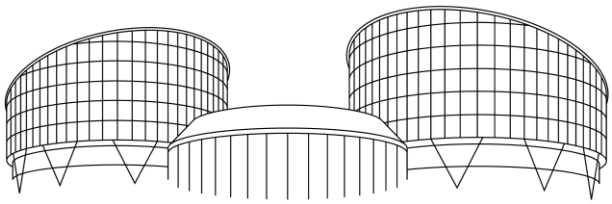

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KASHAVELOV v. BULGARIA

(Application no. 891/05)

JUDGMENT

STRASBOURG

20 January 2011

FINAL

20/04/2011

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

In the case of Kashavelov v. Bulgaria,

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

Peer Lorenzen, *President*,
Renate Jaeger,
Rait Maruste,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Ganna Yudkivska, *judges*,
Pavlina Panova, ad hoc *judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 14 December 2010,

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

PROCEDURE

1. The case originated in an application (no. 891/05) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Ivo Stefanov Kashavelov ("the applicant"), on 7 December 2004.

2. The Bulgarian Government ("the Government") were represented by their Agents, Ms S. Atanasova and Ms M. Kotseva, of the Ministry of Justice. The applicant stated that he did not wish to be legally represented, and was granted leave to represent himself (Rule 36 § 2 of the Rules of Court).

3. On 30 June 2009 the Court declared the application partly inadmissible and decided to give the Government notice of the complaints concerning the conditions of the applicant's detention in Sofia Prison, the length of the criminal proceedings against him, and the lack of effective remedies in respect of that length. It also decided to rule on the admissibility and merits of the remainder of the application at the same time (Article 29 § 3 of the Convention, as worded before 1 June 2010).

4. Zdravka Kalaydjieva, the judge elected in respect of Bulgaria, withdrew from sitting in the case. The President of the Chamber accordingly appointed Pavlina Panova to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1964 and is currently serving a life term in Sofia Prison.

A. The criminal proceedings against the applicant

6. On 5 August 1996 the applicant was arrested on suspicion of having abducted a person. On 14 August 1996 he was charged with that offence. In September 1996 he was charged with murdering three police officers, and on 4 June 1997 with at least ten other offences.

7. On an unspecified date in 1998 the prosecuting authorities submitted an indictment against the applicant to the Sofia City Court. However, on 18 September 1998 the judge rapporteur referred the case back to them, citing irregularities in the manner in which some of the charges and evidence had been presented to the applicant.

8. On 12 October 1998 the prosecuting authorities submitted to the Sofia City Court an indictment against the applicant and three others. The charges included the murder of three police officers, several attempted murders, robberies, thefts, unlawful deprivation of liberty, and unlawful possession of firearms. On 29 December 1998 the judge rapporteur set the case down for trial over several days in May 1999.

9. The Sofia City Court held at least seven hearings between May 1999 and 8 March 2000, and on the latter date convicted the applicant of aggravated murder, hooliganism, attempted armed robbery, deprivation of liberty and unlawful possession of firearms, and acquitted him of the other charges. It sentenced him to life imprisonment without commutation and ordered that he should begin serving his sentence under the strictest prison regime (the so-called “special regime” – see paragraph 21 below).

10. On appeal, the Sofia Court of Appeal held at least five hearings, the last of which took place on 14 January 2002. On 10 February 2003 it partly quashed the lower court's judgment, acquitting the applicant of one of the charges of attempted armed robbery and of the charges of unlawful possession of firearms, and re-qualifying one of the other charges. It upheld the remainder of the judgment, including the applicant's sentence.

11. On 27 February 2004 the Supreme Court of Cassation partly quashed the Sofia Court of Appeal's judgment and remitted the case to that court for reconsideration of the charges of attempted robbery. It upheld the remainder of the judgment, including the applicant's sentence.

12. On remittal, the Sofia Court of Appeal held at least two hearings. On 31 August 2004, it upheld the Sofia City Court's judgment, acquitting the

applicant of the charges of attempted armed robbery. No appeal was lodged, and the judgment became final on 6 October 2004.

B. The applicant's detention in Sofia Prison

13. On 7 February 1997 the applicant was moved to the detention centre of the National Investigation Service. On 2 December 1997 he was transferred to Sofia Prison. Between 1997 and 2004, he was held there as a detainee awaiting the final determination of the criminal charges against him. Since 17 November 2004, his stay in the prison has been continued on the basis of his final sentence of life imprisonment.

14. On 4 December 1997 the prison's governor, relying on the relevant regulations (see paragraphs 17 and 18 below) and having regard to a note in which the investigating authorities had described the charges against the applicant, his character, and their assessment of the risk that he could pose to prison staff, ordered that he be placed within an isolated group of prisoners subjected to stringent security measures and be deprived of the right to take part in communal activities. In a follow-up decision of 14 May 1999 the governor ordered that the applicant be handcuffed each time he was separated from that group. According to the Government, the applicant was being handcuffed only when taken out of the premises occupied by the group – for outdoor activities, visits to the prison doctor, dentist or library, or receiving visitors or lawyers. He was allowed to exercise in a special secluded yard. The applicant contended that he was being handcuffed each time when taken out of his cell.

15. The applicant alleged that he was held alone in a locked cell measuring 1.9 by 4.05 metres. He could leave the cell only for his daily one-hour walk. During the first eight or nine months in prison he took his walk alone. After that, he was allowed to join one or two other life prisoners, but was prohibited from talking to them. Since October 2001, he was again taking his daily walks alone, in a concrete enclosure covered with a wire-net and measuring 6.7 by 11 metres. The only other times when the applicant was allowed out of his cell were the scheduled visits to the sanitary facilities, for five to ten minutes twice a day. According to him, those were the only occasions when he could stock up on drinking water. Later, he was allowed to spend more time using the sanitary facilities. The applicant further alleged that during the first six months of his stay in prison he was being deprived of one of his daily meals once every four days, and for an initial period of about a year and a half he was not allowed to use his own bed sheets and pillows.

16. The Government disputed those allegations, saying that the applicant had not been subjected to serious isolation inside his prison group. They pointed out that, save for a limited number of restrictions flowing from the “special regime” to which the applicant was subjected, he enjoyed the

opportunities available to all other inmates, such as the possibility to work, access to free health and dental care, access to the prison library and temple, receiving visitors, parcels, telephone calls and correspondence, etc. They cited a note drawn up by the prison's governor, which said the following:

> "[The applicant] is even now extremely hostile towards the legal order of the Republic of Bulgaria. He does not accept his conviction and sentence, and considers the criminal proceedings against him to be unfair and biased. He shows complete disregard to others, and acts rudely and arrogantly when approached. Extremely mistrustful, suspicious and hostile towards all prison staff. His irascibility, undisguised cruelty and spitefulness, and constant nervous tension make him especially dangerous and unpredictable. His attitude towards the other inmates in his group does not differ markedly from the one described above. He refuses to socialise with others, hates everything and everyone. He enters into sporadic contacts with the group's hygienist when necessary. Refuses to take part in communal activities. On several occasions he was offered work, which he pointedly turned down. When taken out for visits and in the presence of larger groups of people, he often loudly makes negative remarks about the courts and the prison administration. He often rehearses his 'defence speech' naked in his cell."

17. The applicant disputed those allegations and pointed out that the governor did not cite any specific facts to support them.

II. RELEVANT DOMESTIC LAW

A. The regime of pre-trial detainees kept in prisons

18. At the material time the regime of pre-trial detainees kept in prisons was governed by regulations issued in 1993 (*Наредба № 12 от 15 април 1993 г. за положението на обвиняемите и подсъдимите в местата за лишаване от свобода*). In May 1999 those were superseded by similar regulations (*Наредба № 2 от 19 април 1999 г. за положението на обвиняемите и подсъдимите с мярка за неотклонение задържане под стража*), which remained in force until September 2006.

19. Regulation 15(1)(3) of the 1993 regulations, superseded by regulation 14(3) of the 1999 Regulations, provided that detainees could be placed in a locked cell and be deprived of the right to take part in communal activities if considered a security risk. That measure could be imposed by the prison's governor, who had to have regard to the detainee's personal characteristics and psychological state, and to the dangerousness of the offence in relation with which he or she had been detained. Regulation 15(3) *in fine* of the 1993 regulations, superseded by regulation 15 of the 1999 regulations, provided that detainees subjected to such measures had to be kept isolated from the general prison population each time they were taken out of their cells, for court transfers, medical treatment, receiving visitors, outdoor activities, etc.

B. The regime of prisoners serving a life sentence

20. Until June 2009 the regime of prisoners serving a life sentence was governed by the Execution of Punishments Act (1969) (*Закон за изпълнение на наказанията*) and the regulations for its implementation. In June 2009 and February 2010 these were superseded by, respectively, the Execution of Punishments and Pre-Trial Detention Act (*Закон за изпълнение на наказанията и задържането под стража*) and the regulations for its implementation.

21. The regime of life prisoners was governed by sections 127a-127e of the 1969 Act, added in 1995. Section 127b(1) provided that when imposing a life sentence the court had to order the prisoner's placement under the strictest regime, called "special regime". Individuals placed under that regime were to be kept in locked single cells and subjected to heightened security and supervision (regulation 56(1) of the implementing regulations). Those provisions were maintained in 2009 Act (sections 61(1), 71(2) and 198(1)) and the 2010 regulations (regulation 213). Regulation 213 additionally provides that life prisoners can take part in communal activities only with prisoners of the same category. Under regulation 214, they have to be kept isolated from the general prison population even when taken out of their cells for transfers, medical treatment, visits, outdoor activities, etc.

22. Section 127b(2) of the 1969 Act, superseded by section 198(1) of the 2009 Act, provided that, if they had good conduct, after five years life prisoners could be placed under a lighter regime. The time spent in pre-trial detention does not form part of that period (regulation 167(2) of the implementing regulations of the 1969 Act, superseded by regulation 218 of the implementing regulations of the 2009 Act). The decision to place a life prisoner under a lighter regime is taken by a commission consisting of prison staff and various other officials (section 17 of the 1969 Act, superseded by sections 73 and 74 of the 2009 Act). Under section 58 of the 1969 Act, the commission's decisions could be challenged by the Minister of Justice. Under section 74(2) of the 2009 Act, only the decisions to place a prisoner under a stricter regime can be challenged, by way of judicial review. Once under a lighter regime, life prisoners can, under certain conditions, be placed together with the general prison population (section 127b(4) of the 1969, superseded by section 198(2) of the 2009 Act).

III. REPORTS OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT ("the CPT")

23. The CPT has visited Bulgaria seven times. Sofia Prison was visited in 2006 and 2008.

24. The report on the 2006 visit (CPT/Inf (2008) 11) says:

"101. There were 15 lifers at Sofia Prison at the time of the visit; two were being accommodated in the mainstream prison population, while the rest were held in a separate unit in the section used for disciplinary isolation ... Lifers in the separate unit were accommodated in single cells measuring 7.5 m²; the cells had a small barred window, set too high in the wall to afford a view out. There was integral sanitation which reduced the limited space in the cell; however, the cells would provide adequate sleeping accommodation for one person provided these prisoners were offered a varied programme of out-of-cell activities during the daytime.

However, in contrast to the situation observed in [two other prisons], life-sentenced prisoners in Sofia Prison lacked communal activities. They were locked up in their cells except for periods of outdoor exercise (1.5 hours like the rest of the inmates at Sofia Prison), which all but four lifers took together. The lack of group activities is not justifiable in security terms, given that life-sentenced prisoners already exercise together. The delegation was told of plans to set up a group room for association and other activities for lifers, which would be opened in the near future. In-cell activities included watching TV and reading books from the library and a daily newspaper; further, nine lifers worked in their cells (making gift bags). One prisoner interviewed by the delegation complained that he had been refused permission to have a personal computer in his cell to do a computer literacy course.

The four lifers who did not join the others for communal exercise were segregated under orders reviewed every 6 months. Whenever they were outside the cell, they were handcuffed, including for exercise which they took alone in a secure yard. In the CPT's opinion, there can be no justification for handcuffing a prisoner exercising alone in a secure yard, provided there is proper staff supervision. **The Committee recommends that the Bulgarian authorities review their current policy as regards the handcuffing of the above-mentioned life-sentenced prisoners, in the light of these remarks.**"

25. The report on the 2008 visit (CPT/Inf (2010) 29) says:

"74. [A]t the time of the visit, there were 18 life-sentenced prisoners at Sofia Prison. Three of [them] had been integrated into the mainstream prisoner population, while the remainder were being held in a separate unit (Group 1).

75. Material conditions of detention in the lifer unit had remained basically unchanged since the 2006 visit ... The installation of integral sanitation in the cells, with a shower head over the toilet and access to hot water all day, was a positive feature; however, as a result, prisoners had less occasions to leave their cells and interact with staff.

Some of the lifers had their own television sets and play-stations in their cells. At the time of the 2006 visit, lifers had had hot plates in their cells, to cook food, which increased their sense of independence and helped to pass the time. The hot plates had reportedly been withdrawn a few weeks before the visit for safety reasons, and lifers had immersion coils for heating water.

76. As regards activities, one notable change since the 2006 visit was the entry into operation of a social room ("club") in the lifer unit. This good facility was decorated in pleasant light colours and furnished with bookcases, a chess table with two chairs, a larger table with five chairs, a cupboard with games including a backgammon board, a

television set with DVD player and a sink. Lifers were divided into three subgroups on the basis of common interests (playing cards, chess, discussing legal matters, etc.) and each group was allowed to use the social room for one hour each weekday. At weekends, there were only the two officers present, which made it difficult to organise activities.

Lifers who were willing to work (12 of the 15 in the lifers unit) worked in their cells on the same kinds of piece work as was observed on the 2006 visit (e.g. putting strings on boutique bags).

Further, outdoor exercise for one and a half hours per day was offered to all lifers. The delegation noted that a shelter had been provided at one end of the exercise yard.

Despite the above-mentioned welcome introduction of a social room, which increased the amount of time spent out of the cells and in association with other prisoners, the daily regime in the lifer unit remained monotonous. **The CPT recommends that the Bulgarian authorities strive to enhance the programme of activities provided to life-sentenced prisoners at Sofia Prison, if necessary, by increasing staffing.**

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

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

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

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

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

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

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

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

26. The applicant complained about the regime and the conditions of his detention in Sofia Prison. He relied on Article 3 of the Convention, which provides as follows:

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

A. The parties' submissions

27. The Government pointed out that the size of the applicant's cell was above the regulatory minimum. Referring to *Kröcher and Möller v. Switzerland* (no. 8463/78, Commission's report of 16 December 1982, Decisions and Reports (DR) 34, p. 24), they argued that the measures taken in respect of the applicant did not amount to inhuman or degrading treatment. Those measures had been lawful, based on reasoned orders of the prison's governor, and fully warranted in view of the gravity of the offences committed by the applicant, his conduct, and the need to maintain order and discipline in prison. There was no indication that the applicant had

complained to the prison authorities about specific measures. Nor were there any medical documents showing that he had suffered any damage to his health as a result of his prison regime.

28. The applicant submitted that the very fact of his imprisonment, which he considered as lacking any legal basis because it had resulted from criminal proceedings that were a nullity, amounted to inhuman and degrading treatment. His being permanently locked up in a cell that was cold, handcuffed without any reason, not being allowed to dress as he wished or use his own personal effects and bed linen, having a bucket for excrements in his cell, being given limited quantities of innutritious and unhealthy food and limited quantities of water all caused him physical discomfort. That discomfort was compounded by the negative psychological effects of being kept in isolation for a long time, having to interact with serious criminals, being branded by the authorities and media as a criminal, and being paraded in handcuffs and leg fetters. He disputed the lawfulness of all legal acts relating to his confinement, and stated that he did not consider himself as having the status of a prisoner. Accordingly, there was no reason for him to interact with other prisoners or take part in common activities with them. He also stated that he had not complained about the conditions of his detention because that would be pointless. He could not submit any medical evidence in corroboration of his allegations either, because the authorities would not provide him with such evidence.

B. The Court's assessment

29. The Court considers that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

1. General principles

30. Restatements of the general principles concerning the examination of conditions and regime of detention under Article 3 may be found in the Court's judgments in *Van der Ven v. the Netherlands* (no. 50901/99, §§ 46-51, ECHR 2003-II) and *Ramirez Sanchez v. France* ([GC], no. 59450/00, §§ 115-24, ECHR 2006-IX).

2. Application of the principles to the present case

31. The Court would distinguish three aspects of the applicant's complaint: the nature and stringency of his regime of detention, the material conditions of his detention, and the use of handcuffs in respect of him. It will examine these points separately.

(a) The physical conditions

32. The Court observes that save for his own assertions – which were not particularly detailed and were apparently not brought to the attention of any domestic authority – the applicant did not provide any evidence relating to the conditions of his detention. He did not submit statements by co-detainees (contrast *Khudoyorov v. Russia*, no. 6847/02, §§ 71 and 113, ECHR 2005-X (extracts), and *Gavazov v. Bulgaria*, no. 54659/00, §§ 59 and 94, 6 March 2008), or by other persons who might possess relevant information, such as visiting relatives. Nor did he submit medical evidence showing the impact of the conditions in which he was kept on his physical or psychological well-being (compare *Georgiev v. Bulgaria*, no. 47823/99, § 64, 15 December 2005, and contrast *Staykov v. Bulgaria*, no. 49438/99, § 41, 12 October 2006). In the specific circumstances, the Court must treat the applicant's assertions with certain caution, because he might have a tendency to exaggerate the inadequacy of the conditions in prison partly because he has a negative attitude towards an establishment in which he considers he should have never been detained (see, *mutatis mutandis*, *Sabeva v. Bulgaria*, no. 44290/07, § 41, 10 June 2010, citing *B. v. the United Kingdom*, no. 6870/75, Commission's report of 7 October 1981, DR 32, p. 29, §§ 174-75). Those assertions do not match the findings of the CPT in its 2006 and 2008 reports, which say that at the times of the visits the cells of life prisoners in Sofia Prison included integral sanitation, shower, and permanent access to hot water (see paragraphs 24 and 25 above). Even assuming that the conditions were worse at the beginning of the applicant's confinement in 1997, the Court cannot overlook the fact that they have gradually improved.

33. In view of the foregoing, the Court is not satisfied "beyond reasonable doubt" that the conditions of the applicant's detention in Sofia Prison can be regarded as inhuman or degrading. There has therefore been no violation of Article 3 on that account.

(b) The detention regime

34. Measures depriving a person of liberty, such as pre-trial detention or a sentence of imprisonment, while inevitably involving an element of suffering, do not in themselves raise an issue under Article 3 (see *Kudła v. Poland* [GC], no. 30210/96, § 93, ECHR 2000-XI). The detention regime imposed on the applicant following his transfer to Sofia Prison was based on an order issued by the prison's governor under the relevant regulations and on the basis of information about the applicant supplied by the investigating authorities (see paragraph 14 above). After the applicant's sentence became final, his prison regime was based on a court order made under the applicable provisions (see paragraphs 12 and 21 above). There is nothing to indicate that those decisions were arbitrary. The Court notes that the CPT has criticised the statutory provisions requiring that individuals

sentenced to life imprisonment be placed under a "special regime" during the first five years of their confinement (see paragraphs 21, 22 and 25 above). However, the question whether or not the applicant suffered treatment proscribed by Article 3 depends on the extent to which he was personally affected by that regime (see *Van der Ven*, cited above, § 53 *in fine*). Indeed, in cases arising from individual applications, the Court must as a rule focus its attention not on the law as such but on the manner in which it has been applied to the applicant (see, among other authorities, *Sommerfeld v. Germany* [GC], no. 31871/96, § 86, ECHR 2003-VIII).

35. While the restrictions imposed on the applicant in Sofia Prison could be described as harsh, he was not subjected to sensory isolation or total social isolation, but only a relative social isolation, being prevented from communicating with prisoners subjected to different prison regimes. However, although his opportunities for contact are therefore limited, one could not speak of isolation in this context (see *Messina v. Italy (no. 2)* (dec.), no. 25498/94, ECHR 1999-V). It is true that, according to his allegations, during the early period of his deprivation of liberty he spent almost twenty-three hours per day alone in his cell. However, the Court cannot overlook that, as it appears from the CPT's reports, in recent years his situation has gradually become more flexible, with the possibility to engage in various activities and communicate with other prisoners from his group. However, it appears that he is unwilling to do so (see paragraphs 16 and 28 above and compare, *mutatis mutandis*, with *Ramirez Sanchez*, cited above, § 148). In those circumstances, and noting that the applicant has not submitted any medical documents showing the effects of the regime on his psychological well-being (contrast *Van der Ven*, cited above, § 56), the Court is not persuaded that it has affected him to an extent sufficient to amount to a violation of Article 3. Moreover, there is no indication that he has ever been prevented from having outside visitors (contrast *Van der Ven*, cited above, § 54), or visiting the prison library.

36. The Court further notes that under Bulgarian law, after serving five years of his sentence, the applicant could have requested to be placed under a less stringent prison regime (see paragraph 22 above). There is no indication that he has availed himself of that opportunity.

37. In view of the above, the Court considers that the evidence before it is not sufficient to conclude that the applicant had been subjected to inhuman and degrading treatment on account of the stringency of his detention regime. There has therefore been no violation of Article 3 on that account.

(c) The use of handcuffs

38. The use of handcuffs or other instruments of restraint does not normally give rise to an issue under Article 3 of the Convention where the measure has been imposed in connection with a lawful detention and does

not entail the use of force or public exposure exceeding what is reasonably considered necessary. In this regard, it is important to consider, for instance, the danger of the person's absconding or causing injury or damage (see *Raninen v. Finland*, judgment of 16 December 1997, § 56, *Reports of Judgments and Decisions* 1997-VIII; *Mouisel v. France*, no. 67263/01, § 47, ECHR 2002-IX; *Hénaf v. France*, no. 65436/01, § 48, ECHR 2003-XI; and *Mathew v. the Netherlands*, no. 24919/03, § 180, ECHR 2005-IX). The Court must always have regard to the specific facts of the case (see *Avcı and Others v. Turkey*, no. 70417/01, § 38, 27 June 2006).

39. In view of the gravity of the applicant's sentence, his criminal record and his violent antecedents, the use of handcuffs could be warranted on specific occasions, such as transfers outside the prison (see *Garriguenc v. France* (dec.), no. 21148/02, 15 November 2007, and *Paradysz v. France*, no. 17020/05, § 95, 29 October 2009). However, the CPT's reports, which fully confirm the applicant's allegations on that point, show that he is indeed being handcuffed each time when taken out of his cell, even when taking his daily walk (see paragraphs 24 and 25 above). The Court takes note of the misgivings expressed by the prison authorities about the applicant's conduct and of their assessment of the risk that he might pose (see paragraph 16 above). It is aware that those authorities need to exercise caution when dealing with individuals who have been convicted of violent offences, refuse to accept the fact of their imprisonment, and are consequently hostile towards prison staff and other inmates. However, it observes that the systematic use of handcuffs in respect of the applicant started about thirteen years ago, in December 1997, and apparently continues to this day. The authorities did not point to any specific incidents over that period in which the applicant has tried to flee or harm himself or others. For the Court, the matters to which the authorities refer do not necessarily show that there is a risk that such incidents might occur. It shares the CPT's opinion that the routine handcuffing of a prisoner in a secure environment cannot be considered justified (see paragraph 25 above).

40. The Court concludes that the systematic handcuffing of the applicant when taken out of his cell was a measure which lacked sufficient justification and can thus be regarded as degrading treatment. There has therefore been a violation of Article 3 of the Convention on that account.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

41. The applicant complained that the length of the proceedings against him had been unreasonable. He relied on Article 6 § 1 of the Convention, which reads, in so far as relevant:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

42. The parties presented arguments concerning the beginning and the end of the period under consideration and its reasonableness.

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

44. The Court observes that the applicant was arrested on 5 August 1996. It takes that date as the beginning of the period under consideration (see *Ewing v. the United Kingdom*, no. 11224/84, Commission's report of 6 October 1987, DR 56, p. 71, at pp. 84-85, § 145). The end point was 6 October 2004, when the Sofia Court of Appeal's judgment of 31 August 2004 became final. The period to be taken into consideration therefore is eight years and almost three months.

45. The reasonableness of that period must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law: the complexity of the case and the conduct of the applicant and of the relevant authorities (see, as a recent authority, *Yankov and Manchev v. Bulgaria*, nos. 27207/04 and 15614/05, § 20, 22 October 2009).

46. The Court finds that the case was quite complex, as it involved several accused charged with a number of offences of considerable gravity. However, there were delays, attributable to the authorities, that cannot fully be explained by that. First, the preliminary investigation took about two and a half years to complete (see paragraphs 6-8 above). Secondly, while the Sofia City Court was able to deal with the case in about a year and a half, the first proceedings before the Sofia Court of Appeal took almost three years, partly because the court did not hand down its judgment for more than a year after its last hearing (see paragraphs 9-12 above).

47. Having regard to those matters and the overall duration of the proceedings, the Court concludes that the charges against the applicant were not determined within a "reasonable time", in breach of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

48. The applicant complained about the lack of an effective remedy in respect the excessive length of the proceedings against him. He relied on Article 13 of the Convention, which reads as follows:

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

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

50. Article 13 guarantees an effective remedy in respect of an arguable complaint of a breach of the requirement of Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, §§ 146-57, ECHR 2000-XI). A remedy is effective if it prevents the alleged violation or its continuation or provides adequate redress for any breach that has already occurred (ibid., § 158, and *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

51. Until 2003 Bulgarian law did not provide remedies allowing those accused in criminal proceedings to expedite the determination of the charges against them. The only such remedy was the possibility, introduced in June 2003, for the accused to request to have their cases brought before a court if the preliminary investigation had not been completed within a certain time-limit (see *Yankov and Manchev*, cited above, § 32, with further references). However, that could not have availed the applicant, as at that time his case was already pending before the court of appeal. As to compensatory remedies, the Court has not found it established that under Bulgarian law there exists an avenue whereby persons subjected to criminal proceedings can obtain damages or other redress in respect of the excessive length of such proceedings (ibid., § 33).

52. There has therefore been a violation of Article 13 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. Article 41 of the Convention provides:

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

A. Damage

54. In respect of non-pecuniary damage, the applicant claimed 2,000,000 euro (EUR). He also claimed EUR 60,000 in respect of pecuniary damage, consisting of the loss of value of three cars seized by the authorities in relation with the criminal proceedings against him. Lastly, he requested the Court to order the Bulgarian State to end to his "illegal imprisonment".

55. The Government contested the claims as excessive and unsubstantiated.

56. The Court observes that in the present case, an award of just satisfaction can be based only on the violations of Articles 3, 6 § 1 and 13 of the Convention. It does not consider that those violations had a sufficient causal link with the pecuniary damage suffered by the applicant. Nor do they make it necessary or appropriate to grant consequential relief of the

sort requested by him (contrast *Assanidze v. Georgia* [GC], no. 71503/01, §§ 202-03, ECHR 2004-II). On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage as a result of the breaches of his rights under the above-mentioned provisions. Ruling in equity, as required under Article 41, it awards him EUR 7,000, plus any tax that may be chargeable.

B. Costs and expenses

57. The applicant sought reimbursement of 3,000 Bulgarian levs (BGN) incurred in fees in relation with the criminal proceedings against him, and of the sums incurred in translation expenses for the proceedings before the Court. He submitted translation receipts for the amount of BGN 65 (the equivalent of EUR 33.23).

58. The Government contested the claims as excessive and not supported by documents.

59. According to the Court's case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred and reasonable as to quantum. Furthermore, legal costs are only recoverable in so far as they relate to the violation found (see, as a recent authority, *Šilih v. Slovenia* [GC], no. 71463/01, § 226, 9 April 2009). Since the legal fees claimed concerned the applicant's defence against the criminal charges in the domestic proceedings, they cannot be regarded as constituting expenses necessarily incurred in seeking redress for the violations found in the present case (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). On the other hand, having regard to the documents in its possession and the above criteria, the Court considers the translation expenses (EUR 33.23) should be allowed in full.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of the application admissible;

2. *Holds* that there has been no violation of Article 3 of the Convention on account of the physical conditions of the applicant's detention;

3. *Holds* that there has been no violation of Article 3 of the Convention on account of the regime of the applicant's detention;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the systematic handcuffing of the applicant when taken out of his cell;

5. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the criminal proceedings against the applicant;

6. *Holds* that there has been a violation of Article 13 of the Convention;

7. *Holds*

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

(i) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 33.23 (thirty-three euros and twenty-three cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses.

(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;

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

Done in English, and notified in writing on 20 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President