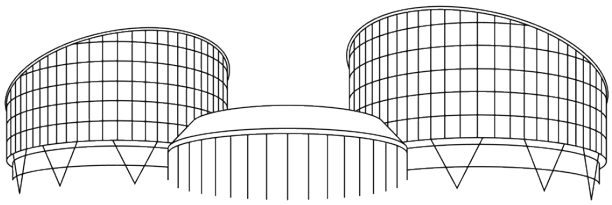

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF IORGOV (II) v. BULGARIA

(Application no. 36295/02)

JUDGMENT

STRASBOURG

2 September 2010

FINAL

21/02/2011

This judgment has become final under Article 44 § 2 (c) of the Convention. It may be subject to editorial revision.

In the case of Iorgov (II) v. Bulgaria**,**

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

Peer Lorenzen, *President,*
Renate Jaeger,
Karel Jungwiert,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Ganna Yudkivska, *judges,*
Pavlina Panova, ad hoc *judge,*

and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 6 July 2010,

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

PROCEDURE

1. The case originated in an application (no. 36295/02) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Plamen Parashkevov Iorgov ("the applicant"), on 15 August 2002.

2. The applicant was represented before the Court by Mrs Y. Vandova, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Dimova of the Ministry of Justice.

3. The applicant complained that he had been given a sentence of life imprisonment with no possibility of early release, which he considered to be in violation of Article 3 of the Convention. Under the same Article he also complained about the conditions of his detention in Pleven prison. He further alleged that he had no means of challenging the lawfulness of his detention, in violation of Article 5 § 4 of the Convention.

4. On 9 October 2007 the President of the Fifth Section decided to communicate the application to the Government. Applying Article 29 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

5. Mrs Zdravka Kalaydjieva, the judge elected in respect of Bulgaria, having withdrawn from sitting in the case (Rule 28 of the Rules of Court), on 30 January 2009 the Government appointed Mrs P. Panova to sit as an *ad hoc* judge in her stead (Article 27 § 2 of the Convention and Rule 29 § 1 as in force at the time).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1957. He is currently serving a life sentence in Pleven, following the commutation of the death penalty to which the courts sentenced him.

7. An initial application lodged by the applicant led to the finding of a violation of Article 3 of the Convention because of the severity of the regime and conditions of detention imposed on him in Sofia prison between 1990 and 1998 (*Iorgov v. Bulgaria*, no. 40653/98, 11 March 2004). The present case concerns events subsequent to the commutation of the applicant's death penalty in 1999 to one of life imprisonment and his transfer to Pleven prison.

A. The applicant's criminal background, the death sentence and its commutation

8. Between 1976 and 1987 the applicant was convicted on one count of rape, two of robbery, one of aggravated robbery and one of disturbing public order *(хулиганство)*. As a result he was given three prison sentences and spent a total of eight years and eight months in prison before being released on 14 March 1989.

9. On 4 August 1989 he was arrested near the border between Bulgaria and Yugoslavia. In the course of the ensuing investigations he confessed to having murdered three minors not far from his town, Gulyantsi, on 17 July 1989, and explained that he had intended to leave the country illegally in order to avoid conviction. On 8 August 1989 he was remanded in custody.

10. In the criminal proceedings against him he was charged with the murder of the three children, aged 12, 10 and 8 respectively, with the attempted rape of one of the three victims, with attempting to leave the country illegally and with four counts of trespassing followed by rape committed between 1984 and 1989. In a judgment of 9 May 1990 the Pleven Regional Court found him guilty of the murder of the three children, of the attempted rape of one of the victims, of attempting to leave the country illegally, and of rape committed in 1984 after unlawful entry into the victim's home.

11. On the strength of the evidence produced, the court established the circumstances of the the triple murder as follows. The applicant, a lorry driver, had known the three victims because he had spent some time with their families on a festive occasion. On 17 July 1989 he was asked to transport part of the harvest from the fields around Gulyantsi. That afternoon he chanced upon the three children playing by a river not far from

the town. He persuaded them to get into his lorry and drove them to a wood ten kilometres away. There, he tied up the youngest two and tried to rape the girl, who was 12 years old. Then, fearing that they would report him, he strangled the children one by one. To make sure they were dead, he kicked each child in the head several times and slit their throats with a knife. The same day he returned to the scene of the crime and buried the three bodies.

12. The court sentenced him to death for the murder of the three children, considering that, under the circumstances, that was the only penalty that fulfilled the purpose of criminal repression set forth in Article 36 of the Criminal Code: this was an exceptionally serious crime, with several aggravating circumstances (the victims were all young children and had been killed in a particularly cruel manner in order to cover up another crime – the rape of one of them), and the accused had already been convicted of other crimes, but the sentences he had served had not had the desired deterrent effect. The court's decision was upheld by the Supreme Court on 24 October 1990. The applicant then submitted a request for the revision of the judgment, which was rejected on 8 April 1994.

13. The last executions of convicts sentenced to death in Bulgaria took place in November 1989. On 20 July 1990 the National Assembly placed a moratorium on all executions of prisoners sentenced to death. On 23 December 1998 the National Assembly abolished capital punishment and replaced it in the Criminal Code with a new penalty, life imprisonment without commutation *(доживотен затвор без замяна)*. By a decree of 25 January 1999, the Vice-President of Bulgaria commuted the death sentences of the 19 convicts who had been awaiting execution since the introduction of the moratorium, including the applicant, to sentences of life imprisonment without commutation.

14. On 3 November 2009, when news of the parties was last received, the applicant was still in Pleven prison. He had already served twenty years and three months of his life sentence.

B. Conditions of detention in Pleven prison and prison regime applied to the applicant

1. Conditions of detention between 1999 and 2003

15. On 27 April 1999 the applicant was transferred to Pleven prison. In a decision of 5 July 1999 the Veliko Tarnovo Court of Appeal ordered him to be placed under the strictest regime, the "special regime". It based its decision on section 127b of the Execution of Sentences Act.

16. The applicant was placed in the section of the prison reserved for prisoners serving life sentences, located on the third floor and separated from the rest of the building by a locked door. It comprised six cells, a corridor and a bathroom with lavatories.

17. Each cell measured 4.50 m² and was separated from the neighbouring cells by two solid metal panels, and from the corridor by iron bars. The dividing panels jutted out about 30 inches past the bars, making visual contact between the prisoners impossible. Each cell had a metal bed and bedside table. A metal plate welded to the bars served as a table and another, welded to the bed served as a bench. There was a shelf on the wall for the detainees' clothes.

18. The only daylight came from the windows in the corridor, which were too small to provide sufficient light or ventilation. There was a fluorescent lamp, controlled by the warder, on the ceiling outside each cell. At night light was provided by a 60-watt electric bulb fixed to the end of the metal partition panel, out of reach of the detainees. It was left on all night, but the light it gave out was not bright enough to read or write by. There was a window in the bathroom, but it was covered with a metal plate. Heating was provided by radiators attached to the corridor walls, about two yards from the cell bars.

19. The applicant went to shower once a week, and that was his only access to hot water. He was allowed to use the sanitation facilities in his detention quarters three times a day. The rest of the time he had to use a plastic bucket as a toilet.

20. The applicant had the right to one hour's exercise in the open air per day. Until the beginning of 2002 prisoners serving life sentences were taken out for their open-air exercise one by one, handcuffed and escorted by guards. It was then decided to take them out two at a time, still in handcuffs, and after a while the use of handcuffs was dropped. In 2002 the applicant and the other prisoners serving life sentences were allowed to play table tennis once a week in the activity room adjacent to their quarters. They were also allowed to watch a film and see a priest once a week. From 18 October 2000 onwards the prison authorities allowed the applicant to work in his cell, folding envelopes.

2. Conditions of detention since 2003

21. In October 2003, at the applicant's initiative, the prison governor took certain steps to improve the detention conditions of prisoners serving life sentences: the cells were left open between 5.30 a.m. and 8 p.m., allowing the prisoners to communicate and to use the lavatory when necessary, and giving them access to running water. The metal plate over the bathroom window was removed to let the daylight in. The electric light bulbs were moved closer to the cells and the metal wall by the applicant's bed was covered with insulating material.

22. In 2003 and 2004 the applicant's detention regime was relaxed twice in succession. On 6 April 2004 he joined a group of ordinary prisoners and left the quarters reserved for prisoners serving life sentences. Since that date he has been sharing a 23 m² cell with five other prisoners. The door of the

cell is left open in the daytime and he can talk to the other prisoners in his group in the corridor.

23. According to a report by the Director General of Prison Administration presented by the Government, the applicant regularly took part in sporting activities (table tennis, football, volleyball) and in the organisation of various concerts and festivities on national holidays, at Easter and over the Christmas season. He regularly spoke to his close relatives on the telephone and received parcels from them. Since 2 April 2007 he has worked as a cleaner in charge of the cells on the third floor of the prison.

C. The applicant's health and the medical care he received in prison

24. The applicant suffers from back pain (discopathy), for which he was treated in hospital in 2000. According to him, the pain subsequently grew worse and on 13 February 2002 he was examined by a doctor, who recommended physiotherapy. He received no such treatment and complained about it to the Minister of Justice. In a letter of 4 April 2002 the Director General of Prison Administration informed the applicant that the treatment recommended was not the usual method for treating his condition and, as he was under medical supervision, medicine could be administered to him in Pleven prison.

25. According to a report by the director of the prison's medical centre, presented by the Government, the applicant consulted neurology specialists about his back pains on several occasions. In 2003 he apparently underwent thorough medical examinations which revealed no complications.

26. In March 2003, following a skin infection, the applicant underwent surgery at the Sofia prison hospital. He was there from 15 March to 18 April 2003. The doctors noted an improvement in his health by the time he left the hospital. The applicant says that since he was transferred to a shared cell he has had no particular health problems.

27. According to the report by the director of the prison's medical centre, the applicant consulted the prison dentist over a hundred times for different types of dental treatment between 1999 and 2004.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The sentencing system in Bulgarian criminal law over the years

28. Under Articles 37 (2) and 38 of the Criminal Code (CC) as applicable prior to the abolition of capital punishment, the courts could pronounce the death penalty only for particularly serious crimes and only if they considered that the punitive and deterrent purposes of a criminal

penalty could not be achieved by a lesser sentence. Until 1995 the harshest sentence after the death penalty was imprisonment, for up to 30 years in exceptional cases (Article 39 of the CC). In 1995 a new penalty was introduced: life imprisonment *(доживотен затвор)*, defined by Article 38a (1) of the CC as "confinement of the convicted person in a prison establishment until the end of his life". This sentence could be commuted by a court to 30 years' imprisonment after the convict had served 20 years of his sentence (Article 38a (3) of the CC).

29. The death penalty was abolished on 23 December 1998. A new penalty was introduced: life imprisonment without commutation *(доживотен затвор без замяна)*. This penalty replaced capital punishment in the provisions of the Criminal Code. At present it is considered as an alternative to imprisonment and ordinary life imprisonment for crimes considered particularly serious, such as murder or aggravated armed robbery. The relevant part of the explanatory memorandum that accompanied the law abolishing the death penalty read as follows:

> "... It is proposed in the draft law to replace the death penalty with a new penalty, life imprisonment without commutation, 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 ..."

30. Thus, since the abolition of the death penalty, Bulgarian legislation has provided for three types of custodial penalty: imprisonment, for a period of up to thirty years, life imprisonment with a possibility of commutation, and life imprisonment without the possibility of commutation. According to the statistics produced by the respondent Government, on 15 September 2009 there were 60 people serving life sentences without the possibility of commutation in Bulgarian prisons. Another 89 prisoners were serving ordinary life sentences.

B. Acts of clemency and adjustment of sentence and their applicability to life imprisonment without commutation

1. Release on licence

31. Under the provisions of Article 70 (1) of the CC, release on licence is applicable only to fixed-term prison sentences. Offenders sentenced to life imprisonment, with or without the possibility of commutation, are not eligible for release on licence.

2. Commutation of sentence by judicial decision

32. The Code of Criminal Procedure 1974 (the CCP) and the new Code of Criminal Procedure 2006 (the NCCP) provide for the possibility for a

regional court, at the request of the regional prosecutor, to commute a life sentence to an ordinary prison sentence (Articles 427 and 428 of the CCP 1974 and Articles 449 and 450 of the NCCP). The regional court gives a reasoned decision; a negative decision may be challenged in the higher courts. If the prosecutor's proposal is rejected, no further commutation request may be submitted for two years. The legislation makes no provision for the prosecuting authorities to apply for adjustment of the sentence of offenders sentenced to life imprisonment without commutation.

3. Presidential clemency

33. Under Article 98 point 11 of the Constitution, the power of clemency is a presidential prerogative. Article 74 of the CC, which explains the scope of this presidential power, reads as follows :

> "The President may use his power of clemency to grant a pardon in respect of all or part of the sentence and, in the case of the death penalty, a sentence of life imprisonment without commutation or a sentence of life imprisonment, grant a pardon or commute the sentence."

34. It is a discretionary power which the President has delegated to the Vice-President of the Republic. The Vice-President may decide to exercise the power, in either form, at any time while the sentence is being served. His decision is unconditional and irrevocable. Refusal by the Vice-President to exercise his power is not subject to judicial or administrative review.

35. In practice a committee of experts from the President's administration examines requests for presidential clemency and makes proposals to the Vice-President. In forming its opinion in each case the committee takes into account the position of the president's legal advisers on criminal policy and relies on the information communicated by the prison administration about the convict concerned. Before reaching a decision, the Vice-President may interview the prisoner.

36. In the period from 1 January 2002 to 31 December 2009 the Vice-President received 6,967 applications for clemency. 477 of these were granted.

37. According to a report by the Director General of Prison Administration dated 15 September 2009, submitted by the Government, prisoners serving a life sentence without commutation had submitted about a hundred applications for clemency to the successive Vice-Presidents of the Republic. None was granted. According to a letter from the head of the Vice-President's Office submitted by the Government, from 21 January 2002 to 7 September 2009 the advisory Committee received 29 applications for clemency from 16 prisoners sentenced to life imprisonment without commutation. None was granted. The letter explains that the Vice-President is not required to give reasons for his refusal, but the prisoners concerned can renew their applications for presidential clemency without any restrictions.

C. The prison regimes of prisoners serving a life sentence without commutation

38. According to Article 127b of the 1999 version of the Law on the Execution of Punishments 1969, in the event of an ordinary life sentence the court was to order the offender's placement under the strictest regime, called the "special regime". Prisoners placed under that regime were confined to locked single cells kept under special surveillance (Section 56 of the implementing regulations). Following its amendment on 25 June 2002, the Law on the Execution of Punishments expressly provided for prisoners sentenced to life imprisonment without commutation to be placed under the same prison regime as those serving an ordinary life sentence. The different regimes for custodial sentences, including the special regime, were defined in sections 49 to 65 of the Law on the Execution of Punishments.

39. On 1 June 2009 that Law was replaced by a new Law on the Execution of Punishments, which retained its provisions concerning the execution of the two types of life sentence. The implementing regulations defined the different prison regimes, including the special regime, and the means of execution of custodial sentences (sections 47 to 54).

III. REPORTS OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

40. CPT delegations visited Pleven prison in April 2002 and September 2006. The reports on the two visits were published (in English only).

41. The parts of the report on the visit in 2002 concerning the conditions of detention of prisoners serving life sentences and the medical care dispensed in prison read as follows:

> "... iii. life-sentenced prisoners
>
> 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 Law on the Execution of Punishments (cf. Art. 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.
>
> ...

94. ... the four life-sentenced inmates at Pleven Prison ... were accommodated in individual front-grilled cells of a mere 4.5 m², in a specific section of the third floor. Access to natural light and fresh air was through small windows in the corridor situated in front of the cell; as a consequence, lighting and ventilation were poorer than elsewhere in the establishment and the cells could apparently become very hot and stuffy in summer. The cell equipment consisted of a bed, locker, table and chair; in addition, prisoners could have a personal television set.

The CPT recommends that immediate steps be taken to improve material conditions of detention of life-sentenced prisoners at Pleven Prison. These improvements should include providing larger cells (cells of 4.5 m² are unsuitable for use as prisoner accommodation) and better access to natural light and ventilation.

95. ..., life-sentenced prisoners' access to the toilet facilities was restricted to three times a day. At other times, they had to use a bucket within their cells. ...

96. ... life-sentenced inmates referred to recent improvements to their regime, involving ... the possibility of playing table-tennis. Further, ... the inmates concerned had been given some productive/creative work which they could carry out in their cells. Finally, they were now allowed to use the phone. These are all steps in the right direction.

However, 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).**

...

103. The delegation heard hardly any complaints about access to the doctor and no particular difficulties were noted as regards the transfer of prisoners to outside hospitals or other specialist medical services. However, ..., there were some complaints about the standard of treatment and care, in particular as regards the range of medication prescribed and the quality of dental care. ...”

42. The relevant provisions of the report on the 2006 visit state:

“iii. life-sentenced prisoners

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. ...

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.

...

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 LAW

I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

43. The applicant alleged that the life sentence imposed on him by vice-presidential decree, in denying him any possibility of early release, is inhuman and degrading. He also complained about the conditions of his detention in Pleven prison, the excessively strict prison regime applied to him, the lack of a legal framework for the regime concerned and the quality of the medical care dispensed to the prisoners. He relied on Articles 3, 5 § 1 and 8 of the Convention. The Court considers that these complaints fall to be examined under Article 3 of the Convention, which provides:

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

A. Admissibility

44. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for

declaring them inadmissible has been established. They must therefore be declared admissible.

B. The merits

1. *Compatibility of the applicant's punishment with Article 3 of the Convention*

(a) The parties' submissions

45. Affirming that he was not eligible for release on licence or commutation of his sentence to a fixed term of imprisonment, the applicant submitted that life imprisonment without commutation was an irreducible sentence *de facto* and *de jure*. As to the likelihood of being granted presidential clemency, he submitted that the Vice-President had never granted clemency to anyone sentenced to life imprisonment without commutation.

46. The applicant maintained that he had not applied for presidential clemency for two reasons. He had allegedly attempted – but to no avail – to have the criminal proceedings reopened, in the hope that a less severe sentence would be pronounced. And in various interviews in the country's media, different Vice-Presidents had allegedly stated that they reserved their power of clemency for cases where there were humanitarian grounds – where the detainee was seriously ill, for example – or for prisoners who had committed less serious offences, and under no circumstances could a murderer hope for an act of clemency. The applicant considered that as there was no real hope of early release for him, his punishment was inhuman and degrading.

47. The Government did not address this issue. They did, however, submit various documents containing factual information on the exercise of the presidential power of clemency in the case of prisoners sentenced to life imprisonment without commutation, in general (paragraph 37 above) and in respect of the applicant in particular. According to the report by the Director General of Prison Administration dated 15 September 2009, the applicant had applied for presidential clemency. The prison authorities had forwarded his personal file to the Vice-President's advisory Committee, at the same time expressing the opinion that no clemency should be shown. In a letter dated 7 September 2009 (paragraph 37 above) the head of the then Vice-President's office confirmed that the applicant had applied for clemency but his application had been rejected. The letter did not state the reasons for the rejection.

(b) The Court's assessment

48. The Court reiterates that Article 3 of the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy* [GC], no. 26772/75/ § 119, ECHR 2000-IV).

49. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, 18 January 1978, Series A no. 25, p. 65, § 162). Imposing a life sentence on an adult offender is not, in itself, prohibited by Article 3 or any other provision of the Convention or incompatible therewith (see, among many other authorities, *Bamber v. the United Kingdom*, no. 13183/87, Commission decision of 14 December 1988, and *Sawoniuk v. the United Kingdom* (dec.), no. 63716/00, ECHR 2001-VI). The Court has nevertheless found that imposing an irreducible life sentence on an adult, depriving him of any hope of release, might raise an issue under Article 3 (see, among other authorities, *Nivette v. France* (dec.), no. 44190/98, ECHR 2001-VII; *Einhorn v. France* (dec.), no. 71555/01, ECHR 2001-XI; and *Stanford v. the United Kingdom* (dec.), no. 73299/01, 12 December 2002).

50. In the light of the above-cited case-law, the Court considers that the main question in the instant case is whether the penalty imposed on the applicant may be classified as irreducible. It reiterates that a life sentence does not become "irreducible" by the mere fact that in practice it may be served in full. It is enough for the purposes of Article 3 that a life sentence is *de jure* and *de facto* reducible (see *Kafkaris v. Cyprus* [GC], no. 21906/04, § 98, ECHR 2008-...). Thus, where national law affords the possibility of review of a life sentence with a view to its commutation, remission, termination or the conditional release of the prisoner, notwithstanding the non-judicial character of the procedures to be followed, this will be sufficient to satisfy Article 3 (ibid. § 103). The Court considers that the principles set forth in the above-cited *Kafkaris* judgment must be applied to the instant case and that it must seek to establish whether, in spite of the fact that he is serving a life sentence without commutation, Mr Iorgov may be considered to have any chance of release.

51. The Court notes in this connection that the domestic law does not provide for the applicant's release on licence, a measure applicable only to prisoners serving fixed-term sentences (paragraph 31 above). Nor may the applicant hope for a court decision to commute his life sentence to a lesser term of imprisonment (paragraph 32 above).

52. However, the domestic law does not deprive the applicant of all hope of release or reduction of sentence. In particular, he may be granted one of

the two measures of presidential clemency: either a pardon or a commutation of the sentence (paragraph 33 above). In the event of a pardon the applicant could be released immediately and unconditionally. In the event of a commutation of his sentence, even if it were only commuted to an ordinary life sentence, that would open up the possibility of judicial commutation and perhaps release on licence (paragraphs 31 and 32 above).

53. The Court is well aware that this is a discretionary power rather than one exercised by a judicial body, and that refusal to exercise it is not open to appeal. However, it reiterates that the main question in this case from the standpoint of Article 3 is whether there is any hope for the applicant of being released (paragraphs 49 *in fine* and 50 above). It notes that the possibility of an adjustment of the applicant's sentence, and of his eventual release does indeed exist in the domestic law. It follows that a life sentence without commutation is not an irreducible penalty *de jure*. The Court must then consider whether the penalty concerned is also reducible *de facto*.

54. The Court notes that according to the statistics in its possession the Vice-President granted clemency to 477 prisoners between 2002 and 2009. The large number of applications submitted during the same period (paragraph 36 above) shows that this is a well-known remedy widely used by prisoners. It cannot be said, in the light of these figures, that the Vice-President fails to exercise his prerogative to grant clemency when he deems it appropriate.

55. In his observations the applicant states that no prisoner serving a life sentence without commutation has yet been granted presidential clemency, and the information presented by the Government seems to confirm that assertion (see paragraph 37 above). The applicant concludes that there is no possibility of him being granted clemency in the future.

56. The Court does not accept that argument. It notes that the penalty of a life sentence without commutation was not introduced into the Criminal Code until December 1998, as a result of the abolition of the death penalty (see paragraph 13 above), a very important act for the development of domestic law and of the State's penal policy. The Bulgarian Parliament opted to introduce two types of life sentence: one with a possibility of judicial commutation to thirty years' imprisonment and one without commutation, which is considered the heaviest penalty and is reserved for crimes of exceptional gravity (see paragraph 29 above). It must be remembered that at the time of these legislative changes the applicant had been sentenced to death by the courts for exceptionally serious crimes, even if his execution had been suspended by virtue of a moratorium decreed by Parliament. In January 1999 the Vice-President used his power of clemency to commute the applicant's death penalty to a life sentence without the possibility of judicial commutation (see paragraph 13 above).

57. The applicant has been in prison since August 1989, that is to say, for slightly more than twenty years (see paragraph 14 above). The sentences

of eighteen other prisoners sentenced to death during or just prior to the moratorium on executions were also commuted to life sentences without commutation. Forty-one more offenders have incurred the same penalty since 1998 (see paragraphs 13 and 30 above). In view of the date of introduction of the moratorium on executions (see paragraph 13 above) and the time that has elapsed between the introduction of the life sentence without commutation and the examination of the present application, the Court considers it unlikely that a large number of prisoners in this category have already spent more than twenty years in detention. The Court notes that under domestic law even an ordinary life sentence, which is considered a less severe penalty, cannot be commuted by the courts until the offender has served twenty years of his sentence – and even then only to a thirty-year sentence (see paragraph 28 *in fine* above). That being so, the Court considers that, while it is true that by November 2009 there had been no decision to grant clemency to any prisoner sentenced to life without commutation, that does not suffice to prove that that penalty is irreducible *de facto.* In the Court's view, the absence of any measures of clemency at this stage cannot give rise to the conclusion that the Bulgarian system is not functional. An examination of practical situations as they unfold in the future will be necessary to determine how applications for clemency by persons sentenced to life imprisonment without commutation are examined by the Vice-President and in what circumstances, if any, measures of clemency are granted. Since the Court is confined to reviewing the circumstances of the case, it cannot accept the applicant's claim that the system in question will not be effective. It must also be borne in mind that by the time the applicant lodged his complaint – in August 2002 – he had served only thirteen years of his life sentence, which is much less than the maximum fixed-term prison sentence provided for under domestic law (see paragraph 30 above).

58. The applicant further submitted that he had not applied for presidential clemency because he considered that such an application had no chance of succeeding. From the information in the case file, however, it appears that the applicant did in fact apply to the Vice-President for clemency (see paragraph 47 above). While it is true that shortcomings in the clemency procedure may be identified, such as the lack of reasons for decisions not to grant clemency (see *Kafkaris*, cited above, §§ 91 and 105), it nonetheless appears that the applicant's request was examined by the advisory committee and rejected on the strength of his personal file and the negative opinion formulated by the prison authorities (see paragraph 47 above).

59. Neither the legislation nor the authorities prevent the applicant from submitting a new application to the Vice-President. The Court notes that a variety of factors are likely to affect, one way or the other, the decision to grant the applicant a measure of clemency, such as the gravity of the crimes

committed, his own perception of the facts, whether or not he expresses remorse, the time he has spent in detention and his behaviour during that time, the authorities' assessment of his ability to adjust to life outside prison and abide by the law and accepted moral standards, not to mention his physical or psychological health. It cannot speculate as to whether the applicant will one day be set free and, if so, after how many years. It is for the authorities, and particularly the Vice-President, when the time comes, to examine any new application for clemency and to decide, on the basis of the pertinent information, whether or not to reduce the applicant's sentence. In the light of the information in its possession, the Court does not consider that the applicant's allegation that he has no hope in practice of his sentence ever being reduced has been proved beyond reasonable doubt.

60. In conclusion, applying the criteria set forth in its *Kafkaris* judgment cited above, the Court considers that, as matters stand, it has not been established that the applicant has been deprived of all hope of being released from prison one day. It therefore finds that there has been no violation of Article 3 of the Convention on that account.

2. *Conditions of detention in Pleven prison and alleged lack of proper medical care*

(a) The parties' submissions

61. The applicant submitted that, combined with the severity and the non-regulatory nature of the prison regime applied in his case, and the lack of activities in prison, the poor living conditions in the quarters reserved for prisoners serving life sentences amounted to inhuman and degrading treatment. He also complained about the lack of proper medical and dental care, and argued that his allegations were corroborated by the reports on visits by the CPT to Pleven prison.

62. The Government disputed that submission. They relied on a report of the Director General of Prison Administration, which purportedly showed the improvements that had been made to the applicant's prison regime and how well he had been integrated into a group of ordinary prisoners. They also referred to the report drawn up by the CPT following its visit to Pleven prison in 2006 to show that the applicant was not subjected to inhuman or degrading treatment. They added that the applicant's health was regularly monitored by the prison doctors, that he had consulted outside doctors on various occasions and that he had received proper treatment for his health problems, particularly his dental problems.

(b) The Court's assessment

63. Article 3 of the Convention requires the State to ensure that all prisoners are detained in conditions which are compatible with respect for

their human dignity, and that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI). After examining Mr Iorgov's previous application, the Court had found that he had been subjected to inhuman and degrading treatment, in particular because of the harshness of the prison regime and his unjustified isolation for a long period, in addition to the poor material conditions of his detention and the lack, during the moratorium imposed by the National Assembly, of clear regulations governing the status and regime of prisoners against whom death sentences had been pronounced (see the *Iorgov* judgment cited above, §§ 84 and 86). The present application concerns the period that followed the commutation of the applicant's death sentence into a life sentence without commutation and his transfer to Pleven prison.

64. The Court notes, first of all, that the prison regime imposed on the applicant after his sentence was commuted was decided by a court (paragraph 15 above) based on the provisions in force at the time. As the courts, by analogy, applied the legislative provisions aimed at prisoners serving ordinary life sentences, the Court cannot conclude that their decision was arbitrary. That decision subjected the applicant to a prison regime provided for under a domestic law which specified the arrangements for the execution of the sentence (paragraph 38 above).

65. The Court further notes that at the start of his detention at Pleven prison the security measures applied to the applicant effectively limited contact between him and the other prisoners, as well as his activities and his access to sanitary facilities (paragraphs 16, 19 and 20 above). However, Mr Iorgov's situation gradually but surely became more flexible, with greater freedom of movement and the possibility to engage in various activities: in 2000 he was authorised to work in his cell; in 2002 the security measures applied during the time he spent in the open air were relaxed; starting in 2003, his cell was left open all day; and in 2004 he joined a group of ordinary prisoners and was transfered to a shared cell of acceptable size in another part of the prison (paragraphs 20, 21 and 22 above). These changes gave him much easier access to the sanitary facilities and enabled him to take part in activities with the other prisoners. He participated in sporting activities (table tennis, football, volleyball) and in the organisation of different events (paragraph 23 above). In 2007 he was given a paid job keeping the cells on the third floor of the prison clean. These changes were also reported by the CPT delegations that visited the prison in 2002 and 2006 (paragraphs 41 and 42 above).

66. The material conditions of detention also improved: a number of changes were made in 2003 to the section of the prison reserved for prisoners serving life sentences (paragraph 21 above). And in 2004 the applicant was transferred to a shared cell in another part of the prison and

has not complained about the conditions in his new cell (paragraph 61 above).

67. As to the medical care dispensed to the applicant, the Court notes that he suffered from back pain and contracted a skin infection. The case file shows that he received proper medical care, including in hospital, and that he himself admitted that he had had no further health problems after his transfer to a shared cell (paragraph 26 above, *in fine*). Furthermore, he regularly consulted the prison dentist, and the information communicated to the Court does not indicate that the treatment dispensed was ineffective (paragraphs 25 to 27 above).

68. In conclusion, in view of the gradual improvement of the applicant's conditions of detention and prison regime and in the light of the information in its possession concerning the medical care dispensed to the applicant in Pleven prison, the Court considers that Mr Iorgov was not subjected to inhuman or degrading treatment there. There has therefore been no violation of Article 3 of the Convention in this respect.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

69. Relying on Articles 5 § 1, 5 § 4 and 13 of the Convention, the applicant complained of the lack of judicial review under domestic law enabling him to question the lawfulness of his detention once his death penalty was commuted to a life sentence without commutation. The Court will examine this complaint under Article 5 § 4 of the Convention, which provides:

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

70. The Government did not address this issue.

A. Admissibility

71. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. The merits

72. The review required by Article 5 § 4 is incorporated in the decision depriving a person of his liberty for a fixed term when that decision is made by a court at the close of judicial proceedings (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 76, series A, no. 12). In several cases

against the United Kingdom, however, the Court has found that Article 5 § 4 guaranteed prisoners sentenced to life the right to a remedy to determine the lawfulness of their detention once they had served the "tariff" (the retributive and deterrent part of their sentence), as under British law, on expiry of that initial punitive period further detention depended solely on circumstances that were subject to change, such as how dangerous the individual was considered to be, or the risk of his reoffending (see, among other authorities, *Stafford v. the United Kingdom* [GC], no. 46295/99, §§ 87-90, ECHR 2002-IV, and *Waite v. the United Kingdom*, no. 53236/99, § 56, 10 December 2002).

73. Bearing that case-law in mind, the Court considers that the main question that arises here is whether or not the review required under Article 5 § 4 is incorporated in the applicant's initial conviction. It notes that the applicant's situation differs from that of the applicants in the cases cited above: following a trial, he was sentenced to death, and in January 1999 the Vice-President commuted his sentence to one of life imprisonment without commutation. His current detention is thus the result of a remission of his initial sentence. Furthermore, unlike British law, Bulgarian law does not divide a life sentence into a punitive period and a security period (see the *Stafford* judgment cited above, § 40).

74. The Court notes that at the time when the courts sentenced the applicant to death, that was the heaviest penalty provided for in the domestic legislation. Moreover, Protocol No. 6 to the Convention, providing for the abolition of the death penalty in peacetime, did not enter into force in Bulgaria until 1 October 1999, five years after the applicant was sentenced and a few months after his initial sentence was commuted.

75. In sentencing the applicant to death the domestic courts found that the seriousness of the crimes committed warranted nothing but the harshest penalty (paragraph 12 and 28 above). In view of the very nature of capital punishment and the reasons given by the domestic courts for imposing such a sentence in the applicant's case, the Court accepts that the determination of the need for the sentence imposed on the applicant did not depend on any circumstance that was likely to change in time (unlike in the *Stafford* judgment sited above, § 87). Deciding which particular sentence should be imposed is a matter for the national courts, which are best placed to establish the facts and apply the domestic law. What matters in the instant case is that when the applicant was sentenced the domestic courts took into account all the relevant circumstances in deciding whether or not to impose the harshest sentence provided for in domestic law.

76. Furthermore, the commutation of a death penalty to a life sentence by a non-judicial organ exercising the power of clemency does not alter the cause-and-effect relationship between the initial conviction and the individual's continued detention, which continues to be considered as "detention after conviction by a court" within the meaning of Article 5

§ 1 a) (*Kotälla v. the Netherlands*, no. 7994/77, Commission decision of 6 May 1978, Decisions and Reports no. 14, p. 238). It follows that the applicant's detention subsequent to the Vice-President's decree continues to have its legal basis in the initial conviction pronounced by the courts.

77. In conclusion, the Court considers that the review of the lawfulness of the applicant's detention required under Article 5 § 4 is incorporated in the conviction pronounced by the courts. It accordingly finds that the lack of judicial recourse by which the applicant could have challenged the lawfulness of his detention after the commutation of his death sentence was not in violation of Article 5 § 4 of the Convention.

III. THE OTHER ALLEGED VIOLATIONS

78. The applicant complained that there had been no domestic remedy by which he could have complained about the conditions of his detention and the lack of medical care in prison. He further contended that the commutation of his death penalty to a life sentence without commutation amounted to imposing a heavier penalty on him than that to which he had initially been sentenced.

79. Having regard to all the evidence in its possession, and in so far as it has jurisdiction to examine the allegations, the Court has not found any appearance of a breach of the rights and freedoms guaranteed by the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible in so far as it concerns the applicant's complaints under Articles 3 and 5 § 4 of the Convention and declares the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention in respect of the sentence imposed on the applicant, his conditions of detention and the quality of the medical care he received in prison;

3. *Holds* that there has been no violation of Article 5 § 4 of the Convention;

Done in French and English, and notified in writing on 2 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Deputy Registrar	Peer Lorenzen President