 2005-06, but that had only consisted in repainting it.

36. Mr Harakchiev and the Chief Directorate for the Execution of Sentences appealed. The proceedings on appeal (адм. д. № 9946/2013 г.) are still pending before the Supreme Administrative Court. A hearing was due to be held on 24 February 2014, but the case was adjourned *sine die* on

account of the failure of Mr Harakchiev's court-appointed counsel to appear.

B. Mr Tolumov

1. Mr Tolumov's criminal background and his life sentence

37. As can be seen from the documents in the case file, Mr Tolumov, a driver by profession, had four previous convictions and had spent a year and a half in prison in 1988. In 2000 he was convicted on a charge of armed robbery accompanied by murder and a further charge of murder and sentenced to life imprisonment.

2. Conditions of detention in Plovdiv Prison and prison regimes applied to Mr Tolumov

38. Mr Tolumov was placed in Plovdiv Prison on 29 December 2000. In September 2005, when his life sentence imprisonment apparently became final, he was placed under the "enhanced regime" (see paragraph 115 below). With the entry into force of the Execution of Punishments and Pre-Trial Detention Act of 2009 on 1 June 2009, that regime was replaced with the "special regime" (see paragraph 118 below) by operation of law. On 11 February 2013 the competent Execution of Punishments Commission decided to change Mr Tolumov's regime from "special" to "severe". However, according to Mr Tolumov and an affidavit of another life prisoner detained in the same unit, he continues to be kept locked in his cell and is handcuffed whenever he is taken out of the high-security unit.

39. During his stay in prison, Mr Tolumov has been given four disciplinary punishments, the latest of which was in 2009. One of those punishments, imposed in in 2000 or 2001, was isolation in a disciplinary cell for seven days for his involvement in a scuffle with another prisoner. He was, on the other hand, given rewards for good conduct on a number of occasions.

40. In Plovdiv Prison Mr Tolumov has spent time in cells nos. 4, 9 and 7 in the prison's high-security unit, situated on the first floor. He submitted that during unspecified periods of time he had had to share those cells with other inmates. The Government submitted that cell no. 7, in which Mr Tolumov was now being detained, was 7.5 square metres in size, and that Mr Tolumov was alone in it. According to the Government, the cell had a window measuring 1.15 x 0.97 metres. Artificial lighting was provided by a 100-watt incandescent light bulb, which was not on during the day and was turned off at 10 p.m. According to Mr Tolumov, the light bulb was very dim, installed behind a grille, and on all the time.

41. Mr Tolumov's cell is furnished with a plank bed, two small cabinets, a table, which is fixed to the floor, and a stool, also fixed to the floor.

Mr Tolumov submitted that humidity from the communal bathroom, which was adjacent to the cell, penetrated the walls and the floor and produced mould on one of the walls. An additional factor that increased dampness in the cell was the need to dry clothes in it. The Government submitted that the cell adjoined the part of the bathroom which contained the sinks and did not generate humidity; it was therefore impossible for mould to appear on the cell walls. According to an affidavit drawn up by one of Mr Tolumov's fellow inmates in August 2013, humidity was indeed permeating the walls of the bathroom, and for that reason in June 2013 the prison authorities had had the gaps between the bathroom tiles filled in, unfortunately to little effect.

42. Plovdiv Prison does not have a ventilation or air-conditioning system. Mr Tolumov claimed that as a result temperatures in his cell were very high in summer and there was no fresh air. In winter, heating was inadequate. The Government pointed out the cell window could be opened, and that Mr Tolumov had a ventilator. As for heating, the prison had its own heating installation, which was normally turned on between 6 a.m. and 9 p.m., and permanently on colder days.

43. None of the cells in which Mr Tolumov was detained had a toilet or running water. Mr Tolumov submitted that as a result, apart from the daily visits to the communal toilets, he had to use a plastic bucket to relieve himself. During the period he had had to share his cell with another inmate, he had had to relieve himself in his presence. The lack of running water prevented him from washing his hands or the bucket after relieving himself. The Government submitted that the communal toilet and bathroom in the high-security unit were accessible to Mr Tolumov four times a day, and also whenever he asked the guards.

44. Mr Tolumov submitted that on any given day he could leave his cell once for his one-hour daily walk and three more times, for thirty minutes, to visit the toilet. Mr Tolumov also submitted that he took his meals in his cell. The Government submitted that all prisoners in the high-security unit could leave their cells once for their daily walk, and in addition four times a day, for forty-five minutes each time, for meals and visits to the toilet. According to an affidavit drawn up by one of Mr Tolumov's fellow inmates in August 2013, the practice of allowing inmates in the high-security unit to visit the toilet four times a day instead of three had been introduced very recently. According to a document produced by the Government, since the end of January 2013 Mr Tolumov could also visit the prison gymnasium three times a week: between 3 p.m. and 4 p.m. on Mondays, Wednesdays and Saturdays. Mr Tolumov submitted that each time he was taken out of the prison's high-security unit he was handcuffed. The Government submitted that he was only handcuffed when taken out of the prison for transfers.

45. According to Mr Tolumov, the food in prison was poorly prepared, of low quality, tasteless to the point of being inedible, and insufficient in

quantity. According to the Government, the quantity and the calorie content of the food were fully adequate. Mr Tolumov was being provided with vegetarian meals on account of an illness, as well as fresh fruit and vegetables. In support of their assertion, the Government provided three randomly chosen daily menus. Mr Tolumov disputed the accuracy of those menus and submitted that he had never been given the meals stated in them. According to him, the "fresh fruit and vegetables" consisted of a daily portion of one onion and three carrots.

46. According to Mr Tolumov, medical care in Plovdiv Prison consisted of routinely giving all inmates aspirin or analgin, and inmates had to purchase all other medicines themselves. According to the Government, the prison's medical centre was staffed by a general practitioner, a feldsher, a psychiatrist and a dentist. Medical and dental examinations were carried out weekly. Mr Tolumov could also consult outside specialists, and since the end of 2010 he had been examined nine times, by a cardiologist, a surgeon, an ophthalmologist, an endocrinologist and a dermatologist. All medicines required for Mr Tolumov's treatment had been covered either by the national health insurance fund or the prison's budget.

47. The Government asserted, further, that Mr Tolumov could see the social inspector in charge of his unit daily. He could also ask to see a psychologist, the prison governor or deputy governor, the prison legal officer, or another member of the prison staff. He could also socialise with other inmates of the same category during his daily walk and during meal times. He had access to cable television, with fifty channels, to the prison library, and to religious services. For his part, Mr Tolumov submitted that he could not attend religious services, and that, in spite of having expressed his desire to do so, he had not been given any opportunity to work or take part in other meaningful activities. The Government went on to say that at present Mr Tolumov was enrolled in a basic computer literacy class that he attended each Thursday between 3 p.m. and 4 p.m.

48. The annual psychological assessments of Mr Tolumov for 2008, 2009, 2011 and 2013, submitted by the Government, are quite similar. All of them say, often using the same language, that he has not changed his thinking and attitudes (though the 2013 report says that it was possible to detect a positive trend in that respect), but that he was not making any unjustified claims. He was able to defend his position, but usually avoided getting drawn into conflicts, and treated prison staff with respect. The risk of his hurting himself or others was average. He had expressed the wish to work, but it had not been possible to find work for him. He had willingly taken part in activities.

3. Mr Tolumov's correspondence in prison

49. Mr Tolumov submitted that all letters from his legal representative before the Court were being opened and read by the prison administration.

He also submitted that he had to hand over all letters to his legal representative to the prison administration without sealing the envelopes. The monitoring of his correspondence was proved by the letter "P" stamped on the back of each envelope.

50. In support of his allegations, Mr Tolumov submitted photocopies of the envelopes of three letters that he had sent to his legal representative in January, February and March 2012. They bear illegible postmarks and the word "checked" is stamped on the back of each one.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Life imprisonment

1. Historical note

51. The Penal Act 1896, which was the first comprehensive criminal-law enactment after Bulgaria was recreated as an autonomous State in 1878, made provision for life imprisonment as a form of custodial sentence (section 15(1)). Persons sentenced to life imprisonment could be released, in cases of "good conduct", if they had served at least fifteen years of their sentence (section 20(1) and (3)).

52. The Penal Act of 1951, which superseded the 1896 Act and in 1956 was renamed the Criminal Code, did not make provision for life imprisonment as a form of punishment.

2. The sentencing system under the 1968 Criminal Code

53. Article 36 of the 1968 Criminal Code, which superseded the Criminal Code of 1956, defines the aims of criminal punishment. Paragraph 1 provides that punishment is imposed with a view to (a) reforming the convicted offender and rehabilitating him or her to comply with the law and good morals; (b) deterring the convict and preventing him or her from committing further offences; and (c) cautioning and deterring other members of society. Paragraph 2 states that punishment cannot be intended to cause physical suffering or humiliation of human dignity.

54. The various criminal penalties are listed in Article 37 of the Code, and Articles 38-52 specify the characteristics of those penalties. Until 1986 the longest possible custodial penalty was twenty years' imprisonment (Article 39 §§ 2 and 3 of the Code, as worded between 1968 and 1986). In 1986 the maximum was increased to thirty years' imprisonment.

55. Under Articles 37 § 2 and 38 of the Code, as worded before the abolition of capital punishment in December 1998, the courts could impose the death penalty only for particularly serious intentional offences and only if they were of the view that the punitive and deterrent purposes of criminal punishment could not be achieved by a lesser sentence. Under Article 38 § 4

of the Code, the death penalty could not be carried out until the President of the Republic had considered commuting it.

56. Until 1995 the harshest sentence after the death penalty was imprisonment for up to thirty years in exceptional cases (Article 39 § 2 of the Code, as worded after 1986). In 1995 a new penalty was introduced: life imprisonment (*доживотен затвор*), defined by the newly added Article 38a § 1 of the Code as "confinement of the convicted person in an incarceration facility until the end of his or her life". That sentence may be commuted by a court to thirty years' imprisonment after the convicted offender has served at least twenty years (Article 38a § 3 of the Code).

57. The last executions of persons sentenced to death were carried out in November 1989. Following a period of a *de facto* moratorium on executions, on 20 July 1990 Parliament imposed a formal moratorium. For more details on that point, and the ensuing debates concerning the abolition of the death penalty, see *Iorgov v. Bulgaria* (no. 40653/98, §§ 12-28, 11 March 2004).

58. The death penalty was abolished with effect from 27 December 1998. At the same time, a new penalty was introduced: whole life imprisonment (*доживотен затвор без замяна*). That penalty replaced capital punishment in the provisions of the 1968 Criminal Code dealing with specific offences.

59. Article 37 § 2 of the Code, as worded after the amendment, reads as follows:

> "The most serious offences, which threaten the foundations of the Republic, and other particularly serious intentional offences, shall, provisionally and exceptionally, be punishable by whole life imprisonment."

60. Article 38 of the Code, as worded after the amendment, reads as follows:

> "1. A whole life sentence ... shall be imposed only if the specific offence is particularly serious and the aims [of the punishment, as] laid down in Article 36 cannot be attained by means of a lesser penalty.
>
> 2. A whole life sentence cannot be imposed on a person who at the time of the commission of the offence has not attained the age of twenty or, as regards persons serving in the armed forces or during a time of war, the age of eighteen. A whole life sentence cannot be imposed on a woman who was pregnant at the time of the commission of the offence or is pregnant at the time when the sentence is imposed."

61. The relevant part of the explanatory note that accompanied the bill amending the Code read as follows:

> "The bill proposes to replace the death penalty with a new penalty: whole life imprisonment, which differs from life imprisonment. This penalty will remove the prisoner from society, depriving him of the possibility of committing new offences, and the penalty will have a deterrent effect on other would-be offenders."

62. The parliamentary debates on the bill took place on 27 November 1998 (first reading) and 10 December 1998 (second reading).

63. In the course of the first of those debates, a number of members of parliament spoke in favour of the abolition of the death penalty. At the same time, one member of parliament said that he would only support that proposal if it were accompanied by the introduction of whole life imprisonment. Misgivings were also expressed that the irreversibility of such a sentence might be compromised through the exercise of the presidential power of clemency. Another member of parliament pointed out that the public could hardly be regarded as being in favour of abolition, and that society had to be assured that those who would be spared the death penalty would remain fully isolated from it. For his part, the Minister of Justice undertook to substantially amend the legislation relating to the execution of criminal punishments with a view to isolating those sentenced to whole life imprisonment and thus preventing them from committing offences in prison or enjoying comfortable conditions. He went on to say that the level of that isolation would have to be gauged carefully, so as not to infringe the human rights of those concerned.

64. In the course of the second of those debates, a member of parliament observed that it would be paradoxical to have two types of life sentence, but that he could accept it as a provisional state of affairs. He went on to say that in his view the presidential power of clemency could not be circumscribed by statute. However, another member of parliament said that arrangements had to be made, if need be by limiting the scope of the presidential power of clemency, to prevent those who, but for the amendment, would be sentenced to death from one day walking free. Another member of parliament expressed the view that the very wording of the new provisions of the Code would prevent the exercise of the presidential power of clemency with respect to persons serving a whole life sentence.

65. Accordingly, since the abolition of the death penalty the Code has provided for three types of custodial penalty: imprisonment for a fixed period of up to thirty years, life imprisonment with the possibility of commutation, and (whole) life imprisonment without the possibility of commutation. There is no offence which is punishable only by whole life imprisonment.

66. By two decrees of 25 January and 6 March 1999 the Vice-President of the Republic commuted all death sentences which had become final but had not been executed to either life imprisonment (in one case) or whole life imprisonment (in twenty-one cases).

3. The sentencing system in the new draft Criminal Code

67. On 31 January 2014 the Government laid before Parliament a draft Criminal Code intended to supersede the 1968 Criminal Code. That draft

Code does not envisage the penalty of whole life imprisonment; it only makes provision for life imprisonment. The relevant part of the draft reads as follows:

Article 47 – Types of Penalties

"1. ...

2. Particularly serious intentional offences are punishable by life imprisonment."

Article 48 – Life imprisonment

"1. Life imprisonment consists in the isolation of the convict until the end of his life in an incarceration facility.

2. Life imprisonment shall be imposed where the offence is particularly serious compared with offences of the same kind and the aims of the punishment cannot be attained by means of a lesser penalty.

3. Life imprisonment is not to be imposed on

(1) A person who has not reached twenty years of age at the time of the offence;

(2) A woman who was pregnant at the time of the offence or is pregnant at the time of sentencing."

Article 49 – Replacement of life imprisonment with a term of imprisonment

"1. The remaining part of life imprisonment may be replaced by fifteen years' imprisonment if the convicted offender has served not less than fifteen years and has, through his conduct, shown proof of his rehabilitation.

2. ...

3. The term of imprisonment under paragraph 1 is to be served separately from the life imprisonment already served."

68. The explanatory note accompanying the draft Code says the following with respect to life imprisonment (at p. 8):

"The penalty of whole life imprisonment is to be abolished because it is at present perceived as too inhuman on account of the lack of any hope for the persons sentenced to it.

It is on the other hand proposed to retain the penalty of commutable life imprisonment. The cases in which it is likely to be imposed are limited owing to the exceptional harshness of that penalty. It is to be resorted to only when the offence is particularly serious compared with offences of the same kind and the aims of the punishment cannot be attained by means of a lesser penalty. For humanitarian reasons, it is envisaged that that penalty cannot be imposed on offenders who have not reached twenty years of age at the time of the offence or on women who were pregnant at the time of the offence or are pregnant at the time of sentencing."

69. Parliament has not yet debated the draft.

B. Clemency and adjustment of sentence and their applicability to whole life imprisonment

1. Release on licence

70. Under Article 70 § 1 of the Criminal Code of 1968, release on licence is only applicable to fixed-term prison sentences. Offenders sentenced to whole life or life imprisonment are not eligible for release on licence.

2. Commutation of the sentence by judicial decision

71. The Code of Criminal Procedure of 1974 and the Code of Criminal Procedure of 2005 provide that a regional court may, at the request of the regional public prosecutor, commute a life sentence to a fixed-term prison sentence (Articles 427 and 428 of the 1974 Code and Articles 449 and 450 of the 2005 Code). The regional court rules by means of a reasoned decision; a negative decision may be challenged before the higher courts. If the public prosecutor's proposal is rejected, no further commutation request may be submitted for two years. The legislation makes no provision for the public prosecutor to seek an adjustment of the sentence of offenders sentenced to whole life imprisonment.

3. Presidential clemency

(a) Legal framework

(i) Constitutional and statutory provisions

72. Under Article 98, point 11, of the Constitution of 1991, which came into effect on 13 July 1991, the power of clemency is a prerogative of the President of the Republic.

73. At that time Article 74 of the 1968 Criminal Code, which determines the scope of that presidential power, read as follows:

> "The President may use his [or her] power of clemency to grant a pardon in respect of all or part of the sentence and, in the case of the death penalty, grant a pardon or commute the sentence."

74. With effect from 13 October 2006, Article 74 of the Code was amended to provide that the powers of the President in relation to the death penalty also applied in relation to sentences of whole life or life imprisonment.

75. This is a discretionary power which the President has since 1991 traditionally delegated to the Vice-President of the Republic, as envisaged under Article 104 of the 1991 Constitution. Its exercise is not subject to review by the ordinary courts (see опр. № 2429 от 20 февруари 2012 г. по адм. д. № 817/2012 г., ВАС, III о.).

(ii) Constitutional Court decision no. 6 of 2012

76. In its decision no. 6 of 11 April 2012 (реш. № 6 от 11 април 2012 г. к. д. № 3/2012 г., обн., ДВ, бр. 15 от 2012 г.), given following an application made by sixty-one members of parliament, the Constitutional Court gave a binding interpretation of Article 98, point 11, of the 1991 Constitution (see paragraph 72 above) and declared unconstitutional, as *ultra vires* and in breach of the principle of the separation of powers, a decision of Parliament of 15 February 2012 to set up an *ad hoc* committee mandated to conduct an inquiry into, *inter alia*, the way in which the former President and Vice-President had exercised the power of clemency during their two terms of office between 22 January 2002 and 22 January 2012 (see paragraph 89 below). The court explained that the presidential power of clemency under that provision was the modern-day equivalent of the royal prerogative of mercy, and was based on the principle of humanity. For that reason, it could not be tied to specific grounds, but was to be exercised by the President – or, by delegation, by the Vice-President – on the basis of the specific circumstances of each case. It could be exercised from the time when the sentence became final, and could consist in full or partial commutation of the sentence or its replacement with a less severe one. It did not impinge on the independence of the judiciary because it did not entail relieving a person of criminal liability but merely exempting that person from serving the sentence imposed by the criminal courts. It was permissible to lay down the manner of exercise of that power in a statute, but it was not permissible for Parliament to define or circumscribe the grounds on which it could be exercised or seek to influence the reasons for its exercise. Nor was it permissible to limit the types of penalties in respect of which the power could be exercised, or to exclude a given class of convicted offender from its scope.

77. The power of clemency, which was in a way an exception to the principle of equality before the law, was based on the need to give effect to higher constitutional values that could not be protected by way of abstract statutory rules. It was therefore implicit in the Constitution that that power had to be exercised in a non-arbitrary way, and was subject to the duty to give effect to the constitutional values and principles. It followed that the Constitution required that in the exercise of that power the President had to take into account equity, humanity, compassion, mercy, and the health and the family situation of the convicted offender. In cases where exercise of the power of clemency concerned not the entire sentence but only part of it, it was very important to take account of any positive changes in the convicted offender's personality. The President was not under a duty to give reasons: in as much as it was impermissible for the legislature to circumscribe his or her power of clemency in any way, it was equally impermissible to require him or her to give reasons. Indeed, if reasons were given for clemency decrees they could bind the President or the Vice-President to grant future

clemency requests if they concerned identical circumstances, and lead convicted offenders to believe that they were entitled to clemency because they satisfied the conditions set out in previous clemency decrees.

78. At the same time, the President was under a duty to respect everyone's right to equality before the law. It was therefore necessary to have in place broad guarantees that the President would treat all requests for clemency in the same way and apply the same criteria to all of them. Naturally, those criteria could not be imposed on the President by the legislature because that would run counter to the principle of the separation of powers. However, the President was in a position to set out the manner in which he or she would exercise the power of clemency and the general criteria that would guide him or her in that respect. Such a policy statement would make the practical exercise of that power transparent and stable. It was thus possible for the President or the Vice-President to make known, at the outset of their term of office, the criteria that they would follow in dealing with requests for clemency.

79. The President could at any time – either at the beginning of the term of office or later – delegate the power of clemency to the Vice-President, who could exercise it in the same way as the President. The delegation could be withdrawn at any time, and did not prevent the President from exercising the delegated power him- or herself. In the event of a re-election of the President and the Vice-President for a second term of office, the delegation from the first term subsisted and did not need to be renewed.

80. Presidential clemency decrees did not need to be co-signed by a Government minister. They came into effect when signed and could not be reviewed by any other authority. Nor could they be withdrawn or varied by the President once they had produced their effects. In that sense, clemency, once granted, was irrevocable, and the person benefiting from it could not be required to resume service of his or her sentence based on subsequent conduct. Clemency, whether full or partial, could not be made subject to conditions either.

81. There was no constitutional requirement for clemency decrees to be published in the State Gazette. The decision whether those decrees were to be made public hinged on the delicate balance that needed to be struck between the private life, personal data and dignity of the person benefiting from an act of clemency and the right of the public to be informed of the way in which the authorities dealt with issues of public interest. The practice in the course of the previous twenty years had been not to publish clemency decrees unless the person concerned had acquiesced to their publication. However, there was no obstacle to requiring them to be published. That was a point to be decided by the legislature.

82. Clemency decrees, like all other presidential and vice-presidential decrees, were not administrative decisions and could not be equated with these. They were therefore not subject to judicial review, and could only be

challenged, on grounds of unconstitutionality, under Article 149 § 1 (2) of the Constitution, before the Constitutional Court, by any of the authorities or persons entitled to institute proceedings before that court, under Article 150 of the Constitution: one fifth of the 240 members of parliament, the President, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court, or the Prosecutor-General.

83. In a partly dissenting opinion three constitutional judges said, *inter alia*, that it was not impermissible for the President to be required by statute to give reasons for his or her clemency decrees. Indeed, such reasons would show that those decrees were not arbitrary and would greatly facilitate their review by the Constitutional Court.

(b) Exercise during the period 2002-12

84. The previous President and Vice-President were in office for two terms, the first between 22 January 2002 and 22 January 2007 and the second between 22 January 2007 and 22 January 2012.

85. Between 1 January 2002 and 31 December 2009 the Vice-President received 6,967 applications for clemency. 477 of those were granted.

86. In practice a committee of officials from the President's administration examined requests for clemency and made proposals to the Vice-President. In forming its opinion in each case the committee took into account the position of the President's legal advisers on criminal policy and relied on information about the convicted offender provided by the prison administration. Before reaching a decision, the Vice-President could also interview the prisoner.

87. According to a report by the Director-General of Prison Administration of 15 September 2009, about 100 applications for clemency had been submitted to the successive Vice-Presidents by prisoners serving a whole life sentence; none of those had been granted. According to the chief of the Vice-President's staff, between 21 January 2002 and 7 September 2009 the advisory committee had received twenty-nine requests for clemency from sixteen persons sentenced to whole life imprisonment; none of those had been granted. He further explained that the Vice-President was not required to give reasons for his or her refusal, but that the prisoners concerned could renew their applications for clemency without limitations. In a report published in April 2010, the Bulgarian Helsinki Committee also mentioned that information and went on to say that its research had shown that even before January 2002 no persons serving a whole life sentence had benefited from presidential clemency (see paragraph

175 below).

88. The applicants submitted four letters dated 27 June 2006, 29 November 2007 and 17 February 2011, in which the presidential administration had informed two life prisoners in identical terms that their "applications for clemency [had been] duly considered and turned down". The letters did not contain any further particulars.

(c) Parliament's decision of 15 February 2012 to set up an *ad hoc* committee inquiring into, *inter alia*, the exercise of the presidential power of clemency between 22 January 2002 and 22 January 2012

89. On 15 February 2012 Parliament decided to set up an *ad hoc* committee mandated to conduct an inquiry into, *inter alia*, the way in which the former President and Vice-President had exercised the power of clemency during their two terms of office between 22 January 2002 and 22 January 2012 (see paragraph 84 above). Shortly after that, on 11 April 2012, the Constitutional Court declared that decision unconstitutional, as *ultra vires* and in breach of the principle of the separation of powers (see paragraph 76 above). In response, on 16 May 2012 Parliament decided to set up an *ad hoc* committee mandated to conduct an inquiry into, *inter alia*, how officials from various executive departments had carried out their duties in connection with that matter. In its report, published on 1 November 2012, the committee observed, *inter alia*, that the former Vice-President, to whom the President had delegated the power of clemency, had been advised by a special commission. The practice of that commission had been to obtain from the respective prison governor, medical doctor and psychologist information, including psychological assessments, about the prisoners who had applied for clemency (see also paragraphs 85-88 above). However, it was impossible to say whether all the information in the prisoners' personal files had been fully reflected in the data provided to that commission. It was also important to note that the presidential administration which had taken over in January 2012 had vastly increased the level of transparency of the clemency system (see also paragraphs 90-107 below). The committee went on to note that there were no statutory criteria governing the assessment of the conduct or the psychological profile of a convicted offender who applied for presidential clemency. As a result, the provision of information on those points was entirely within the discretion of the competent officials. It was therefore necessary to legislate on that point, and to introduce a statutory requirement for the publication of presidential clemency decrees. The practice of the incumbent presidential administration of publishing reports was entirely appropriate, but could not bind future presidential administrations.

(d) Exercise of the presidential power of clemency during the period 2012-13

(i) Internal rules of procedure

90. In two decrees of 23 January 2012 the newly elected President, who had taken office the previous day, decided, like his predecessors, to delegate the power of clemency to the Vice-President. He also set up a Clemency Commission to advise the Vice-President in the exercise of that power, and laid down rules of procedure governing the work of the Commission.

91. Rule 1(3) of those Rules provides that in its work the Commission must take into account, *inter alia*, relevant case-law of international courts and other bodies on the interpretation and application of international human rights instruments in force in respect of Bulgaria. The Commission deliberates twice a month (Rule 5(2)). Each request for clemency is allocated to one member of the Commission, who has to report on it (Rule 4(1)(1)) within two weeks (Rule 6). Decisions are taken by a majority, with the chairperson having the casting vote in the case of a tie (Rule 5(4)). The chairperson then apprises the Vice-President of the Commission's recommendations (Rule 4(1)(5)). Prisoners who have requested clemency must be informed in writing of the Vice-President's decision, and every three months the Commission has to publish a report on its activities.

(ii) Work of the Clemency Commission in 2012

92. In practice, throughout 2012 the Clemency Commission published comprehensive monthly reports.

93. On 24 January 2013 the Commission published its first annual report, which was approved by the Vice-President. It is a comprehensive document containing information about the Commission's activities in 2012, analytical information about the types of grounds on which requests for clemency made during the year had been based, statistical data, the Commission's approach to the examination of requests for clemency, the types of outcome suggested by the Commission (non-examination of the request, refusal, or full or partial pardon), and the Commission's conclusions and recommendations.

94. According to the report, 840 persons had filed 988 requests for presidential clemency in 2012. Sixty-five of those persons had filed more than one request. The vast majority of requests (98%) filed by prisoners (as opposed to relatives of theirs) had relied on one or a combination of the following reasons: 34% on the convicted offender's attitude to his or her offence, with some prisoners expressing regrets and others seeking to vindicate their acts or challenge the correctness of their convictions or sentences; 18% on the convicted offender's rehabilitation following incarceration; 48% on humanitarian grounds (family difficulties, need to take care of children or elderly relatives, need to provide financial assistance to family members, need to reunite with family members, ill health, old

age); and 7% had sought to portray the prisoners as victims of the prison, the courts or the system, with some requests citing the ill effects of incarceration or the impossibility for personal development in prison. The remaining 2% of requests had not cited specific grounds. Only four requests had been filed not by the person concerned him- or herself, but by a legal representative.

95. In 2012 the Commission had held thirty-three rounds of deliberations, three to five times a month.

96. The practice of the Commission had been based on the idea that clemency was a subsidiary means of reduction of sentence, and was only applicable in situations in which, on the one hand, there were no other means of alleviating criminal repression, and on the other, the continued execution of the sentence was morally unjustifiable and against the spirit of the law in that, due to circumstances obtaining after conviction, the convicted offender's situation had become unusual, and the continued execution of the sentence did not have the intended beneficial effects but became unnecessarily repressive and ran counter to the humane goals of criminal policy.

97. In the examination of each request for clemency, the Commission had had regard to the totality of the prisoner's circumstances: the existence of a criminal model of conduct and its characteristics; the gravity of the offence; the particularities of the criminal environment; the motives underlying the offence; the post-offence conduct; the criminal record, including the effectiveness of previous criminal sanctions; the victims; the time elapsed since the commission of the offence and the time when the conviction and sentence had become final; any interruptions in the service of the sentence; the part of the sentence already served and the manner in which it had been served; the prisoner's prospects of personal development, including the risk of reoffending; the successfulness of the correctional process; the degree to which the aims of punishment had been attained; the availability of persons or institutions that could resocialise the prisoner; the prisoner's state of health and its effects on the service of the sentence; the prisoner's family situation and its effect on his or her legal or moral obligations (state of health and age of the members of the prisoner's family, or the existence of any pregnancies, young children or unemployed family members); any post-conviction changes in the law abolishing or reducing criminal liability for the acts committed by the prisoner; and the availability of other means of alleviating criminal repression.

98. The Commission had proposed to the Vice-President to pardon three prisoners.

99. One of them had been a fifty-eight-year-old, sentenced to death in 1990 for murder, infliction of grievous bodily harm and rape, whose death sentence had been commuted to life imprisonment in 1999, following the abolition of capital punishment in Bulgaria (see paragraph 58 above). In

2012 he had requested that his sentence be commuted to life imprisonment, citing his repentance and good behaviour and the inhumanity of his sentence. The Commission had noted that he had already spent twenty-two years in prison, eighteen of which had been in solitary confinement, under the "special regime" applicable to life prisoners (see paragraphs 115, 116, 118 and 121 below). The Commission had researched his case for six months, and had found a special circumstance – sustainable positive changes in his personality – which made it intolerable for him to continue to serve a sentence of whole life imprisonment. That development had been unequivocally established on the basis of the available documents, the reports of the experts who had worked with the prisoner throughout his incarceration, a special expert psychologist's report obtained by the Commission, and an assessment, based on a variety of methods, of the risk of his reoffending. All of those showed that the prisoner was very different from other life prisoners and prisoners serving long terms of imprisonment. His criminal proclivities had given place to compassion towards other prisoners and reconsideration of his offences. The prisoner's profile showed a successful correctional process, which was rare even for persons convicted of similar offences and sentenced to much shorter terms of imprisonment than the period of time that he had already served. Those factors placed him outside the scope of application of Article 38 § 1 of the Criminal Code of 1968 (see paragraph 60 above).

100. The Commission had come to the view that the commutation of that prisoner's sentence to life imprisonment would serve the aims of punishment and would not diminish the moral condemnation of his acts. Commutation would not be tantamount to forgiveness of his criminal past but represent an acknowledgement of his efforts to distance himself from that past. It would also demonstrate to all other persons sentenced to whole life imprisonment that they would be able to improve their situation because their efforts would be recognised by society, which continued to consider them as members. Lastly, the commutation of whole life imprisonment to life imprisonment did not give rise to a risk of reoffending.

101. The Commission had proposed to the Vice-President to commute the prisoner's sentence on 20 December 2012, and the Vice-President had agreed with the proposal and had done so by decree of 21 January 2013.

102. On 11 February 2013 a national daily newspaper, *24 Hours*, published an article about that prisoner. The article said, *inter alia*, that the person who had been instrumental in reforming him had been a retired prison inspector who had worked with him for about fifteen years. The prisoner had thus been persuaded that anyone could change if he or she met the right people, and was for that reason helping other prisoners.

(iii) Work of the Clemency Commission in 2013

103. Throughout 2013 the Clemency Commission continued to publish monthly reports setting out statistical data and detailed information on the reasons underlying the proposals for clemency that it had made to the Vice-President. According to information on the Commission's website, 419 persons had filed 475 requests for clemency in 2013, and the Commission had proposed to the Vice-President to pardon three prisoners. It had received six requests from persons serving a whole life sentence. In its report for the period July-August 2013, the Commission said that it had examined two of those requests and had recommended that they be refused because the persons concerned had not showed sufficient progress towards rehabilitation.

104. The Commission's annual report for 2013 was published in February 2014. Like the Commission's report for 2012, it is a comprehensive document containing information about the Commission's activities in 2013, analytical information about the grounds on which requests for clemency made during the year had been based, statistical data, the Commission's approach to the examination of requests for clemency, the types of outcome suggested by the Commission (non-examination of the request, refusal, or full or partial pardon), and the Commission's conclusions and recommendations.

105. According to the report, in 2013 the Commission had dealt with 587 requests for clemency (roughly forty-five per month) filed by 420 persons. All but twenty-three of those requests had concerned prisoners. 387 convicts had filed the requests personally, in thirty-four cases the requests had been filed by relatives, and in eleven cases by legal representatives. 31% of the requests had relied on the alleged atonement of the convict; 33% on the alleged excessive harshness of the penalty, an alleged lack of recognition that the convict had reformed him- or herself, and an alleged lack of possibility of personal development in prison; 68% on humanitarian grounds (old age, illness, need to take care of sick relatives, indigence, need to provide assistance to family members); 4% on asserted rehabilitation, work in prison, alleged good conduct, and the fact of having served more than half of the sentence; 16% on the alleged excessiveness of the sentence, the alleged excessive length of the criminal proceedings, the alleged incorrectness of the conviction, etc.; and 8% on alleged actual innocence.

106. In 2013 the Commission had held thirty-two rounds of deliberations.

107. In 2013 the Commission had fully adhered to its earlier practice, and had had regard to identical factors (see paragraph 97 above) when examining requests for clemency. It had proposed to the Vice-President to pardon nine prisoners; by 21 January 2014 the Vice-President had accepted seven of the proposals and rejected one. The report set out a summary of the reasons for each of the proposals.

C. General principles relating to conditions of imprisonment

108. Article 31 § 5 of the 1991 Constitution provides that prisoners must be kept in conditions allowing them to exercise those of their fundamental rights that have not been restricted by virtue of their sentence.

109. Section 8(2)(1) of the Execution of Punishments Act of 1969, as worded after June 2002, provided that prisoners were rehabilitated by, *inter alia*, ensuring that they were detained in conditions that safeguarded their physical and mental health and their human dignity.

110. Section 3(1) of the Execution of Punishments and Pre-Trial Detention Act of 2009, which superseded the 1969 Act on 1 June 2009, provides that prisoners may not be subjected to torture or cruel or inhuman treatment. Section 3(2) defines torture and inhuman and degrading treatment as (a) any intentional act or omission that causes strong physical pain or suffering, except those arising from the use of force, auxiliary means or firearms where allowed under the Act; (b) intentional placement in poor conditions of detention, consisting of insufficient living space, food, clothing, heating, light, ventilation, medical care, opportunities for physical exercise, prolonged isolation without human contact, or other culpable acts or omissions that are capable of damaging a person's health; (c) humiliating treatment that diminishes the convicted offender's human dignity, coerces him to commit or suffer acts against his will, or arouses in him feelings of fear, vulnerability or inferiority. Section 3(3) provides that such acts or omissions include those committed by a public official or by any other person at the instigation or with the connivance, overt or tacit, of a public official.

111. Section 40(2)(1) provides that prisoners are rehabilitated by, *inter alia*, ensuring that they are detained in conditions that safeguard their physical and mental health and their human dignity.

112. Section 90(6) ((5) before 1 January 2013) provides that prisoners cannot be held disciplinarily liable for making applications and complaints.

D. Risk assessments of prisoners

113. Section 47(1) of the Execution of Punishments and Pre-Trial Detention Act of 2009 provides that incoming prisoners are to be put in a reception ward, where they have to remain for between a fortnight and one month. Within two days of a prisoner's arrival in that ward, the prison administration has to compile a personal file for him or her (section 54(1) of the Act and Regulation 31(1) of the Implementing Regulations of the Act, issued on 2 February 2010). Section 55(2) of the Act provides that before the prisoner leaves that ward, the social worker, medical doctor and psychologist attached to the prison must draw up an assessment of his or her personality, state of health and capacity to work, and give recommendations

about group or individual work with the prisoner. With effect from 1 January 2013, that subsection was amended to provide that the assessment must also cover the risk of reoffending or damage. At the same time, a new subsection 3 was added to section 55, providing that prisoners serving sentences of life or whole life imprisonment, or more than ten years' imprisonment, or prisoners whose risk assessment was "very high" or "high", must in all cases be subjected to a psychological assessment. For other prisoners, such an assessment may be carried out at the request of the prison's social activities and re-education inspector.

E. The regime of life prisoners

1. Under the Execution of Punishments Act of 1969

114. Until 1 June 2009 the regime of life prisoners was governed by sections 127a-127e of the Execution of Punishments Act of 1969, added in 1995 when life imprisonment was introduced as a form of punishment (see paragraph 56 above), and by the implementing regulations of that Act, issued in 1990 and subsequently amended several times. Following its amendment with effect from June 2002, the Act expressly provided that persons sentenced to whole life imprisonment were to be placed under the same prison regime as those serving a life sentence.

115. Section 127b(1) provided that when imposing a life sentence the court had to order the prisoner's placement under the strictest regime, the so-called "special regime". The other available prison regimes, applicable to fixed-term prison sentences, were the "light", "general", "strict" and "enhanced" regimes (section 43(1)); in contrast to life imprisonment, the sentencing court had a certain discretion in determining which one of these to impose (section 51). Prisoners serving life or whole life sentences, and placed under the "special regime", were to be kept in locked single cells and subjected to heightened security and supervision (regulations 56(1), 167c and 167d(1)). For its part, the "enhanced regime" entailed keeping prisoners placed under it in locked cells at night and not allowing them to carry out any maintenance work in prison or any work in external sites (regulation 55(1) and (4)). Prisoners placed under the "enhanced regime" could, by order of the prison governor, be permanently kept in locked cells if, by reason of the seriousness of their offence or the length of their sentence, they could be regarded as dangerous, or if they manifestly and systematically failed to respect internal order or had a negative influence on other inmates (regulation 56(1)).

116. Under section 127b(2) and regulation 167d(2), after five years of imprisonment in execution of their sentence life prisoners could be placed under a lighter regime if they were of good conduct. Time spent earlier in pre-trial detention did not count towards that period (regulation 167(2)). The

decision to place a life prisoner under a lighter regime was to be taken by a special commission comprising prison staff and various other officials (section 17(1) and (5)(1)); by contrast, the decision to place any prisoner under a harsher regime was to be taken by the regional court, on a proposal by that commission (section 17(5)(2)). All proposals in that respect were to be based on an assessment of the risk that the prisoner presented to him- or herself, other inmates and prison staff (section 17a). Under section 58, the commission's decisions could be set aside by the Minister of Justice. Once placed under the "strict regime", a life prisoner could, if considered not to pose a risk to him- or herself, other inmates or prison staff, be detained with the general prison population, by decision of the same commission (section 127b(4), added in June 2002).

2. Under the Execution of Punishments and Pre-Trial Detention Act of 2009

117. In June 2009 and February 2010 the 1969 Act and the implementing regulations were superseded by, respectively, the Execution of Punishments and Pre-Trial Detention Act of 2009 and the implementing regulations, issued on 2 February 2010.

118. Section 61(1) of the 2009 Act provides that when sentencing an individual to whole life or life imprisonment the court must order that he or she be placed under the "special regime" (the three regimes applicable in prisons are the "special regime", the "severe regime" and the "general regime" – section 65(2)). Under section 71(2), persons placed under the "special regime" must be kept in permanently locked cells and under heightened supervision. Section 71(3), which was inserted in December 2012 and came into effect on 1 January 2013, provides that persons sentenced to whole life or life imprisonment and placed under the "severe regime" are likewise to be kept in permanently locked cells and under heightened supervision unless it is possible, having regard to the requirements of section 198(2) (see paragraph 121 below), to detain them with the general prison population. According to the explanatory note to that amendment, the new provision was necessary to fend off legal challenges brought by life prisoners to their being kept permanently under lock and key even though their regime had been changed from "special" to "severe" (see paragraphs 130-134 below).

119. Sections 197-99 deal specifically with the regime of whole life or life prisoners.

120. Section 197(1) provides that those two sentences are to be served in purpose-built prisons or, failing such prisons, in separate units of other prisons. Section 197(2) provides that in the absence of special provisions applicable to life prisoners, the provisions governing other custodial sentences apply to them as well.

121. Section 198(1) provides that a life prisoner may be placed under a more lenient regime if he or she has been of good conduct and has served not less than five years of his or her sentence. Section 198(2) provides that life prisoners may be placed with the general prison population and take part in common work, training, educational activities, sport, or other activities by decision of the Execution of Punishments Commission on the basis of a personality assessment, provided that they have already been placed under the "severe regime". That commission consists of the prison governor, a member of a supervisory board, the prison deputy governor in charge of security, the head of the prison's social and educational department, and the prison psychologist (section 73(1)). It deliberates at least twice a month (regulation 55(1)).

122. Section 199(1) provides that life prisoners cannot be placed under the "general regime" or given perks that cannot be used inside prison. Section 199(2) provides that persons who have been sentenced to life imprisonment and whose sentence has been commuted by a court to a fixed term of imprisonment (see paragraph 71 above), may be transferred from prison to an open penitentiary facility, where they may be placed under the "general regime" or the "light regime" (which is only available in open penitentiary facilities – section 65(3)).

123. The regime of life prisoners is also governed by regulations 213-220 of the implementing regulations of the 2009 Act. The regulations in respect of whole life imprisonment are the same as for life imprisonment (regulation 220).

124. Regulation 213 provides that life prisoners must be kept in purpose-built prisons or separate high-security units in other prisons. It also provides that life prisoners must be kept in permanently locked cells under heightened supervision, and can only take part in communal activities with other prisoners of the same category.

125. Regulation 214 provides that life prisoners have to be kept isolated from other prisoners also during transfers, medical treatment, visits, open air activities or other occasions when they leave their cells.

126. Regulation 216(1) provides that life prisoners may work in their cells or in purpose-built workstations, if such are available. By contrast, section 71(1) provides, with respect to other prisoners, that they can work in the area of the respective prison or dormitory and, in exceptional cases, on secure external sites. Records have to be kept of life prisoners' work days (regulation 216(2)). However, under Article 38a § 4 of the Criminal Code 1968, in force since 1995, work performed by a life prisoner does not generate early release credits; that is in marked contrast with the position in relation to prisoners serving determinate custodial sentences, in respect of whom two days of work count as three days of incarceration for the purposes of early release (Article 41 § 3 of the same Code).

127. Regulation 217, which echoes section 198(2) of the Act (see paragraph 121 above), provides that life prisoners may be placed with the general prison population and take part in common work, training, educational activities, sport, or other activities by decision of the Execution of Punishments Commission on the basis of a personality assessment, provided that they have already been placed under the "severe regime".

128. Regulation 218, which echoes section 198(1) of the Act (see paragraph 121 above), provides that a life prisoner may be placed under a more lenient regime if he or she has been of good conduct and has served not less than five years of his or her sentence (periods of pre-trial detention do not count).

129. Regulation 219(1), which echoes section 197(1) of the Act (see paragraph 120 above), provides that for a period of five years after their sentence has become final, life prisoners may be placed in special units of existing prisons or in a purpose-built prison determined by the Minister of Justice. During that period, a special team is in charge of the prisoner (regulation 219(2)). After the expiry of the period, and following an overall assessment of the prisoner, he or she may be placed in another prison and under different conditions (regulation 219(3)).

3. The legal challenge to the implementing regulations of the 2009 Act

130. In 2010 two life prisoners brought a legal challenge to regulations 213, 214 and 219 of the implementing regulations of the 2009 Act. They argued that these ran counter to the provisions of the Act.

131. In a judgment of 28 March 2011 (реш. № 4373 от 28 март 2011 г. по адм. д. № 10758/2010 г., ВАС, I о.) a three-member panel of the Supreme Administrative Court upheld the challenge. It found that the Minister of Justice had failed to follow the proper procedure for issuing the regulations. In particular, he had not published the draft regulations on the Ministry's website with a view to making them available to the public and obtaining comments, as required under section 26(2) of the Normative Acts Act 1973. This had been a serious omission. The panel went on to find that regulation 213, in as much as it required that life prisoners be kept permanently under lock and key, ran counter to section 197(1) of the 2009 Act (see paragraphs 120 and 124 above) because it laid down a requirement that did not flow from the text of the statute: such a regulation could specify only the manner of application of requirements flowing from the text of the statute. Regulation 213 could not be regarded as based on any other section of the 2009 Act either. The remaining part of regulation 213, as well as regulations 214 and 219 (see paragraphs 124, 125 and 129 above), were not contrary to the provisions of the 2009 Act.

132. On an appeal by the Minister, in a final judgment of 14 September 2011 (реш. № 11411 от 14 септември 2011 г. по адм. д. № 6341/2011 г., ВАС, петчл. с-в) a five-member panel of the Supreme Administrative

Court overturned the three-member panel's judgment. It held that the failure to publish the draft regulations on the Ministry's website had not amounted to a material breach of the rules of procedure. It went on to state that regulation 213 did not run counter to the provisions of the 2009 Act because it could be regarded as based on section 197(1) read in conjunction with section 71(1) of the Act (see paragraph 118 above). The latter applied to all prisoners placed under the "special regime" and required that they be kept in separate and permanently locked cells.

133. Two judges dissented, saying that the failure of the Ministry to publish the draft regulations on its website had indeed been a serious omission and had vitiated the process of adoption of the regulations.

134. As a result of the dismissal of that legal challenge, two claims for damages brought by the same life prisoners under section 1 of the State and Municipalities Liability for Damage Act 1988 (see paragraph 136 below) and based on the suffering allegedly endured as a result of their impoverished regime were rejected by the Supreme Administrative Court as inadmissible (see опр. № 3355 от 7 март 2012 г. по адм. д. № 3154/ 2012 г., ВАС, петчл. с-в, and опр. № 5065 от 6 април 2012 г. по адм. д. № 14339/2011 г., ВАС, петчл. с-в). The court held that those claims could only be upheld if the statutory instrument against which they were directed had been set aside in prior proceedings, which was not the case.

4. National standards for the treatment of life prisoners

135. On 2 February 2007 the Director of the Directorate for the Execution of Sentences approved, for the first time in Bulgaria, "National standards for the treatment of life prisoners". The purpose of those standards is to "lay down an effective model for the treatment of life prisoners that guarantees concrete support for their physical and mental preservation and ensures that society and prison staff are protected". They set out, among other things, minimum requirements for the material conditions in which those prisoners are to be kept, the applicable security arrangements, and the manner in which life prisoners are to be treated. They call on the prison authorities to ensure, where possible and within the constraints flowing from the applicable security arrangements, that life prisoners are provided with suitable work, education (including, if possible, distance learning), social development, tutelage, programmes for the maintenance of their physical and mental health, and medical care. The standards state, *inter alia*, that all life prisoners are to be enrolled in adaption programmes oriented towards enabling them to accept their situation, creating a sense of perspective, encouraging self-help, maintaining social contacts, stimulating their participation in various activities, and neutralising any depressive and psychosomatic symptoms. The standards also state that life prisoners should have individual sentence plans and periodical assessments, as well as the possibility to discuss issues relating to the execution of their sentence with

the prison administration. According to the standards, life prisoners should have access to cultural and sport activities, the prison library, periodicals, television and radio, religious services and group activities. However, the standards do not appear to make any mention of correctional or rehabilitation programmes.

F. Claims for damages against the authorities

1. Statutory text

136. Section 1(1) of the State and Municipalities Liability for Damage Act 1988 provides that the State is liable for damage suffered by individuals or legal persons as a result of unlawful decisions, actions or omissions by civil servants, committed in the course of or in connection with administrative action. Under Article 204 § 1 of the Code of Administrative Procedure 2006, such a claim can only be brought if the administrative decision (or statutory instrument, as the case may be) has been duly set aside. If the claim relates to an unlawful action or omission, the unlawfulness may be established by the court hearing the claim (Article 204 § 4 of the Code).

2. Case-law under section 1 of the 1988 Act in relation to conditions of detention

137. In 2003 the Bulgarian civil courts started awarding damages under section 1 of the 1988 Act to persons claiming to have suffered non-pecuniary damage as a result of the poor conditions of their detention (see the domestic cases cited in *Hristov v. Bulgaria* (dec.), no. 36794/03, 18 March 2008; *Kirilov v. Bulgaria*, no. 15158/02, §§ 43-48, 22 May 2008; *Shishmanov v. Bulgaria*, no 37449/02, §§ 58-62, 8 January 2009; *Titovi v. Bulgaria*, no. 3475/03, § 34, 25 June 2009; *Simeonov v. Bulgaria*, no. 30122/03, §§ 43-47, 28 January 2010; and *Georgiev v. Bulgaria* (dec.), no. 27241/02, 18 May 2010). The Supreme Court of Cassation upheld those decisions, relying, *inter alia*, on Article 3 of the Convention and the standards laid down by the CPT (see реш. от 26 януари 2004 г. по гр. д. № 959/2003 г., ВКС, IV гр. о.; реш. № 104 от 20 февруари 2009 г. по гр. д. № 5895/2007 г., ВКС, II г. о.; реш. № 538 от 22 октомври 2009 г. по гр. д. № 1648/2008 г., ВКС, II г. о.; реш. № 15 от 29 януари 2009 г. по гр. д. № 4427/2007 г., ВКС, III г. о.; реш. № 233 от 8 май 2009 г. по гр. д. № 1625/2008 г., ВКС, II г. о.; and реш. № 581 от 25 юни 2009 г. по гр. д. № 616/2008 г., ВКС, IV г. о.).

138. However, in some cases the courts refused to award damages, or awarded minimal sums, holding, in particular, that evidence proving poor conditions of detention was not sufficient to also prove that a person who had been kept in such conditions had suffered non-pecuniary damage as a

result of them (see the domestic judgments cited in *Iovchev v. Bulgaria*, no. 41211/98, §§ 62 and 66, 2 February 2006; *Iliev and Others v. Bulgaria*, nos. 4473/02 and 34138/04, § 15, 10 February 2011; *Radkov v. Bulgaria (no. 2)*, no. 18382/05, §§ 17 and 21, 10 February 2011; and *Shahanov v. Bulgaria*, no. 16391/05, §§ 9-11 and 13-14, 10 January 2012).

139. In a decision of 17 October 2012 (опр. № 4681 от 17 октомври 2012 г. по адм. д. № 1347/2012 г., АС-Варна) the Varna Administrative Court discontinued proceedings brought by a prisoner under section 1 of the 1988 Act in relation to the conditions of his detention. It noted that that prisoner had obtained just satisfaction in that respect in proceedings before this Court (see *Shahanov*, cited above). Therefore, any damage suffered by him as a result of those conditions had been made good with the award of just satisfaction made by this Court. It was not permissible to award compensation twice in relation to the same matter. In a final decision of 30 November 2012 (опр. № 15225 от 30 ноември 2012 г. по адм. д. № 13739/2012 г., ВАС, III о.) the Supreme Administrative Court fully upheld the lower court's decision.

3. Cases brought by life prisoners under section 1 of the 1988 Act

140. The courts have dealt with a number of claims brought by life prisoners under section 1(1) of the 1988 Act in relation to the regime and conditions of their detention. What follows is a selection of some of the more important ones.

141. In a final judgment of 5 March 2009 (реш. № 1466 от 5 март 2009 г. по гр. д. № 6339/2007, ВКС, V г. о.) the Supreme Court of Cassation upheld an award of BGN 1,000 (the equivalent of EUR 511.29) to a life prisoner in relation to the lack of sanitary facilities in his cell and the consequent need to use a bucket for sanitary purposes between November 2000 and November 2005. In a judgment of 11 July 2012 (реш. № 10166 от 11 юли 2012 г. по адм. д. № 15508/2011 г., ВАС, III о.) the Supreme Administrative Court[1] awarded the same amounts to each of two life prisoners placed under the "special regime", in respect of the non-pecuniary damage suffered by them as a result of having to relieve themselves in plastic buckets due to the lack of sanitary facilities in their cells between mid-April 2006 and March 2008, when they had been moved to cells containing such facilities. The court relied on this Court's judgments in *Iovchev v. Bulgaria* (no. 41211/98, 2 February 2006), *Radkov (no. 2)* (cited above) and *Shahanov* (cited above), and held that that had constituted treatment contrary to Article 3 of the Convention and therefore damages were payable under section 1(1) of the 1988 Act.

1. On 1 March 2007 claims under section 1(1) of the 1988 Act, with the exception of pending claims, were transferred from the jurisdiction of the civil courts to that of the administrative courts.

142. However, in another case (реш. № 67 от 6 март 2012 г., адм. д. № 393/2010 г., АС-Кюстендил) the Kyustendil Administrative Court refused to award damages for the use of shackles during the transfer of a life prisoner. In finding that that had not been unlawful, it had regard, *inter alia*, to the "special regime" applicable to life prisoners and the requirement, flowing from that regime, to isolate such prisoners even during transfers, and to subject them to heightened supervision. The judgment was upheld by the Supreme Administrative Court.

143. Similarly, in a final judgment of 23 February 2009 (реш. № 82 от 23 февруари 2009 г. по гр. д. № 6452/2007 г., ВКС, III г. о.) the Supreme Court of Cassation dismissed a claim for damages brought by a life prisoner in relation to the failure of the prison administration to allow him to engage in work, educational and cultural activities and sport together with other inmates. The court held that there had been no unlawful omission, within the meaning of section 1(1) of the 1988 Act, on the part of the prison administration because such activities were incompatible with the "special regime" applicable to life prisoners and its requirement that they be isolated from the general prison population (see paragraphs 115 and 118 above).

144. In a final judgment of 14 January 2010 (реш. № 568 от 14 януари 2010 г. по адм. д. № 4934/2009 г., ВАС, III о.) the Supreme Administrative Court dismissed a claim for damages brought by a life prisoner in relation to the failure of the prison administration to provide him with correctional courses, access to radio and television, decent living and sanitary conditions, social contacts, and timely medical assistance. The court held, *inter alia*, that the prisoner had not established that he had suffered any damage as a result of those omissions.

145. In a final decision of 16 March 2012 (опр. № 3837 от 16 март 2012 г. по адм. д. № 3256/2012 г., ВАС, III о.) the Supreme Administrative Court dismissed a claim in which a person sentenced to whole life imprisonment alleged that Parliament's enactment of a statute providing for such a punishment had been in breach of Article 3 of the Convention. It held that the enactment of a statute could not be regarded as administrative action within the meaning of section 1(1) of the 1988 Act.

146. In a judgment of 27 June 2012 (реш. № 421 от 27 юни 2012 г. по адм. д. № 305/2012 г., АС-Плевен, VI с-в) the Pleven Administrative Court dismissed a claim for damages brought by a life prisoner in relation to the size of his cell. It was not fully clear whether the cell had measured six or four and a half square metres, but the court held that even if it had measured only four and a half square metres, it could not be regarded as giving rise to inhuman or degrading treatment. It noted that for the time being Bulgarian law did not lay down minimum requirements for cell size (a requirement that each inmate be provided with at least four square metres

was due to take effect in 2013).[1] In any event, the claimant's cell was larger than four square metres, and it did not matter that he was alone in a cell rather than together with other inmates in a bigger cell. The Supreme Administrative Court refused to entertain the claimant's appeal, as he had failed to pay the requisite fee (опр. № 14725 от 22 ноември 2012 г. по адм. д. № 12653/2012 г., ВАС, III о.).

G. Prohibitive and mandatory injunctions against the authorities

147. Article 250 § 1 of the Code of Administrative Procedure 2006, which came into effect on 1 March 2007,[2] provides that any person who has the requisite legal interest may request the cessation of actions carried out by an administrative authority or a public official that have no basis in the law or in an administrative decision. The request is to be made to the competent administrative court (Article 251 § 1), which has to deal with it immediately (Article 252 § 1) and, having made the necessary enquiries (Article 252(2)-(4)), rule forthwith (Article 253 § 1). The court's decision is subject to appeal, which does not have suspensive effect (Article 254 §§ 1 and 2).

148. In 2009 a life prisoner's legal challenge under Article 250 § 1 to, *inter alia*, the fact that the prison authorities were keeping him in a cell without a toilet or running water was dismissed as being outside the scope of that provision (see опр. № 1366 от 2 февруари 2009 г. по адм. д. № 498/2009 г., ВАС, V о.).

149. Articles 256 and 257 of the same Code, which likewise came into force on 1 March 2007, provide that a person may bring proceedings to enjoin an administrative authority to carry out an action that it has the duty to carry out under a legal provision. If the court allows the claim, it must order the authority to carry out the action within a fixed time-limit.

150. In 2009 the Supreme Administrative Court dismissed a challenge under those provisions to an alleged failure of a prison governor to provide adequate food to inmates (see реш. № 5924 от 11 май 2009 г. по адм. д. № 12132/2008 г., ВАС, III о.).

151. In a judgment of 18 March 2011 (реш. № 65 от 18 март 2011 г. по адм. д. № 501/2010 г., АС-Стара Загора) the Stara Zagora Administrative Court, acting pursuant to a claim by Mr Harakchiev under Article 257 of the

1. At the end of 2012 Parliament amended the relevant provision of the 2009 Act (paragraph 13 of its transitional and concluding provisions), and the requirement of a minimum of four square metres for each inmate is now due to take effect on 1 January 2019.

2. All provisions of the Code, except those concerning judicial review of administrative action and judicial remedies, came into effect on 12 July 2006. The provisions concerning judicial review of administrative action and judicial remedies came into effect on 1 March 2007.

Code, ordered the governor of Stara Zagora Prison to provide him with clothes, shoes and bed linen, in accordance with the governor's obligation under section 84(2)(3) of the Execution of Punishments and Pre-Trial Detention Act of 2009 with which he had failed fully to comply during the previous years. The prison governor appealed. In a final judgment of 27 June 2011 (реш. № 9276 от 27 юни 2011 г. по адм. д. № 5747/2011 г., ВАС, III о.) the Supreme Administrative Court upheld the lower court's judgment, fully agreeing with its reasoning.

152. In a judgment of 8 October 2012 (реш. № 581 от 8 октомври 2012 г. по адм. д. № 337/2012 г., АС-Плевен) the Pleven Administrative Court, acting pursuant to a claim under Article 257 of the Code, ordered the Chief Directorate for the Execution of Sentences to provide, within one month after the judgment became final, a life prisoner with shoes, in accordance with the Directorate's obligation under section 84(2)(3) of the Execution of Punishments and Pre-Trial Detention Act of 2009 and with which it had failed to comply for almost three years. Following appeals by the Directorate and a public prosecutor, in a judgment of 20 November 2013 (реш. № 15349 от 20 ноември 2013 г. по адм. д. № 15221/2012 г., ВАС, III о.) the Supreme Administrative Court quashed that judgment on procedural grounds and remitted the case to the lower court. In a judgment of 12 February 2014 (реш. № 72 от 12 февруари 2014 г. по адм. д. № 1115/2013 г., АС-Плевен) the Pleven Administrative Court made the same order as earlier. The Directorate appealed again. The appeal (адм. д. № 4505/2014 г.) is still pending before the Supreme Administrative Court. A hearing is listed for 27 October 2014.

H. Prisoners' correspondence

153. Articles 30 § 5 and 34 of the Constitution of 1991 provide:

Article 30 § 5

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

Article 34

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

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

154. Section 33(1)(c) of the Execution of Punishments Act of 1969 provided that prisoners had the right to correspondence, which was subject to control by the prison administration. Section 132d(3) of the Act, which applied to persons in pre-trial detention, likewise provided that their correspondence was subject to inspection by the prison administration. In a

decision of 18 April 2006 (реш. № 4 от 18 април 2006 г. по к.д. № 11 от 2005 г., обн., ДВ, бр. 36 от 2 май 2006 г.) the Constitutional Court declared section 132d(3) unconstitutional. After analysing in detail the relevant constitutional and Convention provisions and referring to, among others, this Court's judgments in *Campbell v. the United Kingdom* (25 March 1992, Series A no. 233), *Calogero Diana v. Italy* (15 November 1996, *Reports of Judgments and Decisions* 1996-V) and *Petra v. Romania* (23 September 1998, *Reports* 1998-VII), it held that a blanket authorisation to inspect the correspondence of all detainees without regard to their particular circumstances and the threat which they allegedly posed to society through such correspondence was unconstitutional.

155. Following the Constitutional Court's decision, on 1 September 2006 the implementing regulations of the 1969 Act were amended. Under the new regulation 178(1), pre-trial detainees were entitled to unlimited correspondence which was not subject to monitoring. Letters had to be sealed and opened in the presence of a prison officer, in a manner allowing that officer to make sure that they did not contain money or other prohibited items (regulation 178(2)).

156. Section 86(1)(3) of the Execution of Punishments and Pre-Trial Detention Act of 2009 provides that prisoners have the right to correspondence. Regulation 75(2) of the implementing regulations provides that prisoners' incoming and outgoing correspondence is to be controlled in the interests of security and with a view to preventing the commission of offences. Regulations 75(3) and (4) lay down the manner in which letters are controlled: they have to be sent and received in the presence of a prison officer, and the envelope has to be sealed or unsealed in a manner that satisfies the officer that it does not contain unauthorised objects. If a reasonable suspicion arises that a letter's contents may prevent the uncovering of a serious offence or facilitate the commission of such an offence, the letter may be stopped by order of the prison governor. In such cases, the governor must inform the public prosecutor in charge of supervising the prison.

III. RELEVANT INTERNATIONAL MATERIALS

A. The 1966 International Covenant on Civil and Political Rights

157. The 1966 International Covenant on Civil and Political Rights (999 UNTS 71) was signed by Bulgaria on 8 October 1968 and ratified by it on 21 September 1970; it came into force, with the exception of Article 41, on 23 March 1976. It was published in the Bulgarian State Gazette on 28 May 1976 (обн., ДВ, бр. 43 от 28 май 1976 г.), which means that under Article 5 § 4 of the Constitution of 1991 it is part of domestic law. Article 10 of the Covenant provides, in so far as relevant:

"1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. ...

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. ..."

158. In its General Comment No. 21 on Article 10 (Humane Treatment of Persons Deprived of Their Liberty), adopted at its 1141st meeting (forty-fourth session) on 6 April 1992, the Human Rights Committee said, in paragraph 10, that "[n]o penitentiary system should be only retributory; it should essentially seek the reformation and social rehabilitation of the prisoner".

B. Council of Europe instruments

1. European Prison Rules

159. The European Prison Rules are recommendations of the Committee of Ministers of the Council of Europe to member States on the minimum standards to be applied in prisons. The 1987 European Prison Rules (featuring as an appendix to Recommendation No. R (87) 3) were adopted on 12 February 1987. On 11 January 2006 the Committee of Ministers, noting that the 1987 Rules "needed to be substantively revised and updated in order to reflect the developments which ha[d] occurred in penal policy, sentencing practice and the overall management of prisons in Europe", adopted Recommendation Rec(2006)2 on the European Prison Rules. The new 2006 version of the Rules featured as an appendix to that Recommendation. It reads, in so far as relevant, as follows:

"**Part I**

Basic principles

1. All persons deprived of their liberty shall be treated with respect for their human rights.

2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.

3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.

4. Prison conditions that infringe prisoners' human rights are not justified by lack of resources.

...

6. All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.

...

Part II

Conditions of imprisonment

...

Prison regime

25.1. The regime provided for all prisoners shall offer a balanced programme of activities.

25.2. This regime shall allow all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction.

25.3. This regime shall also provide for the welfare needs of prisoners.

...

Release of prisoners

33.3. All prisoners shall have the benefit of arrangements designed to assist them in returning to free society after release.

...

Security

51.1. The security measures applied to individual prisoners shall be the minimum necessary to achieve their secure custody.

...

51.3. As soon as possible after admission, prisoners shall be assessed to determine:

a. the risk that they would present to the community if they were to escape;

b. the risk that they will try to escape either on their own or with external assistance.

51.4. Each prisoner shall then be held in security conditions appropriate to these levels of risk.

51.5. The level of security necessary shall be reviewed at regular intervals throughout a person's imprisonment.

...

Part VIII

Sentenced prisoners

Objective of the regime for sentenced prisoners

102.1. In addition to the rules that apply to all prisoners, the regime for sentenced prisoners shall be designed to enable them to lead a responsible and crime-free life.

102.2. Imprisonment is by the deprivation of liberty a punishment in itself and therefore the regime for sentenced prisoners shall not aggravate the suffering inherent in imprisonment.

Implementation of the regime for sentenced prisoners

103.1. The regime for sentenced prisoners shall commence as soon as someone has been admitted to prison with the status of a sentenced prisoner, unless it has commenced before.

103.2. As soon as possible after such admission, reports shall be drawn up for sentenced prisoners about their personal situations, the proposed sentence plans for each of them and the strategy for preparation for their release.

103.3. Sentenced prisoners shall be encouraged to participate in drawing up their individual sentence plans.

103.4. Such plans shall as far as is practicable include:

a. work;

b. education;

c. other activities; and

d. preparation for release.

103.5. Social work, medical and psychological care may also be included in the regimes for sentenced prisoners.

...

103.8. Particular attention shall be paid to providing appropriate sentence plans and regimes for life sentenced and other long-term prisoners.

...

Release of sentenced prisoners

107.1. Sentenced prisoners shall be assisted in good time prior to release by procedures and special programmes enabling them to make the transition from life in prison to a law-abiding life in the community.

107.2. In the case of those prisoners with longer sentences in particular, steps shall be taken to ensure a gradual return to life in free society.

107.3. This aim may be achieved by a pre-release programme in prison or by partial or conditional release under supervision combined with effective social support.

107.4. Prison authorities shall work closely with services and agencies that supervise and assist released prisoners to enable all sentenced prisoners to re-establish themselves in the community, in particular with regard to family life and employment.

107.5. Representatives of such social services or agencies shall be afforded all necessary access to the prison and to prisoners to allow them to assist with preparations for release and the planning of after-care programmes."

160. The commentary on the 2006 Rules (prepared by the European Committee on Crime Problems) says that Rule 102 is in line with the requirements of key international instruments including Article 10 § 3 of the International Covenant on Civil and Political Rights (see paragraph 157 above).

2. Resolution 76(2)

161. Since 1976 the Committee of Ministers has adopted a series of resolutions and recommendations on long-term and life prisoners. The first was Resolution 76(2) of 17 February 1976, which recommended to member States to, *inter alia*:

"1. pursue a criminal policy under which long-term sentences are imposed only if they are necessary for the protection of society;

2. take the necessary legislative and administrative measures in order to promote appropriate treatment during the enforcement of such sentences;

...

6. encourage a sense of responsibility in the prisoner by the progressive introduction of systems of participation in all appropriate areas;

...

9. ensure that the cases of all prisoners will be examined as early as possible to determine whether or not a conditional release can be granted;

10. grant the prisoner conditional release, subject to the statutory requirements relating to time served, as soon as a favourable prognosis can be formulated; considerations of general prevention alone should not justify refusal of conditional release;

11. adapt to life sentences the same principles as apply to long-term sentences;

12. ensure that a review, as referred to in 9, of the life sentence should take place, if not done before, after eight to fourteen years of detention and be repeated at regular intervals; ..."

3. Recommendation 2003(23) on the management by prison administrations of life sentence and other long-term prisoners

162. Recommendation 2003(23) on the management by prison administrations of life sentence and other long-term prisoners was adopted by the Committee of Ministers on 9 October 2003. It recommended that in their legislation, policies and practice on the management of life sentence and other long-term prisoners the Member States be guided by the principles contained in the appendix to the recommendation. Those principles read, in so far as relevant, as follows:

"**Definition of life sentence and long-term prisoners**

1. For the purposes of this recommendation, a life sentence prisoner is one serving a sentence of life imprisonment. A long-term prisoner is one serving a prison sentence or sentences totalling five years or more.

General objectives

2. The aims of the management of life sentence and other long-term prisoners should be:

– to ensure that prisons are safe and secure places for these prisoners and for all those who work with or visit them;

– to counteract the damaging effects of life and long-term imprisonment;

– to increase and improve the possibilities for these prisoners to be successfully resettled in society and to lead a law-abiding life following their release.

General principles for the management of life sentence and other long-term prisoners

3. Consideration should be given to the diversity of personal characteristics to be found among life sentence and long-term prisoners and account taken of them to make individual plans for the implementation of the sentence (individualisation principle).

4. Prison life should be arranged so as to approximate as closely as possible to the realities of life in the community (normalisation principle).

5. Prisoners should be given opportunities to exercise personal responsibility in daily prison life (responsibility principle).

6. A clear distinction should be made between any risks posed by life sentence and other long-term prisoners to the external community, to themselves, to other prisoners and to those working in or visiting the prison (security and safety principle).

7. Consideration should be given to not segregating life sentence and other long-term prisoners on the sole ground of their sentence (non-segregation principle).

8. Individual planning for the management of the prisoner's life or long-term sentence should aim at securing progressive movement through the prison system (progression principle).

Sentence planning

9. In order to achieve the general objectives and comply with the principles mentioned above, comprehensive sentence plans should be developed for each individual prisoner. These plans should be prepared and developed as far as possible with the active participation of the prisoner and, particularly towards the end of a detention period, in close co-operation with post-release supervision and other relevant authorities.

10. Sentence plans should include a risk and needs assessment of each prisoner and be used to provide a systematic approach to:

– the initial allocation of the prisoner;

– progressive movement through the prison system from more to less restrictive conditions with, ideally, a final phase spent under open conditions, preferably in the community;

– participation in work, education, training and other activities that provide for a purposeful use of time spent in prison and increase the chances of a successful resettlement after release;

– interventions and participation in programmes designed to address risks and needs so as to reduce disruptive behaviour in prison and re-offending after release;

– participation in leisure and other activities to prevent or counteract the damaging effects of long terms of imprisonment;

– conditions and supervision measures conducive to a law-abiding life and adjustment in the community after conditional release.

11. Sentence planning should start as early as possible following entry into prison, be reviewed at regular intervals and modified as necessary.

...

Managing reintegration into society for life sentence and other long-term prisoners

33. In order to enable life sentence and other long-term prisoners to overcome the particular problem of moving from lengthy incarceration to a law-abiding life in the community, their release should be prepared well in advance and take particular account of the following:

– the need for specific pre-release and post-release plans which address relevant risks and needs;

– due consideration of the possibility of achieving release and the continuation post-release of any programmes, interventions or treatment undertaken by prisoners during detention;

– the need to achieve close collaboration between the prison administration and post-release supervising authorities, social and medical services.

34. The granting and implementation of conditional release for life sentence and other long-term prisoners should be guided by the principles set out in Recommendation Rec(2003)22 on conditional release.

163. In respect of paragraph 34, the report accompanying the recommendation states (at paragraph 131):

"Recommendation Rec(2003)23 contains the principle that conditional release should be possible for all prisoners except those serving extremely short sentences. This principle is applicable, under the terms of the Recommendation, even to life prisoners. Note, however, that it is the possibility of granting conditional release to life prisoners that is recommended, not that they should always be granted conditional release."

4. Recommendation 2003(22) on conditional release (parole)

164. Recommendation Rec(2003)22 on conditional release (parole) was adopted by the Committee of Ministers on 24 September 2003. It provides a series of recommendations governing preparation for conditional release, the granting of it, the conditions which may be imposed, and the procedural safeguards. It reads, in so far as relevant:

"3. Conditional release should aim at assisting prisoners to make a transition from life in prison to a law-abiding life in the community through post-release conditions and supervision that promote this end and contribute to public safety and the reduction of crime in the community.

4.*a*. In order to reduce the harmful effects of imprisonment and to promote the resettlement of prisoners under conditions that seek to guarantee safety of the outside community, the law should make conditional release available to all sentenced prisoners, including life-sentence prisoners.

...

5. When starting to serve their sentence, prisoners should know either when they become eligible for release by virtue of having served a minimum period (defined in absolute terms and/or by reference to a proportion of the sentence) and the criteria that will be applied to determine whether they will be granted release ('discretionary release system') or when they become entitled to release as of right by virtue of

having served a fixed period defined in absolute terms and/or by reference to a proportion of the sentence ('mandatory release system').

...

III. Preparation for conditional release

12. The preparation for conditional release should be organised in close collaboration with all relevant personnel working in prison and those involved in post-release supervision, and be concluded before the end of the minimum or fixed period.

13. Prison services should ensure that prisoners can participate in appropriate pre-release programmes and are encouraged to take part in educational and training courses that prepare them for life in the community. Specific modalities for the enforcement of prison sentences such as semi-liberty, open regimes or extra-mural placements, should be used as much as possible with a view to preparing the prisoners' resettlement in the community.

14. The preparation for conditional release should also include the possibility of the prisoners' maintaining, establishing or re-establishing links with their family and close relations, and of forging contacts with services, organisations and voluntary associations that can assist conditionally released prisoners in adjusting to life in the community. To this end, various forms of prison leave should be granted.

15. Early consideration of appropriate post-release conditions and supervision measures should be encouraged. The possible conditions, the help that can be given, the requirements of control and the possible consequences of failure should be carefully explained to, and discussed with, the prisoners. ..."

IV. RELEVANT REPORTS OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT ("the CPT")

A. Eleventh general report

165. In its eleventh general report (CPT/Inf (2001) 16), published on 3 September 2001, the CPT noted the following in relation to life-sentenced and other long-term prisoners:

"33. In many European countries the number of life-sentenced and other long-term prisoners is on the increase. During some of its visits, the CPT has found that the situation of such prisoners left much to be desired in terms of material conditions, activities and possibilities for human contact. Further, many such prisoners were subject to special restrictions likely to exacerbate the deleterious effects inherent in long-term imprisonment; examples of such restrictions are permanent separation from the rest of the prison population, handcuffing whenever the prisoner is taken out of his cell, prohibition of communication with other prisoners, and limited visit entitlements. The CPT can see no justification for indiscriminately applying restrictions to all prisoners subject to a specific type of sentence, without giving due consideration to the individual risk they may (or may not) present.

Long-term imprisonment can have a number of desocialising effects upon inmates. In addition to becoming institutionalised, long-term prisoners may experience a range of psychological problems (including loss of self-esteem and impairment of social

skills) and have a tendency to become increasingly detached from society; to which almost all of them will eventually return. In the view of the CPT, the regimes which are offered to prisoners serving long sentences should seek to compensate for these effects in a positive and proactive way.

The prisoners concerned should have access to a wide range of purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association). Moreover, they should be able to exercise a degree of choice over the manner in which their time is spent, thus fostering a sense of autonomy and personal responsibility. Additional steps should be taken to lend meaning to their period of imprisonment; in particular, the provision of individualised custody plans and appropriate psycho-social support are important elements in assisting such prisoners to come to terms with their period of incarceration and, when the time comes, to prepare for release. Further, the negative effects of institutionalisation upon prisoners serving long sentences will be less pronounced, and they will be better equipped for release, if they are able effectively to maintain contact with the outside world."

B. Twenty-first general report

166. In its twenty-first general report (CPT/Inf (2011) 28), published on 10 November 2011, the CPT noted the following in relation to solitary confinement as the result of a court decision:

"56. ... The CPT considers that solitary confinement should never be imposed – or be imposable at the discretion of the court concerned – as part of a sentence. The generally accepted principle that offenders are sent to prison as a punishment, not to receive punishment, should be recalled in this context. Imprisonment is a punishment in its own right and potentially dangerous aggravations of a prison sentence as part of the punishment are not acceptable. It may be necessary for a sentenced prisoner to be subject, for a certain period of time, to a solitary confinement regime; however, the imposition of such a regime should lie with the prison authorities and not be made part of the catalogue of criminal sanctions."

C. Report on CPT's 1999 visit to Bulgaria

167. A delegation of the CPT visited Bulgaria from 25 April to 7 May 1999. In its ensuing report (CPT/Inf (2002) 1), published on 28 January 2002, the CPT noted the following in relation to life prisoners (footnotes omitted):

"91. Following a moratorium on the execution of the death penalty in force since August 1990, in December 1998 the Bulgarian National Assembly abolished the death penalty, and introduced two types of life imprisonment: with or without parole.

The CPT recognises that the abolition of the death penalty creates new challenges for the Bulgarian prison system. Later sections of the report will describe in detail the conditions under which life sentenced prisoners were being held in the two prisons visited (cf. paragraphs 118 to 124). Suffice it to say at this stage that their situation left a great deal to be desired, in terms of material conditions as well as activities and possibilities for human contact. Prison staff stressed that the lack of new regulations related to this category of prisoner was preventing the introduction of improvements

to their conditions of detention (the regulations in force dating back to 1995 and 1996). According to the Director of the Main Prison Directorate, greater integration of life sentenced prisoners with other inmates was a very long way off and would require inter alia a fundamental change in the attitude of prison staff.

92. Long-term imprisonment is widely considered to have a number of desocialising effects upon inmates. In addition to becoming institutionalised, such prisoners may experience a range of psychological problems (including loss of self-esteem and impairment of social skills) and have a tendency to become increasingly detached from society to which almost all of them will eventually return. In the view of the CPT, the regimes which are offered to prisoners serving long sentences should seek to compensate for these effects in a positive and proactive way.

Prisoners serving life sentences should have access to a wide range of purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association). Moreover, they should be able to exercise a degree of choice over the manner in which their time is spent, thus fostering a sense of autonomy and personal responsibility. Additional steps should be taken to lend meaning to their period of imprisonment; in particular, the provision of individualised custody plans and appropriate psycho-social support are important elements in assisting such prisoners to come to terms with their period of incarceration and, as appropriate, to prepare for release. Further, the negative effects of institutionalisation upon prisoners serving long sentences will be less pronounced, and they will be better equipped for release, if they are able effectively to maintain contact with the outside world.

In this connection, the CPT wishes to stress that it can see no justification for keeping life sentenced prisoners apart from other prisoners serving lengthy sentences. In many jurisdictions, life sentenced prisoners are not viewed as necessarily more dangerous than other prisoners. Many of them have a long-term interest in a stable and conflict free environment. Risk/needs assessment of life sentenced prisoners, including those without parole, should therefore be made on a case by case basis.

The CPT recommends that the Bulgarian authorities take steps to develop the regulations applicable and regime offered to life sentenced prisoners, taking due account of the factors identified above. Further, the Committee recommends that prison staff be encouraged to communicate and develop positive relationships with this category of prisoner.

...

118. Both prisons were accommodating a certain number of prisoners placed under a special security regime on account of their sentences (life sentenced prisoners with or without parole), perceived dangerousness or troublesome behaviour. The CPT has serious concerns about the conditions in which these prisoners were being held.

119. At Stara Zagora Prison, a new unit (‘2Γ’) had been in operation since 1996, designed to accommodate life sentenced prisoners as well as prisoners segregated on the basis of [regulation] 56 of the Regulations for the [application] of the [Execution of Punishments Act 1969] and Section 15 of the Order concerning the Status of Accused and Defendants. A total of 14 inmates were held in the unit at the time of the visit, of whom three prisoners serving life sentences without parole, three life sentenced prisoners with eligibility for parole review, five prisoners segregated under [regulation] 56 and three under Section 15.

...

120. However, as regards out-of-cell activities, hardly anything had changed. Life sentenced prisoners were offered one hour of outdoor exercise every day, which they took together. The only other time which they spent out of their cells consisted of three trips a day to the sanitary facilities and one visit per month. As in 1995, there were no possibilities for work. Inside their cells, prisoners had access to TV and/or radio, books and newspapers. For those who were alone in a cell, human contact was limited to communication with other prisoners during the outdoor exercise period, rare dealings with prison officers, and occasional visits from family members.

The CPT welcomes the improvements made to the material conditions of life sentenced prisoners at Stara Zagora Prison. **However, it recommends that a full review of their regime be carried out, taking into consideration the criteria outlined in paragraph 92.**

121. Life sentenced prisoners at Burgas Prison were accommodated in the high security Unit 2B. At the time of the visit, there were five prisoners serving a sentence of life imprisonment without parole and three remand prisoners appealing life sentences. Unit 2B was also accommodating three remand prisoners segregated under Section 15 of the Order concerning the Status of Accused and Defendants, and nine prisoners segregated under [regulation] 56 of the [r]egulations for the [application of the Execution of the Punishments Act 1969].

...

122. The only time life sentenced prisoners spent out of their cells was one hour of outdoor exercise per day and short visits to the sanitary facilities. During the outdoor exercise, they were forbidden to communicate with other prisoners, and consequently walked in silence in a row with their hands behind their backs. Some prisoners had books, newspapers and radios in the cells; others had close to nothing.

123. The delegation had the opportunity to examine a new facility under construction designed to accommodate life sentenced and other categories of segregated prisoners. It was located in a former workshop adjacent to the main accommodation building, linked by a door to Unit 2B. The internal structure of the workshop had been demolished, and a plan for repartitioning the area had been drawn up. The plan showed six double-occupancy cells (some 12 m²) and one single cell (7 m²) for disciplinary isolation or control purposes. The cells would have high ceilings and windows situated high in the walls, currently covered by metal plates with small perforations. According to the plan, cell furnishings would comprise a bunk bed, a table, two stools and a twin locker. In-cell sanitation, appropriately partitioned off, was also to be provided. The plan also envisaged a room for visits, as well as access to an association room located in Unit 2B.

The CPT welcomes the plans to construct a new unit for life sentenced and other categories of segregated prisoners, **and would like to be informed of its expected date of entry into operation and the regime of activities envisaged in the unit. The Committee recommends that all metal plates covering the cell windows be removed, thereby facilitating access to natural light and ventilation.**

124. Pending the entry into operation of the new unit, the CPT recommends that:

...

– urgent steps be taken to develop the regime of activities for life sentenced prisoners, taking into consideration the criteria outlined in paragraph 92. As a first step, these prisoners should be allowed to talk with each other during the outdoor exercise period;

– life sentenced prisoners have access to the prison library and are regularly supplied with newspapers.

125. As regards prisoners segregated on the basis of [regulation] 56 of the [r]egulations for the [application] of the [Execution of Punishments Act 1969] and Section 15 of the Order concerning the Status of Accused and Defendants, the CPT has already made a number of remarks and recommendations in the 1995 visit report. The delegation was pleased to learn that at both prisons these prisoners were being offered regular outdoor exercise (although some of them alleged that on occasion it could last less than an hour). However, as regards other aspects of their regime, it was as impoverished as the one already described in respect of life sentenced prisoners. In particular, prisoners placed in segregation were not entitled to go to the library, had no possibilities for work or education, and were allowed very little human contact.

The CPT recommends that the Bulgarian authorities take urgent steps to develop the regimes offered to prisoners placed in segregation.

126. The CPT understands that prisoners segregated under [regulation] 56 of the [r]egulations for the [application] of the [Execution of Punishments Act 1969] are informed in writing of the reasons for the measure taken against them, and are able to contest the measure within 7 days before the Director of the Main Prison Directorate. **The CPT would like to be informed whether there also exist provisions for periodic review of the measure.**

However, the CPT's delegation was unable to establish whether prisoners segregated under Section 15 of the Order concerning the Status of Accused and Defendants benefit from the safeguards referred to above. Prisoners spoken to by the delegation affirmed that they had received no information of the reasons for being segregated or the expected length of the segregation, and were not aware of possibilities to have the measure appealed or reviewed. It is noteworthy that the recently adopted Ordinance No 2 of 19 April 1999 on the Status of Accused and Defendants Remanded in Custody (which has superseded the previous Order) details the cases in which remand prisoners may be segregated, but contains no procedural safeguards. **The CPT would like to receive clarification of the procedural safeguards for remand prisoners placed in segregation.**"

D. Report on CPT's 2002 visit to Bulgaria

168. A delegation of the CPT visited Bulgaria from 17 to 26 April 2002. In its ensuing report (CPT/Inf (2004) 21), published on 24 June 2004, the CPT noted the following in relation to life prisoners (footnotes omitted):

"92. In its previous reports, the CPT made recommendations concerning the conditions under which life-sentenced prisoners were held, and the regime applicable to them. The evidence gathered during the 2002 visit suggests that steps have been taken by the Bulgarian authorities to improve the situation of life-sentenced inmates in the light of these recommendations. In this regard, the CPT's delegation was pleased to learn of plans to progressively integrate life-sentenced prisoners into mainstream prison regimes. Pursuant to the recent amendments to the [Execution of Punishments Act] (cf. [section] 127b), the commission set up at each prison for the purpose of making decisions on prisoners' regime can decide, on the basis of individual risk assessment, to transfer life-sentenced prisoners to ordinary units with the right to participate in work, education, sport and other activities.

...

... life-sentenced prisoners complained about the lack of possibilities for associating among themselves and with other prisoners. The little time available for face-to-face interaction during daily outdoor exercise (which, at Pleven Prison, they took in groups of two) and recreational/sports activities did not offer adequate scope for human contact. **The Committee recommends that life-sentenced prisoners at Pleven Prison be allowed to take outdoor exercise together (and not only in groups of two).**

More generally, **the CPT recommends that the Bulgarian authorities continue to develop the regime of life-sentenced prisoners at Burgas and Pleven prisons, as well as at other prisons throughout Bulgaria, by integrating them in the mainstream prison population, in accordance with the above-mentioned amendments to the [Execution of Punishments Act 1969]. The Committee would like to receive information on the practical use made by the prison commissions of the possibility to transfer life-sentenced prisoners to ordinary units**."

E. Report on CPT's 2006 visit to Bulgaria

169. A delegation of the CPT visited Bulgaria from 10 to 21 September 2006. In its ensuing report (CPT/Inf (2008) 11), published on 28 February 2008, the CPT noted the following in relation to life prisoners (footnotes omitted):

"98. In its previous visit reports, the CPT paid close attention to the situation of prisoners serving life sentences (see paragraph 92 of CPT/Inf (2004) 21; paragraphs 118-124 of CPT/Inf (2002) 1). The delegation which carried out the 2006 visit examined progress made in this area.

99. At the time of the visit, Pleven Prison was holding 8 life-sentenced prisoners, of whom 5 were held in a special section and 3 had been placed in a unit for prisoners serving sentences under strict regime.

In the special section for lifers, the configuration of the cells remained the same as that observed in 2002 (in particular, the cells still measured only 4.5 m²). On a positive note, the cells' grille-fronted door remained open throughout the day, which enabled prisoners to move along the corridor, associate with other life-sentenced prisoners in the unit and have ready access to the sanitary facilities; however, at night a bucket in each cell replaced the toilet. Positive developments concerned outdoor exercise, which all prisoners in the lifers' section took together, and the additional possibility to engage in some sports activities (e.g. table tennis). Further, some work was provided inside the section (making gift bags). All prisoners had a TV set in their cells and there was an additional TV in the corridor. It is also noteworthy that life-sentenced prisoners were not handcuffed when they left their section, took outdoor exercise or saw the doctor.

Since 2004, Pleven Prison had embarked on an 'experiment' of integrating certain life-sentenced prisoners into the general prison population. At the time of the 2006 visit, three such prisoners were being accommodated in a unit for prisoners serving sentences under strict regime (and one more was expected to be moved there soon). They were held in a cell measuring some 22 m² with three other prisoners. Conditions in the cell were generally adequate (large windows, various items of furniture, elements of personalisation). One of the prisoners had a job as a cleaner and the other

two occasionally made gift bags in the cell. The cell doors were open throughout the day and life-sentenced prisoners enjoyed the same rights as the remainder of prisoners under strict regime. It appeared from conversations with other prisoners and staff that the arrival of the life-sentenced prisoners in the unit had not caused any particular dissatisfaction or problems.

100. In Sliven Prison, there were three women serving life sentences. Two of them were being accommodated in separate rooms in Group 7, in conditions of a good standard (i.e. the rooms measured some 16 m² and were light, well-equipped, nicely decorated and tidy). They could associate with other prisoners in the unit during outdoor exercise, meal times and recreation, go to the library and the chapel, as well as work in the unit; further, once a week they were allowed an additional 45 minutes in the yard to do some gardening. However, it is noteworthy that in addition to lifers, Group 7 was accommodating prisoners segregated on administrative, medical or disciplinary grounds; thus lifers were housed alongside the disciplinary cells. **This juxtaposition is unfortunate and suggests that the lifer segregation rule is of a punitive nature.**

The third woman serving a life sentence had recently been moved to a unit for sentenced prisoners (Group 4) and, like in Pleven Prison, this seemed to be working well. The prisoner concerned worked in the sewing workshop and had access to all the other activities available to other inmates (with the exception of education and vocational training which, reportedly, were not available to life-sentenced prisoners).

101. There were 15 lifers at Sofia Prison at the time of the visit; two were being accommodated in the mainstream prison population, while the rest were held in a separate unit in the section used for disciplinary isolation (cf. the comment above concerning the same practice in Sliven Prison). Lifers in the separate unit were accommodated in single cells measuring 7.5 m²; the cells had a small barred window, set too high in the wall to afford a view out. There was integral sanitation which reduced the limited space in the cell; however, the cells would provide adequate sleeping accommodation for one person provided these prisoners were offered a varied programme of out-of-cell activities during the daytime.

However, in contrast to the situation observed in Pleven and Sliven, life-sentenced prisoners in Sofia Prison lacked communal activities. They were locked up in their cells except for periods of outdoor exercise (1.5 hours like the rest of the inmates at Sofia Prison), which all but four lifers took together. The lack of group activities is not justifiable in security terms, given that life-sentenced prisoners already exercise together. The delegation was told of plans to set up a group room for association and other activities for lifers, which would be opened in the near future. In-cell activities included watching TV and reading books from the library and a daily newspaper; further, nine lifers worked in their cells (making gift bags). One prisoner interviewed by the delegation complained that he had been refused permission to have a personal computer in his cell to do a computer literacy course.

The four lifers who did not join the others for communal exercise were segregated under orders reviewed every 6 months. Whenever they were outside the cell, they were handcuffed, including for exercise which they took alone in a secure yard. In the CPT's opinion, there can be no justification for handcuffing a prisoner exercising alone in a secure yard, provided there is proper staff supervision. **The Committee recommends that the Bulgarian authorities review their current policy as regards the handcuffing of the above-mentioned life-sentenced prisoners, in the light of these remarks.**

102. The 'experiment' at Pleven Prison of integrating life-sentenced prisoners into the general prison population is a positive example to be followed in the rest of the country's prisons. At present, the formal criteria for changing the regime of a lifer is to have served at least 5 years under special regime (not counting the period on remand), to have good behaviour and to have formally applied for the change of regime. The CPT wishes to stress that, whereas initial segregation of a person awaiting or starting a life sentence might be deemed appropriate on the basis of individual risk assessment in a specific case, persons awaiting or serving a life sentence should not be subject to a systematic policy of segregation. **The Committee recommends that the Bulgarian authorities review the legal provisions in the light of these remarks.**

As regards those life-sentenced prisoners currently held in special units, the CPT recommends that the Bulgarian authorities continue to develop their regime of activities, in particular by providing more communal activities (including access to work and education) and revising the policy on long-distance learning and computer-based courses.

The Committee would also like to receive confirmation that the communal activities room for lifers in Sofia Prison is now in operation; in this context, it wishes to be provided with information on the range of communal activities provided, the number of lifers using the room each week and the number of hours per lifer per week."

F. Report on CPT's 2008 visit to Bulgaria

170. A delegation of the CPT visited Bulgaria from 15 to 19 December 2008. In its ensuing report (CPT/Inf (2010) 29), published on 30 September 2010, the CPT noted the following in relation to life prisoners (footnotes omitted):

"74. ... [A]t the time of the visit, there were 18 life-sentenced prisoners at Sofia Prison. Three of [them] had been integrated into the mainstream prisoner population, while the remainder were being held in a separate unit (Group 1).

75. Material conditions of detention in the lifer unit had remained basically unchanged since the 2006 visit. The installation of integral sanitation in the cells, with a shower head over the toilet and access to hot water all day, was a positive feature; however, as a result, prisoners had less occasions to leave their cells and interact with staff.

Some of the lifers had their own television sets and playstations in their cells. At the time of the 2006 visit, lifers had had hot plates in their cells, to cook food, which increased their sense of independence and helped to pass the time. The hot plates had reportedly been withdrawn a few weeks before the visit for safety reasons, and lifers had immersion coils for heating water.

76. As regards activities, one notable change since the 2006 visit was the entry into operation of a social room ('club') in the lifer unit. This good facility was decorated in pleasant light colours and furnished with bookcases, a chess table with two chairs, a larger table with five chairs, a cupboard with games including a backgammon board, a television set with DVD player and a sink. Lifers were divided into three subgroups on the basis of common interests (playing cards, chess, discussing legal matters, etc.) and each group was allowed to use the social room for one hour each weekday. At

weekends, there were only the two officers present, which made it difficult to organise activities.

Lifers who were willing to work (12 of the 15 in the lifers unit) worked in their cells on the same kinds of piece work as was observed on the 2006 visit (e.g. putting strings on boutique bags).

Further, outdoor exercise for one and a half hours per day was offered to all lifers. The delegation noted that a shelter had been provided at one end of the exercise yard.

Despite the above-mentioned welcome introduction of a social room, which increased the amount of time spent out of the cells and in association with other prisoners, the daily regime in the lifer unit remained monotonous. **The CPT recommends that the Bulgarian authorities strive to enhance the programme of activities provided to life-sentenced prisoners at Sofia Prison, if necessary, by increasing staffing.**

77. Staff on the lifer unit indicated that two of the inmates were in their first 5 years of a life sentence and were therefore subject to particular security restrictions. The two lifers were escorted in handcuffs and were not allowed television. It was up to the Director to review the use of handcuffs, but there was no time limit on their use and no regular review period.

As already stated in the report on the 2006 visit, the CPT considers that there can be no justification for routinely handcuffing a prisoner within a secure environment, provided there is proper staff supervision. **The Committee recommends that the Bulgarian authorities review the policy of handcuffing life-sentenced prisoners when outside their cells.**

78. The CPT has in the past expressed its serious misgivings about the current legal provisions whereby lifers are systematically subjected to a strict and segregated regime for an initial period ordered by the sentencing court (i.e. 5 years). This approach runs counter to the generally accepted principle that offenders are sent to prison as a punishment, not to receive punishment.

The Committee does not question that it may be necessary for some prisoners to be subject, for a certain period of time, to a special security regime. However, the decision whether or not to impose such a measure should lie with the prison authorities, be based on an individual risk assessment and be applied only for the shortest period of time. A special security regime should be seen as a tool of prison management, and not be made part of the catalogue of criminal sanctions to be imposed by courts.

In many countries, lifers are not viewed as necessarily more dangerous than other prisoners; many of them have a long-term interest in a stable and conflict free environment. Therefore, the approach to the lifer management should proceed from individual risk and needs assessment to allow decisions concerning security, including the degree of contact with others, to be made on a case-by-case basis.

Whereas lifers should not be systematically segregated from other prisoners, special provision should be made to assist lifers and other long-term prisoners to deal with the prospect of many years in prison. In this respect, reference should be made to Rule 103.8 of the European Prison Rules which states that ‘particular attention shall be paid to providing appropriate sentence plans and regimes for life-sentenced prisoners’, taking into consideration the principles and norms laid down in the Council of Europe Recommendation on the ‘management by prison administrations of life-sentence and other long term prisoners’.

Pursuant to Bulgarian law, after the initial 5 years of their sentence, lifers are eligible for allocation within the mainstream prisoner population if they have behaved well and have had no disciplinary punishments. However, in practice, only a minority of lifers (3 out of 18 at Sofia Prison) had found their way into the mainstream, some after many years served in the lifer unit. **The CPT invites the Bulgarian authorities to build on the success of the 'experiment' of integrating some life-sentenced prisoners into the mainstream prison population, which should be considered as an appropriate part of the management of this category of prisoner and reinforced by legislative measures.**

More generally, the CPT recommends that the Bulgarian authorities review the legal provisions and practice concerning the treatment of life-sentenced prisoners, in the light of the above remarks."

G. Report on CPT's 2010 visit to Bulgaria

171. A delegation of the CPT visited Bulgaria from 18 to 29 October 2010. In its ensuing report (CPT/Inf (2012) 9), published on 15 March 2012, the CPT noted the following in relation to life prisoners (footnotes omitted):

"116. During previous visits, the CPT has paid close attention to the situation of life-sentenced prisoners. The 2010 visit provided an opportunity to review progress in this area.

At the outset of the visit, the CPT's delegation learned that the working group which was in the process of drafting a new Criminal Code had decided to propose that the sentence of 'life imprisonment without the right to substitution' (i.e. without possibility of parole) be revoked. This is a welcome development which goes in the direction of the Committee's recommendations. The new Criminal Code was expected to be submitted to Parliament for adoption in 2011. **The CPT would like to receive confirmation that, following the adoption of the new Criminal Code, conditional release (parole) has been made available to all life-sentenced prisoners, subject to a review of the threat to society posed by them on the basis of an individual risk assessment.**

117. At the time of the visit, *Plovdiv Prison* was holding nine life-sentenced prisoners, three of whom had been sentenced to life imprisonment without possibility of parole. All life-sentenced prisoners were being accommodated in a special unit with reinforced security. The delegation was told that three of them had had their regime changed by the competent court from 'special' to 'strict'. Preparations were underway to integrate these prisoners into the mainstream prison population (one of them had already spent a short period of time in an ordinary group).

Lifers were being held one to a cell (measuring some 7 m²). The cells and their furniture were in an advanced state of dilapidation. Further, there was no integral sanitation in the cells and access to the communal toilet was limited to three times a day; during the rest of the time and especially at night, prisoners resorted to buckets in their cells to comply with the needs of nature. The sanitary facilities were in a dilapidated state and unhygienic.

As regards activities, lifers could spend up to 3.5 hours a day outside their cells associating with other prisoners in the unit, participating in hobby groups, playing chess or engaging in sports. Outdoor exercise of one hour per day was taken in a small yard attached to the special unit (see paragraph 104). Lifers were also offered the

possibility to periodically participate in group cultural and sports activities. All of them had a TV set in their cells (but three of the TV sets were broken) and there was access to cable television, as well as a continuous electricity supply. However, none of the lifers had work (though two of the lifers worked as cleaners on a voluntary basis).

118. There were 18 life-sentenced inmates at *Varna Prison* at the time of the visit, including six without the right to parole. Five of the lifers had been integrated in the mainstream prison population, while the rest were being held in a separate high-security area (Group 3 on the ground floor) which also contained the disciplinary isolation cells.

Lifers were accommodated in multiple-occupancy cells (e.g. 5 prisoners in a cell measuring some 20 m²). Like the rest of the prisoner accommodation at Varna Prison, the cells were dilapidated and unhygienic. Access to natural light was very limited and the artificial lighting had to be constantly on during the day in order for prisoners to be able to read. Similar to Plovdiv Prison, access to the communal toilet was limited to three times a day.

The activities offered to lifers consisted of occasional individual and group work (e.g. anger management) and English classes (twice a week) which took place in the unit's dining room. Outdoor exercise, lasting one hour a day, took place in a small courtyard topped with a net. Further, a tennis table had been installed in the corridor of the lifers' unit and could be used for half an hour twice a week. As at Plovdiv Prison, none of the lifers had work. In-cell activities included watching TV and reading books from the library.

119. The CPT has already stressed in its reports on the visits in 2006 and 2008, that, whereas initial segregation of a person starting a life sentence might be deemed appropriate on the basis of individual risk assessment in a specific case, persons serving a life sentence should not be subject to a systematic policy of segregation. At present, the formal criteria for changing the regime of a lifer is to have served at least five years under special regime (not counting the period on remand), to have good behaviour and to formally apply for the change of regime. However, in practice, only a minority of lifers have been moved to the mainstream. **The Committee recommends that the Bulgarian authorities review the legal provisions in order to ensure that the segregation of lifers is based on an individual risk assessment and is applied for no longer than strictly necessary. Meanwhile, the CPT urges the Bulgarian authorities to strive to increase the number of life-sentenced prisoners integrated into the general prisoner population.**

120. **Concerning material conditions in the special units for lifers, the Committee recommends that steps be taken to:**

– improve access to natural light in the cells at Varna Prison;

– ensure that life-sentenced prisoners at both prisons have ready access to the toilet and to discontinue the use of buckets;

– refurbish the lifers' cells and improve the state of the common sanitary facilities at both Plovdiv and Varna Prisons;

– ensure that all inmates have access to a range of basic hygiene products and are provided with materials for cleaning the cells.

As regards those life-sentenced prisoners currently held in special units, the CPT recommends that the Bulgarian authorities continue to develop their regime of activities, in particular by providing more communal activities (including access to work and education)."

172. In their response (CPT/Inf (2012) 10), also published on 15 March 2012, the Bulgarian Government said, *inter alia*, the following:

"**Paragraph 116**

The creating of a new Criminal Code complies with the changes in social relations and socio-economic sphere during the last twenty years. One of the leading tendencies in our work on the project of a new CC is to differentiate penal policy in order to respond to the necessity of effective protection of rights and legal interests of citizens. The strictness of criminal repression will be enforced primarily regarding serious offences (punishable with a deprivation of liberty for a term of at least five years or heavier punishment) and recidivism. At the same time criminal responsibility and the order for its realization regarding minor offences will be lightened.

It is essential to reconsider and amend the system of punishments and other measures of state constraint which are imposed upon perpetration of a crime. It is imperative to abolish some punishments which have lost its meaning in the present days among which life imprisonment without commutation has its central place. The abolition of life imprisonment without commutation may have its grounds in the essence of this punishment which is not more effective than life imprisonment. Everywhere in the Special Part of Criminal Code both punishments are stipulated as alternative, i.e. they are imposed for the same kind of offences. In both cases the sentenced person may be pardoned by the President of the Republic. This question will be laid to a wide public discussion.

In November 2009 a working group for preparation of a new Criminal Code was established within the Ministry of Justice. The members include representatives for legal doctrine (from Sofia University 'St. Kliment Ohridski' and the MoI Academy), court practitioners (Supreme Cassation Court, Supreme Cassation Prosecutor's Office, National Investigation Service), the bar associations as well as experts from the Ministry of Justice. The General Part of the project was published on the website of the Ministry of Justice in January 2011 and many suggestions and comments were received with regard to the provisions. The new draft Criminal Code should be ready in the beginning of 2012 and will be subjected to broad public discussion. Then it should be entered into the National Assembly.

It should be noted that the project for a new Criminal Code will not provide conditional release to persons with life imprisonment sentences. Currently its aim is to abolish the punishment "life imprisonment without commutation". Furthermore, according to the project there will be a possibility for commutation of the punishment "life imprisonment" with "imprisonment for a term of fifteen years". The prerequisites for such commutation shall be that the person has already served at least 15 years of life imprisonment, and that there is evidence this person has been reformed. The punishment "imprisonment for a term of 15 years", which will replace the life imprisonment sentence, shall be served apart from the served term of life imprisonment. Once the punishment has been commuted conditional release may be an option as per the general rules.

Paragraph[s] 117-119

In the prisons of Bulgaria, there are 165 prisoners with life-time convictions. Of them 108 have the right to appeal and for 57 the conviction is irrevocable.

The main activities of these prisoners are in compliance with the legal framework and with the national standards for working with prisoners with life-time convictions,

as ratified in 2007. For this period, 27 prisoners with life-time convictions have been admitted according to the general procedure.

In the first 5 years of the prisoners' stay, their personal characteristics and their psychological state are examined in view of evaluating the possibilities of planning a follow-up correction programme. In this case, the point is not to isolate these prisoners, but rather to accommodate them in separate wards. This five-year term is stipulated by the law and is not imposed by the administration of the prison.

Although such prisoners are accommodated in a separate area, they are offered the opportunity to participate in the social activities held with other prisoners. Programmes for stress prevention, social skills development and computer literacy are implemented. At present, two of them are included in the individual courses of education at the prison schools.

The use of additional suppressive means (including handcuffs) is strictly laid down in the [Execution of Punishments and Pre-Trial Detention Act 2009]. As regards prisoners with life-time convictions being taken out of prison in handcuffs, this is only applied in single cases, and yet not at order of and with the participation of the prisons.

Measures were taken for intensification and diversification of the group forms of social and educational work with life sentenced persons. In all prisons special inspection teams were set up including social activities and educational work inspector and a psychologist who are entrusted with the obligation to work with life sentenced persons. For each inmate sentenced to life an assessment of the offender is made, which is detailed, specific and allows to fully identifying the risks.

At Varna [P]rison the team working with life sentenced persons performs diagnosis of conditions such as anxiety, neuroticism, psychoticism, suicidal risk, etc. on a regular basis. One of the good practices in working with this category is prisoners is the application of collective forms of social and educational work. Currently the psychologists realize one educational program and one group program for mutual aid. As a consequence of the work of the team of specialists five inmates with life sentences were accommodated under general regime, i.e. were taken out from the high security zone and now live with other prisoners.

In the Plovdiv prison, one life sentenced inmate is accommodated under general regime. The following collective forms of work are applied - courses in computer skills, sports tournaments for among the persons convicted to life, a program for development of logical thinking. The ones who express willingness are provided with opportunities to participate in creative activities.

Paragraph 120

In all cells for persons sentenced to life in the Republic of Bulgaria there is access to and availability of daylight, and this applies to the prison in Varna as well.

In the Plovdiv [P]rison toilets were built in all criminal cells and in two of the dormitories of prisoners sentenced to life. Measures have been identified and taken to ensure access to bathrooms to persons sentenced to life in Varna and Plovdiv.

To solve the problem it is necessary to build the sanitary units in the dormitories of prisoners sentenced to life, and this task is scheduled to take place during the overall renovation of the main premises of the prison. For this purpose a technical task will be prepared.

Cleaning and washing materials are provided to inmates sentenced to life in the manner applicable to all prisoners."

H. Report on CPT's 2012 visit to Bulgaria

173. A CPT delegation visited Bulgaria from 4 to 10 May 2012. In its ensuing report (CPT/Inf (2012) 32), published on 4 December 2012, the CPT noted the following in relation to life prisoners (footnotes omitted):

"32. The 2012 visit provided an opportunity to review the situation of life-sentenced prisoners and the extent to which the recommendations and comments made in previous reports had been taken into account. At the outset of the visit, the delegation was informed that no progress had been made as regards the removal from the Criminal Code of the sentence of 'life imprisonment without the right to substitution' (i.e. without possibility of parole). This is highly regrettable.

The CPT considers that it is inhuman to imprison a person for life without any realistic hope of release. Consequently, the CPT must reiterate that it has serious reservations about the very concept according to which life-sentenced prisoners are considered once and for all to be a permanent threat to the community and are deprived of any hope of being granted conditional release. Reference should also be made to paragraph 4.a of the Committee of Ministers' Recommendation Rec (2003) 22 on conditional release (parole) of 24 September 2003 [see paragraph 164 below], which clearly indicates that the law should make conditional release available to all sentenced prisoners, including life-sentenced prisoners.

The CPT once again invites the Bulgarian authorities to amend the legislation with a view to making conditional release (parole) available to all life-sentenced prisoners, subject to a review of the threat to society posed by them on the basis of an individual risk assessment.

33. At the time of the visit, there were 27 life-sentenced prisoners at Burgas Prison, 22 of them accommodated in a special unit (Group 1) with reinforced security, and five integrated into the mainstream prison population.

At Varna Prison, there were 13 life-sentenced prisoners accommodated in the same high security unit as during the 2010 visit and six integrated into the mainstream prison population.

34. While welcoming the efforts to integrate lifers into the mainstream population, this concerned only a minority of them at both establishments. This is hardly surprising considering that the legislation governing the criteria for changing the regime of a lifer had remained unchanged. **The CPT reiterates its recommendation that the Bulgarian authorities review the legal provisions in order to ensure that the segregation of lifers is based on an individual risk assessment and is applied for no longer than strictly necessary.**

35. The cells used to accommodate lifers in the high security units were small at both prisons (some 6 m² at Burgas Prison and 6.5 m² at Varna Prison) and yet were holding up to two prisoners each. However, two cells at Burgas Prison had been created out of three and were larger (some 9 m² each) and had a fully partitioned sanitary annexe; this is in principle a far more satisfactory arrangement. At Varna Prison, one larger cell (of some 20 m²) accommodated five prisoners.

The cells accommodating lifers at Burgas and Varna Prisons were in the same advanced state of dilapidation and insalubrity as the rest of the prisoner accommodation. The situation was compounded at Burgas Prison by damage in some cells resulting from leaking sewage pipes.

On a positive note, cell windows at Burgas Prison had been replaced a few years previously and access to natural light was adequate. That said, the artificial lighting was kept on all night, obliging inmates to improvise lampshades to dim the light. At Varna Prison, access to natural light was still very limited and artificial lighting insufficient.

36. At both prisons, life-sentenced prisoners could shower twice a week. Lifers were released six times a day to go the toilets at Burgas Prison, but only three times a day at Varna Prison. They had to use buckets the rest of the time. As for the common sanitary facilities, they were in an extremely poor state of repair and filthy.

37. As regards material conditions in the units accommodating life-sentenced prisoners, the CPT recommends that steps be taken to:

– ensure that all life-sentenced prisoners at both prisons have ready access to a proper toilet facility at all times, including at night; resort to buckets should be abandoned;

– carry out the necessary repair work in the common sanitary facilities without delay;

– enlarge and refurbish the cells accommodating lifers, following the example of the two cells of some 9 m² at Burgas Prison;

– improve access to natural light and artificial lighting in the cells at Varna Prison;

– reduce the intensity of artificial lighting at night in the cells at Burgas Prison;

– ensure that all inmates have access to a range of basic hygiene products and are provided with sufficient materials for cleaning their cells, and have access to facilities for washing and drying their clothes.

In addition, **the Committee invites the authorities to ensure that all life-sentenced prisoners can use the dining areas in their units instead of eating their meals in the cells.**

38. Similar to the other prisoners at Burgas Prison, lifers took their daily outdoor exercise in two one-hour sessions in the yards described in paragraph 29. At Varna Prison, lifers had one hour of outdoor exercise a day and 30 minutes per week access to table tennis in the corridor's unit.

The CPT was pleased to note that, at Burgas Prison, nine lifers (of whom seven were in the special unit) had been offered in-cell work consisting of assembling markers; in contrast, at Varna Prison no lifers had work. One lifer integrated in the mainstream prison population at Varna Prison was attending the recently opened school, which represented the only positive development as regards organised activities in comparison with the situation observed during the 2010 visit.

As regards other activities, lifers at both prisons could have TV and radio in their cells, as well as books.

The occasional individual and group work observed in 2010 at Varna Prison had been discontinued. At Burgas Prison, the delegation was informed that regular anger

management, behavioural and emotional group work organised by the social worker, which had been discontinued 18 months previously, was about to resume. **The CPT would like to receive confirmation of the resumption of these activities at Burgas Prison.**

39. The delegation noted that some written individual plans had been developed at both prisons for lifers. That said, there appeared to be little or no structurally planned intervention on the part of the staff to attempt to provide appropriate mental and physical stimulation to these prisoners. In the CPT's opinion, the regime for life-sentenced prisoners should be fundamentally reviewed. Small-group isolation for extended periods is more likely to de-socialise than re-socialise people. There should instead be a structured programme of constructive and preferably out-of-cell activities; educators and psychologists should be proactive in working with life-sentenced prisoners to encourage them to take part in that programme and attempt to engage them safely with other prisoners for at least a part of each day.

The CPT recommends that the Bulgarian authorities continue to develop the regime of activities for life-sentenced prisoners in the light of the above remarks, in particular by providing more communal activities (including access to work and education)."

174. In their response (CPT/Inf (2012) 33), also published on 4 December 2012, the Bulgarian Government said, *inter alia*, the following:

"...

The Varna [P]rison

...

Material conditions in the lifers ward

– currently a repair is being carried out in the ward – plastering and painting;

– sanitary units are being constructed in each bedroom;

– it is presently technically impossible to expand and restructure the cells for purely architectural and engineering reasons;

– the artificial lighting in the Varna [P]rison is turned off for the night;

– the access to daylight is improved by removal of obsolete physical security facilities;

– the amateur team of the prison society gives away on a monthly basis hygiene preparations and detergents. In addition, the health officer of the prison receives preparations for maintenance of the prison kitchen, the common areas and the prison hostel. Access is provided to laundry washing and drying room.

The window bars are replaced in the cells of the lifers in the Varna prison. More daylight is thus ensured. Repairs are currently being carried out in their cells, as a wash-basin and toilet with constant running water are being installed in every room.

...

In relation to the CPT's recommendations for further development of the programmes for labour, educative and professional activities with the persons deprived of liberty the Managements of the Burgas and Varna prisons have taken steps in this aspect, and namely:

In the Burgas [P]rison

...

– The specialized programmes were increased and more persons deprived of liberty were included in the training group for development of social skills. Seven such programmes function for the time being. About 200 persons deprived of liberty visit them for one year. These programmes include charged and accused persons, as well as lifers. Every inspector conducts the programme they are in charge of two times in the year, i.e. one per six months.

...

In the Varna [P]rison

...

– A lifer accommodated in the common areas will continue his education in a school. A lifer accommodated in the common areas is appointed as a construction worker under the staff-table.

...

– Anger mastering teamwork is conducted with the participation of 8 persons deprived of liberty – lifers and a group of 12 persons deprived of liberty-sentenced.

As regards lifers, the social-and-educative activities performed in respect of them are conducted on the basis of the provisions of the Execution of [Punishments] and [Pre-Trial Detention] Act and the [implementing regulations], as well as in compliance with the national standards for treatment of lifers.

As of 01 September 2012 167 persons serve life imprisonment punishment in the penitentiary facilities, 59 of them without parole and 108 – with parole.

Considerable efforts were made in the last years to improve the conditions of daily activities in the high security areas. The goal is to achieve treatment of the lifers that is closer to the European standards.

The improvement of their quality of life is precondition for a decrease of the number of appeals to various institutions, claims and demands to the state. This allows the employees to seek for new opportunities to give meaning to their stay, as well as opportunities for more purposeful individual and educative work with them. There is a striving to stimulate the proper behaviour, preservation of their psychological status and revealing before them of prospects of change in the legal status. The successful integration of lifers with the other persons deprived of liberty is not only an 'experiment' but it is an affirmed practice in the prisons and is a part of the management of this category of legal offenders.

In 2011 8 lifers were accommodated under the general procedure or twice as many compared to 2010. This positive trend, except for effective corrective activity, is also indicative of a considerable change in the attitude towards this category of sentenced persons on the part of the relevant prison administration.

Important progress in the social-and-educative work with lifers is reported towards activation in the implementation of the group forms of work with them in the high security areas. In addition, psychological consultations are deployed and diagnostic activities with respect of the current psychological status of this category of sentenced persons. Thereby, forecasts are made at an earlier stage for conditions of higher anxiety, depressive conditions and suicidal risks.

Lifers are included in the school-and-educative process through an individual form of training at the schools in the respective prisons.

All teams implementing specialized group programmes with lifers report high effectiveness towards restriction of the personal regress from the continuous isolation, improvement of the interrelations between the prison administration and the lifers and development of social skills necessary in their accommodation under the general procedure.

Considerable difficulties in the social-and-educative work are reported in respect of lifers with personal disorders, whose number is constantly increasing. High risk is identified about these persons of causing serious damages to the surrounding people and it remains relatively constant despite the interventions applied."

V. REPORT OF THE BULGARIAN HELSINKI COMMITTEE ON WHOLE LIFE IMPRISONMENT

175. Having carried out research on the topic of whole life imprisonment in Bulgaria between June 2009 and February 2010, in April 2010 the Bulgarian Helsinki Committee published a report entitled "Life imprisonment without commutation – inhuman and degrading punishment". The report only dealt with persons serving a whole life sentence of life imprisonment, not those serving life imprisonment.

176. The report said, among other things, that at the time of the visits to individual prisons, all life prisoners in Plovdiv Prison had been in single cells. In Stara Zagora Prison, two life prisoners had shared a cell, but all the others had been in single cells as well. Save for Plovdiv Prison and some other prisons that did not include Stara Zagora Prison, the units housing life prisoners were in a very poor state of repair: the floors and walls were dirty, and the furniture, invariably attached to the floor, was very old. Some units had double bunk beds, which were seldom used however. Life prisoners took their meals in their cells. Sunlight in the units earmarked for them was often insufficient. Windows typically measured 1 by 0.6-0.8 metres and were situated at about two metres from the floor, which prevented the inmates from looking out of them. The window frames in the life prisoners' unit of Plovdiv Prison – but not in that of Stara Zagora Prison – were new. Artificial lighting was never turned off, so as to make it possible for guards visually to inspect the cells at all times. Some inmates complained that that made it hard for them to go to sleep, especially if the lights were luminescent. No life prisoners' unit had a ventilation system, and fresh air only came through the windows when they were open, which was a problem in winter because even in the coldest days heating was only turned on for one hour in the morning and one hour in the afternoon. Life prisoners had to wash their clothes during their visits to the toilet, and dry them in their cells. In-cell toilets had been built in several prisons, but not in Plovdiv or Stara Zagora Prisons. Access to the common toilets was possible for thirty minutes in the morning, at lunch and in the evening. During that time, life

prisoners also had to wash their buckets and eating utensils. To relieve their needs during the rest of the time, they had to call the guards. Since most prisons did not have a signalling system, prisoners had to bang on the doors of their cells or shout. That often caused conflicts with the guards, and prisoners therefore often preferred to relieve themselves in buckets in their cells. In all prisons except Pleven Prison, life prisoners remained permanently locked in their cells. In Plovdiv Prison, the one-hour daily walk had been extended by thirty minutes, and in Stara Zagora Prison by twenty minutes. In most prisons, life prisoners took their daily walk in separate yards. Those yards were quite small, and in some prisons, such as Plovdiv Prison, did not allow a proper work out.

177. The report went on to say that in August 2009 only eight persons serving a whole life sentence had been provided work: seven inside their cells and one outside. Later, that number had dropped. Finding suitable work for such prisoners was not an easy task for the prison authorities, and in Stara Zagora Prison, for instance, no life prisoner had ever been provided with work. In Plovdiv Prison life prisoners had for a period of time been given the job of packing surgical gloves.

178. The report also noted that most life prisoners had their own television sets, and some also had radios. Since most of those prisoners had lived in the same cells for a number of years, they had tried to arrange them in such a way as to resemble, as far as possible, home interiors. Plovdiv Prison and Stara Zagora Prison did not have clubs in their high-security units. Only few life prisoners had been given the opportunity to engage in meaningful activities. Care for them was very hard because of the lack of prospects of release. Nevertheless, in some prisons the teams working with life prisoners had made serious attempts to support them psychologically and give them a sense of perspective, and the impetus to keep up their social contacts, take part in activities, and counter any depressive or psychosomatic symptoms. In some prisons, however, the treatment of life prisoners fell short of the requirements of the "National standards for the treatment of life prisoners" (see paragraph 135 above), and some of the prisoners concerned had complained that no individual work was being carried out with them and that no cultural, informational or sport activities were being organised for them.

THE LAW

I. REGIME AND CONDITIONS OF THE APPLICANTS' DETENTION

179. Mr Harakchiev and Mr Tolumov alleged that the prison regimes to which they were subjected as whole life and life prisoners respectively,

coupled with the material conditions in which they were kept, amounted to either torture or inhuman and degrading treatment, in breach of Article 3 of the Convention.

180. Article 3 of the Convention provides as follows:

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

A. Admissibility

1. Alleged abuse of the right of application

(a) The parties' submissions

181. The Government submitted that the applications, in as much as they concerned the conditions of the applicants' detention, were deliberately based on untrue facts and not supported by any evidence, and were therefore an abuse of the right of application. The description of the relevant conditions in both applications was identical even though the two applicants were in different prisons. Furthermore, those descriptions fully matched the description of the conditions of detention in the application of another life prisoner, who was in a third prison.

182. The applicants replied that the descriptions of the conditions of their detention were quite similar simply because the conditions themselves were very much alike. The Court had found breaches of Article 3 of the Convention on the basis of almost identical factual allegations in a number of cases against Bulgaria.

183. In response, the Government pointed out that they had presented evidence, including photographs, showing that the applicants' allegations were not true. A number of prisons in Bulgaria were undergoing renovation, and conditions in many of them had improved, but the applicants had failed to keep the Court apprised of that. Conditions in different prisons in Bulgaria were disparate, as was evident from the reports of the CPT, which had lately only visited some prisons, such as the one in Burgas, because it was aware that the conditions in other prisons had significantly improved in the past few years.

(b) The Court's assessment

184. The notion of "abuse", within the meaning of Article 35 § 3 (a) of the Convention, must be understood as any conduct of the applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and that impedes the proper functioning of the Court or the proper conduct of the proceedings before it (see *Miroļubovs and Others v. Latvia*, no. 798/05, §§ 62 and 65, 15 September 2009). An application may exceptionally be rejected on that ground if, among other

things, it is knowingly based on untrue facts (see, as a recent example, *F.A. v. Cyprus* (dec.), no. 41816/10, §§ 39, 40, 42 and 43, 25 March 2014), the most egregious example being applications based on forged documents (see, for instance, *Jian v. Romania* (dec.), no. 46640/99, 30 March 2004; *Bagheri and Maliki v. the Netherlands* (dec.), no. 30164/06, 15 May 2007; and *Poznanski and Others v. Germany* (dec.), no. 25101/05, 3 July 2007). However, a deliberate attempt to mislead the Court must be established with sufficient certainty (see *Assenov and Others v. Bulgaria*, no. 24760/94, Commission decision of 27 June 1996, DR 86-A, p. 54, at p. 68; *Miroļubovs and Others*, cited above, § 63 *in fine*; and *Komatinović v. Serbia* (dec.), no. 75381/10, 29 January 2013).

185. In the instant case the applicants made a number of allegations in their applications concerning the conditions of their detention. Whilst the Government have disputed the accuracy of most of those allegations, there is nothing in the case file to suggest that they are far removed from reality or could possibly be regarded as a deliberate attempt to mislead the Court. Those allegations, and the Government's counter-assertions, are part of the dispute between the parties about whether or not there has been a breach of Article 3 of the Convention in relation to the conditions of the applicants' detention. Accordingly, the parties can submit arguments and counter-arguments on the basis of those allegations, which the Court can accept or reject, but such allegations cannot in themselves be regarded as an abuse of the right of individual application (see *Udovičić v. Croatia*, no. 27310/09, § 125, 24 April 2014).

186. The Government's objection must therefore be rejected.

2. Exhaustion of domestic remedies

(a) The parties' submissions

187. The Government submitted that the applicants had failed to exhaust domestic remedies. Mr Tolumov had not tried to bring a claim for damages under section 1 of the 1988 Act in relation to the conditions of his detention. Since those conditions had improved, such a claim would have been an effective remedy. As regards Mr Harakchiev, he had brought such a claim in October 2009 but the proceedings were still pending.

188. The applicants replied that in their situation a claim for damages under section 1 of the 1988 Act was not an effective remedy. Both of them were still serving their sentences, and Mr Harakchiev was still under the "special regime" applicable to life prisoners. That regime was directly based on the wording of the applicable provisions, and the Bulgarian courts had for that reason dismissed claims under section 1 of the 1988 Act in relation to the conditions of detention necessarily imposed under it. It was true that Mr Harakchiev had been awarded BGN 400 (the equivalent of EUR 204.52) in respect of the material conditions of his detention. However, it must not

be overlooked that the proceedings in his case were still pending on appeal and that the sum awarded to him by the first-instance court was too low. As regards Mr Tolumov, who was now serving his sentence under the "severe regime", the material conditions of his detention had not improved since the lodging of his application. Therefore, a claim for damages would not have been an effective remedy in his case either.

189. In response, the Government submitted that it could not simply be presumed that the two applicants were still being kept in poor conditions of detention; that had to be proved. In relation specifically to Mr Harakchiev, the national courts dealing with his claim for compensation were the only authority competent to determine the extent of the damage suffered by him. Moreover, the first-instance court's judgment had been appealed against, and it was still uncertain how the appellate court would rule. There was, nonetheless, a risk that Mr Harakchiev might obtain double compensation: in these proceedings and in the domestic proceedings.

(b) The Court's assessment

190. The Court finds that the question whether the applicants have exhausted domestic remedies with respect to this complaint is closely linked to the merits of their complaint under Article 13 of the Convention that they did not have such remedies (see paragraph 215 below). The Government's objection must therefore be joined to the merits of that complaint (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 70, 10 January 2012).

3. The Court's conclusion on the admissibility of the complaint

191. The complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The Government's observations

192. The Government submitted, in relation to the applicants' prison regime, that the "special regime" normally applicable to life prisoners – which entailed keeping them permanently under lock and key and their segregation from other prisoners – was not incompatible with Article 3 of the Convention. It was required by law on account of the seriousness of their offences, and was necessary for the purpose of assessing the risk posed by those prisoners. That regime could be changed to a less stringent one if the prisoner had served at least five years and had shown good conduct; it

was therefore possible for a life prisoner to influence his prison regime. Under the applicable rules, life prisoners had to undergo annual risk assessments, and such assessments had been drawn up in respect of both applicants.

193. In the case of Mr Harakchiev, the risk levels had remained consistently high: all of his annual reports said that his attitude towards law and order was very negative, that there was a high risk of recidivism, and that he did not show any signs of rehabilitation. His attitude towards the prison authorities and other inmates was hostile, and he had been subjected to numerous disciplinary punishments. Mr Harakchiev was also a serial litigator, having brought about seventy cases against the prison authorities. Some of those – concerning for instance the lack of truffles in the daily menu or the prohibition on bringing bulk tobacco into prison – had been clearly frivolous. Although Mr Harakchiev's regime did not permit communal activities, in November 2006 he had been allowed to take part in a yoga course. He could also interact with prison officers. For instance, in 2009 he had had a series of meetings with the prison psychologist, but had then chosen to abandon individual consultations. Once or twice he had met with television journalists for interviews. His contacts with other inmates were confined to meeting other life prisoners during the daily outdoor walk, meals and visits to the toilet. In his cell, Mr Harakchiev had a television set with fifty channels and a personal radio. He also had periodical access to a digital video player on which he could play two films a week, unlimited access to the prison library, and the possibility, which he had not used in the last few years, to subscribe to newspapers and magazines. During his daily walk, he had access to fitness equipment, a basketball hoop, a basketball, a football and a shuttlecock.

194. Since his arrival in prison in 2000 Mr Tolumov had shown very good conduct, for which he had been rewarded ten times. He had been given disciplinary punishments only four times, the latest being in 2009. Staff working with him had noted positive changes in his thinking and conduct. He actively took part in work with other life prisoners, treated prison staff with respect, and willingly helped with the cleaning of the unit where he was housed. He was not prone to conflicts and enjoyed the respect of other inmates. His contacts with them were confined to meeting them during the daily walk, meals and visits to the toilet. He actively corresponded with friends and relatives and, albeit rarely, received visits. He had also taken part in a number of communal activities, such as quizzes and musical recitals. In his cell, Mr Tolumov had a television set with fifty channels and a personal radio. He could also subscribe to newspapers and magazines, and use the prison library and sports room. He had enrolled in a weekly computer skills class. In view of the positive changes in his personality, in February 2013 his regime had been changed from "special" to "severe".

195. The Government submitted further, in relation to the material conditions of the applicants' detention, that those conditions corresponded to living standards in Bulgaria, where, according to the latest statistical data, almost half of the population lived below the poverty line and almost a quarter of the population inhabited dwellings that did not have in-house toilets with running water, and where both the average salary and the average pension were very low. It could not therefore be said that the conditions of the applicants' detention had reached the minimum threshold of severity required to constitute inhuman and degrading treatment.

(b) The applicants' observations

196. The applicants pointed out that the Government had only provided annual assessments for Mr Harakchiev for 2009, 2010, 2011 and 2013. Those assessments were wholly stereotypical, and painted Mr Harakchiev in a negative light solely on account of the "campaign" that he had mounted against "all institutions"; indeed, it transpired from those assessments that the court cases brought by him in relation to the conditions of his detention had been the main reason why the authorities branded him as dangerous. The Government had only provided annual assessments for Mr Tolumov for 2008, 2009, 2011 and 2012. However, other inmates testified that life prisoners in Plovdiv Prison only met the prison psychologist once every two years. All those factors showed that the assessments were formal, superficial and unprofessionally prepared. The "special regime" of life prisoners, which had been criticised by the CPT, was unduly restrictive, and the possibility to request that it be changed after five years of incarceration was not attended by sufficient safeguards against arbitrariness; for instance, there was no definition of what constituted "good conduct". The change in Mr Tolumov's prison regime had been merely formal because his prison routine had remained the same even after the change of regime.

197. The applicants went on to reiterate in detail their allegations in respect of the material conditions of their detention, and to contest the Government's assertions in that respect.

(c) The Government's additional observations

198. In their additional observations, the Government submitted that they had only provided the Court with the latest psychological assessments of the two applicants to illustrate that such assessments were being regularly made. The assessments could not be regarded as stereotypical, especially bearing in mind Mr Harakchiev's unwillingness to engage in any contact with prison officials. The very fact that, unlike Mr Harakchiev's regime, Mr Tolumov's prison regime had been changed in view of the positive developments in his personality showed that the authorities took a case-by-case approach and that a life prisoner's regime depended entirely on his own conduct. Each prisoner's annual assessment was prepared by specially

qualified inspectors. As a rule, only the most experienced inspectors worked with life prisoners, and they always consulted a psychologist before drawing up an assessment of the prisoner's dangerousness. Changes to the regime were not arbitrary, but based on "good conduct" – a notion that could not usefully be circumscribed but had been reasonably elucidated in the practice of the competent Execution of Punishments Commissions. Mr Harakchiev's refusals to communicate with the prison authorities, his incitement of other inmates to break the rules, and his hunger strikes and frequent disciplinary offences could not be regarded as "good conduct". The reverse was true in the case of Mr Tolumov.

2. The Court's assessment

(a) General principles laid down in the Court's case-law

199. The general principles governing the application of Article 3 of the Convention to the regime and conditions of detention of life prisoners – with special reference to solitary confinement, recreation and outdoor exercise – were recently set out in detail in the Court's judgment in *Babar Ahmad and Others v. the United Kingdom* (nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09, §§ 200-14, 10 April 2012). The Court has in particular held that an impoverished regime which isolates a life prisoner for an extended period of time is likely, in the long term, to have damaging effects, resulting in deterioration of mental faculties and social abilities (see also *Iorgov*, cited above, §§ 83-84), and that such a regime cannot be regarded as warranted unless based on proper risk considerations, and should not be maintained after such risk has subsided (see *Babar Ahmad and Others*, cited above, §§ 207-11).

200. Another recent restatement of those principles, with reference to the regime and conditions of detention of a person serving a whole life sentence in Bulgaria, may be found in the Court's judgment in the case of *Chervenkov v. Bulgaria* (no. 45358/04, §§ 60-66, 27 November 2012).

201. A very detailed recent restatement of the general principles governing the examination of material conditions of detention under Article 3 of the Convention may be found in the Court's judgment in the case of *Ananyev and Others* (cited above, §§ 139-59).

202. It should also be noted that in cases arising from individual applications, the Court must focus its attention not on the domestic law itself but on the manner in which it has been applied to the applicant (see *Savičs v. Latvia*, no. 17892/03, § 134, 27 November 2012, with reference specifically to the prison regime of a life prisoner). It must moreover – in contrast with the approach of some Bulgarian courts in the examination of claims under section 1 of the 1988 Act (see paragraphs 30-36 above, and *Shahanov*, cited above, § 40) – take into account the cumulative effects of the conditions of detention of which the applicant complains (see *Dougoz*

v. Greece, no. 40907/98, § 46, ECHR 2001-II, and, more recently, *Idalov v. Russia* [GC], no. 5826/03, § 94, 22 May 2012).

(b) Application of those principles in the present case

203. In the present case, it is not disputed that – despite the statutory differences between the "special regime" normally applicable to life prisoners and the "strict regime", which is slightly more lenient but at present likewise entails, as a rule, keeping those prisoners in permanently locked cells (see paragraphs 118, 124 and 125 above) – both applicants remained in permanently locked cells and isolated from the rest of the prison community throughout the entire period of their incarceration (see paragraphs 12 and 38 above). In spite of some minor differences between the parties' versions on that point (see paragraphs 18 and 44 above), it has not been disputed that throughout that period the applicants had to remain confined to their cells for the vast majority of the time, twenty-one to twenty-two hours a day, and that during that time they could not interact with other inmates, even those housed in the same units as them (the period of five years between 2002 and 2007, when Mr Harakchiev had a cellmate, was obviously a limited exception to that). The fact that in Mr Harakchiev's case the effects of that regime were to some extent, especially in 2010-12, mitigated by his numerous transfers to other prisons in connection with his participation in hearings in cases brought by him against the authorities (see paragraph 20 *in fine* above) cannot be regarded as decisive in that respect. It should be noted in that connection that under the "special regime" – applied to Mr Harakchiev at that time – life prisoners have to be kept isolated from other inmates during prison transfers as well (see paragraph 125 above).

204. The Court has held that all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long term, to have damaging effects, resulting in the deterioration of mental faculties and social abilities (see *Iorgov*, cited above, §§ 83-84). It is true that the applicants in the present case were not subjected to complete isolation and that an inmate's segregation from the prison community does not in itself amount to inhuman or degrading treatment. However, it cannot be overlooked that in the present case both applicants were kept under such an impoverished regime for extended periods of time – twelve and fourteen years respectively. In such circumstances, isolation should be justified by particular security reasons obtaining throughout the duration of this measure. It can hardly be accepted that this was automatically necessary solely on account of the applicants' sentences to whole life and life imprisonment respectively as an inherent part of the relevant punishment for at least the initial five years of the sentence. The automatic segregation of life prisoners from the rest of the prison community and from each other, in particular where no comprehensive activities outside the cell or stimulus inside the cell are available, may in itself raise an issue under Article 3 of

the Convention (see *Savičs*, cited above, § 139). Moreover, it runs counter to two instruments to which the Court attaches considerable importance despite their non-binding character (see, *mutatis mutandis*, *Rivière v. France*, no. 33834/03, § 72, 11 July 2006, and *Dybeku v. Albania*, no. 41153/06, § 48, 18 December 2007): Rule 25.2 of the 2006 European Prison Rules, which says that the prison regime should allow "all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction" (see paragraph 159 above), and point 7 of Recommendation 2003(23) on the management by prison administrations of life sentence and other long-term prisoners, which says that "[c]onsideration should be given to not segregating life sentence and other long-term prisoners on the sole ground of their sentence" (see paragraph 162 above). In that connection, it should also be noted that in its reports on its visits to Bulgaria, the CPT has repeatedly emphasised that life prisoners should not be regarded, solely on the basis of their sentence, as more dangerous than other prisoners, and that the assessment of the risk that they pose needs to be made on a case-by-case basis (see paragraphs 167-171 above). In that context, reference also needs to be made to the CPT's eleventh general report, which said that there was "no justification for indiscriminately applying restrictions to all prisoners subject to a specific type of sentence, without giving due consideration to the individual risk they may (or may not) present" (see paragraph 165 above), and to its twenty-first general report, which made the same point as the above-mentioned reports on the CPT's visits to Bulgaria (see paragraph 166 above).

205. The Court notes that the authorities were required to carry out, and did carry out, specific initial and periodic risk assessments of prisoners sentenced to life imprisonment. However, the Court cannot agree that the number of claims against the prison authorities, even if frivolous, and the fact of vigorously seeking to vindicate his or her personal rights (see paragraph 24 above) can be regarded as reliable criteria showing that a prisoner presents a higher security risk and that his very restrictive prison regime is therefore justified. The Court has already had occasion to find, albeit in the context of Article 10 of the Convention, that it is impermissible to impose a disciplinary punishment on a prisoner for complaining of the conditions of his detention (see *Marin Kostov v. Bulgaria*, no. 13801/07, §§ 45-51, 24 July 2012). It should also be noted in that connection that section 90(6) of the Execution of Punishments and Pre-Trial Detention Act of 2009, in force since 1 June 2009, specifically prohibits the imposition of disciplinary punishments in retaliation for applications or complaints made by prisoners (see paragraph 112 above).

206. In that connection the Government cited one incident involving a scuffle with another inmate for the whole period of Mr Harakchiev's incarceration (see paragraph 13 above), and no incidents involving violence

towards prison staff. It should be noted in this regard that point 6 of the above-mentioned Recommendation 2003(23) states that it is important to distinguish clearly between risks posed by life prisoners to the external community, to themselves, to other prisoners and to those working in or visiting the prison (see paragraph 162 above). The Court is not persuaded that, apart from the above-mentioned facts, there exist other circumstances showing that Mr Harakchiev could, throughout his incarceration, be regarded as dangerous to the point of requiring such stringent measures as those applicable under his prison regime.

207. The stringent regime appears even less justified in the case of Mr Tolumov, who, by the Government's own admission, has shown very good conduct ever since his arrival in prison in 2000 and, according to his annual assessments, has consistently avoided getting drawn into conflicts and treats prison staff with respect (see paragraph 48 above). In this regard, the Government have failed to explain the relevance of the risk assessment exercises and their impact on the actual situation of the applicant, which remained unchanged despite the good conduct observed.

208. Another element that needs to be noted is the apparently limited possibility for outdoor exercise and reasonable activities. The Court has often observed that a short duration of outdoor exercise limited to one hour a day is a factor that further exacerbates the situation of a prisoner confined to his cell for the rest of the time (see *Ananyev and Others*, cited above, § 151, with further references). It should also be noted in this connection that apparently the exercise yards for life prisoners are separate and quite small, and that the yard in Plovdiv Prison does not allow a proper work out (see paragraph 176 *in fine* above, and compare with the case cited in *Ananyev and Others*, cited above, § 152). In this connection, it appears that the prison authorities were to ensure such occupation to the extent possible "within the constraints flowing from the applicable security arrangements" (see paragraph 135 above). However, the Government have not referred to any participation of the two applicants in reasonable activities or correctional courses, with the exception of a week's yoga course intended to overcome stress in the case of Mr Harakchiev, have not sought to invoke convincing security reasons requiring the applicants' isolation, and have not said why it was not possible to revise the regime of prisoners in the applicants' situation so as to provide them with adequate possibilities for human contact and sensible occupation in practice (compare and contrast *Iorgov (no. 2)*, cited above, §§ 21-23 and 65). It appears that this situation is to a great extent a result of the automatic application of the legal provisions regulating the applicants' prison regime.

209. This situation can be contrasted with that of Mr Iorgov, whose regime was gradually relaxed by way of an "experiment" in Pleven Prison – highly commended by the CPT – that began in 2003-04 initially as regards access to the common areas and the lavatories and then as regards isolation

from other prisoners (see *Iorgov v. Bulgaria (no. 2)*, no. 36295/02, §§ 21-23 and 42, 2 September 2010, and paragraph 169 above). Indeed, the CPT noted that that "had not caused any particular dissatisfaction or problems" (ibid.).

210. To that should be added the material conditions of the applicants' detention. The Court notes in that connection that, after an on-the-spot inspection in 2010, the Stara Zagora Administrative Court found – albeit in a judgment that is currently under appeal – that the conditions of Mr Harakchiev's detention were in breach of Article 3 of the Convention (see paragraphs 31, 35 and 36 above). That court's findings, although not final, tend to confirm Mr Harakchiev's allegations concerning ventilation, heating, access to the toilets and hygiene.

211. The Court is particularly struck by the lack of ready access to toilet facilities. The Government did not dispute that the applicants' cells are not equipped with such facilities or running water. The Court can therefore hardly accept that it was the applicants' choice to use buckets to relieve their sanitary needs outside the three daily visits to the toilet, and that the need to resort to the use of buckets could be obviated by calling on the guards to open their cells at any time. The impracticability of that possibility is amply demonstrated by the explanations given in the Bulgarian Helsinki Committee report of April 2010, which said that prisoners' calling on the guards often gave rise to conflicts and thus drove the prisoners to prefer to use buckets in their cells for their sanitary needs (see paragraph 176 above). It appears that in Mr Harakchiev's case the guards never opened his cell to let him visit the toilet outside the three regular daily visits (see paragraphs 17 *in fine* and 35 above). The use of buckets in the absence of toilet facilities in the cells was, and still is, widespread in prisons in Bulgaria, has been well documented by the CPT (see the report cited in paragraph 171 above in relation specifically to the unit housing life prisoners in Plovdiv Prison, and the report cited in paragraph 173 above), has been acknowledged as a problem by the Government (see paragraph 172 above), and has been consistently criticised by this Court since 2005 (see *Kehayov v. Bulgaria*, no. 41035/98, § 71, 18 January 2005; *I.I. v. Bulgaria*, no. 44082/98, § 75, 9 June 2005; *Iovchev v. Bulgaria*, no. 41211/98, § 134, 2 February 2006; *Yordanov v. Bulgaria*, no. 56856/00, § 94, 10 August 2006; *Dobrev v. Bulgaria*, no. 55389/00, § 129, 10 August 2006; *Malechkov v. Bulgaria*, no. 57830/00, § 140, 28 June 2007; *Kostadinov v. Bulgaria*, no. 55712/00, § 61, 7 February 2008; *Gavazov v. Bulgaria*, no. 54659/00, § 108, 6 March 2008; *Radkov (no. 2)*, cited above, §§ 48-49; *Shahanov*, cited above, § 53; and *Sabev v. Bulgaria*, no. 27887/06, § 99, 28 May 2013).

212. Taking into account the cumulative effect of the above-mentioned conditions, regardless of whether they flowed from the applicable regulatory framework or from its practical implementation, and the period of the applicants' detention – twelve and fourteen years, respectively, so far –, the

Court considers that the distress and hardship endured by them exceeded the unavoidable level of suffering inherent in detention and went beyond the minimum threshold of severity required by Article 3 of the Convention (see *Sabev*, cited above, § 99).

213. In those circumstances, even accepting that the applicants' allegations of inadequate ventilation, lighting, heating, hygiene, access to the shower, food and medical care in prison have not been made out beyond reasonable doubt, the Court considers that the other aspects of the conditions of their detention and prison regime were, taken together, serious enough to be qualified as inhuman and degrading treatment (see *Shahanov*, cited above, § 53 *in fine*).

214. There has therefore been a breach of Article 3 of the Convention in respect of both applicants.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

215. Both applicants complained that they did not have effective domestic remedies in respect of their grievance under Article 3 of the Convention in relation to the material conditions of their detention. They relied on Article 13 of the Convention, which provides as follows:

> "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

216. The Government submitted that, in view of the well-established case-law of the Bulgarian courts in conditions-of-detention cases brought by prisoners, a claim under section 1 of the 1988 was an effective remedy with respect to the material conditions of the applicants' detention. In any event, no issue arose under Article 13 of the Convention as the applicants' claims were not "arguable" for the purposes of that provision. The Government went on to say that the possibility to challenge omissions of the authorities under Articles 256 and 257 of the Code of Administrative Procedure 2006 was an effective remedy in respect of poor material conditions of detention. The Execution of Punishments and Pre-Trial Detention Act of 2009 and its implementing regulations clearly set out the minimum conditions that the prison authorities had to provide to inmates, and any failure to do so was therefore actionable under those Articles. The Government referred to two cases (see paragraphs 151-152 above), one of which involved Mr Harakchiev, in which first-instance administrative courts had allowed such claims.

217. The applicants submitted that a claim for damages under section 1 of the 1988 Act was not an effective remedy, citing the reasons they had put

forward in their submissions relating to the exhaustion of domestic remedies. They went on to say that the possibility of bringing proceedings under Articles 256 and 257 of the Code of Administrative Procedure 2006 was not an effective remedy either, for several reasons. First, some aspects of the conditions of their detention flowed directly from the prison regime under which they were placed, and were therefore not actionable under those Articles. In this regard they referred to the Court judgment in *Sabev* (cited above, § 85). Secondly, neither the 2009 Act nor its implementing regulations laid down clear rules on the treatment of life prisoners. Thirdly, it was unclear which authority would be the proper defendant, and there did not exist an appropriate mechanism for enforcing a mandatory injunction against a public authority. The administrative courts considered that authorities that were second-tier beneficiaries of budget funds – and the likely defendant to a claim under Articles 256 and 257 was likely to be just such an authority – could not be fined for failure to comply with an injunction. Moreover, any such injunction would be of limited duration and would not be able to provide the applicants with lasting redress. Lastly, the only two examples cited by the Government were judgments given by first-instance administrative courts. Accordingly, there was no established case-law in that domain.

218. In response, the Government reiterated that a claim under Articles 256 and 257 of the Code of Administrative Procedure 2006 was an effective remedy because it could lead to the vindication of the concrete rights guaranteed to prisoners under the 2009 Act and its implementing regulations. The allegations that injunctions under those Articles would remain unenforced in the event of lack of budgetary funds were speculative and based on completely different factual scenarios. It was likewise speculative to say that the effectiveness of an injunction would be diminished by its allegedly limited duration, or by the manner in which the courts' ruling was worded.

B. The Court's assessment

1. Scope of the complaint

219. The Court notes at the outset that the complaint concerns only the availability or otherwise of effective domestic remedies in respect of the material conditions of the applicants' detention, not the availability or otherwise of such remedies in respect of the regulations governing their prison regime or the sentence of life imprisonment served by Mr Harakchiev. The applicants' complaints under Article 13 of the Convention in relation to the latter two points were declared inadmissible in the partial decision in the present case (see *Harakchiev and Tolumov*

v. Bulgaria (dec.), nos. 15018/11 and 61199/12, §§ 126-28, 19 February 2013).

220. The Court also notes that it must examine together with this complaint the Government's objection of non-exhaustion of domestic remedies in relation to the applicants' complaint under Article 3 of the Convention about the regime and conditions of their detention, which it has joined to the merits (see paragraph 190 above).

2. Admissibility

221. The complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

3. Merits

222. The general principles emerging from the Court's case-law in relation to effective domestic remedies in respect of conditions of detention were recently set out in detail in the Court's judgments in the cases of *Ananyev and Others* (cited above, §§ 93-98) and *Torreggiani and Others v. Italy* (nos. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10, §§ 50-51, 8 January 2013). There is no need to repeat them all here, except to reiterate that where ongoing conditions of detention are concerned, preventive and compensatory remedies have to be complementary to be considered effective, because the mere prospect of compensation cannot be allowed to legitimise particularly severe suffering in breach of Article 3 of the Convention and unacceptably to weaken the State's obligation to bring its standards of detention into line with that Article (see *Ananyev and Others*, cited above, § 98, and *Orchowski v. Poland*, no. 17885/04, §§ 108-09, 22 October 2009).

223. In the present case there is no need to decide whether, in view of the way in which the Bulgarian courts' case-law in conditions-of-detention cases under section 1 of the 1988 Act has evolved in recent years, a claim under that provision continues in all cases to be an effective domestic remedy with respect to complaints relating to material conditions of detention. That point forms part of the subject matter of another case, currently pending before the Court (see *Neshkov and Others v. Bulgaria*, nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, Statement of Facts and Questions to the Parties available on HUDOC). Even assuming that it could still in principle be regarded as an effective remedy, it would not have been capable of providing adequate redress to the two applicants in the present case for two reasons.

224. First, in *Iliev and Others* (cited above, §§ 55-56 and 68) and *Radkov (no. 2)* (cited above, §§ 53 and 58) the Court held, by reference to two earlier decisions (see *Łatak v. Poland* (dec.), no. 52070/08, §§ 77-85,

12 October 2010, and *Łomiński v. Poland* (dec.), §§ 68-76, no. 33502/09, 12 October 2010), that a claim under section 1 of the 1988 Act (see paragraphs 136 and 137 above) – in as much as it could only result in an award of compensation and not lead to an improvement of the status quo – was, on its own, not a remedy capable of providing adequate redress to an applicant complaining under Article 3 of the Convention of conditions of detention which continued to obtain. In view of its purely compensatory nature, such a claim could only be regarded as effective with respect to applicants who had either been released or placed in Article 3-compliant conditions of detention.

225. The Court later applied that reasoning to the cases of two life prisoners complaining of the conditions of their detention in Varna Prison and Burgas Prison respectively. It held that, since it had not been established that those prisoners had been placed in Article 3-compliant conditions, a claim for damages under section 1 of the 1988 Act did not provide them with an effective domestic remedy (see *Iordan Petrov v. Bulgaria*, no. 22926/04, §§ 171-72, 24 January 2012, and *Chervenkov*, cited above, §§ 55, 57 and 58). By contrast, in the case of a life prisoner in Burgas Prison who had been put in a bigger cell that was equipped with toilet facilities and running water and had new windows and furniture, the Court held that, in view of the clear improvement of the conditions of the applicant's detention and failing further explanations, a claim for damages under section 1 of the 1988 Act could be regarded as an effective remedy (see *Oreshkov v. Bulgaria*, no. 11932/04, § 46, 6 March 2012). In the case of another life prisoner, in Lovech Prison, whose cell had been refurbished and equipped with toilet facilities and who had failed to provide any information about the contemporaneous conditions of his detention, the Court proceeded on the basis that he could be regarded as having been placed in Article 3-compliant conditions. Therefore, such a claim could likewise be regarded as an effective remedy in his case (see *Sabev*, cited above, § 84).

226. In the present case, both applicants are still incarcerated and kept in conditions that the Court has found to be in breach of Article 3 of the Convention. There is no indication that those conditions have significantly changed in recent years. A claim for damages under section 1 of the 1988 Act would not therefore, on its own, have been capable of providing either of the two applicants with adequate redress. Moreover – but this point concerns only the Government's objection of non-exhaustion of domestic remedies, not the merits of the applicants' complaint under Article 13 of the Convention – a claim for damages under section 1 of the 1988 Act in relation to conditions directly flowing from the prison regime applicable to the applicants would not have stood any prospect of success, given that the Bulgarian courts have already dismissed such claims on the basis that such conditions were not unlawful (see paragraphs 142 and 143 above).

227. The fact that Mr Tolumov has not brought such proceedings and that the proceedings brought by Mr Harakchiev are still pending on appeal before the Supreme Administrative Court (see paragraphs 30-36 above) is therefore immaterial. There is no risk of double compensation in Mr Harakchiev's case because the Bulgarian courts will be able to take into account any award made by this Court under Article 41 of the Convention, as they did in the case of Mr Shahanov (see paragraph 139 above).

228. With respect to the other possibility suggested by the Government – an application for a mandatory injunction under Articles 256 and 257 of the Code of Administrative Procedure 2006 – the Court notes that, with two exceptions, which concerned very concrete statutory duties of the prison authorities (a failure to provide Mr Harakchiev with clothes and shoes, and a failure to provide another life prisoner with shoes) it does not appear that the administrative courts have thus far interpreted those provisions in a way that would enable an inmate to obtain a more general improvement of the conditions of his confinement (see paragraphs 150-152 above). Moreover, regard should be had to the fact that the second of those cases has still not been finally decided. Therefore, that remedy, while theoretically capable of providing redress to the applicants, does not appear, for the time being, to be capable of doing so in practice (see, *mutatis mutandis*, *Mandić and Jović v. Slovenia*, nos. 5774/10 and 5985/10, §112, 20 October 2011, and *Ananyev and Others*, cited above, § 110). There is, however, nothing to prevent it from being moulded to accommodate such grievances, as has been shown, for instance, by its development by the Bulgarian administrative courts in relation to the provision of medicines to cancer patients (see *Zaharieva v. Bulgaria* (dec.), no. 6194/06, §§ 51-55, 20 November 2012). All unclear issues, such as the courts' approach to such claims, the proper defendant, the duration of the mandatory injunction against the authorities and the exact manner of its enforcement, could be elucidated in individual cases. However, it does not appear that this is yet the case.

229. In view of the foregoing, the Court finds that the applicants did not have at their disposal effective domestic remedies in respect of their complaint under Article 3 of the Convention concerning the material conditions of their detention. It therefore rejects the Government's objection of non-exhaustion of domestic remedies and holds that there has been a breach of Article 13 of the Convention.

III. WHOLE LIFE IMPRISONMENT

230. Mr Harakchiev also alleged that his sentence to whole life imprisonment had amounted, from the time of its imposition, to inhuman and degrading punishment in breach of Article 3 of the Convention.

231. The text of Article 3 of the Convention has been set out in paragraph 180 above.

A. The parties' submissions

1. The Government's observations

232. The Government submitted that the mere fact that Mr Harakchiev had been sentenced to whole life imprisonment did not amount to a breach of Article 3 of the Convention because he could seek presidential clemency at any time. There was already a precedent in which a person serving a whole life sentence had had his sentence replaced by the Vice-President. A ruling that that was not sufficient would not do justice to the work of the Clemency Commission attached to the Vice-President and would engender legal turmoil not only in Bulgaria but also in other member States. Whole life imprisonment, introduced in 1998 as a result of the abolition of the death penalty, was a very important component of the punitive system of Bulgarian criminal law. It was a penalty that was imposed very rarely and reserved for the most serious offences. There were at present 57 persons in Bulgaria serving a whole life sentence and 106 persons serving a life sentence.

233. The presidential power of clemency was a readily available means of adjusting a whole life sentence that gave all those serving such a sentence hope that they might one day regain their freedom. It was very significant in that connection that on 21 January 2013 the Vice-President had, in exercising that power, replaced a whole life sentence with a life sentence. The reasons underlying the decision to do so had been set out in the report of the Clemency Commission, which had moreover noted that the decision would demonstrate to all other persons sentenced to whole life imprisonment that they would be able to improve their situation. The presidential power of clemency had been in place at the time when whole life imprisonment had been introduced as a penalty and had always been exercised in a way that gave those concerned hope that they could obtain a reduction of their sentence. That was evident from the reasons given for refusals to pardon persons serving a whole life sentence, which essentially relied on two arguments: lack of progress in the process of rehabilitation or insignificant portion of the sentence hitherto served. The procedure for examining requests for clemency was and always had been laid down in presidential decrees, such as the decree of 23 February 2012, which had the force of law. The latest version of the applicable rules had been intended to optimise the procedure and render it more transparent, and to formalise the standards that had already emerged in practice. The main emphasis had been on increasing the research and analytical capabilities of the Clemency Commission and harmonising the way in which it examined each request for clemency. That procedure could produce the same effect as judicial procedures for the commutation of sentence. The President and the Vice-President were not bound by any criteria and could exercise the power of clemency at any time and in respect of any person.

234. The detention regime of persons serving a sentence of life imprisonment did not prevent them from showing that they had reformed themselves. That was evident from the reasons for the decision of the Vice-President of 21 January 2013 to replace a whole life sentence with a life sentence, and from the conduct of Mr Tolumov and the change in his detention regime. Mr Harakchiev, for his part, had not shown any signs of rehabilitation. On the contrary, he had been subjected to a number of disciplinary punishments, and the risk of recidivism in his case had remained consistently high. There was, moreover, no indication that either of the two applicants had applied for clemency.

2. Mr Harakchiev's observations

235. Mr Harakchiev submitted that the whole life sentence that he was serving was incompatible with Article 3 of the Convention because it presupposed that he would have to spend the rest of his life in prison. At the same time, an analysis of the relevant provisions of Bulgarian law showed that the purposes sought to be attained through the imposition of that penalty could also be realised through life imprisonment. Under the Criminal Code of 1968, whole life imprisonment was reserved for cases in which the aims of punishment could not be attained by means of a lesser penalty. It followed that it was intended for persons who could never be rehabilitated, whereas it was clear that the sentencing court was not in a position to say whether a prisoner would remain unreformed for twenty or thirty years.

236. While the judicial procedure governing the commutation of a life sentence was fully in line with the requirements of Article 3 of the Convention, the exercise of the presidential power of clemency was unclear and unpredictable. Article 98 of the Constitution of 1991 and Article 74 of the Criminal Code 1968 did not lay down any rules of procedure or the conditions in which that power would be exercised. As a result, a life prisoner did not know what he or she had to do to stand a chance of obtaining clemency. The manner in which that power had been exercised until 23 February 2012 was also very unclear: there was no information on how many prisoners had sought clemency and on what grounds, on how many requests had been upheld and for what reasons, and on who had been the experts advising the Vice-President and in accordance with what rules they had carried out their duties. In support of that assertion, the applicants produced four letters sent between 2006 and 2011 by the presidential administration to persons serving a whole life sentence who had applied for clemency: all of them merely said that the request had been duly examined and turned down. Between 2002 and 2009 sixteen persons serving such a sentence had applied for clemency; all of their requests had been turned down. There had been no cases of clemency in respect of such persons before 2002 either.

237. The legal framework governing the exercise of the presidential power of clemency had not improved on 23 February 2012. The rules laid down by the President on that date, while being a step forward, did not properly clarify the conditions under which a pardon could be sought. They were just internal instructions governing the work of the Clemency Commission, not the exercise of the powers of the President and the Vice-President. Moreover, those rules had not even been published in the State Gazette, and it was not even clear whether the President was entitled under the Constitution and the laws to make abstract rules. It was still the case that as a matter of law the President and the Vice-President were free to decide, without having to base their decision on any criteria, whether or not to grant clemency. The decision on that point did not have to be reasoned, and was not open to legal challenge. In 2012, only three out of one hundred requests for clemency had been granted, whereas the number of life sentences remained high. Therefore, the clemency procedure was not a proper means of seeking commutation of a life sentence. The fact that the current Vice-President had, on the basis of her personal view that whole life sentences should be abolished, pardoned one person serving such a sentence did not give any real hope. While worthy of admiration, that position was personal to the Vice-President, was deeply unpopular, and would remain valid only as long as she held office. It could not have the lasting effect of a change in the law.

238. The detention regime of those who, like Mr Harakchiev, were serving a whole life sentence entailed complete isolation, even outside the cell and even during work. The only possibility of contact was with other prisoners under the same regime, and only during the one-hour daily walk. Those highly restrictive conditions made it almost impossible to find suitable work for life prisoners. That was borne out by the information set out in the April 2010 report of the Bulgarian Helsinki Committee. That report also showed that life prisoners were not provided with any re-socialisation programmes, and were kept in extremely poor material conditions. All those factors made it impossible for them to show that they had reformed themselves and thus to persuade the President or the Vice-President to grant them clemency.

3. The Government's additional observations

239. In their additional observations, the Government submitted that the situation in the present case was clearly different from that obtaining in *Vinter and Others v. the United Kingdom* ([GC], nos. 66069/09, 130/10 and 3896/10, ECHR 2013 (extracts)). Unlike the limited powers of the Secretary of State for Justice in the United Kingdom, the presidential power of clemency in Bulgaria was not fettered in any way. The President could commute any sentence, and that power was actually exercised. The procedure was sufficiently flexible, enabling prisoners to apply for a pardon

without any time-limits and on any grounds. Any request for a pardon was subjected to a comprehensive assessment bearing upon the question whether incarceration continued to be justified on legitimate penological grounds. The monthly reports of the Clemency Commission attached to the Vice-President showed that it analysed those points in detail. In the one case in which it had recommended the commutation of a life prisoner's sentence, that Commission had had regard to exactly those factors. The possibility to seek presidential clemency was available from the beginning of a life prisoner's sentence, widely known and frequently used.

240. According to the Government, there was no need for more detailed rules on the exercise of that power. There was no uncertainty in relation to the manner of its exercise and any detailed rules would only circumscribe its ambit, which was at present very wide. In any event, States had a margin of appreciation in deciding on the way in which life sentences were to be reviewed. The fact that the presidential power of clemency was fully discretionary did not detract from its effectiveness. That had been demonstrated by its exercise in relation to a prisoner serving a whole life sentence at the beginning of 2013. Contrary to Mr Harakchiev's allegation, that had not been solely due to the personal views of the current Vice-President. The decision to commute that life prisoner's sentence had set a trend. As was evident from the Clemency Commission's report, it had been taken on the basis of a comprehensive assessment of all relevant factors. The trend was also evident from the draft Criminal Code, which envisaged the abolition of whole life imprisonment. However, the enactment of a complex piece of legislation such as a criminal code required time. Meanwhile, the possibility to seek presidential clemency was a sufficiently effective means at the disposal of persons sentenced to whole life imprisonment.

241. Under the applicable regulations, life prisoners had to be informed in plain language upon their arrival in prison of their rights and obligations, and of prison order and discipline; they were also entitled to obtain that information in writing. That information included detailed explanations about prison rules and regulations, the right to work, the visiting regime, disciplinary sanctions, and the possibility to seek a change in the prison regime and early release. Moreover, in 2007 the Chief Directorate for the Execution of Sentences had issued "National standards for the treatment of life prisoners". Those standards expressly said that the authorities had to enable life prisoners to discuss issues relating to the execution of their sentence. All life prisoners, regardless of whether they were serving commutable or non-commutable sentences, were informed of the period of time that they had to serve before they could seek a change in their prison regime, and of the conduct that they had to observe to increase their chances of obtaining a commutation of their sentence. In addition, each life prisoner had an individual sentence plan setting out the positive changes expected of

him or her and the concrete steps leading to those changes. That plan was subject to periodic reassessments which had to be brought to the prisoner's attention. In Mr Harakchiev's case, the latest plan had not been signed by him, but that was only because he had refused to sign any documents emanating from the prison administration.

B. The Court's assessment

1. Admissibility

242. The complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles laid down in the Court's case-law

243. In the case of *Kafkaris v. Cyprus* ([GC], no. 21906/04, § 97, ECHR 2008), the Grand Chamber of the Court held that while a State's choice of criminal justice system, including sentence review and release arrangements, was in principle outside the scope of the supervision carried out by the Court, and while the imposition of a sentence of life imprisonment on an adult offender was not in itself prohibited by or incompatible with Article 3 or any other Article of the Convention, the imposition of an irreducible life sentence could raise an issue under Article 3. The Grand Chamber was at the same time at pains to emphasise that a life sentence did not become "irreducible" by the mere fact that in practice it could be served in full, and that it was enough for the purposes of Article 3 of the Convention that such a sentence be *de jure* and *de facto* reducible (ibid., § 98 *in fine*).

244. In that case, the Grand Chamber found no breach of Article 3 of the Convention because under the Constitution of Cyprus the President could at any point in time, subject to the agreement of the Attorney-General, commute a life sentence to one of a shorter duration and then remit it. It was true that there were certain shortcomings in the procedure: there were no published criteria indicating how the President would exercise his or her discretion, no obligation to disclose to a prisoner the opinion of the Attorney-General on his or her application, no requirement for the President to give reasons and no such practice, and no possibility of judicial review. It was also true that the prospect of release for life prisoners was limited, since any adjustment of a life sentence fell within the President's discretion. However, there were a number of concrete examples in which the President had exercised that discretion and ordered the release of life prisoners. It

could not therefore be said that Mr Kafkaris had been deprived of any prospect of release (ibid., §§ 102-05).

245. The question of the compatibility of irreducible life sentences with Article 3 of the Convention was taken up once again by the Grand Chamber of the Court in the more recent case of *Vinter and Others* (cited above). The Grand Chamber reviewed in detail the relevant considerations flowing from the Court's case-law and from recent comparative and international-law trends in respect of life sentences (ibid., §§ 104-18). On that basis, it held that a life sentence could remain compatible with Article 3 of the Convention only if there was both a prospect of release and a possibility of review (ibid., §§ 109-10), because a prisoner could not be detained unless there were legitimate penological grounds for incarceration. Those grounds included punishment, deterrence, public protection and rehabilitation. The Grand Chamber noted in particular that the balance between those justifications for incarceration was not necessarily static and could shift in the course of the sentence. What could be the primary justification for incarceration at the start of a sentence could cease to be so after a lengthy period into the service of that sentence. Therefore, it was only by carrying out a review of the justification for continued detention at an appropriate point in the sentence that those factors or shifts could be properly evaluated. If a prisoner was incarcerated without any prospect of release and without the possibility of having his life sentence reviewed, there was the risk that he could never atone for his offence: whatever he did in prison, however exceptional his progress towards rehabilitation, his punishment remained fixed and unreviewable (ibid., §§ 111-12). The Grand Chamber therefore held that it would be incompatible with human dignity – which lay at the very essence of the Convention system – forcefully to deprive a person of his freedom without striving towards his rehabilitation and providing him with the chance to someday regain that freedom (ibid., § 113). It went on to note that there was now clear support in European and international law for the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation was achieved (ibid., § 114). While punishment remained one of the aims of imprisonment, the emphasis in European penal policy, as expressed in Rules 6, 102.1 and 103.8 of the European Prison Rules, Resolution 76(2) and Recommendations 2003(23) and 2003(22) of the Committee of Ministers, statements by the CPT, and the practice of a number of Contracting States, and in international law, as expressed, *inter alia*, in Article 10 § 3 of the International Covenant on Civil and Political Rights and the General Comment on that Article, was now on the rehabilitative aim of imprisonment, even in the case of life prisoners (ibid., §§ 115-18).

246. Based on that analysis, the Grand Chamber decided to overrule the earlier Chamber's judgment and to establish the following propositions in relation to life sentences:

(a) In the context of a life sentence, Article 3 of the Convention must be interpreted as requiring reducibility of the sentence, in the sense of a review which allows the domestic authorities to consider whether any changes in the life prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds (ibid., § 119);

(b) Having regard to the margin of appreciation which must be accorded to Contracting States in the matters of criminal justice and sentencing, it is not the Court's task to prescribe the form – executive or judicial – which that review should take, or to determine when that review should take place. However, the comparative and international law materials show clear support for the institution of a dedicated mechanism guaranteeing a review no later than twenty-five years after the imposition of a life sentence, with further periodic reviews thereafter (ibid., § 120);

(c) Where domestic law does not provide for the possibility of such a review, a whole life sentence will not measure up to the standards of Article 3 of the Convention (ibid., § 121);

(d) Although the requisite review is a prospective event necessarily subsequent to the passing of the sentence, a whole life prisoner should not be obliged to wait and serve an indeterminate number of years of his sentence before he can raise the complaint that the legal conditions attaching to his sentence fail to comply with the requirements of Article 3 of the Convention in this regard. This would be contrary both to legal certainty and to the general principles on victim status within the meaning of that term in Article 34 of the Convention. Furthermore, in cases where the sentence, on imposition, is irreducible under domestic law, it would be capricious to expect the prisoner to work towards his own rehabilitation without knowing whether, at an unspecified, future date, a mechanism might be introduced which would allow him, on the basis of that rehabilitation, to be considered for release. A whole life prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought. Consequently, where domestic law does not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with Article 3 of the Convention on this ground already arises at the moment of the imposition of the whole life sentence and not at a later stage of incarceration (ibid., § 122).

(b) Application of those principles in the present case

247. The Court notes at the outset that Mr Harakchiev did not seek to argue that his sentence was, as such, grossly disproportionate to the gravity of his offences, or that there were no longer any legitimate penological grounds for his continued incarceration (see *Vinter and Others*, cited above, § 102). His grievance was rather directed against the effects of that sentence.

248. In Bulgaria, the penalty of whole life imprisonment – which had never previously existed in Bulgarian criminal law – was introduced in December 1998, when Parliament formally abolished the death penalty (see paragraphs 51, 52 and 58 above). That penalty is – as also confirmed by the Government's observations in the present case – regarded as "provisional" and "exceptional", and is reserved for offences (a) that "threaten the foundations of the Republic" or are particularly serious and intentional and (b) in respect of which "the aims of the punishment ... cannot be attained by means of a lesser penalty" (see paragraphs 59 and 60 above). It exists alongside the penalty of "simple" life imprisonment, put in place in 1995, which is commutable (see paragraphs 56, 65 and 71 above).

249. The Court further notes that the penalty of whole life imprisonment was regarded as "provisional" and "exceptional", and that the new draft Criminal Code, laid by the Government before Parliament very recently, at the end of January 2014, only envisages the penalty of "simple", that is, commutable, life imprisonment (see paragraph 67 above) because, according to the explanatory note to that draft Code, whole life imprisonment "is at present perceived as too inhuman on account of the lack of any hope for the persons sentenced to it" (see paragraph 68 above). It appears that, when adopted, this Code will provide the same prospects of hope for review of sentence to those currently serving whole life imprisonment as those serving life imprisonment.

250. A State's choice of criminal justice system, including sentence review and release arrangements, is, as already noted, in principle outside the scope of the supervision carried out by the Court, and the mere imposition of a sentence of life imprisonment on an adult offender is not in itself prohibited by Article 3 or any other Article of the Convention.

251. In the light of its case-law, the question for the Court is whether the penalty imposed on Mr Harakchiev could be classified as irreducible, that is, whether there was a prospect of release and a possibility of review. The Court notes in this connection that, while Bulgarian law does not permit Mr Harakchiev to be released on licence – a measure that only applies to prisoners serving fixed-term sentences (see paragraph 70 above) – and while Mr Harakchiev cannot hope for a court decision to convert his whole life sentence into a lesser penalty, the law envisages two measures of presidential clemency: either a full pardon or a commutation of his sentence (paragraphs 72-74 above). In the event of a full pardon Mr Harakchiev

could be released immediately and unconditionally. In the event of a commutation of his sentence, even if it were only replaced with a life sentence, as happened in the case of another life prisoner in January 2013 (see paragraphs 99-101 above), it will be open to Mr Harakchiev to seek judicial commutation and then perhaps even release on licence.

252. In the case of *Iorgov (no. 2)* (cited above, §§ 48-60), decided after *Kafkaris* (cited above) but before *Vinter and Others* (cited above), a Chamber of the Fifth Section of the Court reviewed those constitutional and legislative arrangements and their application up to 2009. It noted that even though between 2002 and 2009 the presidential power of clemency had been exercised in the cases of 477 prisoners, no one serving a whole life sentence had yet been granted such clemency. The Chamber nonetheless concluded that, as matters stood, it could not be said that Mr Iorgov, who had been sentenced to whole life imprisonment, had been deprived of all hope of being released from prison one day. Even though, by November 2009, no life prisoner had been granted presidential clemency, that was not enough to show that whole life imprisonment in Bulgaria was irreducible *de facto*. That penalty had been introduced into Bulgarian law fairly recently, in December 1998, following the formal abolition of the death penalty. That meant that it was unlikely that a large number of persons serving such a sentence, including Mr Iorgov, had spent a sufficiently lengthy period of time in prison to qualify for presidential clemency. There was nothing to suggest that if Mr Iorgov applied in due course for such clemency his application would not be properly considered by reference to a wide range of criteria. He could not therefore be regarded as having no hope of release, and there had therefore been no breach of Article 3 of the Convention (see *Iorgov (no. 2)*, cited above, §§ 52-60).

253. However, in the light of the Grand Chamber's later ruling, in paragraph 122 of *Vinter and Others* (cited in paragraph 246(d) above), the Court cannot adopt the same approach in the present case. That approach is based on the assumption that the lack of a genuine possibility of obtaining commutation of a life sentence is only capable of infringing Article 3 of the Convention when a point is reached when the life prisoner has already served a sufficiently long period of time and has made sufficient progress to stand a realistic chance of persuading the competent authority to commute his sentence. That assumption underpinned the rulings of the domestic courts and the majority of the Chamber in *Vinter and Others*, who were essentially of the view that an irreducible life sentence did not entail a breach of Article 3 of the Convention unless and until the time came when the life prisoner's further incarceration would no longer be justified (see *Vinter and Others*, cited above, §§ 48, 49, 56, 87 and 91). That line of reasoning was explicitly rejected by the Grand Chamber in that case (ibid., § 122).

254. It follows that in the present case, in addition to scrutinising the present arrangements governing the possibility for those, such as Mr Harakchiev, serving a whole life sentence to seek an adjustment of that sentence, the Court must verify whether Bulgarian law provided an adequate possibility for a review of Mr Harakchiev's sentence at the time when it became final – November 2004 – and since then.

255. It is clear that the sentence is, at least since the amendment of Article 74 of the Criminal Code 1968 with effect from 13 October 2006 (see paragraph 74 above), *de jure* reducible. However, it is not clear that this was the case before that amendment. As worded before 13 October 2006, Article 74, although not expressly excluding the possibility, did not state in clear terms that the presidential power of clemency was also applicable to whole life and life imprisonment (see paragraph 73 above). Since before October 2006 there were no instances in which the President or the Vice-President had exercised the power of clemency in relation to a prisoner serving a whole life sentence (see paragraph 87 above), and since there did not exist an authoritative contemporaneous interpretation of the law relating to presidential clemency, it is difficult to say whether that Article was capable of being construed, alone or in conjunction with Article 98, point 11, of the Constitution of 1991, to mean that that penalty came within the ambit of the presidential power of clemency even though it was not specifically mentioned in the text of the Article. That uncertainty transpires from statements made by members of parliament in the course of the debate accompanying the introduction of whole life imprisonment (see paragraphs 63 and 64 above), the very fact that the legislature subsequently found it necessary to clarify the point by way of a statutory amendment, and also from the fact that in 2012 a group of members of parliament sought a binding interpretation of Article 98, point 11, of the Constitution of 1991 by the Constitutional Court, in particular on the point whether the presidential power of clemency embraced all types of criminal penalties (see paragraph 76 above). In those circumstances, the Court is not persuaded that it was clear that at the time when Mr Harakchiev's sentence became final it was *de jure* reducible.

256. Be that as it may, the Court is not persuaded that throughout the relevant period Mr Harakchiev's sentence was also *de facto* reducible, and that throughout his incarceration he could be regarded as knowing that a mechanism existed that would actually permit him to be considered for release.

257. Under the current system, which is based on decisions made by the President who took office in January 2012 and on the practice of the Clemency Commission set up by him at that time (see paragraphs 90-107 above) and, more importantly, on the binding interpretation of Article 98, point 11, of the Constitution of 1991 given by the Constitutional Court in

April 2012 (se paragraphs 76-83 above), there is considerable clarity about the manner of exercise of the presidential power of clemency.

258. In particular, the Constitutional Court defined the scope of that power, and held that it should be exercised in a non-arbitrary way, taking into account equity, humanity, compassion, mercy, and the health and family situation of the convicted offender, and any positive changes in his or her personality. That court went on to say that while the President or the Vice-President could not be required to give reasons in individual cases, they were expected to make known the general criteria guiding them in the exercise of the power of clemency. Lastly, the court held that a clemency decree was open to legal challenge before it, albeit subject to some restrictive conditions, in particular relating to standing (se paragraphs 76-83 above). That ruling provides weighty guarantees that the presidential power of clemency will be exercised in a consistent and broadly predictable way.

259. In addition, the rules governing the work of the Clemency Commission attached to the Vice-President provide that in its work the Commission must take into account, *inter alia*, the relevant case-law of international courts and other bodies on the interpretation and application of international human rights instruments in force in respect of Bulgaria (see paragraph 91 above). The practices adopted by the Commission since the start of its work in early 2012 – especially those relating to the publication of the criteria that guide it in the examination of clemency requests, the reasons for its recommendations to the Vice-President to exercise the power of clemency in individual cases, and relevant statistical information (see paragraphs 94-107 above) – have also increased the transparency of the clemency procedure and constitute an additional guarantee of the consistent and transparent exercise of presidential powers in that respect.

260. Lastly, consideration should be given to the fact that, albeit only in December 2012, the Clemency Commission proposed to the Vice-President to replace a prisoner's whole life sentence with a life sentence, based on the reformation of that prisoner, and that in January 2013 the Vice-President acceded to that proposal (see paragraphs 99-101 above). As noted by that Commission, and indeed by the Government in their observations, that case demonstrates to all other persons, such as Mr Harakchiev, sentenced to whole life imprisonment that they can improve their situation (see paragraph 100 above).

261. It therefore appears that if the current and future Presidents and Vice-Presidents continue to exercise the power of clemency in line with the precepts laid down by the Constitutional Court in 2012 and with the practices adopted in the same year, Mr Harakchiev's whole life sentence can be regarded as *de facto* reducible, and that since that time he can be regarded as knowing that there exists a mechanism which allows him to be considered for release or commutation of sentence. It is true that some of the applicable rules are not laid down in the Constitution or in a statute, but in a

presidential decree. However, as already noted, it is not the Court's task to prescribe the form which the requisite review should take.

262. However, the same cannot be said in respect of the period of time between the date when that sentence became final – November 2004 – and at least the early months of 2012. Under the previous presidential administration, which was in office for two terms, the first between 22 January 2002 and 22 January 2007 and the second between 22 January 2007 and 22 January 2012, the way in which the presidential power of clemency was being exercised was quite opaque, with no policy statements made publicly available and no reasons whatsoever provided for individual clemency decisions (see paragraph 87 above). Indeed, the Court cannot overlook the fact that during their debate in 1998 members of parliament sought reassurance that the President's discretion would not be exercised with regard to persons sentenced to whole life imprisonment, and that in 2012 Parliament found it necessary to set up an ad hoc committee to conduct an inquiry into the matter (see paragraph 89 above). Nor were there any concrete examples showing that persons in Mr Harakchiev's situation could hope to benefit from the exercise of that power (contrast *Kafkaris*, cited above, § 103). It is true that the lack of such examples could be explained by the fact that the penalty of whole life imprisonment had been introduced into Bulgarian law not long before that, in December 1998, and that it was therefore unlikely that a large number of persons serving such a sentence had spent a sufficiently long period of time in prison by then to qualify for clemency (see *Iorgov (no. 2)*, cited above, §§ 56-57). However, the combination of a complete lack of formal or even informal safeguards surrounding the exercise of the presidential power of clemency, coupled with the absence of any examples tending to suggest that a person serving a whole life sentence would be able to obtain an adjustment of that sentence and under what circumstances, leads the Court to conclude that between November 2004 and the beginning of 2012 Mr Harakchiev's sentence could not be regarded as *de facto* reducible. It necessarily follows from paragraph 122 of the Grand Chamber's judgment in *Vinter and Others* (cited in paragraph 246(d) above) that in this type of case the breach of Article 3 of the Convention consists of depriving the prisoner, for any period of time, of any hope of release, however tenuous that hope may be.

263. That said, in the present case, in which the applicants have also made serious complaints about the regime and conditions of their detention (see paragraph 179 below), there is a further aspect to the Court's examination: whether, in view of the regime and conditions of Mr Harakchiev's incarceration, he could be regarded as having a genuine opportunity of reforming himself and thus trying to persuade the President or the Vice-President to exercise the power of clemency in his regard. It should also be noted in that connection that in *Vinter and Others* (cited above, § 122) the Grand Chamber held that a "life prisoner is entitled to

know, at the outset of his sentence, what he must do to be considered for release and under what conditions" (see paragraph 246(d) above).

264. While the Convention does not guarantee, as such, a right to rehabilitation, and while Article 3 cannot be construed as imposing on the authorities an absolute duty to provide prisoners with rehabilitation or reintegration programmes and activities, such as courses or counselling, it does require the authorities to give life prisoners a chance, however remote, to someday regain their freedom. For that chance to be genuine and tangible, the authorities must also give life prisoners a proper opportunity to rehabilitate themselves. Indeed, the Court has already had occasion to note that in recent years there has been a trend towards placing more emphasis on rehabilitation, which constitutes the idea of re-socialisation through the fostering of personal responsibility (see *Dickson v. the United Kingdom* [GC], no. 44362/04, § 28, ECHR 2007-V, and *Vinter and Others*, cited above, §§ 113-18). That appears fully consonant with the first aim of criminal punishment, as set out in Article 36 of the Bulgarian Criminal Code (see paragraph 53 above), as well as with Article 10 § 3 of the International Covenant on Civil and Political Rights, in force with respect to Bulgaria since 1970, which provides that the essential aim of the treatment of prisoners is their reformation and social rehabilitation (see paragraphs 157 and 158 above). It is also inherent in several instruments to which, as already mentioned, the Court attaches considerable importance despite their non-binding character (see, *mutatis mutandis*, *Rivière*, § 72, and *Dybeku*, § 48, both cited above): Rules 6, 33.3, 102.1 and 107.1 of the 2006 European Prison Rules, points 6 and 11 of Resolution 76(2) of the Committee of Ministers, and paragraphs 2 *in fine*, 5 and 33 of Recommendation 2003(23) on the management by prison administrations of life sentence and other long-term prisoners, all of which emphasise that efforts need to be made by the prison authorities to promote the reintegration and rehabilitation of all prisoners, including those serving life sentences (see paragraphs 159, 161 and 162 above).

265. That is, of course, an area in which the Contracting States enjoy a wide margin of appreciation. However, the regime and conditions of a life prisoner's incarceration cannot be regarded as a matter of indifference in that context. Those conditions and regime need to be such as to make it possible for the life prisoner to endeavour to reform himself, with a view to being able one day to seek an adjustment of his or her sentence.

266. Even if a Bulgarian life prisoner now "knows what he must do to be considered for release and under what conditions (see paragraph 246(d) above), prisoners such as Mr Harakchiev are as a rule – unlike the situation of Mr Iorgov, whose regime was gradually relaxed by way of an "experiment" in Pleven Prison (see paragraph 209 above) – subjected to a particularly stringent prison regime, which entails almost complete isolation and very limited possibilities for social contacts, work or education (see

paragraphs 118, 124, 125 and 126 above). In the present case, in spite of some variations in his prison regime, in practice Mr Harakchiev remained in permanently locked cells and isolated from the rest of the prison community, with very limited possibilities to engage in social contacts or work, throughout the entire period of his incarceration (see paragraphs 12, 23, 32 and 177 above). In the Court's view, the deleterious effects of that impoverished regime, coupled with the unsatisfactory material conditions in which Mr Harakchiev was kept, must have seriously weakened the possibility of his reforming himself and thus entertaining a real hope that he might one day achieve and demonstrate his progress and obtain a reduction of his sentence. To that should be added the lack of consistent periodical assessment of his progress towards rehabilitation. It is true that Mr Harakchiev was the subject of annual psychological assessments (see paragraph 48 above). However, it is noteworthy that the National standards for the treatment of life prisoners, issued in 2007, appear to be geared towards helping life prisoners adapt to their sentence rather than work towards their rehabilitation (see paragraph 135 above). Nor do those standards make it clear whether any positive changes in life prisoners should be the result of their own efforts or of a proactive approach on the part of the prison authorities, as recommended by the CPT (see paragraph 165 above).

267. In view of the foregoing considerations, the Court concludes that there has been a breach of Article 3 of the Convention.

268. In reaching this conclusion, the Court would note that the nature of Mr Harakchiev's complaint (see paragraph 247 above) and the finding of a violation with respect to that complaint cannot be understood as giving him the prospect of imminent release.

IV. MR TOLUMOV'S CORRESPONDENCE IN PRISON

269. Mr Tolumov complained that correspondence between himself and his lawyers was being routinely opened and read by the prison authorities, and that some letters had not been dispatched to his lawyers. He relied on Article 8 of the Convention, which provides, in so far as relevant:

> "1. Everyone has the right to respect for ... 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

270. The Government submitted that Mr Tolumov's correspondence was not being monitored by the prison authorities. The applicable rule – regulation 75 of the implementing regulations of the 2009 Act – was fully in line with the requirements of Article 8 of the Convention. The prison stamps on the envelopes submitted by Mr Tolumov merely showed that those envelopes had been opened and closed in the presence of a prison officer, as required under that regulation, not that the content of the letters inside them had been checked.

271. Mr Tolumov submitted that he received all letters from his legal representative already opened, and that he had to hand over his letters to his representative to the prison administration in unsealed envelopes. There was no guarantee that when checking those envelopes for prohibited objects the administration would not inspect the contents of the letters as well. The applicable regulations made no distinction between correspondence with lawyers and other correspondence, and contained the disproportionate requirement that each envelope be checked for prohibited items.

272. In reply, the Government submitted that the envelopes of Mr Tolumov's letters were sealed and unsealed by him in the presence of a prison officer. His allegation that some of those envelopes had been opened before being given to him could only be true to the extent that they had been opened in his presence and then handed over to him. The same was true in respect of his outgoing letters, whose envelopes were sealed in front of him after being checked for prohibited items. That could be seen from the position of the prison stamps, which were on the envelope flaps. Moreover, the few envelopes submitted by Mr Tolumov could not lead to the conclusion that his entire correspondence was being subjected to physical checks; those had rather been isolated occurrences.

B. The Court's assessment

273. In a case concerning the correspondence of pre-trial detainees in Bulgaria the Court found that until 2006 the applicable provisions of the Execution of Punishments Act of 1969 and of the implementing regulations required that the entirety of pre-detainees' incoming and outgoing correspondence, including letters to and from their lawyers, be monitored. On that basis, the Court accepted that there had been an interference with a pre-trial detainee's right to respect for his correspondence even though he had not produced any evidence that his letters had been opened and inspected by the prison authorities (see *Bochev v. Bulgaria*, no. 73481/01, § 94, 13 November 2008). However, the Court went on to say that there was no basis on which to assume that such interference had continued to exist after the amendment in 2006 of regulation 178(2) of the implementing

regulations of the 1969 Act providing that inmates' letters had to be sealed and opened in the presence of a prison officer in such a way as to allow that officer to ensure that they did not contain money or other prohibited objects (ibid., § 94 *in fine*; see also paragraph 155 above).

274. In the present case any complaints concerning the alleged interception of Mr Tolumov's correspondence under section 33(1)(c) of the 1969 Act (see paragraph 154 above) and its implementing regulations, both of which were repealed more than six months before the lodging of Mr Tolumov's application (see paragraphs 1 and 117 above), are inadmissible for failure to comply with the six-month time-limit under Article 35 § 1 of the Convention.

275. As regards the period since February 2010, during which prisoners' correspondence has been governed by regulation 75 of the implementing regulations of the 2009 Act, the Court observes that the wording of regulation 75(3) is almost identical to that of regulation 178(2) of the implementing regulations of the 1969 Act, as amended in 2006 (see paragraphs 155 and 156 above). Therefore, as in *Bochev* (cited above, § 94 *in fine*), the Court finds no basis on which to assume that Mr Tolumov's correspondence after February 2010 has been systematically intercepted and read by the prison authorities (contrast *Campbell v. the United Kingdom*, 25 March 1992, § 33, Series A no. 233).

276. It is true that Mr Tolumov submitted three outgoing letters which had been stamped by the prison administration (see paragraph 50 above). However, it should be pointed out that those stamps were on the envelopes, not on their contents. There is therefore no indication that the letters inside the envelopes were inspected by the prison authorities (see, *mutatis mutandis*, *Ostrovar v. Moldova* (dec.), no. 35207/03, 22 March 2005), especially bearing in mind the wording of the applicable regulations, the Government's categorical assertion that there was no practice of inspecting inmates' letters, and the fact that the prison stamps on the envelopes of Mr Tolumov's letters did not allude to any form of censorship (contrast, on the latter point, *Matwiejczuk v. Poland*, no. 37641/97, § 99, 2 December 2003; *Mianowski v. Poland*, no. 42083/98, § 63, 16 December 2003; *Pisk-Piskowski v. Poland*, no. 92/03, § 26, 14 June 2005; and *Michta v. Poland*, no. 13425/02, § 58, 4 May 2006).

277. It follows that this complaint is partly out of time and partly manifestly ill-founded, and must therefore be rejected in accordance with Article 35 §§ 1, 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 46 OF THE CONVENTION

278. Article 46 of the Convention provides, in so far as relevant:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution. ..."

279. By virtue of that Article, the Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach of the Convention or the Protocols thereto imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded under Article 41 of the Convention by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the breach found by the Court and to redress as far as possible the effects. It is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order to discharge that obligation. However, with a view to helping the respondent State to fulfil it, the Court may seek to indicate the type of individual and/or general measures that might be taken to put an end to the situation it has found to exist (see, as a recent authority, *Stanev v. Bulgaria* [GC], no. 36760/06, §§ 254-55, ECHR 2012).

280. The breach of Article 3 of the Convention found in the present case in relation to the regime and conditions of the applicants' detention flows in large part from the relevant provisions of the Execution of Punishments and Pre-Trial Detention Act of 2009 and its implementing regulations (see paragraphs 203-214 above). It discloses a systemic problem that has already given rise to similar applications (see *Chervenkov*, §§ 50 and 69-70, and *Sabev*, §§ 72 and 98-99, both cited above), and may give rise to more such applications. The nature of the breach suggests that to properly execute this judgment, the respondent State would be required to reform, preferably by means of legislation, the legal framework governing the prison regime applicable to persons sentenced to life imprisonment with or without parole. That reform, invariably recommended by the CPT since 1999 (see paragraphs 167-171 and 173 above), should entail (a) removing the automatic application of the highly restrictive prison regime currently applicable, as a rule, to all life prisoners for an initial period of at least five years, and (b) putting in place provisions envisaging that a special security regime can only be imposed – and maintained – on the basis of an individual risk assessment of each life prisoner, and applied for no longer than strictly necessary.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

281. 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

282. Mr Harakchiev claimed 30,000 euros (EUR) in respect of non-pecuniary damage on account of the impossibility of obtaining a reduction of his whole life sentence and regarding the regime and conditions of his detention. He referred to the sense of hopelessness that he had experienced as a result of the certainty that he would have to remain in prison until the end of his days, to the very restrictive conditions flowing from his prison regime, to the poor material conditions in which he was being kept, and to the lack of effective remedies in those respects.

283. Mr Tolumov claimed EUR 20,000 in respect of non-pecuniary damage on account of the regime and conditions of his detention and the alleged monitoring of his correspondence in prison.

284. The Government submitted that the claims were exorbitant, that the amounts sought were far higher than any previous awards made by the Court in conditions-of-detention cases in Bulgaria. In their view, the mere finding of a violation would amount to sufficient just satisfaction for any non-pecuniary damage suffered by the applicants, especially in relation to the alleged breach of Article 3 of the Convention flowing from Mr Harakchiev's whole life sentence. The Government noted that Mr Harakchiev had served less than ten years of his sentence and, having shown no signs of remorse or rehabilitation, was not in a position to seek a modification of his prison regime or an adjustment of his sentence.

285. With regard to the breach of Article 3 of the Convention relating to the possibilities for Mr Harakchiev to obtain a reduction of his whole life sentence, the Court considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage he may have suffered (see *Vinter and Others*, cited above, § 136). It accordingly makes no award under this head.

286. With regard to the breach of Article 3 of the Convention relating to the regime and conditions of the applicants' detention, the Court considers that the applicants must have sustained non-pecuniary damage as a result of the violation of their rights under that provision. The Court also finds that Mr Harakchiev must have sustained non-pecuniary damage as a result of the breach of his rights under Article 13 of the Convention (Mr Tolumov did not make a claim in relation to that). Taking into account all the

circumstances, and ruling on an equitable basis, as required under Article 41 of the Convention, the Court awards Mr Harakchiev EUR 4,000, plus any tax that may be chargeable on that amount, and Mr Tolumov EUR 3,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

287. The applicants sought reimbursement of EUR 8,400 incurred in lawyers' fees for 101 hours' work in the proceedings before the Court, at the rate of EUR 80 per hour, plus EUR 100 for postage and EUR 50 for office supplies. They requested that any award made by the Court under this head be made directly payable to their legal representatives, Mr M. Ekimdzhiev and Ms S. Stefanova. In support of their claims, the applicants submitted fee agreements, time-sheets and postal return receipts.

288. The Government submitted that the hourly rate of EUR 80 was unrealistic and completely out of line with the economic realities in the country. The number of hours charged by the applicants' legal representatives was also excessive, especially bearing in mind the significant overlap between the two applications. The Government also pointed out that the claim of EUR 100 in respect of postage was not supported by documents showing the exact amount spent on postal services, that there was nothing to show that the return receipts concerned correspondence with the Court in relation to these proceedings, and that the claim for EUR 50 in respect of office supplies was not supported by any documents.

289. According to the Court's well-established case-law, costs and expenses claimed under Article 41 of the Convention must have been actually and necessarily incurred and be reasonable as to quantum. In the present case, the hourly rate charged by the applicants' lawyers is comparable to those charged in recent cases against Bulgaria having a similar complexity, and can therefore be regarded as reasonable (see *Finger v. Bulgaria*, no. 37346/05, § 142, 10 May 2011, with further references). However, given that the two applications partly concerned similar facts and complaints, a certain reduction appears appropriate (see *Mileva and Others v. Bulgaria*, nos. 43449/02 and 21475/04, § 125, 25 November 2010, with further references). It should also be noted that part of Mr Tolumov's application was declared inadmissible. On the other hand, after being invited to reply to the Government's observations, the applicants were asked by the Court to deal with additional points in their observations (see paragraph 5 above). Having regard to all those factors, and making its assessment on an equitable basis, the Court awards the applicants EUR 5,600, plus any tax that may be chargeable to them, to be paid directly to their legal representatives, Mr M. Ekimdzhiev and Ms S. Stefanova.

290. With regard to the claims for postage and office supplies, the Court notes that the applicants have not submitted supporting documents showing that they had actually incurred those expenses. In those circumstances, and bearing in mind the terms of Rule 60 §§ 2 and 3 of its Rules, the Court makes no award in respect of those heads of claim.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the Government's objection of non-exhaustion of domestic remedies in relation to the applicants' complaint about the regime and conditions of their detention to the merits of the applicants' complaint under Article 13 of the Convention that there was no effective domestic remedy in respect of the material conditions of their detention;

2. *Declares* the complaints concerning (a) the impossibility for Mr Harakchiev's to obtain a reduction of his whole life sentence; (b) the regime and conditions of the applicants' detention; and (c) the alleged lack of an effective domestic remedy in respect of the material conditions of the applicants' detention admissible, and the remainder of the applications inadmissible;

3. *Holds* that there has been a violation of Article 3 of the Convention in relation to the regime and conditions of the two applicants' detention;

4. *Holds* that there has been a violation of Article 13 of the Convention in relation to the lack of effective domestic remedies in respect of the material conditions of the applicants' detention, and in consequence *rejects* the Government's objection of non-exhaustion of domestic remedies;

5. *Holds* that there has been a violation of Article 3 of the Convention in relation to Mr Harakchiev's inability to obtain a reduction of his whole life sentence from the time when it became final;

6. *Holds* that the finding of a violation of Article 3 of the Convention in relation to Mr Harakchiev's inability to obtain a reduction of his whole life sentence from the time when it became final constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by him on that account;

7. *Holds*

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

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

(ii) to Mr Tolumov, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) jointly to both applicants, EUR 5,600 (five thousand six hundred euros), plus any tax that may be chargeable to them, in respect of costs and expenses, to be paid directly to the applicants' legal representatives, Mr M. Ekimdzhiev and Ms S. Stefanova;

(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*, unanimously, the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 8 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Ineta Ziemele
Deputy Registrar	President