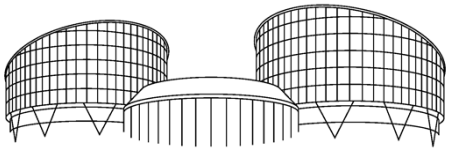

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MANOLOV v. BULGARIA

(Application no. 23810/05)

JUDGMENT

STRASBOURG

4 November 2014

FINAL

04/02/2015

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

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In the case of Manolov v. Bulgaria,

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

Ineta Ziemele, *President*,
Päivi Hirvelä,
Ledi Bianku,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Paul Mahoney,
Faris Vehabović, *judges*,
and Françoise Elens-Passos, *Section Registrar*,

Having deliberated in private on 14 October 2014,

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

PROCEDURE

1. The case originated in an application (no. 23810/05) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Biser Nikolov Manolov ("the applicant"), on 10 June 2005.

2. The applicant was represented by Mr M. Ekimdzhiev and Ms S. Stefanova, lawyers practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. On 8 December 2009 the Court decided to give the Government notice of the complaints relating to the applicant's sentence of life imprisonment without commutation and the regime and conditions of his detention under that sentence, and to declare the remainder of the application inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1970.

A. The applicant's sentence and prison regime

5. On an unspecified date in the second half of 1994 the applicant was arrested and detained in investigation detention facilities in Kyustendil and Sofia in the framework of a criminal investigation against him. On 25 November 1994 he was transferred to Pazardzhik Prison.

6. On 11 July 1996 the Kyustendil Regional Court found the applicant guilty of a number of violent offences committed between May 1993 and August 1994 and sentenced him to death. On 4 February 1999 the Sofia Court of Appeal upheld the applicant's conviction but, following the abolition of the death penalty with effect from 27 December 1998 and the concomitant introduction of the sentence of life imprisonment without commutation (see paragraph 30 below), replaced his sentence with life imprisonment without commutation.

7. On 27 January 2000 the applicant was transferred from Pazardzhik Prison to Bobov Dol Prison, where he has been serving his sentence ever since. By order of the prison governor, he was placed alone in a constantly locked cell, as required under the legal provisions governing the regime of life prisoners (see paragraph 30 below).

8. In a decision of 30 November 2001, which became final on 25 April 2002, the Sofia Court of Appeal decided that the applicant was to serve his sentence under the "special regime" applicable to life prisoners at that time (see paragraph 30 below).

9. On 19 April 2007 a special commission in charge of deciding on changes in a prisoner's regime decided to place the applicant under the "enhanced regime" (see paragraph 30 below).

10. On 1 June 2009, when the Execution of Punishments and Pre-Trial Detention Act 2009 superseded the Execution of Punishments Act 1969, the applicant was placed under the "severe" regime (see paragraph 30 below). His continued to be kept isolated from the rest of the prison population, as normally required under the relevant provisions of the 2009 Act and the regulations for its application (ibid.). The above-mentioned commission has apparently not decided to place the applicant together with the main prison population, as permitted under those provisions under certain conditions (ibid.).

B. Conditions of the applicant's detention in Bobov Dol Prison

11. In Bobov Dol Prison, the applicant was kept in an individual cell measuring thirteen and a half square metres. The Government submitted that not later than 2007 significant improvements had been made to that cell. In particular, central heating was installed and the old wooden window frames were replaced by modern ones measuring 138 cm by 50 cm and providing enough temperature isolation and access to sunlight. According to

evidence put before the Kyustendil Administrative Court and its judgment of 9 June 2011 (see paragraph 28 below), those works were completed in October or November 2006.

12. At all relevant times the applicant's cell contained an in-cell toilet and a water tap.

13. The applicant's assertions in respect of the material conditions of his detention are voluminous and lack clarity in that grievances apparently relating to different periods of time are not clearly distinguished. The applicant alleged that during unspecified periods of his incarceration in Bobov Dol Prison he had encountered the following problems: food had been substandard and insufficient in quantity, with some meals containing pieces of plastic, hairs and fur, and the meat meals often containing meat substitutes or no meat at all; the plates in which the food was being served had been dirty and greasy; tap water had been muddy; there had been iron pieces bulging from the bed-spring which had made his bed very uncomfortable, and the bedding provided had been unclean; the taking of a shower (twenty minutes per week) and applicant's visits to the doctor had been counted as part of his daily outdoor activities; the yard in which he took his daily outdoor exercise had not had toilet facilities, which had prevented him from relieving his needs before the end of the exercise period, and inmates had not been provided with waterproof clothing when spending time outdoors; guard dogs had been placed several metres from the window of the applicant's cell and with their constant barking at night had prevented him from sleeping; other inmates and the applicant himself had found and killed rats in the cells; the temperature in the applicant's cell had not risen above twelve degrees Celsius in winter and the heating coal provided in winter had been insufficient; there had been no heating in the bathroom and inmates had been freezing when taking showers in winter; the applicant's cell lacked sufficient sunlight; for a long time the cell's floor had been left riddled with holes and not covered with linoleum; and the cleaning products provided for the in-cell toilet had been insufficient, consisting of a mere two spoonfuls of chlorine a month, which had made the smell unbearable as the main part of the cell was only separated from the toilet area by a screen.

14. The evidence submitted by the applicant in support of those allegations consisted of his own statements, a statement written in the same handwriting as in all other letters sent by the applicant but co-signed by two other inmates on an unspecified date, and copies of more than fifty complaints that the applicant had sent to the prison administration and various other authorities between 2000 and 2009 and of some of the replies received. The vast majority of those complaints concerned the food served in prison: concrete instances in which the applicant had allegedly not received a full portion, yoghurt had been missing, the food had had a bad taste or smell, or meat had not been provided or had been of low quality.

Some of those complaints had been acknowledged as well-founded by the prison administration and the applicant had been assured that measures would be taken.

15. In some of those complaints the applicant raised concerns in relation to the poor quality of coal given to inmates before the installation of a central heating system in October 2006, the fact that bed linen or clothes had not been properly washed, the choice of products available for purchase at the prison canteen, and the fact that a refrigerator in the canteen used to store personal food items had not functioned for a certain period of time.

16. For their part, the Government denied the applicant's allegations concerning the material conditions of his detention. They said that the quality and quantity of food served to inmates had been fully adequate, and that hygienic conditions in the prison canteen, including in relation to cutlery, had been maintained in line with the applicable standards. Water in the prison had not been muddy; it came from the same pipeline as the water supplied to the town of Bobov Dol. Inmates could also buy bottled mineral water from the prison canteen. The allegation that iron pieces had protruded from the applicant's bed was not true, and his bed sheets had been changed and washed every week. Bathing time had not been counted as part of the outdoor walk time; unlike other inmates, who had only had one hour of daily outdoor walk time, life prisoners had been allowed one and a half hours. The only reasons for interrupting that walk had been rowdy conduct or bad weather; in the latter case, more outdoor time had been made available later on. The yard designated for the daily outdoor walk did not have a toilet for security and hygiene reasons. Such a toilet was in any event not needed because that yard was adjacent to the applicant's cell, which was equipped with a toilet. If the applicant had felt an urgent need to go to the toilet during his daily walk, he could have always used that one, and would have never been prevented from doing so. The prison administration was not under a duty to provide inmates with waterproof clothing; when such clothing had been provided as a matter of courtesy, the inmates had very quickly damaged it. It was not true that guard dogs had been kept near the applicant's cell; such dogs had not been used at all in the zone at issue. Nor had there been rats inside the applicant's cell; its door, windows and piping had been built in a way not permitting rats to come in, and the prison administration was under a duty regularly to carry out pest control. The applicant's cell had had central heating since 2007, and the temperature inside the cell and the bathroom had been around eighteen degrees Celsius. The cell's window, which, like all windows in Bobov Dol Prison, had had its old wooden frame replaced with a new PVC one, did not have any covers preventing sunlight from coming in and could be freely opened, and the cell's floor was covered with linoleum which was in a good condition. Cleaning products were distributed weekly. Cable television was available

in the cell. Lastly, works were under way for enlargement of the area for outdoor walks.

17. Apparently in view of the fact that the applicant is serving a sentence of life imprisonment without commutation, he is always handcuffed when taken out of his cell, including inside the prison. The handcuffs are removed once the destination has been reached, if security conditions permit. In particular, the applicant is handcuffed when taken out of his cell for his daily outdoor walk, but the handcuffs are removed during the walk.

18. It does not appear that the applicant has ever been involved in violent incidents in prison or disciplined for violent or aggressive conduct. There is no indication that he has ever tried to abscond from prison either.

C. The applicant's claims for damages against the authorities

19. The facts summarised in this subsection were set out by the applicant in two separate applications to this Court lodged by him in August 2010 (application no. 53109/10) and September 2011 (application no. 67629/11). In those applications he complained about various issues, such as an alleged lack of access to a court, the outcome of proceedings for damages, the impossibility to vote in the October 2011 presidential elections in Bulgaria, and an alleged interference with his right to correspondence.

20. From the materials submitted by the applicant in those two cases it transpires that in 2010-11 he brought a number of claims for damages under section 1 the State and Municipalities Liability for Damage Act 1988 (see paragraph 30 below) before the territorially competent Kyustendil Administrative Court. Those claims concerned dozens of allegations concerning various aspects of the conditions of his detention and specific incidents allegedly breaching his rights.

21. The claims that directly relate to the subject matter of the present case concerned, *inter alia*: the allegedly poor quality of tap water in Bobov Dol Prison; the allegedly insufficient heating; the allegedly insufficient surface of the area for outdoor walks; the alleged failure of the prison authorities to transfer the applicant to a collective cell with a view to enabling him to have contacts with other inmates; the alleged failure of the prison authorities to provide any educational courses for the applicant or to enable him to take part in artistic, cultural, sport, religious or other activities; the fact that the applicant had been routinely handcuffed when taken out of his cell; and allegedly frequent body searches by prison guards.

22. Other claims concerned matters such as an alleged refusal of the prison authorities in 2010 to provide the applicant with copies of receipts showing that he had paid for mail sent by him; alleged delays and obstacles in respect of mail that the applicant had wished to send; an alleged refusal to allow the applicant to use a combined MP3/radio device as opposed to

separate radio and MP3 devices, which were allowed; an alleged refusal of the prison administration to wash the applicant's underwear, etc.

23. In relation to several claims, the Kyustendil Administrative Court instructed the applicant to clarify the link between the facts described in his statement of claim and the alleged damage, and to submit a declaration of means. As the applicant did not comply with those instructions, the court discontinued the proceedings in respect of some of the claims.

24. At least four cases proceeded to judgment on the merits.

25. In a case decided on the merits on 25 February 2011, the Kyustendil Administrative Court dismissed the applicant's claim for damages concerning the fact that tap water in Bobov Dol Prison had on occasions been muddy and unfit for drinking. The court noted that although there was evidence that sometimes, especially after heavy rains, the quality of that water had been bad, the laboratory analysis had confirmed that it had been safe for drinking. The prison was connected to the general water supply system and got the same water as that supplied to households nearby. The applicant's allegations, for instance that he had endured acute stomach pain and had required medical assistance, had not been made out. Moreover, the applicant had had the possibility to buy bottled mineral water from the prison canteen or, if he did not have the necessary means for that, boil tap water using a device which he confirmed that he had in his cell, or filter it. The applicant's appeal on points of law against that judgment was not examined by the Supreme Administrative Court as he failed to pay the requisite fee of BGN 5 for the processing of the appeal (see опр. № 9496 от 28 юни 2011 г. по адм. д. № 8190/2011 г., ВАС, III о.).

26. A case decided on the merits by the Kyustendil Administrative Court on 1 March 2011 concerned a specific incident on 2 September 2009 in which prison staff had entered the applicant's cell for a search accompanied by a dog trained to find narcotic drugs. The court dismissed the applicant's claim that he had endured stress because of his fear of dogs. There was no evidence that the dog, which had been kept on a leash, had been handled in an inappropriate manner. That case ended in a judgment of the Supreme Administrative Court of 14 November 2011 (реш. № 14766 от 14 ноември 2011 г. по адм. д. № 8803/2011 г., ВАС, III о.) whereby the applicant's appeal on points of law against the Kyustendil Administrative Court's judgment was dismissed.

27. Another case decided on the merits by the Kyustendil Administrative Court on 17 March 2011 concerned thirty-three separate allegations relating to various aspects of the conditions of the applicant's detention. It appears that in his statement of claim the applicant had made confused assertions about the periods of time to which those claims related and that he eventually only claimed non-pecuniary damages in respect of a limited period of time in the first half of 2010. The court dismissed all of the applicant's claims. With regard, in particular, to the surface of the area for

daily outdoor walks, it found that it was one hundred square metres. It went on to note that the bodily searches to which the applicant had been subjected had not involved any undressing or inappropriate touching of his private parts but patting, through his clothes, with a view to determining whether or not he had had on him any unauthorised items. The systematic handcuffing of the applicant was not in breach of the Execution of Punishments and Pre-Trial Detention Act 2009 or the regulations for its application, was not inconsistent with the applicant's prison regime, could be considered necessary in view of the seriousness of the offences in relation to which he had been sentenced to life imprisonment, and had not been intended to humiliate the applicant. With regard to the claim that the applicant had not been transferred to a multi-occupancy cell despite the possibility to do so for life prisoners serving their life sentence under the "severe" regime, the court found that those matters fell within the discretion of the special commission for the execution of sentences; there had therefore not been a failure on the part of the prison authorities to observe a binding legal obligation. The same went for educational courses. The applicant's appeal on points of law against that judgment was not examined by the Supreme Administrative Court as he failed to pay the requisite fee of 5 Bulgarian levs (BGN) (the equivalent of 2.56 euros (EUR)) for the processing of the appeal (see опр. № 9090 от 23 юни 2011 г. по адм. д. № 8057/2011 г., ВАС, III о.).

28. The applicant's claim concerning the allegedly low temperatures in his cell related to two winters: the periods between October 2005 and April 2006, and the period between October 2006 and April 2007. The court ordered an expert report, which showed that the amount of coal provided to inmates in Bobov Dol Prison in 2005-06 had been adequate and that central heating had been installed in the prison in October 2006. In a judgment of 9 June 2011 the Kyustendil Administrative Court found that the prison administration had provided the applicant with enough coal to secure a temperature of approximately twenty degrees Celsius in his cell during the first period, and that central heating had been installed before the second period. The applicant's claim was therefore dismissed. That judgment was apparently not validly appealed against.

29. From other materials submitted by the applicant it appears that in 2012 he tried to bring a number of further claims under section 1 of the State and Municipalities Liability for Damage Act 1988 (see paragraph 30 below) in relation to various instances in which his rights had allegedly been breached by the prison authorities. None of those claims was accepted for examination by the Kyustendil Administrative Court as a result of apparent failures on the part of the applicant to formulate his claims properly and pay the requisite court fees. In a series of decisions given in 2012-13 the Supreme Administrative Court upheld the lower court's decisions not to examine the claims on the merits.

II. RELEVANT DOMESTIC LAW AND OTHER MATERIALS

30. The law relating to (a) the sentence of life imprisonment without commutation; (b) acts of clemency and adjustment of a sentence and their applicability to that type of sentence; (c) the detention regime of life prisoners; (d) prisoners' claims for damages against the authorities; and (e) prohibitive and mandatory injunctions against the authorities has been set out in detail in paragraphs 51-152 of the Court's judgment in *Harakchiev and Tolumov v. Bulgaria* (nos. 15018/11 and 61199/12, 8 July 2014).

31. The relevant parts of the general reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and of its reports on its visits to Bulgaria in 1999, 2002, 2006, 2008, 2010 and 2012 have likewise been set out in paragraphs 165-74 of the Court's judgment in *Harakchiev and Tolumov* (cited above).

THE LAW

I. ADMISSIBILITY

32. The Government submitted that the applicant had not exhausted domestic remedies as he had not brought a claim for damages under section 1 of the State and Municipalities Liability for Damage Act 1988.

33. The applicant replied that such a claim was not an effective remedy in respect of grievances concerning the prison regime applicable to life prisoners. He pointed out that in 2009 the Supreme Court of Cassation had refused to award damages under section 1 of the 1988 Act to a life prisoner complaining of his prison regime. The applicant went on to submit that such proceedings would not be effective because Bulgarian courts often approached claims by prisoners under that provision very formalistically and restrictively and rejected them arbitrarily, and also on account of the sometimes prohibitive court fees and the delays in the payment of awards of damages against the authorities.

34. The Court notes that one of the applicant's complaints, as formulated by him, concerns the very fact that under Bulgarian law it is possible to sentence a convicted offender to a penalty – life imprisonment without commutation – that cannot be commuted through legal channels other than presidential clemency. It therefore relates to the content of primary legislation. It is clear, and indeed confirmed by the Supreme Administrative Court's case-law, that a claim under section 1 of the State and Municipalities Liability for Damage Act 1988 does not lie in respect of that (see *Harakchiev and Tolumov*, cited above, § 145).

35. As to whether such a claim could be regarded as an effective remedy in respect of the regime and conditions of the applicant's detention, the Court notes that the applicant brought a considerable number of claims for damages in relation to the regime and conditions of his detention. While the Kyustendil Administrative Court discontinued the proceedings pursuant to a number of those claims for various reasons, it did examine some of the claims on the merits (see paragraphs 25-28 above). However, under the Court's well-established case-law claims for damages can only be regarded as an effective domestic remedy in respect of allegedly poor conditions of detention if the applicant has been released or placed in Article 3-compliant conditions (see *Harakchiev and Tolumov*, cited above, §§ 222-25, with further references). The applicant is still incarcerated, and it does not appear that, except with respect to heating, cell windows and size of the outdoor walk area, the conditions of his detention – in particular, his very restrictive prison regime – have significantly changed in recent years (see paragraphs 8-10 and 30 above). A claim for damages under section 1 of the State and Municipalities Liability for Damage Act 1988 or another legal provision is therefore, on its own, not capable of providing the applicant adequate relief. Moreover, such a claim, in so far as directed against conditions of incarceration that flow directly from the prison regime applicable to the applicant, would not have stood any prospect of success, given that the Bulgarian courts have already dismissed such claims on the basis that such conditions were not unlawful (ibid., § 226). Indeed, that is what happened in one of the cases brought by the applicant, in relation to his claim concerning the systematic use of handcuffs (see paragraph 27 above).

36. The Government's objection of non-exhaustion of domestic remedies must therefore be rejected.

37. The part of the application presently under examination (another part was previously declared inadmissible in the partial decision of 8 December 2009 – see paragraph 3 above) is, moreover, not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other ground. It must therefore be declared admissible.

II. MERITS

A. Conditions and regime of the applicant's detention

38. The applicant complained that the conditions and regime of his incarceration in Bobov Dol Prison, including his being routinely handcuffed when taken out of his cell, had amounted to inhuman and degrading treatment. He relied on Article 3 of the Convention.

39. Article 3 of the Convention provides as follows:

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

40. The Government made detailed submissions in relation to the material conditions of the applicant's detention in Bobov Dol Prison (see paragraph 16 above), and went on to say that the applicant had not had any particular health problems and that his health had been regularly monitored. They also pointed out that the applicant had fully benefitted from all rights available under his prison regime: to receive two visits and one food parcel per month, to receive money from the outside, and to have access to a telephone. He was also entitled to an hour and a half of daily outdoor walk. As regards the use of handcuffs, the Government submitted that for security reasons, under the applicable rules persons sentenced to life imprisonment had to be handcuffed when escorted. However, the handcuffs were removed during the daily walk and each time security conditions made it possible.

41. The applicant submitted that he had been held in isolation in his cell, and could not socialise with other inmates, even during his daily walk. He went on to say that even if it were to be accepted that the material conditions of his detention had improved in 2008, the period of time before that was sufficient for a finding that he had been held in inhuman and degrading conditions. He referred to his detailed allegations in respect of those conditions (see paragraph 13 above) and to several reports describing the conditions in which life prisoners in Bulgaria were kept.

42. The Court notes that it has not been disputed that, in spite of the statutory differences between the "special", "enhanced" and "severe" prison regimes successively applied to the applicant since 2000, the applicant remained in a permanently locked cell, isolated from the rest of the prison population, and subjected to special security arrangements throughout the entire period of his incarceration in Bobov Dol Prison (see paragraphs 8-10 and 30 above). In its recent judgment in *Harakchiev and Tolumov* (cited above, §§ 203-09), the Court found that such automatic isolation, in application of the relevant provisions of the Execution of Punishments Act 1969 and later of the Execution of Punishments and Pre-Trial Detention Act 2009, as well as the regulations for their application, was in breach of Article 3 of the Convention. It sees no reason to hold otherwise in the present case. Although the applicant was convicted and sentenced for a number of violent offences committed in 1993-94, there is no indication that since his arrest in 1994 he has been involved in any violent incidents with prison staff or other inmates or has tried to abscond from prison.

43. Furthermore, the applicant was routinely handcuffed when taken out of his cell, apparently again as a result of application of the rules governing the regime of life prisoners, as interpreted by the administration of Bobov Dol Prison (see paragraphs 17 and 30 above). The Court has already had

occasion to hold that, if not based on proper risk considerations, the systematic use of handcuffs in respect of prisoners taken out of their cells but still kept in a secure environment was in breach of Article 3 of the Convention (see *Kashavelov v. Bulgaria*, no. 891/05, §§ 38-40, 20 January 2011, as well as *Piechowicz v. Poland*, no. 20071/07, § 174, 17 April 2012, and *Horych v. Poland*, no. 13621/08, § 99, 17 April 2012). As already noted, in the present case there is no allegation that the applicant has ever behaved aggressively or tried to abscond, or that there existed reasons to believe that he posed a security risk to prison staff or other inmates (see paragraph 18 above). Nonetheless, he was, throughout his incarceration in Bobov Dol Prison, systematically handcuffed each time he was taken out of his cell, a practice apparently regarded as fully justified solely on account of the seriousness of the offences in respect of which he was sentenced to life imprisonment (see paragraph 27 above).

44. On the other hand, the Court notes that a number of the applicant's allegations concerning the material conditions of his detention were examined by the Kyustendil Administrative Court in some detail and dismissed on the facts (see paragraphs 25-28 above).

45. However, even accepting that the bulk of those allegations, reiterated by the applicant in the instant proceedings, have not been made out beyond reasonable doubt, the Court considers that the other aspects of the conditions of the applicant's detention – in particular, the automatic restrictions flowing from his prison regime – were, taken together, serious enough to be qualified as inhuman and degrading treatment.

46. There has therefore been a breach of Article 3 of the Convention.

B. Life imprisonment without commutation

47. The applicant alleged that his sentence of life imprisonment without commutation had amounted to inhuman and degrading punishment, in breach of Article 3 of the Convention.

48. The text of that Article has been set out in paragraph 39 above.

49. The Government did not make any submissions in relation to this complaint.

50. The applicant submitted that his sentence had condemned him to isolation for the rest of his life and had deprived him of any hope of a normal life. The lack of any, however limited, prospect of release, and of procedures whereby his sentence could be adjusted, meant that that sentence had, from the very moment of its imposition, amounted to inhuman and degrading treatment. The presidential power of clemency could not be regarded as providing a realistic prospect of release.

51. In its recent judgment in *Harakchiev and Tolumov* (cited above, §§ 247-68), the Court considered whether Mr Harakchiev's sentence of life imprisonment without commutation could be regarded as giving rise to a

breach of Article 3 of the Convention. The Court found that from the time when that sentence had become final – November 2004 – until the beginning of 2012, it could not be regarded as reducible, as required under the Court's case-law under Article 3 in relation to life sentences, for two reasons. First, it was unclear whether before a 2006 amendment to the Criminal Code 1968 that had expressly provided that the presidential power of clemency extended to that type of sentence, the sentence had been *de jure* reducible. Secondly, the manner in which the presidential power of clemency had been exercised before the early months of 2012 had been quite opaque, and there had existed no concrete examples showing that persons serving sentences of life imprisonment without commutation could hope to benefit from the exercise of that power and obtain an adjustment of their sentence. Mr Harakchiev's sentence could not therefore be regarded as *de facto* reducible before that time. The Court went on to say that although there was no right to rehabilitation under the Convention, its Article 3 required the Contracting States to give life prisoners a chance, however remote, to someday regain their freedom. For that chance to be genuine, those prisoners had to be given a proper opportunity to rehabilitate themselves. In that context, while Contracting States had a wide margin of appreciation to decide on such things as the regime and conditions of a life prisoner's incarceration, those points could not be considered as a matter of indifference. Mr Harakchiev had been subjected to a particularly stringent prison regime, which had entailed almost complete isolation and very limited possibilities for social contacts, work or education, and had been kept in unsatisfactory material conditions. He could not therefore be regarded as being able to entertain a real hope that he might one day achieve and demonstrate progress towards rehabilitation and on that basis seek an adjustment of his sentence. The Court accordingly found that there had been a breach of Article 3 of the Convention, but went on to caution that this finding was not to be understood as giving Mr Harakchiev the prospect of imminent release.

52. In the instant case, the applicant's sentence of life imprisonment without commutation became final in 1999, and his very restrictive prison regime has apparently been maintained, with some variations, since that time, with no educational or other courses or group activities (see paragraphs 8, 10, 21, 27 and 30 above). In those circumstances, the Court sees no reason to depart from its ruling in *Harakchiev and Tolumov* (cited above, §§ 247-67), and finds that there has been a breach of Article 3 of the Convention. However, as in that case, the Court notes that this finding cannot be understood as giving the applicant the prospect of imminent release (ibid., § 268).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed 30,000 euros (EUR) in non-pecuniary damages in respect of the suffering resulting from the impossibility to seek a reduction of his sentence of life imprisonment without commutation and from the conditions and regime of his detention under that sentence.

55. The Government did not comment on the applicant's claim.

56. The Court considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage suffered by the applicant as a result of the breach of Article 3 of the Convention relating to the impossibility for him to obtain an adjustment of his sentence of life imprisonment without commutation (see *Harakchiev and Tolumov*, cited above, § 285). It accordingly makes no award under this head.

57. Conversely, the Court considers that the applicant must have suffered non-pecuniary damage as a result of the breach of Article 3 of the Convention relating to the regime and conditions of his detention, and that the finding of a violation does not in itself amount to sufficient just satisfaction in that regard (ibid., § 286). Taking into account all the circumstances of the case, and ruling on an equitable basis, as required under Article 41 of the Convention, the Court awards the applicant EUR 3,000, plus any tax that may be chargeable on that amount, under this head.

B. Costs and expenses

58. The applicant sought reimbursement of EUR 3,640 incurred in lawyers' fees for fifty-two hours of work on the proceedings before the Court, at the rate of EUR 70 per hour, plus EUR 40 for postage and EUR 30 for office supplies. In support of his claims, the applicant submitted a fee agreement and a time-sheet. He requested that any award made by the Court under this head be made directly payable to his legal representatives, Mr M. Ekimdzhiev and Ms S. Stefanova.

59. The Government did not comment on the applicant's claim.

60. 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. Having

regard to the materials in its possession and these considerations, the Court finds it reasonable to award the applicant the sum of EUR 500, plus any tax that may be chargeable to him, to be paid to his legal representatives, Mr M. Ekimdzhiev and Ms S. Stefanova, in respect of lawyers' fees. With regard to the claims for postage and office supplies, the Court notes that the applicant has not submitted supporting documents showing that he has actually incurred those expenses. In those circumstances, and bearing in mind the terms of Rule 60 §§ 2 and 3 of its Rules, the Court makes no award in respect of these heads of claim.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of application admissible;

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

3. *Holds* that there has been a violation of Article 3 of the Convention in relation to the impossibility for the applicant to obtain a reduction of his sentence of life imprisonment without commutation from the time when it became final;

4. *Holds* that the finding of a violation of Article 3 of the Convention in relation to the impossibility for the applicant to obtain a reduction of his sentence of life imprisonment without commutation from the time when it became final constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered by him on that account;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:
      (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid to the applicant's legal representatives, Mr M. Ekimdzhiev and Ms S. Stefanova;

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

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 November 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Ineta Ziemele
Registrar	President