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

FIRST SECTION

CASE OF IORGOV v. BULGARIA
(Application no. 40653/98)

JUDGMENT

STRASBOURG

11 March 2004

FINAL

07/07/2004

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Iorgov v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 5 February 2004,

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

PROCEDURE

1. The case originated in an application (no. 40653/98) against the Republic of Bulgaria lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Plamen Parashkevov Iorgov ("the applicant"), on 4 December 1997.

2. The applicant was represented by Mrs Z. Kalaydjieva, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Mrs G. Samaras, of the Ministry of Justice.

3. The applicant alleged, in particular, that following his conviction and death sentence, his detention pending a moratorium on executions amounted to torture and inhuman and degrading treatment within the meaning of Article 3 of the Convention, given the fear of a possible resumption of executions, the long time spent in uncertainty and the detention's material conditions and regime. The applicant also complained that he did not have an effective remedy in this respect, contrary to Article 13 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 3 October 2002, the Court declared the application partly admissible.

7. The applicant, but not the Government, filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1957. He is currently serving a sentence of life imprisonment without parole eligibility.

A. The applicant's conviction and sentence

9. On 9 May 1990 the applicant, who had three previous convictions and prison sentences, was convicted of the murder on 17 July 1989 of three children, aged 8, 10 and 12, attempted rape of one of them, attempted rape of a woman in 1984 and attempted illegal crossing of the State border in August 1989. The court imposed the capital punishment.

10. The applicant's conviction and sentence were upheld on appeal on 24 October 1990 by the Supreme Court.

11. On 8 April 1994 a five-member chamber of the Supreme Court dismissed the applicant's ensuing petition for review (cassation).

B. Moratorium on executions and abolition of the death penalty

12. Article 375 § 5 of the Code of Criminal Procedure as in force at the time, provided that no execution could be carried out prior to the President's decision whether or not to exercise his power of pardon.

13. The last executions of persons sentenced to the capital punishment were carried out in Bulgaria in November 1989.

14. Following a period of a *de facto* moratorium on executions, on 20 July 1990 the Parliament adopted a decision "on deferral of the execution of death sentences" which read:

> "The execution of death sentences which have entered into force shall be deferred until the resolution of the question regarding the application of the capital punishment in Bulgaria."

15. Since the capital punishment remained in the Penal Code, the courts continued sentencing convicted persons to death or - as in the applicant's case - upholding on appeal death sentences delivered before 20 July 1990.

16. Although no explicit undertaking by Bulgaria to abolish the death penalty was made at the moment of Bulgaria's accession to the Council of Europe on 7 May 1992, such a requirement was regarded as implied in the general undertaking to comply with Article 3 of the Statute of the Council of Europe (see the reports of the Parliamentary Assembly's commission on Bulgaria's compliance with its obligations and undertakings (report of 2 September 1998, Doc. 8180, §§ 5 and 125-29 (urging the abolition as an implied obligation), and report of 17 January 2000, Doc. 8616, § 110 (noting with satisfaction the abolition of the death penalty)).

17. On 10 December 1998 Parliament abolished the death penalty replacing it by life imprisonment without parole eligibility.

18. By decision of 25 January 1999 the applicant's death sentence was commuted to life imprisonment without parole eligibility.

19. On 29 September 1999 Bulgaria ratified Protocol No. 6 to the Convention.

C. Debate on the death penalty in Bulgaria until its abolition in 1998

20. The death penalty was an issue often debated between 1990 and 1998. A number of members of Parliament expressed views in support of reintroducing executions whereas others sought the abolition of the death penalty. The media periodically discussed the topic. It was widely known that the abolition of the death penalty was urged by the Council of Europe and other international organisations and was a step towards Bulgaria's European integration.

21. During the relevant period the Penal Code was amended several times. Some amendments expanded the scope of the death penalty. At the same time, work started on a draft Penal Code which excluded the death penalty. In 1995 an amendment to the Penal Code introduced for the first time life imprisonment.

22. The following attempts to reintroduce executions were made by supporters of the death penalty:

23. On 27 May 1992 the Chair of the Parliamentary Legislative Committee and another member of Parliament introduced a motion proposing the annulment of the Parliament's decision of 20 July 1990.

24. On 22 November 1993 a similar proposal was introduced in Parliament by a minority parliamentary group, the New Democracy Alliance. Two parliamentary committees discussed the issue and voted against reintroducing executions. On 1 February 1994 the Legislative Committee held a hearing on both proposals which were defeated.

25. The issue of reintroducing executions was discussed several times in the Parliament elected at the end of 1994. There were four motions: two for a parliamentary vote on restarting executions and two for calling a referendum.

26. The first proposal was discussed by the Parliamentary Committee on Government Institutions, which supported the idea of reintroducing executions by a majority of seven votes to six. Thereafter, a member of Parliament on several occasions unsuccessfully sought to have the motion discussed by a plenary session of the Parliament. On one occasion the motion gathered the required number of votes to be entered on the weekly agenda, but eventually was not discussed. Most proposals to include the issue on the agenda of the Parliament's plenary session were defeated through abstention votes.

27. The first motion for a referendum was defeated on a procedural ground as the proposed date in 1995 did not allow sufficient organisation time. The second proposal for a referendum, filed on 5 December 1995, was considered by the Human Rights and Religions Committee on 6 March 1996 and was defeated by eight votes to two, with two abstentions.

28. On 29 January 1996 a proposal for restarting executions was introduced by opposition deputies. It was discussed by the Human Rights and Religions Committee and was defeated on 13 March 1996 by eight votes to three.

D. The conditions of the applicant's detention pending the moratorium on executions

1. Legal regulation on the regime of detention

29. According to section 130 of the Execution of Sentences Act, as in force at the relevant time, persons awaiting execution were to be detained in complete isolation, correspondence and visits being only possible if permitted by the competent prosecutor.

30. On 2 August 1990 the Deputy Director of Central Prisons Board instructed prisons administrations that the Parliament's decision suspending executions also suspended by implication this restrictive regime of detention.

31. The instruction stated, in so far as relevant, that persons sentenced to death should be held in individual cells or together with other persons sentenced to death or detained under a “special regime” (the regime of detention of recidivists and, after 1995, persons sentenced to life imprisonment: sections 43 and 127b of the Execution of Sentences Act as in force at the time). Inmates should have a bed, bedcover, a bed-side piece of furniture and a centrally operated radio loudspeaker. They should be allowed unlimited correspondence, newspapers and books, one visit per month, one hour of daily outdoor walk without contact with other categories of prisoners and the receipt of one food parcel every six months and a small amount of money. If possible, they could work in the cell.

32. On 26 July 1996, the Director of the Central Prisons Board and a prosecutor of the Chief Public Prosecutor's Office issued an instruction which stated that, "in view of the continuing moratorium on executions", persons sentenced to death should be allowed unlimited correspondence, one hour daily outdoor walk, one visit per month and the receipt of two food parcels and 30 packs of cigarettes per month and small amounts of money.

2. The actual conditions

33. The applicant was detained in the Sofia prison, in a wing for prisoners under the "special regime" provided for by section 56 of the Regulations on the Application of the Execution of Sentences Act, approximately twenty inmates. He changed cells several times but stated that all cells in the relevant prison wing measured 2 by 4 metres.

34. Following a period of solitary confinement, on an unspecified date in 1990 the applicant was transferred to a cell where he lived with two or three other detainees.

35. The applicant alleges that on 21 June 1995 he and eight other death-sentence prisoners were moved to independent cells, where each of them was alone. It appears that the applicant remained in this cell at least until the end of 1998.

36. According to the Government, the cell floor measured 2 by 3 metres. The ceiling was 3.30 metres high. According to the applicant, until October 1998, when new larger windows were installed in all cells, the cell window was small and did not allow sufficient light or fresh air. As a result, in summer it was very hot. Moreover, in winter it was very cold because the heating, covered by a bricks layer, was not working properly.

37. There was one 60-Watts electric bulb in the cell. As it was installed on the wall above the door, its light was insufficient which made reading tiring for the eyes. It appears that the light was on all night.

38. The applicant alleged that between June 1995 and January 1997 he had been sleeping on a plank-bed. In his recollection, a centrally operated radio loudspeaker was installed in March 1996. A proper bed and a bed-side piece of furniture were provided in January 1997. After April 1998 the applicant possessed a portable radio receiver which was sent to him in a parcel.

39. The Government provided photographs, apparently made in the summer of 1998, of the applicant's cell. It is visible that the cell's furbishing consisted of a bed, a bed-side piece of furniture and a small table. A loudspeaker and hangers were suspended on the wall. Books, a metal bowl, plastic bottles, clothes and blankets are visible on the photograph.

40. Inmates were given one hour out-of-cell time in the morning in an open yard. There they could walk together with other inmates from the high security wing. The applicant could also leave his cell once again, in the evening, to use the sanitary facilities. During the remaining part of the day,

he had to use a bucket full of water which served as a chamber pot. As a result, there was allegedly a constant stink in his cell.

41. Inmates could have a shower once per week, for several minutes.

42. One or two visits of one-half hour were allowed per month. Visits by lawyers were not limited. For the period 1990-1998 the applicant had thirty-five visits.

43. During the relevant period there was no limitation on correspondence. Between 1990 and 1 August 1998 the applicant received eighty-three food parcels and fifty-six money orders. He was also entitled to a small amount of money per month, which he used to buy toilet items and food from the prison shop. Nevertheless, he was often lacking items such as tooth paste, shaving cream, razors, cigarettes and coffee.

44. The applicant received the same medical service as all other prison inmates. The Government submitted a copy of his medical record according to which he had been seen by a doctor or a dentist almost every month during the period 1990-1998. The infirmary was opened eight hours per day. The applicant was treated repeatedly in respect of back pain, including by physiotherapy. According to one of the medical doctors at the Sofia prison, the applicant was known for his frequent and unwarranted complaints.

45. In February 1996 the applicant signalled a medical problem which turned out to be a swollen salivary gland. In April 1996 a medical doctor recommended surgery, but the applicant was only operated in July 1998. The applicant maintained that he had been refused timely surgical help despite his suffering. His medical records disclose that the swollen salivary gland problem persisted throughout 1997 and 1998, when the applicant underwent several examinations, including by external medical doctors. The applicant was treated with medicines. Twice during the relevant period, medical doctors noted in the applicant's medical record that surgery was not necessary at the particular stage, whereas other entries with illegible signatures indicate that the problem was noted as being acute. According to the director of the Sofia prison, all necessary measures had been taken. The applicant had been treated according to the doctors' recommendations. In July 1997 he had been admitted to hospital for examinations but had been sent back to the prison as he had behaved rudely with the medical staff. A disciplinary punishment had been imposed in that connection on 6 August 1997. The applicant submitted that as a result the operation of his gland had been postponed. According to the medical records, the applicant was again brought to the hospital for examinations and treatment in October 1997, but the applicant alleged that he had been quickly returned back to his cell. As of March 1998 the one doctor's opinion was that surgery was not yet necessary. The swollen salivary gland was eventually operated in July 1998. Tissue of the size of an egg was removed and examined but proved benign.

46. During the relevant period the applicant sent numerous complaints in respect of the conditions of his detention to the Director of the Sofia Prison, to the Director of the Central Prisons Board, the Chief Public Prosecutor's Office and to other institutions. His complaints concerned the food in prison, allegedly insufficient heating, allegedly lost correspondence and other matters. He received answers to only a part of his complaints. With the exception of a request to use a radio receiver and some of the requests for medical treatment, all other complaints allegedly did not bring about any improvement of his situation.

47. On an unspecified date in 1999 the applicant was moved to the Pleven prison.

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

1. *The report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") on their visit to Bulgaria in 1995*

48. The CPT has not visited the Sofia prison where the applicant was detained.

49. In 1995 it visited, however, two inmates sentenced to death and detained in the Stara Zagora prison facilities and described the conditions of detention there as follows:

> "The material conditions in the cells left a great deal to be desired: mediocre access to natural light and weak artificial lighting; inadequate heating; cell furnishings in a poor state of repair; dirty bed linen, etc. As regards out-of-cell activities, they were limited to 15 minutes per day for use of the sanitary facilities, one hour outdoor exercise (which the prisoners alleged was not guaranteed every day) and one visit per month. The two prisoners were not allowed to work (not even inside their cells), nor to go to the library, the cinema room or the refectory (their food was brought to the cell). In short, they were subject to an impoverished regime and, more particularly, were offered very little human contact. The latter consisted essentially of the possibility to talk to each other during outdoor exercise (which they took together), and occasional dealings with prison officers. Practically the only forms of useful occupation at their disposal were reading newspapers and books, and writing letters.
>
> The above-described situation is in accordance with the rules concerning prisoners sentenced to death, adopted after the moratorium on the execution of the death penalty... Nevertheless, in the CPT's view it is not acceptable.
>
> It is generally acknowledged that all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long term, to have damaging effects, resulting in deterioration of mental faculties and social abilities. The delegation found that the regime applied to prisoners sentenced to death in Stara Zagora Prison did not provide such stimulation.

The CPT recommends that the regime applied to prisoners sentenced to death held in Stara Zagora Prison, as well as in other prisons in Bulgaria, be revised in order to ensure that they are offered purposeful activities and appropriate human contact. Further, the CPT recommends that steps be taken to improve the material conditions in the cells occupied at Stara Zagora Prison by prisoners sentenced to death."

2. *CPT's recommendations to the Bulgarian authorities on the organisation of medical help for detainees*

50. In paragraphs 127-133 of its 1999 report on Bulgaria, the CPT stated, *inter alia*:

"[H]ealth care in Bulgarian prisons is provided by the Ministry of Justice ... Prison health-care staff are recruited by and administratively subordinated to the Main Prison Directorate, whose Medical Division is responsible for supervising their work. The prison health-care services apply general health guidelines and regulations issued by the Ministry of Health; further, arrangements can be made for hospitalising prisoners in need of urgent treatment in Ministry of Health establishments. However, it emerged that in the Ministry of Health's view, given the division of responsibilities, the issue of health care for prisoners lay outside its remit...

A similar situation is found in many other countries in Europe, where the provision of health care is the responsibility of the authority in charge of prison establishments. However, the CPT believes that a greater involvement of the Ministry of Health in the provision of health care in the prison system would help to ensure optimum health care for prisoners, as well as implementation of the principle of the equivalence of health care in prison with that in the outside community... This approach is clearly reflected in Recommendation N° R (98) 7 concerning the ethical and organisational aspects of health care in prison, recently adopted by the Committee of Ministers of the Council of Europe.

[I]n order to guarantee their professional independence and quality of medical work, it is important that prison health-care staff be aligned as closely as possible with the mainstream of health-care provision in the community at large...

The CPT also wishes to stress again that whatever institutional arrangements are made for the provision of health care in prisons, it is essential that prison doctors' clinical decisions should be governed only by medical criteria and that the quality and effectiveness of their work should be monitored by a qualified medical authority.

[Some improvements since 1995 were reported.] Full-time doctors had been appointed, and posts for psychiatrists created, at all prisons, and steps were being taken to employ full-time trained nurses. Further, the shortage of medicines within the prison system had been overcome...

[T]he delegation heard complaints from prisoners at [the prisons visited, in Burgas and Stara Zagora] about delays in gaining access to the doctor. Prisoners who wished to be medically examined announced that to the officer on duty during the morning roll-call. Such requests were meant to be entered in a special register kept on each unit and presented to the doctor every morning. Such a system is unexceptionable. However, the CPT must stress that all requests to see a doctor should be brought to the attention of the prison doctor; it is not for prison officers to screen such requests."

III. RELEVANT INTERNATIONAL AND COMPARATIVE LAW AND PRACTICE

A. The Council of Europe and the abolition of the death penalty

51. Historically, most Member States of the Council of Europe approached the question of the abolition of the death penalty by suspending executions pending debate on a final abolition. States which became members of the Council of Europe during the 1990s were urged by the Parliamentary Assembly to introduce moratoria on executions as a first step towards the abolition of the death penalty (see Report on the abolition of the death penalty in Europe, PA Doc. 7589 (25 June 1996)).

B. The United Nations' Human Rights Committee

52. The Committee has held that “in the absence of further compelling circumstances” prolonged detention on death row *per se* does not constitute a violation of Article 7 of the International Covenant on Civil and Political Rights (prohibition of cruel, inhuman or degrading treatment) (see *Hylton v. Jamaica*, Views of 16 July 1996, communication no. 600/1994, *Errol Johnson v. Jamaica*, Views of 22 March 1996, communication no. 588/1994; and *Michael Wanza v. Trinidad and Tobago*, Views of 26 March 2002, communication no. 683/1996).

C. The Inter-American Commission of Human Rights

53. The Commission, when examining complaints by persons on death row, has found violations of Article XXVI of the American Declaration of the Rights and Duties of Man (prohibiting cruel, infamous or unusual punishment of persons accused of offences) and Article 5 §§ 1 and 2 of the American Convention on Human Rights (right to humane treatment and prohibition of torture, cruel, inhuman or degrading punishment or treatment) mainly on the strength of facts concerning irregularities in the sentencing process, the material conditions and regime of detention and ill-treatment in prison, while also taking into account the length of the period spent on death row (*Andrews v. the United States of America*, Case No. 11.139, Report No. 57/96, OEA/Ser/L/V/II.98, §§ 178-83; *Joseph Thomas v. Jamaica*, Case No. 12.183, Report 127/01).

D. The Judicial Committee of the Privy Council in the United Kingdom

54. The Privy Council, examining cases from Caribbean Commonwealth States, had to decide whether the execution of a person following long delay after his sentence to death could amount to inhuman punishment or treatment contrary to those States' Constitutions. Initially, the Privy Council considered that a condemned person could not complain about delay of his execution caused by his resort to appellate proceedings (*de Freitas v. Benny* [1976] A.C. 239, *Abbott v. Attorney-General of Trinidad and Tobago* [1979] 1 W.L.R. 1342), or indeed about any delay, "whatever the reasons", including a temporary moratorium on executions which had been lifted (*Riley v. Attorney-General of Jamaica* [1983] 1 A.C. 719).

55. In 1993, departing from its earlier decisions, the Privy Council held that to execute the appellants, who had spent almost fourteen years on death row and had on three occasions lived through last minutes stays of execution, would be unlawful as being inhuman punishment and therefore advised that their death sentences should be commuted to life imprisonment (*Pratt and Morgan v. The Attorney General for Jamaica and another* [1994] 2 A.C. 1).

56. In *Pratt and Morgan*, part of the relevant period was taken up by a temporary moratorium on executions.

> "[P]olitical debate on the desirability of retaining the death sentence in Jamaica ... resulted in a resolution of the Senate on 9th February 1979 to suspend all executions for a period of eighteen months pending the report of a Committee of inquiry. The Committee of Inquiry was appointed in June 1979. Before the Committee reported, an execution took place on 27th August 1980 which drew a protest to the Jamaican Privy Council from the Chairman of the Committee. No further executions took place before the Committee reported in March 1981. On 12th May 1981 executions were resumed" (*Pratt*, § 16).

57. The judgment in *Pratt and Morgan* stated, *inter alia*:

> "There is an instinctive revulsion against the prospect of hanging a man after he has been held under sentence of death for many years. What gives rise to this instinctive revulsion? The answer can only be our humanity; we regard it as an inhuman act to keep a man facing the agony of execution over a long extended period of time. But before their Lordships condemn the act of execution as 'inhuman or degrading punishment or other treatment' within the meaning of section 17(1) [of the Jamaican Constitution] there are a number of factors that have to be balanced in weighing the delay. If delay is due entirely to the fault of the accused such as an escape from custody or frivolous and time wasting resort to legal procedures which amount to an abuse of process the accused cannot be allowed to take advantage of that delay for to do so would be to permit the accused to use illegitimate means to escape the punishment inflicted upon him in the interest of protecting society against crime...
>
> In their Lordships' view a State that wishes to retain capital punishment must accept the responsibility of ensuring that execution follows as swiftly as practicable after sentence, allowing a reasonable time for appeal and consideration of reprieve. It is part

of the human condition that a condemned man will take every opportunity to save his life through use of the appellate procedure. If the appellate procedure enables the prisoner to prolong the appellate hearings over a period of years, the fault is to be attributed to the appellate system that permits such delay and not to the prisoner who takes advantage of it. Appellate procedures that echo down the years are not compatible with capital punishment. The death row phenomenon must not become established as a part of our jurisprudence...

There may of course be circumstances which will lead the Jamaican Privy Council to recommend a respite in the carrying out of a death sentence, such as a political moratorium on the death sentence, or a petition on behalf of the appellants to [international human rights bodies] or a constitutional appeal to the Supreme Court. But if these respites cumulatively result in delay running into several years an execution will be likely to infringe section 17(1) and call for commutation of the death sentence to life imprisonment."

58. Further, calculating the normal length of relevant appellate proceedings in Jamaica and taking into consideration the time necessary for examination of applications to the Inter American Commission of Human Rights and the UN Human Rights Committee, the Privy Council held that:

"in any case in which execution is to take place more than five years after sentence there will be strong grounds for believing that the delay is such as to constitute inhuman or degrading punishment or ... treatment".

59. In cases which followed the Privy Council accepted a claim that a period of four years and ten months also warranted a finding in favour of the appellant (*Guerra v. Baptiste and Others* [1996] 1 A.C. 397) but dismissed appeals concerning shorter periods (*Henfield v. The Attorney General of the Commonwealth of The Bahamas* [1997] A.C. 413; *Fischer (No. 1) v. The Minister of Public Safety and Immigration and Others (Bahamas)* [1998] A.C. 673; and *Higgs and David Mitchell v. The Minister of National Security and Others (Bahamas)* [1999] UKPC 55) and held that save in exceptional circumstances, periods of pre-sentence detention should not be taken into account since, *inter alia*, "the state of mind of the person ... during this earlier period is not the agony of mind of a man facing execution, but ... anxiety and concern of the accused"(*Fisher*, § 14). In *Higgs and David Mitchell*, the Privy Council stated, *inter alia*:

"If a man has been sentenced to death, it is wrong to add other cruelties to the manner of his death... In Pratt ... the [Privy Council] held that the execution after excessive delay was an inhuman punishment because it added to the penalty of death the additional torture of a long period of alternating hope and despair. It is not the delay in itself which is a cruel and unusual punishment..., 'it is the act of hanging the man that is rendered cruel and unusual by the lapse of time".

E. Other fora

60. The Supreme Court of India found that execution following inordinate delay after sentence of death violated Article 21 of the Indian Constitution which provides that “no one shall be deprived of his life or personal liberty except according to procedure established by law” and that the reasons for the delay were immaterial (*Vatheeswaran v. State of Tamil Nadu* [1983] 2 S.C.R. 348, *Sher Singh and Others v. the State of Punjab* [1983] 2 S.C.R. 582 and *Smt. Treveniben v. State of Gujarat* [1989] 1 S.C.J. 383).

61. The United States' Supreme Court has refused to accept claims that lengthy detention on death row violated the prohibition, contained in the Eight Amendment to the Constitution of the United States of America, of cruel and unusual punishment, emphasising that the delay is due to the convicted person's own decision to make use of all possibilities to appeal (*Knight v. Florida*, 528 US 990).

62. The Supreme Court of Canada has held that Canadian constitutional standards did not bar extradition to the United States of America of a defendant facing the death penalty (*Kindler v. Canada (Minister of Justice)*, [1991] 2 S.C.R. 779). However, in 2001 it changed its approach and held that if the person being extradited could face the death penalty, constitutional standards required that in all but exceptional cases assurances must be sought from the United States of America that the death penalty would not be imposed or, if imposed, would not be carried out (*United States v. Burns*, [2001] 1 S.C.R. 283).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. The parties' submissions

63. The applicant stated that he suffered for many years of the uncertainty as to his execution, until the abolition of the death penalty. His suffering was caused by the inability of the Bulgarian authorities to achieve the abolition of the death penalty without delay.

64. The applicant further complained that during that period there were no clear legal rules concerning the conditions of his detention, the internal guidelines issued in 1990 and 1996 being unpublished instruction which could change any time and did not provide an adequate regulation of the

prison regime. In his observations on the merits, submitted in 2002, the applicant argued that the above amounted to a violation of Article 5 of the Convention.

65. The applicant also stated that the material conditions in his cell and in the prison in general were inhuman. He complained, in particular, that he had been deprived of human contact after 1995, when he had been placed alone in a cell, that the food was insufficient and of bad quality and that temperatures in the cell had been too low in winter and too high in summer, with insufficient ventilation. The applicant stated that the authorities had not reacted adequately and timely to his complaints in this respect and that the medical care he had received had been inadequate. In particular, the surgery of his swollen salivary gland had allegedly been unduly delayed because of the hostility of the prison medical staff and administration against him. The applicant submitted that the medical doctors in prison were not independent from the prison administration and did not provide the necessary medical care impartially and timely. Moreover, there was also corruption.

66. The Government stated that the size of the applicant's cell and all material conditions of detention, including medical care, had always been in conformity with the European Prison Rules.

67. The Government submitted that the delay between the moratorium on executions in 1990 and the final abolition of the death penalty in 1998 had been inevitable as the public debate and the evolution of societal attitudes had required time. Therefore, the very fact that the abolition of the death penalty was an important and difficult step in the protection of human rights should not be overlooked in assessing the case. Furthermore, the applicant had filed numerous complaints about all aspects of his conditions of detention. Those complaints had been examined and measures had been taken where possible.

B. The Court's assessment

68. The Court considers that the applicant's complaints fall to be examined under Article 3 of the Convention. Article 3 provides:

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

1. Relevant principles

69. As the Court has held on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

70. According to the Court's case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. Furthermore, in considering whether treatment is “degrading” within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. However, the absence of such a purpose cannot conclusively rule out a finding of a violation of this provision (see *Peers v. Greece*, no. 28524/95, §§ 67-68, 74, ECHR 2001-III; and *Valašinas v. Lithuania*, no. 44558/98, § 101, ECHR 2001-VIII).

71. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. In accordance with this provision the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

72. In addition, present-day attitudes in the Contracting States to capital punishment are relevant for the assessment whether the acceptable threshold of suffering or degradation has been exceeded (see *Soering v. the United Kingdom,* judgment of 7 July 1989, Series A no. 161, p. 41, § 104). The fear and uncertainty as to the future generated by a sentence of death, in circumstances where there exists a real possibility that the sentence will be enforced, must give rise to a significant degree of human anguish. Having regard to the rejection by the Contracting States of capital punishment, which is no longer seen as having any legitimate place in democratic society (forty-three states have abolished it and the remaining member State, Russia, has introduced a moratorium), the imposition of the capital punishment in certain circumstances, such as after an unfair trial, must be considered, in itself, to a amount to a form of inhuman treatment (see *Öcalan v. Turkey*, no. 46221/99, §§ 195-98 and 203-07, 12 March 2003).

73. In all circumstances, where the death penalty is imposed, the personal circumstances of the condemned person, the conditions of detention awaiting execution and the length of detention prior to execution are examples of factors capable of bringing the treatment or punishment

received by the condemned person within the proscription under Article 3 (ibid.). When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II and *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2001-XI).

2. *Application of those principles to the present case*

74. The Court observes that the Convention came into force in respect of Bulgaria on 7 September 1992 and that, therefore, part of the period of the applicant's detention falls outside the Court's competence *ratione temporis*. However, in assessing the effect on the applicant of the conditions of detention, the Court may also have regard to the overall period during which he was detained and to the conditions of detention to which he was subjected, including prior to 7 September 1992 (see *Poltoratskiy v. Ukraine*, no. 38812/97, § 134, ECHR 2003-V).

75. In his submissions, the applicant stressed that he suffered immensely at the thought of his possible execution and that it was inhuman to keep him in such uncertainty for many years.

76. The Court notes that the applicant was convicted and sentenced to death by a judgment of 9 May 1990, at a moment when executions were no longer carried out in Bulgaria. By the time his conviction and sentence were upheld on appeal on 24 October 1990 (before that his sentence was not enforceable), a Parliamentary moratorium on executions was in place. The moratorium remained in force unaltered until the abolition of the death penalty in Bulgaria in 1998 (see paragraphs 9-19 above).

77. Furthermore, in the light of the available information about the abolition of the death penalty in Bulgaria and the safeguards that existed during the relevant period, the Court considers that the applicant's situation was not comparable to that of persons on “death row” in countries practising executions, a situation analysed in the Court's *Soering* judgment (cited above) and in a number of cases decided by other *fora* (see paragraphs 52-62 above).

78. In particular, nothing comparable to the genuine “death row phenomenon” – which in some cases involved the bringing of the condemned person to the “death chamber” and returning him to his cell upon a last minute stay of a execution (see *Soering*, cited above, pp. 23-25, §§ 52-56 and p. 28, § 68) – happened or could have happened in the applicant's case.

79. The applicant's position was, furthermore, different from that of the applicants in six cases against Ukraine which concerned persons sentenced to death at a time when executions continued in Ukraine in violation of its international commitments. To the contrary, not a single violation of the moratorium on executions occurred in Bulgaria. The Court accepts that initially the applicant must have been in a state of some uncertainty, fear

and anxiety as to his future. However, it considers that the feelings of fear and anxiety must have diminished as time went on and as the moratorium continued in force (see *Poltoratskiy,* cited above, § 135; *Aliev v. Ukraine*, no. 41220/98, § 134, 29 April 2003; *Kuznetsov v. Ukraine*, no. 39042/97, § 115, 29 April 2003; *Khokhlich v. Ukraine*, no. 41707/98, § 167, 29 April 2003; *Nazarenko v. Ukraine*, no. 39483/98, § 129, 29 April 2003; and *Dankievich v. Ukraine*, no. 40679/98, § 126, 29 April 2003).

80. Turning to the conditions of the applicant's detention, the Court notes that the cells in which the applicant was detained throughout the relevant period measured 6 or 8 sq. m. Between 1995 and 1998 he was the sole occupant of a cell of that size, an accommodation standard which appears acceptable (see paragraphs 33-36 above).

81. The Court observes that between 1990 and 1995 the applicant shared a cell with two or three detainees (see paragraphs 34 and 35 above).

82. His complaint, however, is that between June 1995 and the end of 1998 he was alone in a cell and was subjected to a regime of detention which was very restrictive and involved very little human contact. During that period he spent almost twenty-three hours per day alone in his cell. He was not allowed to join other categories of prisoners for meals in the refectory or for other activities. Food was served in the cell. The applicant had the right to no more than two visits per month. For the applicant, human contacts were practically limited to conversations with fellow prisoners during the one-hour daily walk and occasional dealings with prison staff (see paragraphs 40-43 above).

83. The Court notes that the prohibition of contacts with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment (see, among others, *Messina v. Italy* (dec.), no. 25498/94, ECHR 1999-V). As stated by the CPT, however, all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long term, to have damaging effects, resulting in deterioration of mental faculties and social abilities (see paragraph 49 above).

84. The Court notes that although the damaging effects of the impoverished regime to which the applicant was subjected were known, that regime was maintained for many years. The relevant law and regulations on the detention regime of persons sentenced to death were not amended. The adjustments introduced through internal unpublished instructions apparently did not clarify all aspects of the detention regime and did not establish clear and foreseeable rules (see paragraphs 29-32 above). Furthermore, it is significant that the Government have not invoked any particular security reasons requiring the applicant's isolation and have not mentioned why it was not possible to revise the regime of prisoners in the applicant's situation so as to provide them with adequate possibilities for human contact and sensible occupation.

85. As regards the quality of the health care provided to the applicant, the Court notes that his health was regularly monitored and in most cases the necessary treatment was provided. However, the evidence about the treatment of the applicant's swollen salivary gland, although not conclusive, suggests that there had been an unwarranted delay in providing adequate medical assistance. It must be stressed in this respect that the applicant's alleged rude behaviour towards medical staff and, indeed, any violation of prison rules and discipline by a detainee, can in no circumstances warrant a refusal to provide medical assistance (see paragraphs 44-46 and 50 above).

86. In sum, the Court considers that the stringent custodial regime to which the applicant was subjected after 1995 and the material conditions in which he was detained must have caused him suffering exceeding the unavoidable level inherent in detention. The Court thus concludes that the minimum threshold of severity under Article 3 of the Convention has been reached and that the applicant has been subjected to inhuman and degrading treatment.

87. There has, accordingly, been a breach of that provision.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

88. The applicant alleged under Article 13 of the Convention that his repeated complaints in respect of the conditions of his detention did not bring about any material improvement. Article 13 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."

89. The Government stated that there has been no violation of that provision since the applicant's complaints had been examined and measures had been taken where possible.

90. The Court has already examined the measures taken by the authorities in respect of the applicant's situation as part of the issues under Article 3 of the Convention. It considers that in the particular circumstances of the case no separate issue arises under Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. 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

92. The applicant claimed 30,000 Bulgarian levs ("BGN") (the equivalent of approximately 15,000 euros ("EUR")) in respect of non-pecuniary damage. He stated that he had spent more than 3,000 days in abominable conditions and anxiety and considered that that suffering warranted the payment of approximately BGN 10 (EUR 5) per day.

93. The Government stated that in the event of the Court finding a violation of the Convention that finding would be sufficient just satisfaction, in view of the fact that the death penalty was abolished in Bulgaria and the situation complained of was brought to an end.

94. The Government also stated that the applicant had been convicted of abdominal crimes, the murder of three small children, committed in an extremely cruel manner, and that the sum awarded by the Bulgarian courts, apparently in 1994, to the parents of the victims, had only been 3,500 "old" Bulgarian levs in respect of each of the children. Against that background, the applicant's claim – as seen by the Government - was immoral and constituted an insult to the memory of the murdered children, the more so given the fact that the applicant had never expressed any regret.

95. The Government added, furthermore, that the award of money to the applicant would cause an extremely negative reaction in the Bulgarian society.

96. In reply to the Government's position, the applicant stated that the prohibition of torture and inhuman and degrading treatment was absolute and that the applicant's crimes did not justify any treatment beyond that lawfully inflicted by virtue of his conviction and sentence. As to the amounts awarded to the children's parents, the applicant stated that they reflected the practice of the Bulgarian courts ten years ago and considered that the fact that insufficient compensation had been granted for the infringement of the rights of the victims should not serve as grounds for the refusal of compensation for another infringement of the rights of another.

97. The Court considers that the finding of a violation does not provide sufficient just satisfaction for the treatment to which the applicant was subjected during the relevant period. The Court, taking into consideration all relevant factors, including the relatively lower gravity of the applicant's case in relation to other similar cases (see *Poltoratskiy*, cited above) and the

length of the period spent by the applicant in solitary confinement, deciding on an equitable basis, awards the applicant EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

98. The applicant, who retained legal council in 2002, claimed BGN 2,800 for 30 hours of legal work related to studying the case and the submission of observations on the merits. He also claimed BGN 300 in respect of postal, travel and translation expenses. The sums claimed under the head of costs and expenses were the equivalent of approximately EUR 1,550.

99. The Government objected, stating, *inter alia*, that the applicant's lawyer had only been involved in the very last stage of the proceedings and that the hourly rate claimed was excessive.

100. Deciding on an equitable basis, the Court awards EUR 1,000 in respect of costs and expenses.

C. Default interest

101. 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. *Holds* that there has been a violation of Article 3 of the Convention as regards the regime and conditions of the applicant's detention;

2. *Holds* that no separate issue arises under Article 13 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 1,500 (one thousand and five hundred euros) in respect of non-pecuniary damage and EUR 1,000 (one thousand euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (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;

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

Done in English, and notified in writing on 11 March 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Mrs Tulkens is annexed to this judgment.

C.L.R.
S.N.

CONCURRING OPINION OF JUDGE TULKENS

(Translation)

In the present case the Court has limited its finding of a violation of Article 3 of the Convention to the regime and conditions of the applicant's detention (see paragraph 86 of the judgment), without including the fact that for many years he suffered uncertainty as to whether the death penalty to which he had been sentenced would be carried out.

The applicant was sentenced to death on 9 May 1990 and his sentence was upheld on appeal on 24 October 1990 by the Supreme Court. In the meantime, on 20 July 1990, Parliament had adopted a decision pursuant to which "the execution of death sentences which have entered into force shall be deferred until the resolution of the question regarding the application of capital punishment in Bulgaria". This moratorium on executions was maintained until 10 December 1998, when Parliament voted to abolish the death penalty, replacing it by life imprisonment without eligibility for parole.

Admittedly, as the judgment points out, the applicant's situation was not comparable to that of persons on death row (see paragraph 78 of the judgment). His position was, moreover, different from that of the applicants in the Ukrainian cases concerning persons sentenced to death at a time when executions continued in Ukraine (see paragraph 79).

Nevertheless, I feel that the Court should have taken into account the length of the period in issue and the ever-present risk of the death penalty being carried out. Firstly, while the moratorium on executions was an indispensable, and probably the only possible, first step in the political process leading to the abolition of the death penalty, the applicant's sufferings must have been exacerbated by the very fact that no change in his legal position as a person sentenced to death occurred for more than eight years. It took that long, including more than six years after the Convention's entry into force in respect of Bulgaria, for the Bulgarian legislature to abolish the death penalty. Secondly, the moratorium had been introduced by means of a mere decision by Parliament which could have been amended at any stage. That eventuality was by no means hypothetical, as is clear from the political debate on the death penalty in Bulgaria until its abolition in 1998 (see paragraphs 20-28 of the judgment). Lastly, as to the consideration that not a single violation of the moratorium on executions occurred in Bulgaria during these eight years, that fact could only be observed with hindsight and was therefore not capable of reducing the risk or the applicant's feelings of fear throughout that lengthy period.

In those circumstances, I consider that the Court should have concluded that the *combined effects* of the custodial regime and material conditions to which the applicant was subjected and the uncertainty as to the abolition of

the death penalty must have caused him anguish and anxiety and that the minimum threshold of severity under Article 3 of the Convention had been reached.