



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

FOURTH SECTION

CASE OF DYBEKU v. ALBANIA

(Application no. 41153/06)

JUDGMENT

STRASBOURG

18 December 2007

FINAL

02/06/2008

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 Dybeku v. Albania,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 27 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 41153/06) against the Republic of Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Albanian national, Mr Ilir Dybeku (“the applicant”), on 25 September 2006.

2. The applicant was represented by Mr Sh. Syri, a lawyer practising in Berat. The Albanian Government (“the Government”) were represented by their Agent, Mrs S. Mëneri of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that while in prison his conditions of detention and the medical treatment he received were inadequate in view of his state of health. Moreover, he alleged a violation of Article 6 of the Convention on account of the unfairness of the proceedings concerning the inadequacy of his detention conditions in relation to his state of health.

4. On 14 December 2006 the President of the Fourth Section of the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

5. On the same date the application was given priority under Rule 41 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1971 and is currently serving a prison sentence in Peqin High Security Prison.

A. Circumstances leading to the arrest of the applicant

7. From 1996 onwards the applicant has been suffering from chronic paranoid schizophrenia. For many years he has received in-patient treatment in various psychiatric hospitals in Albania.

8. On 23 August 2002 three persons died, including two children aged 10 and 13, and others were injured as a result of explosives placed in the applicant's sister's family's flat.

9. On 24 August 2002 criminal proceedings were instituted against the applicant, who, on the same day, was arrested and charged with one count of voluntary homicide, *inter alia*, of children and one count of illegal possession of explosives. The applicant was placed in the pre-trial detention facility of Durrës Police Commissariat, where he shared a cell with an unspecified number of prisoners.

B. The applicant's trial

10. On 27 May 2003, on the basis of a medical report which concluded that at the time of the commission of the offence the applicant's mental disorder was in a period of remission, the Durrës District Court ruled that the applicant was able to stand trial. Subsequently, the court found the applicant guilty and sentenced him to life imprisonment.

11. On 4 June 2003 the applicant's counsel lodged an appeal with the Durrës Court of Appeal, claiming that the proceedings had been unfair since the experts' report had been biased and unsubstantiated. He asked the court to order a new medical report in order to establish his state of health.

12. On 4 September 2003 and 2 March 2004 respectively, the Durrës Court of Appeal and the Supreme Court upheld the District Court's decision. Moreover, the domestic courts dismissed the applicant's request for a fresh medical examination. They held that the first medical assessment had been performed by impartial professionals and had complied with procedural safeguards.

C. The applicant's health problems while in detention

13. Since December 2003 the applicant has been transferred to three different prisons to serve his sentence, namely Tirana Prison no. 302, Tepelene Prison and Peqin Prison, where he is currently being held. He has shared cells with other inmates who were in good health and has received the same treatment as them, notwithstanding his state of health. He has also regularly visited Tirana Prison's hospital, where he has been treated as an in-patient.

14. Given the applicant's increasingly disturbed state of mind, on 7 January 2005 his counsel initiated proceedings before the Tirana District Court seeking his release or transfer to a medical facility on the ground that his detention conditions were inappropriate to his state of health and put his life at risk. The applicant's counsel requested the court to order that the applicant be examined by psychiatric experts. The request was based on medical reports issued by practitioners who had treated the applicant in the period from March to April 2003.

15. On 11 April 2005 the Tirana District Court dismissed the request as unsubstantiated since the medical reports submitted by the applicant's counsel failed to prove that the conditions of his detention posed any threat to his life or state of health.

16. On 27 September 2005 and 17 February 2006 the Tirana Court of Appeal and Supreme Court respectively upheld the District Court's decision. According to the applicant, the Supreme Court's decision was not served on him until 3 April 2006.

17. On 25 June 2007 the Constitutional Court dismissed an appeal by the applicant on the ground that his claims related to the assessment of evidence which fell outside its jurisdiction.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL SOURCES

A. Relevant domestic law

1. *Criminal Code, as amended by Law No. 8204 of 10 April 1997, Law No. 8279 of 15 January 1998, and Law No. 8733 of 24 January 2001*

Article 79: Premeditated homicide on account of the victim's particular position

"A person who commits murder against: (a) a minor under sixteen years of age; ... shall be sentenced to life imprisonment or to a term of not less than twenty years of imprisonment."

2. *Code of Criminal Procedure*

Article 478: Release of a prisoner

“The execution judge may decide that a detainee should be released where the continuation of his detention may have consequences for his life.”

B. Relevant international material

1. European Prison Rules

18. The relevant extracts from the Committee of Ministers’ Recommendation No. R (87) 3 on the European Prison Rules (adopted by the Committee of Ministers on 12 February 1987 at the 404th meeting of the Ministers’ Deputies), as revised and updated by Recommendation Rec(2006)2 (adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers’ Deputies), read as follows:

“Health care

39. Prison authorities shall safeguard the health of all prisoners in their care.

Organisation of prison health care

40.1 Medical services in prison shall be organised in close relation with the general health administration of the community or nation.

40.2 Health policy in prisons shall be integrated into, and compatible with, national health policy.

40.3 Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

40.4 Medical services in prison shall seek to detect and treat physical or mental illnesses or defects from which prisoners may suffer.

40.5 All necessary medical, surgical and psychiatric services including those available in the community shall be provided to the prisoner for that purpose.

...

Health care provision

46.1 Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals, when such treatment is not available in prison.

46.2 Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide the prisoners referred to them with appropriate care and treatment.

Mental health

47.1 Specialised prisons or sections under medical control shall be available for the observation and treatment of prisoners suffering from mental disorder or abnormality who do not necessarily fall under the provisions of Rule 12.

47.2 The prison medical service shall provide for the psychiatric treatment of all prisoners who are in need of such treatment and pay special attention to suicide prevention. ...”

B. Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

19. A delegation of the CPT visited Albania from 28 to 31 March 2006. The relevant parts of the CPT’s report of 6 September 2007 read as follows (emphasis added by the CPT):

“11. In the report on the 2005 visit, the CPT emphasised that, in several of the pre-trial detention facilities visited (in particular, at Durrës), detained persons were being held in conditions of detention which could easily be considered as inhuman or degrading. Indeed, the accumulation of execrable material conditions, the legal prohibition of any activity inside the cell, the almost total absence of activities outside the cell, and the prolonged duration of placements in the facilities concerned was described by Committee as ‘being, in its experience, unique in a European context’.

It is a matter of grave concern that from the observations made at Durrës during the March 2006 visit, the situation has clearly remained virtually unchanged. It must be added that the situation found at Fier Police Directorate was scarcely more favourable.

During the high-level consultations with the Albanian authorities, the delegation’s view was also shared by the Prime Minister who stated that the conditions of detention in pre-trial detention facilities were ‘a shame for Albania’.

Already at this stage, the CPT must also express its serious concern about the absence of care for a severely ill detainee who was found in his cell in the pre-trial detention facilities at Fier Police Directorate. He had been left in a catatonic state on the floor of his cell for several days, without receiving any medical attention.

These issues will be addressed in detail in the following section of the present report, but the seriousness justifies them already being flagged in this section on ill-treatment.

...

23. The 2006 visit demonstrated that not a single of the specific recommendations repeatedly made in this respect by the CPT in previous visit reports had been implemented in practice, despite the explicit assurances given to the contrary by the

Albanian authorities in their response to the report on the 2003 visit. In particular, in neither establishment visited were newly-arrived detainees subject to medical screening on admission (except in cases of emergency or upon request). Further, medical examinations/consultations when they did occur were still systematically carried out in the presence of police officers. It should be added that in those few cases when medical files had been opened, they lacked basic medical data and were usually accessible to non-medical staff. Such a state of affairs is totally unacceptable.

24. Further, no improvements had been made as regards the general provision of health care in either establishment visited, notwithstanding various recommendations made by the CPT in the reports on the 2003 and 2005 visits. More specifically, no steps had been taken to ensure the regular presence of qualified nursing staff (on a full-time basis at Durrës). It is particularly worrying that the Albanian authorities, in their response of 27 June 2006 to the report on the 2005 visit, totally failed to address the recommendations made by the Committee on this subject.

25. The health care provided in the pre-trial detention facilities at Fier appeared to be particularly problematic and, in a number of cases, even inexistent. In addition, conditions in the health-care facilities were appalling. The delegation received many complaints from inmates about delays in having access to the doctor and the quality of the health care provided; the delegation observed itself, on the spot, the case of one inmate in need of urgent medical care who had been left in a state of total neglect.

As already mentioned in paragraph 11, a mentally ill detainee was found lying in a catatonic state on the floor of an overcrowded cell, below a leaking sewage pipe, without receiving any medical attention. He had apparently been in this situation for several days. A physical examination by the medical member of the delegation also revealed that his right leg was of intensive red colour and swollen, painful on palpation. According to fellow inmates, he had sustained the latter injury a few days earlier when he had fallen on the floor in the sanitary facilities (to which he had to be carried by other inmates).

Upon consultation with staff and cellmates, it transpired that the detainee had been hospitalised, due to his serious mental disorder, and returned to the establishment two weeks before the visit. His health condition was said to have been stable for the first couple of days on his return, but to have drastically deteriorated subsequently, apparently due to the fact that he had not received the medication prescribed by the hospital.

When confronted with this case, the doctor claimed that he had seen the inmate concerned, but was not able to provide any precise information about his health condition or the treatment provided.

When asked about the whereabouts of the medical file of the above-mentioned detainee as well as of other detainees, the doctor affirmed that such files existed in respect of every inmate, but claimed that he had no key to the cupboard where the files were said to be stored. After a considerable delay, a key was produced by a police officer, and it came to light that there was not a single personal medical file.

The only medical documentation available was a register for doctors' visits, the last entry dating back to November 2005. The doctor's explanation for this state of affairs was that 'he had not recorded anything, because he had not received any medication to prescribe ever since'. ..."

20. A previous visit by a CPT delegation to Albania took place from 23 May to 3 June 2005. The delegation inspected, *inter alia*, Tirana Prison Hospital. The relevant parts of the CPT's report of 2 July 2006 read as follows (emphasis added by the CPT):

"61. Material conditions of detention were appalling in all the pre-trial detention facilities visited. Many detainees were being held in very cramped conditions (for example, up to seven persons in a cell of 5 m² at Vlora or up to ten persons in a cell of 8 m² at Durrës). Cells were only equipped with foam mattresses and/or blankets. In addition, access to natural light was very limited and ventilation extremely poor.

The worst conditions were found at Durrës, where inmates were not even provided with mattresses or bed sheets. Further, some inmates were being accommodated in two storage rooms, which were packed with food parcels of the entire inmate population. Some inmates were found to be in a state of torpidity, and the delegation was informed that, on occasion, inmates had even fainted, as a result of extremely high temperatures and a very high level of humidity. Further, hygienic conditions in most of the cells as well as in the sanitary facilities were appalling (infested with cockroaches, etc.). Not surprisingly, many inmates were suffering from skin diseases and/or breathing problems. It must also be stressed that some of the inmates met by the delegation had already been held in this establishment for several years. ...

108. During the follow-up visit to the prison hospital in Tirana, the delegation mainly focused on the situation of psychiatric patients. It also reviewed the measures taken by the Albanian authorities in the light of the recommendations made after the 2000 visit regarding the prison hospital as a whole. ...

110. Material conditions in the prison hospital had significantly improved since the 2000 visit. All cells were of a reasonable size, had good access to natural light and artificial lighting, and were well equipped (bed, bedside table, table, chair, radio). However, the sanitary facilities were found to be in a very poor state of repair and hygiene. The CPT recommends that steps be taken to remedy these deficiencies.

Further, many complaints were received from patients about the poor quality and quantity of the food provided. Steps should be taken to review the arrangements for the provision of food at the prison hospital.

111. The CPT remains very concerned about the almost total lack of out-of-cell activities for patients at the prison hospital.

As regards patients who had been declared criminally irresponsible, no out-of-cell activities were organised for them, and outdoor exercise was only provided on an irregular, less than weekly, basis, and for less than one hour each time. It is all the more worrying that many of the patients concerned had been staying at the prison hospital under such conditions for several years.

Further, no outdoor exercise at all, nor any other out-of-cell activities were offered to any of the other patients. Thus, except for access to sanitary facilities, patients were usually confined to their rooms 24 hours per day, the only occupation being reading and listening to the radio. The hospital also had no library.

Such a state of affairs is totally unacceptable and constitutes a flagrant failure on the part of the Albanian authorities to implement a recommendation which had already been made after the 1997 visit and reiterated after the subsequent visits to the prison hospital.

The CPT calls upon the Albanian authorities to take immediate steps to ensure that all patients whose state of health permits are offered at least one hour of outdoor exercise per day.

Further, **the Committee reiterates its recommendation that a wider range of activities be offered to long-term patients in the prison hospital and that special attention be paid to juveniles serving long-term sentences.**

112. The CPT welcomes the recent reinforcement of health-care staff (two additional doctors and one psychologist) at the prison hospital. The delegation was informed that plans were afoot to increase the number of nursing staff. **The CPT would like to receive updated information on this matter.**

113. As regards the treatment provided to patients, the situation remained, on the whole, unchanged. As in 2000, psychiatric treatment was based exclusively on pharmacotherapy. There were no individualised treatment plans or individual psychotherapy, occupational therapy or group therapy. In this respect, the CPT wishes to stress once again that psychiatric treatment should be based on an individualised approach, which implies the drawing up of a treatment plan for each patient indicating the goals of treatment, the therapeutic means used and the staff member responsible. The treatment plan should also contain the outcome of a regular review of the patient's mental health condition and a review of the patient's medication. The treatment should involve a wide range of rehabilitative and therapeutic activities, including access to occupational therapy, group therapy, individual psychotherapy, and sports. In addition, patients should have regular access to suitably equipped leisure rooms; it is also desirable for them to be offered education and suitable work (cf. also paragraph 111).

The CPT reiterates its recommendation that the psychiatric treatment offered to patients at the prison hospital be reviewed, in the light of the above remarks.

114. As regards contact with the outside world, it is praiseworthy that patients now have regular access to a telephone (once per week). As regards visits, the entitlements of patients were identical to those of inmates held in prisons. In this connection, reference is made to the remarks and recommendation made in paragraph 136.

115. The CPT noted that, since the beginning of 2005, agitated patients were no longer shackled to their bed with hand- and ankle-cuffs. Further, no excessive recourse to means of restraint (leather straps; sedative medication) or seclusion was observed. However, there was no special register on the use of means of restraint/seclusion. **Steps should be taken to remedy this shortcoming.**

116. The confidentiality of medical examinations/consultations and data was not respected at all at the prison hospital. In this connection, reference is made to the remarks and recommendations made in paragraph 127.

117. Persons who had been declared criminally irresponsible were subject to an involuntary placement order for an indefinite period. In such cases, [Article 46 of the

Criminal Code] provides that the necessity of that placement be reviewed by the court *ex officio* after one year. However, the delegation was informed that such judicial reviews had never been carried out *ex officio*, but only upon request by the person concerned or his lawyer.

The CPT calls upon the Albanian authorities to take immediate steps to ensure that the review procedure under [Article 46 of the Criminal Code] is carried out in respect of all persons who have been declared criminally irresponsible.”

C. Amnesty International Report 2007 on the state of the world’s human rights

21. The Amnesty International Annual Report 2007 stated, with reference to the state of human rights in Albanian prisons:

“Conditions of detention

Despite an EU-supported programme of prison reform and some improvements to detention conditions, these were still generally very poor and characterized by overcrowding, poor hygiene and sanitation, and inadequate diet and health care. Contrary to Albanian law and international standards, minors were still sometimes held together with adult detainees, and remand and convicted prisoners shared cells. Mentally ill prisoners were often held in prisons instead of being sent for medical treatment in specialized institutions in accordance with court decisions. Detainees held in remand cells in police stations suffered particularly harsh conditions, and there were frequent complaints. Conditions were particularly poor, largely due to overcrowding, in Durrës, Elbasan and Korça police stations.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

22. Without relying on any Article of the Convention, the applicant complained of the inadequacy of his medical treatment, and with reference to the CPT reports on Albanian prisons in general, the conditions of his detention in view of his state of health.

23. In his observations of 22 May 2007 the applicant challenged the adequacy of the conditions in the pre-trial detention cells at Durrës Police Station from August 2002 to December 2003.

24. The Court considers that despite the fact that the applicant did not explicitly rely on Article 3 of the Convention, his claims fall to be examined under that Article. The Government in their submissions were requested to address that Article. Article 3 reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Admissibility

25. The Government contested the applicant’s arguments. They submitted that the applicant had failed to submit his complaints to the domestic courts and that this part of the application should therefore be declared inadmissible for non-exhaustion of domestic remedies.

26. The applicant alleged that his repeated complaints to the competent domestic courts had been dismissed and that he was currently serving his sentence in the same place as other inmates who were in good health. He maintained that his complaints were based on a structural problem of the Albanian penitentiary system, which lacked appropriate institutions to ensure adequate conditions of detention and the necessary medical treatment for people with a similar health condition. Consequently, his appeals would have been ineffective in practice even if they were successful at domestic level.

27. The Court observes at the outset that the applicant’s complaint about the conditions of his pre-trial detention (from August 2002 to December 2003) was lodged only on 22 May 2007, that is to say after the six-month time-limit provided for by the Convention. In these circumstances this complaint must be rejected as having been lodged outside the six-month time-limit pursuant to Article 35 §§ 1 and 4 of the Convention.

28. As to the remainder of the applicant’s complaints under this provision, namely the inadequacy of the conditions in prison and the medical treatment he received, the Court observes that it appears from the file that after his conviction the applicant was placed in cells with other inmates. When his state of health worsened he was transferred to Tirana Prison Hospital, where he received in-patient treatment. The applicant’s lawyer unsuccessfully requested the domestic courts to release the applicant from prison and/or to order his detention in a specialised medical facility, given the harsh conditions of detention in a high-security prison. The applicant cannot therefore be reproached for failing to exhaust domestic remedies.

29. The Court would further observe that the Government have failed to prove that the remedies referred to would have been adequate and effective to redress the applicant’s complaints. In particular, they have not alluded to any decisions of the domestic courts which indicate that individuals in the applicant’s situation have successfully obtained their transfer from prison to an institution specialising in the treatment of the mentally ill. Consequently, it dismisses their objection.

30. Having regard to the above considerations, the Court considers that the applicant’s complaints relating to the conditions of his detention and the

medical treatment he received while in prison are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

31. The applicant argued that he was serving his sentence in a prison where the detention conditions failed to meet those required for persons in his state of health. Moreover, he argued that the authorities' negligence in failing to treat him with the drugs prescribed by specialist doctors had breached his rights under the Convention.

32. The Government disputed that – apart from the applicant's subjective feelings – the treatment complained of had attained the minimum level of severity required to fall within the scope of Article 3. They first of all maintained that in the light of the medical evidence produced by them before the Court, there could be no doubt that the relevant authorities had carefully and frequently monitored the applicant's state of health and provided him with medical assistance appropriate to his condition.

33. The Government submitted that the conditions of detention in Albanian prisons should be considered in the same context as those in other member States which were reforming their legal systems. Indeed, since the time of the CPT's first visit to Albania in 1990, positive progress had been achieved and conditions of detention had improved. Moreover, they submitted that the conditions in which prisoners such as the applicant were detained should be assessed with reference to the economic situation of the State and the standard of living in the country.

34. Lastly, they maintained in particular that the conditions of the applicant's detention were appropriate to his state of health and equal to the standards applied to other prisoners, given that in 2002 the domestic courts had found him criminally responsible for the offences committed. The Government submitted medical reports on the applicant's health, which referred to his medical treatment during his stay in prison and in the prison hospital. These reports reflected the fact that the applicant had been treated with medicines similar to those prescribed by his ordinary doctor and that his admission to a specialist institution within the penitentiary system depended on the construction of such an institution in the future.

2. *The Court's assessment*

(a) General principles

35. The Court reiterates at the outset that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, as recent authorities, *Van der Ven v. the Netherlands*, no. 50901/99, § 46, ECHR 2003-II, and *Poltoratskiy v. Ukraine*, no. 38812/97, § 130, ECHR 2003-V).

36. The Court reiterates that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Kudla v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI; *Mouisel v. France*, no. 67263/01, § 37, ECHR 2002-IX; and *Papon v. France (no. 1)* (dec.), no. 64666/01, ECHR 2001-VI).

37. Treatment has been held by the Court to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudla*, cited above, § 92). The question whether the purpose of the treatment was to humiliate or debase the victim is a further factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a violation of Article 3 (see *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III; *Kalashnikov v. Russia*, no. 47095/99, § 101, ECHR 2002-VI and *Ramirez Sanchez v. France* [GC], no. 59450/00, § 119, ECHR 2006-...).

38. The suffering and humiliation involved must go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that detention in itself raises an issue under Article 3. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured. When assessing conditions of detention, account has to be taken of the cumulative effects of

those conditions and the duration of the detention (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II, and *Kalashnikov*, cited above, § 102). In particular, the Court must have regard to the state of health of the detained person (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3296, § 135; *Kudla*, cited above, § 94 and *Ramirez Sanchez* cited above, § 119).

39. An important factor, along with the material conditions, is the detention regime. In assessing whether a restrictive regime may amount to treatment contrary to Article 3 in a given case, regard must be had to the particular conditions, the stringency of the regime, its duration, the objective pursued and its effects on the person concerned (see *Messina v. Italy* (dec.), no. 25498/94, ECHR 1999-V; *Van der Ven*, cited above, § 51; *Iorgov v. Bulgaria*, no. 40653/98, §§ 82-84 and 86, 11 March 2004; and *G.B. v. Bulgaria*, no. 42346/98, §§ 83-85 and 87, 11 March 2004).

40. Thus, the Court has been called upon to examine, *inter alia*, whether it is compatible with Article 3 for the following categories of persons to be detained in conditions which are not suitable in the light of their physical or mental condition: persons suffering from a mental disorder (see *Kudla*, cited above, and *Keenan v. the United Kingdom*, no. 27229/95, ECHR 2001-III) or serious illness (see *Mouisel*, cited above, and *Matencio v. France*, no. 58749/00, 15 January 2004; and *Sakkopoulos v. Greece*, no. 61828/00, 15 January 2004), the disabled (see *Price v. the United Kingdom*, no. 33394/96, ECHR 2001-VII), the elderly (see *Papon* (dec.), cited above) or drug addicts suffering withdrawal symptoms (see *McGlinchey and Others v. the United Kingdom*, no. 50390/99, ECHR 2003-V).

41. Although Article 3 of the Convention cannot be construed as laying down a general obligation to release detainees on health grounds, it nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance (see *Hurtado v. Switzerland*, judgment of 28 January 1994, Series A no. 280-A, Opinion of the Commission, pp. 15-16, § 79). The lack of appropriate medical care may amount to treatment contrary to Article 3 (see *Ilhan v. Turkey* [GC], no. 22277/93, § 87, ECHR 2000-VII; *Naumenko v. Ukraine*, no. 42023/98, § 112, 10 February 2004; and *Farbtuhs v. Latvia*, no. 4672/02, § 51, 2 December 2004). In particular, the assessment of whether the particular conditions of detention are incompatible with the standards of Article 3 has, in the case of mentally ill persons, to take into consideration their vulnerability and their inability, in some cases, to complain coherently or at all about how they are being affected by any particular treatment (see, for example, *Herczegfalvy v. Austria*, judgment of 24 September 1992, Series A no. 244, pp. 25-26, § 82, and *Aerts v. Belgium*, judgment of 30 July 1998, *Reports* 1998-V, p. 1966, § 66).

42. There are three particular elements to be considered in relation to the compatibility of an applicant's health with his stay in detention: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention, and (c) the advisability of maintaining the detention measure in view of the state of health of an applicant (see *Mouisel*, cited above, §§ 40-42, and *Melnik v. Ukraine*, no. 72286/01, § 94, 28 March 2006).

(b) Application of these principles to the present case

43. The Court considers that the applicant's complaints under this provision, namely the inadequacy of the conditions of his detention and the inappropriate medical treatment he received while in prison, concern the same Convention issues. Thus, it will examine the merits of both complaints jointly.

44. The Court observes that the parties agreed that the applicant was suffering from a chronic mental disorder, which involved psychotic episodes and feelings of paranoia. The history of his detention in the pre-trial detention facility of Durrës Police Station, and then in Peqin High Security Prison from 2002 onwards, indicates that his condition had deteriorated by the time he received in-patient treatment in Tirana Prison Hospital. In particular, during his five years of detention the applicant received in-patient medical treatment in Tirana Prison Hospital from 26 May 2004 to 2 June 2004 and from 1 December 2004 to 26 January 2005.

45. According to the authorities, given the impossibility of providing the applicant with the necessary medical treatment in view of the lack of relevant facilities and medicines (see paragraph 34 above), he was treated with drugs similar to those prescribed by his doctor and, until the establishment of a specialist criminal psychiatric institution, he was placed in ventilated and well-lit cells in a high-security prison which he shared with other inmates who were in good health. He received in-patient treatment in Tirana Prison Hospital only when his health worsened.

46. The applicant's father and lawyer lodged several complaints with the competent authorities against the prison hospital administration and the medical unit, alleging that they had been negligent in failing to prescribe adequate medical treatment and that his health had deteriorated because of the lack of medical treatment and examinations. However, all the complaints were disregarded. Indeed, the Court observes that the last assessment of the applicant's health dates back to 2002. The applicant's medical notes show that he has repeatedly been prescribed the same treatment and that no detailed description has been given of the development of his illness.

47. The Court considers that the fact that the applicant was found criminally responsible for an offence of homicide and sentenced to life

imprisonment is not decisive for the question whether the authorities fulfilled their obligation under Article 3 to protect him from treatment or punishment contrary to this provision. Indeed, the feeling of inferiority and powerlessness which is typical of persons who suffer from a mental disorder calls for increased vigilance in reviewing whether the Convention has been complied with. While it is for the authorities to decide, on the basis of the recognised rules of medical science, on the therapeutic methods to be used to preserve the physical and mental health of patients who are incapable of deciding for themselves, and for whom they are therefore responsible, such patients nevertheless remain under the protection of Article 3, whose requirements permit of no derogation.

48. The Court accepts that the very nature of the applicant's psychological condition made him more vulnerable than the average detainee and that his detention may have exacerbated to a certain extent his feelings of distress, anguish and fear. In this connection, the Court considers that the fact that the Government admitted that the applicant was treated like the other inmates, notwithstanding his particular state of health, shows the failure of their commitment to improving the conditions of detention in compliance with the recommendations of the Council of Europe (see paragraph 18 above). In recent judgments the Court has drawn the authorities' attention to the importance of this recommendation, notwithstanding its non binding nature for the member States (see *Rivière v. France*, no. 33834/03, § 72, 11 July 2006, and *Naumenko v. Ukraine*, cited above, § 94).

49. Moreover, the Court observes that the Government have failed either to submit detailed information about the material conditions of the applicant's detention or to show that notwithstanding his stay in a high-security prison, those conditions were appropriate for a person with his history of mental disorder. Furthermore, the Court considers that the applicant's regular visits to the prison's hospital cannot be viewed as a solution since the applicant is serving a sentence of life imprisonment.

50. The Court does not underestimate the significance of the financial difficulties referred to by the Government (see paragraph 33 above). However, it observes that many of the shortcomings outlined above could have been remedied even in the absence of considerable financial means. In any event, a lack of resources cannot in principle justify detention conditions which are so poor as to reach the threshold of severity for Article 3 to apply (see *Poltoratskiy*, § 148 cited above, and *Iovchev v. Bulgaria*, no. 41211/98, § 136, 2 February 2006).

51. Taking into account the cumulative effects of the entirely inappropriate conditions of detention to which the applicant was subjected, which clearly had a detrimental effect on his health and well-being (see *Kalashnikov*, cited above, § 98), the CPT's findings in its latest reports concerning the conditions of detention in Albanian prisons, particularly with

regard to mentally ill prisoners (see paragraphs 19-20 above), and its own case-law in this area (see paragraph 41 above), the Court considers that the nature, duration and severity of the ill-treatment to which the applicant was subjected and the cumulative negative effects on his health are sufficient to be qualified as inhuman and degrading (see *Egmez v. Cyprus*, no. 30873/96, § 77, ECHR 2000-XII; *Labzov v. Russia*, no. 62208/00, § 45, 16 June 2005; and *Mayzit v. Russia*, no. 63378/00, § 42, 20 January 2005).

52. There has therefore been a violation of Article 3 of the Convention.

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

A. The parties' submissions

53. Relying on Article 6 § 1 of the Convention, the applicant complained of the unfairness of the proceedings concerning his request for his release from prison or confinement in a specialist institution appropriate to his state of health. In particular, he claimed that the domestic courts had failed to give him the possibility of being examined by an independent and impartial psychologist in order to establish the nature of his mental disorder, thus putting him at a disadvantage *vis-à-vis* the prosecutor's office and upsetting the principle of equality of arms.

54. The Government contested that argument. They submitted that the applicant had had the opportunity to prove that the conditions of his detention threatened his life. In their submission, the applicant's complaint concerned the outcome of the proceedings at issue and should thus be dismissed by the Court as being of a fourth-instance nature.

B. The Court's assessment

55. The Court reiterates the settled case-law of the Convention institutions to the effect that proceedings concerning the execution of a sentence imposed by a competent court, including proceedings on the granting of conditional release, do not fall within the scope of Article 6 § 1 of the Convention. They concern neither the determination of "a criminal charge" nor the determination of "civil rights and obligations" within the meaning of this provision (see, for example, *Aldrian v. Austria*, no. 16266/90, Commission decision of 7 May 1990, Decisions and Reports (DR) 65, p. 337; *A. B. v. Switzerland*, no. 20872/92, Commission decision of 22 February 1995, DR 80, pp. 66 and 72; *Grava v. Italy* (dec.), no. 43522/98, 5 December 2002; *Husain v. Italy* (dec.), no. 18913/03, 24 February 2005; and *Sannino v. Italy* (dec.), no. 30961/03, 24 February 2005).

56. It observes that the applicant's conviction and sentence were upheld by the domestic courts at three levels of jurisdiction. The applicant has been serving the prison sentence imposed on him ever since. The Court is not persuaded that the decision taken by the domestic courts regarding the applicant's request to serve his sentence in a specialist institution appropriate to his state of health or to be released involved the determination of a "criminal charge" or of "civil rights and obligations" within the meaning of Article 6 § 1. The applicant's request in practice related to the manner of implementing his sentence.

57. The Court would further observe that the Convention does not guarantee, as such, a right to conditional release or to serve a prison sentence in accordance with a particular sentencing regime (see *Aldrian*, Commission decision cited above, and *Savic v. Slovakia*, no. 28409/95, Commission decision of 3 December 1997).

58. It follows that the complaint must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLES 46 AND 41 OF THE CONVENTION

59. Article 46 of the Convention provides:

"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."

60. Article 41 of the Convention provides as follows:

"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."

61. The applicant pointed out that he had been detained in poor conditions from 2002 onwards, during which time he had not received adequate medical treatment. He requested to be placed in a specialised medical institution appropriate to his state of health, and also sought payment of 500,000 euros (EUR) in respect of the pecuniary and non-pecuniary damage sustained. In the event of the authorities' failure to comply with the above-mentioned request, he claimed EUR 1,000,000 in respect of pecuniary and non-pecuniary damage.

62. The Government confined themselves to alleging that there was no evidence supporting the applicant's claims.

63. The Court reiterates that, in accordance with Article 46 of the Convention, a finding of a violation imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the

Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects (see *Broniowski v. Poland* [GC], no. 31443/96, § 192, ECHR 2004-V).

64. The Court has taken due note of the Government's commitment to the improvement of prison conditions. In this connection the Government should take an approach to the matter in keeping with the spirit of the protection system set up by the Convention. However, the Court considers that in view of its findings in the present case, the necessary measures should be taken as a matter of urgency in order to secure appropriate conditions of detention and adequate medical treatment, in particular, for prisoners, like the applicant, who need special care owing to their state of health.

A. Damage

65. As to the pecuniary damage allegedly caused, the Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention (see *Barberà, Messegué and Jabardo v. Spain*, judgment of 13 June 1994 (former Article 50), Series A no. 285-C, §§ 16-20; see also *Berktaş v. Turkey*, no. 22493/93, § 215, 1 March 2001; and *Khudobin v. Russia*, no. 59696/00, § 142, ECHR 2006-... (extracts)).

66. The Court, having regard to its findings concerning the applicant's complaint under Article 3 of the Convention, considers that no causal link has been established between the damage alleged and the violation it has found (see *Kalashnikov*, cited above, § 139). It therefore dismisses the applicant's claim for pecuniary damage.

67. As regards non-pecuniary damage, the Court observes that it has found that the applicant's rights under Article 3 of the Convention have been violated. It considers that the applicant suffered damage of a non-pecuniary nature, as a result of his detention in inhuman and degrading conditions, inappropriate to his state of health (see paragraphs 51-52 above), which is not sufficiently redressed by the finding of a violation of his rights under the Convention.

68. For the foregoing reasons, having regard to the specific circumstances of the present case and its case-law in similar cases (see, *mutatis mutandis*, *Peers*, cited above, § 88; *Khokhlich v. Ukraine*, no. 41707/98, § 228, 29 April 2003; and *Melnik*, cited above, § 121) and deciding on an equitable basis, the Court awards EUR 5,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

69. The applicant claimed no costs and expenses, either for the Convention proceedings or for the proceedings before the domestic courts, other than those received in legal aid.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the inappropriateness of the conditions of the applicant's detention in prison and of the medical treatment he received, having regard to his state of health, admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable on the date of the settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President