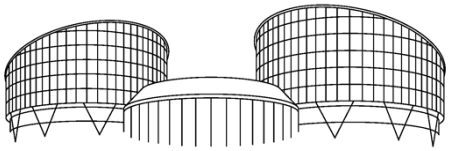

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF NESHKOV AND OTHERS v. BULGARIA

(Applications nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13)

JUDGMENT

STRASBOURG

27 January 2015

FINAL

01/06/2015

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

In the case of Neshkov and Others v. Bulgaria,

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

Ineta Ziemele, *President*,
Päivi Hirvelä,
George Nicolaou,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Krzysztof Wojtyczek,
Faris Vehabović, *judges*,

and Françoise Elens-Passos, *Section Registrar*,

Having deliberated in private on 16 December 2014,

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

PROCEDURE

1. The case originated in six applications (nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13) 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 five Bulgarian nationals, Mr Svetlomir Nikolov Neshkov, Mr Georgi Ivanov Tsekov, Mr Pavel Enchev Simeonov, Mr Yordan Kolev Yordanov and Mr Ivan Ivanov Zlatev ("the applicants"). Mr Neshkov lodged applications nos. 36925/10 and 9717/13 respectively on 18 June 2010 and 27 December 2012. Mr Tsekov lodged application no. 21487/12 on 16 March 2012. Mr Simeonov lodged application no. 72893/12 on 5 November 2012. Mr Yordanov lodged application no. 73196/12 on 7 November 2012. Mr Zlatev lodged application no. 77718/12 on 16 October 2012.

2. Mr Neshkov, having been granted leave by the President of the Section to present his own case under Rule 36 § 2 *in fine* of the Rules of Court, was not legally represented. Mr Tsekov, Mr Simeonov and Mr Zlatev were not legally represented either. Mr Yordanov was represented by Ms D. Fartunova, a lawyer practising in Sofia and working with the Bulgarian Helsinki Committee.

3. The Bulgarian Government ("the Government") were represented by their Agents, Ms L. Gyurova and Ms K. Radkova, of the Ministry of Justice.

4. The applicants alleged, *inter alia*, that the conditions of their detention in various correctional facilities in Bulgaria had been or were inhuman and degrading. Mr Neshkov in addition alleged that he had not had effective domestic remedies in that respect.

5. On 20 March 2014 the President of Section Four, to which the cases had been allocated, decided to grant priority to the applications under Rules 41 and 61 § 2 (c) of the Rules of Court, give the Government notice of the applicants' complaints concerning the conditions of their detention and the alleged lack of effective domestic remedies in that respect, and invite the parties to comment on whether the case was suitable for a pilot-judgment procedure (see Rule 61 § 2 (a) and (b)). At the same time, the President, acting as a single judge (see Rule 54 § 3), declared inadmissible the remainder of one of the applications lodged by Mr Neshkov (no. 36925/10).

6. Mr Neshkov and Mr Yordanov submitted observations in reply to these of the Government by 9 October 2014, the time-limit fixed by the President of the Section. Mr Tsekov and Mr Zlatev failed to do so. Having been advised of this by letters of 24 October 2014, they submitted such observations out of time, by letters dated respectively 29 October and 6 November 2014, but the President of the Section decided to admit these observations, as well as Mr Zlatev's claim for just satisfaction, to the case file (Rule 38 § 1 *in fine* of the Rules of Court). Later, in a letter dated 23 and postmarked 26 November 2014, Mr Tsekov submitted a claim for just satisfaction. In Mr Simeonov's case, a letter by the Court of 24 July 2014, sent to his address in Burgas Prison, came back to the Court with a note that he had been released from that prison on 15 July 2014. Mr Simeonov did not inform the Court of this change of address. Nor did he submit observations within the time-limit fixed by the President of the Section. In view of this, by a letter of 24 October 2014, sent by registered mail to his permanent address (the only one available to the Court), Mr Simeonov was advised that the Court could find that he was no longer interested in pursuing his application and decide to strike it out of its list. Mr Simeonov did not reply to this letter; it is unclear whether it reached him.

7. In a letter dated 20 and postmarked 26 November 2014 Mr Zlatev said that he no longer maintained his application and wished for it to be struck out of the Court's list. He did not give any reasons for this request.

8. In addition to the parties' observations, third-party submissions were received from the non-governmental organisations Bulgarian Lawyers for Human Rights and Bulgarian Helsinki Committee, which had been granted leave by the President of the Section to intervene in the written proceedings (Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court). The applicants' and Government' replies to these submissions (Rule 44 § 6) were incorporated in their respective observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. Mr Neshkov was born in 1971 and is currently detained in Belene Prison. Mr Tsekov was born in 1973 and is currently detained in Stroitel, an open-type prison hostel attached to Burgas Prison. Mr Simeonov was born in 1976. He was detained in Burgas Prison until 15 July 2014, when he was released; his current whereabouts are unknown. Mr Yordanov was born in 1962 and is currently detained in Atlant, a closed-type prison hostel in Troyan attached to Lovech Prison. Mr Zlatev was born in 1965 and is currently detained in Burgas Prison.

A. The case of Mr Neshkov

10. Since his incarceration Mr Neshkov has been placed successively in Varna Prison (2002-05), Lovech Prison (2005-06), Vratsa Prison (2006-14), and Belene Prison (2014-present). In the course of transfers to court hearings he also spent short periods of time, one to two days on each occasion, in Stara Zagora Prison.

1. The conditions of Mr Neshkov's detention in Varna Prison

11. Mr Neshkov was placed in Varna Prison on 19 June 2002 in execution of eight separate criminal sentences. In a decision of 25 October 2007 of the Lovech District Court these were combined into an aggregate sentence of twenty-eight years and eleven months' imprisonment.

12. In the course of his stay in Varna Prison Mr Neshkov was kept in the prison's high-security area, Group 3 (life prisoners and other prisoners under special regime) on the ground floor, in cells nos. 15, 19, 19a and 24. Cell no. 15 measured 6.5 by 3.2 metres and had two windows letting in enough sunlight and allowing the cell to be properly aired. Cells nos. 19 and 24 each measured 3.2 by 2 metres and had one window, and, according to the Government, were not overcrowded. According to them, cell no. 19a measured 2 by 1.9 metres, and was equipped with a bed, a metal locker and a table. According to Mr Neshkov, the cell was only equipped with a bed and a plastic bucket. According to the Government, Mr Neshkov was during most of the time kept alone in these cells, all of which had windows that let in enough sunlight and allowed them to be properly aired. According to Mr Neshkov, the cell windows were covered with metal sheets, which did not permit sunlight or fresh air to come in, and the cells were not equipped with a ventilation system. None of these cells was equipped with a toilet. The Government said that they had no records on the exact amount of time spent by Mr Neshkov in each of these four cells. Mr Neshkov submitted that

he had spent two years in cell 19a. This cell, as well as the others in which he had been housed – and indeed all cells in the prison's high security area – had been kept locked all the time, save for three periods of thirty to forty minutes in the morning, at lunch and in the evening. During these periods, he was able to go to the toilet, but the rest of time he had to use a bucket to relieve his sanitary needs. Mr Neshkov submitted that while in cell 24, he was tied to the bed with handcuffs for thirty-four days.

13. According to the Government, all inmates in Varna Prison, including Mr Neshkov, were provided with adequate health care. Varna Prison had a medical centre, and where necessary inmates were consulted by outside medical doctors.

2. The conditions of Mr Neshkov's detention in Lovech, Vratsa and Belene Prisons

14. On 29 June 2005 Mr Neshkov was transferred to Lovech Prison, then on 11 October 2006 to Vratsa Prison, and then on 23 May 2014 to Belene Prison, where he is currently housed. He did not provide any information about the conditions in these prisons.

3. The conditions of Mr Neshkov's detention in Stara Zagora Prison

15. Between 2002 and 2008 Mr Neshkov spent periods of time of several days in Stara Zagora Prison on a number of occasions in connection with court hearings.

16. According to the Government, all inmates from other prisons who spent short periods of time in Stara Zagora Prison were housed in a special wing. Since they were very diverse – sentenced and remand prisoners, men and women, adults and minors, inmates from open and closed correctional facilities, first time and repeat offenders – they had to be kept separated in locked cells, primarily for their own security. That, and the fact that this wing contained the disciplinary cells, had made it necessary to classify as a high-security zone. The sometimes high number of such transit prisoners had made it necessary to put up to four of them in one cell. They had been allowed to visit the toilet three times a day, separately for men and women and for adults and minors, and to spend time in the open air. They had taken their meals in the cells. Hygiene in the cells had been maintained by the inmates themselves. All the windows had glazing, and the cells had been repainted in 2003 and 2006. However, because of the large number of prisoners transiting through the premises, they were wearing quite fast.

4. Mr Neshkov's claim for damages in relation to the conditions of his detention in Stara Zagora Prison on various occasions in 2002-08

17. On 8 August 2008 Mr Neshkov brought a claim under section 1 of the State and Municipalities Liability for Damage Act 1988

(see paragraph 125 below) in relation to the conditions of his detention in Stara Zagora Prison. He sought 7,000 Bulgarian levs (BGN) in non-pecuniary damages. On 25 September 2008 the Sofia City Administrative Court discontinued the proceedings, citing Mr Neshkov's failure to state clearly the alleged facts and his request for relief. Following an appeal by Mr Neshkov, in a decision of 16 December 2008 (опр. № 13975 от 16 декември 2008 г. по адм. д. № 14809/2008 г., ВАС, III о.) the Supreme Administrative Court quashed that decision and directed that the claim be examined on the merits. On 18 February 2009 the Sofia City Administrative Court transferred the case to the territorially competent Stara Zagora Administrative Court.

18. At Mr Neshkov's request, the Stara Zagora Administrative Court ordered the administration of Stara Zagora Prison to provide information about Mr Neshkov's stays in this prison between 10 October 2002 and 25 February 2008 and about the conditions in which he had been kept in the course of these stays. The prison administration was able to provide such information only in relation to 2007, explaining that the records concerning short-term stays of prisoners normally housed in other prisons were not kept for more than a year.

19. In a judgment of 6 July 2009 (реш. № 12 от 6 юли 2009 г. по адм. д. № 104/2009 г., АС-Враца) the Vratsa Administrative Court dismissed Mr Neshkov's claim. It noted that the exact periods of time when he had been housed in Stara Zagora Prison in 2002-08 could only be established for 2007, because the prison's records for the remaining years had not been preserved. In 2007, Mr Neshkov had been housed in this prison on five occasions: on 18-19 January, alone in a cell; on 30-31 March, in a cell with three other inmates; on 4-6 April, in a cell with three other inmates; on 14-15 June, in a cell with two other inmates; and on 3-4 July, in a cell with one other inmate. During these periods, he had not been provided with bed linen. The cells in which he had been kept had been infested with cockroaches, had not been sufficiently lit during the day but constantly lit at night, and had not had in-cell toilets. As a result, Mr Neshkov had had to relieve himself in a bucket and urinate in a plastic bottle. The court made no findings in relation to the size of the cells or the number of inmates held in them, noting that at the relevant time there had been no binding legal requirement for minimum space per prisoner. However, it went on to say that Mr Neshkov had failed to prove that he had suffered non-pecuniary damage as a result of these conditions. Moreover, he had only spent short periods of time in these cells. While a long period of time in such extremely poor conditions of detention could cause mental suffering, the same could not be said of a short period. There was therefore no damage to make good.

20. Mr Neshkov appealed on points of law, arguing, *inter alia*, that the Vratsa Administrative Court had erred by dismissing his claim as unproved in relation to the remainder of the period 2002-08 based on the lack of

relevant prison records. He also challenged the court's ruling on the existence or otherwise of non-pecuniary damage.

21. In a judgment of 19 March 2010 (реш. № 3608 от 19 март 2010 г. по адм. д. № 11645/2009 г., ВАС, III о.) the Supreme Administrative Court upheld the lower court's judgment, fully agreeing with its reasoning. It noted, in particular, that Mr Neshkov had failed to prove the existence of damage.

5. Mr Neshkov's claim for damages in relation to the conditions of his detention in Varna Prison in 2002-05

22. On 24 April 2009 Mr Neshkov brought a claim against the Ministry of Justice under section 1 of the State and Municipalities Liability for Damage Act 1988 (see paragraph 125 below) in relation to the conditions of his detention in Varna Prison in 2002-05. He sought BGN 50,000, plus interest, in non-pecuniary damages.

23. Mr Neshkov requested to be exempted from paying a court fee. On 28 April 2009 the Varna Administrative Court refused his request, holding that the declaration of means that he had presented was not sufficient to elucidate his and his family's financial situation. It could not therefore be accepted that he was indigent.

24. At the first hearing, held on 18 September 2009, the court instructed Mr Neshkov to specify which part of the damage allegedly suffered by him was due to acts and which part to omissions of prison officials. The court also directed the governor of Varna Prison to provide information about the conditions of Mr Neshkov's detention, gave leave to Mr Neshkov to call witnesses, and ordered an expert report on the compatibility of the conditions in the cells and toilets in Varna Prison with the applicable standards.

25. On 28 September 2009 Mr Neshkov requested to be exempted from paying a deposit for the expert report. The next day, 29 September 2009, the court refused his request, giving the same reason as previously: that the declaration of means presented by Mr Neshkov was not sufficient to elucidate his and his family's financial situation and show that he was indeed indigent. Mr Neshkov appealed against this ruling, but in a decision of 10 November 2009 (опр. № 13367 от 10 ноември 2009 г. по адм. д. № 14179/2009 г., ВАС, IA о.) a three-member panel of the Supreme Administrative Court refused to examine the appeal, holding that such rulings by the first-instance court were not subject to appeal. Mr Neshkov appealed further. In a decision of 25 January 2010 (опр. № 912 от 25 януари 2010 г. по адм. д. № 16497/2009 г., ВАС, петчл. с-в) a five-member panel of the Supreme Administrative Court upheld the three-member panel's decision.

26. In the meantime, on 29 September 2009 the Varna Administrative Court decided to strike one of Mr Neshkov's witnesses off. It found that this

witness, who was incarcerated, was a dangerous criminal regarded by the prison authorities as cruel and extremely resilient. There was therefore a risk that, if brought to the court to take part in a hearing, he might try to flee. The court instructed Mr Neshkov to seek another witness in relation to the facts that he was seeking to prove through this witness' testimony.

27. Following further applications by Mr Neshkov, on 17 March 2010 the court refused to vary its earlier evidentiary rulings.

28. At a hearing on 9 April 2010 Mr Neshkov asked the judge hearing the case to recuse herself, citing her rulings in relation to the evidence. She refused to do so, saying that these rulings were not indicative of any bias against Mr Neshkov. The court then heard one witness called by Mr Neshkov and ordered the prison governor to present the medical documents relating to Mr Neshkov's stay in Varna Prison in 2002-05.

29. In a judgment of 5 July 2010 (реш. № 1405 от 5 юли 2010 г. по адм. д. № 1093/2009 г., АС-Варна) the Varna Administrative Court dismissed Mr Neshkov's claim. It held that Mr Neshkov, who bore the burden of proving all elements of the tort under section 1 of the State and Municipalities for Damage Act 1988, including the existence of damage, had failed to make out his claim that he had suffered harm as a result of the conditions of his detention. He had not presented evidence that he had felt bad or fallen ill as a result of these conditions. The witness evidence that he had adduced was – unlike medical expert evidence – not sufficient to prove medical complaints. There was no indication that the pain and suffering allegedly endured by him had led to any permanent damage to his health. Moreover, it could not be overlooked that, in view of the fact that he had been incarcerated pursuant to more than two sentences, he had been placed under a prison regime entailing heightened security.

30. On an appeal by Mr Neshkov, in a judgment of 23 February 2011 (реш. № 2738 от 23 февруари 2011 г. по адм. д. № 11507/2010 г., ВАС, III о.) the Supreme Administrative Court quashed the Varna Administrative Court's judgment and remitted the case. It held that the lower court had, in breach of the rules of procedure, failed to indicate to Mr Neshkov which of his allegations were unsupported by evidence. For instance, the lower court had held Mr Neshkov's omission to present medical evidence on his state of health against him without instructing him to present such evidence. Since it was apparently of the view that such evidence was required, it could have even appointed a medical expert of its own motion. Its failure to do so could not be explained by Mr Neshkov's inability to bear the costs of such an expert report. Such financial considerations could not be allowed to trump the fundamental constitutional right of access to an independent court. The lower court had in addition failed to rule in terms on several of Mr Neshkov's evidentiary requests. That, as well as its failure to obtain the medical documents concerning Mr Neshkov's stay in Varna Prison, had in effect prevented Mr Neshkov from making out his claim.

31. The Varna Administrative Court re-examined the case at four hearings. It also obtained, by way of a letter of request to the Lovech Administrative Court, the statement of a witness for the applicant who was housed in Lovech Prison.

32. In a judgment of 11 November 2011 (реш. № 2647 от 11 ноември 2011 г. по адм. д. № 758/2011 г., АС-Варна) the Varna Administrative Court again dismissed Mr Neshkov's claim. It found that after his admission to Varna Prison, between 19 June and 19 August 2002 Mr Neshkov had been kept in cell no. 15. This cell had measured twelve by three metres and had been full of beds and cabinets. Mr Neshkov had had to share the cell with ten to fifteen other inmates, some of whom smokers. The cell had not had proper artificial lighting or access to sunlight. It had not had a ventilation system either, and it had not been possible to air it properly because its windows could not open widely. Nor had the cell had a toilet; it had only been equipped with a bucket for sanitary needs. Following a serious deterioration in Mr Neshkov's mental state as a result of the conditions in this cell, on 19 August 2002 the prison administration had moved him to cell no. 24, an isolation cell, where he had remained alone. This cell had not had a ventilation system or direct access to sunlight, because its window had been covered with a metal sheet. It had not had a toilet or any furniture apart from a bed. During his time in this cell – until 19 November 2002 – Mr Neshkov had not always been allowed to use the half-an-hour out-of-cell time permitted three times a day under his prison regime. After that he had been moved for a period of about eight or nine months to cell no. 19a, which had been two by two metres and had only been equipped with a bed and a bucket for sanitary needs. This cell's window had been covered with a perforated metal sheet. The court said that the evidence presented by Mr Neshkov did not enable it to make any findings of fact in relation to the period after 19 August 2003.

33. Based on these findings of fact, the Varna Administrative Court held that the state of affairs which lay at the origin of Mr Neshkov's claim had come to an end on 19 August 2003. The applicable five-year limitation period had therefore expired on 19 August 2008, whereas Mr Neshkov's claim had been lodged in April 2009. Therefore, in as much as it concerned the period before 19 August 2003, the claim was time-barred. In as much it concerned the period after that date, it was unproved: there was no evidence of either unlawful acts or omissions on the part of the prison authorities or of harm suffered by Mr Neshkov as a result of that.

34. Mr Neshkov appealed on points of law. He argued, *inter alia*, that the Varna Administrative Court had completely disregarded part of the evidence and had erroneously found that there was no evidence in relation to the period after 19 August 2003. For instance, the prison administration had itself admitted that throughout Mr Neshkov's stay in Varna Prison the cells had not been equipped with toilets or ventilation systems.

35. In a judgment of 3 July 2012 (реш. № 9586 от 3 юли 2012 г. по адм. д. № 1247/2012 г., ВАС, III о.) the Supreme Administrative Court upheld the Varna Administrative Court's judgment in the following terms:

> "... [T]he [lower] court gathered all relevant evidence, analysed it in depth and in detail, and came to correct and lawful findings that are fully shared by this court.
>
> Having elucidated the facts, the [lower] court was correct to hold that the latest date on which prison officials were proved to have carried out the impugned acts or omissions during the period under consideration was 19 August 2003. Not one piece of evidence concerns the period after that date. The court was therefore correct to hold that that was the point in time when the impugned acts and omissions of the [prison] administration had come to an end. ... [T]he five-year limitation period [therefore] started to run on that date and expired on 19 August 2008. In these circumstances, and given that the statement of claim was lodged on 24 April 2009, it was proper to hold that, regardless of the veracity or otherwise of the allegations about the period of time between 7 June 2002 and 23 April 2004, the claim concerning that period was time-barred. As regards the remainder of the period – between 24 April 2004 and 20 May 2005 – the case file does not contain any evidence showing that the alleged unlawful acts and omissions of officials of Varna Prison have indeed taken place. The prerequisites for allowing a claim under section 1 of the [1988 Act] are not in place, and the lower court was right to reject the claim as unproved."

B. The case of Mr Tsekov

36. On 2 September 2011, following his extradition from Romania, Mr Tsekov was placed in Sofia Prison to serve a sentence of seven years' imprisonment whose execution had started on 27 August 2008. He remained in this prison until 25 January 2012, when he was transferred to Burgas Prison. He arrived in Burgas Prison on 30 January 2012, and the same day was placed in Unit five, where he remained until 13 February 2014, when he was transferred to Stroitel open-type prison hostel, attached to Burgas Prison.

37. Mr Tsekov alleged that the cells in which he was kept, first cell no. 317 and then cell no. 309 on the third floor, measured about four by five metres, making for a total surface of 20 square metres, and housed between fourteen and twenty-two inmates, which made for less than one square metre each. Since the cell had six triple-bunk and one double-bunk beds, six lockers, and three table, the actual amount of free space was even less, as low as 0.2 square metre per person. The Government did not provide any information in relation to cell no. 317, but said that cell no. 309 was 4.23 by 7.05 metres, which made for 29.82 square metres of surface. According to them, the number of inmates in the cell was thirteen, and the amount of space per inmate was 2.29 square metres. The cell had two windows close to the ceiling, one metre by fifty centimetres each, which allegedly did not allow direct sunlight into the cell or its proper ventilation. Since there were no cells for non-smokers, Mr Tsekov had to share the cell with smokers, which was allegedly particularly problematic for him in view of the lack of

ventilation. According to the Government, the issue of smoking was being resolved amicably among the cellmates; according to Mr Tsekov, that was absolutely not the case. He said that the problem could not be solved as up to 90% of inmates in Burgas Prison were smokers. Mr Tsekov was not one, and he only received cigarettes from the outside to use them as currency, as was customary in the prison. He also said that there were four or five television sets in the cell that showed different programmes, which, given the little space available and the level of noise, made it impossible to watch television. There were no newspapers or magazines available in the prison either, and access to the poorly stocked library was only possible once a week.

38. According to Mr Tsekov, there was no running water or toilet in the cell, and inmates had to use a bucket to relieve themselves at night, when the cell was locked. Mr Tsekov's floor had only four Asian-type toilets without running water for the approximately two hundred and ten inmates housed on that floor, and only two or three showers, which often did not work (and, when they worked, had hot water only twice a week for four hours); as a result, inmates had to use small cans to bathe themselves. According to the Government, there was running water in the toilets, and hot water was made available twice a week for five hours. Mr Tsekov also said that cleaning the toilets was very hard because the prison administration did not supply enough cleaning products.

39. According to Mr Tsekov, the prison canteen measured about four or five by fifteen metres and accommodated eighty people at the same time, which caused severe overcrowding and discomfort while eating. According to the Government, the number of inmates in the canteen during meals was between fifty and sixty. Mr Tsekov said that the quality of the food was very poor, and that outside food parcels did not compensate for that, especially since there were no refrigerators in which to store them. According to the Government, each inmate was provided with 2,622 calories a day, in line with official tables. Each inmate was entitled to receive five kilogrammes of food parcels a month and five kilogrammes of fruit and vegetables. According to Mr Tsekov, inmates were in practice given less than half of what was necessary in terms of food.

40. Mr Tsekov alleged that there was no place in the prison for self-cooking, sports or cinema. The Government said that self-cooking in the cells could not be allowed for hygiene reasons. They also said that in 2012 Mr Tsekov had been enrolled in a volleyball tournament, but had desisted after one match for health reasons. In February 2013 He had refused to take part in another tournament, again for health reasons. Mr Tsekov disputed these assertions. According to the Government, the outside walking area of the prison had bodybuilding equipment that the inmates could use, and the prison authorities regularly organised chess, backgammon, bridge and arm-wrestling contests. The prison was also

equipped with a projection room, where the Advent and Evangelical churches showed religious films; Mr Tsekov had not expressed a wish to attend a projection. Mr Tsekov said that since his arrival in Burgas Prison there had been only one projection.

41. Mr Tsekov also referred to the problems that he was encountering in relation to telephone communication with the outside world.

42. Lastly, Mr Tsekov, who apparently had no health insurance, claimed that health care in prison was inadequate, with no qualified doctors but only a feldsher working on site, and no provision of medicines free of charge. An outside medical doctor visited the prison twice a week, and it was almost impossible to see him in view of the large number of inmates in the prison and the need to obtain an appointment. According to the Government, Mr Tsekov had on two occasions in 2011 and 2013 been treated in the prison hospital in Sofia and in a hospital in Burgas.

C. The case of Mr Simeonov

43. Mr Simeonov entered Burgas Prison on 12 April 2012 to serve a sentence of two and a half years' imprisonment; he was released on 15 July 2014. He was placed in unit four. On 7 December 2012, following a decision of the commission in charge of allocating prisoners, he was transferred to Zhitarovo open-type prison hostel, attached to Burgas Prison.

44. Mr Simeonov alleged that the cell in which he was kept, cell no. 309 on the third floor, measured about twenty square metres and housed fifteen inmates. There was no running water or toilet in the cell. From eight o'clock in the evening until six o'clock in the morning, during which time the cell apparently remained locked, the inmates had to use buckets to relieve their needs. There were four toilets on the floor but access to them was limited as they were used by about two hundred inmates. According to the Government, cell no. 309 measured 29.82 square metres and housed thirteen inmates, which gave 2.29 metres per inmate.

45. Mr Simeonov said that he was allowed to take a shower twice a week, between 1.30 p.m. and 5.30 p.m. However, the bathroom, which measured six square metres, featured only one shower and two sinks and usually the inmates used small cans to pour water on themselves. The size of the bathroom and the time allowed for showering made it impossible for all two hundred inmates who used the bathroom to shower properly. Immediately adjacent to the bathroom were the two litter containers for the entire floor.

46. According to Mr Simeonov, many inmates in Burgas Prison suffered from tuberculosis as a result of the poor hygienic conditions there. He did not however allege that he had himself contracted the disease. According to the Government, in Burgas Prison there had been six registered cases of

tuberculosis in 2012, four cases in 2013, and five cases in 2014. None of these had been in units four or five.

47. Mr Simeonov also complained that telephone calls made from prison were expensive, that the food shop in the prison was overpriced, and that health care in the prison was inadequate.

D. The case of Mr Yordanov

48. Since his incarceration in Bulgaria in 2007 Mr Yordanov has been placed successively in Sofia Prison (2007), Pleven Prison (2007-10), Lovech Prison (2010-12) and Atlant Prison Hostel in Troyan (2012-present).

1. The conditions of Mr Yordanov's detention in Sofia Prison

49. Mr Yordanov was placed in Sofia Prison on 13 August 2007 in execution of a sentence of seventeen years' imprisonment meted out by the Sofia City Court. According to him, he was not medically screened upon his arrival in prison. According to the Government, the prison's medical journal showed that Mr Yordanov was medically examined on 13 August 2007 and found to be healthy, with no traces of violence. On 31 August 2007 Mr Yordanov was placed under the "strict" regime. He was initially allocated to prisoner group 8, the intake unit for new prisoners. On 11 September 2007 a special commission in charge of allocating prisoners decided to place him in group 2, where he remained until his transfer to Pleven Prison several weeks later (see paragraph 51 below).

50. The Government submitted that on 31 August 2007 Mr Yordanov had been provided with two bed sheets, one pillow cover and two blankets. In reply, Mr Yordanov pointed out that this meant that he had had to do without these and sleep on a bare mattress for eighteen days, between 13 and 31 August 2007. He further submitted that he had not been provided with cutlery and had been forced, like the other detainees, to eat with his hands from random boxes that had come into his possession. Moreover, the prison was not equipped with enough tables and chairs, and as a result inmates had to eat sitting on their beds. The food that he was being provided was of very poor quality, often causing vomiting and diarrhoea. The Government did not contest these allegations.

2. The conditions of Mr Yordanov's detention in Pleven Prison

51. On 4 October 2007 Mr Yordanov was transferred to Pleven Prison.

52. The Government submitted that on 11 October 2007 he was placed in prisoner group 6. Later he was placed in group 5, which consisted of convicted criminals. On 14 August 2008, following the re-opening of the criminal proceedings against him by the Supreme Court of Cassation on

20 February 2008 and the change in his procedural situation, he was placed in group 7, for persons awaiting trial. On 1 March 2010 he was placed in group 6, also for persons awaiting trial. When his conviction and sentence by the Sofia City Court became final on 20 April 2010, Mr Yordanov was placed in group 2, for convicted persons.

53. Mr Yordanov submitted that following the re-opening of the proceedings against him by the Supreme Court of Cassation on 20 February 2008, he was transferred to the prison's recidivists unit, and, in spite of his numerous complaints, was not moved from there until 2010. In support of this assertion he pointed out that two researches retained by his legal representative in these proceedings had visited Pleven Prison on 24 September 2014 and spoken with the prison's deputy governor, who had said that there were currently no records on the allocation of prisoners in 2007-10. Both he and members of the prison staff had explained that at that time all prisoners without final convictions and sentences had been placed on the prison's fourth floor, where their cells were separated by mere iron grills allowing free contacts between all inmates.

54. When Mr Yordanov was transferred to Pleven Prison, the cells there were not equipped with in-cell toilets or running water. According to the Government, such toilets were installed on 1 September 2008. Thus, after the locking of his cell at about 8 p.m. each evening, he was forced to relieve himself in a bucket. According to a declaration by another inmate, the cells remained locked between 8.30 p.m. and 5.30 a.m. or 5.45 a.m. during weekdays and 6.30 a.m. on weekends. The cells were left unlocked until late at night, allowing access to the common toilets, only at times of epidemics of intestinal disorders in the prison. Initially, Mr Yordanov had been placed in a cell measuring 9.5 by 5.2 metres that he had shared with fifteen to twenty-two other inmates. After Christmas 2007 he had been placed in a cell measuring 5 by 4 metres that he had shared with five or six other inmates. Both cells had been equipped with one bucket of about ten litres.

55. The Government conceded that in 2007 Pleven Prison had been overcrowded. The total floor space of the prison building was 984.02 square metres. In 2007, it was occupied by six hundred and seven prisoners; in 2008, by four hundred and forty-four prisoners; in 2009, by three hundred and eighty-seven prisoners; and in 2010, by five hundred and one prisoners. The surface of the fourth floor, where Mr Yordanov was kept, was 149.88 square metres. In 2007, it was occupied by seventy-six prisoners; in 2008, by fifty-six prisoners; in 2009, by forty-two prisoners; and in 2010, by thirty-six prisoners. The Government nevertheless submitted that at that time conditions in this prison had been fully compliant with the applicable legal framework and pointed out that, while Mr Yordanov had filed six complaints with the prison authorities, he had not complained in terms of the conditions of his detention there. In reply, Mr Yordanov said that he had not made such complaints because conditions in the prison had been the

same for all prisoners, but that, as evident from a complaint that he had filed on 19 January 2010, he had sought a transfer to Vratsa Prison precisely because of the poor conditions in Pleven Prison. That transfer request had been denied by the prison authorities.

3. The conditions of Mr Yordanov's detention in Lovech Prison

56. On 22 July 2010 Mr Yordanov was transferred to Lovech Prison. He was initially placed in prisoner group 3, and then in prisoner groups 2, 10 and 1.

57. Mr Yordanov alleged that the conditions of his detention in this prison were as poor as in the previous two prisons. He said that in winter heating had been turned on only twice a day for about twenty minutes. As a result of that and of the fact that the windows did not close properly, the temperature in the cell never went above 14 degrees Celsius. The Government submitted that the heating boilers in Lovech Prison had been fired twice a day, for about two and a half to four hours. If Mr Yordanov had had a problem with the window in his cell, he should have brought that to the attention of the responsible prison officials, who would have taken steps to tackle it. Mr Yordanov retorted that, while he could not say for how long the boilers had been fired each day, the amount of time during which the radiators in his cell had been warm was a mere twenty minutes.

58. Mr Yordanov also submitted that he had worked in the prison's workshop, which was not properly heated in winter either. The Government submitted that the workshop had been heated with wood-burning stoves, and when necessary also with electrical heaters.

59. Mr Yordanov further submitted that the toilets had been very dirty. The Government submitted that it was the inmates' duty to keep the premises clean, and that the prison authorities provided them with cleaning products for that. Mr Yordanov retorted that, in view of the small amounts and the low quality of the cleaning products provided by the prison authorities, it had not been possible properly to clean the toilets.

60. Mr Yordanov alleged that inmates who had spent less than three years in prison had no health insurance, and as a result did not get proper medical treatment. He said that as a result of the poor conditions of his detention he was suffering from chronic colitis and periodontitis, and had lost four teeth. The Government submitted that, while in Lovech Prison, Mr Yordanov had visited a dentist twice, on 30 July 2010, when he had had a tooth extracted in order to treat his periodontitis, and on 21 February 2011, when he had been prescribed medication for bleeding in the gums. Mr Yordanov retorted that although he had not been health insured during his stay in Pleven Prison, the resident dentist there had provided him with the necessary medication free of charge. However, in Lovech Prison, despite being already health insured, he was not provided with medication

free of charge, and experienced great difficulties in obtaining that medication.

4. The conditions of Mr Yordanov's detention in the prison hostel in Troyan

61. On 21 January 2012 Mr Yordanov was transferred to Atlant Prison Hostel, a closed-type prison hostel in Troyan attached to Lovech Prison. He complained of overcrowding and said that the conditions there were similar to these in the prisons in which he had been housed before that. According to two declarations by other inmates submitted by Mr Yordanov, in 2013 and 2014 he was kept in a cell measuring 62.8 square metres together with between fourteen and twenty-two inmates. The cell had ten bunk beds and a toilet in the corner, all of which further reduced the amount of living space. The Government submitted that Atlant Prison Hostel was one of the best heated prison hostels in the country and that the temperature in the living quarters was always adequate. An inmate was designated as responsible for the heating central and took constant care of it, even remaining there overnight.

5. Cases that appear to have been brought by Mr Yordanov in relation to the conditions of his detention

62. In late 2010 Mr Yordanov brought a claim under section 1 of the State and Municipalities Liability for Damage Act 1988 (see paragraph 125 below) in relation to the conditions of his detention in Sofia Prison earlier that month. He sought BGN 1,000 in non-pecuniary damages. In a judgment of 10 April 2012 (реш. № 1997 от 10 април 2012 г. по адм. д. № 9619/2010 г., АС-София град) the Sofia City Administrative Court found that the conditions of Mr Yordanov's confinement in Sofia Prison between 15 and 17 December 2010 – lack of glazing on the windows during a very cold winter period, poor hygiene, and lack of proper separation between the in-cell toilet and the rest of the cell – did not meet the minimum standards laid down in the Execution of Punishments and Pre-Trial Detention Act 2009 and the regulations for its application (see paragraphs 107-120 below). The court also had regard to Article 3 of the Convention. Taking however into account the small amount of time – less than forty-eight hours – that Mr Yordanov had spent in these conditions, the court decided to award him BGN 100. The Chief Directorate for the Execution of Punishments appealed, and in a judgment of 4 April 2013 (реш. № 4688 от 4 април 2013 г. по адм. д. № 7759/2012 г., ВАС, III о.) the Supreme Administrative Court fully upheld the lower court's judgment.

63. On 13 April 2011 Mr Yordanov brought another claim under section 1 of the 1988 Act (see paragraph 125 below) in relation to the

conditions of his detention in a transfer cell in Sofia Prison on 3-7 April 2011 and the failure of the prison authorities to provide him a hot meal on 7-8 April 2011. He sought BGN 1,000 in non-pecuniary damages in relation to the stress endured by him on account of the poor conditions in the cell, BGN 1,000 in non-pecuniary damages in relation to the fact that the cell had been infested with rats, and BGN 1,000 in non-pecuniary damages in relation to the failure to provide him with a hot meal. In a judgment of 1 April 2013 (реш. № 2146 от 1 април 2013 г., по адм. д. № 3060/2011 г., АС-София-град) the Sofia City Administrative Court, having regard to, *inter alia*, Article 3 of the Convention, found that the poor conditions in the cell in which Mr Yordanov had been kept, the presence of rats in that cell, and the lack of proper food had caused him non-pecuniary damage. The court awarded him BGN 100 in respect of the first head of claim, BGN 300 in respect of the second head of claim, and BGN 100 in respect of the third head of claim. In a judgment of 17 January 2014 (реш. № 619 от 17 януари 2014 г. по адм. д. № 9147/2013 г., ВАС, III о.) the Supreme Administrative Court quashed that judgment and partly dismissed the claim and partly remitted the case. It held, by reference to this Court's judgment in *Shahanov v. Bulgaria* (no. 16391/05, 10 January 2012), that the lower court had erred by dealing with the first and second heads of claim separately. The proper approach was to analyse them in combination and focus on their cumulative effect on the inmate's well-being. That part of the case was therefore to be remitted. The head of claim concerning the failure to provide Mr Yordanov with a hot meal was, for its part, unfounded, because there was evidence that he had been provided with a sufficiently calorific food package instead. The proceedings on remittal are apparently still pending.

64. In 2012 Mr Yordanov brought a claim under section 1 of the State and Municipalities Liability for Damage Act 1988 (see paragraph 125 below) in relation to the conditions of his detention in Stara Zagora Prison, through which he had been transferred on 21 and 22 May 2012. He alleged that there he had been subjected to ill-treatment because he had at first been put for about an hour together with fifteen other inmates in a cell measuring two by two metres, and then moved to a cell measuring two and a half by two and a half metres, which he had had to share with three other inmates. This cell had had no running water, toilet or proper access to sunlight and air. In a judgment of 11 March 2013 (реш. № 92 от 11 март 2013 г. по адм. д. № 800/2012 г., АС-Велико Търново) the Veliko Tarnovo Administrative Court dismissed the claim, noting that section 43(3) of the Execution of Punishments and Pre-Trial Detention Act 2009, which laid down a minimum requirement of four square metres of floor space per prisoner, as well as regulation 20(3) of the regulations for the application of this Act, which made the availability of in-cell toilets and running water mandatory, had not yet come into force (see paragraphs 115, 118 and 119 below). The prison authorities had therefore not acted unlawfully by putting

Mr Yordanov in the two cells. Mr Yordanov appealed. In a judgment of 17 February 2014 (реш. № 2204 от 17 февруари 2014 г. адм. д. № 5584/2013 г., ВАС, III о.) the Supreme Administrative Court quashed the lower court's judgment and remitted the case. It noted that the lower court had constituted as a co-defendant the administration of Stara Zagora Prison, which could not be a proper defendant to a claim under section 1 of the 1988 Act. Its judgment was therefore inadmissible. The proceedings on remittal are apparently still pending.

E. The case of Mr Zlatev

65. Mr Zlatev has been detained in Burgas Prison since 10 September 2002 in execution of a fourteen-year sentence of imprisonment. In the course of his imprisonment there, he was moved between different units. According to information supplied by the Government, on 24 January 2005 he was placed in unit two, which was a high-security unit. On 22 June 2005 he was moved to unit four, but on 5 May 2006 was moved back to unit two. On 11 April 2007 he was transferred to Zhitarovo open-type prison hostel, attached to Burgas Prison, but on 14 December 2007 moved back to unit four. On 14 March 2008 he was moved to unit eight. On 16 June 2008 he was once again transferred to Zhitarovo open-type prison hostel. On 18 January 2009 he escaped, but was re-captured on 23 April 2009. On 8 May 2009 he was against placed in unit two, the high-security unit. On 1 June 2009 he was moved to unit eight, on 4 June 2010 to unit seven, on 13 January 2012 to unit five, and on 3 October 2013 to unit three.

66. In 1980 or 1984 Mr Zlatev's left hand was amputated at the wrist following a trauma suffered as a conscript in the army. Since 1983 he has been suffering from bronchial asthma. Since his incarceration he has been admitted to the prison hospital in Lovech for treatment of his asthma at least seven times, the latest apparently being in May-June 2011. According to the Government, Mr Zlatev was being provided with the requisite medical care and medicines.

67. Mr Zlatev complained of overcrowding and said that his cell measured fifteen square metres and housed twenty inmates. He alleged that there was insufficient light in the cell and that the inmates had to use buckets to relieve their needs at night. He also submitted that there were only four Asian-type toilets, two sinks and one shower on his floor, for one hundred and seventy-seven inmates. According to the Government, the toilets were disinfected with chlorine solution once a month.

68. Mr Zlatev also complained of the allegedly poor hygiene in the prison canteen. According to him, as a result inmates routinely suffered from stomach and intestinal infections. According to the Government, hygiene in the prison canteen was maintained by four inmates assigned to that task by the prison governor. They cleaned the canteen four times a day,

after each meal. Once a week the canteen was disinfected with chlorine tablets. Between 2012 and 2014 there had been no registered cases of intestinal disorders among the inmates of groups four and five.

69. On 22 March 2013 Mr Zlatev poured boiling water on his left leg, either as a result of an incident or as an act of self-harm. He was urgently sent to a hospital in Burgas, and then moved to the special prisoners' hospital in Sofia, where he was treated between 23 March and 5 April 2013. After his return to the prison he behaved in an aggressive and suicidal way, which made it necessary to place him in psychiatric institutions for inmates between 19 April and 7 May 2013, 17 and 23 June 2013, and 23 August and 12 September 2013. On 8 October 2013 a special medical commission found that he was to be classified as 84% handicapped, based on his missing left hand, the injuries to his legs following the incident of 22 March 2013, and his mental problems.

70. In October 2014 Mr Zlatev swallowed four needles and, following pain in the stomach, on 20 October 2014 he was urgently hospitalised in a hospital in Burgas, where he underwent surgery of the abdomen. He was discharged from this hospital on 29 October 2014 and placed in a constantly locked cell in unit two, the high-security unit.

II. REPORTS ON THE CONDITIONS IN BULGARIAN CORRECTIONAL FACILITIES

A. Reports of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

1. Report on the September 2006 visit

71. A delegation of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") visited Bulgaria from 10 to 21 September 2006. In its ensuing report (CPT/Inf (2008) 11), published on 28 February 2008, the CPT noted the following in relation to, in particular, overcrowding in Pleven Prison (footnotes omitted):

> "63. Prison overcrowding in Bulgaria remains a matter of serious concern. At the time of the 2006 visit, the total number of prisoners stood at around 11,500 whereas the maximum official capacity (calculated on the basis of 6 m² of living space per prisoner) was 5,828. According to statistics provided by the General Directorate for the Execution of Punishments, overcrowding in the prison system averaged 197% and in some prisons (e.g. Burgas and Pleven) it surpassed 300%."

2. Report on the October 2010 visit

72. A delegation of the CPT visited Bulgaria from 18 to 29 October 2010. In its ensuing report (CPT/Inf (2012) 9), published on 15 March 2012, the CPT noted the following (footnotes, save for footnote 26, omitted):

"106. ... Varna Prison is an establishment for adult men (on remand and sentenced), comprising a closed prison and two open-type prison hostels. The building of the closed prison was constructed in the late 1920s in what were at the time the outskirts of Varna and is now one of the residential areas of the city. With a capacity of 350 places, on the first day of the visit the closed prison was holding 528 prisoners, of whom 82 were on remand and the remainder were sentenced (including 18 life-sentenced prisoners).

...

107. In the closed prison, prisoner accommodation was provided in a cross-shaped building on three levels, with three of the wings containing a total of some 70 cells of varying sizes and the fourth wing being occupied by the medical centre, cinema hall and visiting rooms. Inmates were distributed into nine groups according to legal criteria and regime[: [o]n the ground floor, Group 1 (sentenced prisoners with health problems and working prisoners), Group 2 (sentenced working prisoners) and Group 3 (lifers and other prisoners under special regime). On the first floor, Group 4 (admission unit and prisoners on remand), and Groups 5 and 6 (remand prisoners). On the second floor, Groups 7, 8 and 9 (sentenced prisoners).].

The situation was marked by extreme overcrowding, which exacerbated the already problematic material conditions of an obsolete building constructed 80 years previously and had negative repercussions for all other aspects of life. In most cells, the space available per prisoner was at best around 2 m² and was on occasion little more than 1 m² per person. The worst conditions were observed on the top level of the building (Groups 8 and 9). The cells were packed with two or three-tier bunk beds, the distance between the third level of the beds and the ceiling being only some 50 cm. In the larger cells, prisoners had hung blankets around the beds in order to create some privacy; as a result, the cells looked like a labyrinth of screened-off areas, which made control by staff difficult. Further, access to natural light and ventilation were problematic because of the overcrowding and the related effects.

Due to the lack of financing, no major refurbishment had been carried out for years, and the building was very dilapidated (walls damaged by dampness, broken floor surfaces, missing window panes, faulty electrical wiring). With the exception of a few cells (e.g. those accommodating working prisoners in Groups 1 and 2), the general hygiene was poor and prisoners complained about infestation with cockroaches and other vermin. Further, the state of the beds and bedding was far from adequate, and the delegation noted that a few prisoners had no mattress and bed linen.

108. One of the three accommodation wings, that holding Groups 2, 5 and 8, had had in-cell sanitation (a WC and sink) installed a few years previously. However, the partitioning – there was a only a low wall on one side of the WC – was clearly inadequate.

The remainder of the cells had no integral sanitation. During the day, prisoners could circulate around their units and access to a toilet was not a problem (each unit had a common sanitary facility). However, at night, low staffing levels resulted in failure to provide access to toilets, and prisoners relied on buckets inside their cells. Further, in the admission unit, prisoners were locked up in their cells and were reportedly taken out to the toilet only three times a day. It should also be noted that the common sanitary facilities were dilapidated, dirty and insufficient for the numbers held (e.g. in Group 1, there was one toilet and two sinks for some 60 inmates; in Group 7, two toilets and three sinks for some 100 prisoners).

109. Prisoners could take a shower once a week (and those who worked on a daily basis). The bathroom, located in the basement of the building, was dark and dilapidated (broken window panes, missing sprinklers, damaged walls and floor surfaces). As at Plovdiv Prison, there was no centralised provision of sanitary items other than soap.

The prison laundry had limited and obsolete equipment (two washing and two drying machines), and prisoners were obliged to wash and dry their clothes in the cells.

110. The accumulation of the above-mentioned negative factors (extreme overcrowding, problematic access to the toilet, unhygienic conditions) could easily lead to a situation amounting to inhuman and degrading treatment.

The Director of Varna Prison informed the delegation that a plot of land had been found for a new prison, but there were no plans to start construction due to the lack of funding. As previously mentioned, the new Law on the Implementation of Sentences and Preliminary Detention provides for a minimum of 4 m² of living space per prisoner, a standard which should start to apply from 2012. Given the present state of Varna Prison and the absence of plans for its refurbishment or extension, it is difficult to see how the Bulgarian authorities can comply with this standard by the deadline set.

The CPT recommends that the Bulgarian authorities do everything within their powers in order to provide a lasting solution to the problem of overcrowding at Varna Prison and the other ensuing deficiencies. Given the state of dilapidation of the building, the replacement of Varna Prison should be considered as a priority. In the meantime, the Committee recommends that steps be taken at Varna Prison to:

– remove the third tier of the bunk beds;

– ensure that each prisoner has a mattress, blankets and bed linen;

– ensure that all prisoners have ready access to the toilet and to discontinue the use of buckets;

– improve the state of the common sanitary facilities;

– provide the in-cell toilets with a full partition;

– refurbish and enlarge the prison bathroom;

– increase the frequency of showers for inmates, in the light of Rule 19.4 of the European Prison Rules;

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

– ensure that the disinfection of the establishment's premises is carried out in an effective manner and at suitable intervals.

111. The delegation received many complaints about the poor quality and insufficient quantity of the food. Eggs, dairy products and fruit were rarely on the menu. Prisoners supplemented their diet through food parcels from their families and by buying foodstuffs from the prison shop. It is also striking that all products – including bread – were centrally supplied from Sofia (nearly 500 km away) on a daily basis.

Meals were served in a dining room situated in the basement of the building.

The CPT recommends that steps be taken to review the quality and quantity of the food provided at Varna Prison."

3. Report on the May 2012 visit

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

"2. ... the Committee has recently received reports pointing to ever-worsening conditions in Varna Prison as well as to very poor conditions of detention in Burgas Prison, an establishment last visited by the CPT in 2002. The CPT therefore decided to visit Bulgaria in order to examine on the spot the steps taken by the authorities to implement the relevant recommendations of the Committee contained in the reports on previous visits, and in particular to examine the current treatment and conditions of detention of inmates held at Burgas and Varna Prisons.

...

6. ... The CPT is concerned to note that, at Burgas Prison, staff tried to create an unrealistic impression by both concealing certain problems and attempting to mislead the delegation. Additionally, staff attempted to find out which prisoners the delegation had spoken to and who had provided information in relation to allegations of ill-treatment. Staff even threatened a number of prisoners that it would not be in their interest to talk further with the delegation. Such action is entirely incompatible with the principle of co-operation, which lies at the heart of the Convention, as well as with the confidentiality that applies, by virtue of the Convention, to the Committee's interviews with detained persons.

...

7. ... the CPT is extremely concerned that little or no progress has been made as regards a number of problems highlighted in the reports on the Committee's previous visits, e.g. as regards the treatment of prisoners by prison staff, inter-prisoner violence, prison overcrowding, health care provision for prisoners, use of restraint, material conditions, prison staff levels, discipline and segregation, and contact with the outside world.

...

10. At the outset, the General Director of the Main Directorate of Execution of Sanctions ('GDIN') acknowledged that, since the last CPT visit in 2010, very little progress had been made concerning the reform of the prison system. He stated that the economic crisis had prevented the implementation of various projects and hampered the emerging efforts noted during the 2010 visit. By way of example, no major investment had been made to improve material conditions in prisons and the delegation was informed that the application of the legal requirement of 4 m² of living space per prisoner (initially delayed until 2012) is likely to be further delayed, this time, to 2019. In addition, no significant improvements had been made as regards the provision of work to prisoners.

Overcrowding remains a major problem in Bulgaria's penitentiary system, with the prison population again on the rise (9,788 at the time of the 2012 visit). The delegation observed disturbing levels of overcrowding in all sections of the two prisons visited (see paragraph 22). At the same time, it appeared, from the information

provided by the authorities, that recourse to probation had remained at the same level, and that the use of early release had only slightly increased since the 2010 visit.

As for the plans to build three new prisons in Bulgaria (respectively in Burgas, Varna and Sofia), their implementation has been postponed.

11. The CPT fully understands that the general economic situation in Bulgaria is hindering plans to upgrade and more specifically enlarge the prison estate. That said, even if economic circumstances were more favourable, the CPT doubts that providing additional accommodation would in itself offer a lasting solution to the problem of prison overcrowding. Any strategy for the sustainable reduction of the prison population must include a variety of steps to ensure that imprisonment (whether awaiting trial or following conviction) really is a measure of last resort. This implies, in the first place, an emphasis on non-custodial measures in the period before the imposition of a sentence and the availability to the judiciary, especially in less serious cases, of alternatives to custodial sentences together with an encouragement to use those options. Further, the adoption of measures to facilitate the reintegration into society of persons who have been deprived of their liberty could reduce the rate of re-offending.

The CPT calls upon the Bulgarian authorities to redouble their efforts to combat prison overcrowding by implementing policies designed to limit or modulate the number of persons sent to prison. In so doing, the Bulgarian authorities should be guided by Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec(2003)22 on conditional release (parole), Recommendation Rec(2006)13 on the use of remand in custody and the provision of safeguards against abuse, and Recommendation Rec(2010)1 on the Council of Europe Probation Rules.

In addition, the CPT recommends that efforts be made to step up the training provided to prosecutors and judges, with a view to promoting the use of alternatives to imprisonment.

12. The CPT is also very concerned by the lack of progress as regards prison staffing levels; they remained totally insufficient to provide a solid foundation for improving the treatment of prisoners. In fact, the present inadequate staff levels, combined with the ever-increasing overcrowding, can have serious consequences for the overall security of the prisons and the personal security of both staff and inmates (see paragraph 52).

13. Further, the CPT was struck by the very large number of allegations of corrupt practices by prison staff received at Burgas and Varna Prisons; its delegation gained the distinct impression that corruption was endemic at both establishments. As regards Burgas Prison in particular, the phenomenon appeared to extend to senior management. The allegations referred to prisoners being asked to pay money to prison/medical staff in order to be allowed to benefit from services provided for by law (e.g. access to medical care, transfer to a hospital, transfer to prison hostels, early release) or to be granted certain privileges (access to work for instance). Irrespective of whether each and every allegation is well-founded, the frequency, consistency and seriousness of the allegations received during the visit is a clear indication of a major problem. The CPT wishes to stress that the widespread conviction alone of the existence of a culture of corruption in a place of detention brings in its wake discrimination, violence, insecurity and, ultimately, a loss of respect for authority.

The CPT calls upon the Bulgarian authorities to take decisive action to combat the phenomenon of corruption in all prisons. Prison staff and public officials associated with the prison system should be given the clear message that seeking advantages from prisoners or their relatives is not acceptable; this message should be reiterated in an appropriate form at suitable intervals.

In this connection, it recommends that a comprehensive and independent inquiry be conducted into allegations of corruption in Burgas and Varna Prisons; the CPT would like to be informed of the outcome of the above-mentioned inquiry and of the action taken as a result.

...

19. The delegation received many allegations of inter-prisoner violence at both Burgas and Varna Prisons (including verbal and physical intimidation), and even witnessed itself such episodes. This was hardly surprising considering the combination of severe overcrowding and extremely low staffing levels at both establishments.

Despite long-standing recommendations on this issue, the findings from the 2012 visit suggest that very little progress has been made to tackle inter-prisoner violence. The Committee must stress again that the duty of care which is owed by the prison authorities to prisoners in their charge includes the responsibility to protect them from other prisoners who might wish to cause them harm. In particular, prison staff must be alert to signs of trouble and be both resolved and properly trained to intervene. Such a capacity to intervene will of course depend, inter alia, on an adequate staff/prisoner ratio and on providing all staff members with appropriate initial and advanced training. In addition, the prison system as a whole may need to develop the capacity to ensure that potentially incompatible categories of prisoners are not accommodated together. **The CPT calls upon the Bulgarian authorities to develop a national strategy to address the problem of inter-prisoner violence, with a view to ensuring that all prisoners are detained under safe conditions.**

...

C. Conditions of detention at Burgas and Varna Prisons

1. Material conditions

21. At the outset, it must be stressed that the material conditions in which prisoners were obliged to live in these two obsolete prisons, often for years on end, are a matter of serious concern for the CPT. As regards more particularly the closed section of Varna Prison, very little had been done to implement the recommendations made by the CPT after its visit in 2010.

22. At the time of the visit, there were 560 inmates in the closed section of Varna Prison for an official capacity of 350, of whom 87 were on remand and the remainder were sentenced (including 19 life-sentenced prisoners). As for Burgas Prison, it was accommodating 940 inmates in the closed section for an official capacity of 371, of whom 125 were on remand and the remainder were sentenced (including 27 life-sentenced prisoners).

As could only be expected in the light of the figures just given, the overwhelming majority of the inmate accommodation was extremely overcrowded. At Varna Prison, living space per prisoner was at best around 2 m² and, in several dormitories, was a mere 1 m². At Burgas Prison, the situation was even worse, with less than 1 m² of living space per prisoner in many dormitories. Unsurprisingly, not every inmate had a

bed and some prisoners were obliged either to share one or to sleep on a mattress placed on the floor.

Such an outrageous level of overcrowding can be considered in itself to be inhuman and degrading from a physical standpoint (notwithstanding the fact that most prisoners could circulate in the corridors for much of the day). The situation was aggravated by the fact that both prisons were in an advanced state of dilapidation and insalubrity. It should be noted in this regard that the cells were infested with all sorts of cockroaches, bugs and other vermin.

23. At both prisons, most prisoners had access during the day to the common sanitary facilities, located in the corridors (typically a trough with taps, and floor-level-type toilets with no flushing system). However, these facilities were very dilapidated and filthy, and, in some cases, there were leakages from the sewage pipes to the floor below. At night, inmates had to resort to buckets inside the cells.

As for prisoners in the admission units, they remained locked up in their cells with access to a proper toilet only three times a day. A small number of cells at Varna Prison had been equipped with in-cell sanitation but without a partition.

24. Prisoners at both prisons could take a shower twice a week, which represents a positive development as compared to the situation observed in the past. Having said that, at Varna Prison, the prison shower room remained in a dilapidated and unhygienic state. The shower rooms at Burgas [P]rison were also dilapidated (some had broken window panes, there were usually no showerheads, the walls and surfaces were damaged) and dirty.

The only personal hygiene item provided to prisoners at both prisons was one small bar of soap per month.

25. In conclusion, the material conditions at Burgas and Varna Prisons were totally unacceptable and as such could be considered as inhuman and degrading.

The delegation was informed that, at Varna Prison, there were plans to refurbish 'Razdelna' prison hostel with a view to turning it into a closed-type facility and decrease the overcrowding in the closed prison. As regards Burgas Prison, a former police and fire-brigade building located in the village of Debelt, some 18 km away, was to be refurbished and transformed into a closed-type facility, with an intended capacity of some 400 inmates; some refurbishment work had already been carried out, but had stopped due to the lack of funding.

However, it is clear that fully resolving the current situation at Burgas and Varna Prisons will require more radical steps to be taken. The replacement of these two outdated and dilapidated prisons by new establishments is the only viable long-term solution. In this regard, **the CPT wishes to receive a realistic assessment of when the plans for new prisons in Burgas and Varna are likely to come to fruition** (cf. paragraph 10 above). In the meantime, resolute action must be taken to reduce overcrowding at Burgas and Varna Prisons. In this connection, **the highest priority should be given to the projects referred to in the previous sub-paragraph**. Of course, effective implementation of the general recommendation set out in paragraph 11 is also of crucial importance in this context.

Moreover, **the Committee recommends that steps be immediately taken at Burgas and Varna Prisons to:**

– ensure that each prisoner has a bed, a clean mattress, as well as blankets and bed linen (washed at regular intervals);

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

– improve the state of the communal sanitary facilities;

– provide any in-cell toilets with a full partition to the ceiling;

– fully refurbish the prisons[‘] bathrooms, and to enlarge the facility at Varna Prison;

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

– ensure that the disinfection of the establishments’ premises is carried out in an effective manner and at regular intervals.

2. Activities

26. In both Burgas and Varna Prisons, with the exception of the high security and admission units, cell/dormitory doors were open during the day and prisoners could move freely within their respective units, thereby offering some relief from the appalling conditions of their accommodation. All inmates could have TV and radio in their cells, and had access to a library, a cinema and a multi-faith area. However, the majority of inmates at both prison were left in idleness most of the time due to the insufficient provision of organised activities.

27. At Burgas Prison, 84 sentenced prisoners had work, essentially in the mechanical workshops, and on general prison maintenance services (which represented some 9 % of all prisoners).

Schooling activities had also been introduced in September 2011 and were offered to 69 inmates.

As regards other activities, computer courses were organised, as well as small workshops (sculpture, modelling, confection of jewellery). Inmates also had access to religious services.

28. At Varna Prison, work was offered to 110 sentenced prisoners, essentially in the mechanical and furniture workshops, and on cleaning tasks (representing some 17% of all prisoners).

Schooling activities had been introduced in September 2011 and was offered to 32 inmates, including one life-sentenced prisoner (see also paragraph 38).

29. At Burgas Prison, outdoor exercise was taken one hour twice a day for each group of prisoners, in two large yards, equipped with fitness devices and benches. This contrasted with the situation at Varna Prison where inmates had only one hour of outdoor exercise per day. In both prisons, inmates had one hour’s access per week and per group to a yard where they could play football.

30. In the light of the above remarks, **the CPT recommends that the Bulgarian authorities pursue their efforts to develop activity programmes for inmates at Burgas and Varna Prisons, in particular as regards work, educational and vocational activities, taking into consideration the specific needs of different groups of the inmate populations. The CPT also reiterates its recommendation that outdoor exercise and sports facilities be expanded at Varna Prison.**

In addition, **exercise yards at both prisons should be equipped with protection from the sun and rain**.

3. Food

31. At both establishments, the delegation was inundated with complaints about the poor quality and insufficient quantity of food. Eggs, dairy products and fruit were in particular rarely on the menu. **The CPT calls upon the Bulgarian authorities to take steps to review the quality and quantity of the food provided at Burgas and Varna Prisons.**

The kitchens (as well as the prison dining hall at Varna) were located in the basements of the establishments. Like the rest of the buildings, they were dilapidated and unhygienic with walls and ceilings covered with mould, and leaking and over-flowing sewage pipes generated a serious health risk and caused lingering putrid smells.

The Committee recommends that the Bulgarian authorities take measures, without delay, to entirely refurbish the kitchens at both establishments. Consideration should be given to relocating the kitchens from the basements.

...

D. Health-care services

40. The provision of health-care was very problematic at both prisons due to an extreme shortage of staff and resources. The delegation was submerged by complaints about difficulties in having access to prison medical staff, inadequate quality of care (including dental care), problematic access to outside specialists/hospitals (in particular for insurance reasons) and delays in transfer to outside hospitals.

At Varna Prison, the health-care staff consisted of a general practitioner ─ who had just returned to his duties after a lengthy period of sick leave ─ and a feldsher, both working full-time. The doctor from the nearby prison hostel 'Razdelna' had been ensuring medical cover when the feldsher was absent. The psychiatrist's post had been vacant since January 2011. A part-time dentist was present for two hours, five days a week. No qualified nurse was present at the establishment. To sum up, since January 2011, the establishment's needs in terms of health-care had been covered essentially by a single feldsher. The delegation was impressed by her professionalism and commitment, which was also recognised by inmates; nevertheless, the fact that no arrangement was found to compensate the absence of the GP for at least 18 months is unacceptable.

Burgas Prison employed a dentist, a feldsher, and a dental nurse, all working full-time. There were two vacancies: a post of general practitioner, and a post of psychiatrist. A general practitioner had been contracted and visited the prison two hours per day (Monday to Friday) but was only available to prisoners with health insurance. Needless to say such staff resources are totally inadequate to meet satisfactorily the health-care needs of more than 1,000 prisoners.

Despite previous CPT's recommendations, there was still no staff with a recognised health-care qualification present at night or during weekends at either prison.

41. The above-mentioned staffing situation rendered virtually impossible the provision of health care worthy of the name in the establishments visited. Further, there was an over-reliance on feldshers, causing them to practise beyond the limits of their competence.

In the light of the above, and taking into account the long-standing recommendations of the CPT in this field, **the Committee calls upon the Bulgarian**

authorities to considerably reinforce the health-care teams at both Burgas and Varna Prisons. More specifically:

– the vacant post of doctor should be filled without delay at Burgas Prison, and the equivalent of a full-time post of doctor should be ensured at Varna Prison;

– at least three full-time qualified nurses should be immediately recruited at Burgas Prison and two at Varna Prison;

– determined efforts should be made to fill the vacant posts of psychiatrist at both prisons;

– someone qualified to provide first aid, preferably with a recognised nursing qualification, should always be present on the premises of Burgas and Varna Prisons, including at night and weekends;

– steps should be taken to ensure that prisoners in need of diagnostic examination and/or hospital treatment are promptly transferred to appropriate medical facilities.

42. The importance of medical screening of newly arrived prisoners cannot be over-emphasised. It is indispensable, in particular in the interests of preventing the spread of transmissible diseases, suicide prevention, and ensuring the timely recording of any injuries.

At Burgas Prison, the medical examination on admission took place immediately upon admission. By contrast, delays of up to seven days were observed at Varna Prison. At both establishments, the medical examination was cursory, consisting merely of asking the prisoner questions about previous diseases, and taking his pulse and blood pressure.

As regards screening for transmissible diseases, both establishments were visited twice monthly by an NGO, on a voluntary basis, to perform HIV, Syphilis and Hepatitis B and C testing. In addition, a TB screening questionnaire was completed on each admission at Burgas Prison, and a Mantoux test and a chest X-Ray would be performed in case of doubt. At both prisons the results were only provided to the prisoners concerned and not to the prison health-care staff. At Burgas Prison, only positive blood tests would be recorded, all negative results being immediately destroyed and no information kept.

The CPT recommends that steps be taken to ensure strict adherence to the rule that all prisoners must be seen by a health-care staff member immediately upon arrival, as specified in the law. The medical examination on admission should be comprehensive, including a physical examination. In addition, for control of transmissible diseases to be effective, efforts should be made to ensure that all those involved co-ordinate their action in the best possible way.

43. No specific screening for injuries was performed upon arrival or after a violent episode in prison, and very limited medical information could be found at Varna Prison, and nothing at Burgas Prison, in this respect. Further, it appeared that reporting of injuries depended on the prisoner concerned making a specific request, usually to the social worker, on a special form (a copy of the form was not kept in the medical file). There appeared to be no systematic reporting of traumatic injuries to the Main Directorate for the Execution of Sanctions.

In the light of the above, **the CPT reiterates its recommendation that steps be taken to ensure that prison health-care services perform a thorough screening of newly-arrived prisoners for injuries. In this context, the report completed by the**

doctor should contain, in addition to a detailed description of injuries observed, any allegations made by the prisoner concerned and the doctor's conclusions as to the consistency between those allegations and the objective medical findings. Further, whenever injuries are recorded which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the record should be systematically brought to the attention of the relevant prosecutor. Moreover, the results of every examination, including the above-mentioned statements and the doctor's conclusions, should be made available to the prisoner and his lawyer.

The same approach should be followed whenever a prisoner is medically examined following a violent episode in prison.

...

45. Further, in order to get access to the medical staff, prisoners had to ask the prison staff on duty and many prisoners had doubts as to whether such requests were indeed forwarded to the health-care units. The CPT wishes to stress that prisoners should be able to approach the health care service on a confidential basis, for example, by means of a message in a sealed envelope. Further, prison officers should not seek to screen requests to consult a doctor. **The CPT recommends that steps be taken to ensure that these requirements are met in practice at Burgas and Varna Prisons, as well as in all other prisons in Bulgaria.**

46. It appeared from examination of medical documentation that at Varna Prison only prisoners having a medical insurance had a personal medical file. By contrast, at Burgas Prison all prisoners had such a file. Nevertheless, the medical notes therein were extremely sparse if they existed at all. The very limited medical information available was indeed to be found in the daily medical journal, countersigned by each prisoner having had a medical consultation. This system not only makes it impossible to assess the continual medical care provided to an individual prisoner, but also gives rise to concern in terms of confidentiality as any prisoner countersigning an entry about himself could see the annotation on other prisoners, as could prison staff accompanying inmates.

The CPT calls upon the Bulgarian authorities to take steps at Burgas and Varna Prisons to improve medical record-keeping. In particular, a personal and confidential medical file must be opened for each prisoner, containing diagnostic information as well as an ongoing record of the prisoner's state of health and of any special examinations he has undergone. In the event of transfer, the file should be forwarded to the doctors in the receiving establishment.

47. At both establishments, there were prisoners working as orderlies in the health-care unit, despite repeated CPT's recommendations to review such a practice. In addition to being involved in the distribution of medicines ─ already an unsatisfactory practice ─ they even performed certain medical tasks such as measuring temperature, blood pressure and pulse; this is unacceptable. **The CPT calls upon the Bulgarian authorities to cease the practice of using prisoners in health-care units as medical orderlies; if necessary, the law should be amended.**

...

49. The situation encountered at the two prisons was aggravated by the fact that the vast majority of inmates did not have medical insurance. In their response to the CPT's report on the 2010 visit, the Bulgarian authorities had acknowledged the problem and at the outset of the visit, assured the delegation that the GDIN would bear the necessary costs in such cases. However, it became clear during the visit that

prisoners who did not have the state health insurance were unable to receive specialist/outside hospital care, except in emergencies. On a number of occasions, the delegation had to intervene to ensure that prisoners with serious health problems who did not have medical insurance were referred to hospital for further evaluation and treatment. **The CPT wishes to stress that it is totally unacceptable for sick prisoners to be deprived of care until such time as their state of health becomes critical.**

50. As already indicated in paragraph 8, the CPT's delegation invoked Article 8, paragraph 5 of the Convention and requested that an immediate review of the provision and quality of health care services at both Burgas and Varna Prisons be undertaken jointly by the Ministries of Justice and Health. This should cover health-care staffing levels, the provision of treatment and medication to prisoners within the prisons and the requirement that all prisoners, irrespective of whether they have state health insurance or not, are able to be referred to hospital for further investigation and treatment as and when this is required. The Bulgarian authorities were requested to complete this review and formulate an action plan to address the deficiencies in the provision of healthcare services for prisoners within three months. The delegation asked to receive the review report and action plan by 15 August 2012. **The CPT trusts that it will receive the requested information in due time.** In the meantime, **immediate steps should be taken to ensure that prisoners without resources are able to receive the medication and treatment that their state of health requires.**

51. In Bulgaria, the provision of health-care to prisoners remains under the responsibility of the Ministry of Justice. That said, pursuant to Regulation No. 2 of 22 March 2010 'On terms and conditions for medical care in places of deprivation of liberty', jointly issued by the Minister of Health and the Minister of Justice, the Ministry of Health is also involved in the matter. While welcoming this, the facts found during the 2012 visit clearly indicate that a closer involvement of the Ministry of Health is required.

The CPT recommends that the Bulgarian authorities ensure that the Ministry of Health becomes more actively involved in supervising the standard of care in places of deprivation of liberty (including as regards recruitment of health-care staff, their in-service training, evaluation of clinical practice, certification and inspection). Consideration should be given to transferring the responsibility for prison health-care to the Ministry of Health."

B. Reports under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

74. A report submitted by the Bulgarian Helsinki Committee in October 2011 within the fourth and fifth cycle of reporting in respect of Bulgaria under Article 19 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1465 UNTS 85), ratified by Bulgaria on 16 December 1986 and in force since 26 June 1987, said the following at pp. 13-14:

"... Out of the 12 prison facilities, accommodating an inmate population of 9,006 as of 18 May 2011, 33 none were built in the past 20 years. The prison buildings in Lovech, Pazardzhik, Vratsa, Stara Zagora, Varna, and Burgas were built in the 1920s and 1930s, while the Sofia prison is a century old. This rather dilapidated material

base is now meeting the pressure of massive overpopulation and thus raising concerns about the acceptability of the living conditions provided vis-à-vis the requirements of Article 16 of the Convention.

The living space in the cells of the Burgas, Varna, Sofia and Pleven prisons remains insufficient, and requires the use of double and even triple bunks – a clear indicator of overcrowding. The explanatory notes of the 2008 Strategy for the Development of the Correctional Facilities point out that the living space in most cells is approximately 2 sq. m. per person, while the recommended standard is 6 sq. m. Since 2008 the situation deteriorated due to the overall increase of the number of prisoners in Bulgaria. During the most recent visit to the Varna prison, carried out by the BHC penitentiary institutions research team at the end of September 2010, the average living space per person was 1 sq. m.

On 18 and 19 August 2011, a team of BHC researchers visited the prison in the city of Burgas and found that over the past year the number of persons deprived of liberty had increased dramatically. At the time of the visit, 866 inmates were accommodated in the main building of the prison, whose official capacity was for 371 inmates. The research team visited two prisoners‟ groups (number seven and eight), a total of 240 persons, who shared the living space of a corridor on the fourth floor of the main building of the facility. Their cells were not equally divided in terms of area as some of the cells were former dining halls that had to be reallocated due to the increasing number of prisoners. This means that in certain sections of the prison inmates could only have their meals while standing up in the rather narrow corridor. Usually, between 15 and 44 persons shared a cell. In cell No 419, BHC witnessed the accommodation of 44 persons in a 55 sq. m. cell that had only 40 beds available. Thus, four of the inmates who lived in that cell were forced to sleep on the floor space between beds. During the day, their mattresses were rolled up and stored under other inmates‟ beds. The only open space in the cells consisted of the aisles between the beds.

None of the cells at the Burgas or Varna prisons have separate sanitary facilities. In the abovementioned section of the Burgas prison, 240 inmates share a total of three toilets and only one shower in a deplorably unsanitary state. As cell doors are locked at night, instead of toilet facilities, all persons deprived of liberty have to use buckets that are in alarming proximity to their beds and are also clearly visible by all other inmates. Not only most cells do not have drinking water, but their windows are too small to provide fresh air (especially during the warmer seasons) and sunlight sufficient for all the inmates. In Varna, cell doors are perforated due to rodent infestation. The tremendous overcrowding and the resultant drastic deterioration of the living conditions, lack of sufficient living space and separate sanitary facilities within the cells, as well as the personnel shortages and escalating tensions among inmates, more and more often lead to inter-prisoner violence.

In respect of health care, services in the prisons are not integrated with the national healthcare system in terms of facility standards, administration, provision of medical check-ups, statistics, prophylactics, and preventive care. Most medical centres within the prisons fail to meet the requirements of the *Medical Institutions Act*. Over the past year, BHC has registered a sharp increase in the number of complaints sent by inmates to the BHC legal defen[c]e programme, regarding healthcare provision. The underlying reasons are staff and equipment deficiencies, as well as unavailability of specialised assistance. No independent control is exerted to ensure adequate provision of services that affect directly inmates‟ health status.”

75. Bulgaria's combined fourth and fifth periodic reports concerning the implementation of this Convention, submitted on 3 August 2009 and published on 3 December 2010 (CAT/C/BGR/4-5), said the following:

> "112. In recent years, the number of inmates in prisons and prison hostels has remained steady, with a minimal decline in 2007; currently, the total prison population stands at 10,271. With respect to accused persons and defendants held in custody in prison facilities, there is a tendency of decline in their overall numbers. Over the years their number changed as follows: in early 2004, 1,861; in early 2005, 1,988; in 2006, 2,015; in 2007, 1,378; dropping to 942 towards the present moment.
>
> 113. Overcrowding remains a problem in the main prison buildings. It is alleviated by transferring convicts held in closed-type prison facilities, both first-time and repeat offenders, subject to meeting certain requirements as provided by law, to prison hostels of a transitional type. In the course of 2007, a total of 2,446 inmates have been proposed for such transfer to a court of law; the proposal was granted in respect of 2,142, and rejected for the remaining 304."

C. Reports of the Ombudsman of the Republic of Bulgaria under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

76. In May 2012 the Ombudsman of the Republic of Bulgaria was designated as national preventive mechanism under Article 17 of the 2002 Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2375 UNTS 237), which was signed by Bulgaria on 22 September 2010 and came into force in respect of it on 1 June 2011.

1. 2012 report

77. Between July and November 2012 the Ombudsman inspected Vratsa, Belene, Pleven, Lovech, Sliven, Stara Zagora, Plovdiv, Bobov Dol, Varna, Burgas and Pazardzhik Prisons.

78. In his annual report for 2012 under the national preventive mechanism the Ombudsman noted, *inter alia*, that the problems in relation to overcrowding and living conditions in the prisons had accumulated for decades and were well known. During the preceding twenty years, major repairs had only been carried out in one prison and three old buildings had been converted into open-type prison hostels. He went on to say that his inspections had led him to conclude that the conditions in almost all prisons and closed-type prison hostels could be characterised as subjecting the inmates to inhuman or degrading treatment. In relation in particular to overcrowding, the Ombudsman was of the view that Bulgarian law did not lay down any mechanism allowing the enforcement of minimum standards on the housing of prisoners. An amendment to the Execution of Punishments and Pre-Trial Detention Act 2009 in December 2012 had made

provision for the transfer of prisoners to another facility in case of lack of capacity of the prison to which they had been allocated (see paragraph 111 below). However, this possibility could serve no practical purpose, because all prisons in the country, except two correctional institutions for juveniles and Sliven Prison, which housed female prisoners, were overcrowded, in the sense of providing less than four square metres per prisoner. The worst example was Burgas Prison, where the available space per inmate was one square metre, which was in practice even less, because that was not the unencumbered area but the living area, including the space occupied by beds and tables. In the Ombudsman's opinion, the architecture of the old prisons did not allow conditions for individual work with inmates and required additional staff to ensure their safety. The construction of toilets had caused a reduction in the amount of living space. Moreover, construction works required the emptying of parts of the prisons, which led to even more overcrowding. In most prisons, reconstruction was impossible in practice. It would partly improve conditions, but would not solve the issue of overcrowding. There was therefore an urgent need to build new prisons and prison hostels. The Ombudsman outlined the possibilities in that regard.

79. With regard to hygiene in the prisons, the Ombudsman said that there were not enough resources for cleaning and sanitation. Cleaning of the floors was predominantly only carried out with water. Cockroaches, bedbugs and even rodents were, in spite of the carrying out of pest control operations, commonplace in male prisons and closed-type prison hostels. The Ombudsman went to say that inmates were consistently not provided with clothing because of the lack of funds, and that clothing was only being provided to needy prisoners.

80. With regard to food, the Ombudsman said that overcrowding had a negative effect on the organisation of eating in prison canteens. In some places the actual time for eating was only between five to ten minutes. In some prisons the canteens were in the corridors, because the original canteens were used for social activities. During the previous four years the daily food allowance per inmate had increased from BGN 1.30 (0.66 euros (EUR)) to BGN 2.50 (EUR 1.28), but this largely reflected food price inflation. Eggs, dairy products and fruits were a rarity on the prisoners' menu. Fruits and vegetables were not readily available even in prison food shops. Since inmates could not properly store food, they were trying to refrigerate it with water. Food in the prison food shops was being sold at above-market prices, which was giving rise to numerous legitimate complaints from prisoners.

81. Medical care was also a serious problem. While primary medical examinations were well organised, the level of equipment of prison medical facilities was insufficient and below the level of a normal general practitioner surgery. Prophylactic care and monitoring of chronically ill

inmates was substandard. Following an amendment to the Execution of Punishments and Pre-Trial Detention Act 2009 in December 2012 (see paragraph 123 below), the issue with the health insurance coverage of inmates had been resolved. However, problems with the financing of prison medical facilities and hospitals remained.

2. 2013 report

82. In 2013 the Ombudsman inspected Bobov Dol, Burgas and Varna Prisons.

83. In his annual report for 2013 under the national preventive mechanism, published in Bulgarian on 17 February 2014, the Ombudsman said, *inter alia*, that the material conditions in Burgas Prison continued to be unacceptable and were inhuman and degrading. This was the most overcrowded prison in Bulgaria, with on average less than two square metres per prisoner, and in some places less than one square metre. The rule in this prison was triple-bunking, and its buildings were very old and run down. The two closed-type hostels attached to the prison were also overcrowded, with slightly more than three square metres per prisoner. In the prison, unimpeded access to the toilets at all times, especially at night, was a problem, and the toilets themselves were very unsanitary and dilapidated. Nor did all prisoners have access to basic cleaning products. The building of Varna Prison was also old and in bad repair.

84. There were problems with food in Burgas Prison, mainly resulting from the low qualification of the kitchen staff and the lack of funds. Prisoners voiced many complaints with regard to the quality and the quantity of the food. Varna Prison was also in arrears with the payment of its food suppliers.

85. The medical centre of Burgas Prison comprised a doctor's surgery, a dental surgery, a manipulation room, a medicines storage room, an inpatients section, consisting of two rooms with eight beds, and two toilets and a bathroom. The equipment was deficient and substandard. The centre was staffed by a medical doctor, two feldshers, a dentist and an orderly, who was an inmate. There was no psychiatrist; even the position had been closed in 2012. The inmates did not undergo regular annual check-ups. There was no real control of the medical treatment dispensed, the equipment or the prescription of medicines, and the level of active and prophylactic medical care was below that available out of prison. Dental care was also extremely deficient. Many inmates were drug addicts.

86. The medical centre of Varna Prison comprised a doctor's surgery, a dental surgery, a psychiatric room, an inpatients section, consisting of four rooms with twelve beds, a medicines storage room, an isolator, a small dining room, two toilets and a bathroom. The equipment was extremely deficient. The centre was staffed by a medical doctor, a psychiatrist, a dentist, a feldsher and an orderly, who was an inmate. Outside specialists

were being called in as necessary. Inmates underwent medical check-ups upon their arrival in prison, as well as before and after transfers. There was no real control of the medical treatment dispensed, the equipment or the prescription of medicines, and the level of active and prophylactic medical care was below that available out of prison. The biggest problem was with dental care. Medically insured prisoners were often referred to an outside hospital in Varna. Others were, if necessary, sent to the prison hospital in Sofia. Many inmates were drug addicts.

87. Most inmates in Burgas Prison remained idle for most of the day, chiefly as a result of the lack of social services rooms and the extremely insufficient level of social staff. In 2012 only eighty-four inmates, or about 9% of the prison population, had been engaged in work, most of them in prison maintenance because the prison's woodwork workshop had had to stop its operations as a result of the economic situation in the country. In 2013 more inmates – one hundred and eighteen – were in work.

D. The McManus report

88. In March 2014 Jim McManus, former Scottish Prison Complaints Commissioner, drew up an expert report on the Bulgarian penitentiary system. In this report, he said that although the Bulgarian authorities fully accepted the criticisms levelled at them by this Court in relation to prison conditions in Bulgaria and were trying to address most issues within their limited resources, problems remained. The main issues were overcrowding, especially in male adult prisons, a large number of annual receptions of pre-trial detainees, very poor material conditions, very poor programmes of activities, the lack of an appropriate preventive judicial remedy and some confusion in respect compensatory remedies.

89. The Bulgarian authorities had done a lot to reduce the prison population, which had fallen from 11,000 in 2007 to just over 9,000 on 31 December 2013. One reason for that had been the introduction of probation as a form of sentence in respect of many offences, but there was room for increased use of this option as an alternative to custody, as well as for more release on parole. An action plan for 2010-13 for improving the prison estate had not been fully implemented for financial reasons. However, works had been carried out in a number of facilities: a prison hostel in Pleven had been converted into a closed-type prison, in-cell toilets been installed in the life prisoners' section of Varna Prison, and minor renovations had been carried out in eight prisons. There were plans to build a new hostel attached to Burgas Prison, able to hold four hundred and fifty inmates, with Norwegian funding. However, any further improvement was contingent on the finding of sources of extra-budgetary funding. There was no preventive remedy, and there were issues with the operation of the existing compensatory remedy, such as conflicting decisions no very similar

facts and the lack of a statutory rule on the minimum amount of space per prisoner, which precluded the courts from considering this as a factor in the assessment of prison conditions under Article 3 of the Convention.

90. In terms of steps that could be taken to reduce the number of persons being sent to prison, the report noted that the authorities had already taken this path and that the rate of incarceration in Bulgaria was close to the mean for Council of Europe States. It also noted that crime in Bulgaria was falling, and that in 2012, only 47.5% of those convicted of a criminal offence had been given an effective sentence, with conditional sentences imposed on 37.6% and 11% released for criminal liability. However, there was more that could be done in this respect. For instance, prosecutors could be empowered to resort to alternatives to prosecution, such as formal warnings, mediation and reparation programmes or community work, early in the criminal process, but with appropriate monitoring to reduce the risk of corruption. In 2013, there had been 22,029 persons placed in pre-trial detention, spending an average of forty-one days in custody. This suggested that pre-trial detention was routinely being imposed in respect of certain charges, and that alternatives to pre-trial detention could be used to result the number of people in custody. There was also room for reducing the percentage of custodial sentences, which stood at either 48% or 66.2% for 2012, by resorting more readily to probation or fines, especially with respect to offenders given sentences of less than six months (47% in 2012) or between six months and a year (29% in 2012). Those offenders were apparently perceived as low-risk, and it was well known that short sentences were the most ineffective ones in terms of offender rehabilitation, while at the same time the most disruptive ones in terms of impact on the lives of those concerned. Resort to the automatic remission of sentences could also be envisaged as well as expanding and improving the use of parole, in line with Recommendation Rec(2003)22 of the Committee of Ministers on conditional release (parole), and the use of waiting lists.

91. In terms of steps that could be taken to expand the capacity of the penitentiary system and improve its use, there was obviously the need to build new prisons or spend massive sums of money on renovating the existing ones. Such plans existed, but none of them had come to fruition. The authorities were looking at various options to ensure extra-budgetary funding for this. Renovating existing prisons, some of which were in a very poor state of repair, was a very difficult and expensive option; building new ones was a superior alternative. Changes had to be envisaged in respect of the investigation detention facilities as well. There was also a lot that could be done with respect to prisoner allocation. According to the authorities, the total number of persons held in prisons and prison hostels on 31 December 2013 was 8,449, for an official capacity of 8,763. This meant that the penitentiary system as a whole was not overcrowded according to local norms. However, on the same date Burgas Prison held 1,057 inmates for an

official capacity of 547 and Bobov Dol Prison held 665 inmates for an official capacity of 530, whereas Sofia Prison had 1,471 inmates for an official capacity of 1,671. There were thus pockets of massive overcrowding while some prisons were underused. This was largely due to the rules on the classification of prisons and prison regimes in the Execution of Punishments and Pre-Trial Detention Act 2009, which left the criminal courts little discretion in allocating offenders to one or another regime or prison. For instance, recidivists and those sentenced to more than years' imprisonment were automatically allocated to closed-type prisons. Since 47% of custodial sentences were for less than six months, the statutory requirement to have served at least six months to qualify for a transfer from a prison or a closed-type prison hostel to an open-type prison hostel (see paragraph 113 below) meant that no recidivist could hope to obtain such transfer; those serving sentences ranging between six months and a year (29% of all prisoners in 2012) could also find it difficult to obtain a transfer. As a result of those rigid rules, prisons and close-type prison hostels were overcrowded while open-type prison hostels were underused. The report urged more flexibility in this respect. As regards remedies, there was perhaps a need to overhaul the applicable statutes, putting the emphasis on the rights of prisoners and on the ways in which they could be enforced. The authorities also had to strengthen the role of the Ombudsman as national preventive mechanism under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. There was in addition a need for better cooperation between the various actors involved; the report therefore recommended that a coordinating body be set up under the auspices of the Ministry of Justice.

III. RELEVANT DOMESTIC LAW

A. The Constitution of 1991

1. General prohibition against inhuman treatment

92. Article 29 § 1 of the Constitution of 1991 provides, *inter alia*, that no one may be subjected to torture or to cruel, inhuman or degrading treatment.

2. The Constitution's direct effect

93. Article 5 § 2 of the Constitution of 1991 provides that the Constitution's provisions have direct effect.

94. In a binding interpretative decision of 6 October 1994 (реш. № 10 от 6 октомври 1994 г. по к. д. № 4/1994 г., КС, обн., ДВ, бр. 87 от 25 октомври 1994 г.) the Constitutional Court held that this meant that there was no need for any intermediary provision for the Constitution to be

directly applied. The manner in which its various provisions were to be applied depended on their subject matter. Some of them concerned constitutional law issues (the form of government, the structure of the main organs of government, the fundamental rights and freedoms), others set out the manner in which the laws were to be framed, and yet others laid down general constitutional principles. Although these provisions were all different in their content, all of them had one common characteristic and that was their direct effect. This effect manifested itself in a different way, depending on the specific content of each constitutional provision.

3. The effects of international treaties in domestic law

95. Article 5 § 4 of the Constitution of 1991 provides that international treaties that (a) have been ratified in the manner laid down in the Constitution, (b) have been promulgated and (c) have come into force with respect to Bulgaria are part of domestic law and take precedence over any conflicting provisions of domestic legislation.

96. As early as July 1992 the Constitutional Court confirmed that this rule applied to all international treaties – save for those requiring the criminalisation of certain acts or omissions – ratified after the entry into force of the Constitution on 13 July 1991 and complying with these three requirements (see реш. № 7 от 2 юли 1992 г. по к. д. № 6/1992 г., КС, обн., ДВ, бр. 56 от 10 юли 1992 г.).

97. In their case-law, the Bulgarian civil and administrative courts have sometimes held, by reference to Article 5 § 4 of the Constitution, that the Convention has direct effect in domestic law, regulates directly the relations between private persons and the State – even where domestic law is silent on the point at issue, or inconsistent with the Convention –, and gives rise to subjective rights *vis-à-vis* the State that can be independently vindicated (see, for instance, реш. № 1336 от 6 януари 2009 г. по гр. д. № 5769/2007 г., ВКС, V г. о., and реш. № 362 от 21 ноември 2013 г. по гр. д. № 92/2013 г., ВКС, IV г. о.). On other occasions, the courts have relied on Articles of the Convention as an aid to construing domestic law provisions (see, for instance, реш. № 10166 от 11 юли 2012 г. по адм. д. № 15508/2011 г., ВАС, III о., and реш. № 12850 от 4 октомври 2013 г. по адм. д. № 11827/2012 г., ВАС, III о.).

4. The State's liability for damage

98. Article 7 of the Constitution of 1991 provides that the State is liable for damage caused by unlawful decisions or acts of its authorities or officials.

99. In a binding interpretative decision of 22 April 2005 (тълк. реш. № 3 от 22 април 2005 г. по т. гр. д. № 3/2004 г., ВКС, ОСГК) the Supreme Court of Cassation, confirming the civil courts' prior case-law,

held that this Article did not provide a direct avenue of redress, but merely laid down a general principle whose implementation was to be effected through statute; as no such statute had been enacted following the Constitution's entry into force on 13 July 1991, this function was performed by the State and Municipalities Liability for Damage Act 1988 (see paragraph 125 below).

B. The Criminal Code 1968

100. Article 36 § 2 of the Criminal Code 1968 provides that criminal punishment cannot be intended to cause physical suffering or humiliation of human dignity.

C. The Execution of Punishments Act 1969 and the 1990 regulations for its application

1. General rules

101. Section 8(2)(1), as worded after June 2002, provided that prisoners' rehabilitation was effected by, *inter alia*, ensuring that they were housed in conditions that safeguarded their physical and mental health and their human dignity.

2. Types of correctional facilities

102. Section 8a(1), added in June 2002, provided that there were two types of correctional facilities: prisons and correctional homes. Prisons could have prison hostels attached to them. These hostels could be of an open, halfway, or closed type. Halfway-type hostels could be attached to correctional homes as well (section 8a(2)).

3. Material conditions

103. Section 9 provided that correctional facilities had to be in line with the applicable security and sanitary requirements and have appropriate living quarters and sanitary facilities.

4. Food and other necessities

104. Section 31(1) provided that inmates had the right to, *inter alia*, free food with sufficient chemical and caloric content, in line with tables approved jointly by the Ministers of Justice and Health, as well as separate beds, bed linen, clothes and shoes, in line with tables approved by the Ministers of Justice and Finance.

5. Health care

105. Section 22(1) provided that the health care of inmates was to be provided by medical establishments attached to the Ministry of Justice. If these establishments could not provide the necessary medical treatment, inmates were to be sent to outside hospitals (section 22(2)). In the provision of emergency care, inmates had the same rights as other citizens (ibid.). Detailed rules were laid down in regulations no. 2 of 1982 on health care in correctional facilities, superseded in January 2007 by regulations no. 12 of 20 December 2006 on the medical treatment of inmates.

D. The Execution of Punishments and Pre-Trial Detention Act 2009 and the 2010 regulations for its application

106. On 1 June 2009 and 1 February 2010, respectively, the 1969 Act and the regulations for its application were superseded by, respectively, the Execution of Punishments and Pre-Trial Detention Act 2009 and the 2010 regulations for its application.

1. General rules

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

108. Section 40(2)(1) provides that prisoners' rehabilitation is effected by, *inter alia*, ensuring that they are housed in conditions that safeguard their physical and mental health and their human dignity.

2. Types of correctional facilities

109. The two types of correctional facilities that can house persons with final sentences are prisons and correctional homes (section 41(1)). Prisons may have prison hostels attached to them. These hostels may be of an open or closed type. Open-type hostels may be attached to correctional homes as

well (section 41(2)). Prisons, correctional homes and prison hostels may also house pre-trial detainees (section 42(3)), who may be sent there by decision of the prosecutor in charge of the case or of the court (section 244(1)).

3. Placement of prisoners

110. The initial placement of prisoners is done by the sentencing court (section 57(1)). Female prisoners are held in separate prisons (section 58(1)). Persons convicted of wilful offences and sentenced to less than five years' imprisonment, and persons convicted of offences out of negligence, regardless of the sentence, serve their sentences in open-type prison hostels (section 59(1)). The court can only order that the convict serve the sentence in a closed-type prison hostel if (a) he or she had tried to abscond and has been put up for tracing, (b) suffers from alcoholism or drug addiction, or (c) suffers from a mental condition that prevents him or her from perceiving properly his or her environment (section 59(2)). Recidivists and all offenders who do not fall under section 59(1) serve their sentences in prisons or closed-type prison hostels (section 60(1)). Life prisoners are placed under the "special" regime; convicts serving their sentence in a prison or a closed-type prison hostel are placed under the "severe" regime; and convicts serving their sentence in an open-type prison hostel are placed under the "general" regime (section 61).

4. Transfer of prisoners from one correctional facility to another

111. The decision whether to transfer a prisoner from one prison to another belongs to the chief director of the Chief Directorate for the Execution of Punishments at the Ministry of Justice (section 62(1)). Among the factors that he or she can take into account are psychological incompatibilities, conflicts with prison staff or with other inmates who are relatives of the victim of the offence in respect of which imprisonment has been imposed, or other serious considerations relating to the prisoner's re-socialisation or safety, or safety in the prison in general (section 62(1)(4)). The chief director's decision is subject to appeal before the Minister of Justice (section 62(3)) and judicial review. However, the Supreme Administrative Court has held that the courts are not entitled to interfere with the Chief Director's discretionary assessment of the need or otherwise to transfer a prisoner (see реш. № 2614 от 25 февруари 2013 г. по адм. д. № 6794/2012 г., ВАС, III о.).

112. The same factors may warrant a prisoner's transfer to a closed-type prison hostel attached to the prison; the decision in this respect belongs to the prison's governor (section 63(1)). The governor's decision is subject to appeal before the chief director of the Chief Directorate for the Execution of Punishments (section 63(2)).

113. Prisoners who have had good conduct may be transferred to an open-type prison hostel if they have spent at least six months in a prison or a closed-type prison hostel and have less than five years remaining of their sentence (section 64(1)). Such transfer has to be based on the prisoner's assessment (section 64(3)). A refusal may be challenged before the competent regional court, which rules by means of a final decision (section 64(4) and (6)).

114. A prisoner cannot seek to block the decision to transfer him or her to another correctional facility by reference to Article 250 § 1 of the Code of Administrative Procedure 2006 (see paragraph 137 below, as well as опр. № 10782 от 17 септември 2009 г. по адм. д. № 10599/2009 г., ВАС, VII о., and опр. № 11168 от 30 септември 2009 г. по адм. д. № 11523/2009 г., ВАС, III о.), or to enjoin the authorities to transfer him under Articles 256 or 257 of the same Code (see paragraph 138 below, as well as опр. № 8686 от 20 юни 2011 г. по адм. д. № 7810/2011 г., ВАС, III о.; опр. № 9011 от 22 юни 2012 г. по адм. д. № 7580/2012 г., ВАС, III о.; and опр. № 555 от 11 юли 2013 г. по адм. д. № 544/2013 г., АС-Плевен). Nor can a prisoner challenge the refusal to transfer him or her under the anti-discrimination legislation (see реш. № 13913 от 19 ноември 2009 г. по адм. д. № 9835/2009 г., ВАС, VII о., upheld by реш. № 9929 от 16 юли 2010 г. по адм. д. № 889/2010 г., ВАС, петчл. с-в).

5. Material conditions

115. Section 43(3), which was initially due to come into effect on 1 January 2013, provides that the minimum floor space per inmate cannot be less than four square metres. However, in December 2012, at the proposal of the Council of Ministers, Parliament decided to amend paragraph 13 of the transitional and concluding provisions of the Act, postponing the entry into force of section 43(3) until 1 January 2019. The explanatory notes to the bill for the amendment of the Act said that the postponement was necessary because, in view of the economic situation in the country, it would be extremely hard to attain the goal of four square metres per inmate before the end of 2012. In these circumstances, the entry of the provision into force would only increase inmates' resentment and the number of adverse judgments of this Court against Bulgaria, whose execution would require large sums of money for the payment of just satisfaction awards, and which would have a negative effect on the country's standing in the European Union. It was therefore necessary to postpone the implementation of the four-square-metres-per-inmate standard by five years.

116. An attempt in 2012 by the applicant Mr Neshkov to challenge the amount of floor space available to him in Vratsa Prison by reference to this provision in proceedings under Article 250 § 1 of the Code of Administrative Procedure 2006 (see paragraph 137 below) failed, as the

courts noted that section 43(3) had not yet entered into force (see разп. № 1316 от 12 ноември 2012 г. по адм. д. № 559/2012 г., АС-Враца, upheld by опр. № 471 от 11 януари 2013 г. по адм. д. № 15167/2012 г., ВАС, IV о.).

117. Section 43(4) provides that the amount of natural and artificial light, heating and air conditioning, access to sanitary facilities and running water, and minimum level of furniture of inmates' sleeping quarters are to be laid down in the regulations for the application of the Act.

118. Regulation 20(1) of these regulations, which came into effect on 1 February 2010, provides that the authorities must specify the maximum number of inmates that each prison may hold, based on the surface of its living area. Regulation 20(2) provides that sleeping quarters must ensure direct sunlight and ventilation, and that the amount of sunlight, artificial light, heating and ventilation should be based on the standards applicable to public buildings. Regulation 20(3) provides that inmates must have constant access to sanitary facilities and running water, and in closed-type facilities the use of a toilet and running water must be ensured in the sleeping quarters.

119. Regulation 20 was due to come into effect three years after the adoption by the Council of Ministers of the special prison-improvement programme which under paragraph 11 of the Act's transitional and concluding provisions had to be approved within six months of the Act's entry into force (paragraph 6 of the regulations' transitional and concluding provisions). This programme was in fact adopted on 8 September 2010, which means that regulation 20 came into effect on 8 September 2013.

120. Regulation 21(1) provides that inmates' sleeping quarters must have separate beds for each person and be equipped with bed linen, cabinets for personal items, a table, chairs, lights and heating.

6. Food and other necessities

121. Section 84(2) provides that inmates have the right to, *inter alia*, free food with sufficient chemical and caloric content, in line with tables approved jointly by the Ministers of Justice and Finance, as well as separate beds and bed linen and, for inmates who do not have their own clothes and shoes, free clothes and shoes that are suitable for the respective season, in line with tables approved by the Minister of Justice.

7. Health care

122. Section 128(1) provides that imprisonment should be effected in conditions that protect the physical and mental health of inmates.

123. Sections 84(2)(4) and 128(2), as originally enacted, provided that the State budget had to pay health insurance contributions for all inmates from the moment of their incarceration. However, as inmates had often not

paid such contributions before their incarceration and as the payment of contributions due by the State budget was in practice sometimes delayed, inmates would sometimes be denied medical treatment in outside hospitals, because under section 109 of the Health Insurance Act 1998 the right of a self-insured person to medical treatment is interrupted if that person has failed to make more than three monthly payments for a period of three years (see paragraphs 40 and 49 of CPT's report on their May 2012 visit in paragraph 73 above). To resolve this issue, in December 2012 Parliament amended section 128(2) of the 2009 Act to in addition provide, with effect from 1 January 2014, that all inmates automatically have, from the moment of their incarceration, the status of health-insured persons who have full coverage.

8. Intervention of the Ombudsman

124. The Ombudsman of the Republic may recommend to the Minister of Justice to close, reconstruct or expand a prison or a prison hostel if the level of overcrowding or the poor hygiene or material conditions prevent prisoner rehabilitation or are liable to put the inmates' physical or mental health at risk (section 46(1)). The Minister must put the recommendation on the Council of Ministers' agenda within one month, and the Council of Ministers must announce the measures taken to resolve the problem (section 46(2)).

E. The State and Municipalities Liability for Damage Act 1988

125. Section 1(1) of State and Municipalities Liability for Damage Act 1988, which came into force on 1 January 1989, provides that the State is liable for damage suffered by individuals or legal persons as a result of unlawful decisions, acts or omissions by civil servants, committed in the course of or in connection with administrative action. By section 1(2) of the Act, as worded until 12 July 2006 and superseded with effect from 1 March 2007 by Article 204 § 1 of the Code of Administrative Procedure 2006, such a claim can only be made if the impugned administrative decision (or statutory instrument, as the case may be) has been duly set aside. If the claim relates to an unlawful act or omission, its unlawfulness may be established by the court hearing the claim of damages (section 1(2) of the Act, superseded by Article 204 § 4 of the Code).

126. Section 4 of the 1988 Act provides that the State's liability extends to all pecuniary and non-pecuniary damage which is a direct and proximate result of the impugned decision, act or omission.

1. Application by the civil courts in 2003-09

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

128. However, in some cases the courts refused to award damages, or awarded minimal sums, holding, in particular, that evidence proving poor conditions of detention was not sufficient to also prove that a person who had been kept in such conditions had suffered non-pecuniary damage as a result of them (see the domestic judgments cited in *Iovchev v. Bulgaria*, no. 41211/98, §§ 62 and 66, 2 February 2006; *Iliev and Others v. Bulgaria*, nos. 4473/02 and 34138/04, § 15, 10 February 2011; *Radkov v. Bulgaria (no. 2)*, no. 18382/05, §§ 17 and 21, 10 February 2011; and *Shahanov*, cited above, §§ 9-11 and 13-14). In a judgment of 23 February 2009 (реш. № 82 от 23 февруари 2009 г. по гр. д. № 6452/2007 г., ВКС, III г. о.) the Supreme Court of Cassation held that conditions that flowed from the wording of statutory or regulatory provisions did not give rise to a breach of Article 3 of the Convention.

2. Competence to hear claims under section 1 of the 1988 Act transferred to the administrative courts

129. Until 1 March 2007 claims under section 1 of the 1988 Act fell within the jurisdiction of the civil courts. With the entry into force of Articles 203-07 of the Code of Administrative Procedure 2006 on that date, jurisdiction to hear such claims was transferred to the administrative courts. Claims brought before that date continued to be dealt with by the civil courts (paragraph 4 of the transitional and concluding provisions of the 2006 Code, as well as реш. № 829 от 3 декември 2009 г. по гр. д. № 1471/2008 г., ВКС, III г. о.; опр. № 63 от 3 юли 2007 г. по адм. д. № 41/2007 г., смесен петчл. с-в на ВКС и ВАС; опр. № 68 от 3 юли

2007 г. по адм. д. № 74/2007 г., смесен петчл. с-в на ВКС и ВАС; and опр. № 118 от 3 юли 2008 г. по адм. д. № 97/2008 г., смесен петчл. с-в на ВКС и ВАС).

3. Application by the administrative courts in 2008-14

130. In the past few years the first-instance administrative courts and the Supreme Administrative Court, which hears appeals on points of law from these courts, have dealt with a number of cases under section 1 of the 1988 Act in relation to prison conditions and conditions in pre-trial detention facilities. In the Supreme Administrative Court, appeals on points of law against judgments of the first-instance administrative courts under this provision are as a rule allocated to the third section, which in 2010-14 comprised between ten and fifteen judges. These appeals are, as required by Article 217 § 1 of the Code of Administrative Procedure 2006, heard by three-judge panels.

131. A survey of the administrative courts' case-law shows that in the past several years they have – apart from the cases brought by the applicants Mr Neshkov and Mr Yordanov at issue in the present case (see paragraphs 17-35 and 62-64 above) – apparently dealt on the merits with at least fifty-eight cases concerning conditions of detention (see Appendix 1). Out of these, seventeen have resulted in an award of compensation (principal sums ranging between BGN 300 and BGN 3,000, the equivalent of 153.39 euros (EUR) to EUR 1,533.88), seven are apparently still pending, two have been discontinued, and thirty-two have resulted in dismissal of the claim on substantive or procedural grounds.

132. A perusal of the reasons for the court's judgments in these cases shows that in examining inmate claims under section 1 of the 1988 Act the courts first sought to establish whether the claimants had managed to prove that the defendant authority was responsible for an unlawful act or omission. In assessing this point, the courts often only had regard to the specific rules laid down in the relevant statutes or statutory instruments. For instance, in many cases they held that since section 43(3) of the Execution of Punishments and Pre-Trial Detention Act 2009, which guarantees a minimum of four square metres of floor space per inmate (see paragraph 115 above), had not yet come into effect, claims relating to lack of personal space failed (see paragraphs 5, 17, 20, 21, 26, 28, 92, 112 and 140 of Appendix 1). They made similar rulings in relation to the lack of express requirements for smokers and non-smokers to be kept separately (see paragraphs 20 and 104 of Appendix 1) and for cells to be equipped with toilets (see paragraphs 92, 129 and 140 of Appendix 1).

133. Even when they did take into account general rules such as the prohibition against inhuman and degrading treatment in Article 3 of the Convention, and said – as they did in many of the cases that resulted in an award of compensation or are still pending (see paragraphs 2, 7, 51, 70, 97,

100, 102, 108, 110 and 137 of Appendix 1) – that conditions of detention should be assessed by reference to, *inter alia*, this Article, the courts often appeared to regard these rules as mere aids in the interpretation of the concrete statutory or regulatory provisions rather than fully fledged norms whose breach could in itself lead to a finding of unlawfulness of the defendant authority's conduct. Rulings to the contrary were rarer (see paragraphs 35, 57, 63, 74, 119 and 134 of Appendix 1).

134. As a result of this approach, the courts sometimes even required claimants to split up their claims to reflect the separate issues that they faced, and then proceeded to examine these claims separately (see, for instance, paragraphs 11 and 76 of Appendix 1).

135. The courts then sought to determine whether such unlawful act or omission had caused the inmate pecuniary or non-pecuniary damage, and whether there existed a sufficient causal link between the two. Claimants were normally required to prove both damage and causal link. Thus, failure to come up with evidence specifically showing that the inmate had suffered non-pecuniary damage as a result of the poor conditions of his or her detention very often resulted in dismissal of the claim (see paragraphs 5, 12, 20, 28, 46, 55, 68, 71, 87, 89, 90, 91, 92, 94, 95, 104, 112, 113, 120, 122, 126 and 128 of Appendix 1). The courts held the reverse in far fewer cases (see paragraphs 3, 7, 75, 134 and 138 of Appendix 1).

136. In terms of procedure, there was, in spite of recent efforts by the Supreme Administrative Court to clarify the point, some uncertainty about the proper defendants to claims under section 1 of the 1988 Act relating to conditions of detention (see paragraphs 23, 50, 79, 80 and 131 of Appendix 1).

F. Relevant provisions of the Code of Administrative Procedure 2006

137. Article 250 § 1 of the Code of Administrative Procedure 2006, which came into effect on 1 March 2007,[1] provides that any person who has the requisite legal interest may request the cessation of acts carried out by an administrative authority or a public official that have no basis in the law or in an administrative decision. The request is to be made to the competent administrative court (Article 251 § 1), which has to deal with it immediately (Article 252 § 1) and, having made the necessary inquiries (Article 252(2)-(4)), rule forthwith (Article 253 § 1). The court's decision is subject to appeal, which does not have suspensive effect (Article 254 §§ 1 and 2). In a decision of 2 February 2009 the Supreme Administrative Court dismissed a life prisoner's legal challenge under

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

Article 250 § 1 to, *inter alia*, the fact that the prison authorities were keeping him in a cell without a toilet or running water as being out of the scope of this provision (see опр. № 1366 от 2 февруари 2009 г. по адм. д. № 498/2009 г., ВАС, V о.). In a decision of 15 July 2011 (разп. № 2755 от 15 юли 2011 г. по адм д. № 666/2011 г., АС-Плевен) the Pleven Administrative Court dismissed a request by a life prisoner under the same provision to be transferred from the prison's high-security zone, where he was kept in isolation, to the common areas, because his prison regime had been relaxed. The court examined the request on its merits but found that under the applicable provisions of the Execution of Punishments and Pre-Trial Detention Act 2009 and the regulations for its application, life prisoners were to be kept in isolation even when their prison regime had been relaxed, and could only be moved in the common areas if a special commission found that their personality permitted it. There was therefore no unlawful act that needed to be cut short by the court. In a decision of 19 September 2011 (опр. № 11630 от 19 септември 2011 г. по адм. д. № 10959/2011 г., ВАС, III о.) the Supreme Administrative Court upheld this decision, fully agreeing with its reasoning.

138. Articles 256 and 257 of the same Code, which likewise came into force on 1 March 2007, provide that a person may bring proceedings to enjoin an administrative authority to carry out an act that it has the duty to carry out under a legal provision. If the court allows the claim, it must order the authority to carry out the act within a fixed time-limit. In 2009 the Supreme Administrative Court dismissed a challenge under these provisions to an alleged failure of a prison governor to provide adequate food to inmates (see реш. № 5924 от 11 май 2009 г. по адм. д. № 12132/2008 г., ВАС, III о.). However, in 2011 that court allowed a life prisoner's claim relating to the failure of the prison authorities to provide him with clothing, shoes and bed linen (see реш. № 9276 от 27 юни 2011 г. по адм. д. № 5747/2011 г., ВАС, III о.). The Pleven Administrative Court also recently made such an order, but its judgment is apparently not yet final (see paragraphs 28-31 of Appendix 1). In June 2014 that court dismissed a claim by an inmate to be sent for medical treatment in an outside hospital, noting that he could obtain the requisite medical care in prison and that the prison governor had taken steps to arrange for such care (see реш. № 8454 от 20 юни 2014 г. по адм. д. № 14001/2013 г., ВАС, III о.).

G. Relevant provisions of the Judiciary Act 2007

139. Section 146(1) of the Judiciary Act 2007 provides that when exercising control over the execution of punishments and detention facilities, public prosecutors may carry out surprise visits, confer with the inmates in confidence, examine applications and complaints, or order the administration of the respective facility to keep them informed of relevant

matters. Section 146(2) provides that with a view to correcting infringements public prosecutors may order the release of any person who is being detained unlawfully, give instructions for the correction of irregularities, or stay the enforcement of any unlawful decisions and seek their quashing. On two recent occasions the Pleven Administrative Court declined to deal under any form with complaints by inmates in relation to the conditions of their detention, holding that under section 146 of the 2007 Act competence to deal with such complaints was exclusively vested in public prosecutors (see опр. № 289 от 18 юни 2012 г. по адм. д. № 548/2012 г. АС-Плевен, and опр. № 1040 от 29 ноември 2013 г. по адм. д. № 1114/2013 г. АС-Плевен).

IV. RELEVANT DECISIONS OF THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE

140. At its 1128th meeting on 29 November-2 December 2011 the Committee of Ministers of the Council of Europe adopted a decision (CM/Del/Dec(2011)1128) on the execution of eighteen judgments of the Court against Bulgaria in cases concerning conditions of detention in prisons and pre-trial detention facilities. The decision reads, in so far as relevant:

> "The Deputies,
>
> 1. recalled that these cases raise complex issues, related in particular to the structural problem of prison overcrowding in Bulgaria and to the conditions of detention in prisons and investigation detention facilities;
>
> 2. took note of the action report provided by the authorities on 02/03/2011 and the additional information submitted on 16/06/2011 concerning the renovation and other works carried out in the places of detention;
>
> 3. noted with interest the adoption by the government on 08/09/2010 of a Programme for improving living conditions in places of detention and an action plan for its implementation for the period of 2011-2013;
>
> 4. invited the authorities to provide information on the impact of the measures already adopted in respect of the shortcomings identified in the judgments of the European Court and on the measures planned and the time-table for their implementation;
>
> 5. moreover invited the Bulgarian authorities to provide further information on the outstanding questions identified in Memorandum CM/Inf/DH(2011)45, in particular as regards the existing compensatory remedy and the need for the introduction of a remedy capable of bringing about specific improvements of conditions of detention in cases where the applicant is still detained;
>
> ...
>
> 8. recalled that an action plan or report is awaited as regards the general measures in respect of the specific issues raised in the Shishmanov, Işyar and Kashavelov cases;
>
> 9. decided to resume consideration:

– of this group of cases at the latest at their June 2012 meeting, on the basis of a revised action plan to be provided by the authorities; ...”

141. At its 1144th meeting on 4-6 June 2012 the Committee of Ministers adopted another decision (CM/Del/Dec(2012)1144) in relation to the same group of cases. The decision reads, in so far as relevant:

“The Deputies

1. noted with interest the revised action reports presented by the Bulgarian authorities on 15/05/2012 detailing the measures taken or envisaged by the authorities to remedy the issues at the origin of these cases;

2. welcomed the efforts of Bulgaria to solve the important systemic problem of overcrowded detention facilities, namely through more frequent use of alternatives to imprisonment, as well as through measures adopted which aim at the achievement of more adequate distribution of detainees between different penitentiary facilities;

3. welcomed the setting-up of the national prevention mechanism, in accordance with the Optional Protocol to the UN Convention against Torture, which allows the Ombudsman to visit and inspect detention facilities and give recommendations on the treatment of detained persons;

4. noted, however, that additional information and clarifications are still required on a number of questions, in particular the functioning modalities of the domestic monitoring mechanisms, the impact of the construction and renovation works already accomplished, the authorities’ precise assessment of the current situation concerning conditions of detention, the construction and renovation works planned for the future, their funding, the time-limits for their implementation as well as their expected impact on the living conditions in the places of detention;

5. took note of the information concerning the domestic legal provisions under which a prisoner may request to be transferred to another penitentiary facility and invited the authorities to provide examples in which this procedure has been used to address a complaint about poor conditions of detention and has brought about specific improvements of the prisoner’s situation;

...

7. encouraged the consultations conducted on these questions between the authorities and the Secretariat and decided to make a comprehensive evaluation of the situation, on the basis of a memorandum prepared by the Secretariat, during one of their next Human Rights meetings.”

142. At its 1172th meeting on 4-6 June 2013 the Committee of Ministers adopted a further decision (CM/Del/Dec(2013)1172) in relation to the same group of cases. The decision reads:

“The Deputies

1. welcomed the efforts of Bulgaria to solve the systematic problem of overcrowding, but noted that additional measures are still necessary in order to overcome it, in particular concerning the current situation in the prisons for men;

2. in this context, encouraged the authorities to develop further the use of alternative measures to imprisonment and preliminary detention and to establish an updated global strategy to address prison overcrowding, taking into consideration the

relevant recommendations of the Council of Ministers, as well as other competent bodies of the Council of Europe;

3. noted also with satisfaction the efforts made by Bulgaria to improve the material conditions of detention, namely through the reconstruction projects funded with the assistance of the Norwegian Financial Mechanism; noted, however, that substantial improvements are still necessary in the majority of the penitentiary facilities and that this situation is due partly to the fact that the national action plans in this field could not be implemented due to budgetary restrictions related to the economic crisis;

4. encouraged the authorities to give the highest priority to seeking solutions which would allow them to achieve their goals to improve the conditions of detention, if necessary by continuing to explore all possibilities of support and cooperation at national and European level; invited the authorities to establish a revised national programme concerning the improvement of conditions of detention for the period after 2013;

5. invited the authorities to take due account, in their efforts to improve the conditions of detention, of the relevant recommendations made by monitoring bodies at national and international level, including the CPT and the Ombudsman;

6. noted that the improvement of the conditions of detention and the reduction of the prison overcrowding should facilitate the setting-up, at the domestic level, of a preventive remedy meeting the requirements of the case-law of the Court and invited the Bulgarian authorities to draw full benefit from project 18 of the Human Rights Trust Fund."

143. According to information provided by the Government to the Department for the Execution of Judgments on 24 January 2014, the official capacity and the number of inmates in all correctional facilities in Bulgaria on 31 December 2013 was as follows:

Correctional facility	**Official capacity**	**Number of inmates**
Belene Prison	530	644
Bobov Dol Prison	492	475
Smoranovo open-type hostel	173	71
Burgas Prison	371	885
Zhitarovo open-type hostel	104	94
Stroitel open-type hostel	72	78
Varna Prison	320	435
Razdelna open-type hostel	229	165
Varna open-type hostel	61	43
Vratsa Prison	462	539
Keramichna Fabrika open-type hostel	160	89
Lovech Prison	450	464
Atlant closed-type hostel	205	287
Polygona open-type hostel	85	77
Veliko Tarnovo open-type hostel	112	19
Pazardzhik Prison	445	359
Sredna Gora open-type hostel	46	29
Pazardzhik open-type hostel	66	28
Pleven Prison	297	376
Pleven open-type hostel	49	37
Vit closed-type hostel	70	49

Correctional facility	Official capacity	Number of inmates
Plovdiv Prison	405	432
Smolyan open-type hostel	220	64
Hebros open-type hostel	73	87
Sliven Prison (for women)	277	202
Sliven open-type hostel (for women)	35	31
Ramanusha open-type hostel (for women)	54	9
Correctional home attached to Sliven Prison (for female juvenile offenders)	35	1
Sofia Prison	745	833
Kremikovtsi closed-type hostel	426	493
Kazichene open-type hostel	500	145
Stara Zagora Prison	495	627
Cherna Gora closed-type hostel	185	159
Stara Zagora open-type hostel	132	28
Galabovo open-type hostel	91	18
Boychinovtsi correctional home (for male juvenile offenders)	261	77

V. OTHER RELEVANT COUNCIL OF EUROPE MATERIALS

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

"**Part I**

Basic principles

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

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

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

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

...

Scope and application

10.1. The European Prison Rules apply to persons who have been remanded in custody by a judicial authority or who have been deprived of their liberty following conviction.

10.2. In principle, persons who have been remanded in custody by a judicial authority and persons who are deprived of their liberty following conviction should only be detained in prisons, that is, in institutions reserved for detainees of these two categories.

10.3. The Rules also apply to persons:

a. who may be detained for any other reason in a prison; or

b. who have been remanded in custody by a judicial authority or deprived of their liberty following conviction and who may, for any reason, be detained elsewhere.

10.4. All persons who are detained in a prison or who are detained in the manner referred to in paragraph 10.3.b are regarded as prisoners for the purpose of these rules.

...

Part II

Conditions of imprisonment

...

Allocation and accommodation

...

18.1. The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.

18.2. In all buildings where prisoners are required to live, work or congregate:

a. the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system;

b. artificial light shall satisfy recognised technical standards; and

c. there shall be an alarm system that enables prisoners to contact the staff without delay.

18.3. Specific minimum requirements in respect of the matters referred to in paragraphs 1 and 2 shall be set in national law.

18.4. National law shall provide mechanisms for ensuring that these minimum requirements are not breached by the overcrowding of prisons.

18.5. Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation.

18.6. Accommodation shall only be shared if it is suitable for this purpose and shall be occupied by prisoners suitable to associate with each other.

18.7. As far as possible, prisoners shall be given a choice before being required to share sleeping accommodation.

18.8. In deciding to accommodate prisoners in particular prisons or in particular sections of a prison due account shall be taken of the need to detain:

a. untried prisoners separately from sentenced prisoners;

b. male prisoners separately from females; and

c. young adult prisoners separately from older prisoners.

18.9. Exceptions can be made to the requirements for separate detention in terms of paragraph 8 in order to allow prisoners to participate jointly in organised activities, but these groups shall always be separated at night unless they consent to be detained together and the prison authorities judge that it would be in the best interest of all the prisoners concerned.

18.10. Accommodation of all prisoners shall be in conditions with the least restrictive security arrangements compatible with the risk of their escaping or harming themselves or others.

Hygiene

19.1. All parts of every prison shall be properly maintained and kept clean at all times.

19.2. When prisoners are admitted to prison the cells or other accommodation to which they are allocated shall be clean.

19.3. Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy.

19.4. Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene.

19.5. Prisoners shall keep their persons, clothing and sleeping accommodation clean and tidy.

19.6. The prison authorities shall provide them with the means for doing so including toiletries and general cleaning implements and materials.

19.7. Special provision shall be made for the sanitary needs of women.

Clothing and bedding

20.1. Prisoners who do not have adequate clothing of their own shall be provided with clothing suitable for the climate.

20.2. Such clothing shall not be degrading or humiliating.

20.3. All clothing shall be maintained in good condition and replaced when necessary.

...

21. Every prisoner shall be provided with a separate bed and separate and appropriate bedding, which shall be kept in good order and changed often enough to ensure its cleanliness.

Nutrition

22.1. Prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work.

22.2. The requirements of a nutritious diet, including its minimum energy and protein content, shall be prescribed in national law.

22.3. Food shall be prepared and served hygienically.

22.4. There shall be three meals a day with reasonable intervals between them.

22.5. Clean drinking water shall be available to prisoners at all times.

22.6. The medical practitioner or a qualified nurse shall order a change in diet for a particular prisoner when it is needed on medical grounds.

...

Exercise and recreation

27.1. Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.

27.2. When the weather is inclement alternative arrangements shall be made to allow prisoners to exercise.

27.3. Properly organised activities to promote physical fitness and provide for adequate exercise and recreational opportunities shall form an integral part of prison regimes.

27.4. Prison authorities shall facilitate such activities by providing appropriate installations and equipment.

27.5. Prison authorities shall make arrangements to organise special activities for those prisoners who need them.

27.6. Recreational opportunities, which include sport, games, cultural activities, hobbies and other leisure pursuits, shall be provided and, as far as possible, prisoners shall be allowed to organise them.

27.7. Prisoners shall be allowed to associate with each other during exercise and in order to take part in recreational activities.

...

Part III

Health

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.

Medical and health care personnel

41.1. Every prison shall have the services of at least one qualified general medical practitioner.

41.2. Arrangements shall be made to ensure at all times that a qualified medical practitioner is available without delay in cases of urgency.

41.3. Where prisons do not have a full-time medical practitioner, a part-time medical practitioner shall visit regularly.

41.4. Every prison shall have personnel suitably trained in health care.

41.5. The services of qualified dentists and opticians shall be available to every prisoner.

Duties of the medical practitioner

42.1. The medical practitioner or a qualified nurse reporting to such a medical practitioner shall see every prisoner as soon as possible after admission, and shall examine them unless this is obviously unnecessary.

42.2. The medical practitioner or a qualified nurse reporting to such a medical practitioner shall examine the prisoner if requested at release, and shall otherwise examine prisoners whenever necessary.

42.3. When examining a prisoner the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to:

a. observing the normal rules of medical confidentiality;

b. diagnosing physical or mental illness and taking all measures necessary for its treatment and for the continuation of existing medical treatment;

c. recording and reporting to the relevant authorities any sign or indication that prisoners may have been treated violently;

d. dealing with withdrawal symptoms resulting from use of drugs, medication or alcohol;

e. identifying any psychological or other stress brought on by the fact of deprivation of liberty;

f. isolating prisoners suspected of infectious or contagious conditions for the period of infection and providing them with proper treatment;

g. ensuring that prisoners carrying the HIV virus are not isolated for that reason alone;

h. noting physical or mental defects that might impede resettlement after release;

i. determining the fitness of each prisoner to work and to exercise; and

j. making arrangements with community agencies for the continuation of any necessary medical and psychiatric treatment after release, if prisoners give their consent to such arrangements.

43.1. The medical practitioner shall have the care of the physical and mental health of the prisoners and shall see, under the conditions and with a frequency consistent

with health care standards in the community, all sick prisoners, all who report illness or injury and any prisoner to whom attention is specially directed.

43.2. The medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to the health of prisoners held under conditions of solitary confinement, shall visit such prisoners daily, and shall provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff.

43.3. The medical practitioner shall report to the director whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by continued imprisonment or by any condition of imprisonment, including conditions of solitary confinement.

44. The medical practitioner or other competent authority shall regularly inspect, collect information by other means if appropriate, and advise the director upon:

a. the quantity, quality, preparation and serving of food and water;

b. the hygiene and cleanliness of the institution and prisoners;

c. the sanitation, heating, lighting and ventilation of the institution; and

d. the suitability and cleanliness of the prisoners' clothing and bedding.

45.1. The director shall consider the reports and advice that the medical practitioner or other competent authority submits according to Rules 43 and 44 and, when in agreement with the recommendations made, shall take immediate steps to implement them.

45.2. If the recommendations of the medical practitioner are not within the director's competence or if the director does not agree with them, the director shall immediately submit the advice of the medical practitioner and a personal report to higher authority.

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. 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.

Other matters

48.1. Prisoners shall not be subjected to any experiments without their consent.

48.2. Experiments involving prisoners that may result in physical injury, mental distress or other damage to health shall be prohibited. ...

Requests and complaints

70.1. Prisoners, individually or as a group, shall have ample opportunity to make requests or complaints to the director of the prison or to any other competent authority.

70.2. If mediation seems appropriate this should be tried first.

70.3. If a request is denied or a complaint is rejected, reasons shall be provided to the prisoner and the prisoner shall have the right to appeal to an independent authority.

70.4. Prisoners shall not be punished because of having made a request or lodged a complaint.

70.5. The competent authority shall take into account any written complaints from relatives of a prisoner when they have reason to believe that a prisoner's rights have been violated.

70.6. No complaint by a legal representative or organisation concerned with the welfare of prisoners may be brought on behalf of a prisoner if the prisoner concerned does not consent to it being brought.

70.7. Prisoners are entitled to seek legal advice about complaints and appeals procedures and to legal assistance when the interests of justice require."

145. In the Second General Report on its activities (CPT/Inf (92) 3 [EN]), published on 13 April 1992, the CPT noted the following in relation to conditions of imprisonment:

"... 46. Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.

47. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners. This holds true for all establishments, whether for sentenced prisoners or those awaiting trial. The CPT has observed that activities in many remand prisons are extremely limited. The organisation of regime activities in such establishments – which have a fairly rapid turnover of inmates – is not a straightforward matter. Clearly, there can be no question of individualised treatment programmes of the sort which might be aspired to in an establishment for sentenced prisoners. However, prisoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature. Of course, regimes in establishments for sentenced prisoners should be even more favourable.

48. Specific mention should be made of outdoor exercise. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a basic safeguard (preferably it should form part of a broader programme of activities). The CPT wishes to emphasise that all prisoners without exception (including those undergoing cellular confinement as a punishment) should be offered the possibility to take outdoor exercise daily. It is also axiomatic that outdoor exercise

facilities should be reasonably spacious and whenever possible offer shelter from inclement weather.

49. Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment.

In this connection, the CPT must state that it does not like the practice found in certain countries of prisoners discharging human waste in buckets in their cells (which are subsequently 'slopped out' at appointed times). Either a toilet facility should be located in cellular accommodation (preferably in a sanitary annex) or means should exist enabling prisoners who need to use a toilet facility to be released from their cells without undue delay at all times (including at night).

Further, prisoners should have adequate access to shower or bathing facilities. It is also desirable for running water to be available within cellular accommodation.

50. The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners.

51. It is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations.

The CPT wishes to emphasise in this context the need for some flexibility as regards the application of rules on visits and telephone contacts *vis-à-vis* prisoners whose families live far away (thereby rendering regular visits impracticable). For example, such prisoners could be allowed to accumulate visiting time and/or be offered improved possibilities for telephone contacts with their families. ..."

146. In the Seventh General Report on its activities (CPT/Inf (97) 10 [EN]), published on 22 August 1997, the CPT noted the following specifically in relation to overcrowding:

"... 13. An overcrowded prison entails cramped and unhygienic accommodation; a constant lack of privacy (even when performing such basic tasks as using a sanitary facility); reduced out-of-cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. This list is far from exhaustive.

The CPT has been led to conclude on more than one occasion that the adverse effects of overcrowding have resulted in inhuman and degrading conditions of detention.

14. To address the problem of overcrowding, some countries have taken the route of increasing the number of prison places. For its part, the CPT is far from convinced that providing additional accommodation will alone offer a lasting solution. Indeed, a number of European States have embarked on extensive programmes of prison building, only to find their prison populations rising in tandem with the increased capacity acquired by their prison estates. By contrast, the existence of policies to limit or modulate the number of persons being sent to prison has in certain States made an important contribution to maintaining the prison population at a manageable level. ..."

147. In the Eleventh General Report on its activities (CPT/Inf (2001) 16), published on 3 September 2001, the CPT noted the following:

"... **Inter-prisoner violence**

27. The duty of care which is owed by custodial staff to those in their charge includes the responsibility to protect them from other inmates who wish to cause them harm. In fact, violent incidents among prisoners are a regular occurrence in all prison systems; they involve a wide range of phenomena, from subtle forms of harassment to unconcealed intimidation and serious physical attacks.

Tackling the phenomenon of inter-prisoner violence requires that prison staff be placed in a position, including in terms of staffing levels, to exercise their authority and their supervisory tasks in an appropriate manner. Prison staff must be alert to signs of trouble and be both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of secure custody and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills. Further, management must be prepared fully to support staff in the exercise of their authority. Specific security measures adapted to the particular characteristics of the situation encountered (including effective search procedures) may well be required; however, such measures can never be more than an adjunct to the above-mentioned basic imperatives. In addition, the prison system needs to address the issue of the appropriate classification and distribution of prisoners.

Prisoners suspected or convicted of sexual offences are at a particularly high risk of being assaulted by other prisoners. Preventing such acts will always pose a difficult challenge. The solution that is often adopted is to separate such prisoners from the rest of the prison population. However, the prisoners concerned may pay a heavy price for their – relative – security, in terms of much more limited activities programmes than those available under the normal prison regime. Another approach is to disperse prisoners suspected or convicted of sexual offences throughout the prison concerned. If such an approach is to succeed, the necessary environment for the proper integration of such prisoners into ordinary cell blocks must be guaranteed; in particular, the prison staff must be sincerely committed to dealing firmly with any signs of hostility or persecution. A third approach can consist of transferring prisoners to another establishment, accompanied by measures aimed at concealing the nature of their offence. Each of these policies has its advantages and disadvantages, and the CPT does not seek to promote a given approach as opposed to another. Indeed, the decision on which policy to apply will mainly depend on the particular circumstances of each case.

Prison overcrowding

28. The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports. As the CPT's field of operations has extended throughout the European continent, the Committee has encountered huge incarceration rates and resultant severe prison overcrowding. The fact that a State locks up so many of its citizens cannot be convincingly explained away by a high crime rate; the general outlook of members of the law enforcement agencies and the judiciary must, in part, be responsible.

In such circumstances, throwing increasing amounts of money at the prison estate will not offer a solution. Instead, current law and practice in relation to custody

pending trial and sentencing as well as the range of non-custodial sentences available need to be reviewed. This is precisely the approach advocated in Committee of Ministers Recommendation No R (99) 22 on prison overcrowding and prison population inflation. The CPT very much hopes that the principles set out in that important text will indeed be applied by member States; the implementation of this Recommendation deserves to be closely monitored by the Council of Europe.

Large capacity dormitories

29. In a number of countries visited by the CPT, particularly in central and eastern Europe, inmate accommodation often consists of large capacity dormitories which contain all or most of the facilities used by prisoners on a daily basis, such as sleeping and living areas as well as sanitary facilities. The CPT has objections to the very principle of such accommodation arrangements in closed prisons and those objections are reinforced when, as is frequently the case, the dormitories in question are found to hold prisoners under extremely cramped and insalubrious conditions. No doubt, various factors – including those of a cultural nature – can make it preferable in certain countries to provide multi-occupancy accommodation for prisoners rather than individual cells. However, there is little to be said in favour of - and a lot to be said against - arrangements under which tens of prisoners live and sleep together in the same dormitory.

Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives. Moreover, the risk of intimidation and violence is high. Such accommodation arrangements are prone to foster the development of offender subcultures and to facilitate the maintenance of the cohesion of criminal organisations. They can also render proper staff control extremely difficult, if not impossible; more specifically, in case of prison disturbances, outside interventions involving the use of considerable force are difficult to avoid. With such accommodation, the appropriate allocation of individual prisoners, based on a case by case risk and needs assessment, also becomes an almost impossible exercise. All these problems are exacerbated when the numbers held go beyond a reasonable occupancy level; further, in such a situation the excessive burden on communal facilities such as washbasins or lavatories and the insufficient ventilation for so many persons will often lead to deplorable conditions.

The CPT must nevertheless stress that moves away from large-capacity dormitories towards smaller living units have to be accompanied by measures to ensure that prisoners spend a reasonable part of the day engaged in purposeful activities of a varied nature outside their living unit.

Access to natural light and fresh air

30. The CPT frequently encounters devices, such as metal shutters, slats, or plates fitted to cell windows, which deprive prisoners of access to natural light and prevent fresh air from entering the accommodation. They are a particularly common feature of establishments holding pre-trial prisoners. The CPT fully accepts that specific security measures designed to prevent the risk of collusion and/or criminal activities may well be required in respect of certain prisoners. However, the imposition of measures of this kind should be the exception rather than the rule. This implies that the relevant authorities must examine the case of each prisoner in order to ascertain whether specific security measures are really justified in his/her case. Further, even when such measures are required, they should never involve depriving the prisoners concerned of natural light and fresh air. The latter are basic elements of life which every prisoner is entitled to enjoy; moreover, the absence of these elements generates conditions favourable to the spread of diseases and in particular tuberculosis.

The CPT recognises that the delivery of decent living conditions in penitentiary establishments can be very costly and improvements are hampered in many countries by lack of funds. However, removing devices blocking the windows of prisoner accommodation (and fitting, in those exceptional cases where this is necessary, alternative security devices of an appropriate design) should not involve considerable investment and, at the same time, would be of great benefit for all concerned."

148. On 30 September 1999 the Committee of Ministers of the Council of Europe adopted Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation, which provides in particular as follows:

"... Considering that prison overcrowding and prison population growth represent a major challenge to prison administrations and the criminal justice system as a whole, both in terms of human rights and of the efficient management of penal institutions;

Considering that the efficient management of the prison population is contingent on such matters as the overall crime situation, priorities in crime control, the range of penalties available on the law books, the severity of the sentences imposed, the frequency of use of community sanctions and measures, the use of pre-trial detention, the effectiveness and efficiency of criminal justice agencies and not least public attitudes towards crime and punishment;

Affirming that measures aimed at combating prison overcrowding and reducing the size of the prison population need to be embedded in a coherent and rational crime policy directed towards the prevention of crime and criminal behaviour, effective law enforcement, public safety and protection, the individualisation of sanctions and measures and the social reintegration of offenders;

Considering that such measures should conform to the basic principles of democratic States governed by the rule of law and subject to the paramount aim of guaranteeing human rights, in conformity with the European Convention on Human Rights and the case-law of the organs entrusted with its application;

Recognising moreover that such measures require support by political and administrative leaders, judges, prosecutors and the general public, as well as the provision of balanced information on the functions of punishment, on the relative effectiveness of custodial and non-custodial sanctions and measures and on the reality of prisons;

Bearing in mind the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

Recognising the importance of Recommendation No. R (80) 11 concerning custody pending trial, Recommendation No. R (87) 3 on the European Prison Rules, Recommendation No. R (87) 18 concerning the simplification of criminal justice, Recommendation No. R (92) 16 on the European Rules on community sanctions and measures and Recommendation No. R (92) 17 concerning consistency in sentencing,

Recommends that governments of member states:

– take all appropriate measures, when reviewing their legislation and practice in relation to prison overcrowding and prison population inflation, to apply the principles set out in the Appendix to this Recommendation;

– encourage the widest possible dissemination of the Recommendation and the report on prison overcrowding and prison population inflation elaborated by the European Committee on Crime Problems.

Appendix to Recommendation No. R (99) 22

I. Basic principles

1. Deprivation of liberty should be regarded as a sanction or measure of last resort and should therefore be provided for only, where the seriousness of the offence would make any other sanction or measure clearly inadequate.

2. The extension of the prison estate should rather be an exceptional measure, as it is generally unlikely to offer a lasting solution to the problem of overcrowding. Countries whose prison capacity may be sufficient in overall terms but poorly adapted to local needs should try to achieve a more rational distribution of prison capacity.

3. Provision should be made for an appropriate array of community sanctions and measures, possibly graded in terms of relative severity; prosecutors and judges should be prompted to use them as widely as possible.

4. Member states should consider the possibility of decriminalising certain types of offence or reclassifying them so that they do not attract penalties entailing the deprivation of liberty.

5. In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of the main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing sentencing practices.

II. Coping with a shortage of prison places

6. In order to avoid excessive levels of overcrowding a maximum capacity for penal institutions should be set.

7. Where conditions of overcrowding occur, special emphasis should be placed on the precepts of human dignity, the commitment of prison administrations to apply humane and positive treatment, the full recognition of staff roles and effective modern management approaches. In conformity with the European Prison Rules, particular attention should be paid to the amount of space available to prisoners, to hygiene and sanitation, to the provision of sufficient and suitably prepared and presented food, to prisoners' health care and to the opportunity for outdoor exercise.

8. In order to counteract some of the negative consequences of prison overcrowding, contacts of inmates with their families should be facilitated to the extent possible and maximum use of support from the community should be made.

9. Specific modalities for the enforcement of custodial sentences, such as semi-liberty, open regimes, prison leave or extra-mural placements, should be used as much as possible with a view to contributing to the treatment and resettlement of prisoners, to maintaining their family and other community ties and to reducing the tension in penal institutions.

...

IV. Measures relating to the trial stage

The system of sanctions/measures – The length of the sentence

14. Efforts should be made to reduce recourse to sentences involving long imprisonment, which place a heavy burden on the prison system, and to substitute community sanctions and measures for short custodial sentences.

15. In providing for community sanctions and measures which could be used instead of deprivation of liberty, consideration should be given to the following:

– suspension of the enforcement of a sentence to imprisonment with imposed conditions,

– probation as an independent sanction imposed without the pronouncement of a sentence to imprisonment,

– high intensity supervision,

– community service (i.e. unpaid work on behalf of the community),

– treatment orders/contract treatment for specific categories of offenders,

– victim-offender mediation/victim compensation,

– restrictions of the liberty of movement by means of, for example, curfew orders or electronic monitoring.

16. Community sanctions and measures should only be imposed in conformity with the guarantees and conditions laid down in the European Rules on Community Sanctions and Measures.

17. Combinations of custodial and non-custodial sanctions and measures should be introduced into legislation and practice, such as unsuspended custodial sentences, followed by community service, (intensive) supervision in the community, electronically monitored house arrest or, in appropriate cases, by an obligation to undergo treatment.

Sentencing and the role of prosecutors and judges

18. When applying the law prosecutors and judges should endeavour to bear in mind the resources available, in particular in terms of prison capacity. In this connection, continued attention should be paid to assessing the impact which existing sentencing structures and planned sentencing policies have on the evolution of the prison population.

19. Prosecutors and judges should be involved in the process of devising penal policies in relation to prison overcrowding and prison population inflation, with a view to engaging their support and to avoiding counterproductive sentencing practices.

20. Rationales for sentencing should be set by the legislator or other competent authorities, with a view to, inter alia, reducing the use of imprisonment, expanding the use of community sanctions and measures, and to using measures of diversion such as mediation or the compensation of the victim.

21. Particular attention should be paid to the role aggravating and mitigating factors as well as previous convictions play in determining the appropriate quantum of the sentence.

V. Measures relating to the post-trial stage

The implementation of community sanctions and measures – The enforcement of custodial sentences

22. In order to make community sanctions and measures credible alternatives to short terms of imprisonment, their effective implementation should be ensured, in particular through:

– the provision of the infrastructure for the execution and monitoring of such community sanctions, not least in order to give judges and prosecutors confidence in their effectiveness; and

– the development and use of reliable risk-prediction and risk-assessment techniques as well as supervision strategies, with a view to identifying the offender's risk to relapse and to ensuring public protection and safety.

23. The development of measures should be promoted which reduce the actual length of the sentence served, by giving preference to individualised measures, such as early conditional release (parole), over collective measures for the management of prison overcrowding (amnesties, collective pardons).

24. Parole should be regarded as one of the most effective and constructive measures, which not only reduces the length of imprisonment but also contributes substantially to a planned return of the offender to the community.

25. In order to promote and expand the use of parole, best conditions for offender support, assistance and supervision in the community have to be created, not least with a view to prompting the competent judicial or administrative authorities to consider this measure as a valuable and responsible option.

26. Effective programmes for treatment during detention and for supervision and treatment after release should be devised and implemented so as to facilitate the resettlement of offenders, to reduce recidivism, to provide public safety and protection and to give judges and prosecutors the confidence that measures aimed at reducing the actual length of the sentence to be served and community sanctions and measures are constructive and responsible options."

THE LAW

I. INTRODUCTION

149. The Court has until now had to examine conditions of detention in Bulgaria under Article 3 of the Convention in more than twenty cases (see paragraph 268 below). The steps taken by the Bulgarian State to execute the Court's judgments in these cases have for a number of years been monitored by the Committee of Ministers, which, although noting some improvement, has repeatedly emphasised the need for additional measures to bring conditions of detention in Bulgarian correctional facilities in line with Convention standards (see paragraphs 140-142 above).

150. In 2008, having been satisfied by information submitted by the Government that in 2003 the Bulgarian courts had started to award compensation to persons kept in poor conditions of detention under a general statutory rule governing the liability of the authorities for unlawful acts or omissions, the Court in principle started rejecting such complaints brought by persons who no longer remained in such conditions for non-exhaustion of domestic remedies. However, it has not done so in respect of persons who continue to be kept in poor conditions of detention, on the basis that in such circumstances the mere award of compensation is not sufficient (see paragraphs 127 above and 192 below).

151. At present, there are almost forty prima facie meritorious applications awaiting first examination by the Court that concern conditions of detention in Bulgarian correctional facilities (see paragraph 270 below). The six applications at issue in this case, in which the applicants complained of the conditions of their incarceration in a number of prisons and closed-type prison hostels (see paragraph 214 below), are among them. One of the applicants in addition complained that he did not have at his disposal effective domestic remedies in respect of these conditions (see paragraph 165 below).

II. PROCEDURAL POINTS

A. Requests that some of the applications be struck out of the Court's list

152. Mr Tsekov and Mr Zlatev failed to submit their observations in reply to these of the Government within the time-limit fixed by the President of the Section. Having been advised of this, they submitted the observations out of time, but the President of the Section decided to admit them to the case file. Mr Simeonov likewise failed to submit observations in reply to these of the Government. This in all probability happened because

the Court's letter inviting him to do so failed to reach him because he had been released from Burgas Prison on 15 July 2014 (see paragraph 6 above). Mr Simeonov has not tried to contact the Court after notice of his application was given to the Government, of which he was informed by letter of 3 April 2014. Nor has he informed the Court of his change of address, as required under Rule 47 § 7 (former 6) of the Rules of Court.

153. The Government submitted that in these circumstances, the applications of Mr Tsekov, Mr Simeonov and Mr Zlatev should be struck out of the list.

154. In a letter dated 20 and postmarked 26 November 2014 Mr Zlatev said that he no longer maintained his application and wished for it to be struck out of the Court's list. He did not give any reasons for this request (see paragraph 7 above).

155. The Court finds that there is no basis on which to conclude that Mr Tsekov does not intend to pursue his application. Albeit belatedly, he submitted observations, thus expressing his wish to maintain it (see *Dobrić v. Serbia*, nos. 2611/07 and 15276/07, §§ 26-30, 21 June 2011; *Musiałek and Baczyński v. Poland*, no. 32798/02, §§ 95-98, 26 July 2011; and *Pińkowski v. Poland*, no. 16579/03, §§ 35-38, 23 February 2010).

156. As for Mr Zlatev, the Court is not persuaded that, in spite of his declaration, he may be regarded as no longer intending to pursue his application within the meaning of Article 37 § 1 (a) of the Convention. He likewise submitted, although belatedly, observations and claims for just satisfaction (see paragraph 6 above), and did not give any reasons for his ensuing request for his application to be struck out of the Court's list. Mr Zlatev was not legally represented (contrast *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, §§ 29-32, ECHR 2005-X). He is still imprisoned in poor conditions, and has recently carried out serious acts of self-harm (see paragraphs 68 and 69 above). In these circumstances, legitimate doubts may arise about the validity of his statement (see, *mutatis mutandis*, *Tehrani and Others v. Turkey*, nos. 32940/08, 41626/08 and 43616/08, § 56, 13 April 2010). Before striking out an application, even in cases where the applicant wishes to withdraw it, the Court must, under Article 37 § 1 *in fine*, consider whether there are circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case (see *K.A.S. v. the United Kingdom* (dec.), no. 38844/12, § 45, 4 June 2013, citing *Tyrer v. the United Kingdom*, 25 April 1978, §§ 24-27, Series A no. 26). In view of the above considerations, the Court finds that there are such circumstances in this case, and that Mr Zlatev's application should not be struck out of its list.

157. On the other hand, on the basis of the procedural developments outlined above Mr Simeonov may be regarded as not intending to pursue his application within the meaning of Article 37 § 1 (a) of the Convention

(see *Konrad v. Poland* (dec.), no. 35476/97, 23 October 2001; *Bibi v. the United Kingdom* (dec.), no. 40083/98, 21 March 2002; *Babichev v. Russia* (dec.), no. 21777/03, 18 May 2006; and *T.T.S. v. the former Yugoslav Republic of Macedonia* (dec.) [Committee], no. 57282/09, 4 March 2014). It is therefore no longer justified to continue its examination.

158. Moreover, since the issue raised by Mr Simeonov – the conditions in Burgas Prison – was also raised by Mr Tsekov and Mr Zlatev, and since Mr Simeonov is no longer incarcerated, respect for human rights does not require the Court to continue examining his application by reference to Article 37 § 1 *in fine* (see, *mutatis mutandis*, *Özgür Gündem v. Turkey*, no. 23144/93, §§ 34 and 36, ECHR 2000-III; *Stec and Others*, cited above, § 32; *Ivanov and Others v. Bulgaria*, no. 46336/99, § 32, 24 November 2005; and *Shesti Mai Engineering OOD and Others v. Bulgaria*, no. 17854/04, § 62, 20 September 2011).

159. The Court therefore decides to strike Mr Simeonov's application out of its list, but rejects the Government's request to do the same with respect to Mr Tsekov and Mr Zlatev's applications.

B. Joinder of the remaining five applications

160. The remaining four applicants all complained of the allegedly inhuman and degrading conditions of their detention. Having regard to the similarity of their complaints, the Court finds that, in the interests of the proper administration of justice, their five applications should be joined under Rule 42 § 1 of its Rules.

III. ADMISSIBILITY

A. Submissions before the Court

1. The Government

161. The Government submitted that in Bulgarian law there were two remedies at the disposal of inmates dissatisfied with the conditions of their detention. The first was a claim for damages under section 1 of the State and Municipalities Liability for Damage Act 1988. The second was a request to be transferred to another correctional facility under sections 62 and 63 of the Execution of Punishments and Pre-Trial Detention Act 2009. In *Kirilov* (cited above) and *Stoyanov v. Bulgaria* ((dec.) [Committee], no. 25626/08, §§ 34-37, 13 May 2014) the Court had found these remedies effective, and their effectiveness was also proved by a number of recent decisions of the Bulgarian courts. Only Mr Neshkov and Mr Yordanov had resorted to proceedings under section 1 of the 1988 Act, which meant that the

remaining applicants – Mr Tsekov and Mr Zlatev – had not exhausted domestic remedies, as required under Article 35 § 1 of the Convention. Their applications were therefore inadmissible.

2. The applicants

162. Mr Yordanov noted that the Government did not maintain that his application was inadmissible for failure to exhaust domestic remedies. Mr Tsekov and Mr Zlatev did not comment on this point.

B. The Court's assessment

163. The question whether Mr Tsekov and Mr Zlatev have exhausted domestic remedies with respect to their complaint under Article 3 of the Convention relating to the conditions of their detention is closely linked to the merits of Mr Neshkov's complaint under Article 13 of the Convention that he did not have effective domestic remedies in respect of the allegedly inhuman and degrading conditions of his detention (see paragraph 165 below). The Government's objection must therefore be joined to the merits of this latter complaint (see *Štrucl and others v. Slovenia*, nos. 5903/10, 6003/10 and 6544/10, § 62, 20 October 2011; *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 70, 10 January 2012; *Sergey Babushkin v. Russia*, no. 5993/08, § 34, 28 November 2013; and *Yarashonen v. Turkey*, no. 72710/11, § 54, 24 June 2014).

164. The complaints concerning the conditions of the applicants' detention and the alleged lack of effective domestic remedies in that respect are moreover not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other ground. They must therefore be declared admissible.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

165. Mr Neshkov complained, in both of his applications, that he had not had effective domestic remedies in respect of the conditions of his detention. He relied on Article 13 of the Convention, which provides as follows:

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

A. Submissions before the Court

1. The Government

166. The Government submitted that while section 1 of the State and Municipalities Liability for Damage Act 1988 did not specifically envisage conditions of detention, it had on many occasions given persons incarcerated in poor conditions a real chance of obtaining compensation for any damage suffered as a result of that. It was true that for a period of time the civil and then the administrative courts had construed this provision somewhat formally, taking a narrow view of what constituted unlawful acts or omissions on the part of the prison authorities, and requiring claimants to split up their claims to reflect discrete problematic aspects of the conditions of their detention. However, in the past few years the administrative courts had started consistently to interpret this provision extensively and had displayed flexibility in relation to the requisite level of proof. They still required claimants to make out the existence of an unlawful act or omission, damage, and a direct and proximate causal link between the damage and the act or omission, but the number of successful claims was clearly on the rise. In support of their assertion, the Government referred to five judgments given by first-instance administrative courts in 2013 and 2014 and ten judgments given by the Supreme Administrative Court between February and July 2014 (see paragraphs 7, 14, 30, 35, 44, 63, 65, 74, 108, 115, 116, 117, 119, 134 and 138 of Appendix 1). In their view, these judgments demonstrated the effectiveness of proceedings under section 1 of the 1988 Act. The courts could not be expected to disregard or reverse the burden of proof, or to stop requiring claimants in such proceedings to pay court fees and expenses for expert reports and bear the defendants' costs in case they lost the case. While prisoner claimants, being in the custody of the authority that they sued, were disadvantaged *vis-à-vis* regular claimants, administrative court judges could not simply find for them and award them damages without establishing a sufficient causal link between the damage suffered by them and the defendant authority's conduct. It had to be also borne in mind that legal aid was available in such proceedings.

167. The way in which Mr Neshkov's claims had been dealt with could not lead to the conclusion that proceedings under section 1 of the 1988 Act were not an effective remedy. His first claim had been rejected because he had spent very short periods of time in Stara Zagora Prison and could not have therefore suffered non-pecuniary damage as a result of the poor conditions there. His second claim had been rejected on account of the expiry of the relevant limitation period. This could not be held against the authorities, either on account of the legislature enacting a statute of limitations or of the courts applying it when deciding Mr Neshkov's case. The mere fact that Mr Neshkov had not been successful did not mean that the remedy that he had used was ineffective. It was worth noting in that

connection that another claim brought by him in relation to the failure of the administration of Varna Prison to provide him with bed sheets for two periods of time in 2007 and 2008 had resulted in an award of damages.

168. In addition to claims for damages under section 1 of the 1988 Act, prisoners dissatisfied with the conditions of their detention had at their disposal injunctive relief under Articles 250 § 1, 256 or 257 of the Code of Administrative Procedure 2006. Such proceedings could have some, albeit indirect, preventive effect with respect to conditions of detention, depending on the specific underlying issue. In cases where this issue related to the regime of the inmate's detention, such proceedings could not grant relief because this regime was determined by a special commission. Some injunctions had been refused because the statutory requirement for a minimum of four square metres of living space per inmate was not yet in force. Some requests were baseless or made without sufficient legal interest on the part of the inmate. Mr Neshkov had made many such requests. One of them, concerning the amount of living space in his cell, had been turned down in January 2013 because his cellmate had been moved elsewhere and because the statutory requirement for a minimum of four square metres per inmate had still not come into effect.

169. Lastly, inmates could seek transfer to another correctional facility under sections 62 and 63 of the Execution of Punishments and Pre-Trial Detention Act 2009. Such a transfer was capable of putting an end to the alleged breach of their rights. It could be sought for medical or family reasons or reasons relating to conditions of detention. Transfer requests had to be addressed to the director of the Chief Directorate for the Execution of Punishments, and any refusal was subject to appeal before the Minister of Justice.

170. In the Government's view, the combination of these remedies was sufficient for the purposes of Article 13 of the Convention.

2. The applicants

171. Mr Neshkov submitted that claims under section 1 of the State and Municipalities Liability for Damage Act 1988 did not result in any liability for the officials at fault. They in consequence felt free to do as they pleased, while the awards of damages pursuant to such claims were covered by the taxpayers. Moreover, these awards were incommensurably small when compared with the salaries of the prison governors responsible for the violations or the judges making the awards. The possibility of seeking transfer to another facility under the Execution of Punishments and Pre-Trial Detention Act 2009 was not an effective remedy either. First, this Act had only come into force in 2009. Secondly, it did not provide in terms for a possibility for an inmate to seek transfer on the basis that his or her rights were being breached, and any request under it was likely to be met with derision.

172. Mr Yordanov submitted that a claim under section 1 of the State and Municipalities Liability for Damage Act 1988 could only lead to compensation, not to an improvement of the inmate's situation, and thus could not in itself amount to an effective domestic remedy in respect of conditions of detention. The possibility of making complaints to the prison authorities and on that basis seeking transfer to another correctional facility could in theory provide relief. However, that remedy was very uncertain, and had not worked in his case. Moreover, the prison authorities did not have the requisite independence. Lastly, since conditions in all correctional facilities in the country were more or less the same as in those in which he had been held, a transfer could not have the desired practical effect.

173. Mr Tsekov and Mr Zlatev made no submissions on this point.

3. The third parties

174. Bulgarian Lawyers for Human Rights submitted that under Article 5 § 4 of the Constitution of 1991, international law, including the Convention, took precedence over domestic law. Moreover, the Constitutional Court had in two judgments confirmed that the interpretation of the Convention by this Court was binding on all domestic authorities. This also flowed from Article 52 § 3 of the Charter of Fundamental Rights of the European Union. Therefore, whenever a person relied on the Convention in domestic proceedings, the authorities had to construe it in line with this Court's case-law.

175. While the Bulgarian courts had in recent months displayed greater willingness to apply Convention standards when dealing with claims under section 1 of the State and Municipalities Liability for Damage Act 1988 relating to conditions of detention, several issues had to be resolved before that remedy could be seen as sufficiently certain and predictable in its operation. For instance, when deciding whether any "unlawful" acts or omissions had taken place in relation to conditions of detention, the courts often only took into account domestic legal provisions. Other problems came from the lack of clarity about which authority was the proper defendant to such claims and from instructions by the courts to prisoners to split up their claims into separate heads with a view to considering each element of the conditions of their detention individually in terms of its effect on the prisoner's well-being. Thus, if some aspects of these conditions did not, when considered in isolation, run counter to a specific domestic rule, the courts were inclined to find that the conditions were "lawful". Another issue arose in relation to the requirement to prove the existence of non-pecuniary damage through objective, extrinsic evidence, such as witness statements or documents. As a result, claims of emotional distress were almost invariably dismissed as unsubstantiated. Nor did the courts permit damage to health to be proved through witness evidence; they always required expert evidence on that. The awards of damages were often

too low, and sometimes diminished even further by the requirement, in cases where the claim had only been partly allowed, for the claimant to bear the costs of the defendant State authority in proportion to the rejected part of the claim. Nor could a claim under section 1 of the 1988 Act provide relief in respect of conditions that flowed directly from the prison regime applicable to the inmate concerned.

176. As regards preventive remedies, a complaint to the prison authorities could not lead to effective redress because it was not sufficiently certain and predictable and could not solve problems, such as overcrowding, that affected all prisons in the country. Complaints to a supervising prosecutor were not effective either, due to the lack of a requirement for the prosecutor to hear the complainant or ensure his or her participation in the proceedings, and the lack of a personal right for the complainants to compel prosecutors to exercise their supervisory powers. The same went for complaints to the Ombudsman of the Republic, who had no power to render a legally binding decision. Nor was the judicial avenue of redress – injunction proceedings under Articles 250 § 1, 256 or 257 of the Code of Administrative Procedure 2006 – effective for the time being. Case-law under these Articles was scarce, and the administrative courts apparently took the view that injunctive relief was only called for if the act or omission was contrary to domestic rules and not the shared responsibility of two or more State authorities. That said, such proceedings could become an effective remedy if all unclear points were elucidated in an appropriate manner. Another form of redress could consist in the criminal courts' taking into account conditions of detention when fixing sentences or deciding whether or not to place a person in pre-trial detention.

B. The Court's assessment

1. General principles

(a) In relation to the requirement to exhaust domestic remedies

177. The rule of exhaustion of domestic remedies in Article 35 § 1 of the Convention requires those seeking to bring their case against the State before the Court to first use the remedies provided by the national legal system. Consequently, the High Contracting Parties are dispensed from answering for their acts or omissions in proceedings before the Court before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention, with which it has close affinity, that the domestic legal system provides an effective remedy which can deal with the substance of an arguable complaint under the Convention and grant appropriate relief. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national

systems safeguarding human rights (see *Ananyev and Others*, cited above, § 93, with further references).

178. An applicant is normally only required to have recourse to domestic remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of these remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness. It is incumbent on the Government claiming non-exhaustion to satisfy the Court on these points, that is to say, that the remedy to which they refer was accessible and capable of providing redress in respect of the applicant's complaints, and offered a reasonable prospect of success. However, once this burden of proof has been satisfied it falls to applicants to establish that the remedy advanced by the Government had in fact been used or was for some reason inadequate and ineffective in their case, or that there existed special circumstances absolving them from the requirement to have recourse to it (ibid., § 94).

179. Application of the rule of exhaustion of domestic remedies in proceedings before the Court must make allowance for the fact that it is being applied in the context of machinery for the protection of human rights. This means that the rule is to be applied with some degree of flexibility and without excessive formalism, that it is neither absolute nor capable of being applied automatically, and that in reviewing whether it has been complied with it is essential to have regard to the particular circumstances of each case. This entails, among other things, that realistic account must be taken not only of the formal existence of remedies in the legal system of the High Contracting Party concerned but also of the general context in which these remedies operate, as well as the applicants' personal situation (ibid., § 95).

(b) In relation to the application of Article 13 of the Convention in general and specifically with respect to conditions of detention

180. Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the legal order of the High Contracting Party concerned. The effect of this Article is thus to require the provision of a domestic remedy to deal with the substance of an arguable complaint under the Convention and grant appropriate relief. This remedy must be effective in practice as well as in law, it being understood that such effectiveness does not depend on the certainty of a favourable outcome for the person concerned (see, among many other authorities, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, §§ 288-89, ECHR 2011).

181. The scope of the obligation under Article 13 depends on the nature of the aggrieved person's complaint under the Convention. With respect to

complaints under Article 3 of inhuman or degrading conditions of detention, two types of relief are possible: improvement in these conditions and compensation for any damage sustained as a result of them. Therefore, for a person held in such conditions, a remedy capable of rapidly bringing the ongoing violation to an end is of the greatest value and, indeed, indispensable in view of the special importance attached to the right under Article 3. However, once the impugned situation has come to an end because this person has been released or placed in conditions that meet the requirements of Article 3, he or she should have an enforceable right to compensation for any breach that has already taken place. In other words, in this domain preventive and compensatory remedies have to be complementary to be considered effective (see *Ananyev and Others*, cited above, §§ 96-98 and 214).

182. The authority referred to in Article 13 of the Convention does not need to be a judicial one (see *Klass and Others v. Germany*, 6 September 1978, § 67, Series A no. 28, and, more recently, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 149, 17 July 2014). The Court has already found that remedies in respect of conditions of detention before an administrative authority can satisfy the requirements of this Article (see *Norbert Sikorski v. Poland*, no. 17599/05, § 111, 22 October 2009; *Orchowski v. Poland*, no. 17885/04, § 107, 22 October 2009; and *Torreggiani and Others*, cited above, § 51). However, the powers and procedural guarantees that an authority possesses are relevant in determining whether the remedy before it is effective (see *Klass and Others*, § 67, and *Centre for Legal Resources on behalf of Valentin Câmpeanu*, § 149, both cited above).

183. For instance, for a preventive remedy with respect to conditions of detention before an administrative authority to be effective, this authority must (a) be independent of the authorities in charge of the penitentiary system, (b) secure the inmates' effective participation in the examination of their grievances, (c) ensure the speedy and diligent handling of the inmates' complaints, (d) have at its disposal a wide range of legal tools for eradicating the problems that underlie these complaints, and (e) be capable of rendering binding and enforceable decisions (see *Ananyev and Others*, cited above, §§ 214-16 and 219). Any such remedy must also be capable of providing relief in reasonably short time-limits (see *Torreggiani and Others*, cited above, § 97).

184. As regards compensatory remedies in respect of conditions of detention, whether judicial or administrative, the burden of proof imposed on the claimant should not be excessive. While inmates may be required to make a prima facie case and produce such evidence as is readily accessible, such as a detailed description of the impugned conditions, witness' statements, or complaints to and replies from the prison authorities or supervisory bodies, it then falls to the authorities to refute the allegations. In

addition, the procedural rules governing the examination of claims for compensation must conform to the principle of fairness enshrined in Article 6 § 1 of the Convention, including the reasonable-time requirement, and the rules governing costs must not place an excessive burden on the inmate where his or her claim is justified. Lastly, claimants should not be required to establish that specific officials have engaged in unlawful conduct. Poor conditions of detention are not necessarily due to failings of individual officials, but often the product of more wide-ranging factors (ibid., §§ 228-29).

185. The effective remedy required by Article 13 is one where the domestic authority or court dealing with the case has to consider the substance of the Convention complaint. For instance, in cases where this complaint is under Article 8 of the Convention, this means that the domestic authority has to examine, *inter alia*, whether the interference with the applicant's rights was necessary in a democratic society for the attainment of a legitimate aim (see *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 138, ECHR 1999-VI; *Peck v. the United Kingdom*, no. 44647/98, § 106, ECHR 2003-I; and *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 141, ECHR 2003-VIII). The same goes for complaints under Article 9 of the Convention (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 100, ECHR 2000-XI), and Article 10 of the Convention (see *Glas Nadezhda EOOD and Anatoliy Elenkov v. Bulgaria*, no. 14134/02, §§ 68-70, 11 October 2007).

186. In cases, such as the present one, where the grievance that requires examination at domestic level is under Article 3 of the Convention, the domestic authority or court dealing with the case must review the acts or omissions alleged to amount to a breach of this Article in line with the principles and standards laid down by this Court in its case-law; for instance, in relation to force used in the course of arrest operations, whether that force has exceeded what could be considered strictly necessary in the circumstances (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, §§ 75-78, 12 April 2007). The same goes for analogous complaints under Article 2 of the Convention (see *Vasil Sashov Petrov v. Bulgaria*, no. 63106/00, § 60, 10 June 2010).

187. Thus, for a domestic remedy in respect of conditions of detention to be effective, the authority or court in charge of the case must deal with it in accordance with the relevant principles laid down in the Court's case-law under Article 3 of the Convention. These principles have been set out in some detail in paragraphs 225-243 below. Since what matters is the reality of the situation rather than appearances, a mere reference to this Article in the domestic decisions is not sufficient; the case must have in fact been examined consistently with the standards flowing from the Court's case-law.

188. If the domestic authority or court dealing with the case finds, whether in substance or expressly, that there has been a breach of Article 3 of the Convention in relation to the conditions in which the person concerned has been or is being held, it must grant appropriate relief.

189. In the context of preventive remedies, this relief may, depending on the nature of the underlying problem, consist either in measures that only affect the inmate concerned or – for instance where overcrowding is concerned – wider measures that are capable of resolving situations of massive and concurrent violations of prisoners' rights resulting from the inadequate conditions in a given correctional facility (see *Ananyev and Others*, cited above, § 219).

190. In the context of compensatory remedies, monetary compensation should be accessible to any current or former inmate who has been held in inhuman or degrading conditions and has made an application to this effect. A finding that the conditions fell short of the requirements of Article 3 of the Convention gives rise to a strong presumption that they have caused non-pecuniary damage to the aggrieved person. The domestic rules and practice governing the operation of the remedy must reflect the existence of this presumption rather than make the award of compensation conditional on the claimant's ability to prove, through extrinsic evidence, the existence of non-pecuniary damage in the form of emotional distress (ibid., § 229; see also *Iovchev*, cited above, § 146).

191. Lastly, prisoners must be able to avail themselves of remedies without having to fear that they will incur punishment or negative consequences for doing so (see Rule 70.4 of the 2006 European Prison Rules, cited in paragraph 144 above, as well as, *mutatis mutandis*, *Marin Kostov v. Bulgaria*, no. 13801/07, §§ 47-48, 24 July 2012).

2. Application of these principles in the present case

192. In 2003 the Bulgarian civil courts started awarding damages to persons claiming to have suffered non-pecuniary damage as a result of the poor conditions of their detention under a general rule governing the tortious liability of the authorities – section 1 of the State and Municipalities Liability for Damage Act 1988 – which had previously not been regarded as relevant in this domain (see paragraphs 125, 127 and 129 above). Having been advised by the Government of the development, in a series of decisions and judgments the Court accepted that, in view of this jurisprudential development, a claim under section 1 of the 1988 Act could in principle be regarded as an effective domestic remedy in respect of complaints under Article 3 of the Convention relating to conditions of detention, but – in view of its purely compensatory character – only if the alleged breach had come to an end because the person concerned had already been released or placed in Article 3-compliant conditions (see *Hristov*; *Kirilov*, §§ 43-48; *Shishmanov*, §§ 58-62; *Titovi*, § 34;

Simeonov, §§ 43-47; *Georgiev*; *Iliev and Others*, §§ 46, 54-56 and 68; and *Radkov (no. 2)*, §§ 37 and 53, all cited above). At the same time, the Court found that in a number of cases this remedy had failed to operate properly as a result of the Bulgarian courts' formalistic approach to various points (see the cases cited in paragraph 128 above).

193. Since Mr Tsekov and Mr Zlatev are apparently still serving their sentences of imprisonment, and since there is no indication that they have been placed in Article 3-compliant conditions, their complaints in relation to the conditions of their detention cannot be rejected for non-exhaustion of domestic remedies, even though they have apparently not brought claims under section 1 of the 1988 Act.

194. Moreover, the Court does not consider that, in view of the manner in which the Bulgarian courts' case-law under section 1 of the 1988 Act in relation to conditions of detention has evolved in recent years, such proceedings may still be regarded as an effective domestic remedy with respect to claims that such conditions are in breach of Article 3 of the Convention. The two domestic cases brought by Mr Neshkov directly at issue here highlight several problems that are characteristic of the manner in which such claims are being dealt with. The Court will address them in turn.

195. First, the courts did not make it clear what specific acts or omissions needed to be established by Mr Neshkov for his claim to succeed.

196. Secondly, the courts applied the rule *affirmanti incumbit probatio* in a very strict way (see paragraphs 29, 32 *in fine* and 33 above), failing duly to recognise that Mr Neshkov, who had been in detention at the time of the events in respect of which he was suing and continued to be in detention at the time of the proceedings, could encounter difficulties in this respect.

197. Thirdly, the courts assessed the conditions of Mr Neshkov's detention – in particular, the amount of living space available to him – only under the specific domestic rules governing that particular aspect rather than in terms of the cumulative impact of these conditions on his well-being and by reference to the general prohibition of inhuman and degrading treatment laid down in Article 3 of the Convention (see paragraph 19 above, and compare with *Shahanov*, cited above, § 40).

198. Fourthly, the courts did not recognise that conditions of detention that fall short of the requirements of Article 3 of the Convention must be presumed to cause non-pecuniary damage (see paragraphs 19 and 21 above). It is true that Mr Neshkov only spent short periods of time in Stara Zagora Prison. However, while the length of the period spent in inadequate conditions may be a relevant factor in assessing the gravity of the suffering caused to a detainee by these conditions, the relative brevity of that period does not automatically exclude the treatment complained of from the scope of Article 3 of the Convention if all other elements are sufficient to bring it within the scope of this provision (see *Tadevosyan v. Armenia*, no. 41698/04, § 55, 2 December 2008, and *Brega v. Moldova*, no. 52100/08,

§§ 42-43, 20 April 2010). As noted above, under the Court's case-law any treatment that falls short of the requirements of Article 3 of the Convention must be presumed to cause non-pecuniary damage to the aggrieved person.

199. Lastly, in the second case brought by Mr Neshkov the courts applied the domestic rules governing the limitation of actions in a way that did not properly take account of the continuous nature of the situation of which he had complained. While it is not this Court's task to verify whether the administrative courts' rulings in Mr Neshkov's case were correct in terms of Bulgarian law, it is competent to examine whether the approach taken by these courts may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I); in this case, Mr Neshkov's right to an effective domestic remedy under Article 13 of the Convention. As noted above, for a remedy to be effective, the domestic authority or court dealing with the case must have reviewed the acts or omissions alleged to amount to a breach of Article 3 of the Convention in accordance with the principles and standards laid down by this Court in its case-law. When dealing with complaints in relation to conditions of detention that do not simply relate to a specific event, but concern a whole range of problems regarding sanitary conditions, the temperature in the cells, overcrowding, lack of adequate medical treatment and so on, which have affected an inmate throughout his or her incarceration, the Court regards this as a continuing situation, even if the person concerned has been transferred to various detention facilities (see *Seleznev v. Russia*, no. 15591/03, §§ 34-36, 26 June 2008; *Sudarkov v. Russia*, no. 3130/03, § 40, 10 July 2008; and *Iacov Stanciu v. Romania*, no. 35972/05, §§ 136-38, 24 July 2012).

200. In view of all these shortcomings, the two claims for damages brought by Mr Neshkov under section 1 of the 1988 Act cannot be regarded as an effective remedy in respect of his complaint relating to the conditions of his incarceration.

201. The issues faced by Mr Neshkov in the course of his proceedings appear representative of those met by a number of persons who have sought damages in respect of the conditions of their detention under section 1 of the 1988 Act in recent years. A perusal of the relevant decisions of the Bulgarian courts shows that this remedy has become quite uncertain in its operation. The particular issues were as follows.

202. First, only about thirty per cent of such cases have thus far resulted in an award of compensation (see paragraph 131 above).

203. Secondly, when examining claims of this type, the courts very often did not take into account, as such, the general rule proscribing inhuman and degrading treatment, but only the concrete statutory or regulatory provisions governing conditions of detention. As a result, in the absence of a concrete domestic-law rule governing a particular aspect of these conditions – such as a rule laying down the minimum space per prisoner, or a rule requiring

that toilets be properly installed in each cell – the courts often found no illegality, and did not go on to examine whether these matters could, when taken alone or together with other aspects of the conditions in which the inmate was held, constituted inhuman and degrading treatment (see paragraph 132 above). In some cases, the courts even required inmates to split up their claims to reflect the particular issues that affected them and then proceeded to examine these claims separately (see paragraph 134 above). In this way, the courts did not review the acts or omissions alleged to amount to a breach of Article 3 of the Convention in line with the principles and standards laid down by this Court in its case-law – which according to circumstances may require a cumulative approach – even though under Article 5 § 4 of the 1991 Constitution the Convention is part of Bulgarian law (see paragraph 95-97 above). Even in the few cases in which they had regard to the general prohibition against inhuman and degrading treatment, the courts saw it more as an aid in the interpretation of concrete statutory or regulatory provisions rather than a fully-fledged norm whose breach could in itself prompt them to grant redress in respect of Convention rights (see paragraph 133 above). Thus, when they examined such claims, the courts did not focus so much on the inmate's right not to be subjected to inhuman and degrading treatment; they instead limited their examination to the lawfulness, within the meaning of domestic law, of the actions of the prison authorities.

204. Moreover, more often than not the courts failed to recognise that poor conditions of detention must be presumed to cause non-pecuniary damage to the person concerned (see paragraph 135 above). There was also some uncertainty about the proper defendants to such claims (see paragraph 136 above).

205. It is true that, as pointed out by the Government, in several recent judgments the lower administrative courts and the Supreme Administrative Court upheld inmates' claims by reference to, *inter alia*, Article 3 of the Convention. However, almost all of these judgments were delivered after notice of the present applications was given to the Government (see paragraph 5 above, and paragraphs 7, 14, 30, 35, 44, 63, 65, 74, 108, 115, 116, 117, 119, 134 and 138 of Appendix 1). It is therefore doubtful whether this can be regarded as a stable trend. Moreover, they did not fully resolve all issues outlined above, and do not appear to have resulted in consistent and predictable levels of compensation in comparable circumstances.

206. All of the above shows that the remedy under section 1 of the 1988 Act is not at this stage sufficiently certain and effective. In effect, the Court is not persuaded that the subject matter of the cases examined by the administrative courts under this provision was co-extensive with the issues that arise under Article 3 of the Convention.

207. It does not appear, and the Government have not asserted, that other such remedies exist.

208. It remains to be established whether Mr Neshkov, who continues to be incarcerated, has at his disposal an effective preventive remedy. It is true that he did not describe the current conditions of his imprisonment in Belene Prison. However, it cannot be overlooked that, according to data submitted by the Government, in December 2013 Belene Prison was overcrowded (see paragraph 143 above), and that other domestic cases show that conditions in this prison are deficient (see paragraphs 32 and 34 of Appendix 1). Moreover, the entire penitentiary system in Bulgaria is, as confirmed in recent reports (see paragraphs 78-81 and 83-87 above) and by the Government's own admission (see paragraphs 258 and 259 below), marred by serious problems. There is therefore no basis on which to presume that Mr Neshkov has been placed in Article 3-compliant conditions and that the question of the availability of a preventive remedy does not arise in his case.

209. In Bulgaria, it appears that some inmates have tried to challenge aspects of the conditions of their detention by way of proceedings under Articles 250 § 1 of the Code of Administrative Procedure 2006, the provision that provides protection, by way of prohibitory injunctions, against unlawful acts of the authorities (see paragraph 137 above), and under Articles 256 and 257 of that Code, the provisions that provide protection, by way of mandatory injunctions, against the authorities' failure to fulfil their statutory duties (see paragraph 138 above). However, with two exceptions, which concerned very concrete statutory duties of the prison authorities – two cases concerning failures to provide prisoners with clothes and shoes – it does not appear that the administrative courts have thus far interpreted these provisions in a way enabling an inmate or a group of inmates to obtain a more general improvement of the conditions of their confinement (see paragraphs 116, 137 and 138 above). Moreover, the second of these cases has still not been finally decided, and that, as noted above, the administrative courts have a tendency to regard acts or omissions as unlawful only if they fail to conform to a very specific statutory duty or proscription rather than to the broader prohibition against inhuman and degrading treatment. Therefore, this remedy, while theoretically capable of providing redress to the applicants, does not appear, for the time being, to be capable of doing so in practice (see, *mutatis mutandis*, *Mandić and Jović v. Slovenia*, nos. 5774/10 and 5985/10, §§ 112 and 114, 20 October 2011; *Ananyev and Others*, cited above, §§ 110 and 217; and *Harakchiev and Tolumov v. Bulgaria*, nos. 15018/11 and 61199/12, § 228, 8 July 2014). Moreover, since such proceedings do not necessarily unfold in a speedy fashion, they may be incapable to provide redress in respect of problems that require an urgent reaction.

210. Moreover, the enforcement of injunctions in individual cases, in so far as they may concern systemic problems such as overcrowding – which appears to be the case at least in prisons and closed-type prison hostels in Bulgaria (see paragraphs 91 and 143 above), could in some cases prove impossible in practice in the absence of reforms that tackle such problems (see *Ananyev and Others*, § 111, and *Torreggiani and Others*, § 54, both cited above, and contrast *Stella and Others v. Italy* (dec.), nos. 49169/09, 54908/09, 55156/09, 61443/09, 61446/09, 61457/09, 7206/10, 15313/10, 37047/10, 56614/10, 58616/10, §§ 50-52, 16 September 2014).

211. For the same reason, the possibility to seek a transfer to another correctional facility (see paragraph 111 above) offers, for the time being, only a limited possibility. In his 2012 report the Ombudsman said that the possibility for inmates to seek transfer to another correctional facility to escape overcrowding was of no practical use because all prisons in the country, except two correctional institutions for juveniles and Sliven Prison, which housed female prisoners, were overcrowded, in the sense of providing less than four square metres per prisoner (see paragraph 78 above). This is largely confirmed, at least as regards prisons and closed-type prison hostels, by the statistical data supplied by the Government about the situation in correctional facilities in December 2013 (see paragraph 143 above). Moreover, by statute the possibility for a transfer from a prison or a closed-type prison hostel to an open-type prison hostel is only available to prisoners who have spent at least six months in such facilities and have less than five years remaining of their sentence (see paragraph 113 above). As pointed out in the McManus report (see paragraph 91 above), that deprives a large category of prisoners of this possibility and makes it difficult to attain for another substantial category. It should also be noted in this connection that under Bulgarian law decisions of the prison authorities on transfers between prisons are apparently regarded as fully discretionary and not compellable by means of an injunction (see paragraphs 111, 112 and 114 above). Inmates do not have a right to be transferred if they so request, which means that the possibility is not a remedy for the purposes of Article 13 of the Convention (see, *mutatis mutandis*, *Mandić and Jović*, cited above, § 110).

212. Complaints to the prosecutor in charge of supervising the respective correctional facility or to the Ombudsman of the Republic are not effective remedies either. It is true that by statute public prosecutors have broad supervisory powers in relation to correctional facilities (see paragraph 139 above). However, a complaint to a public prosecutor is not based on a personal right for the person concerned to obtain redress, and there is no requirement for such a complaint to be examined with the participation of the inmate concerned or for the prosecutor to ensure his or her effective participation in the proceedings (see *Ananyev and Others*, cited above, § 104). For their part, complaints to the Ombudsman cannot result in

a legally binding and enforceable decision (see *Mandić and Jović*, § 117, and *Ananyev and Others*, §§ 105-06, both cited above).

213. In view of the foregoing, the Court dismisses the Government's objection of non-exhaustion of domestic remedies in respect of Mr Zlatev and Mr Tsekov's complaints under Article 3 of the Convention concerning the conditions of their detention, and finds that Mr Neshkov did not have an effective domestic remedy in this respect, in breach of Article 13 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

214. All four applicants complained that the conditions of their detention in the various correctional facilities in which they had been and continued to be held had been and were inhuman and degrading. They relied on Article 3 of the Convention, which reads as follows:

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

A. Submissions before the Court

1. The Government

215. The Government set out in some detail their assertions about the conditions of the applicants' detention in the various correctional facilities in which they had been and were being held (see paragraphs 12, 13, 16, 37-42, 50, 52, 54, 55 and 57-60 above). Based on these assertions, they argued that, although the conditions had been deficient in some respects, they did not amount to inhuman or degrading treatment. The lack of some common life necessities had not reached such a level of severity as to amount to treatment proscribed by Article 3 of the Convention. According to the Government, some of the applicants' allegations were untrue and unsupported by evidence. Lastly, the Government referred to the terms of section 3(2) of the Execution of Punishments and Pre-Trial Detention Act 2009 (see paragraph 107 above), pointing out that under this provision only the wilful placement in poor conditions of detention amounted to inhuman or degrading treatment. None of the applicants had been intentionally placed in such conditions; they had simply been housed in cells identical to those of all other inmates.

2. The applicants

216. Mr Neshkov submitted that the conditions in which he had been kept in Varna Prison, especially in cell 19a, the smallest cell in the whole country, with no window, in which no other inmate had ever been housed but which had been brought into use specially for him, had amounted to

deliberate ill-treatment. The same went for the conditions in cell 24, where he had been tied to the bed for thirty-four days, and for Stara Zagora Prison, regardless of the small amounts of time that he had spent there. The amount of time spent in such conditions was relevant only to the intensity of the suffering, not to its existence in the first place. In Mr Neshkov's view, these conditions could not be explained by the lack of financial means. For instance, removing the metal sheets covering the cell windows and letting inmates visit the toilet whenever they needed to did not require any additional expenditure. In any event, Bulgaria had ratified the Convention and had thereby taken up the obligation to ensure full compliance with its requirements. The Government was well aware that it had failed in this, and was trying to justify that failure by reference to financial considerations.

217. Mr Yordanov noted the Government's concession that conditions in Bulgarian correctional facilities were poor, and submitted that for a very long time they had been below the standards required under the Court's case-law and could therefore be described as inhuman and degrading treatment, in his particular case as well. Issues that had affected him in particular had been overcrowding, the need to relieve himself in a bucket in front of his cellmates, and low hygiene in general. The lack of intention on the part of the authorities to place him in such conditions was immaterial. He had already endured them for more than seven years.

218. Mr Zlatev submitted that he engaged in suicidal behaviour and tried to harm himself because he could no longer bear the conditions of his imprisonment and the uncertainty surrounding the possibility of his early release. In Burgas Prison, he was not being given any work because of his invalidity.

3. The third parties

219. The Bulgarian Helsinki Committee submitted that under an agreement with the Ministry of Justice its researchers had been given the right to enter any correctional facility in Bulgaria to inspect the conditions, and that it regularly published reports on conditions in Bulgarian prisons. It went on to say that in 2009-13 the average number of prisoners per day had fluctuated: 9,461 in 2009, 9,404 in 2010, 9,804 in 2011, 10,039 in 2012 and 9,347 in 2013, which was in line with earlier trends. For instance, on 31 December 2002 the number of prisoners in Bulgaria had been 9,422. However, although the absolute number of prisoners had not increased, the country's population – especially persons aged between of twenty and thirty-nine, who were statistically most likely to be imprisoned – had shrunk considerably, in particular as a result of emigration. The share of the prison population in relation to the population at large had thus in effect increased.

220. The most serious problems in terms of material conditions in Bulgarian correctional facilities were the dilapidated buildings, unsuitable living conditions, poor hygiene and overcrowding. Most prisons – these in

Burgas, Varna, Vratsa, Lovech, Pazardzhik, Stara Zagora and Sofia – had been built in the early twentieth century and their buildings were in line with the standards prevailing at that time. Other correctional facilities – the prisons in Bobov Dol, Pleven and Boychinovtsi and most open-type correctional facilities – were former workers' dormitories, military barracks or schools converted into correctional facilities under the communist regime. These facilities, and the facilities built under the communist regime – the prisons in Belene, Sliven, Plovdiv and a few open-type correctional facilities – had been designed to host prisoners who only spent time in their cells at night, because under the communist regime about 90% of prisoners were involved in work. Since the fall of the regime, no investment had been made in new correctional facilities, and conditions in the existing ones had noticeably deteriorated. The authorities were well aware of that, as shown by a number of statements on the issue by various public officials. A programme to ensure at least four square metres per inmate by the end of 2013 had been postponed until 2019.

221. Since 1994 overcrowding in various prisons had fluctuated, due to changes in their catchment areas. However, several prisons, such as this in Burgas, had remained consistently overcrowded. Its design capacity was 371 inmates, and when last visited by the Bulgarian Helsinki Committee in 2013 it housed almost 900. On the fourth floor, 240 inmates were held in cells containing between 15 and 44 persons. One cell, measuring 55 square metres, contained 40 bunk beds in three layers, for 44 inmates, four of whom had to sleep on the floor. The free space in this cell consisted of narrow paths between the beds. In most cells the windows could not be opened without moving the beds. The corridors were overcrowded as well. None of the cells was equipped with a toilet, and there were only three toilets for the entire floor, with appalling hygiene. There was only one bathroom with one shower. As the cells were locked at night, prisoners had to relieve themselves in buckets in the presence of their cellmates. The lack of in-cell toilets was a problem in Varna and Stara Zagora Prisons as well. On 31 December 2013 cells without toilets in these three prisons housed 1,700 inmates. The recent reduction in the number of inmates and a re-drawing of prisons' catchment areas in 2013 did relieve the overcrowding situation in some prisons, such as these in Lovech and Pazardzhik. However, in other prisons, such as this in Burgas, the situation worsened, with space per prisoner in some cells falling to less than one square metre. This prompted another re-drawing of prisons' catchment areas in the spring of 2014, which resulted in a slight reduction of the level of overcrowding in Burgas. While prison hostels generally provided better conditions, some were also overcrowded. For instance, the prison hostel in Kremikovtsi, designed for 300 inmates, usually had more than 500, sometimes even up to 700. In some cells, 20 to 23 prisoners lived in 50 square metres with only one in-cell toilet.

222. Possibilities for purposeful activities in the correctional facilities were very limited. Most prisoners, especially those in closed-type facilities, remained in their cells all day, played games with other inmates, or roamed the corridors. There was on average one social worker per 90, 100, or even 150 prisoners. The number of prisoners taking part in educational programmes had decreased in the past two years. Even though there were schools in all but two prisons, only 20% of all inmates took part in the educational process. A very small part of them were involved in work: 24% in 2009, 21% in 2010, 17% in 2011, 18% in 2012 and 18% in 2013. There were credible reports of bribe-taking by prison officials in connection with the provision and allocation of work. Another problem was the exclusion of working prisoners from the national health-care system and from compensation for workplace accidents and occupational illnesses.

223. Health care services in the penitentiary system were not integrated in the national health care system, and were plagued by a shortage of staff and resources. In many correctional facilities, medical posts remained vacant due to the low remuneration offered. The situation with prison psychiatrists was the same. This, coupled with the poor material and hygienic conditions, poor food and lack of activities, seriously affected prisoners. Many of them – 8%, according to current estimates – were drug addicts. Another serious problem resulted from the complete lack of external sanitary and hygienic inspections in correctional facilities.

224. Instances of abuse and violence by prison guards were frequent, especially with respect to foreign prisoners, and seldom investigated. Another problem was inter-prisoner violence, which the authorities could not monitor and prevent, chiefly due to the overcrowded cells and corridors and the impossibility to house prisoners on the basis of their compatibility. Since all prisoners but those serving life sentences were kept in common cells unlocked during the day, the guards had no possibility to supervise them properly. The shortage of prison staff added to the problem. For instance, in Varna Prison one guard had to supervise a corridor with 300 inmates, and on the fourth floor of Burgas Prison, one guard had to supervise up to 240 inmates. Close-circuit television surveillance could not fix this because it did not cover all areas. The available statistical data suggested that not all cases were properly recorded, let alone punished. Sexual violence among prisoners was also rife. Lastly, there were a number of problems in relation to solitary confinement, which was used as a disciplinary measure.

B. The Court's assessment

1. General principles

225. The general principles governing the application of Article 3 of the Convention to conditions of detention were set out in considerable detail in paragraphs 139-59 of the Court's judgment in *Ananyev and Others* (cited above) and paragraphs 65-69 of the Court's judgment in *Torreggiani and Others* (cited above).

(a) In relation to the overall approach to the assessment of conditions of detention under Article 3 of the Convention

226. Article 3 of the Convention enshrines one of the most fundamental values of a 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 *Ananyev and Others*, cited above, § 139, with further references).

227. To fall within the scope of this Article, ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative and 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. While ill-treatment that attains this minimum often involves actual bodily injury or intense physical or mental suffering, even in the absence of these, where treatment humiliates or debases a person, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking this person's moral and physical resistance, it may also fall within the prohibition of Article 3 (ibid., §§ 139-40, with further references).

228. For detention specifically to fall under Article 3 of the Convention, the suffering and humiliation involved must go beyond the inevitable element of suffering and humiliation connected with deprivation of liberty itself. That said, the authorities must ensure that a person is detained in conditions compatible with respect for human dignity, that the manner and method of execution of a custodial sentence or other type of detention measure do not subject the person concerned to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, this person's health and well-being are adequately secured (ibid., § 141, with further references).

229. In the assessment of conditions of detention under Article 3 of the Convention, it is particularly important that account be taken of the cumulative effects of these conditions, as well as of the specific allegations made by the person concerned and the amount of time that he or she has spent in these conditions (ibid., § 142, with further references). Even where each individual aspect of these conditions complies with domestic law, their cumulative effect may be such as to result in inhuman or degrading

treatment within the meaning of Article 3 of the Convention. For the same reason, a high crime rate, a lack of resources, or other structural problems are not circumstances that exclude or attenuate the State's liability for such conditions. As the Court has repeatedly emphasised, it is incumbent on the State to organise its penitentiary system in a way that does not give rise to such conditions, regardless of financial or logistical difficulties (ibid., § 229).

230. The absence of an intention of humiliating or debasing a detainee by placing him or her in poor conditions, while being a factor to be taken into account, does not conclusively rule out a finding of violation of Article 3 of the Convention (see, among many other authorities, *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III, and *Kehayov v. Bulgaria*, no. 41035/98, § 63, 18 January 2005).

(b) In relation to overcrowding

231. Extreme lack of space in a prison cell weighs heavily in the assessment of whether conditions of detention are in breach of Article 3 of the Convention. While the CPT's general reports do not appear explicitly to say what amount of living space per inmate should be considered the minimum standard for a multi-occupancy cell, the individual country reports on its visits and the recommendations following on these reports suggest that the desirable standard should be four square metres of living space per person. However, if inmates have at their disposal less than three square metres of living space, overcrowding must be considered so severe as to lead in itself, regardless of other factors, to a breach of Article 3 of the Convention. In the assessment of the amount of available space, account must be taken of the space occupied by furniture and fixtures in the cell. The insufficiency of space may also be aggravated by the lack of enough individual sleeping places (see *Ananyev and Others*, cited above, §§ 145-47, with further references). Even if overcrowding is not so serious as to amount in itself to a breach of Article 3 of the Convention, it can still give rise to a breach of this provision if, combined with other aspects of the conditions of detention – such as lack of privacy when using the toilet, poor ventilation, lack of access to natural light and fresh air, lack of proper heating or lack of basic hygiene – it results in a level of suffering that exceeds that inherent in detention (see *Torreggiani and Others*, cited above, § 69).

232. It follows that, in the assessment of whether there has been a breach of Article 3 of the Convention on account of the lack of personal space, regard must be had to the following factors: (a) each detainee must have an individual sleeping place; (b) each detainee must have at least three square metres of floor space; and (c) the size of the cell must allow detainees to move freely between furniture. The absence of any of these elements in itself gives rise to a strong presumption that the conditions of detention

were in breach of this Article (see *Ananyev and Others*, cited above, § 148, with further references).

(c) In relation to other aspects of the conditions of detention

233. Beside the amount of available space, other aspects of the physical conditions of detention are also relevant for the assessment of compliance with Article 3 of the Convention. Such elements include, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of heating arrangements, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements. Thus, even in cases of prison cells that provide three to four square metres of living space per inmate, there may be a breach of this Article if the space factor is coupled with lack of ventilation and lighting (ibid., § 149, with further references).

(i) Outdoor exercise

234. Of the other elements relevant for the assessment of the conditions of detention by reference to Article 3 of the Convention, special attention must be paid to the availability and duration of outdoor exercise and the conditions in which prisoners can take it. The prison standards set out by the CPT specifically mention such exercise and consider it a basic safeguard of prisoners' well-being that all of them, without exception, be allowed at least one hour of exercise in the open air every day, preferably as part of a broader programme of out-of-cell activities. These standards also say that outdoor exercise facilities should be reasonably spacious and whenever possible provide shelter from inclement weather (ibid., § 150, with further references; see also paragraph 48 of CPT's Second General Report, cited in paragraph 145 above).

235. The short duration of outdoor exercise may be a factor that exacerbates the situation of a prisoner confined to his or her cell the rest of the time (see *Ananyev and Others*, cited above, § 151, with further references).

236. The physical characteristics of outdoor exercise facilities are also relevant. For instance, an exercise yard that is just two square metres larger than the cell, is surrounded by three-metre-high walls, and has an opening to the sky covered with metal bars and a thick net does not offer inmates proper opportunities for recreation and recuperation (ibid., § 152, with further references).

(ii) Access to natural light and fresh air

237. It is very important to give prisoners unobstructed and sufficient access to natural light and fresh air within their cells. For instance, metal shutters or inclined plates fitted to windows have the effect of depriving inmates of access to natural light and preventing fresh air from entering

their cells, and create conditions favourable to the spread of diseases, in particular tuberculosis (ibid., § 153, with further references; see also paragraph 30 of CPT's Eleventh General Report, cited in paragraph 147 above).

238. Restrictions on access to natural light and air due to the fitting of metal shutters can seriously aggravate the situation of prisoners kept in an already overcrowded cell and may weigh heavily in favour of finding a breach of Article 3 of the Convention. That said, absent any indications of overcrowding or malfunctioning of the ventilation system and the artificial lighting, the negative effect of shutters does not reach, on its own, the threshold of severity required under this Article (see *Ananyev and Others*, cited above, § 154, with further references).

239. On the other hand, the free flow of air should not be confused with inappropriate exposure to inclement outside conditions, including extreme heat in summer or freezing temperatures in winter. For instance, detainees may find themselves in particularly harsh conditions because their cell window has been fitted with shutters but lacks glazing, with the result that they suffer both from inadequate access to sunlight and air and from exposure to low temperatures (ibid., § 155, with further references).

(iii) Access to sanitary facilities

240. Access to properly equipped and hygienic sanitary facilities is of paramount importance for preserving the inmates' sense of personal dignity (see also paragraph 49 of CPT's Second General Report, cited in paragraph 145 above). Not only is hygiene an integral part of the respect that persons owe to their bodies and to others with whom they share premises, especially for long periods of time, they also constitute a precondition for the preservation of health. A truly humane environment is not possible without ready access to toilet facilities or the possibility of keeping one's body clean (ibid., § 156, with further references; see also points 19.4 to 19.7 of the European Prison Rules, cited in paragraph 144 above).

241. As regards in particular access to toilets, lavatory pans placed in the corner of the cell and either lacking any separation from the living area or separated by a single partition of one or one-and-a-half metres high is not only objectionable from a hygiene perspective but also deprives a detainee using the toilet of any privacy because he or she remains at all times in full view of other inmates sitting on the bunks, and also of prison guards looking through the peephole. This can take a particularly heavy toll on inmates suffering from medical conditions affecting their digestive system (see *Ananyev and Others*, cited above, § 157, with further references).

242. Problems can arise also in relation to the practical arrangements and time allowed for taking a shower, especially when the number of

functioning showerheads is limited and inmates are taken to the bathroom in groups (ibid., § 158, with further references).

243. Another sanitary issue in correctional facilities is infestation with cockroaches, rodents, fleas, lice, bedbugs and other vermin. The prison authorities should tackle such infestation by providing adequate disinfection facilities, detergent products, and regular fumigation and check-ups of the cells, in particular the bed linen, mattresses and areas used for keeping food (ibid., § 159, with further references).

(iv) Medical care in detention

244. In relation to prisoners who suffer from a medical condition, whether physical or mental, three elements need to be considered in relation to the compatibility of their health with their stay in detention: (a) the prisoner's medical condition, (b) the adequacy of the medical care provided in detention, and (c) the advisability of maintaining the detention measure in view of the state of the prisoner's health (see *Sławomir Musiał v. Poland*, no. 28300/06, § 88, 20 January 2009, with further references). Particular attention should be paid in this connection to the recommendations contained in points 39 to 48 of the European Prison Rules (see paragraph 144 above), in spite of their non-binding character (ibid., § 96).

2. Application of these principles in this case

(a) The case of Mr Neshkov

245. The case of Mr Neshkov concerned the conditions of his detention in Varna Prison in 2002-05 and in Stara Zagora Prison on a number of occasions between 2002 and 2008, when he spent short periods of time there during transfers to court hearings.

(i) Varna Prison

246. In Varna Prison, where he remained for almost exactly three years, between June 2002 and June 2005, Mr Neshkov was first kept for about three months in a cell that was severely overcrowded. From the findings of the Varna Administrative Court it can been seen that between June and August 2002 Mr Neshkov had to share this cell, which, according to the Government measured 6.5 by 3.2 metres, with ten to fifteen other inmates (see paragraph 32 above). After that, he was moved, for about two months, to a small and dark isolation cell that had no toilet and had a window covered by a metal sheet, and then, for eight or nine months, to an even smaller cell that measured about 2 by 2 metres, and had no toilet and a window covered with a perforated metal sheet (ibid.). These cells remained locked except for three periods of 30 to 40 minutes in the morning, at lunch and in the evening (see paragraph 12 above). There is no evidence that this

state of affairs came to an end in August 2003. After it visited Varna Prison in 2010, the CPT described it as "marked by extreme overcrowding", with space per prisoner being at best around two square metres and on occasion little more than one square metre (see paragraph 72 above). The CPT also noted the extreme dilapidation of the prison building and the very poor hygiene in it (ibid.). It is true that this visit took place about five years after Mr Neshkov had been transferred to another prison. But there is nothing to suggest that the material conditions in Varna Prison dramatically changed between 2003 and 2010, or that the level of overcrowding there in 2002-05 – when the overall number of prisoners in Bulgaria was about the same as in 2010 (see paragraph 219 above) – was significantly lower than in 2010. The CPT's findings may therefore inform the Court's assessment (see, *mutatis mutandis*, *Iovchev*, cited above, § 130, and *Todor Todorov v. Bulgaria*, no. 50765/99, § 47, 5 April 2007). It is very unlikely that Mr Neshkov remained unaffected by the problems noted by the CPT, or that the living conditions that he was afforded in Varna Prison between 2003 and 2005 were up to Convention standards (see, *mutatis mutandis*, *Orchowski*, cited above, § 131).

247. The lack of ready access to the toilets, which forces a detainee to relieve his sanitary needs in a bucket in the cell, often in the presence of his cellmates, is a practice that has been consistently criticised by this Court in cases against Bulgaria (see *Harakchiev and Tolumov*, cited above, § 211, with further references). Coupled with the extremely limited amount of personal space available to Mr Neshkov, part of the time as a result of overcrowding and part of the time as a result of the small size of the cells in which he was kept alone, it is sufficient to find that the conditions in which he was kept in Varna Prison amounted to inhuman and degrading treatment. As noted by the CPT in paragraph 50 of the Second General Report on its activities, the cumulative effect of overcrowding and inadequate access to toilet facilities can prove extremely detrimental to prisoners (see paragraph 145 above).

248. There has therefore been a breach of Article 3 of the Convention in relation to the conditions in which Mr Neshkov was kept in Varna Prison.

(ii) Stara Zagora Prison

249. The conditions of Mr Neshkov's detention in Stara Zagora Prison, as established by the Vratsa Administrative Court, included lack of bed linen, presence of vermin in the cells, lack of proper lighting at day and a constant light at night, lack of an in-cell toilet and a resulting need for Mr Neshkov to relieve himself in a bucket and urinate in a plastic bottle (see paragraph 19 above). The relative brevity of the periods spent by Mr Neshkov in these conditions – one to two days on each occasion when he transited through this prison (ibid.) – do not automatically exclude the treatment complained of from the scope of Article 3 of the Convention

(see *Tadevosyan*, § 55, and *Brega*, §§ 42-43, both cited above). The Court has already found that even a very short period of time – twenty-two hours – spent in conditions quite similar to these endured by Mr Neshkov in Stara Zagora Prison were in breach of this provision (see *Fedotov v. Russia*, no. 5140/02, §§ 20, 55, 67, 68 and 104, 25 October 2005).

250. There has therefore been a breach of Article 3 of the Convention in relation to the conditions in which Mr Neshkov was kept during his stays in Stara Zagora Prison.

(b) The case of Mr Yordanov

251. The case of Mr Yordanov concerned the conditions of his detention in four correctional facilities in which was successively kept: Sofia Prison, where he spent about two months; Pleven Prison, where he spent two years and almost ten months; Lovech Prison, where he spent one and a half years; and Atlant Prison Hostel in Troyan, where he has thus far spent almost three years (see paragraphs 49, 51, 56 and 61 above). In the circumstances, the Court finds that it must examine these conditions as a continuing situation (see *Seleznev*, §§ 34-36; *Sudarkov*, § 40; and *Iacov Stanciu*, §§ 136-38, all cited above).

252. During his stay in Sofia Prison between 13 August and 4 October 2007, Mr Yordanov was for a period of time not provided with bed sheets, blankets and cutlery (see paragraph 50 above). In Pleven Prison he was kept in overcrowded conditions, first in a cell providing between 3.1 and 2.1 square metres per person and then in a cell providing between 3.3 and 2.9 square metres per person (see paragraph 54 above). Moreover, throughout the entire period 2007-10 the floor on which Mr Yordanov was kept was overcrowded as a whole, as was Pleven Prison in general (see paragraph 55 above). In addition, until September 2008 Mr Yordanov was forced, as a result of the lack of ready access to toilet facilities at night, to relieve himself in a bucket in the cell in the presence of his cellmates (see paragraph 54 above). There is no information on the amount of space per inmate in Lovech Prison, where Mr Yordanov was transferred in July 2010, but the data supplied by the Government shows that on 31 December 2013 it was overcrowded. Moreover, in this prison there were apparently problems with heating in winter and with hygiene in the toilets. In Atlant Prison Hostel, where Mr Yordanov was transferred in January 2012, he is apparently also kept in overcrowded conditions, in a cell providing between 4.2 and 2.7 square metres per person, without discounting the space taken by furniture and fixtures in the cell (see paragraph 61 above).

253. Assessing these conditions as a whole, the Court finds that they were in breach of Article 3 of the Convention.

(c) The cases of Mr Tsekov and Mr Zlatev

254. Mr Tsekov was detained in Burgas Prison for a little more than two years, between January 2012 and February 2014, when he was transferred to Stroitel open-type prison hostel, attached to Burgas Prison (see paragraph 36 above). Mr Zlatev has been detained in Burgas Prison for twelve years and a little more than three months, since September 2002, with gaps of several months in 2007 and again in 2008-09, when he was placed in Zhitarovo open-type prison hostel, attached to Burgas Prison, and a gap of about four months in 2009, when he escaped from detention and was recaptured (see paragraph 65 above). In the circumstances, the Court finds that it must examine the conditions of Mr Zlatev's detention as a continuing situation (see *Seleznev*, §§ 34-36; *Sudarkov*, § 40; and *Iacov Stanciu*, §§ 136-38, all cited above).

255. In 2006 the CPT found that overcrowding in Burgas Prison was above 300% (see paragraph 71 above). In 2011 the Bulgarian Helsinki Committee made similar findings, noting that in August 2011 866 inmates had been accommodated in the main building of the prison, whose official capacity was 371 inmates (see paragraph 74 above). In 2012 the CPT found that conditions in this prison were as bad as before, characterised by an "outrageous level of overcrowding" – less than one square metre of living space per prisoner in many dormitories –; extremely low staffing levels; a building in an advanced state of dilapidation and insalubrity; dilapidated and filthy toilet facilities, shower rooms and kitchens; and severe problems with the provision of health care to inmates (see paragraph 73 above). The Ombudsman made similar findings (see paragraph 78, 83-85 and 87 above). All of these findings almost fully match the applicants' allegations (see paragraphs 37-42 and 67-68 above). There is no reason to think that between 2002, when Mr Zlatev was first placed in Burgas Prison, and 2006, when the CPT first noted the conditions there, there were any marked changes.

256. Such conditions of detention, especially as regards overcrowding, hygiene and access to the toilets, and access to health care, can without doubt be regarded as giving rise to a serious breach of Article 3 of the Convention.

VI. APPLICATION OF ARTICLE 46 OF THE CONVENTION

257. The Court finds it appropriate to consider the present case under Article 46 of the Convention, which provides, in so far as relevant:

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

A. Submissions before the Court

1. The Government

258. The Government submitted that they had the will to tackle unsatisfactory conditions of detention, but that any steps in this direction were dependent on the availability of funding. Despite their financial difficulties, the Bulgarian authorities had taken effective steps to improve prison conditions. For instance, resorting to alternative modes of punishments, such as probation, and the re-distribution of prisoners between correctional facilities had led to a reduction in the amount of overcrowding. There had been about 11,000 prisoners in the country in 2007, and only about 9,000 at the end of 2013. Significant advances had been made in material conditions: a new medical centre had been built in Sliven Prison with Norwegian financing; all cells in Varna Prison had been renovated and fitted with toilets; the heating system in Lovech Prison had been fully renovated; a number of urgent repairs had been carried out in most prisons; and a new hostel attached to Burgas Prison was due to be built soon. The Government had devised a strategy for developing the correctional facilities in 2009-15, but its full implementation had been postponed until 2019, with a view to bringing conditions in these facilities in line with international standards. That strategy had been accompanied by an action plan for the period 2012-13. The main difficulty standing in the way of the full realisation of these instruments had been the lack of funds.

259. The Government conceded that in spite of the measures taken by the authorities, material conditions in Bulgarian prisons remained below international standards. They referred to a statement by the Chief Directorate for the Execution of Punishments that said that unsatisfactory buildings, poor material conditions and overcrowding in the prisons were justifiably being criticised by various international bodies. The penitentiary system had for several decades experienced serious difficulties relating to the old and dilapidated prison buildings, which had to be operated above capacity. The main prison buildings in Lovech, Pazardzhik, Vratsa, Stara Zagora, Varna and Burgas had been built in the 1920s and 1930s. The oldest was Sofia Prison, which had been built about a century ago. The prisons in

Bobov Dol and Pleven were former workers' dormitories adopted for use as prisons. The capacity of closed-type correctional facilities, which housed the highest number of inmates, had not been increased for years. The funds earmarked for their refurbishment were minimal. Space in correctional facilities was insufficient and they were overcrowded, largely because for years no new prison had been built. Bulgaria was the only member State of the European Union that had not constructed a new prison building for more than 80 years. It was difficult to adapt antiquated and dysfunctional prison buildings to modern requirements. Moreover, for years no serious financial means had been set aside for the refurbishment and modernisation of these buildings. As a result, most were in a poor state of repair and provided bad material conditions. The available budgetary funds were scarce, and for this reason the Ministry of Justice was trying to find external financing.

260. The Government however went on to emphasise that improvement in prison conditions was a long process that engaged not only the authorities but society as a whole. In their view, the fact that the authorities had made efforts to improve these conditions and that overcrowding, while still a problem, had decreased as a result showed that the cases of the applicants were not representative of the penitentiary system as a whole. In recent times, there had been a discernible improvement in material conditions and the provision of medical care to inmates. The situation in the present case was different from that obtaining in *Orchowski* and *Norbert Sikorski* (both cited above), as in Bulgaria the Constitutional Court had not given any ruling with respect of conditions of detention. Nor were the prison authorities systemically failing to provide proper conditions of detention; any failings in relation to the refurbishment of old facilities and the construction of new ones, and the resulting poor conditions and overcrowding, were not due to a lack of efforts on the part of these authorities but to financial difficulties engendered by the country's economic situation. The situation in the present case also differed from that obtaining in *Ananyev and Others* (cited above) because the number of cases against Bulgaria in which that Court had found a breach of Article 3 of the Convention in relation to this issue was not very high, and neither was the number of pending applications. Moreover, unlike in that case, in recent times overcrowding in Bulgarian prisons had ebbed as a result of measures taken by the authorities.

261. The Government also submitted that there was no systemic problem with regard to the availability of effective domestic remedies in respect of conditions of detention. In their view, Bulgarian law provided a range of such remedies, whose practical application had recently evolved in a positive direction. The effectiveness of the compensatory remedy under section 1 of the State and Municipalities Liability for Damage Act 1988 had been confirmed by this Court in a number of cases, and there were no reasons to call this into doubt. It could not be said that there existed a

problem in the application of this provision. While any court could go wrong in a particular case, the general trend was in favour of detainees' claims and towards a convergence of the standards applied by this Court and the domestic courts. As regards preventive remedies, there was a combination of administrative and judicial remedies, which to an extent made it possible to put an end to conditions of detention that went beyond the acceptable threshold of severity.

262. In conclusion, the Government submitted that there was no reason to apply the pilot-judgment procedure in this case.

2. The applicants

263. Mr Neshkov submitted that poor conditions in Bulgarian correctional facilities had been a systemic problem for decades, especially as regarded overcrowding; they had given rise to many findings of violation. It was true that repairs had been carried out in some prisons, but conditions in general remained poor. In these circumstances, it was for the Court to decide whether to resort to the pilot-judgment procedure.

264. Mr Yordanov submitted that overcrowding and poor material conditions were systemic problems in Bulgarian prisons. His own experience showed this, and his case was not an isolated one. The number of applications to this Court in relation to this issue was likely to rise, unless adequate steps were taken to tackle these problems in short order. It was therefore warranted to apply the pilot-judgment procedure.

265. Mr Tsekov and Mr Zlatev made no submissions on this point.

3. The third parties

266. Bulgarian Lawyers for Human Rights submitted that in recent years the Bulgarian courts had been more willing to apply the Convention and this Court's case-law in cases relating to conditions of detention. However, there was a problem with the exceedingly high threshold that they required in relation to the proof of non-pecuniary damage, especially damage to health flowing from poor conditions of detention or lack of proper medical care. There was therefore a need for guidance from this Court on the standard of proof in such cases, as well as on the level of compensation required under the Convention in such cases. Overcrowding in Bulgarian prisons was also a systemic problem noted by the Committee of Ministers and the CPT. In view of its prevalence, there were no effective remedies available. Another systemic problem was the lack of proper medical care in prisons, due to an acute shortage of qualified medical personnel and excessive reliance on feldshers. The lack of properly functioning administrative preventive remedies in respect of conditions of detention was also a structural problem requiring legislative amendments. Lastly, the judicial preventive remedy

under the Code of Administrative Procedure 2006 required improvements to start operating effectively.

B. The Court's assessment

1. General principles

267. The general principles governing the application of Article 46 of the Convention in pilot-judgment proceedings, set out in paragraphs 180-83 of the Court's judgment in *Ananyev and Others* (cited above), are as follows:

(a) Article 46 § 1, construed in the light of Article 1 of the Convention, imposes on the respondent State a legal obligation to implement, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the right of the applicant which the Court found to be violated. Such measures must also be taken in respect of other persons in the applicant's position, notably by solving the problems that led to the Court's findings. The Committee of Ministers has consistently emphasised this obligation when supervising the execution of the Court's judgments.

(b) To facilitate the effective implementation of its judgments along these lines, the Court may resort to a pilot-judgment procedure allowing it clearly to identify in its judgment the structural problem underlying the breach and to indicate the measures that need to be taken by the respondent State to remedy them. This adjudicative approach is however pursued with due respect for the Convention organs' respective functions: under Article 46 § 2 of the Convention it falls to the Committee of Ministers to evaluate the implementation of individual and general measures.

(c) Another important aim of the pilot-judgment procedure is to induce the respondent State to resolve large numbers of individual cases arising from the same structural problem at domestic level, thus implementing the principle of subsidiarity that underpins the system of the Convention. The Court's task, as defined by Article 19 of the Convention, is not necessarily best achieved by repeating the same findings in a large series of cases. The object of the pilot-judgment procedure is to facilitate the speediest and most effective resolution of a dysfunction affecting the protection of the Convention rights in question in the national legal order. While the respondent State's actions should primarily aim at the resolution of such a dysfunction and at the introduction, where appropriate, of effective domestic remedies in respect of the violations in question, it may also include *ad hoc* solutions such as friendly settlements with the applicants or unilateral remedial offers in line with Convention requirements. The Court may decide to adjourn examination of all similar cases, thus giving the respondent State an opportunity to settle them in such ways.

(d) If the respondent State fails to adopt such measures following a pilot judgment, the Court will have no choice but to resume examination of all similar applications pending before it and to take them to judgment, with a view to ensuring effective observance of the Convention.

2. Existence of a structural problem calling for the application of the pilot-judgment procedure

268. Since its first judgment concerning inhuman and degrading conditions in Bulgarian detention facilities (*Iorgov v. Bulgaria*, no. 40653/98, §§ 80-86, 11 March 2004), the Court has found a breach of Article 3 of the Convention on account of poor conditions of detention in such facilities in twenty-five cases (see Appendix 2). While the breaches in these cases, and in the present case, related to various detention facilities, the underlying facts were very similar. The most recurring issues were lack of sufficient living space, unjustified restrictions on access to natural light and air, poor hygiene, and lack of privacy and personal dignity when using sanitary facilities. The breaches were therefore not prompted by isolated incidents or the particular turn of events in each individual case; they originated in a widespread problem resulting from a malfunctioning of the Bulgarian penitentiary system and insufficient safeguards against treatment incompatible with Article 3. This can be seen from the decisions of the Committee of Ministers relating to the execution of these judgments (see paragraphs 140-142 above). The problem has affected and remains capable of affecting a large number of persons placed in correctional facilities in Bulgaria.

269. The Government denied the existence of a structural problem, but conceded that conditions in these facilities were deficient in many respects, in particular as regards overcrowding. The Government also submitted that the problem had recently been addressed, chiefly as a result of the reduction of the number of inmates in these facilities. However, the Chief Directorate for the Execution of Punishments, the authority in charge of the penitentiary system in Bulgaria, accepted that unsatisfactory buildings, poor material conditions and overcrowding in Bulgarian prisons were justifiably being criticised, and pinpointed a number of problem areas (see paragraph 259 above). The reality of the problem is also confirmed by several recent reports. In the report on its 2012 to Bulgaria, the CPT found that conditions in Varna and Burgas Prisons were totally unacceptable, with “disturbing” levels of overcrowding. It went on to say that overcrowding remained a major problem in Bulgaria’s penitentiary system. The CPT also expressed concern at the lack of progress with respect to prison staffing levels, at the large number of allegations of corrupt practices by prison staff, and at the slight progress with respect to inter-prisoner violence (see paragraph 73 above). In his annual report for 2012, the Ombudsman of the Republic, having visited most prisons in the country, concluded that conditions in

almost all prisons and closed-type prison hostels could be characterised as inhuman and degrading, and noted that all prisons in the country, except two correctional institutions for juveniles and Sliven Prison, which housed female prisoners, were overcrowded (see paragraphs 78-81 above). In 2013 he made similar findings with respect to Belene, Burgas and Varna Prisons (see paragraphs 83-87 above). Similar findings were also made in the 2011 report drawn up by the Bulgarian Helsinki Committee (see paragraph 74 above), and in the 2014 McManus report, which, while noting progress in some respects, pointed to a number of ongoing problems (see paragraphs 88 and 89 above). The decision of the Bulgarian authorities to postpone the introduction of the rule requiring a minimum of four square metres per inmate until 2019, said to be made necessary by the impossibility of complying with it in practice, also shows the persistent nature of the problem (see paragraph 115 above). Lastly, the statistical data supplied by the Government to the Department for the Execution of Judgments (see paragraph 143 above) shows that, based on official capacity, presumably calculated on the basis of four square metres per inmate, on 31 December 2013 nine out of the eleven male prisons in the country were overcrowded, some slightly and some horrendously so, the worst case being Burgas Prison, where overcrowding was to the tune of 239%. Two out of the four closed-type prison hostels in the country were likewise overcrowded.

270. There are at present almost forty prima facie meritorious applications against Bulgaria awaiting first examination that contain a complaint about conditions of detention. It is true that this figure may seem insignificant in comparison with those in pilot cases such as *Ananyev and Others* (cited above, § 184) and *Torreggiani and Others* (cited above, § 89). However, the identification of a systemic problem that justifies the application of the pilot-judgment procedure is not necessarily linked to the number of applications that are already pending; the potential inflow of future cases is also an important consideration (see *Hutten-Czapska v. Poland* [GC], no. 35014/97, § 236, ECHR 2006-VIII). This is confirmed by the wording of Rule 61 § 1 of the Rules of Court, which says that the "structural or systemic problem" justifying a pilot-judgment procedure can be one that "has given" or one that "may give" rise to similar applications. In 2013, there were 9,347 prisoners in Bulgaria (see paragraph 219 above). The latest available number stands at just over 9,000 (see paragraph 89 above). As noted in the above-cited reports, many of these prisoners are kept in overcrowded and otherwise unsatisfactory conditions. Moreover, as already found, they are likely to face obstacles when seeking monetary compensation in respect of these conditions, and do not have an effective remedy enabling them to obtain their improvement (see paragraphs 195-205 and 209-212 above). The question whether any individual domestic authority is at fault for this state of affairs is immaterial, because what is at

issue in proceedings before the Court is the responsibility of the State under international law, not that of individual domestic authorities or officials (see, *mutatis mutandis*, *Finger v. Bulgaria*, no. 37346/05, §§ 95-96, 10 May 2011). As noted above, under Article 3 of the Convention it is incumbent on a High Contracting State to organise its penitentiary system in a way that does not give rise to inhuman and degrading conditions of detention, regardless of financial or logistical difficulties (see paragraph 229 *in fine* above). Contrary to what was suggested by the Government in their observations, under the Court's settled case-law the fact that it is not intended to place a detainee in poor conditions does not preclude these conditions from constituting inhuman or degrading treatment in breach of this Article (see paragraph 230 above).

271. In view of all this, and taking into account the nature of the problem, which has persisted for many years (see paragraphs 71-73 and 74 above), the large number of people affected, and the need to grant speedy and appropriate redress at domestic level, the Court considers that it must apply the pilot-judgment procedure.

3. Origin of the problem and general measures required to deal with it

272. The systemic problem underlying the breach of Article 3 of the Convention found in this case is of considerable magnitude and complexity. It does not stem from a particular legal provision or single other cause but from a plethora of factors. Some of these, such as the insufficient capacity of the Bulgarian correctional facilities and their obsolescence and poor state of repair, may chiefly be attributed to the protracted lack of investment by the authorities in the penitentiary system's facilities. Others, such as the lack of ready access to the toilet for inmates at night, appear to be due to the physical characteristics of the correctional facilities, the inmate management practices followed in them, and perhaps an insufficient number of guards.

273. By contrast, the systemic problem underlying the breach of Article 13 of the Convention appears to be due chiefly to the statutory law and its interpretation by the courts (see paragraphs 195-199 and 202-205 above).

(a) Avenues for the improvement of detention conditions

274. The improvement of conditions of detention in Bulgarian correctional facilities raises issues that go beyond the Court's judicial function. It is not the Court's task to give directions about such a complex reform process, let alone make specific recommendations on how the respondent State should organise its penal and penitentiary systems. The Committee of Ministers is better placed to do so (see *Ananyev and Others*, § 194, and *Torreggiani and Others*, § 95, both cited above). However, these considerations do not bar the Court from highlighting specific issues that may warrant the respondent State's in-depth consideration, as such an

indication may make it possible to ascertain better the contours of the problem outlined in the pilot judgment and find appropriate solutions to it (see *Ananyev and Others*, § 195, and, *mutatis mutandis*, *Orchowski*, §§ 149-53, both cited above).

275. There are two issues that Bulgaria will inevitably need to tackle when implementing this judgment.

276. The first concerns overcrowding which, as can be seen from the McManus report and the statistical data presented by the Government (see paragraphs 91 and 143 above), varies between the different correctional facilities in Bulgaria. The Court has held that if a High Contracting State is unable to ensure that prison conditions comply with the requirements of Article 3 of the Convention, it must either abandon its strict penal policy or put in place a system of alternative means of punishment (see *Orchowski*, cited above, § 153 *in fine*). While, as already noted, it is not within the Court's remit to indicate how the respondent State should organise its penal and penitentiary systems, the Court would note that the reports and recommendations of the CPT and the Committee of Ministers, and, in relation specifically to Bulgaria, the McManus report (see paragraphs 90, 91, 146, 147 and 148 above), have highlighted a number of possible approaches that could be considered by the Bulgarian authorities as potential solutions to the problem of overcrowding: a combination of measures that includes the construction of new correctional facilities, better allocation of prisoners in existing correctional facilities, and a reduction of the number of persons serving custodial sentences. Measures recommended or undertaken in other cases before this Court have included reduced recourse to imprisonment as a form of penalty, resorting to shorter custodial sentences, replacing imprisonment with other forms of penalty, increasing the use of various forms of early release, and suspending the enforcement of some custodial sentences (see *Łatak v. Poland* (dec.), no. 52070/08, § 44, 12 October 2010, and *Stella and Others*, cited above, §§ 11-14, 21-24 and 51-52).

277. The second issue concerns material conditions and hygiene. As noted in various reports and in the Government's submissions in this case, many of the prison buildings in Bulgaria are very old, unsuitable for modern needs, and often dilapidated almost beyond repair (see paragraphs 72, 73, 74, 78, 83 and 259 above). The Court notes with disappointment that, in spite of the many reports that have highlighted the problem for years, the authorities have not done more to tackle it. At this stage, the only way to do so is either by carrying out major renovation works or by replacing these buildings with new ones. Having regard to the fundamental nature of the right protected by Article 3 of the Convention and the importance of urgently putting an end to conditions of detention which result in inhuman or degrading treatment for a considerable number of persons, this should be done without any delay.

278. It is true that the solution of these problems may require significant financial resources. However, as already noted, lack of resources cannot in principle justify conditions of detention that are so poor as to amount to treatment contrary to Article 3 of the Convention, and it is incumbent on the Contracting States to organise their penitentiary systems in ways that ensure compliance with this provision, regardless of financial or logistical difficulties (see *Mandić and Jović*, cited above, § 126, with further references).

(b) Putting in place effective domestic remedies

279. The Court has abstained from giving specific indications on the general measures that need to be taken by Bulgaria with a view to bringing conditions of detention in its correctional facilities into line with Article 3 of the Convention in execution of this judgment. While voicing some concerns and pointing out possible ways of dealing with deficiencies, the Court has found that, given the nature of the issues involved, specific instructions on these points would exceed its judicial function. However, the position in relation to the general measures required to redress the systemic problem underlying the breach of Article 13 of the Convention found in the present case is different. The Court's findings under this Article require specific changes in the Bulgarian legal system that will enable any person in the applicants' position to complain of a breach of Article 3 of the Convention resulting from poor detention conditions and obtain adequate relief for any such breach at domestic level.

280. The Court has already highlighted the shortcomings in Bulgarian law and set out the Convention principles that should guide the authorities in setting up the domestic remedies required by Article 13 of the Convention in this context (see paragraphs 180-190, 195-199 and 202-205 above). The Bulgarian State is naturally free, under the supervision of the Committee of Ministers, to choose the means to discharge its duty under Article 46 § 1 of the Convention (see *Ananyev and Others*, cited above, § 213). It may put in place new remedies or amend existing ones with a view to rendering them compliant with the requirements of Article 13 of the Convention (ibid., § 232, and *Torreggiani and Others*, cited above, § 98). However, to assist it in finding appropriate solutions, the Court will address in turn possible preventive and compensatory remedies.

(i) Preventive remedies

281. A preventive remedy must conform fully to the requirements outlined in paragraph 183 above and, above all, be capable of providing swift redress.

282. The best way of putting such a remedy into place would be to set up a special authority to supervise correctional facilities. The examination of inmates' grievances by a special authority normally produces speedier

results than dealing with them in ordinary judicial proceedings. For this to constitute an effective remedy, the authority in question should have the power to monitor breaches of prisoners' rights, be independent from the authorities in charge of the penitentiary system, have the power and duty to investigate complaints with the participation of the complainant, and be capable of rendering binding and enforceable decisions indicating appropriate redress. Examples of such authorities are the Independent Monitoring Boards (formerly Boards of Visitors) in the United Kingdom and the Complaints Commission (*beklagcommissie*) in the Netherlands (see *Ananyev and Others*, cited above, § 215), as well as judges for the execution of sentences in Italy, with the powers that they were granted in 2014 (see *Stella and Others*, cited above, §§ 18 and 48-49, as well as *Orchowski*, cited above, § 154 *in fine*).

283. Another option would be to set up such a procedure before existing authorities, for instance public prosecutors. As noted in paragraph 212 above, public prosecutors have broad supervisory powers in relation to correctional facilities. However, a complaint to a public prosecutor falls short of the requirements of an effective domestic remedy as it is not based on a personal right for the person concerned to obtain redress, and as there is no requirement for such a complaint to be examined with the participation of the inmate concerned or for the prosecutor to ensure his or her effective participation in the proceedings (ibid.). This means that if Bulgaria chooses to comply with this judgment by amending the procedure for complaining to a supervising prosecutor, it should, as a minimum, make provision for the complaining prisoner to be given an opportunity to comment on any factual submissions made by the prison authorities at the prosecutor's request, to put questions, and to make additional submissions to the prosecutor. The complaint does not have to be examined in public or even in oral proceedings, but the prosecutor should be duty-bound to render a binding and enforceable decision within a reasonably short time-limit (ibid., § 216).

284. Turning to a possible judicial remedy, the Court notes its finding above that such a remedy could in principle be found in injunction proceedings under Articles 250 § 1, 256 or 257 of the Code of Administrative Procedure 2006, but that this remedy did not appear, for the time being, to be operating properly in practice. However, as noted in the Court's recent judgment in *Harakchiev and Tolumov* (cited above, § 228), this remedy could be moulded to accommodate grievances relating to conditions of detention, if all unclear points, such as the courts' approach to such claims, the proper defendants, the duration of the injunctions against the authorities and the exact way in which they are to be enforced, even where overcrowding is concerned, were properly elucidated.

(ii) Compensatory remedies

285. In cases where a breach of Article 3 of the Convention has already taken place, the State must be prepared to acknowledge the breach and provide some form of compensation. The introduction of a preventive remedy alone would not be enough because a remedy that prevents or stops breaches of this Article cannot make good inhuman or degrading treatment that has already taken place. The respondent State must therefore have in place a remedy that can redress past breaches. Such a remedy is particularly important in view of the subsidiarity principle, so that aggrieved persons are not forced to refer to this Court complaints that require the finding of basic facts and the fixing of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic courts (see *Ananyev and Others*, cited above, § 221, with further references).

286. Unlike the situation in other High Contracting States (for a survey of the situation in a number of these States, see *Uzun v. Turkey* (dec.), no. 10755/13, §§ 43-51, 30 April 2013; see also, for instance, *Łatak*, cited above, §§ 35-37, 39, 47-54 and 80, regarding the protection of "personal rights" under Polish civil law; and *Donnan v. the United Kingdom* (dec.), no. 3811/04, 8 November 2005, regarding the Human Rights Act 1998 in the United Kingdom), in Bulgaria, even though the Convention is in principle regarded as directly applicable and part of domestic law (see paragraphs 95-97 above), there is no general remedy allowing protection at domestic level of the rights and freedoms enshrined in it. Reforms bringing domestic remedial practice into line with Convention requirements have usually proceeded by way of dedicated legislation consisting in amendments to the State and Municipalities Liability for Damage Act 1988 (see *Goranova-Karaeneva v. Bulgaria*, no. 12739/05, §§ 25 and 30, 8 March 2011, regarding covert surveillance; *Zaharieva v. Bulgaria* (dec.), no. 6194/06, § 45, 20 November 2012, regarding court fees under the 1988 Act; *Balakchiev and Others v. Bulgaria* (dec.), no. 65187/10, §§ 20-22 and 25-29, 18 June 2013, and *Valcheva and Abrashev v. Bulgaria* (dec.), nos. 6194/11 and 34887/11, §§ 49-51 and 54-58, 18 June 2013, regarding remedies in respect of length of proceedings; and *Kostadinov v. Bulgaria*, no. 37124/10, communicated on 29 January 2013, regarding compensation for breaches of Article 5 §§ 2-4 of the Convention). Thus, one way for the Bulgarian State to comply with the relevant part of this judgment is to put in place a general remedy allowing those complaining of a breach of their Convention rights – in this case, the right not to be subjected to inhuman or degrading treatment – to seek the vindication of these rights in a procedure specially designed for this purpose. Another option is to put in place special rules laying down in detail the manner in which claims concerning conditions of detention are to be examined and determined, as was recently done in Italy (see *Stella and Others*, cited above, §§ 19-20 and 56-63).

287. One form of compensation may consist in reducing the sentence of the person concerned in proportion to each day that he or she has spent in inhuman or degrading conditions. In *Ananyev and Others* (cited above, §§ 222-26) the Court expressed some misgivings in relation to this form of redress. However, more recently, in *Stella and Others* (cited above, §§ 19 and 58-60), it upheld it as capable of providing adequate and sufficient redress to persons who are still incarcerated. However, it should be emphasised that, as noted in that decision, a reduction of the sentence can only constitute adequate and sufficient redress if it entails an acknowledgement of the breach of Article 3 of the Convention and provides measurable reparation of this breach. Obviously, such a remedy can only be adequate in respect of persons who are still in detention.

288. Another form of redress – the only one possible in respect of persons who are no longer incarcerated – would be the provision of monetary compensation. Any such remedy must comply fully with the requirements set out in paragraphs 184-188 and 190 above. Moreover, the amount of compensation in respect of non-pecuniary damage that can be obtained must not be unreasonable in comparison with the awards of just satisfaction made by this Court under Article 41 of the Convention in similar cases. The principles outlined by the Court in paragraph 299 below may serve as guidance in this respect. It should be emphasised in this connection that the right not to be subjected to inhuman or degrading treatment is so fundamental that the domestic authority or court dealing with the matter will have to give exceptionally compelling reasons to justify a decision to award lower or no compensation in respect of non-pecuniary damage (see *Ananyev and Others*, cited above, § 228-30).

289. To be truly effective and compliant with the principle of subsidiarity, such a remedy must operate retrospectively, in the sense of providing redress in respect of breaches of Article 3 of the Convention that predate its introduction, both in cases where the impugned situation has already come to an end with the prisoner's release or in another way, and in cases where the prisoner concerned continues to be held in the conditions in issue (ibid., § 231).

(iii) Time-limit for making the above remedies available

290. The required preventive and compensatory remedies must be made available not later than eighteen months after this judgment becomes final (see, *mutatis mutandis*, *Torreggiani and Others*, cited above, § 99).

4. Procedure to be followed in similar cases

291. Under Rule 61 § 6 of its Rules, the Court can adjourn the examination of all similar applications pending implementation of the measures set out in this pilot judgment by the respondent State. However, adjournment is optional rather than mandatory, as shown by the words "as

appropriate" in this Rule and the variety of approaches in the previous pilot cases (see *Ananyev and Others*, cited above, § 235, with further references). In view of the principles established in *Ananyev and Others* (cited above, § 236), the Court does not find it appropriate at this juncture to adjourn the examination of similar cases, whether pending or impending.

5. Individual measures

292. The Court also finds it necessary to indicate individual measures for the execution of this judgment as regards Mr Zlatev, who is still placed in Burgas Prison, in conditions that were and apparently still are particularly harsh (see paragraph 255 above), and who appears to be particularly vulnerable. To redress the effects of the breach of his rights under Article 3 of the Convention, the authorities must, if he so wishes, urgently transfer him to another correctional facility (see, *mutatis mutandis*, *Assanidze v. Georgia* [GC], no. 71503/01, §§ 202-03, ECHR 2004-II; *Aleksanyan v. Russia*, no. 46468/06, § 240, 22 December 2008; and *Stanev v. Bulgaria* [GC], no. 36760/06, § 257, ECHR 2012).

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

293. Article 41 of the Convention provides:

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

A. Damage

294. Mr Neshkov claimed 500,000 Bulgarian levs (BGN) (the equivalent of 255,645.94 euros (EUR)) in non-pecuniary damages in respect of the breach of his rights under Article 3 of the Convention, in particular as regarded the conditions of his detention in Varna Prison in 2002-05, which had caused him great suffering. He submitted that the higher the award of just satisfaction made by the Court, the bigger was the likelihood of the Government taking measures to really improve conditions in Bulgarian prisons, and thus live up to the obligations that it had undertaken when ratifying the Convention.

295. Within the time-limit fixed under Rule 60 § 2 of the Rules of Court, Mr Yordanov claimed EUR 10,000 in respect of the breaches of Articles 3 and 13 of the Convention in his case. One day after the expiry of the time-limit, he said that he wished to increase his claim to EUR 20,000.

296. In a letter that he sent from Burgas Prison, dated 6 November 2014 and postmarked 11 November 2014, Mr Zlatev claimed BGN 500,000 in respect of the non-pecuniary damage that he had suffered as a result of his

detention in inhuman and degrading conditions in Burgas Prison since 2002. He went on to say that if the rules on early release had been correctly applied in his case, he would have been released from this prison five years and two months ago, and on that basis claimed a further EUR 88 per day in respect of his allegedly unlawful deprivation of liberty. The only explanation that Mr Zlatev gave for failing to submit his claim for just satisfaction before 28 August 2014, the time-limit fixed by the President of the Section under Rule 60 § 2 of the Rules of Court, was that neither he nor his fellow inmates spoke English, whereas the Court's letter that had informed him of this time-limit had been in this language.

297. In a letter dated 23 and postmarked 26 November 2014 Mr Tsekov said that he maintained the claim for just satisfaction that he had made at the outset of the proceedings. The only explanation that he gave for failing to submit his claim for just satisfaction before 9 October 2014, the time-limit fixed by the President of the Section under Rule 60 § 2 of the Rules of Court (see paragraph 6 above), was that the letter advising him of this time-limit had only reached him on 20 November 2014.

298. The Government submitted that the conditions in which Mr Neshkov, Mr Yordanov, Mr Tsekov and Mr Zlatev had been kept, while deficient in some respects, had not been as poor as they had alleged. The sums that they claimed were far higher than those awarded by the Court in previous similar cases against Bulgaria. In the Government's view, the mere finding of a violation would constitute sufficient just satisfaction in their cases. The Government further pointed out that Mr Zlatev had failed to make a claim for just satisfaction within the relevant time-limit, and on that basis invited the Court not to award him anything.

299. The Court finds that the suffering caused to a person detained in conditions that are so poor as to amount to inhuman or degrading treatment within the meaning of Article 3 of the Convention cannot be made good by a mere finding of a violation; it calls for an award of compensation. The amount of time spent by the person concerned in these conditions is the most important factor for assessing the extent of this damage (see *Ananyev and Others*, § 172, and *Torreggiani and Others*, § 105, both cited above). It is also known that an initial period of adjustment to poor conditions exacts a heavy mental and physical toll on the person concerned (see *Ananyev and Others*, cited above, § 172). By contrast, the finding of a violation may in itself constitute sufficient just satisfaction for a breach of Article 13 of the Convention flowing from the lack of effective domestic remedies in respect of such conditions (ibid., § 173).

300. In the case of Mr Neshkov, the breaches found concerned his detention for a period of about three years in Varna Prison and a number of stints of one to two days in Stara Zagora Prison, as well as the lack of effective domestic remedies in respect of his grievances under Article 3 of the Convention. As just noted, only the former, but not the latter, call for an

award of compensation in respect of non-pecuniary damage. That said, the Court finds that Mr Neshkov must have experienced suffering and frustration as a result of the breaches of his rights under Article 3. Ruling in equity, as required under Article 41 of the Convention, and taking in particular account of the amount of time spent by Mr Neshkov in poor conditions, it awards him EUR 6,750, plus any tax that may be chargeable on this sum.

301. As regards Mr Yordanov, the Court notes that, unlike Mr Neshkov, in his application he did not raise a complaint under Article 13 of the Convention (see paragraphs 4, 165 and 214 above). Therefore, regardless of any other considerations, the award of just satisfaction in his case can only be based on the breach of Article 3 of the Convention. That said, the Court finds that Mr Yordanov must have experienced suffering and frustration as a result of the breach of his rights under that provision. Ruling in equity, as required under Article 41 of the Convention, and taking in particular account of the amount of time spent by Mr Yordanov in poor conditions, the Court finds that he would in principle be entitled to an award of EUR 14,440. However, the claim made by him within the time-limit fixed under Rule 60 § 2 of the Rules of Court was EUR 10,000, which means that, under the principle *ne ultra petitum* the Court should not award him a bigger sum (see *Mikryukov and Others v. Russia*, nos. 34841/06, 59954/09, 746/10, 1096/10, 1162/10 and 1898/10, § 63, 31 July 2012; *Mateescu v. Romania*, no. 1944/10, § 39 *in fine*, 14 January 2014; and *Gerasimov and Others v. Russia*, nos. 29920/05, 3553/06, 18876/10, 61186/10, 21176/11, 36112/11, 36426/11, 40841/11, 45381/11, 55929/11 and 60822/11, § 191, 1 July 2014). Bearing in mind that Mr Yordanov was legally represented (see paragraph 2 above), the Court does not find that it should take into account the amended claim that he made after the expiry of this time-limit (see Rule 60 § 3 of the Rules of Court, and, *mutatis mutandis*, *Mancini v. Italy*, no. 44955/98, § 29, ECHR 2001-IX; *Fadıl Yılmaz v. Turkey*, no. 28171/02, §§ 26-27, 21 July 2005; and *Chamber of Commerce, Industry and Agriculture of Timişoara (no. 1)*, nos. 13248/05, 13321/05, 23462/05, 23471/05, 23475/05, 23482/05, 23490/05, 23493/05, 23496/05, 23501/05, 23504/05 and 23517/05, § 38, 16 July 2009). It therefore awards him EUR 10,000, plus any tax that may be chargeable on this sum.

302. As for Mr Zlatev, the Court notes that in the present case an award of just satisfaction can only be based on the fact that the conditions of his detention were inhuman and degrading, in breach of Article 3 of the Convention, not on considerations relating to the lawfulness of his deprivation of liberty (see *Staykov v. Bulgaria*, no. 49438/99, § 114, 12 October 2006). That said, the Court finds that Mr Zlatev, who does not have his left hand, and who recently carried out acts of serious self-harm (see paragraphs 66, 69 and 70 above), must have suffered considerably as a result of the breach of his rights under Article 3 as a result of the conditions

of his detention in Burgas Prison since 2002. Ruling on an equitable basis, as required under Article 41 of the Convention, and taking in particular into account the amount of time spent by Mr Zlatev in these conditions, the Court finds that he would in principle be entitled to an award of EUR 23,250. However, Mr Zlatev failed to make his claim for just satisfaction within the time-limit fixed under Rule 60 § 2 of the Rules of Court. The only explanation that he gave for this was that he did not speak English and could not understand the Court's letter advising him of the date on which this time-limit would expire. But the Court informed Mr Zlatev of the time-limit's existence and importance when the Government were given notice of his application, several months before the letter that advised Mr Zlatev of the date on which the time-limit would expire. This was done by means of an information note drafted in Bulgarian. This note also specified the language in which the Court would conduct correspondence with Mr Zlatev and informed him of the possibility to seek legal representation and apply for legal aid under Rule 100 *et seq.* In these circumstances, under Rule 60 § 3, the options available to the Court are to reject the claim in whole or in part. In the circumstances of this case, which concerns a serious breach of Article 3 of the Convention suffered by a disabled and particularly vulnerable applicant, it would be unduly harsh fully to reject his claim in respect of non-pecuniary damage. Therefore, the Court finds it equitable to award Mr Zlatev EUR 11,625, plus any tax that may be chargeable on this sum.

303. As for Mr Tsekov, the Court notes that he did not make a claim for just satisfaction within the time-limit fixed under Rule 60 § 2 of the Rules of Court. The only explanation that he gave for this was that the letter advising him of this time-limit had only reached him on 20 November 2014. However, even assuming this was so, it cannot be overlooked that Mr Tsekov was advised of his omission in a letter of 24 October 2014, to which he replied on 29 October 2014 without saying anything about his claim (see paragraph 6 above). Nor can it be overlooked that even in his letter dated 23 November 2014 Mr Tsekov did not make a quantified claim for just satisfaction. In view of that, and having regard to Rule 60 § 3 of its Rules and point 5 of the Practice Direction on Just Satisfaction Claims, which says that claims set out on the application form but not resubmitted at the appropriate stage of the proceedings will be rejected, the Court rejects Mr Tsekov's claim.

B. Costs and expenses

304. Mr Yordanov sought reimbursement of EUR 1,680 incurred in lawyer's fees for 21 hours of work on his case after notice of the application was given to the Government, at the rate of EUR 80 per hour. He requested that any award made by the Court under this head be made payable directly

to the Bulgarian Helsinki Committee, where his legal representative worked. He submitted a fee agreement between him and his legal representative, a time sheet and postal receipts.

305. Mr Neshkov, Mr Tsekov and Mr Zlatev made no claims in respect of costs and expenses.

306. The Government submitted that in fixing the award under this head the Court should take into account that Mr Yordanov's legal representative had not carried out any work on the initial application and had only stepped in the proceedings after notification of the application to them. They also objected to Mr Yordanov's request for the award to be made payable to the Bulgarian Helsinki Committee, saying that, since it was not based on any specific reasons, it could be regarded as an attempt by Mr Yordanov to evade debts. They also pointed out that the Bulgarian Helsinki Committee had intervened in the proceedings as a third party.

307. According to the Court's well-established case-law, costs and expenses claimed under Article 41 of the Convention must have been actually and necessarily incurred and be reasonable as to quantum.

308. The hourly rate charged by Mr Yordanov's legal representative in this case is comparable to those charged in recent cases against Bulgaria having a similar complexity; it can therefore be regarded as reasonable (see *Finger*, cited above, § 142, with further references). The number of hours that she spent working on the case, albeit only after notice of the application was given to the Government, is also reasonable. Considering all this, and making its assessment on an equitable basis, the Court awards Mr Yordanov the full sum that he claimed, EUR 1,680, plus any tax that may be chargeable to him.

309. As requested by Mr Yordanov, this sum is to be paid directly to the Bulgarian Helsinki Committee, where his legal representative works. The Court's practice has been to accede to such requests (see, among other authorities, *Aydın v. Turkey*, 25 September 1997, § 132 and point 9 (a) of the operative provisions, *Reports of Judgments and Decisions* 1997-VI; *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, §§ 255 and 258, ECHR 2000-VIII; *Öcalan v. Turkey* [GC], no. 46221/99, § 217, ECHR 2005-IV; *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 175, ECHR 2005-VII; *Velikovi and Others v. Bulgaria*, nos. 43278/98, 45437/99, 48014/99, 48380/99, 51362/99, 53367/99, 60036/00, 73465/01 and 194/02, §§ 268-73, 15 March 2007; *Kolevi v. Bulgaria*, no. 1108/02, §§ 221 and 223, 5 November 2009; *Sergey Zolotukhin v. Russia* [GC], no. 14939/03, § 131, ECHR 2009; *Finger*, cited above, §§ 140 and 142; *Ponomaryovi v. Bulgaria*, no. 5335/05, §§ 73 and 75, ECHR 2011; *Ivan Stoyanov Vasilev v. Bulgaria*, no. 7963/05, §§ 41 and 43, 4 June 2013; and *Dimitrov and Others v. Bulgaria*, no. 77938/11, §§ 185-87 and 190, 1 July 2014). There is no

evidence that, as suggested by the Government, Mr Yordanov's request was made for an improper purpose, for instance as a device to defraud creditors.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to strike Mr Simeonov's application out of its list;

2. *Decides* to join the remaining five applications;

3. *Decides* to join the Government's objection of non-exhaustion of domestic remedies in respect of Mr Tsekov's and Mr Zlatev's complaints under Article 3 of the Convention to the merits of Mr Neshkov's complaint under Article 13 of the Convention;

4. *Declares* the remaining five applications admissible;

5. *Holds* that there has been a violation of Article 13 of the Convention and dismisses the Government's objection of non-exhaustion of domestic remedies;

6. *Holds* that there have been violations of Article 3 of the Convention with respect to:
   (a) the conditions in which Mr Neshkov was kept in Varna Prison and Stara Zagora Prison;
   (b) the conditions in which Mr Yordanov was kept in Sofia Prison, Pleven Prison, Lovech Prison and Atlant Prison Hostel; and
   (c) the conditions in which Mr Tsekov and Mr Zlatev were kept in Burgas Prison;

7. *Holds*
   (a) that the respondent State must, within eighteen months from the date on which this judgment becomes final in accordance with Article 44 § 2 of the Convention, make available a combination of effective domestic remedies in respect of conditions of detention that have both preventive and compensatory effects, to comply fully with the requirements set out in this judgment;

(b) that the respondent State must, when this judgment becomes final in accordance with Article 44 § 2 of the Convention, urgently transfer Mr Zlatev to another correctional facility if he so wishes;

8. *Holds*

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

(i) to Mr Neshkov, EUR 6,750 (six thousand seven hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) to Mr Yordanov, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, and EUR 1,680 (one thousand six hundred and eighty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses (this latter amount to be paid directly to the Bulgarian Helsinki Committee);

(iii) to Mr Zlatev, EUR 11,625 (eleven thousand six hundred and twenty-five euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

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

9. *Dismisses* the remainder of Mr Neshkov's and Mr Zlatev's claims for just satisfaction, and Mr Tsekov's claim for just satisfaction.

Done in English, and notified in writing on 27 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Ineta Ziemele
Registrar	President

APPENDIX 1

Summaries of recent conditions-of-detention cases decided on the merits by the Bulgarian administrative courts under section 1 of the State and Municipalities Liability for Damage Act 1988 (arranged alphabetically by first-instance administrative court and then chronologically by the date of the first judgment in the case)

A. Burgas Administrative Court

1. Case no. 1

1. In a judgment of 26 February 2013 (реш. № 445 от 26 февруари 2013 г. по адм. д. № 1482/2012 г., АС-Бургас) the Burgas Administrative Court dismissed a claim for 10,000 Bulgarian levs (BGN) in non-pecuniary damages brought by an inmate in relation to the conditions of his detention in Burgas Prison: overcrowding, lack of ready access to the toilets, lack of enough natural light in the cell, etc. The court held that the inmate had failed to prove that the prison administration had carried out unlawful acts or that he had suffered any damage. In particular, the rule requiring a minimum of four square metres of floor space per inmate had not yet come into effect.

2. In a judgment of 16 December 2013 (реш. № 16851 от 16 декември 2013 г. по адм. д. № 5524/2013 г., ВАС, III о.) the Supreme Administrative Court quashed this judgment and remitted the case. It held that the lower court had failed to take into account the general prohibition, laid down in, *inter alia*, Article 3 of the Convention, against inhuman and degrading treatment, and the case-law of both the Supreme Court of Cassation and the Supreme Administrative Court that said that the lack of sufficient space and ready access to a toilet amounted to breaches of this prohibition. The lower court had also failed properly to analyse the unequivocally established facts that: (a) the inmate had been kept in a cell measuring about twenty-eight square metres together with twenty-four to twenty-six other inmates, and had as a result disposed with a little more than one square metre of floor space; (b) the cell had had no toilet or running water; and (c) there had been no access to the toilet at night, with the result that he had had to relieve himself in a bucket. The lower court needed to take all these facts into account and, based on their cumulative assessment, determine whether the inmate had suffered harm that went beyond the suffering inherent in serving a lawful sentence of imprisonment. In that connection, it was necessary to take into account a number of judgments of this Court in conditions-of-detention cases against Bulgaria.

3. In a judgment of 10 June 2014 (реш. № 1011 от 10 юни 2014 г. по адм. д. № 3018/2013 г., АС-Бургас) the Burgas Administrative Court partly allowed the claim, awarding the inmate BGN 1,250, plus interest, in

respect of the non-pecuniary damage suffered by him in the course of his three-month detention in Burgas Prison as a result of the lack of ready access to the toilets at night and the overcrowding. It held that the conditions of the inmate's detention – overcrowding in the cell, lack of ready access to the toilets, and lack of proper ventilation and lighting in the cell –, taken together, had ran counter to, *inter alia*, Article 3 of the Convention, as interpreted by this Court. There had therefore been an unlawful omission on the part of the defendant authority. Even in the absence of specific evidence on that point, this omission had to be presumed to have caused non-pecuniary damage to the inmate

4. On 6 November 2014 the proceedings on appeal against that judgment were stayed by the Supreme Administrative Court pending the examination of a request by the inmate for the judgment to be supplemented.

2. Case no. 2

5. In a judgment of 2 August 2013 (реш. № 1658 от 2 август 2013 г. по адм. д. № 2575/2012 г., АС-Бургас) the Burgas Administrative Court dismissed a claim for non-pecuniary damages brought by an inmate in relation to the conditions of his confinement: overcrowding and lack of ready access to the toilets at night. It held that the rule requiring a minimum of four square metres of floor space per inmate had not yet come into effect, and that the fact that the inmate had had to use a bucket to relieve himself at night did not mean that he had been deprived of access to a toilet.

6. It appears that that judgment was not validly appealed against and became final on 25 September 2013.

3. Case no. 3

7. In a judgment of 10 June 2014 (реш. № 1011 от 10 юни 2014 г. по адм. д. № 3018/2013 г., АС-Бургас) the Burgas Administrative Court partly allowed an inmate's claim for non-pecuniary damages in relation to the conditions of his detention in Burgas Prison in March-June 2012. The court found that the inmate had been held in Burgas Prison at the time of the worst overcrowding there. There was no evidence in relation to the intake cell in which he had been kept during the first month, with the result that the claim in respect of that period was to be dismissed, but the evidence showed that between April and June 2012 the inmate had been in a cell where he had had at his disposal between 0.92 and 1.15 square metres of living space. The cell had not been properly aired and lit, chiefly due to the small windows, and, like all cells in that unit, had not been equipped with a toilet or running water, with the result that at night the inmate had had to relieve himself in a bucket in the presence of his cellmates. The court also had regard to the findings of the CPT in its report on its 2012 visit to Bulgaria (see paragraph 73 of the judgment). On that basis, the court held that, when

taken together, as required under this Court's case-law, the conditions of the inmate's detention could be regarded as, *inter alia*, inhuman and degrading treatment within the meaning of Article 3 of the Convention. The lack of evidence on the impact of these conditions on the inmate's psychological well-being was not relevant, as these conditions could be presumed to cause suffering to any normal human being. Bearing the amount of time spent in poor conditions, the equitable amount of compensation for that was BGN 1,250, plus interest.

8. It is unclear whether that judgment has become final.

4. Case no. 4

9. In a judgment of 25 June 2014 (реш. № 1127 от 25 юни 2014 г. по адм. д. № 804/2013 г., АС-Бургас) the Burgas Administrative Court dismissed a claim for non-pecuniary damages brought by an inmate in Burgas Prison in relation to the conditions of his detention there in 2012. While finding that the inmate had been kept in overcrowded and unsanitary conditions, with no access to a toilet at night, the court held that the inmate had not showed that prison officials had engaged in unlawful conduct or that he had suffered any damage on account of that. Unlike medical expert evidence, the witness evidence put forward by the inmate could not prove negative changes in his physical or neurological health. The conditions in which the inmate had been held had not been in breach of Bulgarian law or causing suffering of such intensity as to amount to treatment proscribed by Article 3 of the Convention. In reaching that conclusion, the court had regard to the judgment of the Supreme Administrative Court cited in paragraph 141 below.

10. It appears that the judgment was appealed against and that the proceedings on appeal are still pending before the Supreme Administrative Court.

B. Dobrich Administrative Court

1. Case no. 1

11. In a judgment of 21 December 2010 (реш. № 247 от 21 декември 2010 г. по адм. д. № 568/2009 г., АС-Добрич) the Dobrich Administrative Court partly allowed an inmate's claim for non-pecuniary damages (which the inmate had split in ten separate claims) in relation to the conditions of his confinement in a pre-trial detention facility in Balchik in November-December 2009. The court held that there was no evidence, except in relation to a very small period of time, that the inmate had been prevented from having access to a toilet. Therefore, even though there had been not toilet in his cell, he could not be regarded as having been subjected to degrading treatment. The conditions in his cell – in particular the lack of

enough natural light, the constant light at night, the lack of a table – had not caused him serious discomfort either. There was no evidence that the cell had been dirty or unhygienic. On the other hand, the inmate had suffered as a result of the lack of daily outdoor exercise, and that suffering had been sufficiently acute to engage Article 3 of the Convention. The equitable amount of compensation for that was BGN 200, plus interest.

12. In a judgment of 16 May 2011 (реш. № 6733 от 16 май 2011 г. по адм. д. № 2771/2011 г., ВАС, III о.) the Supreme Administrative Court quashed that judgment and dismissed the claim. It held that the inmate had had the possibility to walk up and down the corridor of the detention facility, which had been an acceptable alternative to outdoor exercise. There was no evidence that he had suffered any damage either. Discomfort and depression did not amount to damage subject to compensation under section 1 of the 1988 Act.

C. Kyustendil Administrative Court

1. Case no. 1

13. In a judgment of 30 July 2013 (реш. № 181 от 30 юли 2013 г. по адм. д. № 71/2013 г., АС-Кюстендил) the Kyustendil Administrative Court partly allowed a claim for non-pecuniary damages brought by a life prisoner in relation to a failure of the administration of Bobov Dol Prison to provide him with the shoes, clothes, bed linen and soap to which he was entitled by statute. It awarded him BGN 800.

14. In a judgment of 13 May 2014 (реш. № 6319 от 13 май 2014 г. по адм. д. № 14477/2013 г., ВАС, III о.) the Supreme Administrative Court fully upheld the lower court's judgment. It held that that court had been correct to find that the prison administration had carried out an omission within the meaning of section 1 of the 1988 Act, and that the life prisoner had suffered damage as a result. Relying on this Court's case-law under Article 3 of the Convention, the court said that the harshness of the prisoner's regime had exacerbated any feelings of humiliation engendered by the failure of the prison administration to provide him with clothes and shoes, which called for compensation.

D. Lovech Administrative Court

1. Case no. 1

15. In a judgment of 23 December 2011 (реш. № 135 от 23 декември 2011 г. по адм. д. № 270/2010 г., АС-Ловеч) the Lovech Administrative Court partly allowed and partly dismissed an inmate's claim for non-pecuniary damages concerning the material and hygienic conditions of his confinement. The court held that the claim, in as much as it concerned

the period of time preceding five years before its lodging, was time-barred. It went on to find that, before the installation of a toilet in the cell in which the inmate had been kept, he had had to relieve himself in a bucket in the presence of other inmates, which had caused him to feel humiliated. However, his having to relieve himself in a bucket when alone in a cell could not be regarded as humiliating. Nor did the court find any evidence that food or hygiene in the toilets of the respective facilities had been so bad as to cause the inmate serious suffering. It awarded the inmate BGN 660.

16. In a judgment of 6 December 2012 (реш. № 15503 от 6 декември 2012 г. по адм. д. № 3016/2012, ВАС, III о.) the Supreme Administrative Court quashed that judgment and remitted the case, holding that the lower court had made serious errors in relation to the rules of procedure, the proper defendant and the applicable substantive law.

17. Having examined the case afresh, in a judgment of 15 June 2013 (реш. № 71 от 15 юни 2013 г. по адм. д. № 330/2012 г., АС-Ловеч) the Lovech Administrative Court awarded the inmate BGN 800. It held that the claim, in as much as it concerned the period of time preceding five years before its lodging, was time-barred. It went on to find that the inmate's allegations of overcrowding or suffering on account of overcrowding had not been made out, especially since the rule requiring a minimum of four square metres of floor space per prisoner had not yet come into effect. On the other hand, the inmate's claims concerning lack of ready access to the toilet at night and the humiliation of having to relieve himself in a bucket in the presence of other prisoners were well-founded. However, the court did not find evidence that food or hygiene in the toilets of the respective facility had been so bad as to cause the inmate serious suffering.

18. In a judgment of 27 January 2014 (реш. № 1045 от 27 януари 2014 г. по адм. д. № 12879/2013 г., ВАС, III о.) the Supreme Administrative Court quashed the lower court's judgment and remitted the case. It held that the lower court had made mistakes in construing the inmate's claims and in identifying the proper defendant.

19. The proceedings are apparently still pending before the Lovech Administrative Court.

2. Case no. 2

20. In a judgment of 30 November 2012 (реш. № 165 от 30 ноември 2012 г. по адм. д. № 121/2012 г., АС-Ловеч) the Lovech Administrative Court dismissed an inmate's claim for non-pecuniary damages in relation to overcrowding, on the basis that the rule requiring a minimum of four square metres of floor space per prisoner had not yet come into effect, that there was no legal requirement for non-smokers, such as that inmate, to be housed separately from smokers, and that the inmate had not provided any evidence that he had suffered non-pecuniary damage as a result of these matters.

21. In a judgment of 4 December 2013 (реш. № 16086 от 4 декември 2013 г. по адм. д. № 2447/2013 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment, fully agreeing that the finding that the law did not yet lay down a minimum requirement for floor space per prisoner.

3. Case no. 3

22. In a judgment of 17 January 2013 (реш. № 9 от 17 януари 2013 г. по адм. д. № 61/2012 г., АС-Ловеч) the Lovech Administrative Court dismissed an inmate's claim for non-pecuniary damages against the Ministry of Justice in relation to overcrowding and poor hygiene on the basis that the rule requiring a minimum of four square metres of floor space per prisoner had not yet come into effect, that the evidence suggested that hygiene in the cell had been decent, and that the inmate had not provided any evidence that he had suffered non-pecuniary damage as a result of these matters.

23. In a judgment of 21 October 2013 (реш. № 13702 от 21 октомври 2013 г. по адм. д. № 5531/2013 г., ВАС, III о.) the Supreme Administrative Court quashed that judgment and discontinued the proceedings, holding that the proper defendant to the claim, since it concerned the period after 1 June 2009, was the Chief Directorate for the Execution of Punishments, not the Ministry of Justice.

E. Pazardzhik Administrative Court

1. Case no. 1

24. In a judgment of 11 June 2009 (реш. № 301 от 11 юни 2009 г. по адм. д. № 811/2009 г., АС-Пазарджик) the Pazardzhik Administrative Court dismissed a claim for non-pecuniary damages brought by an inmate in relation to the conditions of his detention. Based on the available evidence, it held that the inmate's allegations of overcrowding, poor hygiene and inadequate food were not true.

25. In a judgment of 2 December 2010 (реш. № 14779 от 2 декември 2010 г. по адм. д. № 9589/2009 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment. It held that the lower court had taken enough evidence that it had properly analysed.

F. Pleven Administrative Court

1. Case no. 1

26. In a judgment of 27 June 2012 (реш. № 421 от 27 юни 2012 г. па адм. д. № 305/2012 г., АС-Плевен) the Pleven Administrative Court dismissed a claim for non-pecuniary damages brought by a life prisoner in

relation to the size of his cell in Belene Prison. It found that the size of the cell was six square metres. However, even if it was four and a half square metres, as alleged by the prisoner, that still allowed him enough space to move about, and was not in breach of the law because it was more than the minimum of four square metres envisaged to be guaranteed to every prisoner under the rule that was not yet in force.

27. In a decision of 22 November 2012 (опр. № 14725 от 22 ноември 2012 г. по адм. д. № 12653/2012 г., ВАС, III о.) the Supreme Administrative Court refused to deal with the life prisoner's appeal on points of law against that judgment because he failed to pay the requisite court fee (BGN 5).

2. Case no. 2

28. In a judgment of 8 October 2012 (реш. № 581 от 8 октомври 2012 г. по адм. д. № 337/2012 г., АС-Плевен) the Pleven Administrative Court, acting pursuant to claims under Article 257 of the Code of Administrative Procedure 2006 and section 1 of the 1988 Act, ordered the Chief Directorate for the Execution of Punishments to provide, within one month after the judgment became final, a life prisoner with shoes, an obligation that the Directorate had under section 84(2)(3) of the Execution of Punishments and Pre-Trial Detention Act 2009 and that it had failed to comply with for almost three years. The court also ordered the Directorate to pay the life prisoner BGN 1,200 in non-pecuniary damages in respect of its failure to comply with its statutory duties.

29. In a judgment of 20 November 2013 (реш. № 15349 от 20 ноември 2013 г. по адм. д. № 15221/2012 г., ВАС, III о.) the Supreme Administrative Court quashed that judgment on procedural grounds and remitted the case.

30. In a judgment of 12 February 2014 (реш. № 72 от 12 февруари 2014 г. по адм. д. № 1115/2013 г., АС-Плевен) the Pleven Administrative Court made the same orders as earlier.

31. The proceedings on appeal (адм. д. № 4505/2014 г.) are still pending before the Supreme Administrative Court. A hearing was held on 27 October 2014.

3. Case no. 3

32. In a judgment of 27 June 2013 (реш. № 362 от 27 юни 2013 г. по адм. д. № 20/2013 г., АС-Плевен) the Pleven Administrative Court dismissed a claim for non-pecuniary damages brought by an inmate in relation to the conditions of his confinement in Belene Prison. While noting that for a period of time the inmate had been held in a cell measuring 24.03 square metres and housing ten prisoners, the court rejected the allegations of overcrowding, holding, *inter alia*, that the rule requiring a minimum of four

square metres per prisoner had not yet come into effect, and that the inmate, who bore the burden of making out all elements of his claim, had failed to prove that he had suffered any harm or discomfort as a result of the conditions in which he had been kept.

33. It appears that that judgment was not validly appealed against and became final on 30 October 2013.

4. Case no. 4

34. In a judgment of 4 July 2013 (реш. № 388 от 4 юли 2013 г. по адм. д. № 999/2012 г., АС-Плевен) the Pleven Administrative Court dismissed a claim for damages brought by an inmate in relation to the poor conditions of his confinement in Pleven Prison, which had allegedly caused him to suffer a myocardial infarction. On the basis of expert evidence, the court was not satisfied that there existed a causal link between the conditions and the infarction suffered by the claimant. It went on to say that the legal requirement for a minimum of four square metres per inmate had not yet come into effect, and that the conditions of the inmate's detention could not, as a whole, be regarded as inhuman or degrading treatment.

35. In a judgment of 13 May 2014 (реш. № 6315 от 13 май 2014 г. по адм. д. № 10857/2013, ВАС, III о.) the Supreme Administrative Court quashed that judgment and remitted the case. It noted that the prisoner had been kept in an overcrowded cell together with twenty-two other inmates, and that he had had to use the toilet installed in the cell in front of them because it was not properly isolated from the rest of the cell. Under this Court's case-law, that amounted to treatment proscribed by Article 3 of the Convention, which was part of domestic law. The lower court had erred by not examining the conditions in the inmate's cell by reference to that Article, which was of a higher rank that domestic statutory rules. Had it done so, it would have arrived at radically different conclusions.

36. The proceedings on remittal appear to be still pending before the Pleven Administrative Court.

5. Case no. 5

37. In a judgment of 22 July 2013 (реш. № 423 от 22 юли 2013 г. по адм. д. № 977/2012 г., АС-Плевен) the Pleven Administrative Court dismissed an inmate's claim for non-pecuniary damages in relation to the conditions of his confinement in Belene Prison. It held that that the inmate's allegation that he had not been given a mattress had not been made out. However, even if it had been made out, there was no indication that the inmate had suffered any harm as a result of that. The court went on to reject the inmate's allegations of overcrowding, saying that the space per prisoner in the cells in which the inmate had been kept had been just below the four

square metres intended to be guaranteed under the rule that had not yet come into effect.

38. In a decision of 23 October 2013 (опр. № 13848 от 23 октомври 2013 г. по адм. д. № 13351/2013 г., ВАС, III о.) the Supreme Administrative Court discontinued the examination of the inmate's appeal against that judgment, noting that on 15 October 2013 he had expressly withdrawn it.

G. Ruse Administrative Court

1. Case no. 1

39. In a judgment of 28 March 2013 (реш. № 38 от 28 март 2013 г. по адм. д. № 173/2012 г., АС-Русе) the Ruse Administrative Court dismissed a claim for non-pecuniary damages brought by an inmate in relation to the conditions of his detention in a pre-trial detention facility and the failure of the authorities to provide him with adequate medical treatment in respect of his narcotic drug addiction. The court found that the authorities had provided the inmate with adequate medical treatment, and that he had failed to prove that there had been concrete instances in which he had been denied access to the toilets.

40. In a judgment of 7 March 2013 (реш. № 3240 от 7 март 2013 г. по адм. д. № 8333/2013 г., ВАС, III о.) the Supreme Administrative Court upheld the lower court's judgment. It fully agreed with the lower court's reasoning, and added that the inmate had failed to prove, to the requisite standard, that he had suffered any non-pecuniary damage, and that the available evidence had in effect disproved his allegations.

2. Case no. 2

41. In a judgment of 9 July 2013 (реш. № 15 от 9 юли 2013 г. по адм. д. № 38/2013 г., АС-Русе) the Ruse Administrative Court dismissed a claim for damages brought by an inmate in relation to the conditions of his detention in a pre-trial detention facility in Ruse. The court found that the inmate had been provided with four square metres of living space and allowed to take a daily walk, and on that basis rejected his allegations of pain in the joints caused by the conditions of his detention. It went on to say that there was no evidence that he had been denied access to the toilets or that he had suffered any damage to his health as a result of that. Lastly, the court found no indication that the inmate's chronic asthma had worsened as a result of the alleged lack of fresh air in his cell.

42. In a judgment of 7 March 2014 (реш. № 3244 от 7 март 2014 г. по адм. д. № 13173/2013 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment. It held that claimants in proceedings under section 1 of the 1988 Act bore the burden of proving all elements of their claims. In

that case, the inmate had been held in a cell measuring eight to ten square metres and had been able to move about it, even though at times he had had to share it with two other persons. The inmate had been able to visit the toilet by calling on the guards, and there was no evidence that they had failed to respond to his calls. Lastly, the medical evidence did not show that the inmate's asthma had worsened as a result of the conditions of his detention. Moreover, it had been possible to open the cell's window.

3. Case no. 3

43. In a judgment of 6 November 2013 (реш. № 17 от 6 ноември 2013 г. по адм. д. № 103/2013 г., АС-Русе) the Ruse Administrative Court dismissed a claim for non-pecuniary damages brought by an inmate in relation to the conditions of his detention in a pre-trial detention facility in Ruse. The court held that there was no statutory requirement for in-cell toilets, and that the mere lack of such a toilet could not give rise to a breach of Article 3 of the Convention. Having reviewed the witness evidence, which was contradictory on that point, the court found that the inmate had not been denied access to the common toilets. It went on to say that there was no evidence that the food given to the inmate had been substandard. However, it found that the inmate had been provided with less than four square metres of personal space, but did not find it established that he had fallen ill with hepatitis C as a result of the conditions of his detention, or that he had suffered mentally as a result of these conditions. On that basis, the court concluded that the authorities had not carried out any unlawful acts or omissions within the meaning of section 1 of the 1988 Act.

44. In a judgment of 30 June 2014 (реш. № 9124 от 30 юни 2014 г. по адм. д. № 485/2014 г., ВАС, III о.) the Supreme Administrative Court quashed the lower court's judgment and ordered the Chief Directorate for the Execution of Punishments to pay the inmate BGN 300 in non-pecuniary damages. It held that the lower court had erred in its assessment concerning access to the toilets, which raised an issue under Article 3 of the Convention, as construed by this Court. Bearing in mind that that was the only element with respect to which the claim succeeded, and the amount of time during which the inmate had had to endure that problem, the court found that a compensation of BGN 300 was equitable.

H. Shumen Administrative Court

1. Case no. 1

45. In a judgment of 16 December 2013 (реш. № 97 от 16 декември 2013 г. по адм. д. № 241/2013 г., АС-Шумен) the Shumen Administrative Court dismissed a claim for non-pecuniary damages brought by an inmate in relation to the conditions of his detention in a pre-trial detention facility in

Shumen in 2011. The court found that the inmate had been allowed to visit the toilet at all times, sometimes with a slight delay. It was true that for a period of time the inmate had been held in a cell with no access to daylight, and that the detention facility had no place where the detainees could take their outdoor walk. However, these were objective constraints, entirely due to the lack of resources, and not the fault of the facility's administration. In any event, there was no evidence that the inmate had suffered any damage as result of that. His allegations that he had felt debased and humiliated as a result of the impugned conditions were not supported by any evidence. Neither the witnesses had said anything on that point, nor was there any medical evidence on it. While the conditions had probably caused him some discomfort, none of the witnesses had said that he had seen the inmate feel despondent, fearful or humiliated as a result of them. There was no indication that he had made complaints in relation to that either. Any negative feelings experienced by him could have been due to the criminal proceedings against him and the mere fact of his deprivation of liberty. The judgment was apparently not appealed against and became final on 23 January 2014.

H. Sliven Administrative Court

1. Case no. 1

46. In a judgment of 11 July 2012 (реш. № 56 от 11 юли 2012 г. по адм. д. № 261/2011 г., АС-Сливен) the Sliven Administrative Court dismissed an inmate's claim for non-pecuniary damages in relation to the need to relieve herself in a bucket because of the alleged lack of ready access to the sanitary facilities, which were out of her cell. The court held that, since it concerned a continuing situation, the claim was not time-barred. However, it went on to note that the inmate had been allowed unimpeded access to the toilet during the day and had been able to obtain such access at night, when she had been locked in the cell, by calling on the guards. There was in addition no evidence that that had caused the inmate to suffer.

47. In a judgment of 17 June 2013 (реш. № 8637 от 17 юни 2013 г. по адм. д. № 10626/2012 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment, noting in addition that there was no evidence that guards had ever failed to respond to the inmate's calls.

I. Sofia City Administrative Court

1. Case no. 1

48. In a judgment of 13 May 2010 (реш. № 1461 от 13 май 2010 г. по адм. д. № 7490/2009 г., АС-София-град) the Sofia City Administrative

Court partly allowed two claims for non-pecuniary damages brought by two life prisoners in relation to the need to relieve themselves in buckets in their cells, due to the lack, until April-May 2008, of in-cell toilets and the restrictive regime applicable to life prisoners. The court had regard to, *inter alia*, Article 3 of the Convention and this Court's case-law in similar cases. Accordingly, it held that there was no need specifically to prove the existence of non-pecuniary damage as a result of such conditions, and ordered the Chief Directorate for the Execution of Punishments to pay each of the claimants BGN 2,000, plus interest.

49. In a judgment of 24 February 2011 (реш. № 2791 от 24 февруари 2011 г. по адм. д. № 10045/2010 г., ВАС, III о.) the Supreme Administrative Court quashed that judgment and remitted the case. It held that the lower court had, at least in part, based its ruling on irrelevant legal provisions.

50. Having examined the case afresh, in a judgment of 19 September 2011 (реш. № 4191 от 19 септември 2011 г. по адм. д. № 2842/2011 г., АС-София-град) the Sofia City Administrative Court dismissed the claims. It made identical findings of fact, but held that the claims had not been directed against the proper defendant – the Ministry of Justice – and were to be dismissed on that ground alone. However, the court went on to find that while the failure to provide the two claimants unimpeded access to the toilets had been unlawful, there was no concrete evidence that it had caused them any psychological harm. There was therefore no damage to make good.

51. In a judgment of 11 July 2012 (реш. № 10166 от 11 юли 2012 г. по адм. д. № 15508/2011 г., ВАС, III о.) the Supreme Administrative Court quashed that judgment. It held that it ran counter to the well-established case-law of this Court in similar cases under Article 3 of the Convention, the latest of which was *Shahanov v. Bulgaria* (no. 16391/05, 10 January 2012). On that basis, the court awarded each of the claimants BGN 1,000, plus interest.

2. Case no. 2

52. In a judgment of 19 October 2011 (реш. № 4481 от 19 октомври 2011 г. по адм. д. № 6562/2011 г., АС-София-град) the Sofia City Administrative Court dismissed a claim for non-pecuniary damages brought by an inmate in relation to the conditions of his detention in a pre-trial detention facility in Plovdiv. It held that the claim was time-barred under the statute of limitations because the statement of claim, while having been posted before the expiry of the limitation period, had arrived in the court too late.

53. In a judgment of 12 February 2014 (реш. № 1967 от 12 февруари 2014 г. по адм. д. № 16554/2013 г., ВАС, III о.) the Supreme Administrative Court upheld the lower court's judgment, but on a different

basis. It held that the claim had been lodged in time, but that it was ill-founded. The claim was based on discomfort and stress allegedly suffered as a result of the conditions in which the inmate had been held. These could not be presumed in all cases, because they depended on the personal perceptions of each individual. The inmate had failed to prove that the alleged stress and anxiety had been due specifically to the poor conditions in which he had been held rather than, for instance, the fact that criminal charges had been brought against him. It was also material in that connection that the inmate had on a number of occasions asked for medical treatment, and that his requests had not been denied. In sum, the inmate had failed to make out his claim to the requisite standard of proof.

3. Case no. 3

54. In a judgment of 2 March 2012 (реш. № 1138 от 2 март 2012 г. по адм. д. № 5255/2011 г., АС-София-град) the Sofia City Administrative Court partly allowed an inmate's claim for non-pecuniary damages in relation to the conditions of his confinement in a pre-trial detention facility during various periods of time in 2007-09, and awarded him BGN 5,000. The court found that the claimant had been held in overcrowded conditions in poorly lit and ventilated cells, and had not been provided ready access to the toilet or the shower. He had therefore suffered non-pecuniary damage.

55. In a judgment of 27 March 2013 (реш. № 4256 от 27 март 2013 г. по адм. д. № 6569/2012 г., ВАС, III о.) the Supreme Administrative Court quashed that judgment and dismissed the claim. It held that the inmate's allegations had remained unproved, that the conditions of his confinement had not contravened specific legal requirements, and that he had not proved that he had suffered any harm, such as a worsening of his physical or mental health.

4. Case no. 4

56. In a judgment of 23 July 2012 (реш. № 4252 от 23 юли 2012 г. по адм. д. № 4202/2011 г., АС-София-град) the Sofia City Administrative Court partly allowed a claim for non-pecuniary damages brought by an inmate in relation to poor material and hygienic conditions of detention and overcrowding. The court rejected the defendant authority's objection of expiry of the limitation period. It went on to find, by reference to Article 3 of the Convention and this Court's case-law under that provision, that the need for the inmate to relieve himself in a bucket in his cell between 1999 and 2005 had amounted to degrading treatment, which had to be compensated to the tune of BGN 3,000, plus interest. The remainder of the inmate's allegations, in particular those relating to overcrowding, had remained unproved.

57. In a judgment of 4 October 2013 (реш. № 12850 от 4 октомври 2013 г. по адм. д. № 11827/2012 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment, fully agreeing with its reasoning.

5. Case no. 5

58. In a judgment of 24 September 2012 (реш. № 4949 от 23 септември 2012 г. по адм. д. № 9012/2010 г., АС-София-град) the Sofia City Administrative Court partly allowed a claim for non-pecuniary damages brought by an inmate against the Chief Directorate for the Execution of Punishments in relation to the conditions of his detention in Varna Prison: cell size, overcrowding, lack of ready access to the toilet and to running water, and poor hygiene. The court, relying in particular on *Shahanov* (cited above), held that it had to analyse these factors jointly and, on that basis, found that the conditions of the inmate's detention had been unlawful and giving rise to non-pecuniary damage. It decided to award him BGN 5,000, plus interest.

59. In a judgment of 15 May 2013 (реш. № 6667 от 15 май 2013 г. по адм. д. № 13664/2012 г., ВАС, III о.) the Supreme Administrative Court quashed that judgment and dismissed the claim. While fully agreeing with the lower court as to the unlawfulness and the existence of damage, it held that the claim had been directed against the wrong defendant. The entity responsible for damage flowing from poor conditions of detention until 1 June 2009 was the Ministry of Justice.

6. Case no. 6

60. In a judgment of 22 May 2013 (реш. № 3466 от 22 май 2013 г. по адм. д. № 5792/2012 г., АС-София-град) the Sofia City Administrative Court dismissed a claim for non-pecuniary damages brought by an inmate in relation to the conditions of his confinement in a pre-trial detention facility, where he had been kept in an underground cell that had not been equipped with a toilet. It held that there was no evidence that the inmate had not been kept in conditions complying with the applicable regulations, or that he had suffered any harm as a result of the conditions of his confinement.

61. In a judgment of 29 April 2014 (реш. № 5890 от 29 април 2014 г. по адм. д. № 11737/2013 г., ВАС, III о.) the Supreme Administrative Court upheld the lower court's judgment. It held that the inmate had failed to prove that the conditions of his detention had been in breach of the applicable requirements, or that he had suffered any damage to his health or any emotional distress as a result of the conditions of his confinement.

7. Case no. 7

62. In a judgment of 8 July 2013 (реш. № 4580 от 8 юли 2013 г. по адм. д. № 7983/2010 г., АС-София-град) the Sofia City Administrative Court party allowed a claim brought by a life prisoner against the Ministry of Justice in relation to the conditions of his confinement in Sofia Prison between February 1999 and September 2005, awarding him BGN 6,000 in respect of the non-pecuniary damage suffered by him as a result of the poor conditions in these facilities. The court turned down the Ministry's objection that the applicable limitation period had expired, holding that under the Supreme Court of Cassation's case-law it could not be calculated day per day but only started to run when the impugned conduct of the defendant had come to an end, which had in that case happened with the prisoner's transfer in 2005 to a fully refurbished cell featuring an in-cell toilet. The poor conditions in which he had been held before that had been a continuous situation. The court went on to say that, when analysed by reference to, *inter alia*, Article 3 of the Convention and this Court's case-law under that Article, these conditions – lack of ready access to a toilet or running water, lack of proper ventilation and heating of the cell, or of access to sunlight – could be regarded as inhuman and degrading treatment.

63. In a judgment of 9 April 2014 (реш. № 4964 от 9 април 2014 г. по адм. д. № 13169/2013 г., ВАС, III о.) the Supreme Administrative Court modified that judgment, reducing the award to BGN 2,000. It fully agreed with the reasons given by the lower court, save for these relating to the quantum of damages. It held that the available evidence and the fact that the prisoner had brought his claim for damages quite late, almost five years after the end of the impugned situation, showed that the extent of the non-pecuniary damage suffered by him was less than assessed by the court below.

8. Case no. 8

64. In a judgment of 9 August 2013 (реш. № 5443 от 9 август 2014 г. по адм. д. № 10668/2012 г., АС-София-град) the Sofia City Administrative Court dismissed an inmate's claim for non-pecuniary damages in relation to his isolation in a punitive cell for two weeks as a disciplinary punishment. The court held that although the punishment had been set aside in previous proceedings before it, it could not be said that the harsh conditions in the punitive cell had been a direct consequence of the prison authorities' decision to impose the punishment. Moreover, the inmate had not proved that his health had suffered as a result of his stay in that cell.

65. In a judgment of 29 May 2014 (реш. № 7245 от 29 май 2014 г. по адм. д. № 13900/2013 г. ВАС, III о.) the Supreme Administrative Court quashed that judgment and remitted the case. It held that the lower court had

erred by, *inter alia*, failing to consider whether the conditions to which the inmate had been exposed had been in breach of his rights under the Convention, as interpreted by this Court.

66. The proceedings on remittal (адм. д. № 5379/2014 г., АС-София-град) are apparently still pending before the Sofia City Administrative Court. The court held a hearing on 27 October 2014 and adjourned the case for 23 February 2015.

J. Stara Zagora Administrative Court

1. Case no. 1

67. In a judgment of 19 September 2008 (реш. № 37 от 19 септември 2008 г. по адм. д. № 12/2008 г., АС-Стара Загора) the Stara Zagora Administrative Court awarded a life prisoner BGN 4 in non-pecuniary damages for the failure of the prison administration to enable him to take his outdoor exercise on a given date.

68. In a judgment of 26 May 2009 (реш. № 6892 от 26 май 2009 г. по адм. д. № 14849/2008 г., ВАС, III о.) the Supreme Administrative Court quashed that judgment and dismissed the claim, holding that the existence of non-pecuniary damage could not be presumed and that the inmate had not provided any evidence of such damage.

2. Case no. 2

69. In a judgment of 12 March 2009 (реш. № 67 от 12 март 2009 г. по адм. д. № 157/2008 г., АС-Стара Загора) the Stara Zagora Administrative Court dismissed a claim for non-pecuniary damages by the same life prisoner in relation to the failure of the prison administration to provide him with shoes for about five years. The court held that the prisoner had not proved that he had suffered non-pecuniary damage as a result.

70. In a judgment of 26 May 2009 (реш. № 13333 от 9 ноември 2010 г. по адм. д. № 6668/2009 г., ВАС, III о.) the Supreme Administrative Court quashed that judgment and awarded the prisoner BGN 3,000, plus interest, holding that the protracted failure of the prison administration to provide him shoes had humiliated him, in breach of, *inter alia*, Article 3 of the Convention.

3. Case no. 3

71. In a judgment of 31 March 2009 (реш. № 118 от 31 март 2009 г. по адм. д. № 545/2008 г., АС-Стара Загора) the Stara Zagora Administrative Court dismissed a claim for non-pecuniary damages by the same life prisoner in relation to the failure of the prison administration to enable him to watch video films. The court held that that would have been incompatible with the requirement, flowing from the applicable prison regime, for the

prisoner to remain isolated in a locked cell at all times, and that he had failed to prove, through a psychological expert report – as opposed to witness' statements – that he had suffered non-pecuniary damage as a result of that.

72. In a judgment of 18 January 2010 (реш. № 695 от 18 януари 2010 г. по адм. д. № 8404/2009 г., ВАС, III о.) the Supreme Administrative Court upheld the lower court's judgment, fully agreeing with its reasoning.

4. Case no. 4

73. In a judgment of 3 December 2012 (реш. № 257 от 3 декември 2012 г. по адм. д. № 387/2012 г., АС-Стара Загора) the Stara Zagora Administrative Court dismissed an inmate's claim for BGN 8,100 in non-pecuniary damages in relation to the conditions of his detention in Stara Zagora Prison during several short periods of time when he had been transferred through there. The court held that the tiny of amount of living space available to the inmate – one and a half metres – and the lack of an in-cell toilet was not due any acts or omissions of prison officials, but of the Minister of Justice and the Director of the Chief Directorate for the Execution of Punishments. Moreover, the rule requiring a minimum of four square metres of floor space per prisoner had not yet come into effect. Lastly, the inmate had failed to prove that he had suffered non-pecuniary damage as a result of the conditions of his detention.

74. In a judgment of 17 February 2014 (реш. № 2203 от 17 февруари 2014 г. по адм. д. № 4745/2013 г., ВАС, III о.) the Supreme Administrative Court quashed that judgment and remitted the case. It held that the lower court had failed properly to identify the right claimed in the proceedings by reference to the applicable domestic and international rules and this Court's case-law, and on that basis to ascertain the corresponding duties of the prison authorities. The salient issue in the case, which the lower court had failed to recognise, had been whether the conditions of the inmate's confinement had breached his rights under Article 3 of the Convention. On remittal, the lower court had to investigate that point, and on that basis determine whether the inmate was required specifically to prove the existence of non-pecuniary damage or whether such damage could be presumed merely by reason of the breach of his fundamental right not be subjected to ill-treatment.

75. Having examined the case afresh, in a judgment of 11 June 2014 (реш. № 101 от 11 юни 2014 г. по адм. д. № 63/2014 г., АС-Стара Загора) the Stara Zagora Administrative Court held that it had to examine the cumulative effect of the poor conditions of the inmate's detention. It went on to say that, although the domestic law rules requiring a minimum of square metres per inmate and ready access to the toilet at all times had not yet come into effect, the problems that the inmate had encountered in

relation to that had to be assessed by reference to the general prohibition against inhuman and degrading treatment, laid down in, *inter alia*, Article 3 of the Convention, as interpreted in this Court's case-law. The evidence showed that he had been kept in severely overcrowded and unsanitary conditions, and had had to use a bucket inside the cell to relieve himself. That had degraded him, in breach of his rights under, *inter alia*, Article 3 of the Convention. In the light of this Court's case-law, it had to be presumed that this had caused the inmate non-pecuniary damage in the form of emotional distress. There was no evidence that the prison authorities had wilfully put the inmate in such conditions, but that was immaterial because liability under section 1 of the 1988 Act did not require fault on the part of the defendant authority. Having regard to the amount of time spent by the inmate in these conditions – forty-three days in total – the court assessed the non-pecuniary damage suffered by him at BGN 650. It is unclear whether that decision has become final.

5. Case no. 5

76. In a judgment of 21 December 2012 (реш. № 370 от 21 декември 2010 г. по адм. д. № 564/2010 г., АС-Стара Загора) the Stara Zagora Administrative Court allowed a life prisoner's claims against the Ministry of Justice and the Chief Directorate for the Execution of Punishments in relation to (a) the material conditions of his detention; (b) the failure of the prison administration to provide him with clothing, shoes and bed linen; (c) the failure of the prison administration to put in place conditions in which he could keep in good physical shape; and (d) the failure of the prison administration to enable him to take his outdoor exercise. The court dismissed the remaining claims, which concerned (a) the failure of the prison administration to provide the prisoner with toiletries; (b) the quality and the quantity of the food that had been provided to him; (c) the failure of the prison administration to provide him with dental prostheses; (d) the alleged failure of the prison administration to provide him with conditions allowing him to keep his mental health intact; and (e) the failure of the prison administration to provide him with work. The court awarded the prisoner a total of BGN 8,200. It held, in particular, that the conditions of his detention had been in breach of Article 3 of the Convention and that he had suffered non-pecuniary damage as a result of that. However, the court also held that the claim relating to the material conditions of detention, in as much as it concerned the period of time preceding five years before its lodging, was time-barred.

77. The life prisoner, the Ministry of Justice and the Chief Directorate for the Execution of Punishments all appealed. However, as the prisoner failed to pay the requisite court fee, the Supreme Administrative Court refused to take his appeal up for examination (see опр. № 8931 от 21 юни 2011 г. по адм. д. № 5865/2011 г. ВАС, III о., upheld by опр. № 14723

от 14 ноември 2011 г. по адм. д. № 10633/2011 г., ВАС, петчл. с-в). As a result, the only part of the case that remained pending were the claims concerning the material conditions of the prisoner's detention and the failure of the prison administration to provide him with clothing, shoes and bed linen.

78. In a judgment of 8 January 2013 (реш. № 179 от 8 януари 2013 г. по адм. д. № 5865/2011 г.) the Supreme Administrative Court quashed the lower court's judgment, holding that that court had failed properly to analyse and discuss the evidence, and remitted the case.

79. Having examined the case afresh, in a judgment of 5 April 2013 (реш. № 38 от 5 април 2013 г. по адм. д. № 17/2013 г., АС-Стара Загора) the Stara Zagora Administrative Court found that the claims against the Ministry, which concerned the period before 1 June 2009, when the 2009 Act had come into force, were inadmissible, but that the claims against the Chief Directorate for the Execution of Punishments, which concerned the period after that date, were admissible and, analysed by reference to, *inter alia*, Article 3 of the Convention and this Court's case-law under that provision, well-founded. It awarded the life prisoner BGN 400.

80. The life prisoner and the Chief Directorate for the Execution of Punishments both appealed on points of law. In a judgment of 3 November 2014 (реш. № 13011 от 3 ноември 2014 г. по адм. д. № 9946/2013 г., ВАС, III о.) the Supreme Administrative Court partly quashed the lower court's judgment, remitting that part of the case, and partly upheld it. It held that the real defendant in proceedings under section 1 of the 1988 Act was the State. It was unclear why the lower court had decided that the claims concerning the period before 1 June 2009 had solely been directed against the Ministry of Justice; there was evidence in the case file that the inmate had directed them against both the Ministry and the Chief Directorate for the Execution of Punishments, both of which had taken part in the proceedings. It was thus unclear why the lower court had not examined these claims *vis-à-vis* the Directorate. On remittal, the lower court had to do that. The part of the lower court's judgment allowing the prisoner's claims against the Directorate in relation to the period after 1 June 2009 was well-founded and correctly reflecting the substantive law.

K. Varna Administrative Court

1. Case no. 1

81. In a judgment of 18 January 2008 (реш. № 84 от 18 януари 2008 г. по адм. д. № 1905/2007 г., АС-Варна) the Varna Administrative Court partly allowed an inmate's claim for non-pecuniary damages in relation to the conditions of his detention, and ordered the Ministry of Justice to pay him BGN 400.

82. In a judgment of 19 February 2009 (реш. № 2327 от 19 февруари 2009 г. по адм. д. № 4875/2008 г., ВАС, III о.) the Supreme Administrative Court quashed that judgment and remitted the case. It held that the inmate's statement of claim was not clear and that the lower court should have resolved that issue before examining the case on the merits. Moreover, the statement of claim in effect set out several claims for damages that the lower court had treated as one global claim, which had been a mistake.

83. Having examined the case afresh, in a judgment of 23 October 2009 (реш. № 1749 от 23 октомври 2009 г. по адм. д. № 565/2009 г., АС-Варна) the Varna Administrative Court dismissed the inmate's claim. It briefly held that the inmate had failed to make out the existence of damage.

84. In a judgment of 23 November 2010 (реш. № 14107 от 23 ноември 2010 г. по адм. д. № 3057/2010 г., ВАС, III о.) the Supreme Administrative Court quashed that judgment and remitted the case, holding that the lower court had failed to gather and examine properly all relevant evidence. It should have, for instance, ordered, even of its own motion, an expert report to verify the inmate's allegations concerning the conditions of his confinement.

85. It appears that on 15 April 2011 the inmate withdrew his claim and that the Varna Administrative Court accordingly discontinued the proceedings in a decision of 4 May 2011 (опр. от 4 май 2011 г. по адм. д. № 3814/2010 г., АС-Варна)

2. Case no. 2

86. In a judgment of 18 April 2008 (реш. № 587 от 18 април 2008 г. по адм. д. № 1491/2007 г., АС-Варна) the Varna Administrative Court allowed a life prisoner's claim for non-pecuniary damages in relation to the fact that he had been put in a cell with smokers, and awarded him BGN 400.

87. In a judgment of 10 December 2008 (реш. № 13598 от 10 декември 2008 г. по адм. д. № 8699/2008 г., ВАС, III о.) the Supreme Administrative Court quashed that judgment and dismissed the claim. It held that the lower court had erred by presuming the existence of non-pecuniary damage; such damage had to be specifically proved by the claimant.

3. Case no. 3

88. In a judgment of 12 February 2009 (реш. № 188 от 12 февруари 2009 г. по адм. д. № 150/2008 г., АС-Варна) the Varna Administrative Court dismissed a claim by the same prisoner in relation to the conditions of his detention.

89. In a judgment of 14 January 2010 (реш. № 568 от 14 януари 2010 г. по адм. д. № 4934/2009 г., ВАС, III о.) the Supreme

Administrative Court upheld that judgment, holding that there was no evidence that the conditions of the prisoner's confinement had caused him any non-pecuniary damage.

4. Case no. 4

90. In a judgment of 5 October 2009 (реш. № 1560 от 5 октомври 2009 г. по адм. д. № 1195/2009 г., АС-Варна) the Varna Administrative Court dismissed yet another claim by the same life prisoner in relation to the conditions of his confinement during a later period. The court found that there was no categorical evidence that the poor conditions – lack of sufficient light, ready access to the toilet, or proper ventilation – had damaged the prisoner's health. He had called witnesses to prove that, but these witnesses did not have proper medical qualifications. Any negative psychological effects of these conditions had to be assessed against the backdrop of the inmate's life sentence and the very strict security regime under which that sentence was to be served. Discomfort, anguish or anxiety did not give rise to damages under section 1 of the 1988 Act.

91. In a judgment of 30 March 2010 (реш. № 4187 от 30 март 2010 г. по адм. д. № 15084/2009 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment. It did not agree that discomfort, anguish or anxiety did not give rise to damages under section 1 of the 1988 Act, but held that they could only be proved through medical evidence, which was not the case.

5. Case no. 5

92. In a judgment of 21 January 2010 (реш. № 117 от 21 януари 2010 г. по адм. д. № 2208/2009 г., АС-Варна) the Varna Administrative Court dismissed a claim for non-pecuniary damages brought by an inmate in relation to the conditions of his confinement. It held that while the cell in which he had been kept was small (two by two and a half metres), there had been no illegality because, on the one hand, there was no rule on the minimum floor space per prisoner and, on the other, the prison administration had not culpably kept him in such conditions. The rule requiring a minimum of four square metres per prisoner was not yet in force, and nor was that requiring in-cell toilets. Moreover, the claimant had not proved that he had suffered harm as a result of these conditions.

93. In a judgment of 25 November 2010 (реш. № 14303 от 25 ноември 2010 г. по адм. д. № 3074/2010 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment, fully agreeing with its reasoning.

6. Case no. 6

94. In a judgment of 1 July 2011 (реш. № 1621 от 1 юли 2011 г. по адм. д. № 787/2011 г., АС-Варна) the Varna Administrative Court dismissed another claim for non-pecuniary damages by the above-mentioned life prisoner in relation to the conditions of his confinement. It held that he had not adduced evidence that he had suffered harm as a result of the need to relieve himself in a bucket, of the limited space and light in his cell, or the cigarette smoke that he had had to endure. Moreover, smoking in prison was not forbidden under the applicable rules.

95. In a judgment of 20 June 2012 (реш. № 8905 от 20 юни 2012 г. по адм. д. № 3074/2010 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment, fully agreeing with its reasoning in relation to the lack of proof of damage.

7. Case no. 7

96. In a judgment of 25 July 2011 (реш. № 1964 от 25 юли 2011 г. по адм. д. № 327/2010 г., АС-Варна) the Varna Administrative Court dismissed a claim for non-pecuniary damages by Mr Shahanov, the applicant in *Shahanov* (cited above), in relation to the conditions of his confinement. The court held that the law did not specifically require running water or access to natural light in the cells. Nor was it unlawful to compel the inmate to use a bucket outside the time when he could access the common toilet. The cell in which he had been kept was slightly smaller than required – five square metres –, but that was not unlawful because there was no rule on the minimum amount of floor space per prisoner. Moreover, the inmate had not adduced evidence that he had suffered harm as a result of these matters.

97. In a judgment of 2 April 2012 (реш. № 4758 от 2 април 2012 г. по адм. д. № 13604/2011 г., ВАС, III о.) the Supreme Administrative Court quashed that judgment, holding that the lower court should have analysed Mr Shahanov's claim by reference to, *inter alia*, Article 3 of the Convention, which took precedence over domestic law. On remittal, the lower court had to take into account the findings of this Court in its judgment in *Shahanov* (cited above).

98. Having examined the case afresh, in a decision of 17 October 2012 (опр. № 4681 от 17 октомври 2012 г. по адм. д. № 1347/2012 г., АС-Варна) the Varna Administrative Court discontinued the proceedings. It held that any damage suffered by Mr Shahanov as a result of the conditions of his detention had been made good with the award of just satisfaction made by this Court in *Shahanov* (cited above). It was not permissible to award compensation twice in relation to the same matter.

99. In a decision of 30 November 2012 (опр. № 15225 от 30 ноември 2012 г. по адм. д. № 13739/2012 г., ВАС, III о.) the Supreme

Administrative Court upheld the lower court's decision, giving the same reasons.

8. Case no. 8

100. In a judgment of 15 February 2012 (реш. № 353 от 15 февруари 2012 г. по адм. д. № 2732/2011 г., АС-Варна) the Varna Administrative Court partly allowed a claim for non-pecuniary damages brought by an inmate in relation to the conditions of his confinement in Varna Prison in 2001-11. Having regard to, in particular, the CPT's report on its October 2010 visit to Bulgaria (see paragraph 72 of the judgment), and this Court's findings in *Shahanov* (cited above), the court held that the prison administration's omission to provide better conditions of detention had amounted to a breach of Article 3 of the Convention, which had caused harm to the claimant. Ruling in equity, it awarded him BGN 3,000, plus interest.

101. In a judgment of 21 March 2013 (реш. № 3958 от 21 март 2013 г. по адм. д. № 5655/2012 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment, fully agreeing with its reasoning. It also noted that the claim under section 1 of the 1988 Act was entirely compensatory in character and the only effective remedy in respect of the conditions of the inmate's confinement.

9. Case no. 9

102. In a judgment of 6 July 2012 (реш. № 1760 от 6 юли 2012 г. по адм. д. № 4055/2011 г.) the Varna Administrative Court partly allowed an inmate's claim for non-pecuniary damages in relation to the conditions of his confinement in Varna Prison in 2010-11, and awarded him BGN 1,000. Having regard to, in particular, the CPT's report on its October 2010 visit to Bulgaria (see paragraph 72 of the judgment), and this Court's findings in *Shahanov* (cited above), the court held that the prison administration's omission to provide better conditions of detention had amounted to a breach of Article 3 of the Convention, which had caused harm to the claimant. However, the court held that the allegation of lack of proper medical care was not supported by the evidence. In fixing the quantum of damages, the court had regard to the just satisfaction award made in *Shahanov* (cited above).

103. In a judgment of 20 June 2013 (реш. № 9152 от 20 юни 2013 г. по адм. д. № 10630/2012 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment, fully agreeing with its reasoning. It also noted that the claim under section 1 of the 1988 Act was entirely compensatory in character and the only effective remedy in respect of the conditions of the inmate's confinement.

10. Case no. 10

104. In a judgment of 22 November 2012 (реш. № 2829 от 22 ноември 2012 г. по адм. д. № 1839/2012 г.) the Varna Administrative Court dismissed a claim for non-pecuniary damages brought by an inmate in relation to the fact that he had been kept in a smokers' cells since 1995. The court started by holding that the claim was not time-barred because it concerned a continuing situation that still persisted. However, it went on to hold that throughout the relevant period there had been no rules requiring the separation of smokers from non-smokers in prisons. Nor was there any indication that the cigarette smoke had caused the inmate any harm.

105. In a judgment of 2 December 2013 (реш. № 15964 от 2 декември 2013 г. по адм. д. № 779/2013 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment, fully agreeing with its reasoning. The court also noted that the inmate's claim did not concern any other aspects of the conditions of his confinement, and focused solely on the cigarette smoke issue.

11. Case no. 11

106. In a judgment of 6 December 2012 (реш. № 2947 от 6 декември 2012 г. по адм. д. № 3301/2012 г.) the Varna Administrative Court partly allowed an inmate's claim for non-pecuniary damages in relation to the conditions of his confinement in Varna Prison in 2010-11, and awarded him BGN 2,000, plus interest. The court rejected the allegations of excessive cold in winter and excessive heat in summer, as well as of lack of proper food, as unsupported by the evidence. However, the allegations concerning the failure of prison administration to ensure ready access to the toilets and the shower found evidentiary support, in particular in the CPT's report on its October 2010 visit to Bulgaria (see paragraph 72 of the judgment), and called for compensation.

107. In a judgment of 8 July 2014 (реш. № 9539 от 8 юли 2014 г. по адм. д. № 2568/2013 г., ВАС, III о.) the Supreme Administrative Court partly upheld that judgment, holding that the lower court's findings based on the CPT's report were correct, corresponded to the rest of the evidence, and had not been refuted by the defendant authorities. The need to relieve himself in a bucket in the presence of his cellmates and the impossibility to take a shower regularly had caused the prisoner discomfort and psychological distress. However, as he had failed to prove that lack of access to the shower had been systemic throughout the period in issue, it was warranted to reduce the award of damages to BGN 1,000, plus interest.

12. Case no. 12

108. In a judgment of 10 January 2013 (реш. № 44 от 10 януари 2013 г. по адм. д. № 2782/2012 г.) the Varna Administrative Court partly

allowed an inmate's claim for non-pecuniary damages in relation to the conditions of his detention in Varna Prison in 2010-11, and awarded him BGN 1,000, plus interest. The court found that the allegations that the inmate, who suffered from paranoid schizophrenia, had not been given proper medical care, that the food that he had been given was not adequate, and that the prison canteen had been infested by rodents were not supported by the evidence. It went on to say that the allegation of overcrowding could not be upheld either, because the rule requiring a minimum of four square metres of floor space per prisoner had not yet come into effect. However, the allegation that access to the toilets and the shower was not readily available was supported by the evidence, and called for compensation, because that was in breach of Article 3 of the Convention. Bearing in mind that the claim concerned a period of about five months, the court found that BGN 1,000 was an adequate amount of compensation.

109. In a judgment of 18 February 2014 (реш. № 2265 от 18 февруари 2014 г. по адм. д. № 7064/2013 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment, fully agreeing with reasoning.

13. Case no. 13

110. In a judgment of 28 January 2013 (реш. № 163 от 28 януари 2013 г. по адм. д. № 1087/2012 г., АС-Варна) the Varna Administrative Court partly allowed a claim for non-pecuniary damages by a life prisoner in relation to the conditions of his confinement in Varna Prison since 1994. Having regard to, in particular, the CPT's report on its October 2010 visit to Bulgaria (see paragraph 72 of the judgment), and this Court's findings in *Shahanov* (cited above), the court held that the prison administration's omission to provide better conditions of detention had amounted to a breach of Article 3 of the Convention, which had caused harm to the claimant. However, there was no evidence in relation to the period before 2007, when the prisoner had been put under the "special" regime, and the court therefore decided to take into account only the period after 2007. Ruling in equity, it awarded the prisoner BGN 3,000, plus interest.

111. In a judgment of 5 June 2013 (реш. № 7684 от 5 юни 2013 г. по адм. д. № 4819/2013 г., ВАС, III о.) the Supreme Administrative Court partly upheld and partly quashed that judgment. It held that the lower court had been correct to hold that the conditions of the prisoner's confinement had been in breach of Article 3 of the Convention. However, in as much as the claim concerned the period before 1 June 2009, it had been brought against the wrong defendant. The part of the award (BGN 1,000) that concerned the period before that date could therefore not stand, but the part (BGN 2,000) that concerned the period after that date was to be upheld.

14. Case no. 14

112. In a judgment of 14 February 2013 (реш. № 334 от 14 февруари 2013 г. по адм. д. № 2151/2012 г., АС-Варна) the Varna Administrative Court dismissed a claim for non-pecuniary damages brought by an inmate in relation to the conditions of his confinement in Varna Prison in 2010-12. The court held that the inmate bore the burden of proving not only the unlawful acts or omissions of which he complained, but also the damage flowing from these acts or omissions. The court found that the inmate had been kept in a cell that measured approximately five by six metres, housed between twenty and twenty-four inmates, and had an in-cell toilet separated from the rest of the cell with a wall. It was true that the amount of floor space available to the inmate was less than four square metres, because twenty inmates lived in forty square metres, but the rule requiring a minimum of four metres of floor space per inmate had not yet come into effect. The allegations of lack of proper hygiene, medical care and food did not appear to be true. Nor had the claimant, apart from his own allegations, presented any evidence that he had suffered damage that went beyond the inevitable element of suffering inevitably flowing from his sentence of imprisonment.

113. In a judgment of 15 October 2013 (реш. № 13372 от 15 октомври 2013 г. по адм. д. № 5407/2013 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment, fully agreeing with its reasoning in relation to the lawfulness of the prison administration's conduct and the failure of the inmate to prove the existence of damage.

15. Case no. 15

114. In a judgment of 1 July 2013 (реш. № 1752 от 1 юли 2013 г. по адм. д. № 4171/2012 г., АС-Варна) the Varna Administrative Court partly allowed a claim by the applicant Mr Neshkov in relation to the conditions of his detention in Varna Prison, where he had been housed for short periods of time on fifteen occasions in 2005-08 in connection with court hearings, following his transfer to Lovech Prison and then Vratsa Prison in 2005 (see paragraph 14 of the judgment). The court found that Mr Neshkov's claims in relation to the failures of the administration of Varna Prison to provide him with bed linen for a total of nine days on two occasions in November 2007 and December 2008 was well-founded. It ordered the Ministry of Justice to pay Mr Neshkov BGN 300 in non-pecuniary damages in respect of that. Based on the expert and documentary evidence, the court turned down Mr Neshkov's remaining allegations, which concerned the material conditions in his cell. It also held that Mr Neshkov's claims in respect of the thirteen earlier occasions on which he had been placed in Varna Prison were time-barred. Since his stays in that prison had been on

discrete occasions, they could not be regarded as a continuing situation, and the limitation period in respect of each of them therefore ran separately.

115. In a judgment of 28 April 2014 (реш. № 5720 от 28 април 2014 г. по адм. д. № 13896/2013 г., ВАС, III о.) the Supreme Administrative Court upheld the lower court's judgment. It held that it had correctly applied the rules governing the limitation of actions and has properly assessed the quantum of damages.

16. Case no. 16

116. In a judgment of 15 July 2013 (реш. № 1932 от 15 юли 2013 г. по адм. д. № 1244/2012 г., АС-Варна) the Varna Administrative Court partly allowed a claim for non-pecuniary damages brought by a life prisoner in relation to the conditions of his detention in Varna Prison. The court found that the inmate had been kept in cells that had been too small and not properly lit, in very poor hygienic conditions, and had not had free access to the toilets, which had forced him to relieve himself in a bucket in his cell. All of that had been in breach of Article 3 of the Convention, and had caused him mental suffering. The court took into account the relevant reports of the CPT, and this Court's judgment in *Shahanov* (cited above). Bearing in mind the amount of time spent by the prisoner in poor conditions and the award made by this Court in *Shahanov*, the court awarded him BGN 5,000, plus interest.

117. In a judgment of 15 April 2014 (реш. № 5258 от 15 април 2014 г. по адм. д. № 14438/2013 г., ВАС, III о.) the Supreme Administrative Court modified the lower court's judgment, reducing the award of damages to BGN 500. The court noted, in particular, that the inmate had been given medical care, and that during most of the time in respect of which he claimed damages, he had not been kept with other inmates, and had therefore not had to relieve himself in front of his cellmates. The lower court had erred by following the award made in *Shahanov* (cited above) to the letter, because each case turned on its own facts.

L. Veliko Tarnovo Administrative Court

1. Case no. 1

118. In a judgment of 4 July 2013 (реш. № 352 от 4 юли 2013 г. по адм. д. № 1014/2012 г., АС-Велико Търново) the Veliko Tarnovo Administrative Court dismissed a claim for non-pecuniary damages brought by an inmate in relation to the conditions of his earlier confinement in a pre-trial detention facility in Svishtov. The court noted that the requirement for a minimum of four square metres per inmate had not yet come into effect, and there was no indication that the authorities had wilfully placed the inmate in worse conditions than those available to other prisoners. The

requirements for in-cell toilets and direct access to sunlight had still not come into effect either.

119. In a judgment of 9 April 2014 (реш. № 4893 от 9 април 2014 г. по адм. д. № 10683/2013 г., ВАС, III о.) the Supreme Administrative Court quashed that judgment and awarded the inmate BGN 500 in non-pecuniary damages. It held that the lack of ready access to the toilet and to running water could, in the light of this Court's case-law, be regarded as constitutive of a breach of Article 3 of the Convention. The requirements of that Article were also reflected in the general rule of section 3 of the Execution of Punishments and Pre-Trial Detention Act 2009 (see paragraph 107 of the judgment). Having regard in particular to the amount of time that the inmate had had to endure such conditions, it found that BGN 500 was adequate compensation for the non-pecuniary damage suffered by him.

M. Vratsa Administrative Court

1. Case no. 1

120. In a judgment of 30 April 2010 (реш. № 11 от 30 април 2010 г. по адм. д. № 648/2009 г., АС-Враца) the Vratsa Administrative Court dismissed a claim for non-pecuniary damages by the applicant Mr Neshkov in relation to the conditions of his confinement in Lovech Prison in 2005-06. The court held that since Mr Neshkov had not been kept in worse conditions than the other inmates, he could not be regarded as having suffered any indignity. Nor had he presented any evidence – apart from the testimony of a fellow inmate, who was possibly biased – that he had suffered non-pecuniary damage as a result of these conditions. Poor conditions of detention did not automatically result in non-pecuniary damage.

121. In a judgment of 29 March 2011 (реш. № 4436 от 29 март 2011 г. по адм. д. № 10051/2010 г., ВАС, III о.) the Supreme Administrative Court quashed the lower court's judgment. It held that that court had erred by failing to gather evidence – if need, through a medical report – on Mr Neshkov's state of health. It had also refused to call an inmate witness without sufficient justification. It had thus deprived Mr Neshkov of the possibility to make out his claim.

122. Having heard the case afresh, in a judgment of 27 June 2010 (реш. № 11 от 30 април 2010 г. по адм. д. № 648/2009 г., АС-Враца) the Vratsa Administrative Court again dismissed the claim. It held that only very serious and lasting harm – as opposed to mere discomfort – could give rise to damages under section 1 of the 1988 Act. No such harm had been proved by Mr Neshkov.

123. In a judgment of 1 February 2012 (реш. № 1575 от 1 февруари 2012 г. по адм. д. № 12195/2011 г., ВАС, III о.) the Supreme

Administrative Court upheld that judgment. It held that Mr Neshkov had failed to present sufficient proof that the prison administration or officials had engaged in unlawful conduct in relation to his stay in prison.

2. Case no. 2

124. In a judgment of 16 June 2010 (реш. № 19 от 16 юни 2011 г. по адм. д. № 51/2011 г., АС-Враца) the Vratsa Administrative Court dismissed a claim for non-pecuniary damages brought by an inmate in relation to alleged failure of the prison administration to provide him food appropriate for his state of health. It held that the inmate had failed to prove that he had any medical condition that required special food.

125. In a judgment of 7 March 2012 (реш. № 3312 от 7 март 2012 г. по адм. д. № 13269/2011 г., ВАС, III о.) the Supreme Administrative Court quashed the lower court's judgment. It found that the inmate had repeatedly failed to specify the facts forming the basis of his claim and his exact request for relief. The lower court had therefore erred by directly proceeding to examine the claim on the merits. It had also erred by refusing to order a medical expert report requested by counsel for the inmate, and had thus deprived the inmate of the possibility to make out his claim.

126. Having heard the case afresh, in a judgment of 13 July 2012 (реш. № 10 от 13 юли 2012 г. по адм. д. № 129/2012 г., АС-Враца) the Vratsa Administrative Court again dismissed the claim. It held, on the basis of medical documents describing the inmate's state of health during his incarceration and a medical expert report, that the inmate had failed to prove that he suffered from an ulcer. Moreover, the prison administration had in fact provided him with dietetic food.

127. In a judgment of 28 October 2013 (реш. № 14037 от 28 октомври 2013 г. по адм. д. № 12928/2012 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment, fully agreeing with its reasoning.

3. Case no. 3

128. In a judgment of 18 June 2010 (реш. № 50 от 18 юни 2010 г. по адм. д. № 626/2009 г., АС-Враца) the Vratsa Administrative Court dismissed a claim for non-pecuniary damages brought by an inmate in relation to the conditions of his confinement in Vratsa Prison in 2008-09. The court held that it had not been unlawful for the prison administration to keep the inmate in cells with smokers. It was true that the cell in which he had been kept had not had a toilet or running water until July 2009, but there was no rule requiring that either, and there was no evidence that the guards had not let the inmate visit the common toilets at night. The fact that he had sometimes had to relieve himself in a bucket at night had not degraded him, especially bearing in mind that he was in prison as a result of

his own conduct. More importantly, there was no evidence that these matters had caused him harm that went beyond the inevitable element of suffering flowing from his sentence of imprisonment.

129. In a judgment of 28 March 2011 (реш. № 4346 от 28 март 2011 г. по адм. д. № 10165/2010 г., ВАС, III о.) the Supreme Administrative Court upheld the lower court's judgment, agreeing with all of its conclusions. It held, in particular, that at the relevant time there had been no rules requiring the separation of inmates who did not smoke from those who did, or the availability of in-cell toilets.

4. Case no. 4

130. In a judgment of 27 December 2011 (реш. № 24 от 27 декември 2011 г. по адм. д. № 345/2011 г., АС-Враца) the Vratsa Administrative Court dismissed a claim for non-pecuniary damages brought by an inmate against the Ministry of Justice in relation to the conditions of his detention and the fact that he had contracted tuberculosis as a result of these conditions. The court found that the acts of the medical doctor attached to the prison were not administrative action within the meaning of section 1 of the 1988 Act. It went on to say that there was no evidence that the inmate in fact suffered from active tuberculosis.

131. In a judgment of 29 November 2012 (реш. № 15176 от 29 ноември 2012 г. по адм. д. № 3173/2012 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment. It noted that the claim had not been brought against the correct defendant, which was the Chief Directorate for the Execution of Punishments. It went on fully to agree with the lower court's findings. It held that the lower court had not erred by not taking evidence on the conditions in the inmate's cell, because the inmate did not seek damages in relation to these conditions alone, but sought to tie them to the allegation that he had contracted tuberculosis as a result of them.

5. Case no. 5

132. In a judgment of 4 July 2013 (реш. № 13 от 4 юли 2013 г. по адм. д. № 465/2012 г., АС-Враца) the Vratsa Administrative Court dismissed a claim for non-pecuniary damages brought by an inmate against the Chief Directorate for the Execution of Punishments in relation to the alleged failure of the administration of Vratsa Prison to provide him with adequate medical care for a number of illnesses. The court held that the inmate had failed to prove that he suffered from many of the alleged illnesses, that he had been on many occasions treated for the rest of the illnesses, and that there was no medical evidence that his medical condition had worsened during his incarceration.

133. In a judgment of 4 April 2014 (реш. № 4660 от 4 април 2014 г. по адм. д. № 11273/2013 г., ВАС, III о.) the Supreme Administrative Court

upheld that judgment. It held that the inmate had failed to make out his allegations to the requisite standard. There was evidence that the prison administration had provided him with medical care, and no medical evidence that his health had worsened as a result of failures on the part of that administration. On the contrary, the available evidence showed that the inmate had himself tried to injure himself, and had refused hospitalisation and other medical treatment.

6. Case no. 6

134. In a judgment of 20 May 2014 (реш. № 245 от 20 май 2014 г. по адм. д. № 165/2014 г., АС-Враца) the Vratsa Administrative Court partly allowed an inmate's claim for non-pecuniary damages in relation to, *inter alia*, the conditions of his detention in an open-type prison hostel attached to Vratsa Prison, Keramichna Fabrika, during various periods in 2011-13. The court found that conditions in that hostel, in which the inmate has spent in total of a year and five months, were very poor, with no access to the toilets at night, dilapidation of the premises and extremely bad hygiene. On that basis, it held that even though the specific rules governing inmate accommodation had not yet come into effect, the conditions ran counter to the general prohibition against inhuman and degrading treatment set out in, *inter alia*, Article 3 of the Convention. That had caused the inmate psychological suffering. Since he had not suffered damage to his health, the equitable amount of compensation was BGN 2,000, plus interest.

135. It appears that the judgment was appealed against and that the proceedings on appeal are still pending before the Supreme Administrative Court.

N. Yambol Administrative Court

1. Case no. 1

136. In a judgment of 15 March 2013 (реш. № 29 от 15 март 2013 г. по адм. д. № 295/2012 г., АС-Ямбол) the Yambol Administrative Court dismissed an inmate's claim for non-pecuniary damages in relation to overcrowding, lack of ready access to the toilet at night, lack of access to natural light and lack of outdoor exercise during his pre-trial detention in a detention facility in Yambol for about a month and a half. The court noted that the rule requiring a minimum of four square metres of floor space per prisoner had not yet come into effect, that the law did not require an in-cell toilet, and that the cell door had a window, which, albeit indirectly, allowed access to natural light. The lack of outdoor exercise had not caused any damage to the inmate's health.

137. In a judgment of 10 October 2013 (реш. № 13140 от 10 октомври 2013 г. по адм. д. № 5881/2013 г., ВАС, III о.) the Supreme

Administrative Court quashed that judgment and remitted the case. It held that the conditions of the inmate's confinement were to be assessed not only by reference to the specific legal rules that governed them, but also by reference to the general rule of Article 3 of the Convention, as interpreted by this Court in a number of judgments against Bulgaria, as well as by the Supreme Court of Cassation and by itself in earlier conditions-of-detention cases. The court went on to say that the lower court had not properly established all relevant facts, such as for instance the existence of overcrowding or ready access to the toilets. It had to do on remittal, and then assess the cumulative effect of these facts on the inmate's well-being, taking also into account the amount of time that he had spent in the impugned conditions.

138. In a judgment of 13 December 2013 (реш. № 178 от 13 декември 2013 г. по адм. д. № 248/2013 г., АС-Ямбол) the Yambol Administrative Court examined the inmate's allegations by reference to, *inter alia*, Article 3 of the Convention, and found that, except for a period of two days, he had been kept alone in a cell measuring 6.38 square metres. He had therefore not been victim of overcrowding. However, the cell had not been properly lit and ventilated, and the inmate had not had ready access to the toilet at night or allowed his daily outdoor exercise. That had caused him discomfort and psychological and physical suffering, which could be made could through the award of BGN 200.

139. Both the inmate and the Chief Directorate for the Execution of Punishments appealed on points of law. In a judgment of 3 November 2014 (реш. № 13012 от 3 ноември 2014 г. по адм. д. № 2707/2014 г., ВАС, III о.) the Supreme Administrative Court quashed that judgment and remitted the case, holding that in the proceedings before the lower court the inmate had failed to specify the exact amounts claimed. The lower court had erred by not instructing him to do so before proceeding to examine the case.

2. Case no. 2

140. In a judgment of 18 March 2013 (реш. № 28 от 18 март 2013 г. по адм. д. № 274/2013 г., АС-Ямбол) the Yambol Administrative Court dismissed an inmate's claim for non-pecuniary damages in relation to overcrowding, lack of an in-cell toilet, lack of outdoor exercise, lack of access to running water and damage to health during his pre-trial detention. The court noted that the rule requiring a minimum of four square metres of floor space per prisoner had not yet come into effect, and that the law did not require an in-cell toilet. There was no evidence that the inmate had been denied access to the common toilets at night, only of occasional delays occasioned by the need to let other inmates out of their cells. There had been no physical possibility for outdoor exercise because the detention facility did not have a yard. All of that, and the lack of any intention on the

part of the guards to humiliate or ill-treat the inmate, meant that there had been no breach of Article 3 of the Convention.

141. In a judgment of 16 January 2014 (реш. № 569 от 16 януари 2014 г. по адм. д. № 7207/2013 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment, fully agreeing with its reasoning.

APPENDIX 2

Judgments in which the Court has found a breach of Article 3 of the Convention in relation to conditions in detention facilities in Bulgaria

1. *Iorgov v. Bulgaria*, no. 40653/98, 11 March 2004
2. *G.B. v. Bulgaria*, no. 42346/98, 11 March 2004
3. *Kehayov v. Bulgaria*, no. 41035/98, 18 January 2005
4. *I.I. v. Bulgaria*, no. 44082/98, 9 June 2005
5. *Iovchev v. Bulgaria*, no. 41211/98, 2 February 2006
6. *Dobrev v. Bulgaria*, no. 55389/00, 10 August 2006
7. *Yordanov v. Bulgaria*, no. 56856/00, 10 August 2006
8. *Staykov v. Bulgaria*, no. 49438/99, 12 October 2006
9. *Todor Todorov v. Bulgaria*, no. 50765/99, 5 April 2007
10. *Malechkov v. Bulgaria*, no. 57830/00, 28 June 2007
11. *Kostadinov v. Bulgaria*, no. 55712/00, 7 February 2008
12. *Gavazov v. Bulgaria*, no. 54659/00, 6 March 2008
13. *Alexov v. Bulgaria*, no. 54578/00, 22 May 2008
14. *Işyar v. Bulgaria*, no. 391/03, 20 November 2008
15. *Slavcho Kostov v. Bulgaria*, no. 28674/03, 27 November 2008
16. *Shishmanov v. Bulgaria*, no. 37449/02, 8 January 2009
17. *Stoyan Dimitrov v. Bulgaria*, no. 36275/02, 22 October 2009
18. *Radkov v. Bulgaria (no. 2)*, no. 18382/05, 10 February 2011
19. *Iliev and Others v. Bulgaria*, nos. 4473/02 and 34138/04, 10 February 2011
20. *Shahanov v. Bulgaria*, no. 16391/05, 10 January 2012
21. *Iordan Petrov v. Bulgaria*, no. 22926/04, 24 January 2012
22. *Chervenkov v. Bulgaria*, no. 45358/04, 27 November 2012
23. *Sabev v. Bulgaria*, no. 27887/06, 28 May 2013
24. *Harakchiev and Tolumov v. Bulgaria*, nos. 15018/11 and 61199/12, 8 July 2014
25. *Manolov v. Bulgaria*, no. 23810/05, 4 November 2014