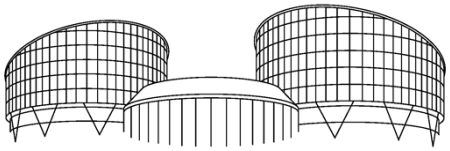

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF DIMITAR ANGELOV v. BULGARIA

(Application no. 58400/16)

JUDGMENT

Art 3 (substantive) • Inhuman treatment • Insufficient judicial consideration of life prisoner's complaint about prolonged isolation and lack of purposeful activities under "special regime" of detention • Degrading treatment • Obviously low compensation at domestic level in respect of material conditions of detention in the past
Art 34 • Victim • Inadequate compensation awarded at domestic level • Victim status upheld
Art 35 § 1 • Exhaustion of domestic remedies • Effective domestic remedies • Life prisoner complaining about isolation or lack of activities, both in the past and in order to end the situation • Specific preventive remedy (from 2017 onwards): effective, depending on the decisions of prison governors and domestic courts • General preventive remedy: effectiveness dependent on courts' practice • Compensatory remedy (from 2017 onwards): effectiveness in respect of past treatment dependent on level of awards made by competent courts

STRASBOURG

21 July 2020

FINAL

21/10/2020

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

In the case of Dimitar Angelov v. Bulgaria,

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

Iulia Antoanella Motoc, *President,*
Yonko Grozev,
Branko Lubarda,
Stéphanie Mourou-Vikström,
Georges Ravarani,
Jolien Schukking,
Péter Paczolay, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to:

the application against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Dimitar Borisov Angelov ("the applicant"), on 18 September 2016;

the decision to give notice to the Bulgarian Government ("the Government") of the complaint concerning the inadequate conditions of detention in which he has been held serving his life sentence and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 23 June 2020,

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

INTRODUCTION

The case concerns a complaint under Articles 3 and 13 of the Convention. The applicant is a prisoner serving a life-sentence under the "special regime". He complained about having been continually held in almost complete isolation, in the absence of purposeful activities for physical and mental stimulation, and in poor material conditions, without there being an effective remedy in this connection.

THE FACTS

1. The applicant was born in 1982 and is detained in Pazardzhik. The applicant was represented by Mr V.S. Stoyanov, a lawyer practising in Pazardzhik.

2. The Government were represented by their Agent, Ms M. Dimitrova, of the Ministry of Justice.

3. The applicant has been serving a life sentence under the "special regime" since 14 October 2013, having been in detention intermittently since 1999 for various offences. He was detained in Plovdiv Prison until

4 November 2013. On that date he was transferred to Pazardzhik Prison, where he has been serving his sentence ever since.

4. According to the applicant, in Pazardzhik Prison he has not had ready access to a toilet and running water, has not been provided with the opportunity to work or participate in other activities aimed at his resocialisation, and has had no opportunity to do any sports, apart from an hour of outdoor exercise daily.

5. According to information provided by the Chief Directorate for the Execution of Sentences, the applicant has not been engaged in work in the prison because there has been no work available to inmates held in the high-security part of the prison where he has been serving his sentence. Between 9 May and 30 June 2016 he took part in an integrated basic skills training course for life prisoners. He also participated in a football tournament organised for life prisoners. In August 2017 he asked to be transferred to another prison in order to continue his education. As he did not apply within the given deadline, his request was refused. He failed to appeal against that decision.

6. In the first half of 2016 the applicant brought a claim for damages in the Pazardzhik Administrative Court under section 1 of the State and Municipality Responsibility for Damage Act ("the SMRDA"), in connection with various periods of his detention starting in 1999. As regards his time in Pazardzhik Prison after 4 November 2013, he complained that his rights under the Execution of Sentences and Pre-Trial Detention Act 2009 ("the 2009 Act") had been breached, and sought damages in that connection.

7. In particular, with regard to the material conditions of his detention, he emphasised in his claim that he had been using a bottle to drink from and a bucket as a toilet, owing to the lack of sanitary facilities and running water in his cell.

8. Furthermore, he pointed out that in accordance with the 2009 Act and the Convention, he had the right to be included in social, educational, cultural, creative and work-related activities aimed at his rehabilitation, as well as in sports activities lasting longer than the time allocated daily for being outdoors. He complained that in actual fact he had been isolated for almost twenty-four hours a day, with the exception of the time spent outdoors in an area measuring 7 by 14 metres. He had to share this area with up to seven other inmates at a time when he was allowed outdoors and could not use it when it rained. He also claimed that there had been no work available in the prison, and that he had been unable to continue his education as the prison only catered for classes up to third or fourth grade of primary school, and he had already finished fifth grade.

9. The Pazardzhik Administrative Court examined his claim under the SMRDA and dismissed it on 20 July 2016. He challenged that decision before the Supreme Administrative Court ("the SAC"), which quashed the judgment and remitted the case to the lower court for a new examination.

10. On 25 May 2018 the Pazardzhik Administrative Court heard the case under the new section 284 of the 2009 Act in conjunction with the amended section 3 (see paragraphs 32 and 18 respectively). The court allowed the claim in part and awarded compensation to the applicant in the amount of about 500 euros (EUR) for his detention in Pazardzhik Prison between 4 November 2013 and 24 April 2018. The court referred to the Court's pilot judgment in the case of *Neshkov and Others v. Bulgaria* (nos. 36925/10 and 5 others, 27 January 2015), observing that any assessment of the conditions of detention had to be made by examining their cumulative effects on the detainee. The court also explicitly held that, according to the Court's case-law, the mere fact of placing a detainee in inadequate conditions was presumed to cause him or her non-pecuniary damage even in the absence of specific evidence about the negative emotions experienced. The court then acknowledged that the absence of running water and lack of ready access to a toilet must have exposed the applicant to a level of suffering beyond what was normal in detention. In particular, the fact that he had been dependent on the availability and goodwill of a prison guard to let him out of his cell so that he could use the toilet was in itself demeaning.

11. As regards the applicant's complaint concerning the lack of purposeful activities, the Pazardzhik Administrative Court briefly observed as follows. According to one witness (a detainee), the applicant had asked to work and to continue his education, while according to another witness (a prison inspector) there had been no work available to life prisoners in Pazardzhik Prison, and the applicant had not even made a request to that effect. The court concluded that, in the light of the witness statements and written evidence, it could not be proven that the applicant had asked the prison administration whether he could participate in either work or further studies. Furthermore, he had had the possibility of choosing a book from among those brought to his cell once a week, and a psychologist had been working with him. The court did not deal with the applicant's allegation concerning his almost complete isolation.

12. The SAC upheld that judgment on 24 January 2019 in a final decision.

13. In the meantime, on 15 March 2018 the prison governor considered the need to change the applicant's prison regime from the most stringent "special regime" to the lighter "severe regime", but decided against it and issued an order to that effect. The applicant did not challenge the order in court (see paragraph 23 below).

14. According to the latest information available in the file, on 11 January 2019 the applicant was placed with another life prisoner in a shared cell, pending the completion of repair works in their usual cells. The new cell measures just under 15 square metres and is equipped with a toilet and a shower separated from the rest of the living space. Hot water is available twice a week for two hours.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

15. The relevant domestic law in force before amendments in 2017 to the Execution of Punishments and Pre-Trial Detention Act 2009 ("the 2009 Act") is set out in *Harakchiev and Tolumov v. Bulgaria* (nos. 15018/11 and 61199/12, §§ 165-74, ECHR 2014 (extracts)). In that judgment, the Court concluded under Article 46 of the Convention that Bulgaria was required to reform the legal framework governing the prison regime applicable to persons sentenced to life or whole-life imprisonment, to ensure, among other things, that the regime was applied for no longer than strictly necessary (ibid., § 280).

16. An amending Act was published in the State Gazette on 7 February 2017 (ДВ, бр. 13/2017 г.). Most of its provisions came into force the same day, and some provisions came into force on 1 May 2017.

17. It amended a number of provisions of the 2009 Act. In particular, it amended the definition of inhuman and degrading treatment in relation to conditions of detention (amended section 3), and introduced dedicated preventive and compensatory remedies in respect of poor conditions of detention (new sections 276 to 286 of the 2009 Act).

I. CLARIFICATION OF THE DEFINITION OF INHUMAN AND DEGRADING TREATMENT

18. Following amendment, section 3 of the 2009 Act, which came into force on 7 February 2017 and set out a general prohibition on subjecting convicted prisoners (and pre-trial detainees) to torture or inhuman or degrading treatment, reads:

> "1. Convicted prisoners and pre-trial detainees shall not be subjected to torture or to cruel, inhuman or degrading treatment.
>
> 2. Placing [a convicted prisoner or a pre-trial detainee] in unfavourable conditions consisting of a lack of sufficient living space, food, clothing, heating, light, ventilation, medical care, conditions for physical activity, prolonged isolation without opportunities to socialise, unjustified use of measures of restraint, as well as other similar actions, omissions or circumstances that demean human dignity or engender fear, helplessness or inferiority, shall also be regarded as a breach of subsection 1."

II. SPECIAL PROVISIONS CONCERNING THE EXECUTION OF LIFE AND WHOLE-LIFE SENTENCES

19. The explanatory note to the Government bill which led to these specific amendments concerning life sentences indicated that they were required in order to avoid future breaches of Article 3 of the Convention, found in the past by the Court in several cases in respect of Bulgaria, including *Chervenkov v. Bulgaria* (no. 45358/04, 27 November 2012), *Harakchiev and Tolumov* (cited above), and *Manolov v. Bulgaria*

(no.23810/05, 4 November 2014). In particular, such breaches were found as a result of the effects of the conditions of detention under the "special regime" on individuals sentenced to life or whole-life sentences, including the complete isolation of that category of prisoners without the prison authorities being able to change or alleviate the effects of the restrictions of the regime for five years after its imposition.

20. Following the amendment of sections 57 to 64a and 66 to 69 of the 2009 Act, it is no longer the sentencing court but the prison authorities which determine the type of correctional facility to which a convicted prisoner is to be committed.

21. The sentencing court, however, places individuals sentenced to life or whole-life imprisonment under the "special regime" for the first year of their sentence (section 57(1)(1) of the 2009 Act).

22. Subsequent changes from one prison regime to a more lenient one are no longer decided by a special commission attached to each prison, but by the prison governor (amended section 66(1)).

23. The amended version of section 198(1), which came into force on 7 February 2017, stipulates that, after a life prisoner has served a year of his or her life or whole-life sentence, the prison governor must decide whether to continue the application of the regime, or whether to lift it and apply the lighter regime for which such prisoners are eligible, namely the "severe regime". The prison governor must then issue an order, which has to contain reasons and be based on reports prepared for that purpose by the head of the department for reform and rehabilitation, the deputy head of security and the prison psychologist. A decision refusing to change the regime from "special" to "severe" can be challenged by the prisoner in the administrative court within fourteen days of the order being served on him or her. The decision of that court is final.

24. The prison governor must carry out such an assessment and decide on the continued application of the "special regime" at least once a year (section 198(3)).

25. Under section 198(5), prisoners serving life or whole-life sentences may, subject to the approval of the prison governor, take part with other prisoners in work, rehabilitation, education, and sports activities, or any other type of activities organised for those categories.

III. PREVENTIVE REMEDY

26. As set out in the Court's decision in the case of *Atanasov and Apostolov v. Bulgaria*, ((dec.), no. 65540/16, § 23, 27 June 2017), the new sections 276 to 283 of the 2009 Act, which came into force on 1 May 2017, put in place a dedicated preventive remedy with respect to conditions of detention. Those provisions read:

Section 276

"1. Any convicted prisoner or pre-trial detainee may request:

(1) that any actions or omissions of an authority [responsible for the execution of sentences] or official that amount to a breach of the prohibition set out in section 3 be discontinued;

(2) that steps be taken with a view to ending or preventing a breach of the prohibition set out in section 3.

2. The absence of a specific statutory obligation to carry out a particular action shall not be a bar to allowing an application under subsection 1 intended to end a breach of section 3.

Section 277

1. The application shall be made in writing to the administrative court competent with respect to the place of execution of the sentence or of enforcement of the pre-trial detention.

2. The application may also be lodged through the prison governor or the respective regional or district service for the execution of sentences, which shall forward it to the administrative court competent with respect to the place of execution of the sentence or of enforcement of the pre-trial detention within three days of receiving it, along with information concerning the grounds on which the action or omission has been challenged.

3. The application shall be recorded in a special court register, with a note of the exact time of its receipt and its author.

4. In cases under subsection 1, the court requires the authority [responsible for the execution of sentences] to immediately provide information about the actions or omissions in question.

Section 278

Within fourteen days of receiving the application the judge shall verify the actions or omissions whose cessation is being sought, and the grounds for them, through the police, the prosecuting authorities, the Ombudsman, an expert, non-governmental organisations, or by any other means.

Section 279

1. The court shall examine the application in a public hearing.

2. The hearing shall take place in the presence of the prison governor or the head of the respective regional or district service for the execution of sentences, the [applicant], and his or her representative. Failure by the governor or the applicant's representative to appear without good cause does not prevent the examination of the case. The case is examined in the [applicant's] absence if he or she expresses a wish not to attend or his or her presence is impossible for health-related or other good reasons.

Section 280

1. The court shall rule in a decision within the time-limit set out in section 278(1).

2. In its decision, the court may:

(1) reject the application;

(2) order the authority [responsible for the execution of sentences] or the respective official to take specific actions to prevent or end unconditionally the actions or omissions constituting a breach of section 3, and fix a time-limit for that.

Section 281

1. The decision may be challenged within three days of its delivery before a three-member panel of the same court.

2. The challenge shall be examined in the manner laid down in Chapter 13 of the Code of Administrative Procedure [which deals with interlocutory appeals] and shall not stay enforcement of the decision.

Section 282

The decision shall be enforced in the manner laid down in Chapter 17 of the Code of Administrative Procedure.

Section 283

All matters not dealt with in this Chapter shall be governed by the provisions set out in Chapter 15, Part I of the Code of Administrative Procedure."

27. In a number of decisions adopted since the introduction of these provisions, the administrative courts have upheld applications for injunctions by inmates and ordered the prison authorities, for example, to immediately send an inmate to an external hospital for surgery and treatment, to ascertain within ten days whether the necessary dental treatment could be provided in the prison or should be done elsewhere, and to put an end to situations such as (i) keeping a (life) prisoner handcuffed to his hospital bed without a prior individual risk assessment, (ii) having insufficient living space in cells, (iii) exposure to passive smoking in shared cells, and (iv) a lack of timely and adequate medical care. In those cases, the domestic courts found that the prisoners' rights under section 3 of the 2009 Act had been breached (see разпореждане № 2361 от 18.06.2018г. по адм. д. № 508/2018 на адм. съд Плевен; разпореждане № 661 от 26.07.2018г. по адм. д. № 394/2018 на адм. съд Враца; разпореждане № 3178 от 18.05.2018г. по адм. д. № 1331/2018 на адм. съд Пловдив; разпореждане № 4281 от 26.6.2017г. по адм. д. № 5079/2017 на адм. съд София; разпореждане № 5857 от 24.8.2017г. по адм. д. № 4817/2017 на адм. съд София; определение № 2740 от 27.4.2018г. по адм. д. № 4445/2018 на адм. съд София; разпореждане № 3303 от 28.5.2018г. по адм. д. № 4433/2018 на адм. съд София).

28. In other decisions the court, ruling in cassation, ordered the lower court to examine on the merits a request by an inmate to have the prison governor determine a rota for using the bathroom in order to prevent conflict and violence between inmates (определение № 2542 от 9.2.2018г.

по к. ч. адм. д. № 379/2018 на адм. съд Варна) and refused a request by a life prisoner serving his sentence under the "severe regime" to be detained separately from life prisoners serving their sentence under the "special regime" (see определение № 518 от 8.2.2018г. по к. адм. н. д. № 44/2018 на адм. съд Варна).

29. In other decisions, the administrative courts, after examining in detail the merits of applications for injunctions concerning the provision of specific medical procedures, living space, and the availability of fresh fruit and vegetables in prison, refused the applications on the grounds that the information collected demonstrated that they were without merit (see разпореждане № 1022 от 31.05.2018г. по адм. д. № 496/2018 на адм. съд Пазарджик; разпореждане № 1755 от 30.01.2018г. по адм. д. № 159/2018 на адм. съд Варна; разпореждане № 715 от 9.08.2018г. по адм. д. № 423/2018 на адм. съд Враца; разпореждане № 4608 от 13.07.2018г. по адм. д. № 1892/2018 на адм. съд Пловдив).

30. In a decision concerning a request under section 276 of the 2009 Act by a (non-life) prisoner serving his sentence under the "special regime" to be allowed to leave his cell three times a day to walk in the corridor for thirty minutes each time, the court dismissed the request for the following reasons. The prisoner had not shown that he had approached the prison administration with his request prior to bringing his case to court. In addition, the request could not be granted because of the characteristics of the "special regime" under which he was serving his sentence, which required cells to remain permanently locked and security to be high, and which did not include the possibility to walk in the corridor. Finally, allowing the prisoner to leave his cell would be wrong because of the numerous disciplinary offences which he had committed, most of which had been violence-related. The court added that, in any event, the prisoner had the ability to do regular physical exercise twice a day (see разпореждане № 2135 от 8.05.2018г. по адм. д. № 972/2018 на адм. съд Бургас).

31. Chapter 17 of the Code of Administrative Procedure governs, among other things, the enforcement of obligations incumbent upon the administrative authorities. Article 290 deals with the enforcement of the duty of officials to carry out non-substitutable actions due under, *inter alia*, judicial decisions. If the relevant official culpably fails to comply with a decision requiring action to be taken, he or she can be fined between 50 and 1,200 Bulgarian levs per week until he or she carries it out (Article 290 § 1). Each failure to comply with a decision requiring inaction may result in a fine in the same range (Article 290 § 2). The fines are imposed by the competent enforcement authority, which in such cases is the bailiff's office (Article 290 § 3 read in conjunction with Article 271 § 1 (2)).

IV. COMPENSATORY REMEDY

32. As set out in the Court's decision in the case of *Atanasov and Apostolov* (cited above, §§ 26-28), the new sections 284 to 286 of the 2009 Act, which came into force on 7 February 2017, put in place a dedicated compensatory remedy with respect to conditions of detention. Those provisions read as follows:

Section 284

"1. The State shall be liable for any damage caused to convicted prisoners or pre-trial detainees by the authorities [responsible] for the execution of sentences as a result of breaches of section 3.

2. In cases under section 3(2), the court shall take into account the cumulative effect of the conditions in which the person concerned has served the sentence of imprisonment or has been subjected to the pre-trial detention measure, their duration, as well as other circumstances which may be of relevance for correctly disposing of the case.

3. The court shall require the authorities [responsible] for the execution of sentences to provide information of relevance for correctly disposing of the case. If they do not comply with that obligation, the court may regard the respective facts as proven.

4. The court may of its own motion call officials from the respective penal establishment, or any other person whose testimony might shed light on the facts of the case.

5. In cases under subsection 1, non-pecuniary damage shall be presumed until proved otherwise.

Section 285

1. Claims under section 284(1) shall be examined in the manner laid down in Chapter 11 of the Code of Administrative Procedure [which governs the procedure applicable to claims for damages against the administrative authorities].

2. Claims shall be brought in the administrative court competent with respect to the place where the damage occurred or the current address of the aggrieved person, [and] against the authorities under section 284(1) whose decisions, actions or omissions have caused the damage.

3. Claims under this part shall be subject to a simple [court] fee in the amount set out in the tariff under Article 73 § 3 of the Code of Civil Procedure. Court costs and enforcement costs need not be deposited in advance.

Section 286

"1. All cases under this part shall be examined with the participation of a public prosecutor.

2. If it dismisses the claim in its entirety, the court shall order the claimant to bear the costs of the proceedings. Costs will also be borne by the claimant if he or she fully withdraws the claim or fully renounces it.

3. If it allows the claim in whole or in part, the court shall order the defendant to bear the costs of the proceedings and reimburse the claimant for the [court] fee paid by him or her. The court shall order the defendant to pay the claimant the fees of his or her counsel, if he or she had any, in proportion to the part of the claim which has been allowed."

33. In a number of decisions adopted since the introduction of these provisions, the administrative courts have allowed requests for compensation by inmates in relation to past breaches of section 3 of the 2009 Act as a result of inadequate conditions of detention, including a lack of sufficient physical activity (see решение № 497 от 23.07.2018г. по адм. д. № 814/2017 на адм. съд Плевен; решение № 1563 от 3.08.2018г. по адм. д. № 3469/2017 на адм. съд Бургас; решение № 1815 от 10.08.2018г. по адм. д. № 3729/2017 на адм. съд Пловдив; решение № 206 от 17.07.2018г. по адм. д. № 203/2018 на адм. съд Стара Загора; решение № 232 от 2.08.2018г. по адм. д. № 81/2017 на адм. съд Стара Загора; решение № 300 от 31.07.2018г. по адм. д. № 264/2018 на адм. съд Враца; решение № 302 от 31.07.2018г. по адм. д. № 257/2018 на адм. съд Враца; решение № 1548 от 27.07.2018г. по адм. д. № 463/2018 на адм. съд Бургас; решение № 585 от 24.07.2018г. по адм. д. № 480/2018 на адм. съд Хасково; решение № 223 от 24.07.2018г. по адм. д. № 21/2018 на адм. съд Стара Загора).

34. As regards the calculation of the limitation period applicable to such situations, the courts have held that the five-year general limitation period for tort under Bulgarian law starts to run from the moment when the situation complained of (inadequate conditions of detention) comes to an end (see, among other authorities, тълкувателно решение № 3 от 22.04.2005г. по тълк. д. № 3/2004 на ОСГК на Върховен Касационен Съд). Thus, in situations where inmates have been freed after serving their sentence, the five-year period starts to run from their release (решение № 1563 от 3.08.2018г. по адм. д. № 3469/2017 на адм. съд Бургас).

35. As regards how far back prisoners can retrospectively claim damages for poor detention conditions under the new remedy, the courts have varied in their findings: some, appearing to consider inadequate conditions of detention as a continuing situation, examined them irrespective of their duration or whether they concerned periods dating back more than five years (see решение № 206 от 17.07.2018г. по адм. д. № 203/2018 на адм. съд Стара Загора; решение № 1815 от 10.08.2018г. по адм. д. № 3729/2017 на адм. съд Пловдив; решение № 2135 от 7.11.2018г. по адм. д. № 909/2018 на адм. съд Варна), while another court held that compensation claims were only admissible for the five years preceding the date of bringing the claim (решение № 1667 от 6.08.2018г. по адм. д. № 2924/2015 на адм. съд Варна).

36. The domestic courts have also delivered reasoned decisions not to award compensation following a detailed examination and finding that the

alleged circumstances at the origin of the claim were not proven (see решение № 175 от 6.08.2018г. по адм. д. № 113/2018 на адм. съд Кюстендил; решение № 1019 от 14.05.2018г. по адм. д. № 113/2018 на адм. съд Варна; решение № 176 от 7.08.2018г. по адм. д. № 128/2018 на адм. съд Кюстендил; решение № 120 от 3.08.2018г. по адм. д. № 92/2018 на адм. съд Габрово).

37. Paragraph 49 of the amending Act's transitional and concluding provisions, which prescribes the manner in which already pending claims for damages in relation to poor conditions of detention – which were previously examined under section 1(1) of the SMLDA – are to be examined following the introduction of the new compensatory remedy, reads:

> "Claims in relation to damage caused to convicted prisoners or pre-trial detainees as a result of detention in poor conditions lodged before this Act entered into force shall be examined in the manner laid down in section 284(1)."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

38. The applicant complained under Article 3 of the Convention that he had been continually held in inhuman and degrading conditions of detention while serving his life sentence, principally owing to his almost complete isolation and the lack of purposeful activities for physical and mental stimulation, in addition to the inadequate material conditions of detention:

39. Article 3 of the Convention reads as follows:

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

A. Admissibility

1. Submissions by the parties

40. The Government argued that the applicant had not exhausted domestic remedies in respect of his complaint about lack of purposeful activities and prolonged isolation in detention. The amendments in the 2009 Act, which had come into force in 2017, provided the applicant with a plethora of remedies and his failure to use them cannot be attributed to the authorities.

41. In particular, he had not made this complaint in the proceedings for damages he had brought domestically in 2016 in respect of past periods (see paragraph 6 above). Under sections 284-286 of the 2009 Act the applicant could have successfully sought compensation for damage which had occurred before the entry into force of the new legislation in respect of poor

conditions of detention, lack of meaningful activities and non-inclusion in correctional programs.

42. Also, he had failed to appeal against the refusal of the prison governor in March 2018 to change the regime under which he was serving his sentence (see paragraphs 13 and 23 above).

43. Finally, if he considered that he continued to be held in inadequate conditions in prison, he could have used at any time the preventive remedy available to him since the first half of 2017 (see paragraph 26 above) in order to seek immediate relief.

44. As regards the material conditions of his detention, he had been awarded compensation for what the courts considered had been justified. His related complaint should be dismissed therefore as manifestly ill-founded.

45. The applicant reiterated his complaint.

2. The Court's assessment

(a) General background

46. The Court notes that the Government made objections to the admissibility, on the basis of non-exhaustion of domestic remedies, of the applicant's complaint about lack of purposeful activities and prolonged isolation in detention, both as regards past periods and in respect of the possibility of putting an end to such a situation. They also stated that the applicant's complaint related to the material conditions of his detention was inadmissible as manifestly ill-founded.

47. In this connection, the Court refers to its previous finding in the main case before it in which it pronounced on complaints about detention of life prisoners in Bulgaria, namely *Harakchiev and Tolumov* (cited above). The Court held in it under Article 46 of the Convention that the respondent State was required to reform, preferably by means of legislation, the legal framework governing the prison regime applicable to persons sentenced to life or whole-life imprisonment (ibid., § 280, and subsequently *Simeonovi v Bulgaria* [GC], no. 21980/04, § 151, 12 May 2017, where the Court reiterated this recommendation).

48. The Court then observes that the relevant legislation, the 2009 Act, was amended after the judgment in *Harakchiev and Toloumov* became final. The changes came into force on 7 February and 1 May 2017 respectively (see paragraphs 18 and 26 above). It appears from the explanatory note to the Government's bill which led to those amendments that they were meant to address the deficiencies in the regulatory framework flagged by the Court in similar cases (indicated in paragraph 19 above). Among other things, the changes were aimed at avoiding future breaches of Article 3 of the Convention resulting from the complete isolation of all individuals sentenced to life or whole-life sentences without there being a possibility for

the prison authorities to change or alleviate the effects of the restrictions of the regime for five years after its imposition.

49. The Court observes that, as pointed out by the Government, three new remedies were put in place to deal with inadequate conditions of detention in correctional facilities – a general preventive one under section 276 to section 283, a specific preventive one under amended version of section 198(1) of the 2009 Act, as well as a general compensatory one under section 284 to section 296 of the 2009 Act. The general preventive and compensatory remedies were duly considered by the Court in the case of *Atanasov and Apostolov* (cited above, §§ 48-68), where it found that they could be regarded as effective with respect to inhuman and degrading conditions of detention in Bulgaria.

50. It is therefore necessary for the Court to ascertain whether the three procedures, indicated in the previous paragraph and available to the applicant under Bulgarian law, may be regarded as effective remedies in respect of his complaint about the application of the "special regime" and his treatment as a life prisoner. The Court should then determine whether those remedies should have been used by the applicant to offset the negative effects of the isolation and lack of purposeful activities under the prison regime applied to him.

51. In its decision in the case of *Atanasov and Apostolov* (cited above, § 47) the Court held that, since the general preventive and compensatory remedies had just become available, their assessment had to be based solely on the statutory provisions which governed them rather than their operation in practice. Since the adoption of that decision, the domestic courts have generated some related judicial practice applying the new provisions. It is therefore necessary to take that case-law into account in the assessment of the effectiveness in practice of the two remedies in respect of applications by life prisoners serving their sentence under the "special regime".

(b) Legal changes specifically concerning the execution of life sentences, under section 198(1) of the 2009 Act (specific preventive remedy)

52. The amended version of section 198(1) of the 2009 Act, which came into force on 7 February 2017, stipulates that, after a life prisoner has served a year of his or her sentence, the prison governor must decide whether to continue the application of the regime, or whether to lift it and apply the lighter regime for which such prisoners are eligible. The prison governor must then issue a reasoned order, based on reports prepared for that purpose by the relevant prison authorities. A decision refusing to change the regime to the lighter one can be challenged by the prisoner in the administrative court within fourteen days of the order being served on him or her. The decision of that court is final. The Court further notes that, in accordance with section 198(3), the prison governor must carry out such an assessment

and decide on the continued application of the "special regime" at least once a year (see paragraphs 23 and 24 above).

53. The Court finds that, on the basis of its characteristics, the legal amendment under section 198(1) of the 2009 Act, taken together with the obligation under section 198(3) of the 2009 Act, meet the requirement elaborated in the Court's case-law that the "special regime" be maintained no longer than strictly necessary (see paragraph 15 above). Consequently, it appears as an effective means for preventing or ending breaches of Article 3 of the Convention resulting from prolonged isolation and lack of purposeful activities. The manner in which the prison governors and the Bulgarian courts deal with such cases may affect the Court's conclusion on that point for the future.

(c) Preventive remedy under sections 276 of the 2009 Act

(i) Analysis related to the remedy

54. The Court observes that this remedy is of general application in the context of inhuman conditions of detention. It is not limited to certain categories of prisoners but can be used by anyone in detention, including prisoners serving life or whole-life sentences (section 276(1) of the 2009 Act). Under it, prisoners can ask the prison authorities to refrain from actions that breach section 3 of the 2009 Act (which prohibits torture or cruel, inhuman or degrading treatment), or to take action to end or prevent such a breach.

55. Section 3(2) of the 2009 Act clarifies that the general prohibition of ill-treatment encompasses the various ways in which conditions of detention can fall short of the requirements of Article 3 of the Convention. In the context of life prisoners, it is significant that a breach of the prohibition of ill-treatment under section 3(2) explicitly includes "prolonged isolation without a possibility to socialise" and a "lack of ... sufficient conditions for physical activity" (see paragraph 18 above). Both of these aspects, in addition to poor material conditions of detention, have been identified repeatedly by the Court as reasons for finding a violation of Article 3 of the Convention on account of the treatment of life prisoners.

56. The Court observes that inmates serving life or whole-life sentences can use this new preventive remedy and ask the administrative courts, which provide guarantees of independence and impartiality, to change the conditions to which they are subjected. In particular, life or whole-life prisoners can complain of a breach of the prohibition of ill-treatment under section 3(1), as a result of the negative effects which prolonged isolation and the lack of sufficient physical activities – both being typical consequences of the application of the "special regime" to inmates – have on them. At the same time, they can ask the courts to order an end to that treatment as being in breach of section 3 of the 2009 Act. If well-founded,

their application would result in a court injunction requiring the prison authorities to act, within a certain time-frame, to bring the situation to an end.

57. If the prison governor fails to comply with a court injunction, he or she can be fined weekly until full compliance (see *Atanasov and Apostolov*, cited above, § 25). The new preventive remedy can also be used by life prisoners in respect of any other conditions in which they are being detained and are serving their sentence and which run contrary to the prohibition of ill-treatment. In practice, therefore, situations of life prisoners which are incompatible with Article 3 of the Convention appear capable of being redressed by means of this remedy.

(ii) Relevant domestic judicial practice

58. Looking at how this general preventive remedy was applied in practice after the decision in *Atanasov and Apostolov*, the Court notes that in a number of decisions the domestic courts allowed requests for injunctions by inmates seeking to put an end to situations in breach of their rights under section 3 of the 2009 Act. These included insufficient living space in cells, exposure to passive smoking from cellmates, being bound to a hospital bed, and inadequate medical care (see paragraph 27 above). In doing so, the courts examined the allegations in detail and applied the requirements developed in the previous case-law of the Court, particularly as regards the establishment of the facts and the need to assess the situation not only in terms of formal compliance with domestic law, but also in terms of the cumulative impact of the conditions on the prisoners' well-being and by reference to the general prohibition of inhuman and degrading treatment laid down in Article 3 of the Convention.

59. In certain other decisions the administrative courts, acting as second-instance courts, quashed decisions taken at first instance and which had dismissed as inadmissible requests for injunctions seeking the provision to prisoners of uninterrupted time for using sanitary facilities, or their inclusion in reform and resocialisation programmes aimed at minimising the risk of recidivism (see paragraph 28 above). In those cases, the courts ordered an examination of the inmates' requests on the merits, in accordance with the courts' prerogatives under the new preventive remedy to bring an end to situations arguably incompatible with the prohibition in section 3 of the 2009 Act.

60. On other occasions where the courts did not uphold requests for injunctions, they did so after careful consideration of all the relevant circumstances and found that the allegations were not substantiated (see paragraph 29 above).

61. The Court is aware of one judicial decision, concerning a request to "relax" the "special regime" by allowing the prisoner to walk three times a day in the corridor of his prison wing, in which the court rejected that

request. In doing so, the court referred, among other things, to the fact that under the "special regime", walks in the corridor were not permitted and cells had to be permanently locked (see paragraph 30 above). The Court notes that, instead of dealing with the merits of the complaint under the amended section 3 of the 2009 Act and the Court's related case-law, the domestic court in that case found the "special regime" assigned to the prisoner to be a formal obstacle to ordering more frequent physical activities which were necessary for his well-being. It notes nonetheless that the decision in question was not final, as it was delivered at first instance, and that it was given relatively shortly after the adoption of the new legal provisions, thus during an acceptable period of adjustment and development of the domestic practice. It therefore considers that this one judicial decision cannot serve as an indicator that the courts will not apply the Court's case-law to other situations of isolation and a lack of activities which tend to occur under the "special regime".

62. Consequently, it cannot be concluded at this stage, including on the basis of the relevant domestic case-law, that the domestic courts will fail to rule on applications under section 276 by lifers concerning a breach of section 3 of the 2009 Act as a result of the negative effects on them of insufficient physical activities and prolonged isolation. This is especially the case considering that both of those are direct consequences of the application of the "special regime", and are explicitly prohibited in section 3 of the 2009 Act and the Court's case-law.

63. On the basis of the above, the Court reiterates that the manner in which the Bulgarian courts continue to deal with such requests, in particular as regards complaints related to suffering as a result of prolonged isolation and a lack of physical activities, and the extent to which related injunctions against the prison authorities are complied with, will affect the Court's future conclusion on this point.

(d) Compensatory remedy

(i) Analysis related to the remedy

64. As regards past periods of detention spent in prolonged isolation with insufficient physical activities, both being incompatible with the prohibition of ill-treatment according to the new wording of section 3 of the 2009 Act (see paragraph 18 above), life prisoners can resort to the compensatory remedy under section 284 to section 296 of the 2009 Act. Like the preventive remedy, the compensatory one is not limited to certain categories of prisoners, but is of general application in the context of inhuman conditions of detention and can be used by anyone in detention, including prisoners serving life or whole-life sentences. This remedy has been available since 7 February 2017 to all prisoners in detention in respect of past periods of detention (see paragraph 32 above).

(ii) Relevant domestic judicial practice

65. It is also important to examine how the domestic courts have applied the new compensatory remedy to claims for damages in relation to past breaches of the prohibition of ill-treatment.

66. Indeed, in a number of decisions adopted since the introduction of the new compensatory remedy the courts have upheld such requests for compensation, including on account of a lack of sufficient physical activity (see paragraph 33 above). In decisions where such requests were refused, the courts did so after careful consideration of the merits (see paragraph 36 above).

67. A final question relates to the amount of compensation awarded by the domestic courts to inmates in respect of complaints about inhuman and degrading conditions of detention. On that point the Court has already held that the quantum of damages was a relevant and important element in considering the effectiveness of the new remedies (see *Atanasov and Apostolov*, cited above, § 64). The Court observes that it is not in possession of sufficient information on this point at this stage. Accordingly, no conclusion could be drawn about the prevalent domestic practice as regards the quantum of damages. The Court reiterates in that connection that the amounts which the Bulgarian courts award in damages for such complaints will potentially affect the Court's future conclusion on this point.

(e) Conclusion in respect of admissibility

68. On the basis of all of the above, the Court finds that the two preventive and one compensatory remedies discussed above can be regarded as effective with respect to complaints of inhuman or degrading conditions of detention in the specific circumstances related to life prisoners. Although the availability of effective domestic remedies is normally assessed by reference to the date of lodging of the application, this rule is subject to exceptions following, among others, the creation of new remedies (see *Atanasov and Apostolov*, cited above, § 45, and *Stella and Others v. Italy* (dec.), no. 49169/09, 16 September 2014).

69. The Court notes that the applicant failed to appeal against the refusal of the prison governor in March 2018 to change the regime under which he was serving his sentence (see paragraphs 13 and 23 above); he likewise failed to use the general preventive remedy at any point in time after it entered into force in May 2017. It does not appear that there exist special circumstances which absolve him from having to do so, or that he was time-barred from doing so. It follows that his complaint about the impossibility for him to put an end to a situation in breach of Article 3 of the Convention as a result of his continued isolation, lack of purposeful activities and inadequate material conditions of detention must be rejected

under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

70. As regards the applicant's complaint about a breach of Article 3 as regards past periods of detention, the Court notes that a question may arise as to whether the applicant can still be considered a victim of an alleged violation of Article 3 of the Convention, seeing that he was awarded compensation in the domestic proceedings which he had initiated in 2016 (see paragraphs 10 and 12 above). The Court reiterates that a decision or measure favourable to an applicant is not, in principle, sufficient to deprive him or her of the status of being a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded appropriate redress for the breach of the Convention (see, among others, *Gäfgen v. Germany* [GC], no. 22978/05, § 115, ECHR 2010).

71. The Court finds that the question of the victim status of the applicant in connection with his complaint about past periods of detention is closely bound up with the merits of the complaint (see, *mutatis mutandis*, *Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, § 79, ECHR 2012 (extracts)). The Court will therefore deal with this question below when examining the substance of the applicant's complaint under Article 3 in respect of past periods of detention. Having regard to the fact that the applicant attempted proceedings domestically as regards past periods of detention (see paragraphs 10-12 above), the Court accordingly dismisses the Government's objection of non-exhaustion in respect of the complaint regarding past periods of detention.

72. The Court further finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

73. The Court observes that while the proceedings for damages which the applicant brought in 2016 were pending, the legislative changes in the 2009 Act entered into force. As a result, the domestic courts effectively examined his claim under the new section 284 in conjunction with the amended section 3 of the 2009 Act (see paragraph 10 above).

74. In line with the approach and standards developed by the Court in its related case-law, the domestic courts referred in their decisions to the need to consider the cumulative impact of the detention conditions, including their duration, as well as the fact that non-pecuniary damage was presumed if inadequate conditions were established. The domestic courts applied that logic in respect of the material conditions of detention, considering the

specific circumstances in their entirety, before finding a breach of the relevant provision of domestic law.

75. The courts did not undertake a similar comprehensive analysis of the applicant's complaints related to not having had access to purposeful stimulating activities while serving his life sentence. Instead, they briefly noted that there was no proof of him having asked to pursue work or education during the relevant period. They did not examine in specific terms what, if anything, had been available to the applicant in that specific prison, either in terms of education or work, or in terms of the other types of activities which he asserted had not been provided to him. Nor did they deal at all with his complaint of having had to spend almost twenty-four hours a day in isolation (see paragraphs 11 and 12 above).

76. The Court has already found that the "special regime" in Bulgarian prisons does not allow for participation in purposeful activities and is considered lawful within the meaning of domestic law, and that a short period of outdoor exercise limited to one hour a day is a factor that further exacerbates the situation of a prisoner confined to his cell for the rest of the time (see, among other authorities, *Halil Adem Hasan v. Bulgaria*, no. 4374/05, § 53, 10 March 2015, with further references). Significantly, the applicant's related complaints were examined by the domestic courts following amendment of the relevant legal provisions, which were meant to address the deficiencies in the regulatory framework flagged by the Court in similar earlier cases. Despite the newly clarified parameters of the meaning of inhuman and degrading treatment in section 3 of the 2009 Act, however, it cannot be said that requisite judicial attention was paid to the applicant's complaints concerning the lack of purposeful activities and almost complete isolation, and to their effects on his mental and physical well-being. The Court concludes in the circumstances that, on the basis of the characteristics of the special regime as established in its earlier case-law (see *Harakchiev and Tolumov*, cited above, among many others) and the fact that the applicant had been serving his sentence under the "special regime", he was held in prolonged isolation and in the absence of purposeful activities during the period in question.

77. A further aspect of the domestic courts' decisions relates to the amount of compensation awarded to the applicant at the end of the proceedings concerning a breach of section 3 of the 2009 Act. In *Atanasov and Apostolov* (cited above, § 64) the Court held that the quantum of damages could not be unreasonable in comparison to the just satisfaction awarded by this Court under Article 41 of the Convention in similar cases. In the present case, the Court observes that the amount awarded to the applicant in May 2018, namely EUR 500 for inadequate conditions of detention for a period of just under four and a half years (see paragraph 10 above), is several times lower than what the Court would have awarded in similar cases (contrast *Neshkov and Others*, cited above, §§ 300-02,

27 January 2015, in addition to *Harakchiev and Tolumov*, cited above, § 296).

78. Accordingly, in view of the above, particularly the insufficient judicial consideration of the applicant's complaint concerning his isolation and the lack of activities under the "special regime", as well as the ostensibly low amount of damages awarded to him in respect of the material conditions of his detention, the Court finds that the applicant could claim to be a victim of a Convention's violation. Taking into account the cumulative effect of the conditions in which the applicant had been held in Pazardzhik Prison between 4 November 2013 and 24 January 2019 (the latter date being when the final judgment in respect of his claim for damages was delivered), and the fact that he has not received adequate redress, the Court finds that there has been a violation of Article 3 of the Convention.

79. The Court emphasises that its conclusion of a violation of Article 3 of the Convention does not affect its findings under the admissibility part, namely that the available remedies to the applicant were effective in principle and he was expected to have attempted them before turning to the Court. The reason for this is that the right to an effective remedy is not to be interpreted as a right to a favourable outcome for the person using it and that the mere fact that the compensation awarded to the applicant was low does not in itself call into question the effectiveness of the remedies examined above (see, similarly, *Delle Cave and Corrado v. Italy*, no. 14626/03, §§ 43 and 45, 5 June 2007).

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

80. In respect of his complaint that he did not have an effective domestic remedy in relation to his complaint under Article 3 of the Convention, the applicant relied on Article 13 of the Convention, which provides:

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

81. The Court already found that the three remedies examined under the admissibility part under Article 3 of the Convention are effective for the purposes of Article 35 § 1 of the Convention. In view of the close link between that provision and Article 13, this finding is equally valid in the context of this complaint (see *Atanasov and Apostolov*, cited above, § 72 with further reference).

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. Article 41 of the Convention provides:

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

A. Damage

84. The applicant claimed EUR 30,000 in respect of non-pecuniary damage.

85. The Government submitted that the claim was exorbitant.

86. The Court considers, with regard to the breach of Article 3 of the Convention relating to the effects on the applicant of the regime and conditions of his detention, that he must have sustained non-pecuniary damage as a result of the violation of his rights under that provision. In view of the general measures taken by the Respondent State, which should be regarded as constituting the most appropriate means of redress and from which the applicant can benefit, as well as taking note of the domestic award already made to the applicant in connection with his complaint before the Court, the Court finds it appropriate to award the applicant EUR 6,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

87. The applicant also claimed EUR 1,500 for the costs and expenses incurred before the Court, in particular for legal fees for the proceedings before the Court.

88. The Government pointed out that he had not submitted a contract for legal representation, only a time sheet. In addition, this sum had not actually been paid by the applicant to his legal representative.

89. According to the Court's settled case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, as a recent authority, *Merabishvili v. Georgia* [GC], no. 72508/13, § 370, 28 November 2017). A representative's fees are actually incurred if the applicant has paid them or is liable to pay them (ibid.). The fees payable to a representative under a conditional-fee agreement are actually incurred only if that agreement is enforceable in the respective jurisdiction (see *Ivanova and Cherkezov v. Bulgaria*, no. 46577/15, § 89, 21 April 2016).

90. In the present case the applicant did not submit a contract for legal representation or any document showing that was under a legal obligation to pay the fees. In the absence of such documents, the Court finds no basis on which to accept that the costs and expenses claimed by the applicant have actually been incurred by him.

91. Accordingly, the Court rejects the claim for costs and expenses in its entirety.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint about the impossibility for the applicant to put an end to a situation in breach of Article 3 of the Convention as a result of his continued isolation and lack of purposeful activities and inadequate material conditions of detention, as well as the complaint under Article 13 in conjunction with Article 3, inadmissible;

2. *Joins* to the merits the question of the victim status of the applicant as regards past periods of detention, and *holds* that the applicant retains such status;

3. *Declares* the complaint concerning a breach of Article 3 of the Convention as regards past periods of detention admissible;

4. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant's past periods of detention by reason of the lack of sanitary facilities combined with the prolonged isolation and lack of purposeful activities available to the applicant;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Bulgarian levs at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 21 July 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Deputy Registrar	Iulia Antoanella Motoc President