

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

FOURTH SECTION

DECISION

Applications nos. 15018/11 and 61199/12
Mitko Georgiev Harakchiev against Bulgaria and
Liudvik Slavov Tolumov against Bulgaria

The European Court of Human Rights (Fourth Section), sitting on 19 February 2013 as a Chamber composed of:

Ineta Ziemele, *President*,
David Thór Björgvinsson,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having regard to the above applications lodged on 22 February 2011 and 11 September 2012 respectively,

Having regard to the decision to grant priority to the above applications under Rule 41 of the Rules of Court.

Having deliberated, decides as follows:

THE FACTS

1. The applicant in the first application (no. 15018/11), Mr Mitko Georgiev Harakchiev, is a Bulgarian national who was born in 1968. He is serving a sentence of life imprisonment without commutation in Stara Zagora Prison.

2. The applicant in the second application (no. 61199/12), Mr Liudvik Slavov Tolumov, is also a Bulgarian national who was born in 1954. He is serving a sentence of life imprisonment with commutation in Plovdiv Prison.

3. Both applicants are represented before the Court by Ms S. Stefanova and Mr M. Ekimdzhiev, lawyers practising in Plovdiv.

A. The circumstances of the case

4. The facts of the case, as submitted by the applicants and as established by the Court on the basis of other materials, may be summarised as follows.

1. Mr Harakchiev

(a) Mr Harakchiev's criminal background and his life sentence without commutation

5. Mr Harakchiev has a number of convictions for various offences not involving violence.

6. On 21 January 2003 the Haskovo Regional Court convicted him of the illegal possession of a firearm and four armed robberies of motor vehicles, two of which had been characterised by murder attempts and two by murders, and sentenced him to life imprisonment without commutation.

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

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

(b) Conditions of detention in Stara Zagora Prison and prison regime applied to Mr Harakchiev

9. After his conviction and sentence became final, on an unspecified date Mr Harakchiev was transferred to Stara Zagora Prison to serve his life sentence without commutation and several other custodial sentences imposed in different proceedings.

10. The conditions of Mr Harakchiev's detention, as described by him, may be summarised as follows.

11. Mr Harakchiev's cell is in the prison's high-security wing designated for life prisoners. The cell, which is apparently quite small, has small windows covered with bars blocking access to natural light. At night the cell is lit by a sixty-watt light bulb.

12. The prison does not have an air-conditioning system. As a result, in summer the temperature in the cells is very high, and there is no fresh air. In winter, heating is only turned on for one hour in the morning, at noon and in the evening.

13. Cleanliness in the common and the service areas of the prison is maintained solely by bleaching them with calcium hypochlorite.

14. Mr Harakchiev relieves himself in a plastic bucket left in his cell. There is no running water in the cell, which prevents him from washing his hands after relieving himself.

15. He can go out of the cell three times a day for forty-five minutes, to take his meal in a special eating room. During each of those periods, he can empty the bucket, wash his hands and fill plastic bottles with drinking water.

16. The inmates in Stara Zagora Prison take a shower once every fourteen or fifteen days.

17. Visits by relatives and lawyers take place in a special room. The prisoners and the visitors are separated by a fine wire-net, and the prisoners have to remain seated. A prison officer is always present.

18. Food is of low quality, tasteless and insufficient in quantity. Meat is served once a week. During the rest of the week, it consists of beans, lentils, cabbage and potatoes, served as soups or stews.

19. Medical assistance in the prison consists of routinely giving all inmates aspirin or analgin. Inmates have to purchase other medicines themselves.

(c) Claims brought by Mr Harakchiev in relation to the conditions of his detention in Stara Zagora Prison

20. Since his incarceration Mr Harakchiev has brought a number of claims against the authorities under section 1(1) of the State and Municipalities Liability for Damage Act 1988 (see paragraph 90 below).

21. In a final judgment of 12 February 2009 (реш. № 1993 от 12 февруари 2009 г. по адм. д. № 9586/2008 г., ВАС, III о.) the Supreme Administrative Court dismissed a claim for damages brought by Mr Harakchiev under section 1(1) of the State and Municipalities Liability for Damage Act 1988 (see paragraph 90 below) in relation to the failure of the prison administration to provide him with newspapers. The court held that Mr Harakchiev had not proved that he had suffered non-pecuniary damage as a result of that.

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

Administrative Court dismissed Mr Harakchiev's claim for damages in relation to a failure of the prison administration to organise his daily walk in the open air in such a way as to compensate him for the fact that he was prevented from going outside on one occasion because of bad weather. The court – overturning the lower court's ruling on that point – held that Mr Harakchiev had failed to establish that he had suffered non-pecuniary damage; that could not simply be taken for granted on the basis of the failure of the prison administration to organise the daily walk.

23. In a final judgment of 18 January 2010 (реш. № 695 от 18 януари 2010 г. по адм. д. № 8404/2009 г., ВАС, III о.) the Supreme Administrative Court dismissed a claim for damages brought by Mr Harakchiev in relation to the failure of the prison administration to allow him to watch films in the prison's video projection room. The courts held, *inter alia*, that that would have been incompatible with the requirement, flowing from his prison regime, to remain isolated in a locked cell.

24. In a final judgment of 9 November 2010 (реш. № 13333 от 9 ноември 2010 г. по адм. д. № 6668/2009 г., ВАС, III о.) the Supreme Administrative Court allowed a claim for damages brought by Mr Harakchiev in relation to the failure of the prison administration, for a period of about five years, to provide him with shoes free of charge, as required by statute. The court, relying on Article 3 of the Convention, held that that failure had humiliated Mr Harakchiev and had systematically impinged on his human dignity. It observed that his feelings of humiliation had been exacerbated as a result of his full isolation. It awarded him 3,000 Bulgarian levs (BGN) (1,533.88 euros (EUR)), plus interest.

(d) Mr Harakchiev's correspondence in prison

25. Mr Harakchiev submits that his main mode of communication with his legal representatives before the Court is by letter. He alleges that all letters from his legal representatives to him are opened and read by the prison authorities, and that he has to present all his letters to his legal representatives to the prison authorities in an unsealed envelope. He says, without giving any further particulars, that the monitoring of his correspondence is proved by the fact that some of his letters did not reach his legal representatives. Lastly, he submits that the prison authorities monitor prisoners' letters by opening and reading them.

26. Mr Harakchiev does not present any evidence in support of his allegations.

2. Mr Tolumov

(a) Mr Tolumov's life sentence with commutation

27. Mr Tolumov was sentenced to life imprisonment with commutation. He was incarcerated in Plovdiv Prison in execution of his sentence on 14 October 2006.

(b) Conditions of detention in Plovdiv Prison and prison regime applied to Mr Tolumov

28. Mr Tolumov is alone in a cell in Plovdiv Prison's high-security wing designated for life prisoners.

29. The conditions of his detention, as described by him, may be summarised as follows.

30. His cell does not have ventilation or access to natural light. It is lit by a light bulb situated behind a metal grill built into the wall. The light is left on night and day, and the bulb is not capable of providing enough light.

31. The cell is furnished with a plank-bed, a metal cabinet built into the wall, a wooden cabinet, a table, which is fixed to the floor, and two stools, also fixed to the floor. As the cell is right next to the toilets, the humidity from them penetrates the walls and the floor, which produces mould.

32. Mr Tolumov relieves himself in a plastic bucket left in his cell. There is no running water in the cell, which prevents him from washing his hands after relieving himself.

33. He can go out of the cell three times a day for thirty minutes. During each of those periods, he can empty the bucket, wash his hands and take drinking water in plastic bottles.

34. The inmates in Plovdiv Prison take a shower once a week. Apparently the water is heated by an electric boiler and there is never enough hot water for all inmates.

35. Plovdiv Prison does not have an air-conditioning system. As a result, in summer the temperature in the cells is very high, and there is no fresh air. In winter, heating is turned on only during the day.

36. Lifers in Plovdiv Prison can go into the open air once a day, for one hour. Each time they are handcuffed.

37. Visits by relatives and lawyers take place in a special room. The prisoners and the visitors are separated by a fine wire-net, and the prisoners have to remain seated. A prison officer is always present.

38. Food is of low quality, tasteless and insufficient in quantity. Prisoners subjected to the "special regime" are entitled to one food parcel of up to five kilograms every six months.

39. Medical assistance in the prison consists of routinely giving all inmates aspirin or analgin. Inmates have to purchase other medicines themselves.

(c) Mr Tolumov's correspondence in prison

40. Mr Tolumov submits that all letters from his legal representative before the Court are being opened and read by the prison administration. He also submits that he has to give all letters to his legal representative to the prison administration without sealing the envelopes. The monitoring of his correspondence was proved by the letter "P" written on the back of each envelope.

41. In support of his allegations, Mr Tolumov submitted photocopies of the envelopes of three letters that he had addressed to his legal representative in January, February and March 2012. They bear illegible postmarks. On the back of each, there is a stamp reading "checked".

B. Relevant domestic law and practice

1. The sentencing system in Criminal Code 1968 over the years

42. Article 36 of the Criminal Code 1968 defines the aims of criminal punishment. Its first paragraph provides that the penalty is imposed with a view to (a) reforming the convict and rehabilitating him or her to comply with the law and good morals; (b) deterring the convict and preventing him or her from committing further offences; and (c) cautioning and deterring other members of society. Its second paragraph states that punishment shall not be intended to cause physical suffering or humiliation of human dignity.

43. The various criminal penalties are listed in Article 37 of the Code, and Articles 38-52 specify the characteristics of those penalties.

44. Under Articles 37 § 2 and 38 of the Code, as worded before the abolition of capital punishment in December 1998, the courts could impose the death penalty only for particularly serious wilful offences and only if they considered that the punitive and deterrent purposes of a criminal penalty could not be achieved by a lesser sentence. Under Article 38 § 4 of the Code, the death penalty could not be carried out until the President of the Republic had considered commuting it. Until 1995 the harshest sentence after the death penalty was imprisonment for up to thirty years in exceptional cases (Article 39 of the Code). In 1995 a new penalty was introduced: life imprisonment (*доживотен затвор*), defined by the newly added Article 38a § 1 of the Code as "confinement of the convicted person in a prison establishment until the end of his or her life". This sentence may be commuted by a court to thirty years' imprisonment after the convict had served twenty years of his or her sentence (Article 38a § 3 of the Code).

45. The death penalty was abolished with effect from 27 December 1998. At the same time, a new penalty was introduced: life imprisonment without commutation (*доживотен затвор без замяна*). This penalty

replaced capital punishment in the provisions of the Code dealing with specific offences.

46. Article 37 § 2 of the Code, as worded following the amendment, reads as follows:

> "The most serious offences, which threaten the foundations of the Republic, as well as other particularly serious wilful offences, shall, provisionally and exceptionally, be punishable by life imprisonment without commutation."

47. Article 38 of the Code, as worded following the amendment, reads as follows:

> "1. The penalty of life imprisonment without commutation ... shall be imposed only if the specific offence is particularly serious and the aims [of the punishment, as] laid down in Article 36 cannot be attained by means of a lesser punishment.
>
> 2. The penalty of life imprisonment without commutation cannot be imposed on a person who at the time of the commission of the offence has not attained the age of twenty or, as regards persons serving in the armed forces or during a time of war, the age of eighteen. The penalty of life imprisonment without commutation cannot be imposed on a woman who was pregnant at the time of the commission of the offence or is pregnant at the time when the sentence is being handed down."

48. The relevant part of the explanatory note that accompanied the amendment abolishing the death penalty read as follows:

> "... The draft law proposes to replace the death penalty with a new penalty, life imprisonment without commutation, which differs from life imprisonment. This penalty will remove the prisoner from society, depriving him of the possibility of committing new offences, and the penalty will have a deterrent effect on other would-be offenders ..."

49. Thus, since the abolition of the death penalty, the Code has provided for three types of custodial penalty: imprisonment for a period of up to thirty years, life imprisonment with a possibility of commutation, and life imprisonment without the possibility of commutation.

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

(a) Release on licence

50. Under the provisions of Article 70 § 1 of the Criminal Code 1968, release on licence is applicable only to fixed-term prison sentences. Offenders sentenced to life imprisonment, with or without the possibility of commutation, are not eligible for release on licence.

(b) Commutation of sentence by judicial decision

51. The Code of Criminal Procedure 1974 and the Code of Criminal Procedure 2005 provide for the possibility for a regional court, at the request of the regional prosecutor, to commute a life sentence to an ordinary

prison sentence (Articles 427 and 428 of the 1974 Code and Articles 449 and 450 of the 2005 Code). The regional court gives a reasoned decision; a negative decision may be challenged in the higher courts. If the prosecutor's proposal is rejected, no further commutation request may be submitted for two years. The legislation makes no provision for the prosecuting authorities to apply for adjustment of the sentence of offenders sentenced to life imprisonment without commutation.

(c) Presidential clemency

52. Under Article 98 point 11 of the 1991 Constitution, the power of clemency is a prerogative of the President of the Republic. Article 74 of the Criminal Code 1968, which explains the scope of this presidential power, reads as follows:

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

53. It is a discretionary power which the President has since 1991 traditionally delegated to the Vice-President of the Republic. The Vice-President may decide to exercise the power, in either form, at any time while the sentence is being served. His or her decision is unconditional and irrevocable. Refusal by the Vice-President to exercise his or her power is not subject to judicial or administrative review.

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

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

56. According to a report by the Director General of Prison Administration dated 15 September 2009, prisoners serving a life sentence without commutation had submitted about a hundred applications for clemency to the successive Vice-Presidents. None had been granted. According to the head of the Vice-President's Office, from 21 January 2002 to 7 September 2009 the advisory Committee received twenty-nine applications for clemency from sixteen persons sentenced to life imprisonment without commutation. None had been granted. He further explained that the Vice-President was not required to give reasons for his or her refusal, but the prisoners concerned could renew their applications for clemency without restrictions.

57. In two decrees of 23 January 2012 the newly elected President, who had taken office the previous day, 22 January 2012, delegated, like his predecessors, to the Vice-President power of clemency. He in addition set up a Clemency Commission to advise the Vice-President in the exercise of that power, and laid down rules of procedure governing the work of the Commission.

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

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

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

61. According to the report, in 2012 840 persons had filed 988 requests for presidential clemency. Sixty-five of those persons had filed more than one request. The vast majority of requests (98%) filed by prisoners (as opposed to relatives of theirs) had relied on one or a combination of the following reasons: 34% on the convicts' attitude to their offence, with some prisoners expressing regrets and others seeking to vindicate their acts or challenge the correctness of their convictions or sentences; 18% on the convicts' rehabilitation following their incarceration; 48% on humanitarian grounds (family difficulties, need to take care of children or elderly relatives, need to provide financial assistance to family members, need to reunite with family members, ill health, old age); and 7% had sought to portray the prisoners as victims of the prison, the courts or the system, with some requests citing the ill effects of incarceration or the impossibility for personal development in prison. The remaining 2% of requests had not cited

specific grounds. Only four requests had been filed not by the person concerned him- of herself, but by a legal representative.

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

63. The practice of the Commission had been based on the idea that clemency was a subsidiary means of reduction of the sentence, and was applicable in situations in which, on the one hand, there were no other means to alleviate the criminal repression, and on the other, the continued execution of the sentence was morally unjustifiable and inconsistent with the spirit of the law – when, due to circumstances obtaining after conviction, the situation of the convict was unusual, and the continued execution of the sentence did not have the intended beneficial effects but constituted unnecessary repression compromising the humane goals of criminal policy.

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

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

66. One of them had been a fifty-eight year old person sentenced to death in 1990 for a murder, the infliction of grievous bodily harm and a rape, whose death sentence had been commuted to life imprisonment without commutation in 1999, following the abolition of capital punishment in Bulgaria (see paragraph 45 above). In 2012 he had requested that his sentence be commuted to life imprisonment with commutation, citing his repentance and good behaviour, and the inhumanity of his sentence. The Commission had noted that that person had already spent twenty-two years in prison, eighteen of which in isolation, under the "special regime"

applicable to life prisoners without commutation (see paragraphs 70, 71, 73 and 76 below). The Commission had researched his case for six months, and had found a special circumstance – sustainable positive changes in his personality, which made it intolerable for him to continue to serve a sentence of life imprisonment without commutation. That development had been unequivocally established on the basis of the available documents, the reports of the experts who had worked with the prisoner throughout the years of his incarceration, a special psychological expert report obtained by the Commission, and an assessment, based on a variety of methods, of the risk of re-offending. All of those showed that that prisoner was particularly different from other lifers and other prisoners serving long terms of imprisonment. His criminal proclivities had given place to the display of attitudes and behaviour of compassion towards other prisoners and re-consideration of his offences. The offender's profile showed a successful correctional process – which was rare even for persons convicted of similar offences and sentenced to terms of imprisonment that were much shorter than the amount of time that the prisoner had already served. These factors placed him outside the scope of application of Article 38 § 1 of the Criminal Code 1968 (see paragraph 47 above).

67. The Commission had come to the view that the commutation of that prisoner's sentence to life imprisonment with commutation would serve the aims of punishment and would not lessen the moral condemnation of his acts. A pardon would not be tantamount to forgiveness of his criminal past but an acknowledgement of his efforts to distance himself from that past. It would also demonstrate to all other persons sentenced to life imprisonment without commutation that they would be able to improve their situation, because their efforts would be recognised by society, which continued to consider them as members. Lastly, the commutation of life imprisonment without commutation to life imprisonment with commutation did not give rise to a risk of re-offending.

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

3. The prison regime of prisoners serving a life sentence

(a) Under the Execution of Punishments Act 1969

69. Until June 2009 the regime of life prisoners was governed by sections 127a-127e of the Execution of Punishments Act 1969 (*Закон за изпълнение на наказанията* – "the 1969 Act"), added in 1995, when life imprisonment was introduced as a form of punishment (see paragraph 44 above), as well as by the regulations for the implementation of the Act. Following its amendment with effect from June 2002, the 1969 Act expressly provided for prisoners sentenced to life imprisonment without

commutation to be placed under the same prison regime as those serving an ordinary life sentence.

70. Section 127b(1) provided that when imposing a life sentence the court had to order the prisoner's placement under the strictest regime, the so-called "special regime". Prisoners placed under that regime were to be kept in locked single cells and subjected to heightened security and supervision (regulation 56(1) of the implementing regulations).

71. Section 127b(2) provided that, if they were of good conduct, after five years life prisoners could be placed under a lighter regime. The time spent in pre-trial detention did not form part of that period (regulation 167(2) of the implementing regulations). The decision to place a life prisoner under a lighter regime was taken by a commission consisting of prison staff and various other officials (section 17). Under section 58, the commission's decisions could be challenged by the Minister of Justice. Once under a lighter regime, life prisoners could, under certain conditions, be placed with the general prison population (section 127b(4)).

(b) Under the Execution of Punishments and Pre-Trial Detention Act 2009

72. In June 2009 and February 2010 the 1969 Act and the regulations for its implementation were superseded by, respectively, the Execution of Punishments and Pre-Trial Detention Act 2009 (*Закон за изпълнение на наказанията и задържането под стража* – "the 2009 Act") and the regulations for its implementation, issued on 2 February 2010.

73. Section 61(1) of the 2009 Act provides that when sentencing a convict to life imprisonment with or without commutation the court must order that he or she be placed under the "special regime" (the three regimes applicable in prisons are the "special regime", the "severe regime" and the "general regime" – section 65(2)). By section 71(2), persons placed under the "special regime" must be kept in constantly locked cells and be under heightened supervision. Section 71(3), which was inserted in December 2012 and came into effect on 1 January 2013, provides that persons sentenced to life imprisonment with or without commutation and placed under the "severe regime" are likewise to be kept in constantly locked cells and be placed under heightened supervision unless it is possible, having regard to the requirements of section 198(2), to place them with the general prison population. According to the explanatory note to the draft bill laid before Parliament, this new provision was necessary to fend off legal challenges brought by lifers to their being kept constantly under lock and key even though their regime had been changed from "special" to "severe" (see paragraphs 85-89 below).

74. Sections 197-199 specifically deal with the regime of life prisoners with or without commutation.

75. Section 197(1) provides that those punishments are to be served in purpose-built prisons or, failing such prisons, in separate units of other

prisons. Section 197(2) provides that in the absence of special provisions applicable to the regime of life prisoners, the provisions governing other forms of imprisonment apply to them as well.

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

77. Section 199(1) provides that life prisoners cannot be placed under the "general regime" and cannot be given awards that cannot be used inside the prison. Section 199(2) provides that persons sentenced to life imprisonment with commutation whose sentence has been commuted by a court to a fixed term of imprisonment (see paragraph 51 above), may be transferred from prison to an open penitentiary facility, where they may be placed under the "general regime" or the "light regime" (which is available only in open penitentiary facilities – section 65(3)).

78. The regime of life prisoners is, in addition, governed by regulations 213-220 of the implementing regulations of the 2009 Act. The regulations in respect of prisoners serving a sentence of life imprisonment without commutation are the same as for those serving a sentence of life imprisonment with commutation (regulation 220).

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

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

81. Regulation 216(1) provides that life prisoners may work in their cells or in purpose-built workstations, if available. Records have to be kept of their work days (regulation 216(2)).

82. Regulation 217, which echoes section 198(2) of the Act (see paragraph 76 above), provides that life prisoners may be placed with the general prison population and take part in common work, training, educational activities, sport, or other activities by decision of the Execution

of Sentences Commission on the basis of a personality assessment, provided that they have already been placed under the "severe regime".

83. Regulation 218, which echoes section 198(1) of the Act (see paragraph 76 above), provides that a life prisoner may be placed under a more lenient regime if he or she has shown good behaviour and has served not less than five years of his or her sentence (periods of pre-trial detention do not count).

84. Regulation 219(1), which echoes section 197(1) of the Act (see paragraph 75 above), provides that for a period of five years after their sentence has become final, life prisoners may be placed in special units of existing prisons or in a purpose-built prison, set by the Minister of Justice. During that period, a special team is in charge of the prisoner (regulation 219(2)). After the expiry of the period, and following an overall assessment of the prisoner, he or she may be placed in another prison and under different conditions (regulation 219(3)).

(c) The legal challenge to the 2009 Act's implementing regulations

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

86. In a judgment of 28 March 2011 (реш. № 4373 от 28 март 2011 г. по адм. д. № 10758/2010 г., ВАС, I о.) a three-member panel of the Supreme Administrative Court upheld the challenge. It found that the Minister of Justice had failed to follow the proper procedure for issuing the regulations. In particular, he had not published the draft regulations on the Ministry's website with a view to making them available to the public and obtaining comments, as required under section 26(2) of the Normative Acts Act 1973. This had been a serious omission. The panel went on to find that regulation 213, in as much as it required that life prisoners be kept constantly under lock and key, ran counter to section 197(1) of the 2009 Act (see paragraphs 75 and 79 above), because it laid down a requirement that did not flow from the text of the statute, which was impermissible for an implementing regulation; such a regulation could only particularise the manner of application of requirements flowing from the text of the statute. Regulation 213 could not be regarded as based on any other section of the 2009 Act either. The remaining part of regulation 213, as well as regulations 214 and 219 (see paragraphs 79, 80 and 84 above), were not contrary to the provisions of the 2009 Act.

87. On an appeal by the Minister, in a final judgment of 14 September 2011 (реш. № 11411 от 14 септември 2011 г. по адм. д. № 6341/2011 г., ВАС, петчл. с-в) a five-member panel of the Supreme Administrative Court overturned the three-member panel's judgment. It held that the failure to publish the draft regulations on the Ministry's website had not amounted to a material breach of the rules of procedure. It went on to state that

regulation 213 did not run counter to the provisions of the 2009 Act – it could be regarded as based on section 197(1) read in conjunction with section 71(1) of the Act (see paragraph 73 above) – the latter applied to all prisoners placed under the "special regime" and required that they be kept in separate and constantly locked cells.

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

89. As a result of the dismissal of that legal challenge, two claims for damages brought by the same life prisoners under section 1 of the State and Municipalities Liability for Damage Act 1988 (see paragraph 90 below) and based on the suffering allegedly endured as a result of their impoverished regime were rejected by the Supreme Administrative Court as inadmissible (опр. № 3355 от 7 март 2012 г. по адм. д. № 3154/2012 г., ВАС, петчл. с-в; опр. № 5065 от 6 април 2012 г. по адм. д. № 14339/2011 г., ВАС, петчл. с-в). The court held that those claims could only be pursued if the statutory instrument against which they were directed had been set aside in prior proceedings, which was not the case.

4. The State and Municipalities Liability for Damage Act 1988

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

91. Since 2003 the Bulgarian courts have started to award compensation under this provision to persons claiming to have suffered non-pecuniary damage as a result of poor material conditions of 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; *Georgiev v. Bulgaria* (dec.), no. 27241/02, 18 May 2010; *Iliev and Others v. Bulgaria*, nos. 4473/02 and 34138/04, 10 February 2011; and *Radkov v. Bulgaria (no. 2)*, no. 18382/05, 10 February 2011).

92. The courts have dealt with a number of claims brought by life prisoners under section 1(1) of the 1988 Act.

93. In a final judgment of 5 March 2009 (реш. № 1466 от 5 март 2009 г. по гр. д. № 6339/2007, ВКС, V г. о.) the Supreme Court of

Cassation upheld an award of BGN 1,000 (EUR 511.29) to a life prisoner in relation to the lack of sanitary facilities in his cell and the consequent need to use a bucket for sanitary purposes between November 2000 and November 2005. In a judgment of 11 July 2012 (реш. № 10166 от 11 юли 2012 г. по адм. д. № 15508/2011 г., ВАС, III о.) the Supreme Administrative Court[1] awarded the same amounts to each of two lifers placed under the "special regime", in respect of the non-pecuniary damage suffered by them as a result of having to relieve themselves in plastic buckets due to the lack of sanitary facilities in their cells between mid-April 2006 and March 2008, when they had been moved to cells containing such facilities. The court relied on this Court's judgments in *Iovchev v. Bulgaria* (no. 41211/98, 2 February 2006), *Radkov (no. 2)* (cited above) and *Shahanov v. Bulgaria* (no. 16391/05, 10 January 2012), and held that that had constituted treatment contrary to Article 3 of the Convention and therefore sounded in damages under section 1(1) of the 1988 Act.

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

95. Similarly, in a final judgment of 23 February 2009 (реш. № 82 от 23 февруари 2009 г. по гр. д. № 6452/2007 г., ВКС, III г. о.) the Supreme Court of Cassation dismissed a claim for damages brought by a life prisoner in relation to the failure of the prison administration to allow him to engage in work, educational and cultural activities and sport together with other inmates. The court held that the "special regime" applicable to life prisoners and the requirement of that regime that they be isolated from the general prison population made such activities impossible. It went on to say that the claimant had been able to engage in individual educational activities.

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

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

97. In a final decision of 16 March 2012 (опр. № 3837 от 16 март 2012 г. по адм. д. № 3256/2012 г., ВАС, III о.) the Supreme Administrative Court dismissed a claim in which a person sentenced to life imprisonment without commutation alleged that Parliament's enactment of a statute providing for such a punishment had been in breach of Article 3 of the Convention. It held that the enactment of a statute could not be regarded as administrative action within the meaning of section 1(1) of the 1988 Act.

98. In a judgment of 27 June 2012 (реш. № 421 от 27 юни 2012 г. по адм. д. № 305/2012 г., АСП, VI с-в) the Pleven Administrative Court dismissed a claim for damages brought by a life prisoner in relation to the size of his cell. It was not fully clear whether the cell had measured six or four and a half square metres, but the court held that even if it had measured only four and a half square metres, it could not be regarded as giving rise to inhuman or degrading treatment. It noted that for the time being Bulgarian law did not lay down minimum requirements for cell size (a requirement that each inmate be provided with at least four square metres was due to take effect in 2013).[1] In any event, the size of the claimant's cell was bigger than four square metres, and it did not matter that he was alone in a cell rather than together with other inmates in a bigger cell. The Supreme Administrative Court did not accept the claimant's appeal for examination, as he failed to pay the requisite fee (опр. № 14725 от 22 ноември 2012 г. по адм. д. № 12653/2012 г., ВАС, III о.).

5. Injunction proceedings against the authorities under Articles 256 and 257 of the Code of Administrative Procedure 2006

99. Under Articles 256 and 257 of the Code of Administrative Procedure 2006, which came into force on 12 July 2006, a person may bring proceedings to enjoin an administrative authority to carry out an action that it has the duty to carry out under a legal provision. If the court allows the claim, it enjoins the authority to carry out the action and fixes a time-limit.

6. Prisoners' correspondence

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

Article 30 § 5

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

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

Article 34

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

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

101. Section 33(1)(c) of the 1969 Act provided that prisoners had the right to correspondence, which was subject to control by the prison administration. Section 132d(3) of the Act, which applied to persons in pre-trial detention, likewise provided that their correspondence was subject to inspection by the prison administration. In a decision of 18 April 2006 (реш. № 4 от 18 април 2006 г. по к.д. № 11 от 2005 г., обн., ДВ, бр. 36 от 2 май 2006 г.) the Constitutional Court, acting pursuant to a request by the Chief Prosecutor, declared section 132d(3) unconstitutional. After analysing in detail the relevant constitutional and Convention provisions and making reference to, among others, the cases of *Campbell v. the United Kingdom* (25 March 1992, Series A no. 233), *Calogero Diana v. Italy* (15 November 1996, *Reports of Judgments and Decisions* 1996-V) and *Petra v. Romania* (23 September 1998, *Reports* 1998-VII), it held that a blanket authorisation to inspect the correspondence of all detainees without regard to their particular circumstances and the threat which they allegedly posed to society through such correspondence was contrary to the relevant provisions of the 1991 Constitution.

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

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

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

1. Report on CPT's 2008 visit to Bulgaria

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

> "74. ... [A]t the time of the visit, there were 18 life-sentenced prisoners at Sofia Prison. Three of the them had been integrated into the mainstream prisoner population, while the remainder were being held in a separate unit (Group 1).
>
> 75. Material conditions of detention in the lifer unit had remained basically unchanged since the 2006 visit. The installation of integral sanitation in the cells, with a shower head over the toilet and access to hot water all day, was a positive feature; however, as a result, prisoners had less occasions to leave their cells and interact with staff.
>
> Some of the lifers had their own television sets and playstations in their cells. At the time of the 2006 visit, lifers had had hot plates in their cells, to cook food, which increased their sense of independence and helped to pass the time. The hot plates had reportedly been withdrawn a few weeks before the visit for safety reasons, and lifers had immersion coils for heating water.
>
> 76. As regards activities, one notable change since the 2006 visit was the entry into operation of a social room ('club') in the lifer unit. This good facility was decorated in pleasant light colours and furnished with bookcases, a chess table with two chairs, a larger table with five chairs, a cupboard with games including a backgammon board, a television set with DVD player and a sink. Lifers were divided into three subgroups on the basis of common interests (playing cards, chess, discussing legal matters, etc.) and each group was allowed to use the social room for one hour each weekday. At weekends, there were only the two officers present, which made it difficult to organise activities.
>
> Lifers who were willing to work (12 of the 15 in the lifers unit) worked in their cells on the same kinds of piece work as was observed on the 2006 visit (e.g. putting strings on boutique bags).
>
> Further, outdoor exercise for one and a half hours per day was offered to all lifers. The delegation noted that a shelter had been provided at one end of the exercise yard.
>
> Despite the above-mentioned welcome introduction of a social room, which increased the amount of time spent out of the cells and in association with other prisoners, the daily regime in the lifer unit remained monotonous. **The CPT recommends that the Bulgarian authorities strive to enhance the programme of activities provided to life-sentenced prisoners at Sofia Prison, if necessary, by increasing staffing.**

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

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

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

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

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

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

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

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

2. Report on CPT's 2010 visit to Bulgaria

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

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

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

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

Lifers were being held one to a cell (measuring some 7 m^2). The cells and their furniture were in an advanced state of dilapidation. Further, there was no integral sanitation in the cells and access to the communal toilet was limited to three times a day; during the rest of the time and especially at night, prisoners resorted to buckets in their cells to comply with the needs of nature. The sanitary facilities were in a dilapidated state and unhygienic.

As regards activities, lifers could spend up to 3.5 hours a day outside their cells associating with other prisoners in the unit, participating in hobby groups, playing chess or engaging in sports. Outdoor exercise of one hour per day was taken in a small yard attached to the special unit (see paragraph 104). Lifers were also offered the possibility to periodically participate in group cultural and sports activities. All of them had a TV set in their cells (but three of the TV sets were broken) and there was access to cable television, as well as a continuous electricity supply. However, none of the lifers had work (though two of the lifers worked as cleaners on a voluntary basis).

118. There were 18 life-sentenced inmates at *Varna Prison* at the time of the visit, including six without the right to parole. Five of the lifers had been integrated in the mainstream prison population, while the rest were being held in a separate

high-security area (Group 3 on the ground floor) which also contained the disciplinary isolation cells.

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

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

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

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

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

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

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

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

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

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

"**Paragraph 116**

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

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

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

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

Paragraph[s] 117-119

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

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

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

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

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

The use of additional suppressive means (including handcuffs) is strictly laid down in the Law on Penalty Enforcement and Detention in Custody. As regards prisoners with life-time convictions being taken out of prison in handcuffs, this is only applied in single cases, and yet not at order of and with the participation of the prisons.

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

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

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

Paragraph 120

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

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

To solve the problem it is necessary to build the sanitary units in the dormitories of prisoners sentenced to life, and this task is scheduled to take place during the overall

renovation of the main premises of the prison. For this purpose a technical task will be prepared.

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

3. Report on CPT's 2012 visit to Bulgaria

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

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

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

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

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

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

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

35. The cells used to accommodate lifers in the high security units were small at both prisons (some 6 m² at Burgas Prison and 6.5 m² at Varna Prison) and yet were

holding up to two prisoners each. However, two cells at Burgas Prison had been created out of three and were larger (some 9 m² each) and had a fully partitioned sanitary annexe; this is in principle a far more satisfactory arrangement. At Varna Prison, one larger cell (of some 20 m²) accommodated five prisoners.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The occasional individual and group work observed in 2010 at Varna Prison had been discontinued. At Burgas Prison, the delegation was informed that regular anger management, behavioural and emotional group work organised by the social worker, which had been discontinued 18 months previously, was about to resume. **The CPT would like to receive confirmation of the resumption of these activities at Burgas Prison.**

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

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

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

"...

The Varna [P]rison

...

Material conditions in the lifers ward

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

– sanitary units are being constructed in each bedroom;

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

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

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

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

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

...

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

In the Burgas [P]rison

...

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

...

In the Varna [P]rison

...

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

...

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

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

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

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

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

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

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

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

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

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

COMPLAINTS

109. Mr Harakchiev alleges that his sentence of life imprisonment without commutation, which deprives him of any hope of a life outside prison, amounted, from the time of its imposition, to inhuman and degrading punishment, in breach of Article 3 of the Convention. Mr Harakchiev takes issue with two aspects of that sentence: the lack of any

prospect of release, and the lack of a non-discretionary procedure allowing its commutation to a lesser one.

110. Both Mr Harakchiev and Mr Tolumov allege that the detention regime to which they are being subjected as persons sentenced to life imprisonment respectively without and with commutation, coupled with the material conditions in which they are being kept, amount to either torture or to inhuman and degrading treatment, in breach of Article 3 of the Convention.

111. Both Mr Harakchiev and Mr Tolumov in addition complain under Article 8 of the Convention that the correspondence between them and their lawyers is being routinely opened and read by the prison authorities, and that some letters are not dispatched to their lawyers.

112. Lastly, both Mr Harakchiev and Mr Tolumov complain under Article 13 of the Convention that they do not have effective remedies in respect of their grievances under Article 3 of the Convention.

THE LAW

113. In respect of his complaint concerning the sentence of life imprisonment without commutation that he is serving, Mr Harakchiev relies on Article 3 of the Convention, which provides as follows:

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

114. The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

115. In respect of their complaint concerning the regime and the material conditions of their detention, the applicants rely on Article 3 of the Convention, whose text has been set out in paragraph 113 above.

116. The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

117. In respect of their complaint that the prison authorities are opening and reading their correspondence the applicants rely on Article 8 of the Convention, which provides, in so far as relevant:

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

country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

118. The Court notes that in a case concerning the correspondence of pre-trial detainees in Bulgaria it found that until 2006 the applicable provisions of the 1969 Act and of the statutory instruments issued under it required that the entirety of pre-detainees' incoming and outgoing correspondence, including letters to and from their lawyers, be subjected to inspection. On that basis, the Court accepted that there had been an interference with a pre-trial detainee's right to respect for his correspondence even though he had not produced any evidence that his letters had been opened and inspected by the prison authorities (see *Bochev v. Bulgaria*, no. 73481/01, § 94, 13 November 2008). However, the Court went on to say that there was no basis to assume that such interference had continued to exist following the amendment in 2006 of regulation 178(2) of the 1969 Act's implementing regulations to provide that letters had to be sealed and opened in the presence of a prison officer, in a manner allowing that officer to ensure that they do not contain money or other prohibited items (ibid., § 94 *in fine*).

119. In the present case, any complaints concerning the interception of correspondence under section 33(1)(c) of the 1969 Act (see paragraph 101 above) and its implementing regulations, which were repealed more than six months before the lodging of the two applications (see paragraph 72 above), are inadmissible for failure to comply with the six-month time-limit under Article 35 § 1 of the Convention.

120. As regards the period after February 2010, when the interception of prisoners' correspondence began to be governed by regulation 75 of the implementing regulations of the 2009 Act, the Court observes that the wording of regulation 75(3) is almost identical to that of regulation 178(2) of the implementing regulations of the 1969 Act, as amended in 2006 (see paragraphs 102 and 103 above). Therefore, as in *Bochev* (cited above, § 94 *in fine*), the Court finds no basis on which to assume that the applicants' correspondence after February 2010 has been systematically intercepted and read.

121. The Court further observes that Mr Harakchiev does not provide any evidence that his correspondence has been intercepted (see *Bragin v. Russia* (dec.), no. 8258/06, 28 January 2010). He also fails to furnish any evidence that any of his letters has not been sent to its addressee, and does not even submit details – such as dates (see *Fiecek v. Poland* (dec.), no. 27913/95, 23 October 2001) – of the letters that he alleges have been opened or not dispatched by the prison administration (see *Bragin*, cited above).

122. It follows that Mr Harakchiev's complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

123. By contrast, Mr Tolumov does submit evidence of three outgoing letters which have been controlled by the prison administration (see paragraph 41 above).

124. The Court therefore considers that it cannot, on the basis of the case file, determine the admissibility of Mr Tolumov's complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

125. In respect of their complaint that they do not have effective remedies in respect of their grievances under Article 3 of the Convention, the applicants rely on Article 13, 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."

126. The Court observes that part of the applicants' complaint, as framed by them, concerns the very fact that under Bulgarian law it is possible to sentence an offender to a penalty – life imprisonment without commutation – which cannot be commuted through legal channels other than presidential clemency. It therefore relates to the content of primary legislation. However, Article 13 of the Convention does not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before a national authority on the ground of being contrary to the Convention or to equivalent domestic legal norms (see, among other authorities, *James and Others v. the United Kingdom*, 21 February 1986, § 85, Series A no. 98, and *Appleby and Others v. the United Kingdom*, no. 44306/98, § 56, ECHR 2003-VI). The Court notes in this connection that recently the Supreme Administrative Court dismissed a claim under section 1(1) of the 1988 Act in which a person sentenced to life imprisonment without commutation alleged that in enacting a statute providing for such a punishment Parliament had acted in breach of Article 3 of the Convention (see paragraph 97 above).

127. The same goes for the part of the complaint concerning the detention regime applicable to the applicants, which is also based on express statutory and regulatory provisions.

128. It follows that these parts of the complaint are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

129. As for the part of the complaint which concerns the material conditions of the applicants' detention, the Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

For these reasons, the Court unanimously

Decides to join the applications;

Decides to adjourn the examination of the applicants' complaints concerning (a) Mr Harakchiev's sentence of life imprisonment without commutation; (b) the regime and the conditions of the applicants' detention; (c) the alleged monitoring of Mr Tolumov's correspondence in prison; and (d) the lack of effective remedies in respect of the material conditions of the applicants' detention;

Declares the remainder of the applications inadmissible.

Lawrence Early Registrar	Ineta Ziemele President