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

Communicated on 20 March 2014

FOURTH SECTION

Applications nos. 36925/10, 9717/13, 21487/12, 72893/12,
73196/12 and 77718/12
Svetlomir Nikolov NESHKOV against Bulgaria,
Georgi Ivanov TSEKOV against Bulgaria,
Pavel Enchev SIMEONOV against Bulgaria,
Yordan Kolev YORDANOV against Bulgaria and
Ivan Ivanov ZLATEV against Bulgaria

STATEMENT OF FACTS

1. Applications nos. 36925/10 and 9717/13 were lodged on 18 June 2010 and 27 December 2012 respectively by Mr Svetlomir Nikolov Neshkov, a Bulgarian national born in 1971 and currently detained in Vratsa Prison.

2. Application no. 21487/12 was lodged on 16 March 2012 by Mr Georgi Ivanov Tsekov, a Bulgarian national born in 1973 and currently detained in Burgas Prison.

3. Application no. 72893/12 was lodged on 5 November 2012 by Mr Pavel Enchev Simeonov, a Bulgarian national born in 1976 and currently detained in Burgas Prison.

4. Application no. 73196/12 was lodged on 7 November 2012 by Mr Yordan Kolev Yordanov, a Bulgarian national born in 1962 and currently detained in a closed-type prison hostel in Troyan attached to Lovech Prison.

5. Application no. 77718/12 was lodged on 16 October 2012 by Mr Ivan Ivanov Zlatev, a Bulgarian national born in 1965 and currently detained in Burgas Prison.

A. The circumstances of the case

6. The facts of the case, as submitted by the applicants and established by the Court at this stage of the proceedings on the basis of material obtained of its own motion, may be summarised as follows.

1. The case of Mr Neshkov

7. Mr Neshkov has apparently been incarcerated since 2002 and is serving a combined sentence of thirty years' imprisonment. From June 2002 until June 2005 he was housed in Varna Prison. He was kept in the prison's high-security area, Group 3 (life prisoners and other prisoners under special regime) on the ground floor, in cells nos. 15, 19, 19a and 24.

8. In June 2005 Mr Neshkov was transferred to Lovech Prison, and then in October 2006 to Vratsa Prison. He does not provide any information about the conditions in those prisons.

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

(a) The claim for damages in relation to the conditions in Stara Zagora Prison

10. On 8 August 2008 Mr Neshkov brought a claim under section 1 of the State and Municipalities Liability for Damage Act 1988 (see paragraph 102 below) in relation to the conditions of his detention in Stara Zagora Prison. He sought 7,000 Bulgarian levs (BGN) in non-pecuniary damages. On 25 September 2008 the Sofia City Administrative Court discontinued the proceedings, citing Mr Neshkov's failure to state clearly the alleged facts and his request for relief. On an appeal by Mr Neshkov, in a decision of 16 December 2008 (опр. № 13975 от 16 декември 2008 г. по адм. д. № 14809/2008 г., ВАС, III о.) the Supreme Administrative Court quashed that decision and directed that the claim be examined on the merits. On 18 February 2009 the Sofia City Administrative Court transferred the case to the territorially competent Stara Zagora Administrative Court.

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

12. In a judgment of 6 July 2009 (реш. № 12 от 6 юли 2009 г. по адм. д. № 104/2009 г., АС-Враца) the Vratsa Administrative Court dismissed Mr Neshkov's claim. It noted that the exact periods of time when he had been housed in Stara Zagora Prison in 2002-08 could be established only for 2007, because the prison's records for the remaining years had not been preserved. In 2007, Mr Neshkov had been housed in that prison on five separate occasions: on 18-19 January, alone in a cell; on 30-31 March, in a cell with three other inmates; on 4-6 April, in a cell with three other inmates; on 14-15 June, in a cell with two other inmates; and on 3-4 July, in a cell with one other inmate. During those periods, he had not been provided with bed linen. The cells in which he had been kept had been infested with cockroaches, had not been sufficiently lit during the day but constantly lit at night, and had not had in-cell toilets. As a result, Mr Neshkov had had to relieve himself in a bucket and urinate in a plastic bottle. The court made no findings in relation to the size of the cells or overcrowding, noting that at the relevant time there had been no binding legal requirement for minimum

space per prisoner. However, it went on to say that Mr Neshkov had failed to prove that he had suffered any non-pecuniary harm as a result of those conditions. It also had to be borne in mind that he had only spent short periods of time in those cells. Whereas a long period of time in such extremely poor conditions of detention could cause mental suffering, the same could not be said of a short period. There was therefore no damage to make good.

13. Mr Neshkov appealed on points of law, arguing, *inter alia*, that the Vratsa Administrative Court had erred by dismissing his claim as unproved in relation to the remainder of the period 2002-08 based on the lack of relevant prison records. He also challenged the court's ruling on the existence of non-pecuniary damage.

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

(b) The claim for damages in relation to the conditions in Varna Prison

15. On 24 April 2009 Mr Neshkov brought a claim against the Ministry of Justice under section 1 of the State and Municipalities Liability for Damage Act 1988 (see paragraph 102 below) in relation to the conditions of his detention in Varna Prison in 2002-05. He sought BGN 50,000, plus interest, in non-pecuniary damages.

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

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

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

five-member panel of the Supreme Administrative Court upheld the three-member panel's decision.

19. In the meantime, on 29 September 2009 the Varna Administrative Court decided to strike one of Mr Neshkov's witnesses off. It found that that witness, who was incarcerated, was a dangerous criminal regarded by the prison authorities as cruel and extremely resilient. There was therefore a risk that, if transferred to the court to take part in a hearing, he might try to flee. The court instructed Mr Neshkov to seek another witness in relation to the facts that he was seeking to prove through that witness' testimony.

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

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

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

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

24. The Varna Administrative Court re-examined the case at four hearings. It also obtained, by way of a letter of request to the Lovech

Administrative Court, the statement of a witness for the applicant who was in Lovech Prison.

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

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

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

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

> "... [T]he [lower] court gathered all relevant evidence, analysed it in depth and in detail, and came to correct and lawful findings that are fully shared by this court.
>
> Having elucidated the facts, the [lower] court was right to hold that the latest date on which prison officials were proved to have carried out the impugned actions or omissions during the period under consideration was 19 August 2003. Not one piece

> of evidence concerns the period after that date. The court was therefore right to hold that this was the point in time when the impugned actions and omissions of the [prison] administration came to an end. ... [T]he five-year limitation period [therefore] started to run on that date and expired on 19 August 2008. In those circumstances, and given that the statement of claim was lodged on 24 April 2009, it was correct to hold that, regardless of the veracity or otherwise of the factual allegations about the period from 7 June 2002 until 23 April 2004, the claim concerning that period was time-barred. As regards the remainder of the period – between 24 April 2004 and 20 May 2005 – the case file does not contain any evidence showing that the alleged unlawful actions and omissions of officials of Varna Prison have indeed taken place. The prerequisites for allowing a claim under section 1 of the [1988 Act] are not in place, and the lower court was right to reject the claim as unproved."

2. The case of Mr Tsekov

29. On an unspecified date Mr Tsekov entered Burgas Prison to serve a sentence of imprisonment. It appears that he is still detained there.

30. Mr Tsekov alleges that the cell in which he is being kept (either cell no. 317 or cell no. 309 on the third floor) measures about four by five or six metres and houses between fourteen and twenty-two inmates, who sleep on triple bunk beds. The cell has two windows close to the ceiling, one metre by fifty centimetres each, which allegedly do not allow direct sunlight into the cell or its proper ventilation. Since there are no cells for non-smokers, Mr Tsekov has to share the cell with smokers, which he alleges is particularly problematic for him in view of the lack of ventilation. There are four or five television sets in the cell which show different programmes.

31. According to Mr Tsekov, there is no running water or toilet in the cell, and inmates have to use a bucket to relieve themselves at night, when the cell is locked. Mr Tsekov's floor has only four Asian-type toilets without running water for the approximately two hundred and ten inmates who are housed on that floor, and only two or three showers, which often do not function (and, when they function, have hot water only twice a week for four hours); as a result, inmates have to use small cans to bathe themselves.

32. According to Mr Tsekov, the prison canteen measures about four or five by fifteen metres and accommodates eighty people at the same time, which causes severe overcrowding and discomfort while eating. The quality of the food is very poor, and outside food parcels do not compensate for that, especially since there are no refrigerators in which to store them.

33. Mr Tsekov alleges that there is no place in the prison for self-cooking, sports or cinema.

34. Lastly, Mr Tsekov, who apparently has no health insurance, claims that health care in the prison is inadequate, with no qualified doctors but only a feldsher working on site, and no provision of medicines free of charge.

3. The case of Mr Simeonov

35. On an unspecified date Mr Simeonov entered Burgas Prison, where he is currently serving a sentence of imprisonment.

36. Mr Simeonov alleges that the cell in which he is being kept (cell no. 309 om the third floor) measures about twenty square metres and houses fifteen inmates. There is no running water or toilet in the cell. From eight o'clock in the evening until six o'clock in the morning, during which time

the cell apparently remains locked, the inmates have to use buckets to relieve their needs. There are four toilets on the floor but access to them is limited as they are used by about two hundred inmates.

37. Mr Simeonov says that he is allowed to take a shower twice a week, between 1.30 p.m. and 5.30 p.m. However, the bathroom, which measures six square metres, features only one shower and two sinks and usually the inmates use small cans to pour water on themselves. The size of the bathroom and the time allowed for showering make it impossible for all two hundred inmates who use the bathroom to shower properly. Immediately adjacent to the bathroom are the two litter containers for the entire floor.

38. According to Mr Simeonov, many inmates suffer from tuberculosis as a result of the poor hygienic conditions in the prison. He does not however allege that he has himself contracted the disease.

39. Mr Simeonov also complains that telephone calls made from prison are expensive, that the food shop in the prison is overpriced, and that health care in the prison is inadequate.

4. The case of Mr Yordanov

(a) Mr Yordanov's account of the conditions of his detention

40. Mr Yordanov submits that has been detained in Bulgaria since 2007, following his extradition from Hungary. He is serving a ten-year sentence of imprisonment. He was transferred from one prison to another several times. He claims that the conditions of his detention in all prisons were similar, their common features being overcrowding, with less than four square metres of floor space per prisoner, poor hygiene, and severe restrictions on parcels and visits.

41. Mr Yordanov submits that initially he was detained at Sofia Prison. He was not subjected to medical screening upon his arrival there. He says that he was not given cutlery and bed sheets and had to sleep on a bare mattress. He could not obtain them even after complaining to the prison inspector. He also complains of the poor hygiene in that prison and the low quality of the food. Inmates had to eat in the cells and, since they were not given plates, had to eat from boxes.

42. Mr Yordanov submits that he was later transferred to Pleven Prison. He complains that the cell there was overcrowded, with no running water or toilet. After 8 p.m. the inmates were locked in their cells with no access to the toilet, and had to relieve themselves in buckets. Mr Yordanov was allowed to shower once a week, for about fifteen to twenty minutes, together with fifteen to twenty other inmates, in the three showers installed on his floor. Mr Yordanov also alleges that the quality of the food was poor.

43. Following the quashing of his conviction on 20 February 2008 by the Supreme Court of Cassation and the remittal of his case, Mr Yordanov was transferred to the prison's recidivists unit, and, in spite of his numerous complaints, was not moved from there until 2010.

44. In the summer of 2010 Mr Yordanov was transferred to Lovech Prison. He claims that the conditions of his detention there were as poor as in the previous two prisons. He says that in winter the heating was being turned on only twice a day for about twenty minutes. As a result of that and of the fact that the windows did not close properly, the temperature in the

cell never went above 14 degrees Celsius. Mr Yordanov further submits that the toilets were very dirty. He worked in the prison's workshop, and claims that the working conditions were poor and that the workshop was not properly heated in winter. Mr Yordanov also says that the prison food shop was overpriced.

45. On an unspecified date Mr Yordanov was transferred to a closed-type prison hostel in Troyan that is attached to Lovech Prison. He complains of overcrowding and says that the conditions there are similar to those in the prisons in which he was housed before that.

46. Lastly, Mr Yordanov alleges that inmates who have spent less than three years in prison have no health insurance, and as a result do not get proper medical treatment. He says that as a result of the poor conditions of his detention he is suffering from chronic colitis and periodontitis, and has lost four teeth.

(b) Cases that appear to have been brought by Mr Yordanov in relation to the conditions of his detention

47. In late 2010 Mr Yordanov brought a claim under section 1 of the State and Municipalities Liability for Damage Act 1988 (see paragraph 102 below) in relation to the conditions of his detention in Sofia Prison earlier that month. He sought BGN 1,000 in non-pecuniary damages. In a judgment of 10 April 2012 (реш. № 1997 от 10 април 2012 г. по адм. д. № 9619/2010 г., АС-София град) the Sofia City Administrative Court found that the conditions of Mr Yordanov's confinement in Sofia Prison between 15 and 17 December 2010 – lack of glass on the windows during a very cold winter period, poor hygiene, and lack of proper separation between the in-cell toilet and the rest of the cell – did not meet the minimum standards laid down in the Execution of Punishments and Pre-Trial Detention Act 2009 and the regulations for its application (see paragraphs 86-94 below). The court also had regard to Article 3 of the Convention. Taking however into account the small amount of time – less than forty-eight hours – that Mr Yordanov had spent in those conditions, the court decided to award him BGN 100. The Chief Directorate for the Execution of Punishments appealed, and in a judgment of 4 April 2013 (реш. № 4688 от 4 април 2013 г. по адм. д. № 7759/2012 г., ВАС, III о.) the Supreme Administrative Court fully upheld the lower court's judgment.

48. On 13 April 2011 Mr Yordanov brought a claim under section 1 of the State and Municipalities Liability for Damage Act 1988 (see paragraph 102 below) in relation to the conditions of his detention in a transfer cell in Sofia Prison on 3-7 April 2011 and the failure of the prison authorities to provide him a hot meal on 7-8 April 2011. He sought BGN 1,000 in non-pecuniary damages in relation to the stress endured by him on account of the poor conditions in the cell, BGN 1,000 in non-pecuniary damages in relation to the fact that the cell had been infested with rats, and BGN 1,000 in non-pecuniary damages in relation to the failure to provide him with a hot meal. In a judgment of 1 April 2013 (реш. № 2146 от 1 април 2013 г., по адм. д. № 3060/2011 г., АС-София-град) the Sofia City Administrative Court, having regard to, *inter alia*, Article 3 of the Convention, found that the poor conditions in the cell in which Mr Yordanov had been kept, the presence of rats in that cell, and the lack of

proper food had caused him non-pecuniary damage. The court awarded Mr Yordanov BGN 100 in respect of the first head of claim, BGN 300 in respect of the second head of claim, and BGN 100 in respect of the third head of claim. In a judgment of 17 January 2014 (реш. № 619 от 17 януари 2014 г. по адм. д. № 9147/2013 г., ВАС, III о.) the Supreme Administrative Court quashed that judgment and partly dismissed the claim and partly remitted the case. It held, by reference to this Court's judgment in *Shahanov v. Bulgaria* (no. 16391/05, 10 January 2012), that the lower court had erred by dealing with the first and second heads of claim separately. The proper approach was to analyse them in combination and to focus on their cumulative effect on the inmate's well-being. That part of the case was therefore to be remitted. The head of claim concerning the failure to provide Mr Yordanov with a hot meal was, for its part, unfounded, because there was evidence that he had been provided with a sufficiently calorific food package instead. The proceedings on remittal are apparently still pending.

49. In 2012 Mr Yordanov brought a claim under section 1 of the State and Municipalities Liability for Damage Act 1988 (see paragraph 102 below) in relation to the conditions of his detention in Stara Zagora Prison, through which he had been transferred on 21 and 22 May 2012. He alleged that there he had been subjected to ill-treatment because he had at first been put for about an hour together with fifteen other inmates in a cell measuring two by two metres, and then moved to a cell measuring two and a half by two and a half metres, which he had had to share with three other inmates. That cell had had no running water, toilet or proper access to light and air. In a judgment of 11 March 2013 (реш. № 92 от 11 март 2013 г. по адм. д. № 800/2012 г., АС-Велико Търново) the Veliko Tarnovo Administrative Court dismissed the claim, noting that section 43(3) of the Execution of Punishments and Pre-Trial Detention Act 2009, which laid down a minimum requirement of four square metres of floor space per prisoner, as well as regulation 20(3) of the regulations for the application of that Act, which made the availability of in-cell toilets and running water mandatory, had not yet come into force (see paragraphs 89, 92 and 93 below). The prison authorities had therefore not acted unlawfully by putting Mr Yordanov in the two cells. Mr Yordanov appealed. In a judgment of 17 February 2014 (реш. № 2204 от 17 февруари 2014 г. адм. д. № 5584/2013 г., ВАС, III о.) the Supreme Administrative Court quashed the lower court's judgment and remitted the case. It noted that the lower court had constituted as a co-defendant the administration of Stara Zagora Prison, which could not be a proper defendant to a claim under section 1 of the 1988 Act. Its judgment was therefore inadmissible. The proceedings on remittal are apparently still pending.

5. The case of Mr Zlatev

50. Since 25 April 2002 Mr Zlatev has been detained in Burgas Prison in execution of a fourteen-year sentence of imprisonment.

51. It appears that in the 1980s Mr Zlatev's left wrist was amputated following a trauma. Since 1983 he has been suffering from bronchial asthma. Since his incarceration he has been admitted to the prison hospital in Lovech for treatment of his asthma at least seven times, the latest apparently being in May-June 2011.

52. Mr Zlatev complains of overcrowding and says that his cell measures fifteen square metres and houses twenty inmates. He alleges that there is insufficient light in the cell and that the inmates have to use buckets to relieve their needs at night. He also submits that there are only four Asian-type toilets, two sinks and one shower on his floor, for one hundred and seventy-seven inmates.

53. Mr Zlatev also complains of the allegedly very poor hygiene in the prison canteen. According to him, as a result inmates routinely suffer from stomach and intestinal infections.

B. Relevant reports on the conditions in Bulgarian prisons

1. *Relevant reports of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*

(a) Report on the September 2006 visit

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

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

(b) Report on the October 2010 visit

55. 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, in particular, Burgas and Varna Prisons (footnotes, save for footnote 26, omitted):

> "106. ... Varna Prison is an establishment for adult men (on remand and sentenced), comprising a closed prison and two open-type prison hostels. The building of the closed prison was constructed in the late 1920s in what were at the time the outskirts of Varna and is now one of the residential areas of the city. With a capacity of 350 places, on the first day of the visit the closed prison was holding 528 prisoners, of whom 82 were on remand and the remainder were sentenced (including 18 life-sentenced prisoners).
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> ...
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> 107. In the closed prison, prisoner accommodation was provided in a cross-shaped building on three levels, with three of the wings containing a total of some 70 cells of varying sizes and the fourth wing being occupied by the medical centre, cinema hall and visiting rooms. Inmates were distributed into nine groups according to legal criteria and regime[: [o]n the ground floor, Group 1 (sentenced prisoners with health problems and working prisoners), Group 2 (sentenced working prisoners) and Group 3 (lifers and other prisoners under special regime). On the first floor, Group 4 (admission unit and prisoners on remand), and Groups 5 and 6 (remand prisoners). On the second floor, Groups 7, 8 and 9 (sentenced prisoners).].
>
> The situation was marked by extreme overcrowding, which exacerbated the already problematic material conditions of an obsolete building constructed 80 years

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

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

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

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

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

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

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

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

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

– remove the third tier of the bunk beds;

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

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

– improve the state of the common sanitary facilities;

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

– refurbish and enlarge the prison bathroom;

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

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

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

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

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

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

(c) Report on the May 2012 visit

56. A delegation of the CPT visited Bulgaria from 4 to 10 May 2012. In its ensuing report (CPT/Inf (2012) 32), published on 4 December 2012, the CPT noted the following in relation to, in particular, Burgas and Varna Prisons (footnotes omitted):

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

...

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

...

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

...

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

Overcrowding remains a major problem in Bulgaria's penitentiary system, with the prison population again on the rise (9,788 at the time of the 2012 visit). The delegation observed disturbing levels of overcrowding in all sections of the two prisons visited (see paragraph 22). At the same time, it appeared, from the information provided by the authorities, that recourse to probation had remained at the same level, and that the use of early release had only slightly increased since the 2010 visit.

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

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

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

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

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

13. Further, the CPT was struck by the very large number of allegations of corrupt practices by prison staff received at Burgas and Varna Prisons; its delegation gained the distinct impression that corruption was endemic at both establishments. As regards Burgas Prison in particular, the phenomenon appeared to extend to senior management. The allegations referred to prisoners being asked to pay money to prison/medical staff in order to be allowed to benefit from services provided for by

law (e.g. access to medical care, transfer to a hospital, transfer to prison hostels, early release) or to be granted certain privileges (access to work for instance). Irrespective of whether each and every allegation is well-founded, the frequency, consistency and seriousness of the allegations received during the visit is a clear indication of a major problem. The CPT wishes to stress that the widespread conviction alone of the existence of a culture of corruption in a place of detention brings in its wake discrimination, violence, insecurity and, ultimately, a loss of respect for authority. **The CPT calls upon the Bulgarian authorities to take decisive action to combat the phenomenon of corruption in all prisons. Prison staff and public officials associated with the prison system should be given the clear message that seeking advantages from prisoners or their relatives is not acceptable; this message should be reiterated in an appropriate form at suitable intervals.**

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

...

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

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

...

C. Conditions of detention at Burgas and Varna Prisons

1. Material conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

– improve the state of the communal sanitary facilities;

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

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

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

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

2. Activities

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

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

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

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

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

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

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

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

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

3. Food

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

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

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

...

D. Health-care services

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

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

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

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

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

In the light of the above, and taking into account the long-standing recommendations of the CPT in this field, **the Committee calls upon the Bulgarian authorities to considerably reinforce the health-care teams at both Burgas and Varna Prisons. More specifically:**

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

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

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

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

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

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

At Burgas Prison, the medical examination on admission took place immediately upon admission. By contrast, delays of up to seven days were observed at Varna Prison. At both establishments, the medical examination was cursory, consisting

merely of asking the prisoner questions about previous diseases, and taking his pulse and blood pressure.

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

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

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

In the light of the above, **the CPT reiterates its recommendation that steps be taken to ensure that prison health-care services perform a thorough screening of newly-arrived prisoners for injuries. In this context, the report completed by the doctor should contain, in addition to a detailed description of injuries observed, any allegations made by the prisoner concerned and the doctor's conclusions as to the consistency between those allegations and the objective medical findings. Further, whenever injuries are recorded which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the record should be systematically brought to the attention of the relevant prosecutor. Moreover, the results of every examination, including the above-mentioned statements and the doctor's conclusions, should be made available to the prisoner and his lawyer.**

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

...

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

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

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

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

...

49. The situation encountered at the two prisons was aggravated by the fact that the vast majority of inmates did not have medical insurance. In their response to the CPT's report on the 2010 visit, the Bulgarian authorities had acknowledged the problem and at the outset of the visit, assured the delegation that the GDIN would bear the necessary costs in such cases. However, it became clear during the visit that prisoners who did not have the state health insurance were unable to receive specialist/outside hospital care, except in emergencies. On a number of occasions, the delegation had to intervene to ensure that prisoners with serious health problems who did not have medical insurance were referred to hospital for further evaluation and treatment. **The CPT wishes to stress that it is totally unacceptable for sick prisoners to be deprived of care until such time as their state of health becomes critical.**

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

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

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

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

57. A report submitted by the Bulgarian Helsinki Committee in October 2011 within the fourth and fifth cycle of reporting in respect of Bulgaria under Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (in force with respect to Bulgaria since 16 December 1986), says the following at pp. 13-14:

> "... Out of the 12 prison facilities, accommodating an inmate population of 9,006 as of 18 May 2011,33 none were built in the past 20 years. The prison buildings in Lovech, Pazardzhik, Vratsa, Stara Zagora, Varna, and Burgas were built in the 1920s and 1930s, while the Sofia prison is a century old. This rather dilapidated material base is now meeting the pressure of massive overpopulation and thus raising concerns about the acceptability of the living conditions provided vis-à-vis the requirements of Article 16 of the Convention.
>
> The living space in the cells of the Burgas, Varna, Sofia and Pleven prisons remains insufficient, and requires the use of double and even triple bunks – a clear indicator of overcrowding. The explanatory notes of the 2008 Strategy for the Development of the Correctional Facilities point out that the living space in most cells is approximately 2 sq. m. per person, while the recommended standard is 6 sq. m. Since 2008 the situation deteriorated due to the overall increase of the number of prisoners in Bulgaria. During the most recent visit to the Varna prison, carried out by the BHC penitentiary institutions research team at the end of September 2010, the average living space per person was 1 sq. m.
>
> On 18 and 19 August 2011, a team of BHC researchers visited the prison in the city of Burgas and found that over the past year the number of persons deprived of liberty had increased dramatically. At the time of the visit, 866 inmates were accommodated in the main building of the prison, whose official capacity was for 371 inmates. The research team visited two prisoners‟ groups (number seven and eight), a total of 240 persons, who shared the living space of a corridor on the fourth floor of the main building of the facility. Their cells were not equally divided in terms of area as some of the cells were former dining halls that had to be reallocated due to the increasing number of prisoners. This means that in certain sections of the prison inmates could only have their meals while standing up in the rather narrow corridor. Usually, between 15 and 44 persons shared a cell. In cell No 419, BHC witnessed the accommodation of 44 persons in a 55 sq. m. cell that had only 40 beds available. Thus, four of the inmates who lived in that cell were forced to sleep on the floor space between beds. During the day, their mattresses were rolled up and stored under other inmates‟ beds. The only open space in the cells consisted of the aisles between the beds.
>
> None of the cells at the Burgas or Varna prisons have separate sanitary facilities. In the abovementioned section of the Burgas prison, 240 inmates share a total of three toilets and only one shower in a deplorably unsanitary state. As cell doors are locked at night, instead of toilet facilities, all persons deprived of liberty have to use buckets that are in alarming proximity to their beds and are also clearly visible by all other inmates. Not only most cells do not have drinking water, but their windows are too small to provide fresh air (especially during the warmer seasons) and sunlight sufficient for all the inmates. In Varna, cell doors are perforated due to rodent infestation. The tremendous overcrowding and the resultant drastic deterioration of the living conditions, lack of sufficient living space and separate sanitary facilities within the cells, as well as the personnel shortages and escalating tensions among inmates, more and more often lead to inter-prisoner violence.
>
> In respect of health care, services in the prisons are not integrated with the national healthcare system in terms of facility standards, administration, provision of medical check-ups, statistics, prophylactics, and preventive care. Most medical centres within the prisons fail to meet the requirements of the *Medical Institutions Act*. Over the past year, BHC has registered a sharp increase in the number of complaints sent by

> inmates to the BHC legal defen[c]e programme, regarding healthcare provision. The underlying reasons are staff and equipment deficiencies, as well as unavailability of specialised assistance. No independent control is exerted to ensure adequate provision of services that affect directly inmates‟ health status."

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

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

3. Reports of the Ombudsman of the Republic of Bulgaria

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

(a) 2012 report

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

61. In his annual report for 2012 under the national preventive mechanism the Ombudsman noted, *inter alia*, that the problems in relation to overcrowding and living conditions in the prisons had accumulated for decades and were well known. During the preceding twenty years, major repairs had only been carried out in one prison and three old buildings had been converted into open-type prison hostels. He went on to say that his inspections had led him to conclude that the conditions in almost all prisons and closed-type prison hostels could be characterised as subjecting the inmates to inhuman or degrading treatment. In relation in particular to overcrowding, the Ombudsman was of the view that Bulgarian law did not law down any mechanism allowing the enforcement of minimum standards on the housing of prisoners. An amendment to the Execution of Punishments and Pre-Trial Detention Act 2009 in December 2012 had made provision for the transfer of prisoners to another facility in case of lack of capacity of the prison to which they had been allocated (see paragraph 98 below). However, that possibility could serve no practical purpose, because all prisons in the country, except two correctional institutions for juveniles and Sliven Prison, which housed female prisoners, were overcrowded, in the sense of providing less than four square metres per prisoner. The worst

example was Burgas Prison, where the available space per inmate was one square metre, which was in practice even less, because that was not the unencumbered area but the living area, including the space occupied by beds and tables. In the Ombudsman's opinion, the architecture of the old prisons did not allow conditions for individual work with inmates and required additional staff to ensure their safety. The construction of toilets had led to a reduction in the residential space. Moreover, construction works required the emptying of parts of the prisons, which led to even more overcrowding. In most prisons, reconstruction was impossible in practice. It would partly improve conditions, but would not solve the issue of overcrowding. There was therefore an urgent need to build new prisons and prison hostels. The Ombudsman outlined the possibilities in that regard.

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

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

64. Medical care was also a major problem. While primary medical examinations were well organised, the equipment of prison medical facilities was insufficient and below the level of a normal general practitioner surgery. Prophylactic care and monitoring of chronically ill inmates was substandard. Following an amendment to the Execution of Punishments and Pre-Trial Detention Act 2009 in December 2012 (see paragraph 97 below), the issue with the health insurance coverage of inmates had been resolved. However, problems with the financing of prison medical facilities and hospitals remained.

(b) 2013 report

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

66. In his annual report for 2013 under the national preventive mechanism, published in Bulgarian on 17 February 2014, the Ombudsman said, *inter alia*, that the material conditions in Burgas Prison continued to be unacceptable and were to be regarded as inhuman and degrading. That was the most overcrowded prison in Bulgaria, with on average less than two

square metres per prisoner, and in some places less than one square metre. The rule in that prison was triple-bunking, and its buildings were very old and run down. The two closed-type hostels attached to the prison were also overcrowded, with slightly more than three square metres per prisoner. In the prison, unimpeded access to the toilets at all times, especially at night, was a problem, and the toilets themselves were very unsanitary and run down. Nor did all prisoners have access to basic cleaning products. The building of Varna Prison was also old and run down.

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

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

69. The medical centre of Varna Prison comprised a doctor's surgery, a dental surgery, a psychiatric room, an inpatients section, consisting of four rooms with twelve beds, a medicines storage room, an isolator, a small dining room, two toilets and a bathroom. The equipment was extremely deficient. The centre was staffed by a medical doctor, a psychiatrist, a dentist, a feldsher and an orderly, who was an inmate. Outside specialists were being called in as necessary. Inmates underwent medical check-ups upon their arrival in prison, as well as before and after transfers. There was no real control of the medical treatment dispensed, the equipment or the prescription of medicines, and the level of active and prophylactic medical care was below that available out of prison. The biggest problem was with dental care. Medically insured prisoners were often referred to an outside hospital in Varna. Others were, if necessary, sent to the prison hospital in Sofia. Many inmates were drug addicts.

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

C. Relevant domestic law

1. The Constitution of 1991

(a) General prohibition against inhuman treatment

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

(b) The Constitution's direct effect

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

73. In a binding interpretative decision of 6 October 1994 (реш. № 10 от 6 октомври 1994 г. по к. д. № 4/1994 г., КС, обн., ДВ, бр. 87 от 25 октомври 1994 г.) the Constitutional Court held that that meant that there was no need for any intermediary provision for the Constitution to be directly applied. The manner in which its various provisions were to be applied depended on their subject matter. Some of them concerned constitutional law issues (the form of government, the structure of the main organs of government, the fundamental rights and freedoms), others set out the manner in which the laws were to be framed, and yet others laid down general constitutional principles. Although those provisions were all different in their content, all of them had one common characteristic and that was their direct effect. That effect manifested itself in a different way, depending on the specific content of each constitutional provision.

(c) The effects of international treaties in domestic law

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

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

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

№ 15508/2011 г., ВАС, III о., and реш. № 12850 от 4 октомври 2013 г. по адм. д. № 11827/2012 г., ВАС, III о.).

(d) The State's responsibility for damage

77. Article 7 of the Constitution provides that the State is responsible for damage caused by unlawful decisions or actions of its authorities or officials.

78. In a binding interpretative decision of 22 April 2005 (тълк. реш. № 3 от 22 април 2005 г. по т. гр. д. № 3/2004 г., ВКС, ОСГК) the Supreme Court of Cassation, confirming the civil courts' prior case-law, held that that Article did not provide a direct avenue of redress, but merely laid down a general principle whose implementation was to be effected through statute; as no such statute had been enacted following the Constitution's entry into force on 13 July 1991, that function was performed by the State and Municipalities Liability for Damage Act 1988 (see paragraph 102 below).

2. The Criminal Code 1968

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

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

(a) General rules

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

(b) Types of correctional facilities

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

(c) Material conditions

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

(d) Food and other necessities

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

(e) Health care

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

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

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

(a) General rules

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

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

(b) Types of correctional facilities

88. The two types of correctional facilities that can house persons with final sentences are prisons and correctional homes (section 41(1)). Prisons may have prison hostels attached to them. Those hostels may be of an open or closed type. Open-type hostels may be attached to correctional homes as well (section 41(2)). Prisons, correctional homes and prison hostels may also house pre-trial detainees (section 42(3)), who may be sent there by decision of the prosecutor in charge of the case or of the court (section 244(1)).

(c) Material conditions

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

90. An attempt in 2012 by the applicant Mr Neshkov to challenge the amount of floor space available to him in Vratsa Prison by reference to that provision in proceedings under Article 250 § 1 of the Code of Administrative Procedure 2006 (see paragraph 109 below) failed, as the courts noted that section 43(3) had not yet entered into force (see разп. № 1316 от 12 ноември 2012 г. по адм. д. № 559/2012 г., АС-Враца, upheld by опр. № 471 от 11 януари 2013 г. по адм. д. № 15167/2012 г., ВАС, IV о.).

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

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

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

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

(d) Food and other necessities

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

(e) Health care

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

97. Sections 84(2)(4) and 128(2), as originally enacted, provided that the State budget had to pay health insurance contributions for all inmates from the moment of their incarceration. However, as inmates had often not paid such contributions before their incarceration and as the payment of contributions due by the State budget was in practice sometimes delayed, inmates would sometimes be denied medical treatment in outside hospitals, because under section 109 of the Health Insurance Act 1998 the right of a self-insured person to medical treatment is interrupted if that person has failed to make more than three monthly payments for a period of three years (see paragraphs 40 and 49 of CPT's report on their May 2012 visit in paragraph 56 above). To resolve that issue, in December 2012 Parliament amended section 128(2) of the 2009 Act to in addition provide, with effect from 1 January 2014, that all inmates automatically have, from the moment of their incarceration, the status of health-insured persons who have full coverage.

(f) Transfer of prisoners from one incarceration facility to another

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

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

100. A prisoner cannot seek to block the decision to transfer him to another correctional facility by reference to Article 250 § 1 of the Code of Administrative Procedure 2006 (see paragraph 109 below, as well as опр.

№ 10782 от 17 септември 2009 г. по адм. д. № 10599/2009 г., ВАС, VII о., and опр. № 11168 от 30 септември 2009 г. по адм. д. № 11523/2009 г., ВАС, III о.), or to enjoin the authorities to transfer him under Articles 256 or 257 of the same Code (see paragraph 110 below, as well as опр. № 8686 от 20 юни 2011 г. по адм. д. № 7810/2011 г., ВАС, III о.; опр. № 9011 от 22 юни 2012 г. по адм. д. № 7580/2012 г., ВАС, III о.; and опр. № 555 от 11 юли 2013 г. по адм. д. № 544/2013 г., АС-Плевен). Nor can a prisoner challenge the refusal to transfer him under the anti-discrimination legislation (see реш. № 13913 от 19 ноември 2009 г. по адм. д. № 9835/2009 г., ВАС, VII о., upheld by реш. № 9929 от 16 юли 2010 г. по адм. д. № 889/2010 г., ВАС, петчл. с-в).

(g) Intervention of the Ombudsman

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

5. The State and Municipalities Liability for Damage Act 1988

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

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

(a) Application by the civil courts in 2003-09

104. In 2003 the Bulgarian civil courts started awarding damages under section 1 of the 1988 Act to persons claiming to have suffered non-pecuniary damage as a result of the poor conditions of their detention (see the domestic cases cited in *Hristov v. Bulgaria* (dec.), no. 36794/03, 18 March 2008; *Kirilov v. Bulgaria*, no. 15158/02, §§ 43-48, 22 May 2008; *Shishmanov v. Bulgaria*, no 37449/02, §§ 58-62, 8 January 2009; *Titovi v. Bulgaria*, no. 3475/03, § 34, 25 June 2009; *Simeonov v. Bulgaria*, no. 30122/03, §§ 43-47, 28 January 2010; and *Georgiev v. Bulgaria* (dec.), no. 27241/02, 18 May 2010). The Supreme Court of Cassation upheld that

case-law, relying, *inter alia*, on Article 3 of the Convention and the standards laid down by the CPT (see реш. от 26 януари 2004 г. по гр. д. № 959/2003 г., ВКС, IV гр. о.; реш. № 104 от 20 февруари 2009 г. по гр. д. № 5895/2007 г., ВКС, II г. о.; реш. № 538 от 22 октомври 2009 г. по гр. д. № 1648/2008 г., ВКС, II г. о.; реш. № 15 от 29 януари 2009 г. по гр. д. № 4427/2007 г., ВКС, III г. о.; реш. № 233 от 8 май 2009 г. по гр. д. № 1625/2008 г., ВКС, II г. о.; and реш. № 581 от 25 юни 2009 г. по гр. д. № 616/2008 г., ВКС, IV г. о.).

105. However, in some cases the courts refused to award damages, or awarded minimal sums, holding, in particular, that evidence proving poor conditions of detention was not sufficient to also prove that a person who had been kept in such conditions had suffered non-pecuniary damage as a result of them (see the domestic judgments cited in *Iovchev v. Bulgaria*, no. 41211/98, §§ 62 and 66, 2 February 2006; *Iliev and Others v. Bulgaria*, nos. 4473/02 and 34138/04, § 15, 10 February 2011; *Radkov v. Bulgaria (no. 2)*, no. 18382/05, §§ 17 and 21, 10 February 2011; and *Shahanov*, cited above, §§ 9-11 and 13-14).

(b) The transfer of competence to hear claims under section 1 of the 1988 Act to the administrative courts

106. Until 1 March 2007 claims under section 1 of the 1988 Act fell within the jurisdiction of the civil courts. With the entry into force of Articles 203-07 of the Code of Administrative Procedure 2006 on that date, jurisdiction to hear such claims was transferred to the administrative courts. Claims brought before that date continued to be dealt with by the civil courts (paragraph 4 of the transitional and concluding provisions of the 2006 Code, as well as реш. № 829 от 3 декември 2009 г. по гр. д. № 1471/2008 г., ВКС, III г. о.; опр. № 63 от 3 юли 2007 г. по адм. д. № 41/2007 г., смесен петчл. с-в на ВКС и ВАС; опр. № 68 от 3 юли 2007 г. по адм. д. № 74/2007 г., смесен петчл. с-в на ВКС и ВАС; and опр. № 118 от 3 юли 2008 г. по адм. д. № 97/2008 г., смесен петчл. с-в на ВКС и ВАС).

(c) Application by the administrative courts in 2008-14

107. In the past few years the first-instance administrative courts and the Supreme Administrative Court, which hears appeals on points of law from those courts, have dealt with a number of cases under section 1 of the 1988 Act in relation to prison conditions and conditions in pre-trial detention facilities. In the Supreme Administrative Court, appeals on points of law against judgments of the first-instance administrative courts under that provision are as a rule allocated to the third section, which in 2010-12 comprised between eleven and thirteen judges. Those appeals are, as required by Article 217 § 1 of the Code of Administrative Procedure 2006, heard by three-judge panels.

108. A survey of the administrative courts' case-law shows that in the past several years they have – apart from the cases brought by the applicants Mr Neshkov and Mr Yordanov in relation to the conditions of their detention at issue in the present case (see paragraphs 10-28 and 47-49 above) – apparently dealt on the merits with at least forty such cases (see the Appendix). Out of those, seven have resulted in an award of compensation

(principal sums ranging between BGN 1,000 and BGN 3,000, the equivalent of 511.29 euros (EUR) to EUR 1,533.88), six are still pending, two have been discontinued, and twenty-five have resulted in dismissal of the claim on substantive or procedural grounds. A perusal of the reasons for those judgments shows that the three most common reasons for dismissal of the inmates' claims were: (a) that the inmates had failed specifically to prove that they had suffered non-pecuniary damage as a result of the poor conditions of their detention (see paragraphs 4, 7, 13, 21, 25, 32, 40, 43, 56, 58, 59, 60, 61, 63, 64, 73, 81, 82, 83, 85, 89 and 91 of the Appendix); (b) that section 43(3) of the 2009 Act, which guarantees a minimum of four square metres of floor space per inmate (see paragraph 89 above), had not yet come into effect (see paragraphs 4, 13, 14, 19, 21, 61, 81 and 98 of the Appendix); and (c) that the courts analysed the conditions of detention at issue solely by reference to specific rules rather than Article 3 of the Convention or domestic rules to like effect (ibid.). By contrast, in many of the cases that resulted in an award of compensation or are still pending the courts expressly said that conditions of detention should be assessed by reference to Article 3 of the Convention (see paragraphs 2, 30, 42, 66, 69, 71, 77, 79 and 96 of the Appendix).

6. Relevant provisions of the Code of Administrative Procedure 2006

109. Article 250 § 1 of the Code of Administrative Procedure 2006, which came into effect on 1 March 2007,[1] provides that any person who has the requisite legal interest may request the cessation of actions carried out by an administrative authority or a public official that have no basis in the law or in an administrative decision. The request is to be made to the competent administrative court (Article 251 § 1), which has to deal with it immediately (Article 252 § 1) and, having made the necessary inquiries (Article 252(2)-(4)), rule forthwith (Article 253 § 1). The court's decision is subject to appeal, which does not have suspensive effect (Article 254 §§ 1 and 2). In 2009 a life prisoner's legal challenge under Article 250 § 1 to, *inter alia*, the fact that the prison authorities were keeping him in a cell without a toilet or running water was dismissed as being out of the scope of that provision (see опр. № 1366 от 2 февруари 2009 г. по адм. д. № 498/2009 г., ВАС, V о.).

110. Articles 256 and 257 of the same Code, which likewise came into force on 1 March 2007, provide that a person may bring proceedings to enjoin an administrative authority to carry out an action that it has the duty to carry out under a legal provision. If the court allows the claim, it must order the authority to carry out the action within a fixed time-limit. In 2009 the Supreme Administrative Court dismissed a challenge under those provisions to an alleged failure of a prison governor to provide adequate food to inmates (see реш. № 5924 от 11 май 2009 г. по адм. д. № 12132/2008 г., ВАС, III о.). However, in 2011 that court allowed a life prisoner's claim relating to the failure of the prison authorities to provide

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

him with clothing, shoes and bed linen (see реш. № 9276 от 27 юни 2011 г. по адм. д. № 5747/2011 г., ВАС, III о.).

7. Relevant provisions of the Judiciary Act 2007

111. Section 146(1) of the Judiciary Act 2007 provides that when exercising control over the execution of sentences and detention facilities a public prosecutor may carry out surprise visits, confer with the inmates in confidence, examine applications and complaints, or order the administration of the respective facility to keep him informed of relevant matters. Section 146(2) provides that with a view to correcting infringements a public prosecutor may order the release of any person who is being detained unlawfully, give instructions for the correction of irregularities, or stay the enforcement of any unlawful decisions and seek their quashing. On two recent occasions the Pleven Administrative Court declined to deal under any form with complaints by inmates in relation to the conditions of their detention, holding that under section 146 of the 2007 Act competence to deal with such complaints was exclusively vested in public prosecutors (see опр. № 289 от 18 юни 2012 г. по адм. д. № 548/2012 г. АС-Плевен, and опр. № 1040 от 29 ноември 2013 г. по адм. д. № 1114/2013 г. АС-Плевен).

D. Relevant decisions of the Committee of Ministers of the Council of Europe

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

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

8. recalled that an action plan or report is awaited as regards the general measures in respect of the specific issues raised in the Shishmanov, Işyar and Kashavelov cases;

9. decided to resume consideration:

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

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

“The Deputies

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

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

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

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

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

...

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

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

“The Deputies

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

2. in this context, encouraged the authorities to develop further the use of alternative measures to imprisonment and preliminary detention and to establish an updated global strategy to address prison overcrowding, taking into consideration the relevant recommendations of the Council of Ministers, as well as other competent bodies of the Council of Europe;

3. noted also with satisfaction the efforts made by Bulgaria to improve the material conditions of detention, namely through the reconstruction projects funded with the

assistance of the Norwegian Financial Mechanism; noted, however, that substantial improvements are still necessary in the majority of the penitentiary facilities and that this situation is due partly to the fact that the national action plans in this field could not be implemented due to budgetary restrictions related to the economic crisis;

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

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

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

E. Other relevant Council of Europe material

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

"**Part I**

Basic principles

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

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

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

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

...

Scope and application

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

10.2. In principle, persons who have been remanded in custody by a judicial authority and persons who are deprived of their liberty following conviction should

only be detained in prisons, that is, in institutions reserved for detainees of these two categories.

10.3. The Rules also apply to persons:

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

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

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

...

Part II

Conditions of imprisonment

...

Allocation and accommodation

...

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

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

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

b. artificial light shall satisfy recognised technical standards; and

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

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

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

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

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

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

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

a. untried prisoners separately from sentenced prisoners;

b. male prisoners separately from females; and

c. young adult prisoners separately from older prisoners.

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

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

Hygiene

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

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

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

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

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

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

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

Clothing and bedding

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

20.2. Such clothing shall not be degrading or humiliating.

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

...

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

Nutrition

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

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

22.3. Food shall be prepared and served hygienically.

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

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

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

...

Exercise and recreation

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

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

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

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

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

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

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

...

Part III

Health

Health care

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

Organisation of prison health care

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

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

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

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

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

Medical and health care personnel

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

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

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

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

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

COMPLAINTS

116. In his first application Mr Neshkov complains of the conditions of his detention in Stara Zagora Prison. In his second application he complains of the conditions of his detention in Varna Prison. Mr Tsekov, Mr Simeonov and Mr Zlatev complain of the conditions of their detention in Burgas Prison. Mr Yordanov complains of the conditions of his detention in Sofia, Pleven and Lovech Prisons and in the closed-type prison hostel in Troyan.

117. Mr Neshkov in addition complains, in both of his applications, that the proceedings for damages that he brought under section 1 of the 1988 Act in relation to the conditions of his detention in Stara Zagora and Varna Prisons were unfair and failed to provide him effective redress.

APPENDIX

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

1. Burgas Administrative Court

(a) Case no. 1

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

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

3. The proceedings are still pending before the Burgas Administrative Court.

(b) Case no. 2

4. In a judgment of 2 August 2013 (реш. № 1658 от 2 август 2013 г. по адм. д. № 2575/2012 г., АС-Бургас) the Burgas Administrative Court dismissed a claim for non-pecuniary damages brought by an inmate in relation to the conditions of his confinement: overcrowding and lack of

ready access to the toilets at night. It held that the rule requiring a minimum of four square metres of floor space per inmate had not yet come into effect, and that the fact that the inmate had had to use a bucket to relieve himself at night did not mean that he had been deprived of access to a toilet.

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

2. Dobrich Administrative Court

(a) Case no. 1

6. In a judgment of 21 December 2010 (реш. № 247 от 21 декември 2010 г. по адм. д. № 568/2009 г., АС-Добрич) the Dobrich Administrative Court partly allowed an inmate's claim for non-pecuniary damages in relation to the conditions of his confinement in a pre-trial detention facility in Balchik in November-December 2009. The court held that there was no evidence, except in relation to a very small period of time, that the inmate had been prevented from having access to a toilet. Therefore, even though there had been not toilet in his cell, he could not be regarded as having been subjected to degrading treatment. The conditions in his cell – in particular the lack of enough natural light, the constant light at night, the lack of a table – had not caused him serious discomfort either. There was no evidence that the cell had been dirty or unhygienic. On the other hand, the inmate had suffered as a result of the lack of daily outdoor exercise, and that suffering had been sufficiently acute to engage Article 3 of the Convention. The equitable amount of compensation for that was BGN 200, plus interest.

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

3. Lovech Administrative Court

(a) Case no. 1

8. In a judgment of 23 December 2011 (реш. № 135 от 23 декември 2011 г. по адм. д. № 270/2010 г., АС-Ловеч) the Lovech Administrative Court partly allowed and partly dismissed an inmate's claim for non-pecuniary damages concerning the material and hygienic conditions of his confinement. The court held that the claim, in as much as it concerned the period of time preceding five years before its lodging, was time-barred. It went on to find that, before the installation of a toilet in the cell in which the inmate had been kept, he had had to relieve himself in a bucket in the presence of other inmates, which had caused him to feel humiliated. However, his having to relieve himself in a bucket when alone in a cell could not be regarded as humiliating. Nor did the court find any evidence that food or hygiene in the toilets of the respective facilities had been so bad as to cause the inmate serious suffering. It awarded the inmate BGN 660.

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

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

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

12. The proceedings are still pending before the Lovech Administrative Court.

(b) Case no. 2

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

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

(c) Case no. 3

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

any evidence that he had suffered non-pecuniary damage as a result of those matters.

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

4. Pazardzhik Administrative Court

(a) Case no. 1

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

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

5. Pleven Administrative Court

(a) Case no. 1

19. In a judgment of 27 June 2012 (реш. № 421 от 27 юни 2012 г. па адм. д. № 305/2012 г., АС-Плевен) the Pleven Administrative Court dismissed a claim for non-pecuniary damages by a life prisoner in relation to the size of his cell. It held that the size of the cell was six square metres. However, even if it was four and a half square metres, as asserted by the prisoner, that still allowed him enough space to move, and was not in breach of the law because it was above the minimum of four square metres envisaged to be guaranteed to every prisoner under the rule that was not yet in force.

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

(b) Case no. 2

21. In a judgment of 27 June 2013 (реш. № 362 от 27 юни 2013 г. по адм. д. № 20/2013 г., АС-Плевен) the Pleven Administrative Court dismissed a claim for non-pecuniary damages brought by an inmate in relation to the conditions of his confinement. It rejected the allegations of overcrowding, holding, *inter alia*, that the rule requiring a minimum of four square metres per prisoner had not yet come into effect, and that the inmate, who bore the burden of making out all elements of his claim, had failed to

prove that he had suffered any harm or discomfort as a result of the conditions in which he had been kept.

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

(c) Case no. 3

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

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

6. Sliven Administrative Court

(a) Case no. 1

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

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

7. Sofia City Administrative Court

(a) Case no. 1

27. In a judgment of 13 May 2010 (реш. № 1461 от 13 май 2010 г. по адм. д. № 7490/2009 г., АС-София-град) the Sofia City Administrative Court partly allowed two claims for non-pecuniary damages brought by two life prisoners in relation to the need to relieve themselves in buckets in their cells, due to the lack, until April-May 2008, of in-cell toilets and the restrictive regime applicable to life prisoners. The court had regard to, *inter*

alia, Article 3 of the Convention and this Court's case-law in similar cases. Accordingly, it held that there was no need specifically to prove the existence of non-pecuniary damage as a result of such conditions, and ordered the Chief Directorate for the Execution of Sentences to pay each of the claimants BGN 2,000, plus interest.

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

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

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

(b) Case no. 2

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

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

(c) Case no. 3

33. In a judgment of 23 July 2012 (реш. № 4252 от 23 юли 2012 г. по адм. д. № 4202/2011 г., АС-София-град) the Sofia City Administrative Court partly allowed a claim for non-pecuniary damages brought by an inmate in relation to poor material and hygienic conditions of detention and

overcrowding. The court rejected the defendant authority's objection of expiry of the limitation period. It went on to find, by reference to Article 3 of the Convention and this Court's case-law under that provision, that the need for the inmate to relieve himself in a bucket in his cell between 1999 and 2005 had amounted to degrading treatment, which had to be compensated to the tune of BGN 3,000, plus interest. The remainder of the inmate's allegations, in particular those relating to overcrowding, had remained unproved.

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

(d) Case no. 4

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

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

(e) Case no. 5

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

38. The proceedings on appeal (адм. д. № 11737/2013 г.) are still pending before the Supreme Administrative Court. A hearing is scheduled for 31 March 2014.

8. Stara Zagora Administrative Court

(a) Case no. 1

39. In a judgment of 19 September 2008 (реш. № 37 от 19 септември 2008 г. по адм. д. № 12/2008 г., АС-Стара Загора) the Stara Zagora

Administrative Court awarded a life prisoner BGN 4 in non-pecuniary damages for the failure of the prison administration to enable him to take his outdoor exercise on a given date.

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

(b) Case no. 2

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

42. In a judgment of 26 May 2009 (реш. № 6892 от 26 май 2009 г. по адм. д. № 14849/2008 г., ВАС, III о.) the Supreme Administrative Court quashed that judgment and awarded the prisoner BGN 3,000, plus interest, holding that the protracted failure of the prison administration to provide him shoes had humiliated him, in breach of, *inter alia*, Article 3 of the Convention.

(c) Case no. 3

43. In a judgment of 31 March 2009 (реш. № 118 от 31 март 2009 г. по адм. д. № 545/2008 г., АС-Стара Загора) the Stara Zagora Administrative Court dismissed a claim for non-pecuniary damages by the same life prisoner in relation to the failure of the prison administration to enable him to watch video films. The court held that that would have been incompatible with the requirement, flowing from the applicable prison regime, for the prisoner to remain isolated in a locked cell at all times, and that he had failed to prove, through a psychological expert report – as opposed to witness' statements – that he had indeed suffered non-pecuniary damage as a result of that.

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

(d) Case no. 4

45. In a judgment of 21 December 2012 (реш. № 370 от 21 декември 2010 г. по адм. д. № 564/2010 г., АС-Стара Загора) the Stara Zagora Administrative Court allowed a life prisoner's claims against the Ministry of Justice and the Chief Directorate for the Execution of Sentences in relation to (a) the material conditions of his detention; (b) the failure of the prison administration to provide him with clothing, shoes and bed linen; (c) the failure of the prison administration to put in place conditions in which he could keep in good physical shape; and (d) the failure of the prison administration to enable him to take his outdoor exercise. The court dismissed the remaining claims, which concerned (a) the failure of the

prison administration to provide the prisoner with toiletries; (b) the quality and the quantity of the food that had been provided to him; (c) the failure of the prison administration to provide him with dental prostheses; (d) the alleged failure of the prison administration to provide him with conditions allowing him to keep his mental health intact; and (e) the failure of the prison administration to provide him with work. The court awarded the prisoner a total of BGN 8,200. It held, in particular, that the conditions of his detention had been in breach of Article 3 of the Convention and that he had suffered non-pecuniary damage as a result of that. However, the court also held that the claim relating to the material conditions of detention, in as much as it concerned the period of time preceding five years before its lodging, was time-barred.

46. The life prisoner, the Ministry of Justice and the Chief Directorate for the Execution of Sentences all appealed. However, as the prisoner failed to pay the requisite court fee, the Supreme Administrative Court refused to take his appeal up for examination (see опр. № 8931 от 21 юни 2011 г. по адм. д. № 5865/2011 г. ВАС, III о., upheld by опр. № 14723 от 14 ноември 2011 г. по адм. д. № 10633/2011 г., ВАС, петчл. с-в). As a result, the only part of the case that remained pending were the claims concerning the material conditions of the prisoner's detention and the failure of the prison administration to provide him with clothing, shoes and bed linen

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

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

49. The life prisoner and the Chief Directorate for the Execution of Sentences both appealed. The proceedings on appeal (адм. д. № 9946/2013) are still pending before the Supreme Administrative Court. A hearing was due to be held on 24 February 2014, but the case was adjourned *sine die* on account of the failure of the prisoner's court-appointed counsel to appear.

9. Varna Administrative Court

(a) Case no. 1

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

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

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

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

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

(b) Case no. 2

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

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

(c) Case no. 3

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

58. In a judgment of 14 January 2010 (реш. № 568 от 14 януари 2010 г. по адм. д. № 4934/2009 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment, holding that there was no evidence that the conditions of the prisoner's confinement had caused him any non-pecuniary damage.

(d) Case no. 4

59. In a judgment of 5 October 2009 (реш. № 1560 от 5 октомври 2009 г. по адм. д. № 1195/2009 г., АС-Варна) the Varna Administrative

Court dismissed yet another claim by the same life prisoner in relation to the conditions of his confinement during a later period. The court found that there was no categorical evidence that the poor conditions – lack of sufficient light, ready access to the toilet, or proper ventilation – had damaged the prisoner's health. He had called witnesses to prove that, but those witnesses did not have proper medical qualifications. Any negative psychological effects of those conditions had to be assessed against the backdrop of the inmate's life sentence and the very strict security regime under which that sentence was to be served. Discomfort, anguish or anxiety did not give rise to damages under section 1 of the 1988 Act.

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

(e) Case no. 5

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

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

(f) Case no. 6

63. In a judgment of 1 July 2011 (реш. № 1621 от 1 юли 2011 г. по адм. д. № 787/2011 г., АС-Варна) the Varna Administrative Court dismissed another claim for non-pecuniary damages by the above-mentioned life prisoner in relation to the conditions of his confinement. It held that he had not adduced evidence that he had suffered harm as a result of the need to relieve himself in a bucket, of the limited space and light in his cell, or the cigarette smoke that he had had to endure. Moreover, smoking in prison was not forbidden under the applicable rules.

64. In a judgment of 20 June 2012 (реш. № 8905 от 20 юни 2012 г. по адм. д. № 3074/2010 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment, fully agreeing with its reasoning in relation to the lack of proof of damage.

(g) Case no. 7

65. In a judgment of 25 July 2011 (реш. № 1964 от 25 юли 2011 г. по адм. д. № 327/2010 г., АС-Варна) the Varna Administrative Court dismissed a claim for non-pecuniary damages by Mr Shahanov, the applicant in *Shahanov* (cited above), in relation to the conditions of his confinement. The court held that the law did not specifically require running water or access to natural light in the cells. Nor was it unlawful to compel the inmate to use a bucket outside the time when he could access the common toilet. The cell in which he had been kept was slightly smaller than required – five square metres –, but that was not unlawful because there was no rule on the minimum amount of floor space per prisoner. Moreover, the inmate had not adduced evidence that he had suffered harm as a result of those matters.

66. In a judgment of 2 April 2012 (реш. № 4758 от 2 април 2012 г. по адм. д. № 13604/2011 г., ВАС, III о.) the Supreme Administrative Court quashed that judgment, holding that the lower court should have analysed Mr Shahanov's claim by reference to, *inter alia*, Article 3 of the Convention, which took precedence over domestic law. On remittal, the lower court had to take into account the findings of this Court in its judgment in *Shahanov* (cited above).

67. Having examined the case afresh, in a decision of 17 October 2012 (опр. № 4681 от 17 октомври 2012 г. по адм. д. № 1347/2012 г., АС-Варна) the Varna Administrative Court discontinued the proceedings. It held that any damage suffered by Mr Shahanov as a result of the conditions of his detention had been made good with the award of just satisfaction made by this Court in *Shahanov* (cited above). It was not permissible to award compensation twice in relation to the same matter.

68. In a decision of 30 November 2012 (опр. № 15225 от 30 ноември 2012 г. по адм. д. № 13739/2012 г., ВАС, III о.) the Supreme Administrative Court upheld the lower court's decision, giving the same reasons.

(h) Case no. 8

69. In a judgment of 15 February 2012 (реш. № 353 от 15 февруари 2012 г. по адм. д. № 2732/2011 г., АС-Варна) the Varna Administrative Court partly allowed a claim for non-pecuniary damages by an inmate in relation to the conditions of his confinement in Varna Prison in 2001-11. Having regard to, in particular, the CPT's report on its October 2010 visit to Bulgaria (see paragraph 55 of the Statement of Facts and Complaints), and this Court's findings in *Shahanov* (cited above), the court held that the prison administration's omission to provide better conditions of detention had amounted to a breach of Article 3 of the Convention, which had caused harm to the claimant. Ruling in equity, it awarded him BGN 3,000, plus interest.

70. In a judgment of 21 March 2013 (реш. № 3958 от 21 март 2013 г. по адм. д. № 5655/2012 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment, fully agreeing with its reasoning. It also noted that the claim under section 1 of the 1988 Act was entirely compensatory in character and was the only effective remedy in respect of the conditions of the inmate's confinement.

(i) Case no. 9

71. In a judgment of 6 July 2012 (реш. № 1760 от 6 юли 2012 г. по адм. д. № 4055/2011 г.) the Varna Administrative Court partly allowed an inmate's claim for non-pecuniary damages in relation to the conditions of his confinement in Varna Prison in 2010-11, and awarded him BGN 1,000. Having regard to, in particular, the CPT's report on its October 2010 visit to Bulgaria (see paragraph 55 of the Statement of Facts and Complaints), and this Court's findings in *Shahanov* (cited above), the court held that the prison administration's omission to provide better conditions of detention had amounted to a breach of Article 3 of the Convention, which had caused harm to the claimant. However, the court held that the allegation of lack of proper medical care was not supported by the evidence. In fixing the quantum of damages, the court had regard to the just satisfaction award made in *Shahanov* (cited above).

72. In a judgment of 20 June 2013 (реш. № 9152 от 20 юни 2013 г. по адм. д. № 10630/2012 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment, fully agreeing with its reasoning. It also noted that the claim under section 1 of the 1988 Act was entirely compensatory in character and was the only effective remedy in respect of the conditions of the inmate's confinement.

(j) Case no. 10

73. In a judgment of 22 November 2012 (реш. № 2829 от 22 ноември 2012 г. по адм. д. № 1839/2012 г.) the Varna Administrative Court dismissed a claim for non-pecuniary damages by an inmate in relation to the fact that he had been kept in a smokers' cells since 1995. The court started by holding that the claim was not time-barred because it concerned a continuing situation that still persisted. However, it went on to hold that throughout the relevant period there had been no rules requiring the separation of smokers from non-smokers in prisons. Nor was there any indication that the cigarette smoke had caused the inmate any harm.

74. In a judgment of 2 December 2013 (реш. № 15964 от 2 декември 2013 г. по адм. д. № 779/2013 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment, fully agreeing with its reasoning. The court also noted that the inmate's claim did not concern any other aspects of the conditions of his confinement, and focused solely on the cigarette smoke issue.

(k) Case no. 11

75. In a judgment of 6 December 2012 (реш. № 2947 от 6 декември 2012 г. по адм. д. № 3301/2012 г.) the Varna Administrative Court partly allowed an inmate's claim for non-pecuniary damages in relation to the conditions of his confinement in Varna Prison in 2010-11, and awarded him BGN 2,000, plus interest. The court rejected the allegations of excessive cold in winter and excessive heat in summer, as well as of lack of proper food, as unsupported by the evidence. However, the allegations concerning the failure of prison administration to ensure ready access to the toilets and the shower found evidentiary support, in particular in the CPT's report on its October 2010 visit to Bulgaria (see paragraph 55 of the Statement of Facts and Complaints), and called for compensation.

76. The proceedings on appeal (адм. д. № 2568/2013 г.) are still pending before the Supreme Administrative Court. A hearing was held on 10 February 2014.

(l) Case no. 12

77. In a judgment of 10 January 2013 (реш. № 44 от 10 януари 2013 г. по адм. д. № 2782/2012 г.) the Varna Administrative Court partly allowed an inmate's claim for non-pecuniary damages in relation to the conditions of his confinement in Varna Prison in 2010-11, and awarded him BGN 1,000, plus interest. The court found that the allegations that the inmate, who suffered from paranoid schizophrenia, had not been given proper medical care, that the food that he had been given was not adequate, and that the prison canteen had been infested by rodents were not supported by the evidence. It went on to say that the allegation of overcrowding could not be upheld either, because the rule requiring a minimum of four square metres of floor space per prisoner had not yet come into effect. However, the allegation that access to the toilets and the shower was not readily available was supported by the evidence, and called for compensation, because that was in breach of Article 3 of the Convention. Bearing in mind that the claim concerned a period of about five months, the court found that BGN 1,000 was an adequate amount of compensation.

78. In a judgment of 18 February 2014 (реш. № 2265 от 18 февруари 2014 г. по адм. д. № 7064/2013 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment, fully agreeing with reasoning.

(m) Case no. 13

79. In a judgment of 28 January 2013 (реш. № 163 от 28 януари 2013 г. по адм. д. № 1087/2012 г., АС-Варна) the Varna Administrative Court partly allowed a claim for non-pecuniary damages by a life prisoner in relation to the conditions of his confinement in Varna Prison since 1994. Having regard to, in particular, the CPT's report on its October 2010 visit to Bulgaria (see paragraph 55 of the Statement of Facts and Complaints), and this Court's findings in *Shahanov* (cited above), the court held that the prison administration's omission to provide better conditions of detention had amounted to a breach of Article 3 of the Convention, which had caused harm to the claimant. However, there was no evidence in relation to the period before 2007, when the prisoner had been put under the "special" regime, and the court therefore decided to take into account only the period after 2007. Ruling in equity, it awarded the prisoner BGN 3,000, plus interest.

80. In a judgment of 5 June 2013 (реш. № 7684 от 5 юни 2013 г. по адм. д. № 4819/2013 г., ВАС, III о.) the Supreme Administrative Court partly upheld and partly quashed that judgment. It held that the lower court had been correct to hold that the conditions of the prisoner's confinement had been in breach of Article 3 of the Convention. However, in as much as the claim concerned the period before 1 June 2009, it had been brought against the wrong defendant.

(n) Case no. 14

81. In a judgment of 14 February 2013 (реш. № 334 от 14 февруари 2013 г. по адм. д. № 2151/2012 г., АС-Варна) the Varna Administrative Court dismissed a claim for non-pecuniary damages by an inmate in relation to the conditions of his confinement in Varna Prison in 2010-12. The court held that the inmate bore the burden of proving not only the unlawful acts or omissions of which he complained, but also the damage flowing from those acts or omissions. The court found that the inmate had been kept in a cell that measured approximately five by six metres, housed between twenty and twenty-four inmates, and had an in-cell toilet separated from the rest of the cell with a wall. It was true that the amount of floor space available to the inmate was less than four square metres, because twenty inmates lived in forty square metres, but the rule requiring a minimum of four metres of floor space per inmate had not yet come into effect. The allegations of lack of proper hygiene, medical care and food did not appear to be true. Nor had the claimant, apart from his own allegations, presented any evidence that he had suffered damage that went beyond the inevitable element of suffering inevitably flowing from his sentence of imprisonment.

82. In a judgment of 15 October 2013 (реш. № 13372 от 15 октомври 2013 г. по адм. д. № 5407/2013 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment, fully agreeing with its reasoning in relation to the lawfulness of the prison administration's conduct and the failure of the inmate to prove the existence of damage.

10. Vratsa Administrative Court

(a) Case no. 1

83. In a judgment of 30 April 2010 (реш. № 11 от 30 април 2010 г. по адм. д. № 648/2009 г., АС-Враца) the Vratsa Administrative Court dismissed a claim for non-pecuniary damages by Mr Neshkov in relation to the conditions of his confinement in Lovech Prison in 2005-06. The court held that since Mr Neshkov had not been kept in worse conditions than the other inmates, he could not be regarded as having suffered any indignity. Nor had he presented any evidence – apart from the testimony of a fellow inmate, who was possibly biased – that he had suffered non-pecuniary damage as a result of those conditions. Poor conditions of detention did not automatically result in non-pecuniary damage.

84. In a judgment of 29 March 2011 (реш. № 4436 от 29 март 2011 г. по адм. д. № 10051/2010 г., ВАС, III о.) the Supreme Administrative Court quashed the lower court's judgment. It held that that court had erred by failing to gather evidence – if need, through a medical report – on Mr Neshkov's state of health. It had also refused to call an inmate witness without sufficient justification. It had thus deprived Mr Neshkov of the possibility to make out his claim.

85. Having heard the case afresh, in a judgment of 27 June 2010 (реш. № 11 от 30 април 2010 г. по адм. д. № 648/2009 г., АС-Враца) the Vratsa Administrative Court again dismissed the claim. It held that only very serious and lasting harm – as opposed to mere discomfort – could give rise to damages under section 1 of the 1988 Act. No such harm had been proved by Mr Neshkov.

86. In a judgment of 1 February 2012 (реш. № 1575 от 1 февруари 2012 г. по адм. д. № 12195/2011 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment. It held that Mr Neshkov had failed to present sufficient proof that the prison administration or officials had engaged in unlawful conduct in relation to his stay in prison.

(b) Case no. 2

87. In a judgment of 16 June 2010 (реш. № 19 от 16 юни 2011 г. по адм. д. № 51/2011 г., АС-Враца) the Vratsa Administrative Court dismissed a claim for non-pecuniary damages by an inmate in relation to alleged failure of the prison administration to provide him food appropriate for his state of health. It held that the inmate had failed to prove that he had any medical condition that required special food.

88. In a judgment of 7 March 2012 (реш. № 3312 от 7 март 2012 г. по адм. д. № 13269/2011 г., ВАС, III о.) the Supreme Administrative Court quashed the lower court's judgment. It found that the inmate had repeatedly failed to specify the facts forming the basis of his claim and his exact request for relief. The lower court had therefore erred by directly proceeding to examine the claim on the merits. It had also erred by refusing to order a medical expert report requested by counsel for the inmate, and had thus deprived the inmate of the possibility to make out his claim.

89. Having heard the case afresh, in a judgment of 13 July 2012 (реш. № 10 от 13 юли 2012 г. по адм. д. № 129/2012 г., АС-Враца) the Vratsa Administrative Court again dismissed the claim. It held, on the basis of medical documents describing the inmate's state of health during his incarceration and a medical expert report, that the inmate had failed to prove that he had a disease of the ulcer. Moreover, the prison administration had in fact provided him with dietetic food.

90. In a judgment of 28 October 2013 (реш. № 14037 от 28 октомври 2013 г. по адм. д. № 12928/2012 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment, fully agreeing with its reasoning.

(c) Case no. 3

91. In a judgment of 18 June 2010 (реш. № 50 от 18 юни 2010 г. по адм. д. № 626/2009 г., АС-Враца) the Vratsa Administrative Court dismissed a claim for non-pecuniary damages by an inmate in relation to the conditions of his confinement in Vratsa Prison in 2008-09. The court held that it had not been unlawful for the prison administration to keep the inmate in cells with smokers. It was true that the cell in which he had been kept had not had a toilet or running water until July 2009, but there was no rule requiring that either, and there was no evidence that the guards had not let the inmate visit the common toilets at night. The fact that he had sometimes had to relieve himself in a bucket at night had not degraded him, especially bearing in mind that he was in prison as a result of his own conduct. More importantly, there was no evidence that as a result of those matters he had suffered any harm that went beyond the inevitable element of suffering flowing from his sentence of imprisonment.

92. In a judgment of 28 March 2011 (реш. № 4346 от 28 март 2011 г. по адм. д. № 10165/2010 г., ВАС, III о.) the Supreme Administrative

Court upheld the lower court's judgment, agreeing with all of its conclusions. It held, in particular, that at the relevant time there had been no rules requiring the separation of inmates who did not smoke from those who did or the availability of in-cell toilets.

(d) Case no. 4

93. In a judgment of 27 December 2011 (реш. № 24 от 27 декември 2011 г. по адм. д. № 345/2011 г., АС-Враца) the Vratsa Administrative Court dismissed a claim for damages by an inmate against the Ministry of Justice in relation to the conditions of his detention and the fact that he had contracted tuberculosis as a result of those conditions. The court found that the actions of the medical doctor attached to the prison could not be regarded as administrative action within the meaning of section 1 of the 1988 Act, and that there was no evidence that the inmate in fact suffered from active tuberculosis.

94. In a judgment of 29 November 2012 (реш. № 15176 от 29 ноември 2012 г. по адм. д. № 3173/2012 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment. It noted that the claim had not been brought against the correct defendant, which was the Chief Directorate for the Execution of Sentences. It went on fully to agree with the lower court's findings. It held that the lower court had not erred by not taking evidence on the conditions in the inmate's cell, because the inmate did not seek damages in relation to those conditions alone, but sought to tie them to the allegation that he had contracted tuberculosis as a result of them.

11. Yambol Administrative Court

(a) Case no. 1

95. In a judgment of 15 March 2013 (реш. № 29 от 15 март 2013 г. по адм. д. № 295/2012 г., АС-Ямбол) the Yambol Administrative Court dismissed an inmate's claim for non-pecuniary damages in relation to overcrowding, lack of ready access to the toilet at night, lack of access to natural light and lack of outdoor exercise during his pre-trial detention. The court noted that the rule requiring a minimum of four square metres of floor space per prisoner had not yet come into effect, that the law did not require an in-cell toilet, and that the cell door had a window, which, albeit indirectly, allowed access to natural light. The lack of outdoor exercise had not caused any damage to the inmate's health.

96. In a judgment of 21 October 2013 (реш. № 13702 от 21 октомври 2013 г. по адм. д. № 5531/2013 г., ВАС, III о.) the Supreme Administrative Court quashed that judgment and remitted the case. It held that the conditions of the inmate's confinement were to be assessed not only by reference to the specific legal rules that governed them, but also by reference to Article 3 of the Convention, as interpreted by this Court in several judgments against Bulgaria and by the Supreme Court of Cassation and the Supreme Administrative Court in earlier conditions-of-detention cases. It went on to say that the lower court had not properly established all relevant facts.

97. The proceedings are apparently still pending on remittal before the Yambol Administrative Court.

(b) Case no. 2

98. In a judgment of 18 March 2013 (реш. № 28 от 18 март 2013 г. по адм. д. № 274/2013 г., АС-Ямбол) the Yambol Administrative Court dismissed an inmate's claim for non-pecuniary damages in relation to overcrowding, lack of in-cell toilet, lack of outdoor exercise, lack of access to running water and damage to his health during his pre-trial detention. The court noted that the rule requiring a minimum of four square metres of floor space per prisoner had not yet come into effect, and that the law did not require an in-cell toilet. There was no evidence that the inmate had been denied access to the common toilets at night, only of occasional delays occasioned by the need to let other inmates out of their cells. There had been no physical possibility for outdoor exercise because the detention facility did not have a yard. All of that, and the lack of any intention on the part of the guards to humiliate or ill-treat the inmate, meant that there had been no breach of Article 3 of the Convention.

99. In a judgment of 16 January 2014 (реш. № 569 от 16 януари 2014 г. по адм. д. № 7207/2013 г., ВАС, III о.) the Supreme Administrative Court upheld that judgment, fully agreeing with its reasoning.

QUESTIONS TO THE PARTIES

1. Did/do the conditions in which the applicants are/were detained amount to inhuman and/or degrading treatment within the meaning of Article 3 of the Convention?

1.1. In particular, can the conditions in which Mr Neshkov was kept in Varna Prison between 7 June 2002 and 20 May 2005 and in Stara Zagora Prison on various dates in 2002-08 be regarded as such treatment? The Government are requested to provide a full chronological account of the correctional facilities in which Mr Neshkov has been housed, of the conditions in all those facilities, at the precise time when Mr Neshkov was housed in them.

1.2. Can the conditions in which Mr Tsekov, Mr Simeonov and Mr Zlatev are being kept in Burgas Prison be regarded as such treatment?

1.3. Can the conditions in which Mr Yordanov was kept in Sofia, Pleven and Lovech Prisons, and is now being kept in the closed-type prison hostel in Troyan, be regarded as such treatment? The Government are requested to provide a full chronological account of the correctional facilities in which Mr Yordanov has been housed, of the conditions in all those facilities, at the precise time when Mr Yordanov was housed in them, and of any proceedings that Mr Yordanov has brought in relation to that.

2. Did/do the applicants have at their disposal effective domestic remedies in respect of their grievances under Article 3 of the Convention relating to the conditions of their detention, as required under Article 13?

2.1. In particular, did the claims for damages brought by Mr Neshkov under section 1 of the State and Municipalities Liability for Damage Act 1988 in relation to the conditions of his detention in Stara Zagora and Varna Prisons constitute such a remedy, in view of the manner in which they were examined by the administrative courts?

2.2. Did/do the applicants have at their disposal other effective domestic remedies, in particular preventive ones?

3. Do the facts of these six applications – which concern allegedly poor conditions of detention in Burgas, Lovech, Pleven, Sofia, Stara Zagora and Varna Prisons and in the closed-type prison hostel in Troyan, as well as the alleged lack of effective domestic remedies in respect of such conditions – reveal the existence of a systemic problem that calls for the application of the pilot judgment procedure (see Rule 60 §§ 1 and 2 (a) of the Rules of Court)?

3.1. In particular, do the alleged overcrowding, poor material and hygienic conditions, and lack of proper medical care in Burgas Prison and other prisons reveal the existence of such a problem (see, *mutatis mutandis*, *Orchowski v. Poland*, no. 17885/04, § 147, 22 October 2009; *Norbert Sikorski v. Poland*, no. 17599/05, §§ 150-52, 22 October 2009; *Mandić and Jović v. Slovenia*, nos. 5774/10 and 5985/10, §§ 124 and 127, 20 October 2011; *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 184-90, 10 January 2012; and *Torreggiani and Others v. Italy*, nos. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10, §§ 87-90, 8 January 2013?

3.2. Do (a) the manner of examination of claims under section 1 of the 1988 Act by the administrative courts (see, in this connection, the cases cited in the Appendix to the Statement of Facts and Complaints), and (b) the apparent lack of an effective preventive remedy in respect of conditions of detention (see, *mutatis mutandis*, *Ananyev and Others*, §§ 184 and 189) reveal the existence of such a problem?