COMPENDIUM OF CASE-LAW ON TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

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COMPENDIUM OF CASE-LAW ON TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

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English edition :

The present Compendium was developed and printed within the framework of the joint programme "Support of the national mechanism for the prevention of torture and development of the parliament in Morocco 2022-2024" financed by the European Union and implemented by the Council of Europe.

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SUMMARY OF PRINCIPLE

This Summary is based mainly on the case-law of the European Court of Human Rights, enriched by various decisions of other international human rights courts and international criminal tribunals

Part 1. Deliberate ill-treatment

International human rights law prohibits torture as well as cruel, inhuman or degrading treatment or punishment. These concepts are interrelated to each other, in that torture is always inhuman and inhuman treatment is always degrading. In other words, torture is the most severe form of ill-treatment. Cruel treatment is a severe form of inhuman treatment not amounting to torture.

Ill-treatment may take many different forms, ranging from torture, to inhuman or degrading treatment to treatment that humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance.

The prohibition of torture and other ill-treatment enshrines one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against organised terrorism and crime, human rights law prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Unlike most rules of human rights law, the prohibition of torture makes no provision for exceptions and no derogation from it is permissible, even in the event of a public emergency threatening the life of the nation.

Torture

In determining whether a particular form of ill-treatment should be qualified as torture, consideration must be given to the distinction between this notion and that of inhuman or degrading treatment. According to the case-law of the European Court of Human Rights, it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering.

In addition to the severity of the treatment, the European Court now also considers that there is a purposive element in the concept of torture. Such an element is also recognised in Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which defines torture in terms of the intentional infliction of severe pain or suffering for a purpose such as obtaining information, inflicting punishment or intimidating the victim, and others. Similarly, the Inter-American Court of Human Rights understands that the elements of torture are a) an intentional act; b) which causes severe physical or mental suffering, c) committed with a given purpose or aim. The case-law of the international ad hoc criminal tribunals is in line with this reasoning.

In contrast, the definitions contained in the Statute of the International Criminal Court, as well as the corresponding "Elements of Crimes", provide support for the opinion that, apart from the desire to inflict pain and humiliate the victim, no specific purpose is required by the term "torture". Accordingly, there may be a lack of coherence between the various definitions of "torture" considered in this Compendium. The relevance of this (possible) incoherence, however, is limited, since normally severe suffering is inflicted for a purpose, and in any case, even "purposeless" inhuman treatment not amounting to torture is, like torture, prohibited in absolute terms and at all times.

Examples of torture found by international courts include, inter alia, "palestinian hanging", a combination of severe beatings and other, very humiliating acts (Selmouni case), beatings on the head causing brain damage (Ilhan case), beatings combined with a strip-search, shackling, hooding and sensory deprivation in the course of a "secret rendition" (El-Masri case). In further cases torture had been found when the victims had been deprived of sleep and subjected to a spraying with water, beatings and "falaka" (Bati case), or repeatedly beaten on different parts of his body and given electric shocks to force them to confess to a criminal offence. Rape in police custody is a clear case of torture (Aydin case), the same is true for "waterboarding" (Husayn (Abu Zubaydah) case).

The European and the Inter-American Courts of Human Rights as well as the international criminal tribunals recognize that torture is not necessarily connected with the infliction of physical pain. Torture and other ill-treatment may be carried out by inflicting merely psychological pain or exercising psychological pressure. A case in point would be if a person is forced to watch the torture of another person.

Cruel treatment

Cruel treatment may be understood as a particular intense form of inhuman treatment, which does not reach the intensity of torture. With the exception of the European Convention on Human Rights, which does not mention such treatment specifically, cruel treatment is expressly prohibited in all human rights treaties and may constitute a war crime or a crime against humanity.

In international criminal law, cruel treatment is defined as an intentional act or omission causing serious mental or physical suffering or injury, or constituting a serious attack on human dignity. It is not required that the suffering caused by the cruel treatment be "lasting". The offence of torture under common article 3 of the Geneva Conventions is also included within the

concept of cruel treatment. According to the ICTY, treatment that does not meet the purposive requirement for the offence of torture, constitutes cruel treatment.

In its assessment of the seriousness of the act or omission, the courts take all circumstances into consideration, including factors such as the age and health of the victim, and the physical and mental effects of the crime upon the victim. For example, in a case before the ICTY a couple was woken up by soldiers in the middle of the night, the husband incapacitated in a well and the wife taken away by the soldiers to be interrogated at an unknown destination. The court considered that this situation must have caused great mental suffering to the husband, and found cruel treatment to be established.

Inhuman Treatment

In the Ireland v. United Kingdom judgment, certain interrogation methods were considered to be "inhuman" by the European Court of Human Rights, because they were applied "with premeditation and for hours at a stretch; they caused, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation." This description covers many cases of inhuman treatment, although premeditation or intent is not always a necessary requirement, as will be seen when discussing inhuman conditions of detention in Part 3 of this Compendium.

Among the typical examples of inhuman (or, in less severe cases, degrading) treatment is the unnecessary use of force by the police. International human rights law does not prohibit the use of force in certain well-defined circumstances. However, such force may be used only if indispensable and must not be excessive. In respect of persons deprived of his liberty, any recourse to physical force which has not been made strictly necessary by their own conduct diminishes human dignity and is in principle an infringement of the prohibition of inhuman and degrading treatment. This is particularly true in cases where a person has already been brought under control. The requirements of an investigation and the undeniable difficulties inherent in the fight against crime cannot justify placing limits on the protection to be afforded in respect of the physical integrity of individuals. Where injuries have been sustained at the hands of the police, the burden to show the necessity of the force used lies on the Government.

In order to fall within the scope "inhuman or degrading treatment", illtreatment must attain a minimum level of severity. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim.

In international criminal law, according to the ICTY (Celebici case) inhuman treatment encompasses the following:

- treatment constituting an attack on physical integrity or health;
- certain measures, for example, which might cut the internees off completely from the outside world and in particular from their families, or
- which caused grave injury to their human dignity,

The prohibition on inhumane treatment also extends to the living conditions of protected persons and would be violated if adequate food, water, clothing, medical care and shelter, were not provided in light of the protected persons' varying habits and health.

In sum, the ICTY found that inhuman treatment is an intentional act or omission, that is an act which, judged objectively, is deliberate and not accidental, which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity. The plain, ordinary meaning of the term inhuman treatment in the context of the Geneva Conventions confirms this approach and clarifies the meaning of the offence. Thus, inhuman treatment is intentional treatment which does not conform with the fundamental principle of humanity, and forms the umbrella under which the remainder of the listed "grave breaches" in the Conventions fall. Hence, acts characterised in the Conventions and Commentaries as inhuman, or which are inconsistent with the principle of humanity, constitute examples of actions that can be characterised as inhuman treatment.

In this framework of offences, all acts found to constitute torture or wilfully causing great suffering or serious injury to body or health would also constitute inhuman treatment. However, this third category of offence is not limited to those acts already incorporated into the other two and extends further to other acts which violate the basic principle of humane treatment, particularly the respect for human dignity. Ultimately, the question of whether any particular act which does not fall within the categories of the core group is inconsistent with the principle of humane treatment, and thus constitutes inhuman(e) treatment, is a question of fact to be judged in all the circumstances of the particular case.

According to the European Court of Human Rights inhuman treatment had taken place in cases where electroshocs had been used against persons (Anzhelo Georgiev case), pepper spray had been applied against a prisoner in a closed room and he was subsequently fixed to a restraint bed for more than three hours (Tali case), where prisoners were forced to participate in exercises of special forces and been subject to beatings and intimidation in the course of these exercises (Davydov case). Secret and illegal detention for twenty days in a hotel room, outside of any judicial framework und without contact to the outside world, may in itself be inhuman and degrading (El Masri case). A threat of torture may constitute inhuman treatment (Gäfgen case).

Degrading Treatment

The European Court of Human Rights has considered acts to be degrading because "they were such as to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance". Whereas inhuman treatment is often connected with the infliction of physical pain on the victim, treatment is typically considered to be degrading because of its humiliating effect which does not necessarily go hand in hand with physical pain or suffering.

In the context of this Compendium, the interpretation and application of the term "degrading treatment" is of special interest and importance. While acts of torture or inhuman treatment are usually far from any legal justification, the line between degrading and acceptable treatment is not always easy to draw.

It is the constant case-law of the European Court of Human Rights that in order to be "degrading", ill-treatment must attain a minimum level of severity. 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. Further factors include the purpose for which the treatment was inflicted together with the intention or motivation behind it.

Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these aspects, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition set forth in Article 3. It should also be pointed out that it may well suffice that the victim is humiliated in his own eyes, even if not in the eyes of others.

In respect of a person who is deprived of his liberty, or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, at least "degrading treatment". Accordingly, even a slap given by a police officer to a young man due to disrespectful behaviour was considered by the Court to be degrading, because – in addition to physical pain – this constituted an abuse of the police officer's superior position and therefore had a humiliating effect (Bouyid case).

Degrading treatment may also occur in the course of criminal proceedings. However, according to the European Court of Human Rights, in order for treatment to be "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment. Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that the execution of detention on remand – or of a custodial sentence – in itself raises an issue under Article 3 of the European Convention on Human Rights. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. Corporal punishment is degrading punishment (Tyrer case).

As regards measures of restraint such as handcuffing, these do not normally give rise to an issue under Article 3 of the Convention where they have been imposed in connection with lawful arrest or detention and do not entail the use of force, or public exposure, exceeding what is reasonably considered necessary in the circumstances. In this regard, it is of importance for instance whether there is reason to believe that the person concerned would resist arrest or try to abscond or cause injury or damage or suppress evidence. However, the frequent use of handcuffs on prisoners in a secure environment (Kashavelov case), in particular where the prisoner is completely blind (Kaverzin case), was found to be obviously unnecessary and therefore degrading by the Court. In addition, the European Court of Human Rights considered the routine placement of accused persons in a metal cage during trial in Russian courtrooms, apart from undermining the presumtion of innocence, to be degrading treatment (Svinarenko and Slyadnev case).

The prohibition of degrading treatment was also violated when witnesses in criminal proceedings were obliged to remain at a police station for ten hours during the night, without nutrition, water and rest (Soare case). The circumstances of arrest may be degrading if a person is arrested, without a convincing need, by a special police operation in the early morning in the presence of his wife and his little children (Gutsanovi case).

Medical examinations and interventions may also constitute degrading treatment, for example an unnecessary gynaecological examination (Yazgül Yilmaz case), the forced administration of emetics in order to obtain evidence (Jalloh case), or forced placement in a closed psychiatric establishment without any medical justification (Gorobet case). Strip searches may be justified, but if used excessively they may also constitute degrading treatment (Iwanczuk, Wieser and Lorsé cases), in particular if a man has to undergo a strip-search in the presence of a female officer (Valasinas case). The forced removal of a prisoner's hair was also found to be degrading (Yankov case).

Protection from inter-prisoner violence

While the prohibition of torture and ill-treatment primarily requires state authorities to refrain from inflicting inhuman or degrading treatment actively on persons deprived of their liberty, the absence of any direct State involvement in acts of violence does not absolve the State from its obligations under human rights law. States have a number of positive obligations, designed to prevent and provide redress for torture and other forms of ill-treatment. They are required to ensure, as far as possible, that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including ill-treatment administered by private individuals. Of course, States cannot guarantee that inhuman or degrading treatment is never inflicted by one individual on another. However, States have a duty to protect the physical well-being of persons, in particular of those who find themselves in a vulnerable position by virtue of being within the control of the authorities, such as, for instance, detainees or conscripted servicemen.

In this context, governments cannot simply rely on the view that violence is an inevitable element of prison life. To the contrary, they have to take the necessary preventive measures to preserve the physical and psychological integrity and well-being of persons deprived of their liberty. This obligation should not be understood to impose an impossible or disproportionate burden on the authorities. However, authorities have to take all steps which can be reasonably expected of them to prevent real and immediate risks to a person's physical integrity, of which the authorities had or ought to have had knowledge. In particular, once the authorities are aware of a case of inter-prisoner violence prompt action by facility staff is required, including ensuring that the victim is protected from further abuse and can access the necessary medical and mental health services (Premininy case).

Part 2. Conditions of detention

General considerations

Inhuman or degrading treatment usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may also be characterised as degrading treatment prohibited by international human rights law. Indeed, the prohibition of torture and inhuman or degrading treatment or punishment is a value of civilisation closely bound up with respect for human dignity.

In the context of deprivation of liberty, the European Court of Human Rights has consistently stressed that, to be inhuman or degrading, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention or punishment. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and punishment and that, given the practical demands of imprisonment, his or her health and well-being are adequately secured.

Even the absence of an intention to humiliate or debase a detainee by placing him or her in poor conditions, while being a factor to be taken into account, does not conclusively rule out a finding that a person is subjected to inhuman or degrading treatment. Indeed, it is incumbent on the government to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties.

Among the typical problems which may violate human rights of persons deprived of their liberty are overcrowding, poor hygienic conditions, lack of access to natural light, lack of access to fresh air, ventilation and heating, and lack of access to outdoor exercise.

Accommodation and overcrowding

The European Court of Human Rights considers that the minimum standard in a detention cell must be 3 sq. m of floor surface per detainee in multi-occupancy accommodation. When the space available to a detainee falls below 3 sq. m of floor surface in prisons, this lack of personal space alone is considered so severe that a strong presumption arises that the prohibition of inhuman and degrading treatment has been violated. The burden of proof is on the government which could rebut that presumption by demonstrating that there were factors capable of adequately compensating for the scarce allocation of personal space. This presumption may be rebutted only if the following factors are cumulatively met:

1. the reductions in the required minimum personal space of 3 sq. m are short, occasional and minor;
2. such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities; and
3. the inmate is confined in what is, when viewed generally, an appropriate detention facility, and there are no other aggravating aspects of the conditions of his or her detention.

In cases where a prison cell – measuring in the range of 3 to 4 sq. m of personal space per inmate – is at issue the space factor remains a weighty factor in assessment of the adequacy of conditions of detention. In such instances inhuman or degrading treatment may be established if the space factor is coupled with other aspects of inappropriate physical conditions of detention related to, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of room temperature, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements.

In cases where a detainee disposes of more than 4 sq. m of personal space in multi-occupancy accommodation in prison, no issue with regard to the question of personal space arises, but at the same time other aspects of physical conditions of detention may still be problematic and make the detention inhuman or degrading.

In addition, each detainee must have an individual sleeping place in the cell, and the surface of the cell must be such as to allow the detainees to move freely between the furniture items.

If detainees are transferred from one place to another, the transfer must be carried out in adequate, not cramped conditions.

Sanitary facilities and hygiene

Access to properly equipped and hygienic sanitary facilities is of paramount importance for maintaining the inmates' sense of personal dignity. Not only are hygiene and cleanliness integral parts of the respect that individuals owe to their bodies and to their neighbours with whom they share premises for long periods of time, they also constitute a condition and at the same time a necessity for the conservation of health. A truly humane environment is not possible without ready access to toilet facilities and the possibility of keeping one's body clean. In prisons where the lavatory pan is placed in the corner of the cell with no proper separation from the living area, such close proximity and exposure is objectionable from a hygiene perspective and also deprives detainees using the toilet of any privacy.

In cases where the time for taking a shower had been limited to fifteen to twenty minutes once a week the European Court of Human Rights considered this to be manifestly insufficient for maintaining proper bodily hygiene. The number of functioning showers must be sufficient so that all detainees may make proper use of them.

Sanitary precautions should also include measures against infestation with rodents, fleas, lice, bedbugs and other vermin. Such measures comprise sufficient and adequate disinfection facilities, provision of detergent products, and regular fumigation and checkups of the cells and in particular bed linen, mattresses and the areas used for keeping food. This is also an indispensable element for the prevention of skin diseases.

Access to natural light and fresh air

It is important that prisoners have unobstructed and sufficient access to natural light and fresh air within their cells. Any security devices must not deprive prisoners of access to natural light and preventing fresh air from entering the accommodation. Restrictions on access to natural light and air may aggravate the situation of prisoners in an already overcrowded cell.

Free flow of natural air should not be confused with inappropriate exposure to inclement outside conditions, including extreme heat in summer or freezing temperatures in winter.

Outdoor exercise

Of the other elements relevant for the assessment of the conditions of detention, special attention must be paid to the availability and duration of outdoor exercise and the conditions in which prisoners could take it. All prisoners, without exception, must be allowed at least one hour of exercise in the open air every day and preferably as part of a broader programme of out-of-cell activities. Outdoor exercise facilities should be reasonably spacious and whenever possible offer shelter from inclement weather. A short duration of outdoor exercise may be a factor further exacerbating the situation of prisoners if they are confined to their cells for the rest of the time without any kind of freedom of movement.

Inhuman or degrading conditions of detention as a combination of problematic factors

In the case-law of the European Court of Human Rights, sometimes poor conditions as to one of the factors described above – in particular, overcrowding – were sufficient to conclude that the applicant was subjected to inhuman or degrading treatment. In many cases, however, the Court found that combination of various factors made the conditions of detention inhuman or degrading. In such cases it is clear that the combination of problematic aspects, taken together, was in violation of human rights, but it is uncertain whether each factor, taken individually, would have brought the Court to the same conclusion. Accordingly, it is not always possible to infer from the case-law with certainty the exact minimum standard for each of the criticised factors, taken individually.

Examples from the voluminous case-law include conditions of detention where to Court found

- a combination of a lack or a very low quality of food, a lack of medical assistance, and strong restrictions as to the possibility to receiving family visits and parcels as well as the denial of access to a lawyer to be inhuman and degrading (Ilascu case),
- a combination of severe overcrowding, lack of access to daylight, inadequate medical assistance and a dysfunctional ventilation which, coupled with cigarette smoke and dampness in the cell, aggravated the applicant's asthma attacks to be inhuman and degrading (Mozer case),
- insufficient food and no access to daylight for up to 22 hours a day, no access to toilet and tap water whenever needed, combined with inadequate medical assistance to be at least degrading (Stepuleac case),
- a situation where the applicant had to spend a considerable part of the day practically confined to his bed in a cell with no ventilation and no window, which would at times become unbearably hot, and he had to use the toilet in the presence of another inmate and be present while the toilet was being used by his cell-mate, to be degrading (Peers case),
- a combination of severe overcrowding coupled with the necessity to share beds with other inmates and to sleep in shifts, in a noisy cell with constant lighting, inadequate

ventilation, and infested with pests, to be degrading (Kalashnikov case),
- overcrowding in a courtroom cell without a toilet and without access to food to be inhuman and degrading (Idalov case)

A combination of severe overcrowding and extremely bad hygienic conditions was considered to be in violation of the prohibition of cruel, inhuman and degrading treatment by the Inter-American Court of Human Rights (Montero-Aranguren case).

Inhuman or degrading conditions of detention as a structural problem

In a number of countries, the European Court of Human Rights has found structural problems with regard to inhuman or degrading conditions of detention. In many of these cases, the Court has given recommendations under Article 46 of the European Convention on Human Rights in order to overcome the problems. These recommendations are particularly interesting from the point of view of the prevention of future ill-treatment.

Typical problems, as identified by the Court, included
- a combination of overcrowding and a lack of beds with insufficient access to a toilet and to running water in Belgium (Vasilescu case),
- overcrowding combined a lack of natural light, unsanitary toilets, lack of ventilation, sometimes the presence of insects and rats in Romania (Rezmives case),
- overcrowding combined with inadequate light and ventilation as well as a lack of access to hot water in Italy (Torreggiani case),
- overcrowding combined with the insufficient separation of the lavatory from the living area, the infestation with insects, inadequate ventilation or sleeping facilities, very limited access to the shower and little time to spend away from their cells in Hungary (Varga case),
- overcrowding, hygiene and access to the toilets as well as access to health care in Bulgaria (Neshkov case),
- serious overcrowding in Polish prisons (Orchowski case),
- serious overcrowding in Greek prisons (Samaras case),
- overcrowding combined with high temperatures in the cell during summer in Slovenian prisons (Mandic and Jovic case),
- overcrowding combined with a shortage of sleeping places, unjustified restrictions on access to natural light and air, and non-existent privacy when using the sanitary facilities in Russian pre-trial detention centres (Ananyev case).

With regard to each of these states, the European Court of Human Rights has indicated general measures considered necessary for bringing the conditions of detention throughout the country in line with the requirements of international human rights law. The Court is aware that, in general, the improvement of conditions of detention raises issues that go beyond its judicial function, and that it is not its task to make recommendations on how states should organise their penal and penitentiary systems.

Still the Court makes it absolutely clear that if a state is unable to ensure prison conditions in line with international human rights law, it must either abandon its strict penal policy or put in place a system of alternative means of punishment.

In order to improve detention conditions, and in particular to tackle the problem of overcrowding, it may be necessary to renovate old correctional facilities or to construct new ones. This may require significant financial resources. However, lack of resources can never justify conditions of detention that are so poor as to amount to inhuman or degrading treatment, and states must organise their penitentiary systems in ways that ensure compliance with international human rights law, regardless of financial or logistical difficulties.

In various states the Court has also indicated that the problem of overcrowding might be solved by reduced recourse to imprisonment as a form of penalty, resorting to shorter custodial sentences, replacing imprisonment with other forms of penalty, increasing the use of various forms of early release, and suspending the enforcement of some custodial sentences. In particular, a reduction in the number of remand prisoners could contribute significantly to solving the problem of overcrowding. The Court has reiterated in many of its judgments that, in view of both the presumption of innocence and the presumption in favour of liberty, pre-trial detention must be the exception rather than the norm and only a measure of last resort.

The Court also considered it necessary in many states that effective domestic remedies be introduced in order to enable detained persons to enforce speedily their right to humane treatment within the national legal system, without the need to introduce (again) complex and time-consuming international court proceedings in each individual case. International courts certainly fulfil a very important function as regards respect for human rights; still, in the long run, the rights of each and every person deprived of their liberty can only be made a reality by the states themselves, that is, by domestic judicial and executive authorities.

Part 3. Health care for detained persons

Inhuman or degrading treatment in the context of health care: general considerations

The prohibition of inhuman or degrading treatment requires that all persons are detained in conditions which are compatible with respect for their human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured by, among other things, providing them with the requisite medical assistance and treatment.

The mere fact that a detainee has been seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate. The authorities must also ensure that a comprehensive record is kept concerning the detainee's state of health and his or her treatment while in detention, that diagnosis and care are prompt and accurate, and that where necessitated by the nature of a medical condition supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation, rather than addressing them on a symptomatic basis. The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through. Furthermore, medical treatment provided within prison facilities must be appropriate, that is, at a level comparable to that which the State authorities have committed themselves to provide to the population as a whole. This does not mean that every detainee must be guaranteed the same level of medical treatment that is available in the best health establishments outside prison facilities. Nevertheless, the State must ensure that the health and well-being of detainees are adequately secured. If the authorities decide to place and maintain a seriously ill person in detention, they shall demonstrate special care in guaranteeing such conditions of detention that correspond to his special needs resulting from his disability.

Lack of treatment

A total lack of treatment of a serious disease usually constitutes, in itself, inhuman or degrading treatment of the detained person. Accordingly, the European Court of Human Rights has found human rights violations for lack of medical treatment, for example, in cases where prisoners suffered from

- chronic hepatitis (Testa case),
- asthma attacks (Mozer case),
- a combination of serious diseases (Paladi case).

The Court also found a violation of the prohibition of inhuman and degrading treatment in a case where a twelve-year-old boy who was suffering from attention-deficit hyperactivity disorder (ADHD), was placed in a temporary detention centre for juvenile offenders for a period of thirty days to "correct his behaviour", and did not receive the necessary medical treatment during this period (Blokhin case).

If persons – for whatever reason – suffer injuries during arrest, they must be treated in police custody without undue delay (Shmorgunov case).

An example from the jurisprudence of the Inter-American Court of Human Rights is the Tibi case, where the detainee, suffering from wounds and traumatism, did not receive any medical treatment.

Adequacy of treatment

If treatment is provided, it must be adequate. In this context, three specific elements are to be considered in relation to the compatibility of an applicant's health with his stay in detention:

a. the medical condition of the prisoner,
b. the adequacy of the medical assistance and care provided in detention, and
c. the advisability of maintaining the detention measure in view of the state of health of an applicant.

The adequacy of the medical assistance may be a difficult element to determine. The required standard of health care must accommodate the legitimate demands of imprisonment but remain compatible with human dignity. If the prison authorities are able to cope adequately with an inmate's serious sickness by having him treated in the prison hospital, human rights do not require his early release (Goginashvili case).

In contrast, if a prisoner suffers from a combination of serious diseases, prison authorities are responsible for developing a comprehensive therapeutic strategy aimed at curing them (see, for example, the Hummatov case where the applicant suffered, inter alia, from tuberculosis, chronic bronchopneumonia, chronic enterocolitis, radiculitis, hypertension, atherocardiosclerosis, internal haemorrhoids, stenocardia, ischemia, and osteochondrosis).

Further examples from the case-law of the European Court of Human Rights include the inadequate treatment of tuberculosis (Melnik case) and various kidney diseases (Holomiov case). The Court also found degrading treatment where the applicant was left without his eyeglasses for a period of five months (Slyusarev case).

Persons with disabilities

Where the authorities decide to place and keep disabled persons in continued detention, they should demonstrate special care in guaranteeing such conditions as correspond to the special needs resulting from their disabilities. Detaining disabled persons in a prison where they cannot move around and, in particular, cannot leave their cell independently, may amount to inhuman or degrading treatment. The same is true if a person with a serious physical disability is left to rely on his cellmates for assistance with using the toilet, bathing and getting dressed or undressed.

The European Court of Human Rights found inhuman or degrading treatment where the applicant was four-limb deficient as a result of phocomelia due to thalidomide, and, in addition, suffering from kidney problems, being detained for several days without precautions being made for her special situation (Price case).

In addition, medical care was not considered to be adequate, where

- a paraplegic complained about inadequate medical care in a prison facility which was not suited for persons in need of a wheelchair, in particular about inability to have access to various prison facilities independently, including the sanitation facilities (Grimailovs case),
- a detainee was deaf and dumb, suffering from intellectual disability, illiterate and unable to avail himself of the official sign language (Z.H. v. Hungary case),
- a paraplegic suffering from a number of serious diseases complained about his insufficient treatment in detention (Amirov case).
- Similarly, the Court found inhuman and degrading treatment in cases
- where a mentally ill prisoner, suffering from schizophrenia, was detained in a regular prison facility and, accordingly, did not receive adequate psychiatric treatment and supervision (Slawomir Musial case).
- where the psychiatric and therapeutic treatment of a detainee suffering from paranoid schizophrenia was insufficient (Strazimiri case).

Release on health grounds

In very exceptional cases, where the state of a detainee's health is absolutely incompatible with the detention, human rights may require the release of such person under certain conditions. The European Court of Human Rights has considered that release for such humanitarian reasons were or would have been required in cases where the detainee was suffering from a terminal disease with a very limited life expectancy (Mouisel and Dorneanu cases).

Part 4. Special measures and special categories of detained persons

High security and safety measures

The prohibition of torture and inhuman or degrading treatment or punishment is applicable in all cases, without exception, including where, for any reason, high security and safety measures are considered to be necessary. Even if it is considered necessary to adopt a disciplinary measure against certain prisoners, their dignity must always be respected (Hellig case).

Solitary confinement

According to the European Court of Human Rights, the solitary confinement of a dangerous prisoner may, in certain circumstances, constitute inhuman or degrading treatment, or even torture in certain instances. The Court considers that complete sensory isolation, coupled with total social isolation, can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason. On the other hand, in the Court's opinion, the prohibition of contacts with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment.

Stringent security measures existing for dangerous prisoners may prevent the risk of escape, attack or disturbance of the prison community. Such measures are often based on separation of the prison community together with tighter controls. However, in order to avoid any risk of arbitrariness, substantive reasons must be given when a protracted period of solitary confinement is order or extended. The decision should thus make it possible to establish that the authorities have carried out a reassessment that takes into account any changes in the prisoner's circumstances, situation or behaviour. The statement of reasons will need to be increasingly detailed and compelling the more time goes by.

Furthermore, such measures, which are a form of "imprisonment within the prison", should be resorted to only exceptionally and after every precaution has been taken. A system of regular monitoring of the prisoner's physical and mental condition should also be set up in order to ensure its compatibility with continued solitary confinement.

In the cases of two high-profile detainees convicted for terrorist offences, the Court found the isolation to be justified and not involving sensory deprivation (Öcalan and Ramirez Sanchez cases). In contrast, in a case of a prisoner put in solitary confinement not because of his general dangerousness, but his inability to adapt to prison conditions, the Court considered that another solution should have been found (Mathew case).

According to the case law of the Inter-American Court of Human Rights, prolonged isolation and deprivation of communication are in themselves considered to be cruel and inhuman punishment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being.

Life sentences

The European Court of Human Rights considers that imposition of a sentence of life imprisonment on an adult offender is not in itself incompatible with Article 3 or any other Article of the European Convention. States must remain free to impose life sentences on adult offenders for especially serious crimes such as murder. This is particularly so when such a sentence is not mandatory but is imposed by an independent judge after he or she has considered all of the mitigating and aggravating factors which are present in any given case.

If a life prisoner has the right under domestic law to be considered for release but is refused on the ground that he or she continues to pose a danger to society, this does not contravene his human rights. This is because States have a duty – which may also be derived from human rights law – to take measures for the protection of the public from violent crime. Indeed, preventing a criminal from re-offending is one of the essential functions of a prison sentence. This is particularly so

for those convicted of murder or other serious offences against the person. The mere fact that such prisoners may have already served a long period of imprisonment does not weaken the State's positive obligation to protect the public; States may fulfil that obligation by continuing to detain such life sentenced prisoners for as long as they remain dangerous.

At the same time, however, the Court has also held that the imposition of an irreducible life sentence on an adult may raise an issue under the prohibition of inhuman and degrading treatment. In determining whether a life sentence in a given case can be regarded as irreducible, the Court has sought to ascertain whether a life prisoner can be said to have any prospect of release. Where national law affords the possibility of review of a life sentence with a view to its commutation, remission, termination or the conditional release of the prisoner, this will be sufficient. For instance, where detention was subject to review for the purposes of parole after the expiry of a minimum term for serving the life sentence, it could not be said that the life prisoners in question had been deprived of any hope of release. A life sentence does not become "irreducible" by the mere fact that in practice it may be served in full. It is enough that a life sentence is de jure and de facto reducible.

Consequently, the existence of a system providing for consideration of the possibility of release is a factor to be taken into account when assessing the compatibility of a particular life sentence with the prohibition of inhuman or degrading treatment or punishment. In this context, however, it should be observed that a State's choice of a specific criminal-justice system, including sentence review and release arrangements, is in principle outside the scope of the supervision of the Court, provided that the system chosen does not contravene the principles set forth in the Convention.

While punishment remains one of the aims of imprisonment, the emphasis in European penal policy is now on the rehabilitative aim of imprisonment, particularly towards the end of a long prison sentence. There are a number of reasons why, for a life sentence to remain compatible with the prohibition of inhuman or degrading treatment or punishment, there must be both a prospect of release and a possibility of review.

A person must not be detained, or kept in detention, unless there are legitimate penological grounds for that detention, as, for example, punishment, deterrence, public protection and rehabilitation. Many of these grounds will be present at the time when a life sentence is imposed. However, the balance between these justifications for detention is not necessarily static and may shift in the course of the sentence. What may be the primary justification for detention at the start of the sentence may not be so after a lengthy period into the service of the sentence. It is only by carrying out a review of the justification for continued detention at an appropriate point in the sentence that these factors or shifts can be properly evaluated.

Moreover, if such a prisoner is incarcerated without any prospect of release and without the possibility of having his life sentence reviewed, there is the risk that he can never atone for his offence: whatever the prisoner does in prison, however exceptional his progress towards rehabilitation, his punishment remains fixed and unreviewable. If anything, the punishment becomes greater with time: the longer the prisoner lives, the longer his sentence.

Furthermore, it would be incompatible with human dignity for the State forcefully to deprive a person of his freedom without at least providing him with the chance to someday regain that freedom.

Indeed, there is now clear support in European and international law for the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved.

Respect for human dignity requires prison authorities to strive towards a life sentenced prisoner's rehabilitation. It follows that the requisite review must take account of the progress that the prisoner has made towards rehabilitation, assessing whether such progress has been so significant that continued detention can no longer be justified on legitimate penological grounds. A review limited to compassionate grounds is insufficient.

The criteria and conditions laid down in domestic law that pertain to the review must have a sufficient degree of clarity and certainty, and also reflect the relevant case-law of the Court. Therefore, prisoners who receive a whole life sentence are entitled to know from the outset what they must do in order to be considered for release and under what conditions. This includes when a review of sentence will take place or may be sought. In this respect the Court has noted clear support in the relevant comparative and international materials for a review taking place no later than twenty-five years after the imposition of sentence, with periodic reviews thereafter. It has however also indicated that this is an issue coming within the margin of appreciation that must be accorded to Contracting States in the matters of criminal justice and sentencing.

As for the nature of the review, the Court has emphasised that it is not its task to prescribe whether it should be judicial or executive, having regard to the margin of appreciation that must be accorded to Contracting States. It is therefore for each State to determine whether the review of sentence is conducted by the executive or the judiciary.

In a number of cases the European Court of Human Rights considered that the applicants, serving a life sentence, had not been deprived of any prospect of release and that their continued detention as such, even though long, did not constitute inhuman or degrading treatment (e.g., Kafkaris case). While there was, for a certain period, an unclear legal situation in the United Kingdom as to the reducibility of certain life sentences (Vinter case); this was later clarified by new case-law of the English courts (Hutchinson case).

In a case concerning Bulgaria, where the applicant was subjected to a particularly severe prison regime entailing almost complete isolation and very limited possibilities for social contact, work or education, the European Court of Human Rights found he was detained in (at least) degrading conditions. In addition, the Court considered that this detention regime must have seriously damaged his chances of reforming himself and thus entertaining a real hope that he might one day achieve and demonstrate his progress and obtain a reduction of his sentence. Therefore, the Court found a separate, additional violation of the prohibition of inhuman and degrading treatment in this respect (Harakchiev and Tolumov case, and, similarly, Simeonovi case).

In a case concerning the Netherlands, the Court found a violation of the prohibition of inhuman and degrading treatment because the applicant, detained in Aruba, could only be released, in the view of the state authorities, after undergoing psychiatric treatment, and at the same time such treatment was not offered by the authorities (Murray case).

Prisoners of war and detained persons during armed conflict

The European Court of Human Rights considers, in line with the case-law of the International Court of Justice, that the protection offered by human rights conventions and that offered by international humanitarian law co-exist in situations of armed conflict. Still, the relationship between international human rights law and humanitarian law may at times get complex, if a conflict between the rules of these two fields of law should arise.

As far as the prohibition of torture and ill-treatment is concerned, however, the applicable rules of international humanitarian law state that civilian detainees as well as prisoners of war have to be treated humanely at all times. Accordingly, there is obviously no conflict between these rules, on one side, and the general prohibition of torture and inhuman or degrading treatment in human rights law, on the other. This means that the prohibition of torture and ill-treatment continues to apply fully in armed conflict. The Court found various violations of this prohibition with respect to civilian detainees and prisoners of war in the Georgia v. Russia (II) case.

Persons held in psychiatric establishments

The European Court of Human Rights recognizes that detainees with mental disorders are more vulnerable than ordinary detainees, and certain requirements of prison life pose a greater risk that their health will suffer, exacerbating the risk that they suffer from a feeling of inferiority, and are necessarily a source of stress and anxiety. The Court considers that such a situation calls for an increased vigilance. When assessing the situation of these particular individuals, account has to be taken of their vulnerability as well as, in certain cases, their inability to complain coherently or at all about how they are being affected by any particular treatment. Where the treatment cannot be provided in a prison or other place of detention, it must be possible to transfer the detainee to hospital or to a specialised unit.

The Court found a violation of the prohibition of inhuman and degrading treatment in a case where the government did not manage to find a psychologist able to communicate with an inmate of a psychiatric hospital in his language which was one of the official languages of the State, namely, German in Belgium (Rooman case).

Foreign nationals and asylum-seekers

Detention conditions must be compatible with respect for human dignity, and the manner and method of the execution of the measure must not subject detainees to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. This is true for everyone, including asylum-seekers and other persons detained in the context of immigration or with a view to expulsion.

As the European Court of Human Rights recognizes, States have the undeniable right to control aliens' entry into and residence in their territory. At the same time, the Court emphasises that States must provide effective protection against torture and ill-treatment to everyone, and particularly to vulnerable members of society. Asylum-seekers may be particularly vulnerable because of their experiences during their migration and the possible traumatic experiences they may have endured previously.

The Court has found detention conditions to be degrading in a case where detained asylum seekers had been obliged to drink water from the toilets; there were 145 detainees in a 110 sq. m space; there was only one bed for fourteen to seventeen people; there was a lack of sufficient ventilation and the cells were unbearably hot; detainees' access to the toilets was severely restricted and they had to urinate in plastic bottles; there was no soap or toilet paper in any sector; sanitary facilities were dirty and had no doors; and detainees were deprived of outdoor exercise. In another case the Court considered degrading the situation of an asylum-seeker who was confined for two months in a prefabricated unit, without any possibility of going outside or using the telephone, and without having clean sheets or sufficient toiletries. Similarly, a detention period of six days, in a confined space, without any possibility of exercise or any leisure area, and where the detainees slept on dirty mattresses and had no free access to toilets, was considered unacceptable and degrading.

On this basis, the European Court of Human Rights has found to be degrading, inter alia,
- detention conditions of asylum seekers in various cases against Greece (Dougoz, M.S.S. cases and others),
- detention conditions of a great number of Georgian nationals to be expelled from Russia (Georgia v. Russia (I) case),
- the holding of asylum seekers for a prolonged period in an airport transit zone pending examination of their asylum applications (Z.A. and others v. Russia case).

In contrast, the detention of various asylum-seekers in the context of migration to Italy was found to be acceptable (Khlaifia case).

Introduction: Scope and Purpose of this Compendium

Morocco's NPM was established by Law No. 76-15 of 1 March 2018 following Morocco's ratification in 2014 of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the OPCAT) .

The mission of the NPM is to examine the situation and treatment of persons deprived of their liberty through regular visits to the various places where persons are deprived of their liberty or are likely to be deprived of their liberty, with a view to strengthening their protection against torture and other cruel, inhuman or degrading treatment or punishment. The NPM may also draw up recommendations and make proposals concerning existing and draft legislation.

In the process of monitoring the various places of deprivation of liberty, the Moroccan NPM has recourse to a number of normative references, both national (Constitution, laws, codes, regulations, notes, etc.) and international (these include both binding treaty provisions and soft law provisions such as the Mandela and Bangkok Rules, etc.), and even regional (European and African standards in particular).

Other national players have made the prevention of torture a central concern:

- The judiciary, represented by the Presidency of the Public Prosecutor's Office (PMP) and the High Council of the Judiciary (CSPJ), are key players in the prevention of torture and ill-treatment in Morocco. As part of the joint PMP-CSPJ programme to train magistrates in human rights, these two institutions are continuing their efforts to provide training for magistrates, particularly in the prevention of torture. The Institut Supérieur de la Magistrature (ISM), through its initial, continuing and specialised training courses, is also an important player.
- The staff of the Protection Department of the National Council for Human Rights, who, as part of their work, carry out visits to all places where people are deprived of their liberty (including prisons, child protection and rehabilitation centres, social welfare establishments, hospitals specialising in the treatment of mental and psychological illnesses, and places where illegal foreign nationals are held) and monitor the conditions of detainees and the treatment they receive, as well as to places where people are held illegally.
- The staff of the Délégation Générale à l'Administration Pénitentiaire et à la Réinsertion (DGAPR) are affected by this issue, in particular because of their proximity to prisoners. The DGAPR attaches great importance to training its staff and raising their awareness of human rights issues through its training centre.

Often these actors are faced with the challenge of qualifying situations that are similar to either torture or treatment that can be described as cruel, inhuman or degrading. While the constituent elements of torture are specified in Article 1 of the Convention against Torture and can help to qualify a situation, there is no precise definition of "other cruel, inhuman or degrading treatment or punishment", and these terms are often grouped together under the heading of "ill-treatment".

Hence, there is a need to refer to the jurisprudential position on the legal characterisation of torture and cruel, inhuman or degrading treatment taken by certain authoritative judicial bodies, such as the European Court of Human Rights, the Inter-American Court of Human Rights, the International Criminal Court, the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and so on.

A selection of the most significant decisions of these bodies on each of the above-mentioned terms and a summary of the constituent elements of each concept can help the NPM team to better qualify the facts, actions or omissions that are likely to fall within one or other of the above-mentioned concepts, as well as to disseminate best judicial practice, both nationally and internationally, and to encourage the judiciary to redouble its efforts to achieve effective protection of persons subjected to acts of torture, cruel, inhuman or degrading treatment.

In this context, I have been tasked to draw up a Compendium of the key decisions and relevant case law positions of the European Court of Human Rights and other similar bodies at international level in the field of torture and cruel, inhuman or degrading treatment or punishment in order to clarify the definition and qualification of the terms "cruel, inhuman or degrading treatment", so as to be better able to identify and qualify relevant facts, acts and omissions, in order to provide a legally appropriate response, where necessary.

I. The prohibition of torture and cruel, inhuman or degrading treatment or punishment: an overview

Torture and cruel, inhuman or degrading treatment or punishment are prohibited by international law. This prohibition is also part of customary international law, and at least the prohibition of torture is considered to be ius cogens, i.e. a peremptory norm of international law. Torture and ill-treatment may also be a crime under international criminal law, in particular a crime against humanity or a war crime. The prohibition of torture is laid down in universal as well as regional human rights treaties; the text of the relevant norms are reproduced in section VI, below.

As is well known, international courts and other bodies have been established in order to adjudicate alleged human rights

violations, including cases of torture and other ill-treatment. From the point of view of effective human rights protection, this is a positive and almost revolutionary development. Still, as far as torture and other ill-treatment are concerned, complaint proceedings, although absolutely necessary, have proven to be insufficient to protect all persons effectively. This is due to a variety of reasons: torture victims are typically shocked and in a state of fear; they may face reprisals or a counter-prosecution for libel or similar offences; they may see no prospects of success for the lack of evidence; they may lack the energy or simply the money to pursue long court proceedings with an uncertain outcome. In addition, and most importantly, no legal proceedings and no compensation can remove the physical and psychological scars inflicted on the victims. As far as torture is concerned, the law is often either respected or irreversibly violated.

Accordingly, in order to strengthen human rights protection in this field, the international community and national governments have created special bodies or mechanisms which aim to prevent violations of the prohibition of torture from the outset. The European Committee for the Prevention of Torture (CPT) took up its activities in 1990, based on the 1987 European Convention for the Prevention of Torture (ECPT). In 2006 a similar institution was created at the universal level, namely the Sub-Committee on Prevention of Torture (SPT). Its legal basis is the Optional Protocol to the United Nations Convention against Torture (OPCAT). This Protocol requires State Parties, in addition, to create National Mechanisms for the Prevention of Torture (NPMs) which work parallel to the international mechanisms, but are, in principle, able to do a much more intense work since they may concentrate on one country only.

All preventive mechanisms are tasked with visiting all types of places of detention in their area and examining the situation of those detained. Following these visits, they prepare recommendations to the government aimed at improving the situation.

II. The context: persons deprived of their liberty

It is important to note that National Preventive Mechanisms, like their international counterparts, have the responsibility to ensure the adequate treatment of "persons deprived of their liberty" by a public authority (see Articles 1-4 OPCAT, Articles 1-2 ECPT). This expression comprises persons in any kind of detention, including police custody, detention on remand, imprisonment, placement in a closed psychiatric establishment, immigration detention, placement in special establishments for juveniles or for military personnel, and others. Accordingly, this is a very comprehensive responsibility. In line with this field of activities of the NPMs, the present Compendium strives to comprise the relevant case-law on torture and cruel or inhuman or degrading treatment or punishment with regard to all persons deprived of their liberty.

Still, although persons deprived of their liberty are particularly vulnerable, it should be noted that torture or other ill-treatment may well occur outside the context of detention, in other words: the international norms prohibiting torture and other ill-treatment protect persons inside and outside of detention situations. There is quite some relevant case law on the significance of the prohibition of torture and ill-treatment of persons outside of a detention situation; however, the prevention of such acts lies outside the responsibility, and the work, of National Preventive Mechanisms.

However, in view of the large volume of case-law it is justified to limit this Compendium to the judicial decisions on the prohibition of torture and other ill-treatment of persons deprived of their liberty.

III. The difference between adjudicating and preventing

National Preventive Mechanisms have to prevent torture and cruel, inhuman or degrading treatment or punishment, Thus it is, of course, of the utmost importance to understand these concepts and their definitions. The very comprehensive body of case-law from the last few decades, as included in this volume, will help to illustrate for the benefit of the NPMs – and, indeed, all authorities responsible for the treatment of persons deprived of their liberty – the absolute limits for the exercise of state power, and to indicate the borderlines which may never be crossed. And in a single case pending before a court of justice, it is of course important to apply the correct definition, in order to decide the case in a just and correct manner.

At the same time, it is essential to note that the task of NPMs is not limited to remind state authorities of the existence of these borderlines. It is not their most important task to solve problems of definition of legal concepts. Their priority task is to prevent acts of torture and other ill-treatment as effectively as possible. For this purpose, to stay in the picture, NPMs should ensure that other state authorities do not even come close to the borderlines of ill-treatment. NPMs are free to recommend any kind of measure which helps to make conditions of detention more humane, and to avoid unnecessary suffering. If they want to work effectively, they have to cover each and every aspect of detention. If conditions of detention are inhuman or degrading, this is often due to a combination of various omissions and shortcomings. NPMs do not need to enter in a discussion whether one omission more or less makes detention degrading, but they may (and should) advocate that all shortcomings that may contribute to a degrading situation are removed.

Indeed, as regards the prevention of torture or other forms of deliberate ill-treatment, prevention mechanisms typically recommend safeguards not connected at all to any legal definition. Such recommendations are aimed at, for example, publicly acknowledging the existence of problems, limiting the time of police custody, videotaping police interrogations, allowing early access to a relative, to a doctor, and to a lawyer, effectively investigating and prosecuting alleged abuses, and, where appropriate, introducing new complaint procedures.

Where appropriate, it is also recommended that police training and education be further developed and improved, for example with regard to modern methods of investigation. The recommendations are summarized in detailed reports which are usually published sometime after the visit, together with a government response.

Government authorities are usually cooperating with preventive mechanisms, although the degree of cooperation varies greatly from one country to the other. In some states, quite measurable progress has been made - not always noticed by the public - in the treatment of detained persons, while in others there have been no significant changes. Preventive mechanisms depend on the cooperation from governments. They may repeat their recommendations, persistently if necessary; the ultimate measure in cases of insufficient cooperation is for the CPT and SPT to issue a public statement on the situation in a particular country (Article 10 ECPT, Article 16 OPCAT), an option of which they make rarely use. When preventive mechanisms work successfully, they have the potential to make a lasting contribution to the preservation of human rights.

Adjudicating and preventing torture and ill-treatment are two different things. In the 2016 case of Mursic v. Croatia, the European Court of Human Rights described this difference as follows, referring to the role of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT):

(Case 1)
113. (…) the Court performs a conceptually different role to the one assigned to the CPT, whose responsibility does not entail pronouncing on whether a certain situation amounts to inhuman or degrading treatment or punishment within the meaning of Article 3 (see paragraph 52 above). The thrust of CPT activity is pre-emptive action aimed at prevention, which, by its very nature, aims at a degree of protection that is greater than that upheld by the Court when deciding cases concerning conditions of detention (see paragraph 47 above, the First General Report, § 51). In contrast to the CPT's preventive function, the Court is responsible for the judicial application in individual cases of an absolute prohibition against torture and inhuman or degrading treatment under Article 3 (see paragraph 46 above). Nevertheless, the Court would emphasise that it remains attentive to the standards developed by the CPT and, notwithstanding their different positions, it gives careful scrutiny to cases where the particular conditions of detention fall below the CPT's standard of 4 sq. m (see paragraph 106 above).

It is obvious that courts of justice, adjudicating cases of alleged ill-treatment correctly, and preventive mechanisms, advocating for all effective measures for preventing such treatment from happening, complement each other. Both are necessary components of a system of effective human rights protection. And, as indicated above, NPMs surely need an understanding of the correct legal definitions as a point of orientation for their practical work.

IV. Two areas of activity: preventing deliberate ill-treatment and improving conditions of detention

If we speak of "torture" or "cruel, inhuman or degrading treatment or punishment", we usually have in mind a deliberate act causing physical or psychological pain and suffering, for example, security forces inflicting pain on a suspect in order to obtain a statement or confession, or prison staff beating a prisoner who is not complying with their orders, or prison rules. However, persons can also be brought in an inhuman or degrading situation by subjecting them to poor conditions of detention. Indeed, many such cases are brought before the European Court of Human Rights, and other international courts, and making recommendations for improving such conditions is the everyday work of virtually all preventive mechanisms in the world. Poor conditions of detention are not always the result of acts intended to inflict pain or humiliate a person; indeed, they often may be the result of neglect, indifference, combined with overcrowding and a lack of budgetary resources allocated to a particular establishment, or the prison system in general. Still, even in the absence of bad intentions, persons deprived of their liberty must at all times be held in decent conditions respecting their human rights.

Accordingly, the next two parts of this Compendium describe the case-law with regard to deliberate ill-treatment, on one hand, and general conditions of detention, on the other. Part 3 deals with the requirements of adequate health care in prisons and other places of detention, while part 4 is devoted to a number of specific situations and specific categories of detainees.

V. Selection of cases

The cases presented on the following pages have been selected so that they will provide a reliable picture of the relevant principles laid down in the case-law of the European Court of Human Rights, the Inter-American Court of Human Rights as well as the international criminal tribunals. The focus of the analysis is on the case-law of the European Court of Human Rights. A number of judgments of the Inter-American Court have been included in the Compendium; it can be seen from them that, while the cases may differ to some extent, both human rights courts follow the same principles and basically the same understanding of the definitions of torture and ill-treatment.

A limited number of cases decided by the international criminal tribunals have also been evaluated. As can be seen from the legal texts in the following section, the crimes laid down in the statutes of these tribunal include "torture", "cruel treatment", "inhuman treatment" and "degrading treatment" whose interpretation by criminal tribunals may be helpful and inspiring also in the human rights context. In addition, however, the criminal offences defined in the statutes include also "wilfully causing great suffering or serious injury to body or health", "other inhumane acts", "violence to life, health and

physical or mental well-being", "mutilation", "outrages upon person dignity", "humilating (…) treatment" and "any form of indecent assault".

All these concepts have different meanings. It is not possible to elaborate their precise definitions in the present context, nor is it necessary or advisable. International criminal law is only applicable in the context of very specific situations, namely genocide, armed conflict (war crimes) or a widespread and systematic attack on a civil population (crimes against humanity). Accordingly, since these concepts are not applicable most of the time, usually they are not suited as a point of reference for preventive mechanisms, nor could they be applied by a court of law. In contrast, the norms of human rights law apply to all situations, in the everyday life of a nation, in times of peace and also, with some limitations, in armed conflict. The task of the national preventive mechanisms – and of the courts of law – is to ensure respect for these general human rights rules, including the prohibition of torture and other ill-treatment, at all times and in all situations.

In the following collection of case excerpts, it was my intention to include a variety of cases concerning different countries. In the case-law of the European Court of Human Rights, we would be able to find many similar ("repetitive") judgments; it would not be useful to reproduce them here in full text. In order to enable the readers to follow the evolution of the case-law, however, the references to other cases have been retained in the case text.

The aim of the Compendium is, of course, to understand the meaning of the concepts of "torture" and, in particular, "cruel, inhuman or degrading treatment of punishment". International courts, in their jurisprudence, have developed definitions of these concepts. In addition, for getting a true and comprehensive picture of what constitutes torture or ill-treatment, it is necessary to show how the international courts have applied these definitions in real-life cases. Accordingly, the following pages contain descriptions of many typical situations where international courts have found – or have declined to find – a violation of the prohibition of torture and ill-treatment.

The footnotes contained in the judgments of the Inter-American Court of Human Rights and of the international criminal tribunals are not reproduced here. Where necessary, their content has been included, in brackets, in the running text. Otherwise, the footnotes have simply been omitted and this omission has been marked by "(…)".

The case descriptions in the following parts of the Compendium are followed by a summary, in each part, of the principles identified with regard to the interpretation of the prohibition of torture and other ill-treatment. These summaries are also reproduced in the "Summary of Principles" at the beginning of the Compendium.

Some of the judgments were only available only in French language. They have been translated by the author; in such cases the text indicates this fact. The author used automatic translation tools and then checked the correctness of the translation personally.

The selection of cases aims at giving a comprehensive picture, but it is by no means complete.

VI. The legal basis

The following legal texts are the basis for the evaluation of the case-law that follows. It will be seen that these texts are similar, though not identical, as far as the human rights treaties are concerned. The statutes of the international criminal tribunals regulate the definition of the offences in more detail:

European Convention on Human Rights

Article 3. Prohibition of torture

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

American Convention on Human Rights

Article 5. Right to Humane Treatment

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
3. Punishment shall not be extended to any person other than the criminal.
4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.
5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.
6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

African Charter on Human and Peoples' Rights

Article 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly, slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

International Covenant on Civil and Political Rights

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, it does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.
2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

Statute of the International Criminal Tribunal for the Former Yugoslavia

Article 2. Grave breaches of the Geneva Conventions of 1949

The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
(…)
(b) torture or inhuman treatment, including biological experiments;
(c) wilfully causing great suffering or serious injury to body or health (…)

Article 5. Crimes against humanity

The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population: (…)
(f) torture;
(g) rape; (…)
(i) other inhumane acts.

State of the International Criminal Tribunal for Rwanda

Article 3. Crimes against Humanity

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds: (…)
(f) Torture;
(g) Rape;
(i) Other inhumane acts.

Article 4. Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II

The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

(a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; (…)
(e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
(h) Threats to commit any of the foregoing acts.

Rome Statute of the International Criminal Court

Article 7. Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (…)
(f) Torture;
(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (…)
(i) Enforced disappearance of persons; (…)
(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:
(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack; (…)
(e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions; (…)

Article 8. War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:
(a) (…)
(ii) Torture or inhuman treatment, including biological experiments;
(iii) Wilfully causing great suffering, or serious injury to body or health; (…)
(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: (…)
(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons; (…)
(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
(xxiii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions; (…)

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment; (…)

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts: (…)
(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions; (…)
(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

Part 1. Deliberate ill-treatment

I. The various forms of ill-treatment

Article 3 of the European Convention on Human Rights prohibits torture as well as inhuman or degrading treatment or punishment. Ever since the 1960s, it is accepted that these concepts are interrelated to each other, in that torture is always inhuman and inhuman treatment is always degrading. In other words, torture is the most severe form of ill-treatment.

Other human rights documents also contain a prohibition of "cruel" treatment, which should be understood as a serious form of inhuman treatment, but not reaching the intensity of torture.
The European Commission on Human Rights, in its 1969 Report in the Greek case (p. 186) stated the following:

(Case 2)
1. Article 3 of the Convention provides that:
"No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

2. It is plain that there may be treatment to which all these descriptions apply, for all torture must be inhuman and degrading treatment, and inhuman treatment also degrading. The notion of inhuman treatment covers at least such treatment as deliberately causes severe suffering, mental or physical, which, in the particular situation, is unjustifiable. The word "torture" is often used to describe inhuman treatment, which has a purpose, such as the obtaining of information or confessions, or the infliction of punishment, and it is generally an aggravated form of inhuman treatment. Treatment or punishment of an individual may be said to be degrading if it grossly humiliates him before others or drives him to act against his will or conscience. In this Report the expression "torture or ill-treatment" will be used, for sake of brevity, to describe generally acts prohibited by Article 3.

In the 1978 Ireland v. United Kingdom case, the European Court of Human Rights had to judge whether the "five techniques" used by the British forces in Northern Ireland, as described below, amounted to inhuman treatment or to torture:

(Case 3)
96. Twelve persons arrested on 9 August 1971 and two persons arrested in October 1971 were singled out and taken to one or more unidentified centres. There, between 11 to 17 August and 11 to 18 October respectively, they were submitted to a form of "interrogation in depth" which involved the combined application of five particular techniques.

These methods, sometimes termed "disorientation" or "sensory deprivation" techniques, were not used in any cases other than the fourteen so indicated above. It emerges from the Commission's establishment of the facts that the techniques consisted of:

a. wall-standing: forcing the detainees to remain for periods of some hours in a "stress position", described by those who underwent it as being "spread eagled against the wall, with their fingers put high above the head against the wall, the legs spread apart and the feet back, causing them to stand on their toes with the weight of the body mainly on the fingers";

b. hooding: putting a black or navy coloured bag over the detainees' heads and, at least initially, keeping it there all the time except during interrogation;

c. subjection to noise: pending their interrogations, holding the detainees in a room where there was a continuous loud and hissing noise;

d. deprivation of sleep: pending their interrogations, depriving the detainees of sleep;

e. deprivation of food and drink: subjecting the detainees to a reduced diet during their stay at the centre and pending interrogations.

The Commission's findings as to the manner and effects of the application of these techniques on two particular case-witnesses are referred to below at paragraph 104.

97. From the start, it has been conceded by the respondent Government that the use of the five techniques was authorised at "high level". Although never committed to writing or authorised in any official document, the techniques had been orally taught to members of the RUC by the English Intelligence Centre at a seminar held in April 1971. (…)

104. T 6 and T 13 were arrested on 9 August 1971 during Operation Demetrius. Two days later they were transferred from Magilligan Regional Holding Centre to an unidentified interrogation centre where they were medically examined on arrival. Thereafter, with intermittent periods of respite, they were subjected to the five techniques during four or possibly five days; neither the Compton or Parker Committees nor the Commission were able to establish the exact length of the periods of respite.

The Commission was satisfied that T 6 and T 13 were kept at the wall for different periods totalling between twenty to thirty hours, but it did not consider it proved that the enforced stress position had lasted all the time they were at the wall. It stated in addition that the required posture caused physical pain and exhaustion. The Commission noted that, later on during his stay at the interrogation centre, T 13 was allowed to take his hood off when he was alone in the room, provided that he turned his face to the wall. It was not found possible by the Commission to establish for what periods T 6 and T 13 had been without sleep, or to what extent they were deprived of nourishment and whether or not they were offered food but refused to take it.

The Commission found no physical injury to have resulted from the application of the five techniques as such, but loss of weight by the two case-witnesses and acute psychiatric symptoms developed by them during interrogation were recorded in the medical and other evidence. The Commission, on the material before it, was unable to establish the exact degree of any psychiatric after-effects produced on T 6 and T 13, but on the general level it was satisfied that some psychiatric after-effects in certain of the fourteen persons subjected to the techniques could not be excluded. (…)

162. As was emphasised by the Commission, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (art. 3). The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc.

163. The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4 (P1, P4), Article 3 (art. 3) makes no provision for exceptions and, under Article 15 para. 2 (art. 15-2), there can be no derogation therefrom even in the event of a public emergency threatening the life of the nation.

164. In the instant case, the only relevant concepts are "torture" and "inhuman or degrading treatment", to the exclusion of "inhuman or degrading punishment".

1. The unidentified interrogation centre or centres
(a) The "five techniques"
165. The facts concerning the five techniques are summarised at paragraphs 96-104 and 106-107 above. In the Commission's estimation, those facts constituted a practice not only of inhuman and degrading treatment but also of torture. The applicant Government asks for confirmation of this opinion which is not contested before the Court by the respondent Government.

166. The police used the five techniques on fourteen persons in 1971 that is on twelve including T 6 and T 13, in August before the Compton Committee was set up, and on two in October whilst that Committee was carrying out its enquiry. Although never authorised in writing in any official document, the five techniques were taught orally by the English Intelligence Centre to members of the RUC at a seminar held in April 1971. There was accordingly a practice.

167. The five techniques were applied in combination, with premeditation and for hours at a stretch; they caused, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation. They accordingly fell into the category of inhuman treatment within the meaning of Article 3 (art. 3). The techniques were also degrading since they were such as to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance.

On these two points, the Court is of the same view as the Commission.

In order to determine whether the five techniques should also be qualified as torture, the Court must have regard to the distinction, embodied in Article 3 (art. 3), between this notion and that of inhuman or degrading treatment.

In the Court's view, this distinction derives principally from a difference in the intensity of the suffering inflicted.

The Court considers in fact that, whilst there exists on the one hand violence which is to be condemned both on moral grounds and also in most cases under the domestic law of the Contracting States but which does not fall within Article 3 (art. 3) of the Convention, it appears on the other hand that it was the intention that the Convention, with its distinction between "torture" and "inhuman or degrading treatment", should by the first of these terms attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering.

Moreover, this seems to be the thinking lying behind Article 1 in fine of Resolution 3452 (XXX) adopted by the General Assembly of the United Nations on 9 December 1975, which declares: "Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment".

Although the five techniques, as applied in combination, undoubtedly amounted to inhuman and degrading treatment, although their object was the extraction of confessions, the naming of others and/or information and although they were used systematically, they did not occasion suffering of the particular intensity and cruelty implied by the word torture as so understood.

168. The Court concludes that recourse to the five techniques amounted to a practice of inhuman and degrading treatment, which practice was in breach of Article 3 (art. 3).

In the 2021 case of Shmorgunov and others v. Ukraine, the Court recapitulated these principles as follows:

(Case 4)
363. Ill-treatment prohibited by Article 3 of the Convention may take many different forms, ranging from torture, to inhuman or degrading treatment to treatment that humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance (see, for instance, Bouyid, cited above, §§ 8788). In determining whether a particular form of ill-treatment should be qualified as torture, consideration must be given to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading

treatment. As noted in previous cases, it appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. In addition to the severity of the treatment, there is a purposive element, as recognised in Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which defines torture in terms of the intentional infliction of severe pain or suffering with the aim, inter alia, of obtaining information, inflicting punishment or intimidating (see, among other authorities, Aktaş v. Turkey, no. 24351/94, §§ 310-13, ECHR 2003V (extracts), and Saribekyan and Balyan, cited above, § 83).

II. Torture

1. Definitions of torture

As indicated above, torture was defined by the European Court of Human Rights in the Ireland v. United Kingdom judgment as "deliberate inhuman treatment causing very serious and cruel suffering".

The Inter-American Court of Human Rights interpreted and applied the definition of torture in the 2007 case of Bueno-Aleves v. Argentina

(Case 5)

76. Firstly, the Court reasserts its case law in the sense that International Human Rights Law strictly prohibits torture and cruel, inhuman, or degrading punishment or treatment. The absolute prohibition of torture, both physical and psychological, is currently part of the domain of the international jus cogens. Said prohibition remains valid even under the most difficult circumstances, such as war, threat of war, the fight against terrorism and other crimes, state of siege, or a state of emergency, civil commotion or domestic conflict, suspension of constitutional guarantees, domestic political instability or other public emergencies or catastrophes. (…)

77. Various universal (…) and regional (…) instruments set forth said prohibition and enshrine the right of all human beings not to be tortured. Similarly, various international instruments enshrine this right and reaffirm that prohibition, (…) including international humanitarian law. (…)

78. Now, in order to define the concept of "torture" in the light of the provisions of Article 5(2) of the American Convention, the Court should consider the definition provided in the first part of Article 2 of the Inter-American Convention to Prevent and Punish Torture (hereinafter "ICPPT"), (…) and the various definitions contained in some of the instruments mentioned in the paragraph above. This is particularly important for the Court as, in accordance with its case law, "the interpretation of a treaty must take into account not only the agreements and instruments related to the treaty (paragraph 2 of Article 31 of the Vienna Convention), but also the system of which it is part (paragraph 3 of Article 31 of said Convention)." (…) This concept is particularly relevant for International Human Rights Law, which has shown substantial progress through the evolution in the interpretation of international protection instruments. (…)

79. Based on the foregoing, the Court understands that the elements of torture are as follows:

a) an intentional act;
b) which causes severe physical or mental suffering,
c) committed with a given purpose or aim. (…)

80. The Court will now analyze the facts of the instant case in view of the foregoing considerations.

I) Intentionality

81. The evidence attached to the record of the case proves that the acts committed were deliberately inflicted upon the victim and not the result of negligent conduct, an accident or force majeure.

II) Purpose

82. In his statement rendered before the judge investigating the acts of mistreatment (supra para. 71), Mr. Bueno-Alves alleged that said acts were aimed at having him make a confession against Carlos Alberto Baltasar Pérez-Galindo, his counsel at the time. In view of these facts and considering the acknowledgement made by the State, the Court considers that said mistreatment was specifically aimed at forcing Mr. Bueno-Alves to make a confession.

III) Suffering

83. Lastly, upon determining the degree of suffering endured by the victim, the Court must take into account the specific circumstances of each case, in view of objective and subjective factors. The former refer to the characteristics of mistreatment, such as the duration, the method or manner used to inflict harm, and the physical and psychological effects such harm may cause. The latter refer to the characteristics of the individual undergoing mistreatment, including age, gender, health condition, and any other personal circumstance. (…)

84. The suffering endured by Mr. Bueno-Alves is reflected in his initial statement, in which he claimed that "after being beaten in that manner, […] he reacted saying 'kill me.'" (…) Similarly, the physical effects of such mistreatment are also particularly relevant. Based on the findings of the medical experts who submitted their reports (supra para. 37), the mistreatment suffered by Mr. Bueno-Alves caused him "a 2mm-diameter perforation of the eardrum" (…) which resulted in a 0.3 percent and 16.7 percent hearing loss in the left and right ears, respectively, as well as deep psychological suffering. Indeed, the psychiatrists that rendered their reports in these proceedings stated that:

As regards the facts of the instant case […], his statement is clear, emotional but discreet at the same time. It is not grandiloquent and it is not meant to cause emotional impact

on the audience. The summary is plausible. […] After such episode, which occurred more than eighteen years ago, all events in his existence seem to be associated in some way or another to said fact. As symptoms derived therefrom, he mentions […] amnesia, sleeping disorders, permanent fear and alert feelings, total work inactivity and a social and emotional lifestyle conditioned by the safety and security measures implemented after the events occurred in 1988. It was then, according to his sayings, particularly while he was under arrest, that he started suffering from skin and eating disorders. […] His mental activity and his daily life […] seem to be governed by this issue, which seems to be his raison d'être. All his psychological energy is focused on that. He has implemented a system of continuous preventive measures, together with a hyper-vigilant attitude. […] There are no indicators of simulation. (…)

85. Moreover, the experts concluded that the disorders caused by such mistreatment prevented and still prevent Mr. Bueno-Alves from "carrying out his daily activities," and require ongoing psychiatric and psychological treatment "for life." (…)

86. Based on the foregoing considerations and in view of the acknowledgment made by the State (supra paras. 19, 22, 23, and 26 to 29), the Court considers that the events alleged by the Commission and the representative, which have been proven in the instant case, amounted to torture to the detriment of Mr. Bueno-Alves, thus entailing a violation by the State of the right enshrined in Articles 5(1) and 5(2) of the American Convention, in relation to Article 1(1) thereof to the detriment of the above-mentioned individual. (…)

In the 2004 case of Prosecutor v. Brdanin, the Trial Chamber of the ICTY considered the definition of torture:

(Case 6)
B. Torture (counts 6 and 7)
480. Torture is charged in counts 6 and 7 pursuant to Articles 2(b) and 5(f) of the Statute. (…)

1. The law
481. Both this Tribunal and the ICTR have adopted a definition of the crime of torture along the lines of that contained in the Convention against Torture ("CAT"),1254 which comprises the following constitutive elements:

1. the infliction, by act or omission, of severe pain or suffering, whether physical or mental; (…)
2. the act or omission must be intentional; (…) and
3. the act or omission must have occurred in order to obtain information or a confession, or to punish, intimidate or coerce the victim or a third person, or to discriminate, on any ground, against the victim or a third person. (…)

(Kunarac Trial Judgement, para. 497; Krnojelac Trial Judgement, paras 179, 186. According to both Trial Chambers, "humiliation" is not a purpose of torture acknowledged under customary international law, which has been stated so by the Furundžija and Kvočka Trial Chambers in their judgements (paras 162 and 141 respectively). This approach has subsequently been confirmed by the Furundžija Appeals Chamber (para. 111 of the Furundžija Appeal Judgement). See also Naletilić Trial Judgement, para. 338, and Semanza Trial Judgement, para. 343.)

482. The definition of "torture" remains the same regardless of the Article of the Statute under which the Accused has been charged. (…) The mens rea as set out above is not controversial in the jurisprudence of the Tribunal. However, a number of issues regarding the actus reus may usefully be addressed.

(a) Severity of pain or suffering
483. The seriousness of the pain or suffering sets torture apart from other forms of mistreatment. (…) The jurisprudence of this Tribunal and of the ICTR has not specifically set the threshold level of suffering or pain required for the crime of torture, and it consequently depends on the individual circumstances of each case. (…)

484. In assessing the seriousness of any mistreatment, the objective severity of the harm inflicted must be considered, including the nature, purpose and consistency of the acts committed. Subjective criteria, such as the physical or mental condition of the victim, the effect of the treatment and, in some cases, factors such as the victim's age, sex, state of health and position of inferiority will also be relevant in assessing the gravity of the harm. (…) Permanent injury is not a requirement for torture; (…) evidence of the suffering need not even be visible after the commission of the crime. (…)

485. The criteria mentioned in the previous paragraph will be used by this Trial Chamber in assessing whether the treatment alleged by the Prosecution in counts 6 and 7 amounts to severe pain or suffering. Some acts, like rape, appear by definition to meet the severity threshold. Like torture, rape is a violation of personal dignity and is used for such purposes as intimidation, degradation, humiliation and discrimination, punishment, control or destruction of a person. (…) Severe pain or suffering, as required by the definition of the crime of torture, can be said to be established once rape has been proved, since the act of rape necessarily implies such pain or suffering. (…)

(b) Prohibited purpose
486. Acts of torture aim, through the infliction of severe mental or physical pain, to attain a certain result or purpose. (…) Thus, in the absence of such purpose or goal, even a very severe infliction of pain would not qualify as torture for the purposes of Article 2 and Article 5 of the Statute. (…)

487. The prohibited purposes mentioned above (…) do not constitute an exhaustive list, and there is no requirement that the conduct must solely serve a prohibited purpose. (…) If one prohibited purpose is fulfilled by the conduct, the fact that such conduct was also intended to achieve a nonlisted purpose is immaterial. (…)

(c) Official sanction not required

488. Even though the CAT envisages that torture be committed "with the consent or acquiescence of a public official or other person acting in an official capacity" (…), the jurisprudence of this Tribunal does not require that the perpetrator of the crime of torture be a public official, nor does the torture need to have been committed in the presence of such an official. (…)

489. In this context, the Trial Chamber notes that the definition of the CAT relies on the notion of human rights, which is largely built on the premises that human rights are violated by States or Governments. For the purposes of international criminal law, which deals with the criminal responsibility of an individual, this Trial Chamber agrees with and follows the approach of the Kunarac Trial Chamber that the characteristic trait of the offence [under the Tribunal's jurisdiction] is to be found in the nature of the act committed rather than in the status of the person who committed it. (…)

In the 2007 case of Prosecutor v. Martic, the ICTY recapitulated the definitions of torture as follows:

(Case 7)

F. Torture

73. Milan Martić is charged with torture as a crime against humanity under Article 5(f) of the Statute (Count 6), and as a violation of the laws or customs of war under Article 3 of the Statute (Count 8), respectively.

74. The torture of persons not taking an active part in hostilities is expressly prohibited by the Geneva Conventions and the Additional Protocols, both in international and non-international armed conflicts.

(Celebici Trial Judgement, para. 446, referring in fn 455 to Article 12 Geneva Conventions I and II; Article 50 Geneva Convention I; Article 51 Geneva Convention II; Articles 17, 87 and 130 Geneva Convention III; Articles 32 and 147 Geneva Convention IV; Common Article 3 Geneva Conventions I–IV; Article 75 Additional Protocol I; Article 4 Additional Protocol II.)

The definition of torture is identical under both Article 3 and Article 5 of the Statute.

(The definition of torture is largely based on the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force on 26 June 1987.)

It comprises the following elements:

1. The intentional infliction, by act or omission, of severe pain or suffering, whether physical or mental;

2. the act or omission must have occurred in order to obtain information or a confession, or to punish, intimidate or coerce the victim or a third person, or to discriminate, on any ground, against the victim or a third person ("prohibited purpose").

(See e.g. Kunarac et al. Appeal Judgement, paras 142-144; Brdanin Trial Judgement, para. 481; Furunzdija Trial Judgement, para. 162.)

75. The pain and suffering inflicted during acts of torture is more severe than the pain and suffering inflicted during other forms of mistreatment and cruel treatment.

(Brdanin Trial Judgement, para. 483. See also Celebici Trial Judgement, para. 468.)

The Trial Chamber will assess on a case-by-case basis whether the acts or omissions charged as torture, inflicted severe physical or mental pain or suffering on the part of the victim.

(Naletilic and Martinovic Appeal Judgement, para. 299; Celebici Trial Judgement, para. 469.)

In its assessment of the severity of the pain or suffering inflicted, the Trial Chamber may take several factors into account, including the duration of the suffering inflicted, the nature of the crimes, the physical or mental condition of the victim, the effect of the acts on the victim, the victim's age, and the victim's position of inferiority to the perpetrator.

(Naletilic and Martinovic Appeal Judgement, para. 300; Brdanin Trial Judgement, para. 484, citing Kvocka et al. Trial Judgement, para. 143 and Krnojelac Trial Judgement, para. 182.)

76. In the jurisprudence of the Tribunal several acts have been listed as rising to the level of seriousness necessary to constitute torture. These acts include beatings, administering electric shocks, forcing victims to watch executions of others, rape, forcing victims to bury the bodies of their neighbours and friends, and causing burn injuries.

(See e.g. Kunarac et al. Appeal Judgement, para. 151; Celebici Trial Judgement, para. 495-496, 971, 973, 976-77; Naletilic and Martinovic Trial Judgement, paras 350-352; Brdanin Trial Judgement, paras 492, 503-511, 524.)

77. As to the mens rea, the perpetrator's acts or omissions must be committed for a prohibited purpose. The definition of torture provides a non-exhaustive list of prohibited purposes.

(Celebici Trial Judgement, para. 470; Brdanin Trial Judgement, para. 487.)

There is no requirement that the act of the perpetrator be committed solely or predominantly to serve this prohibited purpose.

(Kunarac et al. Appeal Judgement, para. 155; Celebici Trial Judgement, para. 470.)

Once the conduct has been carried out for one of the prohibited purposes, it is immaterial whether there is another purpose behind the conduct.

(Kunarac et al. Appeal Judgement, para. 155.)

In addition, it needs to be established that the perpetrator acted or omitted to act with direct or indirect intent.

2. The purpose of torture

If we compare the definitions of torture developed by the different courts, we see that in any case torture is a deliberate act causing a very cruel and serious (severe) suffering. There is a difference of opinion as to whether, in addition, in order to be qualified as "torture", an act always has to pursue a certain purpose such as obtaining a statement or confession, or to punish, intimidate or coerce a person. From the court decisions set out above, we may see that the Inter-American Court of Human Rights as well as the ICTY consider such a purpose to be a necessary element of torture. The European Court of Human Rights, in contrast, initially did not mention a specific purpose as a necessary requirement of torture, although in recent case-law it refers to a "purposive element" of torture.

While it is true that torture typically pursues one of the purposes described above, one may doubt whether such a purpose – other than tormenting and humiliating the victim – is a necessary requirement of torture. If persons are subjected to a very cruel and painful act, they suffer intensely, regardless of the specific purpose the acting person may pursue. Indeed, an act of cruel treatment which is useless and senseless even from the perspective of the tormentor might be felt to be particularly degrading by the victim.

In line with this reasoning, the "Elements of Crimes", elaborated by the States Parties to the Statute of the International Criminal Court, state in footnote 14 that "it is understood that no specific purpose need to be prove for this crime", i.e. torture.

The importance of this dispute should not be overestimated. On one hand, in reality, acts of torture typically pursue a purpose, and on the other, cruel or inhuman treatment is in any case prohibited, in equally absolute terms as torture.

3. Examples of Torture

a. Palestinan hanging

The first case in which the European Court of Human Rights found torture to be established was the 1996 case of Aksoy v. Turkey:

(Case 8)

60. The applicant complained of having been ill-treated in different ways. He claimed to have been kept blindfolded during interrogation, which caused disorientation; to have been suspended from his arms, which were tied together behind his back ("Palestinian hanging"); to have been given electric shocks, which were exacerbated by throwing water over him; and to have been subjected to beatings, slapping and verbal abuse. He referred to medical evidence from Dicle University Medical Faculty which showed that he was suffering from a bilateral brachial plexus injury at the time of his admission to hospital (see paragraph 19 above). This injury was consistent with Palestinian hanging.

He submitted that the treatment complained of was sufficiently severe as to amount to torture; it was inflicted with the purpose of inducing him to admit that he knew the man who had identified him.

In addition, he contended that the conditions in which he was detained (see paragraph 13 above) and the constant fear of torture which he suffered while in custody amounted to inhuman treatment.

61. The Court, having decided to accept the Commission's findings of fact (see paragraphs 39-40 above), considers that where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation as to the causing of the injury, failing which a clear issue arises under Article 3 of the Convention (art. 3) (see the Tomasi v. France judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, paras. 108-111 and the Ribitsch v. Austria judgment of 4 December 1995, Series A no. 336, p. 26, para. 34).

62. Article 3 (art. 3), as the Court has observed on many occasions, enshrines one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against organised terrorism and crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4 (P1, P4), Article 3 (art. 3) makes no provision for exceptions and no derogation from it is permissible under Article 15 (art. 15) even in the event of a public emergency threatening the life of the nation (see the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, para. 163, the Soering v. the United Kingdom judgment of 7 July 1989, Series A no. 161, p. 34, para. 88, and the Chahal v. the United Kingdom judgment of 15 November 1996, Reports 1996-V, p. 1855, para. 79).

63. In order to determine whether any particular form of ill-treatment should be qualified as torture, the Court must have regard to the distinction drawn in Article 3 (art. 3) between this notion and that of inhuman or degrading treatment. As it has remarked before, this distinction would appear to have been embodied in the Convention to allow the special stigma of "torture" to attach only to deliberate inhuman treatment causing very serious and cruel suffering (see the Ireland v. the United Kingdom judgment previously cited, p. 66, para. 167).

64. The Court recalls that the Commission found, inter alia, that the applicant was subjected to "Palestinian hanging", in other words, that he was stripped naked, with his arms tied together behind his back, and suspended by his arms (see paragraph 23 above).

In the view of the Court this treatment could only have been deliberately inflicted; indeed, a certain amount of preparation and exertion would have been required to carry it out. It would appear to have been administered with the aim of obtaining admissions or information from the applicant. In addition to the severe pain which it must have caused at the time, the medical evidence shows that it led to a paralysis of both arms which lasted for some time (see paragraph 23 above). The Court considers that this treatment was of such a serious and cruel nature that it can only be described as torture.

In view of the gravity of this conclusion, it is not necessary for the Court to examine the applicant's complaints of other forms of ill-treatment.

In conclusion, there has been a violation of Article 3 of the Convention (art. 3).

b. Beatings

The applicant in the 1999 case of Selmouni v. France was subjected to a combination of rather humiliating acts by police officers:

(Case 9)

96. In order to determine whether a particular form of ill-treatment should be qualified as torture, the Court must have regard to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. As the European Court has previously found, it appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering (see the Ireland v. the United Kingdom judgment cited above, pp. 66-67, § 167).

97. The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which came into force on 26 June 1987, also makes such a distinction, as can be seen from Articles 1 and 16:

Article 1

"1. For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. …"

Article 16, paragraph 1

"1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in Articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment."

98. The Court finds that all the injuries recorded in the various medical certificates (see paragraphs 11-15 and 17-20 above) and the applicant's statements regarding the ill-treatment to which he had been subjected while in police custody (see paragraphs 18 and 24 above) establish the existence of physical and – undoubtedly (notwithstanding the regrettable failure to order a psychological report on Mr Selmouni after the events complained of) – mental pain or suffering. The course of the events also shows that the pain or suffering was inflicted on the applicant intentionally for the purpose of, inter alia, making him confess to the offence which he was suspected of having committed. Lastly, the medical certificates annexed to the case file show clearly that the numerous acts of violence were directly inflicted by police officers in the performance of their duties.

99. The acts complained of were such as to arouse in the applicant feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance. The Court therefore finds elements which are sufficiently serious to render such treatment inhuman and degrading (see the Ireland v. the United Kingdom judgment cited above, pp. 66-67, § 167, and the Tomasi judgment cited above, p. 42, § 115). In any event, the Court reiterates that, in respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see the Ribitsch judgment cited above, p. 26, § 38, and the Tekin v. Turkey judgment of 9 June 1998, Reports 1998-IV, pp. 1517-18, § 53).

100. In other words, it remains to be established in the instant case whether the "pain or suffering" inflicted on Mr Selmouni can be defined as "severe" within the meaning of Article 1 of the United Nations Convention. The Court considers that this "severity" is, like the "minimum severity" required for the application of Article 3, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc.

101. The Court has previously examined cases in which it concluded that there had been treatment which could only be described as torture (see the Aksoy judgment cited above, p. 2279, § 64, and the Aydın judgment cited above, pp. 1891-92, §§ 83-84 and 86). However, having regard to the fact that the Convention is a "living instrument which must be interpreted in the light of present-day conditions" (see, among other authorities, the following judgments: Tyrer v. the United Kingdom, 25 April 1978, Series A no. 26, pp. 15-16, § 31; Soering cited above, p. 40, § 102; and Loizidou v. Turkey, 23 March 1995, Series A no. 310, pp. 26-27, § 71), the Court

considers that certain acts which were classified in the past as "inhuman and degrading treatment" as opposed to "torture" could be classified differently in future. It takes the view that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies.

102. The Court is satisfied that a large number of blows were inflicted on Mr Selmouni. Whatever a person's state of health, it can be presumed that such intensity of blows will cause substantial pain. Moreover, a blow does not automatically leave a visible mark on the body. However, it can be seen from Dr Garnier's medical report of 7 December 1991 (see paragraphs 18-20 above) that the marks of the violence Mr Selmouni had endured covered almost all of his body.

103. The Court also notes that the applicant was dragged along by his hair; that he was made to run along a corridor with police officers positioned on either side to trip him up; that he was made to kneel down in front of a young woman to whom someone said "Look, you're going to hear somebody sing"; that one police officer then showed him his penis, saying "Here, suck this", before urinating over him; and that he was threatened with a blowlamp and then a syringe (see paragraph 24 above). Besides the violent nature of the above acts, the Court is bound to observe that they would be heinous and humiliating for anyone, irrespective of their condition.

104. The Court notes, lastly, that the above events were not confined to any one period of police custody during which – without this in any way justifying them – heightened tension and emotions might have led to such excesses. It has been clearly established that Mr Selmouni endured repeated and sustained assaults over a number of days of questioning (see paragraphs 11-14 above).

105. Under these circumstances, the Court is satisfied that the physical and mental violence, considered as a whole, committed against the applicant's person caused "severe" pain and suffering and was particularly serious and cruel. Such conduct must be regarded as acts of torture for the purposes of Article 3 of the Convention.

In the case of Ilhan v. Turkey, decided in the year 2000, the applicant's brother was severely beaten and struck on the head with a rifle. The Court found as follows:

(Case 10)

86. The Court has accepted the findings of the Commission concerning the injuries inflicted upon Abdüllatif İlhan, namely, that he was kicked and beaten and struck at least once on the head with a G3 rifle. This resulted in severe bruising and two injuries to the head, which caused brain damage and long-term impairment of function. Notwithstanding the visible injuries to his head and the evident difficulties which Abdüllatif İlhan had in walking and talking, there was a delay of some thirty-six hours in bringing him to a hospital.

87. Having regard to the severity of the ill-treatment suffered by Abdüllatif İlhan and the surrounding circumstances, including the significant lapse in time before he received proper medical attention, the Court finds that he was a victim of very serious and cruel suffering that may be characterised as torture (see also Selmouni v. France [GC], no. 25803/94, §§ 96-105, ECHR 1999-V).

88. The Court concludes that there has been a breach of Article 3 of the Convention in this regard.

The applicant in the 2012 case of El-Masri v. the Former Yugoslav Republic of Macedonia was subject to a "secret rendition", i.e. he was secretly held in a hotel by Macedonian security forces and then handed over at Skopje airport to agents of the United States of America. The Court found as follows:

(Case 11)

(b) Substantive aspects of Article 3 of the Convention

(i) Ill-treatment in the hotel and at Skopje Airport

(α) General principles

(…)

198. The obligation on Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals (see Z and Others v. the United Kingdom [GC], no. 29392/95, § 73, ECHR 2001V). The State's responsibility may therefore be engaged where the authorities fail to take reasonable steps to avoid a risk of ill-treatment about which they knew or ought to have known (see Mahmut Kaya v. Turkey, no. 22535/93, § 115, ECHR 2000III).

(β) Application of the above principles in the present case

199. In view of its conclusion regarding the shifting of the burden of proof to the Government (see paragraphs 165 and 167 above), the Court has already found that the applicant's account is sufficiently persuasive and that his allegations under this Article are established "beyond reasonable doubt". It remains to be ascertained whether the treatment to which the applicant was subjected falls within the ambit of this Article and whether it could be imputed to the respondent State.

Treatment in the hotel

[The Court found that the applicant's illegally incarceration in a hotel, leaving him in a state of permanent anxiety, constituted inhuman and degrading treatment, see below.]

Treatment at Skopje Airport

205. The Court observes that on 23 January 2004 the applicant, handcuffed and blindfolded, was taken from the hotel and driven to Skopje Airport. Placed in a room, he was beaten severely by several disguised men dressed in black. He

was stripped and sodomised with an object. He was placed in an adult nappy and dressed in a dark blue short-sleeved tracksuit. Shackled and hooded, and subjected to total sensory deprivation, the applicant was forcibly marched to a CIA aircraft (a Boeing 737 with the tail number N313P), which was surrounded by Macedonian security agents who formed a cordon around the plane. When on the plane, he was thrown to the floor, chained down and forcibly tranquillised. While in that position, the applicant was flown to Kabul (Afghanistan) via Baghdad (Iraq). The same pattern of conduct applied in similar circumstances has already been found to be in breach of Article 7 of the ICCPR (see paragraphs 108 and 109 above).

206. The Court must firstly assess whether the treatment suffered by the applicant at Skopje Airport at the hands of the special CIA rendition team is imputable to the respondent State. In this connection it emphasises that the acts complained of were carried out in the presence of officials of the respondent State and within its jurisdiction. Consequently, the respondent State must be regarded as responsible under the Convention for acts performed by foreign officials on its territory with the acquiescence or connivance of its authorities (see Ilaşcu and Others v. Moldova and Russia [GC], no. 48787/99, § 318, ECHR 2004VII).

207. As to the individual measures taken against the applicant, the Court reiterates that any recourse to physical force which has not been made strictly necessary by the applicant's own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see Ribitsch, cited above, § 38). In the present case, it notes that the whole operation of transferring the applicant into the custody of the CIA was well rehearsed and that the applicant did not pose any threat to his captors, who clearly outnumbered him. The Government failed to submit any arguments providing a basis for an explanation or justification of the degree of force used at Skopje Airport. Accordingly, the physical force used against the applicant at the airport was excessive and unjustified in the circumstances.

208. Furthermore, the Court observes that it has already found that the procedure of forcible undressing by the police may amount to such an invasive and potentially debasing measure that it should not be applied without a compelling reason (see Wieser v. Austria, no. 2293/03, § 40, 22 February 2007). No such argument has been adduced to show that the measure applied against the applicant, who was already in a particularly helpless situation, was necessary.

209. Nor was any explanation given to justify the use of physical restraints on the applicant. The same concerns the use of hooding, which has already been found to cause, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected to it (see Ireland v. the United Kingdom, cited above, §§ 96 and 167).

210. The forcible administration of a suppository while the applicant was held on the ground without any explanation was not based on any medical considerations. Furthermore, the manner in which the applicant was subjected to that procedure caused serious physical pain and suffering (see Zontul v. Greece, no. 12294/07, § 89, 17 January 2012, and Jalloh, cited above, §§ 69 and 72).

211. The Court notes that the above-mentioned measures were used in combination and with premeditation, the aim being to cause severe pain or suffering in order to obtain information, inflict punishment or intimidate the applicant (see paragraph 124 above). In the Court's view, such treatment amounted to torture in breach of Article 3 of the Convention. The respondent State must be considered directly responsible for the violation of the applicant's rights under this head, since its agents actively facilitated the treatment and then failed to take any measures that might have been necessary in the circumstances of the case to prevent it from occurring (see Z and Others v. the United Kingdom, cited above; M.C. v. Bulgaria, no. 39272/98, § 149, ECHR 2003-XII; and Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia, no. 71156/01, §§ 124 and 125, 3 May 2007).

In the 2015 case of Cestaro v. Italy, the applicant complained that, at the close of the "G8" summit in Genoa in 2001, he had suffered violence and ill-treatment when a school building was stormed by the security forces. The judgment contains an overview of the Court's case-law on torture (§§ 171-176, below):

(Case 12)

b) The Court's assessment

I. Evidence in support of the allegation of ill-treatment

164. The Court reiterates that, as transpires from its well-established case-law (see, among many other authorities, Salman v. Turkey [GC], no. 21986/93, § 100, ECHR 2000-VII, and Gäfgen, cited above, § 92), in cases of alleged violations of Article 3 of the Convention, it must, in its assessment of the evidence, apply a particularly thorough scrutiny. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for these courts to assess the evidence before them,.

Even though in cases involving Article 3 the Court is prepared to be more critical of the conclusions of the domestic courts (see El-Masri v. the former Yugoslav Republic of Macedonia [GC], no. 39630/09, § 155, ECHR 2012), in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see, among many other authorities, Vladimir Romanov, cited above, § 59, 24 July 2008; Georgiy Bykov v. Russia, no. 24271/03, § 51, 14 October 2010; Gäfgen, cited above, § 93; Darraj, cited above, § 37; Alberti v. Italy, no. 15397/11, § 41, 24 June 2014; Saba v. Italy, no. 36629/10, § 69, 1 July 2014; and Ataykaya v. Turkey, no. 50275/08, § 47, 22 July 2014).

165. In the present case, the Court notes that the first-instance and appeal judgments (see paragraphs 33 and 73 above), to which the Court of Cassation judgment refers (see paragraph 77 above), state that once the police officers had entered the Diaz-Pertini School, they had assaulted virtually all those

present, including people who were sitting or lying on the floor, punching, kicking, clubbing and threatening them.

The first-instance judgment states that when the police arrived the applicant had been sitting against the wall beside a group of persons with his arms in the air; that he was mainly struck on the head, arms and legs, whereby the blows caused multiples fractures to the right ulna, the right fibula and several ribs; that those injuries had led to a four-day stay in hospital, forty days' unfitness for work and a permanent weakness in his right arm and leg (see paragraphs 34 and 35 above).

166. The applicant's allegations regarding the assault which he suffered and its after-effects were thus confirmed by the domestic judicial decisions.

167. Moreover, the Government stated that they broadly agreed with the "judgment of the national courts, which had very harshly criticised the police officers' conduct" during the storming of the Diaz-Pertini School.

168. That being the case, and also in view of the systematic nature of the physical and verbal assault on the persons occupying the Diaz-Pertini School throughout the school premises (see Dedovski and Others v. Russia (no. 7178/03, §§ 77-79, ECHR 2008), the Court considers established both the physical and verbal assault complained of by the applicant and the after-effects of that assault.

169. Under those circumstances, it considers that the complaint of a violation of Article 3 is sufficiently serious and that there is no need to examine the substantiation of the applicant's other allegations (humiliating positions, inability to contact a lawyer and/or a support person, lack of appropriate and prompt treatment, and presence of police officers during the medical examination).

II. Legal classification of the treatment as established

170. Having regard to the criteria flowing from its well-established case-law (see, among many other authorities, Selmouni, cited above, § 104; Labita, cited above, § 120; İlhan v. Turkey [GC], no. 22277/93, § 84, ECHR 2000VII; Batı and Others v. Turkey, nos. 33097/96 and 57834/00, §§ 118-119, ECHR 2004-IV; Gäfgen, cited above, § 88; El-Masri, cited above, § 196; Alberti, cited above, § 40; and Saba, cited above, §§ 71-72), the Court considers that there can be no serious doubt as to the fact that the impugned ill-treatment falls within the ambit of Article 3 of the Convention. Moreover, the Government has not contested that fact. It remains to be seen whether those acts should be classified as torture, as alleged by the applicant.

α) Overview of case-law on "torture"

171. In principle, in determining whether a particular form of ill-treatment should be classified as torture, consideration must be given to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. As noted in previous cases, it appears that it was the intention that the Convention should, by means of such a distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering (see Batı and Others, cited above, § 116; Gäfgen, cited above, § 90, with the judgments cited therein; and El-Masri, cited above, § 197). The severity of the suffering is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc. (see Selmouni, cited above, § 100, and Batı and Others, cited above, § 120).

In addition to the severity of the treatment, there is a purposive element to torture, as recognised in the United Nations Convention against Torture, which came into force in respect of Italy on 26 June 1987 (see paragraph 109 above), which in Article 1 defines torture in terms of the intentional infliction of severe pain or suffering with the aim, inter alia, of obtaining information, inflicting punishment or intimidating (see İlhan, cited above, § 85; Gäfgen, § 90; and El-Masri, cited above, § 197).

172. The facts of the case have on occasion led the Court to consider that the impugned ill-treatment should be classified as "torture" after jointly applying the two aforementioned criteria, that is to say severity of the suffering and deliberate intention (see, for example, Aksoy v. Turkey, 18 December 1996, §§ 63-64, Reports 1996VI: the applicant had been subjected to a "Palestinian hanging" to extract a confession information; Batı and Others, cited above, §§ 110, 122-124: the applicants had been deprived of sleep and subjected to a "Palestinian hanging", spraying with water, beatings and falaka (foot whipping) for several days in order to extract a confession that they belonged to a certain political party; Abdülsamet Yaman v. Turkey, no. 32446/96, §§ 19-20, 2 November 2004: the applicant had been subjected to a "Palestinian hanging", spraying with water and electric shocks for several days to force him to confess; Polonskiy v. Russia, no. 30033/05, § 124, 19 March 2009: the applicant had been repeatedly beaten on different parts of his body and given electric shocks to force him to confess to a criminal offence – it should be noted that the Court made a finding of torture even though there had been no long-term physical after-effects; Kopylov, cited above, §§ 125-126: in order to extract a confession the applicant had had his hands behind his back tied and been suspended in the air by means of a rope, bludgeoned, beaten up and subject, for about four months, to several other types of abuse, which had caused serious irreversible after-effects; El-Masri, cited above, §§ 205-211: the applicant had been severely beaten, stripped and forcibly given a suppository, and then shackled and hooded before being forcibly marched to an aircraft, where he had been thrown to the floor, chained down and forcibly tranquillised; the Court found that all these acts of abuse perpetrated in the framework of "extraordinary rendering", had been geared to obtaining information from the applicant or punishing or intimidating him).

173. In its reasoning, the Court has, in some cases, based its finding of torture no so much on the intentional nature of the ill-treatment as on the fact that it had "caused 'severe' pain and suffering" and had been "particularly serious and cruel" (see, for example, Selmouni, cited above, §§ 101-105, and Erdal Aslan v. Turkey, nos. 25060/02 and 1705/03, § 73, 2 December 2008).

174. In other judgments the Court has attached particular importance to the gratuitous nature of the violence committed against a detained applicant, in reaching a finding of torture. for example, in Vladimir Romanov (cited above, §§ 66-70) it emphasised that the applicant had been struck with a truncheon after obeying the order to leave his cell, and even after he had fallen on the ground: the violence in question had therefore been intended as a "reprisal". Similarly, in the case of Dedovski and Others (cited above), the Court had regard to the potential for violence existing in penitentiary institutions and the fact that disobedience by detainees could quickly degenerate into a riot which would require the intervention of the security forces (see Dedovski and Others, § 81). The Court did not "discern any necessity which might have prompted the use of rubber truncheons against the applicants. On the contrary, the actions by the unit officers [had been] grossly disproportionate to the applicants' imputed transgressions", the latter having refused to leave a cell which was to be searched or to spread [their] arms and legs wide apart for a body search, and the Court also deemed the officers' actions "manifestly inconsistent with the goals they sought to achieve" because "hitting a detainee with a truncheon was not conducive to the desired result, that is, facilitating the search" (ibid., § 83). The Court found that the ill-treatment had clearly been "a form of reprisal or corporal punishment" (ibid., §§ 83 and 85) and that, in the context, the use of force had no basis in law (ibid., § 82).

175. In some cases concerning police violence during arrests of suspects the Court has also considered whether the impugned ill-treatment constituted "torture" within the meaning of Article 3 of the Convention. However, it did not so decide because the police officers' aim had not been to extract a confession from the applicant and the injuries were caused during a short period of time in a situation of heightened tension (see Krastanov v. Bulgaria, no. 50222/99, § 53, 30 September 2004: applicant struck on the basis of mistaken identity during a police operation to arrest a dangerous offender), and in view of the doubts as to the severity of the suffering caused by the impugned ill-treatment and the absence of long-term after-effects (see Egmez v. Cyprus, no. 30873/96, §§ 76 and 78-79, ECHR 2000XII).

176. Finally, in Gäfgen (cited above) the Court considered: (a) the duration of the ill-treatment inflicted on the applicant, namely about ten minutes (see Gäfgen, cited above,§ 102); (b) the physical or mental effects of the ill-treatment on the applicant; the Court held that the threats of ill-treatment had caused him considerable fear, anguish and mental suffering, but no long-term adverse consequences (ibid., § 103); (c) whether the ill-treatment had been intentional or not; the Court found that the threats had not been spontaneous but had been premeditated and calculated in a deliberate and intentional manner (ibid., § 104); (d) the purpose of the ill-treatment and the context in which it had been inflicted; the Court pointed out that the police officers had threatened the applicant with ill-treatment in order to extract information from him on the location of a kidnapped child whom they believed to be still alive but in serious danger (ibid., §§ 105-106). Therefore, the Court, while accepting "the motivation for the police officers' conduct and [the fact] that they [had] acted in an attempt to save a child's life" (ibid., § 107), found that the method of interrogation to which he had been subjected in the circumstances of the case had been sufficiently serious to amount to inhuman treatment prohibited by Article 3, but that it did not reach the level of cruelty required to attain the threshold of torture (ibid., § 108).

ß) Application to the present case

177. In the present case, the Court cannot overlook the fact that according to the Court of Cassation the violence at the Diaz-Pertini School of which the applicant was a victim had been perpetrated "for punitive purposes, for retribution, geared to causing humiliation and physical and mental suffering on the part of the victims", and that it could qualify as "torture" under the terms of the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (see paragraph 77 above).

178. Furthermore, it transpires from the case file that the police officers kicked the applicant and struck him with tonfa-type truncheons, which the appeal judgment described as potentially lethal (see paragraph 68 above), and that the applicant had been repeatedly hit on different parts of his body.

The blows received by the applicant caused multiple fractures (to the right ulna, the right styloid, the right fibula and several ribs), leading to a four-day stay in hospital, over forty days' unfitness for work, a surgical operation during his stay in hospital and a further operation a few years later, all of which left the applicant with a permanent weakness in his left arm and leg (see paragraphs 34-35 and 155 above). The ill-treatment inflicted on the applicant has therefore had severe physical consequences.

Nor should the applicant's feelings of fear and anguish be underestimated. Having found accommodation in a night shelter, the applicant was awakened by the noise caused by the police storming the building. In addition to the blows which he received, he witnessed several security officers beating other occupiers of the building for no apparent reason.

In that connection, regard should also be had to the conclusions reached by the domestic courts in the framework of the criminal proceedings, with which the Government declared their broad agreement: according to the first-instance judgment, the conduct of the police inside the Diaz-Pertini School constituted a clear violation of the law, "of human dignity and of respect for the individual" (see paragraph 51 above); according to the appeal judgment, the officers systematically beat those inside the building

in a cruel and sadistic manner, acting like "violent thugs" (see paragraphs 67 and 73 above); the Court of Cassation mentioned "egregious" violence of the "utmost gravity" (see paragraph 77 above).

In their observations before the Court, the Government themselves described the actions of the police in the Diaz-Pertini School as "very serious and deplorable acts".

179. In sum, it cannot be denied that the ill-treatment inflicted on the applicant "caused severe pain and suffering and was particularly serious and cruel" (Selmouni, cited above, § 105, and Erdal Aslan, cité above, § 73).

180. The Court also notes the lack of a causal link between the applicant's conduct and the use of force by the police officers.

Although the first-instance judgment accepted that a number of isolated acts of resistance had probably been committed by those inside the Diaz-Pertini School, it singled out the applicant – who was already advanced in years in July 2001 – to highlight the absolute lack of proportionality between the police violence and the resistance put up by the persons occupying the premises (see paragraph 51 above). Moreover, as transpires from that judgment, the fact that the applicant was sitting against a wall with his arms above his head (see paragraph 34 above) when the police arrived precludes any resistance to the police on his part.

Even more tellingly, the appeal judgment stated that no evidence had been presented regarding the alleged acts of resistance from some of those in the building before or after the police entered (see paragraph 71 above). Moreover, according to that judgment, the police had been indifferent to any physical vulnerability related to sex and age and to any sign of capitulation, even on the part of persons who had just been abruptly awakened by the noise of the attack (see paragraphs 67 and 73 above).

The Court of Cassation judgment confirms that none of those occupying the building put up any résistance (see paragraph 80 above).

181. Consequently, the present case differs from those in which the (disproportionate) use of force by police officers should be considered in relation to acts of physical resistance or attempts to escape (where the arrest of a suspect is concerned, see, for example, Egmez, cited above, §§ 13, 76 and 78, and Rehbock v. Slovenia, no. 29462/95, §§ 71-78, ECHR 2000XII; for cases concerning identity checks, see, for example, Sarigiannis v. Italy, no. 14569/05, §§ 59-62, 5 April 2011, and Dembele, cited above, §§ 43-47; for cases of violence perpetrated during police custody, see Rivas v. France, no. 59584/00, §§ 40-41, 1 April 2004, and Darraj, cited above, §§ 38-44).

182. The ill-treatment complained of in the instant case was thus inflicted on the applicant entirely gratuitously and, as in the cases of Vladimir Romanov (cited above, § 68) and Dedovski and Others (cited above, §§ 83-85), cannot be regarded as a means used proportionately by the authorities to achieve the aim pursued.

It should be recalled that original aim of storming the Diaz-Pertini School had been to carry out a search of the premises: the police were to have entered the school, where the applicant and the other persons present had lawfully sought shelter, in order to secure evidence likely to help identify the members of the Black Bloc who had carried out the unlawful damage in the city and to facilitate their possible arrest (see paragraph 29 above).

Above and beyond any circumstantial evidence of the presence of Black Bloc members in the Diaz-Pertini School on the evening of 21 July (see paragraphs 51 and 63 above), the actual modus operandi was inconsistent with the authorities' declared aim: the police forced their way into the building by breaking down the gate and the entrance doors of the school, beat up virtually all those inside the building and seized their personal effects without even attempting to identify the owners. Moreover, that is one of the reasons why the Court of Appeal decision as upheld by the Court of Cassation, deemed unlawful the arrests of those occupying the Diaz-Pertini School, which amounted to an offence of abuse of public authority, (see paragraphs 33-34, 38-39 and 72 above).

183. The impugned operation was to have been conducted by a formation made up primarily of officers from a division specialising in "anti-riot" operations (see paragraph 29 above). According to the authorities' explanations, that formation was to "secure" the building, that is to say carry out a task which, according to the Genoa Court of Appeal, was an obligation of outcome rather than one of means (see paragraphs 29, 65 and 79 above). It does not transpire from the domestic decisions that the officers had received any instructions regarding the use of force (see paragraphs 65, 68 and 79 above). The police immediately assaulted clearly harmless people who were standing outside the school (see paragraphs 31 and 66 above). At no stage did they attempt to negotiate with the individuals who had lawfully sought shelter in the school building or to persuade them to open the doors which those persons had lawfully locked, preferring to break them down without further ado (see paragraphs 32 and 67 above). Lastly, they systematically beat up all those present throughout the building (see paragraphs 33 and 67 above).

It is therefore impossible to overlook the intentional and premeditated nature of the ill-treatment suffered, in particular, by the applicant.

184. Nor can the Court, in assessing the context in which the assault on the applicant took place and, in particular, the intentional aspect, disregard the police attempts to cover up the events in question or to justify them on the basis of misleading statements.

On the one hand, as the Court of Appeal and the Court of Cassation emphasised, by forcing their way into the Pascoli School the police hoped to eliminate any film evidence of the ongoing storming of the Diaz-Pertini School (see paragraph 83-84 above). Moreover, regard must be had to the statements of the Head of the Police Press Unit during the night from 21 to 22 July, to the effect that the numerous bloodstains on the floor, walls and radiators in the building had stemmed from the injuries which most of the persons occupying the school had sustained during the day's clashes with the police (see paragraph 41 above, and paragraph 67 above for the Court of Appeal's assessment of that matter).

Furthermore, the appeal judgment mentions that the resistance put up by the persons occupying the school, the knife attack on one officer and the discovery in the Diaz-Pertini School of two Molotov cocktails were pure fabrication, constituting offences of slander and libel aimed at justifying, ex post facto, the storming of the building and the violent acts committed (see paragraphs 70-73 above). The Court of Cassation ruled that it had amounted to a "disgraceful whitewashing operation" (see paragraph 80 above).

185. That being the case, the Court cannot accept the Government's implicit argument that the severity of the ill-treatment perpetrated during the police storming of the Diaz-Pertini School should be seen in the context of the high tension surrounding the many clashes which had occurred during the demonstrations and the highly exceptional public-order protection requirements.

186. Clearly, when adjudicating on ill-treatment committed by police officers performing specific duties which are objectively difficult and pose threats to their own safety and that of others, the Court has regard to the tense context and high emotional tension (see, for example, Egmez, cited above, §§ 11-13 and 78: arrest in flagrante delicto of a drug trafficker who had put up resistance and attempted to escape, in the buffer zone between the Turkish Republic of northern Cyprus and the territory under the authority of the Government of Cyprus; and Gäfgen, cited above, §§ 107-108: threats of torture intended to extract information from the applicant on the whereabouts of a kidnapped child who the investigators believed was still alive but in grave danger).

187. In the present case, although the court of first instance acknowledged that the accused had acted "in a state of stress and fatigue" during the storming of the Diaz-Pertini School (see paragraph 50 above), neither the Court of Appeal not the Court of Cassation accepted that mitigating circumstance (see paragraph 73 above).

188. The Court's role is to rule not on criminal guilt or civil liability but on Contracting States' responsibility under the Convention (see El-Masri, cited above, § 151). With specific regard to Article 3 of the Convention, the Court has on many occasions held that that provision enshrines one of the most fundamental values of democratic societies. Unlike most of the substantive clauses of the Convention, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see Selmouni, cited above, § 95; Labita, cited above, § 119; Gäfgen, cited above, § 87; and El-Masri, cited above, § 195). The Court has confirmed that even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned (see Labita, Gäfgen and El-Masri, cited above, ibid.).

189. Accordingly, and without wishing to understate the difficulty of policing contemporary societies and the unpredictability of human behaviour (see, mutatis mutandis, Tzekov v. Bulgaria, no. 45500/99, § 61, 23 February 2006), the Court emphasises the following aspects of the present case:

– the police storming of the Diaz-Pertini School took place during the night from 21 to 22 July, whereas the clashes and unlawful damage which had occurred during the G8 Summit were over and no similar incidents had occurred in the school or the surrounding area;

– even supposing that the troublemakers had taken refuge in the school, the case file does not show that, on the arrival of the police, those present in the building had engaged in conduct liable to threaten anyone, especially not the large numbers of well-armed police officers participating in the operation (see paragraph 30 above): it should be remembered that some of the persons present had merely closed the gate and doors to the school, as they were entitled to do, and that there had been no real acts of resistance (see paragraphs 71 and 80 above);

– it transpires from the case file that the authorities had sufficient time to properly organise the "search" operation (see paragraphs 27-30 above); on the other hand, it does not transpire from the case file that the police officers had to react urgently to any unforeseen developments arising during that operation (see, by contrast, Tzekov, cited above, §§ 61-62);

– the search of another school and the arrests of some twenty people occupying it, even though they served no useful purpose in judicial terms, took place on the afternoon of 21 July, apparently without any police violence (see paragraph 22 above).

In the light of the foregoing considerations, the tension which the Government claim surrounded the police storming of the Diaz-Pertini School may have been caused not so much by any objective factors as by the decision to carry out arrests in front of the TV cameras and the adoption of operational methods at variance with the requirements of protecting the values flowing from Article 3 of the Convention and the relevant international law (see paragraphs 107-111 above).

190. In conclusion, having regard to all the facts set out above, the Court considers that the ill-treatment suffered by the applicant during the police storming of the Diaz-Pertini School must be classified as "torture" within the meaning of Article 3 of the Convention.

In the 2004 case of Ilascu and others v. Russia and Moldova, two of the applicants were subjected to beatings, combined with harsh conditions of detention, while one of them was on death row:

(Case 13)

B. The Court's assessment

1. General principles

424. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 of the Convention even in the event of a public emergency threatening the life of the nation (see, among other authorities, Selmouni v. France [GC], no. 25803/94, § 95, ECHR 1999-V, and Labita v. Italy [GC], no. 26772/95, § 119, ECHR 2000-IV).

425. The Court has considered treatment to be "inhuman" because, inter alia, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see, for example, Kudła v. Poland [GC], no. 30210/96, § 92, ECHR 2000-XI).

426. In order to determine whether a particular form of ill-treatment should be qualified as torture, the Court must have regard to the distinction embodied in Article 3 between this notion and that of inhuman or degrading treatment. As it has previously found, it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering; the same distinction is drawn in Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see Selmouni, cited above, § 97):

"For the purposes of this Convention, the term ‚torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. ..."

427. The Court has also held that the term "severe" is, like the "minimum severity" required for the application of Article 3, in the nature of things, relative (ibid., § 100): it, too, depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, Kalashnikov v. Russia, no. 47095/99, § 95, ECHR 2002VI, and Labita, cited above, § 120). Furthermore, in considering whether treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object was 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. Even the absence of such a purpose cannot conclusively rule out a finding of a violation of Article 3 (see Valašinas v. Lithuania, no. 44558/98, § 101, ECHR 2001-VIII).

428. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty are usually accompanied by such suffering and humiliation. Article 3 requires the State to ensure that every prisoner is detained in 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 of an intensity 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, cited above, §§ 92-94).

429. The Court has previously held that, regard being had to developments in the criminal policy of the member States of the Council of Europe and the commonly accepted standards in that sphere, the death penalty might raise an issue under Article 3 of the Convention. Where a death sentence is passed, the personal circumstances of the condemned person, the proportionality to the gravity of the crime committed and the conditions of detention pending execution of the sentence are examples of factors capable of bringing the treatment or punishment received by the condemned person within the proscription under Article 3 (see Soering v. the United Kingdom, judgment of 7 July 1989, Series A no. 161, p. 41, § 104, and Poltoratskiy v. Ukraine, no. 38812/97, § 133, ECHR 2003-V).

430. For any prisoner condemned to death, some element of delay between imposition and execution of the sentence and the experience of severe stress in conditions necessary for strict incarceration are inevitable (see Soering, cited above, p. 44, § 111). Nevertheless, in certain circumstances, the imposition of such a sentence might entail treatment going beyond the threshold set by Article 3, when for example a long period of time must be spent on death row in extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty (ibid.)

431. Furthermore, the anxiety and suffering engendered by such a sentence can only be aggravated by the arbitrary nature of the proceedings which led to it, so that, considering that a human life is at stake, the sentence thus becomes a violation of the Convention.

432. Prohibition of contact with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment. On the other hand, complete sensory isolation, coupled with total social isolation can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason (see, among other authorities, Messina v. Italy (no. 2) (dec.), no. 25498/94, ECHR 1999-V).

433. Moreover, when assessing conditions of detention, account has to be taken of the cumulative effects of these conditions and of specific allegations made by the applicant (see Dougoz v. Greece, no. 40907/98, § 46, ECHR 2001-II).

2. Application of the above principles in the present case
(a) Mr Ilaşcu

434. The applicant was sentenced to death on 9 December 1993 and detained until his release on 5 May 2001 (see paragraphs 215 and 234 above).

The Court reiterates that the Convention is not binding on Contracting States save in respect of events that have occurred since its entry into force, the relevant dates being 12 September 1997 for Moldova and 5 May 1998 for the Russian Federation. However, in order to assess the effect on the applicant of his conditions of detention, which remained more or less identical throughout the time he spent in prison, the Court may also take into consideration the whole of the period in question, including that part of it which preceded the Convention's entry into force with regard to each of the respondent States.

435. During the very long period he spent on death row, the applicant lived in the constant shadow of death, in fear of execution. Unable to exercise any remedy, he lived for many years, including the time after the Convention's entry into force, in conditions of detention likely to remind him of the prospect of his sentence being enforced (see paragraphs 196-210 and 240-53 above).

In particular, the Court notes that after sending a letter to the Moldovan parliament in March 1999 Mr Ilaşcu was savagely beaten by the warders at Tiraspol Prison, who threatened to kill him (see paragraphs 249, 250, 269 and 270 above). After that incident, he was denied food for two days and light for three (see paragraph 271 above).

As to the mock executions which took place before the Convention's entry into force (see paragraph 198 above), there is no doubt that the effect of such barbaric acts was to increase the anxiety felt by the applicant throughout his detention about the prospect of his execution.

436. The anguish and suffering he felt were aggravated by the fact that the sentence had no legal basis or legitimacy for Convention purposes. The "Supreme Court of the MRT" which passed sentence on Mr Ilaşcu was set up by an entity which is illegal under international law and has not been recognised by the international community. That "court" belongs to a system which can hardly be said to function on a constitutional and legal basis reflecting a judicial tradition compatible with the Convention. That is evidenced by the patently arbitrary nature of the circumstances in which the applicants were tried and convicted, as they described them in an account which has not been disputed by the other parties (see paragraphs 212-16 above), and as described and analysed by the institutions of the OSCE (see paragraph 286 above).

437. The judgment of the Supreme Court of Moldova setting aside the applicant's conviction (see paragraph 222 above) confirmed the unlawful and arbitrary nature of the judgment of 9 December 1993.

438. As regards the applicant's conditions of detention while on death row, the Court notes that Mr Ilaşcu was detained for eight years, from 1993 until his release in May 2001, in very strict isolation: he had no contact with other prisoners, no news from the outside – since he was not permitted to send or receive mail – and no right to contact his lawyer or receive regular visits from his family. His cell was unheated, even in severe winter conditions, and had no natural light source or ventilation. The evidence shows that Mr Ilaşcu was also deprived of food as a punishment and that in any event, given the restrictions on receiving parcels, even the food he received from outside was often unfit for consumption. The applicant could take showers only very rarely, often having to wait several months between one and the next. On this subject the Court refers to the conclusions in the report produced by the CPT following its visit to Transdniestria in 2000 (see paragraph 289 above), in which it described isolation for so many years as indefensible.

The applicant's conditions of detention had deleterious effects on his health, which deteriorated in the course of the many years he spent in prison. Thus, he did not receive proper care, having been deprived of regular medical examinations and treatment (see paragraphs 253, 258-60, 262-63 and 265 above) and dietetically appropriate meals. In addition, owing to the restrictions on receiving parcels, he could not be sent medicines and food to improve his health.

439. The Court notes with concern the existence of rules granting a discretionary power in relation to correspondence and prison visits, exercisable by both prison warders and other authorities, and emphasises that such rules are arbitrary and incompatible with the appropriate and effective safeguards against abuses which any prison system in a democratic society must put in place. Moreover, in the present case, such rules made the applicant's conditions of detention even harsher.

440. The Court concludes that the death sentence imposed on the applicant coupled with the conditions he was living in and the treatment he suffered during his detention after ratification, account being taken of the state he was in after spending several years in those conditions before ratification, were particularly serious and cruel and must accordingly be considered acts of torture within the meaning of Article 3 of the Convention.

There has therefore been a failure to observe the requirements of Article 3.

441. As Mr Ilaşcu was detained at the time when the Convention came into force with regard to the Russian Federation, on 5 May 1998, the latter is responsible, for the reasons set out above (see paragraph 393 above) on account of his conditions of detention, the treatment inflicted on him and the suffering caused to him in prison.

Mr Ilaşcu was released in May 2001 and it is only from that date onwards that Moldova's responsibility is engaged on account of the acts complained of for failure to discharge its positive obligations (see paragraph 352 above). Consequently, there has been no violation of Article 3 of the Convention by Moldova with regard to Mr Ilaşcu.

442. In conclusion, the violation of Article 3 of the Convention with regard to Mr Ilaşcu is imputable only to the Russian Federation.

(b) The other three applicants: conditions of detention and treatment during detention
(i) Mr Ivanţoc
443. The Court notes at the outset that at no time in the proceedings before it have the respondent Governments denied that the alleged incidents took place.

It further considers that the descriptions given by Mr Ivanţoc are sufficiently precise and are corroborated by identical assertions repeatedly made by him to his wife and by the evidence given by other witnesses to the Court's delegates.

In the light of all the information at its disposal, the Court considers that it can take it as established that during the applicant's detention, including that part of it which followed the Convention's entry into force with regard to the respondent States, the applicant received a large number of blows and other ill-treatment, and that at times he was denied food and all forms of medical assistance in spite of his state of health, which had been weakened by these conditions of detention. In particular, the Court draws attention to the persecution and ill-treatment to which Mr Ivanţoc was subjected in May 1999 after lodging his application to the Court (see paragraphs 251-52 above), and in 2001, November 2002 and February 2003 (see paragraphs 254, 256 and 269-72 above).

444. In addition, Mr Ivanţoc has been detained since his conviction in 1993 in solitary confinement, without contact with other prisoners and without access to newspapers. He is not permitted to see a lawyer, his only contact with the outside world taking the form of visits and parcels from his wife, subject to authorisation by the prison authorities when they see fit to give it.

All these restrictions, which have no legal basis and are imposed at the authorities' discretion, are incompatible with a prison regime in a democratic society. They have played their part in increasing the applicant's distress and mental suffering.

445. The applicant is detained in an unheated, badly ventilated cell without natural light, and has not received the treatment required by his state of health, despite a few medical examinations authorised by the prison authorities. On that subject, the Court refers to the conclusions in the report produced by the CPT following its visit to Transdniestria in 2000 (see paragraph 289 above).

446. In the Court's opinion, such treatment was such as to engender pain or suffering, both physical and mental, which could only be exacerbated by the applicant's total isolation and were calculated to arouse in him feelings of fear, anxiety and vulnerability likely to humiliate and debase him and break his resistance and will.

In the Court's opinion, this treatment was inflicted on Mr Ivanţoc intentionally by persons belonging to the administrative authorities of the "MRT" with the aim of punishing him for the acts he had allegedly committed.

447. That being so, the Court considers that, taken as a whole and regard being had to its seriousness, its repetitive nature and its purpose, the treatment inflicted on Mr Ivanţoc has caused "severe" pain and suffering and was particularly serious and cruel. All these acts must be considered acts of torture within the meaning of Article 3 of the Convention.

448. As Mr Ivanţoc was detained at the time when the Convention came into force with regard to the Russian Federation, the latter is responsible, for the reasons set out above (see paragraph 393) on account of his conditions of detention, the treatment inflicted on him and the suffering caused to him in prison.

Regard being had to the conclusions the Court reached on the question of Moldova's responsibility for the acts complained of on account of its failure to discharge its positive obligations after May 2001 (see paragraph 352 above), Moldova is responsible for a violation of Article 3 of the Convention with regard to Mr Ivanţoc from that date onwards.

449. In conclusion, as regards Mr Ivanţoc, there has been a violation of Article 3 of the Convention by the Russian Federation from the time of its ratification of the Convention on 5 May 1998 and by Moldova from May 2001 onwards.

c. Beatings on the soles of the feet ("Falaka")
In the case of Salman v. Turkey, decided in the year 2000, the applicant's husband had been subjected, inter alia, to "falaka":

(Case 14)
110. The applicant complained that her husband was tortured before his death. She invoked Article 3 of the Convention which provides:
"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

111. The applicant submitted that her husband was subjected to treatment amounting to torture whilst in the custody of Adana Security Directorate. She relied on the marks on his feet and ankles as showing that he had been subjected to falaka. He had also received a blow to the chest powerful enough to break the sternum. No other plausible explanation for the injuries on his body had been forthcoming from the authorities. She further argued that the claim that he had been tortured had never been properly investigated by the authorities, in violation of the procedural aspect of Article 3 of the Convention.

112. The Government denied that there was any sign of torture revealed by the medical evidence. They also disputed that there were any failings in the investigation.

113. The Court has found above that the Government have not provided a plausible explanation for the marks and injuries found on Agit Salman's body after he was taken into custody in apparent good health (see paragraph 102 above). Moreover, the bruising and swelling on the left foot combined with the grazes on the left ankle were consistent with the application of falaka, which the European Committee for the Prevention of Torture reported was one of the forms of ill-treatment in common use, inter alia, at the Adana Security Directorate. It was not likely to have been caused accidentally. The bruise to the chest overlying a fracture of the sternum was also more consistent with a blow to the chest than a fall. These injuries, unaccounted for by the Government, must therefore be considered attributable to a form of ill-treatment for which the authorities were responsible.

114. In determining whether a particular form of ill-treatment should be qualified as torture, consideration must be given to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. As noted in previous cases, it appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering (see the Ireland v. the United Kingdom judgment cited above, pp. 66-67, § 167). In addition to the severity of the treatment, there is a purposive element, as recognised in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which came into force on 26 June 1987, which defines torture in terms of the intentional infliction of severe pain or suffering with the aim, inter alia, of obtaining information, inflicting punishment or intimidating (Article 1 of the United Nations convention).

115. Having regard to the nature and degree of the ill-treatment (falaka and a blow to the chest) and to the strong inferences that can be drawn from the evidence that it occurred during interrogation about Agit Salman's suspected participation in PKK activities, the Court finds that it involved very serious and cruel suffering that may be characterised as torture (see also Selmouni cited above, §§ 96-105).

116. The Court concludes that there has been a breach of Article 3 of the Convention.

d. Rape
In the 1997 case of Aydin v. Turkey, the applicant, 17 years old, had been raped in police custody. The Court considered such treatment to be a clear case of torture:

(Case 15)
80. The Court recalls that it has accepted the facts as established by the Commission, namely that the applicant was detained by the security forces and while in custody was raped and subjected to various forms of illtreatment (see paragraph 73 above).

81. As it has observed on many occasions, Article 3 of the Convention enshrines one of the fundamental values of democratic societies and as such it prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Article 3 admits of no exceptions to this fundamental value and no derogation from it is permissible under Article 15 even having regard to the imperatives of a public emergency threatening the life of the nation or to any suspicion, however well-founded, that a person may be involved in terrorist or other criminal activities (see, for example, the Aksoy judgment cited above, p. 2278, § 62).

82. In order to determine whether any particular form of ill-treatment should be qualified as torture, regard must be had to the distinction drawn in Article 3 between this notion and that of inhuman treatment or degrading treatment. This distinction would appear to have been embodied in the Convention to allow the special stigma of "torture" to attach only to deliberate inhuman treatment causing very serious and cruel suffering (see the Ireland v. the United Kingdom judgment cited above, p. 66, § 167).

83. While being held in detention the applicant was raped by a person whose identity has still to be determined. Rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence.

The applicant also experienced the acute physical pain of forced penetration, which must have left her feeling debased and violated both physically and emotionally.

84. The applicant was also subjected to a series of particularly terrifying and humiliating experiences while in custody at the hands of the security forces at Derik gendarmerie headquarters having regard to her sex and youth and the circumstances under which she was held. She was detained over a period of three days during which she must have been bewildered and disoriented by being kept blindfolded, and in a constant state of physical pain and mental anguish brought on by the beatings administered to her during questioning and by the apprehension of what would happen to her next. She was also paraded naked in humiliating circumstances thus adding to her overall sense of vulnerability and on one occasion she was pummelled with high-pressure water while being spun around in a tyre.

85. The applicant and her family must have been taken from their village and brought to Derik gendarmerie headquarters for a purpose, which can only be explained on account of the security situation in the region (see paragraph 14 above) and the need of the security forces to elicit information. The suffering inflicted on the applicant during the period of her detention must also be seen as calculated to serve the same or related purposes.

86. Against this background the Court is satisfied that the accumulation of acts of physical and mental violence inflicted on the applicant and the especially cruel act of rape to which she was subjected amounted to torture in breach of Article 3 of the Convention. Indeed the Court would have reached this conclusion on either of these grounds taken separately.

87. In conclusion, there has been a violation of Article 3 of the Convention.

e. "Waterboarding" and other abuse carried out by the CIA in the "war against terror"

In the 2014 case of Husayn (Abu Zubaydah) v. Poland, the applicant complained, inter alia, that Poland had enabled the Central Intelligence Agency of the United States (CIA) to detain him secretly on its territory, thereby allowing the CIA to subject him to treatment that amounted to torture, incommunicado detention, and other forms of mental and physical abuse.

(Case 16)

(b) Merits

(i) Applicable general principles deriving from the Court's case-law

499. Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. Unlike most of the substantive clauses of the Convention, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see, among many other examples, Soering, cited above, § 88; Selmouni, cited above, no. 25803/94, § 95, ECHR 1999V; Labita v. Italy [GC], no. 26772/95, § 119, ECHR 2000IV); Ilaşcu and Others cited above, § 424; Shamayev and Others, cited above, § 375 and El-Masri, cited above, § 195; see also AlAdsani v. the United Kingdom [GC], no. 35763/97, §§ 26-31, ECHR 2001XI). Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned (see Chahal v. the United Kingdom, 15 November 1996, § 79, Reports 1996-V; Labita, cited above, § 119; Öcalan v. Turkey [GC], no. 46221/99, § 179; ECHR 2005IV and El-Masri, cited above, § 195).

500. In order for ill-treatment to fall within the scope of Article 3 it must attain a minimum level of severity. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see Ireland v. the United Kingdom, 18 January 1978, § 162, Series A no. 25; Kudła v. Poland [GC], no. 30210/96, § 92, ECHR 2000XI Jalloh v. Germany [GC], no. 54810/00, § 67, ECHR 2006IX). Further factors include the purpose for which the treatment was inflicted together with the intention or motivation behind it (compare, inter alia, Aksoy v. Turkey, 18 December 1996, § 64, Reports 1996-VI; Egmez v. Cyprus, no. 30873/96, § 78, ECHR 2000-XII; Krastanov v. Bulgaria, no. 50222/99, § 53, 30 September 2004; and El-Masri, cited above, § 196).

In order to determine whether any particular form of ill-treatment should be classified as torture, the Court must have regard to the distinction drawn in Article 3 between this notion and that of inhuman or degrading treatment. This distinction would appear to have been embodied in the Convention to allow the special stigma of "torture" to attach only to deliberate inhuman treatment causing very serious and cruel suffering (see Aksoy, cited above, § 62). In addition to the severity of the treatment, there is a purposive element, as recognised in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which came into force on 26 June 1987, which defines torture in terms of the intentional infliction of severe pain or suffering with the aim, inter alia, of obtaining information, inflicting punishment or intimidating (Article 1 of the United Nations Convention) (see İlhan v. Turkey [GC], no. 22277/93, § 85, ECHR 2000VII; and El-Masri, cited above, § 197).

501. Furthermore, a threat of conduct prohibited by Article 3, provided it is sufficiently real and immediate, may fall foul of that provision. Thus, to threaten an individual with torture may constitute at least inhuman treatment (see Gäfgen, cited above, § 91 and, mutatis mutandis, D.F. v. Latvia, no. 11160/07, § 85, 29 October 2013).

502. The obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals (see A. v.

the United Kingdom, 23 September 1998, § 22 Reports of Judgments and Decisions 1998VI and Z and Others v. the United Kingdom [GC], no. 29392/95, § 73, ECHR 2001V). The State's responsibility may therefore be engaged where the authorities fail to take reasonable steps to avoid a risk of ill-treatment about which they knew or ought to have known (see Mahmut Kaya v. Turkey, no. 22535/93, § 115, ECHR 2000III and El-Masri, cited above, § 198).

(ii) Application of the above principles to the present case

503. The Court has already found that the applicant's allegations concerning his secret detention under the HVD Programme in Poland from 5 December 2002 to 22 September 2003 and his transfer from Poland to other CIA black sites on the latter date have been proved before the Court and that those facts are established beyond reasonable doubt (see paragraphs 415-419 above).

The Court has also found it established beyond reasonable doubt that during his detention in Poland the applicant was "debriefed" by the CIA interrogation team and subjected to the standard procedures and treatment routinely applied to High-Value Detainees in CIA custody, as defined in the relevant CIA documents (see paragraphs 418-419 above).

It remains to be determined whether the treatment to which he was subjected falls within the ambit of Article 3 and, if so, to what extent it can be imputed to the respondent State (see paragraphs 444-450 and 493 above)

(α) Treatment to which the applicant was subjected at the relevant time

504. The Court notes that the CIA documents give a precise description of the treatment to which High-Value Detainees were being subjected in custody as a matter of precisely applied and predictable routine, starting from their capture through rendition and reception at the black site, to their interrogations. As stated in the 2004 CIA Background Paper, "regardless of their previous environment and experiences, once a [High-Value Detainee] is turned over to CIA a predictable set of events occur" (see paragraphs 6061 above). Even though the section devoted in that paper to interrogations is largely redacted, it gives a complete list of the stages of a CIA interrogation and the measures used (see paragraph 65 above)

Furthermore, this specific part of the 2004 CIA Background Paper, although considerably redacted, gives a clear notion of a "prototypical interrogation" to be practised routinely at each and every CIA black site, together with the suggested time-frame and refers to effective combinations of various "techniques" described above (see paragraph 66 above).

505. It is true that the applicant – at least in December 2002 – was subjected to the "debriefing" process, which, as the experts confirmed, in contrast to "interrogation" did not involve the most aggressive enhanced interrogation methods but consisted in obtaining information by means of interviewing (see paragraphs 51-58, 107, 306, 311 and 416-419 above). That process apparently continued at least until 30 April 2003, the date by which the applicant had provided information for an unspecified – expunged in the document – number of CIA "additional reports" (see paragraphs 106 and 416 above).

506. However, in addition to "enhanced measures", every High-Value Detainee could at any time be subjected to "standard measures", described in the CIA documents as those "without physical or substantial psychological pressure", including shaving, stripping, diapering (generally for periods not greater than 72 hours), hooding, isolation, white noise or loud music, continuous light or darkness, uncomfortably cool environment, restricted diet, including reduced caloric intake, shackling in upright, sitting, or horizontal position; water dousing; sleep deprivation for up to 72 hours (see paragraph 53 above).

507. In accordance with the 2003 CIA Guidelines, at least six "standard conditions of confinement" were applied to CIA detainees during the period of the applicant's detention in Poland. They included blindfolding and hooding within the detention facility, solitary confinement, exposure to constant noise, continuous light and use of leg shackles in all aspects of a detainee management and movement (see paragraph 67 above). As regards solitary confinement, the CIA documents drawn up on the closure of the HVD Programme in 2006 seemed to have recognised its serious effects on detainees, stating that "the isolation experience by the CIA detainees m[ight] impose a psychological toll" (see paragraph 68 above).

508. Furthermore, the Court considers that the applicant's experience in CIA custody prior to his detention in Poland is an important factor to be considered in its assessment of the severity of the treatment to which he was subsequently subjected.

The applicant, as already mentioned, was the first High-Value Detainee for whom the EITs were painstakingly designed and on whom they were tested after the CIA psychologists had eventually proposed twelve such techniques to be used on him, including the waterboarding (see paragraphs 49 and 54-58 above). He was reportedly the only one CIA detainee who was continually and systematically subjected to all those aggressive measures applied one by one or in combination. The 2007 ICRC report gives a shocking account of the cruel treatment to which the applicant was subjected in CIA custody, from the waterboarding, through beating by the use of a collar and confinement in a box, to exposure to cold temperature and food deprivation (see paragraphs 101-103 above). As stated in that report, the initial period of interrogation of the High-Value Detainees was "the harshest, where compliance was secured by the infliction of various forms of ... ill-treatment". This was followed by a "reward-based interrogation approach with gradually improving conditions of detention albeit reinforced by the threat of returning to former methods" (see paragraph 103 above).

509. As noted above, at the beginning of his detention in Poland such a "reward-based interrogation approach" – "debriefing"– was apparently applied to the applicant (see paragraphs 416-419 above). However, even though at least for some of the time the harshest elements of the detention and interrogation regime were presumably removed, the applicant, having beforehand experienced brutal interrogation methods – such as at least 83 waterboard sessions in a single month of August 2002 – inevitably faced the constant fear that, if he failed to "comply", the previous cruel treatment would at any given time be inflicted on him again (see also paragraph 501 above). The Court considers that this permanent state of anxiety caused by a complete uncertainty about his fate in the hands of the CIA and a total dependence of his survival on the provision of information during the "debriefing" interviews must have significantly exacerbated his already very intense suffering arising from the application of the "standard" methods of treatment and detention in the exceptionally harsh conditions summarised above (see paragraphs 506-508 above).

510. The Court does not find it necessary to analyse each and every aspect of the applicant's treatment in detention or the physical conditions in which he was detained.

Nor can the Court speculate as to when, how or in what combination the specific interrogation techniques were used on the applicant between 5 December 2002 and 22 September 2003. However, the predictability of the CIA interrogation practices used on its detainees gives sufficient grounds to believe that these practices could have been applied to the applicant during his detention in Poland and likewise elsewhere, following his transfer from Poland, as an integral part of the HVD Programme.

Even if, as noted above, at least during the initial phase of his detention in Poland the most physically aggressive measures were not necessarily inflicted on him, the applicant was subjected to an extremely harsh detention regime and permanent emotional and psychological distress caused by the past experience and fear of his future fate (see paragraph 501 above). Thus, Article 3 does not refer exclusively to the infliction of physical pain but also to that of mental suffering, which is caused by creating a state of anguish and stress by means other than bodily assault (see El-Masri , cited above, § 202).

Accordingly, considering all the elements of the treatment to which the applicant must have been subjected and its cumulative effects on him, there can be no doubt that it is to be characterised as "deliberate inhuman treatment causing very serious and cruel suffering".

511. The CIA documents state that this treatment was inflicted on the applicant with the aim of obtaining information – in particular, "actionable intelligence of future threats to the United States" (see paragraphs 84 and 88 above).

It is also to be noted that all the measures applicable to High-Value Detainees –"standard" and "enhanced" alike – were used in a premeditated and organised manner, on the basis of a formalised, clinical procedure, setting out a "wide range of legally sanctioned techniques" and specifically designed to elicit information or confessions or to obtain intelligence from captured terrorist suspects. Those – explicitly declared – aims were, most notably, "to psychologically 'dislocate' the detainee, maximize his feeling of vulnerability and helplessness, and reduce or eliminate his will to resist ... efforts to obtain critical intelligence"; "to persuade High-Value Detainees to provide threat information and terrorist intelligence in a timely manner"; "to create a state of learned helplessness and dependence"; and their underlying concept was "using both physical and psychological pressures in a comprehensive, systematic and cumulative manner to influence [a High-Value Detainee's] behaviour, to overcome a detainee's resistance posture" (see paragraphs 53 and 60-66 above).

In that context, it is immaterial whether in Poland the applicant was interrogated or "only" debriefed as both procedures served the same purpose, the only difference being that the former had recourse to physically aggressive methods and the latter to the relatively lesser physical abuse combined with psychological pressure. In any event, both caused deep fear, anxiety and distress arising from the past experience of inhuman and degrading treatment in the hands of the interrogators, inhuman conditions of detention and disorientation of a detainee.

In view of the foregoing, the Court concludes that the treatment to which the applicant was subjected by the CIA during his detention in Poland at the relevant time amounted to torture within the meaning of Article 3 of the Convention (see paragraph 500 above and ElMasri, cited above, § 211).

(β) Court's conclusion as to Poland's responsibility

512. The Court has already found that Poland knew of the nature and purposes of the CIA's activities on its territory at the material time and cooperated in the preparation and execution of the CIA rendition, secret detention and interrogation operations on its territory. It has also found that, given that knowledge and the emerging widespread public information about ill-treatment and abuse of detained terrorist suspects in the custody of the US authorities, it ought to have known that, by enabling the CIA to detain such persons on its territory, it exposed them to a serious risk of treatment contrary to the Convention (see paragraph 444 above).

It is true that, in the assessment of the experts – which the Court has accepted – the interrogations and, therefore, the torture inflicted on the applicant at the Stare Kiejkuty black site were the exclusive responsibility of the CIA and that it is unlikely that the Polish officials witnessed or knew exactly what happened inside the facility (see paragraphs 443-444 above).

However, under Article 1 of the Convention, taken together with Article 3, Poland was required to take measures designed to ensure that individuals within its jurisdiction were not subjected to torture or inhuman or degrading treatment or punishment, including ill-treatment administered by private individuals (see paragraphs 445 and 502 above).

Notwithstanding the above Convention obligation, Poland, for all practical purposes, facilitated the whole process, created the conditions for it to happen and made no attempt to prevent it from occurring. As the Court has already held above, on the basis of their own knowledge of the CIA activities deriving from Poland's complicity in the HVD Programme and from publicly accessible information on treatment applied in the context of the "war on terror" to terrorist suspects in US custody the authorities – even if they did not witness or participate in the specific acts of ill-treatment and abuse endured by the applicant – must have been aware of the serious risk of treatment contrary to Article 3 occurring on Polish territory.

Accordingly, the Polish State, on account of its "acquiescence and connivance" in the HVD Programme must be regarded as responsible for the violation of the applicant's rights under Article 3 of the Convention committed on its territory (see paragraph 449 above and El-Masri, cited above, §§ 206 and 211).

513. Furthermore, Poland was aware that the transfer of the applicant to and from its territory was effected by means of "extraordinary rendition", that is, "an extra-judicial transfer of persons from one jurisdiction or State to another, for the purposes of detention and interrogation outside the normal legal system, where there was a real risk of torture or cruel, inhuman or degrading treatment" (see El-Masri, cited above, § 221).

In these circumstances, the possibility of a breach of Article 3 was particularly strong and should have been considered intrinsic in the transfer (see paragraph 451 above). Consequently, by enabling the CIA to transfer the applicant to its other secret detention facilities, the Polish authorities exposed him to a foreseeable serious risk of further ill-treatment and conditions of detention in breach of Article 3 of the Convention (see paragraphs 108, 444 and 450-451 above).

514. There has accordingly been a violation of Article 3 of the Convention, in its substantive aspect.

f. Psychological torture and ill-treatment

It is obvious that torture and ill-treatment have not only physical, but also psychological effects and consequences. Indeed, often the purpose of ill-treatment is of a psychological nature, namely, breaking the victim's will. Accordingly, torture and other ill-treatment may be carried out by inflicting merely psychological pain or exercising psychological pressure.

In the 2000 case of Cantoral-Benavides v. Peru, the Inter-American Court of Human Rights discussed the concept of torture and inhuman treatment, and held, referring to the jurisprudence of the European Court of Human Rights and of the United Nations Human Rights Committee, as well as to its own case-law, that torture and ill-treatment may be of a physical and also of a psychological nature:

(Case 17)

80. Article 5 of the American Convention states, in numerals 1 and 2, that

1. Every person has the right to have his physical, mental and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

81. The file of the proceeding before this Court reveals that Mr. Cantoral-Benavides was held incommunicado for the first eight days of his detention (supra para. 63.e).

82. Under international human rights law it has been established that people are to be held incommunicado during detention only in exceptional situations, and that to do so may constitute an act contrary to human dignity.

83. Dating back to its earliest judgments, this Court has established that

Prolonged isolation and being held incommunicado constitute, in themselves, forms of cruel and inhuman treatment, harmful to the mental and moral integrity of the person and to the right of all detainees of respect for the inherent dignity of the human being.

(cfr. Fairén-Garbi and Solís-Corrales Case, supra note 10, para. 149; Godínez- Cruz Case, supra note 10, para. 164; and Velázquez-Rodríguez Case, supra note 10, para. 156.)

84. In the Suárez-Rosero case (1997), the Court spoke out again on holding a person incommunicado, stating that same can only be decreed as an exceptional measure, since it can cause the detainee to suffer extreme psychological and moral injury. The Court has said that one of the reasons why holding a person incommunicado is viewed as an exceptional instrument is beca se of the serious impact it has on the detainee. Isolation from the outside world causes any person to suffer moral and psychological trauma, making him/her particularly vulnerable and increasing the risk of aggression and arbitrariness in jails.

(Suárez-Rosero Case, supra note 10, para. 90.)

85. As regards prison conditions, the Court accepts as proven the fact that Mr. Cantoral-Benavides was held in strict isolation for one year, in a crowded cell with other prisoners, without

ventilation or natural light, and that he was permitted to receive few visitors (supra para. 63.k). Also, the evidence presented clearly reveals that the medical attention given to the victim was very deficient (supra para. 63.g). Also, it has been established in this same judgment that 20 days after being incarcerated, when he had not yet been tried, much less convicted, Mr. Cantoral-Benavides was paraded before the media, dressed in defamatory clothes, along with other prisoners, as the perpetrator of the crime of treason against the fatherland (supra para. 63.i).

86. The United Nations Human Rights Committee (hereinafter the "Human Rights Committee") has held that the detention of a prisoner with other persons, in conditions that pose a threat to his/her health, constitutes a violation of Article 7 of the International Covenant on Civil and Political Rights.

(cfr. United Nations. Human Rights Committee. Moriana Hernández Valentini de Bazzano v. Uruguay, No. 5/1997, of August 15, 1979, paras. 9 and 10.)

87. The Inter-American Court has stated that

all persons detained have the right to live in prison conditions that are in keeping with personal dignity, and the State must guarantee their right to life and personal integrity. Consequently, the State, which is responsible for detention facilities, is the guarantor of these rights of detainees.

(cfr. Durand and Ugarte Case. Judgment of August 16, 2000. Series C No. 68, para. 78, and Neira-Alegría et al. Case, supra note 14, para. 60.)

88. In the provisional measures related to the case of Mrs. María Elena Loayza-Tamayo, who was tried at the same time as Mr. Cantoral-Benavides for the crimes of treason against the fatherland and terrorism, this Tribunal concluded that the prison conditions for persons accused of such crimes did not comply with the provisions of the American Convention, and ordered the State to modify the conditions in which Maria Elena Loayza-Tamayo was being held, especially as regards her isolation in cell(s), for the purpose of bringing such conditions into line with the provisions of Article 5 of the American Convention […].

(Loayza-Tamayo Case, Provisional Measures, Decision of the Court of September 13, 1996, Operative Paragraph 1.)

Also, it ordered the State to provide the prisoner with medical attention, both physical and psychological, as soon as possible.

89. The Court has established that

Holding a person incommunicado, public exhibition in defamatory clothing before the media, isolation in a small cell, without ventilation or natural light, […] restriction of visiting rights […], constitute forms of cruel, inhuman and degrading treatment, as per Article 5(2) of the American Convention.

(Loayza-Tamayo Case, supra note 12, para. 58.)

90. Also, the Court, for its part, has reiterated that "a person illegally detained […] is in a situation of heightened vulnerability in which there is a high risk of his/her rights being violated, such as the right to physical integrity and to be treated with dignity."

(cfr. Villagrán-Morales et al. Case. Judgment of September 19, 1999. Series C No. 63, para. 166; Suárez-Rosero Case, supra note 10, para. 90, and Loayza-Tamayo Case, supra note 12, para 57.)

91. There are sufficient reasons to assert that, in addition to being held incommunicado, and having been subjected to very hostile and restrictive prison conditions, Mr. Cantoral-Benavides was on several occasions beaten and physically mistreated in other ways, and that this caused him severe bodily injury and emotional suffering (supra para. 43.a. and 63.f. and j.).

92. Other persons tried along with Mr. Cantoral-Benavides said in their Statements that they suffered acts of aggression similar to those inflicted upon him (supra paras. 38 and 43.c.).

93. The Courts deems it pertinent to consider the facts that make up the present case in the context of the practices prevailing at the time in Peru vis-à-vis persons accused of the crimes of treason against the fatherland and terrorism.

94. When adopting the judgment on merits in the Loayza-Tamayo case (1997), whose evidence was incorporated into the file of the present case (supra para. 38), the Court affirmed that

During the time Mrs. María Elena Loayza-Tamayo was detained, cruel, inhuman and degrading treatment during criminal investigations into the crimes of treason against the fatherland and terrorism was common practice in Peru […].

(Loayza-Tamayo Case, supra note 12, para. 46.)

95. The Court must now determine whether the facts referred to above constitute torture, cruel, inhuman and degrading treatment, or both, in violation of Article 5(2) of the American Convention. It must be clearly understood that, regardless of the nature of the acts referred to, they are strictly prohibited under international human rights law. To this end, the European Court of Human Rights has noted, in reference to Article 3 of the European Convention on Human Rights, that same strictly prohibits torture and inhuman or degrading punishment or treatment regardless of what the victim has done. Article 3 provides for no exceptions, in contrast with most of the principles of the Convention […] and […] does not permit derogation even in the case of a public danger which threatens the life of the nation.

(Eur. Court HR, Ireland v. United Kingdom, Judgment of 18 January 1978. Series A Vol. 25, para. 163.)

The aforementioned Tribunal has specified, on repeated occasions, that said prohibition applies even in the most difficult of circumstances for the State, such as those involving aggression by terrorist groups or large-scale organized crime.

(cfr. Eur. Court HR, Labita v. Italy, Judgment of 6 April 2000, para. 119; Eur. Court HR, Selmouni v. France, Judgment of 28 July 1999, para. 95; Eur. Court HR, Chabal v. United Kingdom, Judgment of 15 November 1996, Reports 1996-V, paras. 79 and 80; and Eur. Court HR, Tomasi v. France, Judgment of 27 August 1992, Series A Vol. 241-A, para. 115.)

96. Along the same lines, the Inter-American Court has warned that the fact that a State is confronted with terrorism should not lead to restrictions on the protection of the physical integrity of the person. Specifically, the Court has stated that

[A]ny use of force that is not strictly necessary, given the behavior of the person detained, constitutes an affront to human dignity […] in violation of Article 5 of the American Convention. The need to conduct investigations and the undeniable difficulties inherent to combating terrorism are not grounds for placing restrictions on the protection of the physical integrity of the person.

(Castillo-Petruzzi et al. Case, supra note 9, para. 197 and Loayza-Tamayo Case, supra note 12, para. 57.)

97. The European Court has underscored that fact that one of the elements considered in defining torture in Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is the intentional infliction of physical or mental pain or suffering for certain purposes, such as obtaining information from a person, or intimidating or punishing him/her.

(cfr. Eur. Court HR, Mahmut Kaya v. Turkey, Judgment of 28 March 2000, para. 117.)

98. The Inter-American Convention Against Torture, in Article 2, defines torture as

any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

And adds:

The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.

99. The European Court has pointed out recently that certain acts that were classified in the past as inhuman or degrading treatment, but not as torture, may be classified differently in the future, that is, as torture, since the growing demand for the protection of fundamental rights and freedoms must be accompanied by a more vigorous response in dealing with infractions of the basic values of democratic societies.

(cfr. Eur. Court HR, Selmouni v. France, supra note 51, para. 101.)

100. It should be pointed out that, according to international standards for protection, torture can be inflicted not only via physical violence, but also through acts that produce severe physical, psychological or moral suffering in the victim.

101. Both the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Inter-American Convention on the same subject, make reference to this possibility. Also, by institutionalizing the right to personal integrity, the latter of these two international instruments makes explicit reference to respect for the psychological and moral integrity of the person.

102. International jurisprudence has been developing the notion of psychological torture. The European Court of Human Rights has established that the mere possibility of the commission of one of the acts prohibited in Article 3 of the European Convention is sufficient to consider that said article has been violated, although the risk must be real and imminent. In line with this, to threaten someone with torture may constitute, in certain circumstances, at least "inhuman treatment."

(cfr. Eur. Court HR, Campbell v. Cosans, Judgment of 25 February 1982, Series A Vol. 48, para. 26.)

That same Tribunal has decided that, for purposes of determining whether Article 3 of the European Convention on Human Rights has been violated, not only physical suffering, but also moral anguish, must be considered.

(cfr. Eur. Court HR, Soering v. United Kingdom, Judgment of 7 July 1989, Series A Vol. 161, paras. 110 and 111.)

Having examined communications received from individuals, the United Nations Human Rights Committee has classified the threat of serious physical injury as a form of "psychological torture."

(cfr. United Nations. Human Rights Committee. Miguel Angel Estrella v. Uruguay, No. 74/1980 of March 29, 1983, paras. 8.6 and 10.)

103. The above leads to the conclusion that a true international system prohibiting all forms of torture has been put in place.

104. Considering the circumstances of the case, and the context in which the facts took place, this Tribunal considers,

beyond a reasonable doubt, that at least some of the acts of aggression examined in this case can be classified as physical and psychological torture. The Court also considers that said acts were planned and inflicted deliberately upon Mr. Cantoral-Benavides for at least two purposes. Prior to his conviction, the purpose was to wear down his psychological resistance and force him to incriminate himself or to confess to certain illegal activities. After he was convicted, the purpose was to subject him to other types of punishment, in addition to imprisonment.

105. As regards the alleged violation of Article 5(1) and 5(2) of the Convention vis-à-vis the relatives of Mr. Cantoral-Benavides, the Court recognizes that the situation Mrs. Gladys Benavides-de-Cantoral and Mr. Luis Fernando Cantoral-Benavides, mother and brother of the victim, respectively, went through as a result of his detention and imprisonment caused them severe suffering and anguish, but the Tribunal will assess same when setting necessary reparations for proven violations of the American Convention.

106. Given the above, the Court concludes that the State violated, to the detriment of Mr. Luis Alberto Cantoral-Benavides, Article 5(1) And 5(2) of the American Convention.

Equally, in the 2003 case of Maritza Urrutia v. Guatemala, the Inter-American Court found that the victim had been subjected to psychological torture:

(Case 18)
81. Article 5 of the Convention establishes that:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person
[...]

82. Articles 1 and 6 of the Inter-American Convention against Torture establish that

1. The States Parties undertake to prevent and punish torture in accordance with the terms of this Convention.
[...]

6. In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction.

The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.

The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

[...]

83. Article 2 of the Inter-American Convention against Torture, defines torture as:

[…] any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

The same article adds that:

The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.

84. In the previous chapter, it was concluded that the State violated the right to personal liberty of Maritza Urrutia by unlawfully and arbitrarily detaining her and keeping her outside judicial control. It is now necessary to determine whether, during the period of her detention, the right of Maritza Urrutia to humane treatment was violated, in accordance with Article 5 of the American Convention and Articles 1 and 6 of the Inter-American Convention against Torture.

85. With regard to the treatment that the State officials afforded to Maritza Urrutia while she was unlawfully and arbitrarily detained, the Court has considered proven that the alleged victim's head was covered by a hood, she was kept handcuffed to a bed, in a room with the light on and the radio at full volume, which prevented her from sleeping. In addition, she was subjected to very prolonged interrogations, during which she was shown photographs of individuals who showed signs of torture or had been killed in combat and she was threatened that she would be found by her family in the same way. The State agents also threatened to torture her physically or to kill her or members of her family if she did not collaborate. To this end, they showed her photographs of herself and her family and correspondence from her to her former husband (supra para. 58.6). Lastly, Maritza Urrutia was obliged to film a video, which was subsequently broadcast by two Guatemalan television channels, in which she made a statement against her will, the contents of which she was forced to ratify at a press conference held after her release (supra paras. 58.8 and 58.9).

86. In this respect, the CEH Report concluded "that Maritza Urrutia suffered [the] violation of her right to humane treatment, owing to the torture committed by 34 members of the Army, who inflicted psychological suffering on her and applied methods designed to obliterate or diminish her personality."

(Cf. Report of the Commission for Historical Clarification, Guatemala, memoria del silencio, Tome VI, illustrative case No. 33, "Privación arbitraria de libertad y tortura de Maritza Urrutia", pp. 245 to 250 (file of attachments to the application, attachment 2, folios 32 to 37).

87. On other occasions, the Court has established that a "person who is unlawfully detained is in an exacerbated situation of vulnerability creating a real risk that his other rights, such as the right to humane treatment and to be treated with dignity, will be violated."

(Cf. Juan Humberto Sánchez case, supra note 14, para. 96; Bámaca Velásquez case, supra note 64, para. 150; and Cantoral Benavides case. Judgment of August 18, 2000. Series C No. 69, para. 90.)

It has also stated that "prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and of the right of any detainee to respect for his inherent dignity as a human being."

(Cf. Bámaca Velásquez case, supra note 64, para. 150; Cantoral Benavides case, supra note 75, para. 83; and Fairén Garbi and Solís Corrales case. Judgment of March 15, 1989. Series C No. 6, para. 149.)

Solitary confinement produces moral and psychological suffering in the detainee, placing him in a particularly vulnerable position.

(Cf. Bámaca Velásquez case, supra note 64, para. 150; Cantoral Benavides case, supra note 75, para. 84; and Castillo Petruzzi et al. case, supra note 66, para. 195.)

The Court has also indicated that even if the unlawful detention has only lasted a short time, it is sufficient to constitute a violation of physical and moral integrity according to the standards of international human rights law,

(Cf. Juan Humberto Sánchez case, supra note 14, para. 98; Bámaca Velásquez case, supra note 64, para. 128; and Cantoral Benavides case, supra note 75, paras. 82 and 83.)

and that, in the presence of these circumstances, it is possible to infer, even when there is no other evidence in this respect, that the treatment received during solitary confinement is inhuman and degrading.

(Cf. Juan Humberto Sánchez case, supra note 14, para. 98; Bámaca Velásquez case, supra note 64, para. 150; and Cantoral Benavides case, supra note 75, paras. 83, 84 and 89.)

88. In view of the foregoing, the Court considers that the unlawful and arbitrary deprivation of freedom of Maritza Urrutia, subjecting her to the above-mentioned detention conditions, constitutes cruel and inhuman treatment and, consequently, the State violated Article 5(2) of the American Convention to her detriment.

89. Regarding the allegations of the Commission and the representatives of the alleged victim that Maritza Urrutia was a victim of torture, the Court must determine whether the acts referred to constitute such treatment. The Court has indicated that torture is strictly prohibited by international human rights law.

(Cf. Cantoral Benavides case, supra note 75, para. 95.)

The prohibition of torture is absolute and non-derogable, even in the most difficult circumstances, such a war, the threat of war, the fight against terrorism, and any other crime, martial law or state of emergency, civil war or commotion, suspension of constitutional guarantees, internal political instability, or any other public disaster or emergency.

90. According to Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, torture means:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

91. The Court also underscores that, the elements of the concept of torture established in Article 2 of the Inter-American Convention against Torture include methods to obliterate the personality of the victim in order to attain certain objectives, such as obtaining information from a person; or intimidation or punishment, which may be inflicted through physical violence or through acts that produce severe mental or moral suffering in the victim.

(Cf. Cantoral Benavides case, supra note 75, para. 100.)

92. An international juridical regime of absolute prohibition of all forms of torture, both physical and psychological, has been developed and, with regard to the latter, it has been recognized that the threat or real danger of subjecting a person to physical harm produces, under determined circumstances, such a degree of moral anguish that it may be considered "psychological torture."

(Cf. Cantoral Benavides case, supra note 75, para. 102.)

The absolute prohibition of torture, in all its forms, is now part of international jus cogens.

93. Likewise, the Court considers that, according to the circumstances of each particular case, some acts of aggression inflicted on a person may be classified as mental torture, particularly acts that have been prepared and carried out

deliberately against the victim to eliminate his mental resistance and force him to accuse himself of or confess to certain criminal conducts, or to subject him to other punishments, in addition to the deprivation of freedom itself.

(Cf. Cantoral Benavides case, supra note 75, para. 104.)

94. In the case sub judice, it has been proved that Maritza Urrutia was subjected to acts of mental violence by being exposed intentionally to a context of intense suffering and anguish, according to the practice that prevailed at that time (supra para. 58.4, 58.5 and 58.6). The Court also considers that the acts alleged in this case were prepared and inflicted deliberately to obliterate the victim's personality and demoralize her, which constitutes a form of mental torture, in violation of Article 5(1) and 5(2) of the Convention to the detriment of Maritza Urrutia.

95. This Court has already had the occasion to apply and declare State responsibility for the violation of the Inter-American Convention against Torture.

(Cf. The "Street Children" case (Villagrán Morales et al.), supra note 12, para. 249; and the "White Van" case (Paniagua Morales et al.), supra note 12, para. 136.)

In the instant case, it will exercise its material competence to apply this Convention, which entered into force on February 28, 1987. Articles 1 and 6 of this treaty oblige the States Parties to take all effective measures to prevent and punish all acts of torture within their jurisdiction.

96. The State did not prevent these acts and it did not investigate or punish effectively the torture to which Maritza Urrutia was subjected. Consequently, the State failed to comply with the commitments assumed in the above-mentioned articles of the Inter-American Convention against Torture (infra para. 128).

97. As regards the claim of the representatives of the alleged victim, in relation to the alleged violation of Article 5 of the Convention to the detriment of the next of kin of Maritza Urrutia, the Court recognizes that the situation they endured owing to the abduction and unlawful and arbitrary detention of Maritza Urrutia, caused them suffering and anguish, and, therefore, it will take this circumstance into consideration when establishing reparations.

98. In light of the foregoing, the Court declares that the State violated Article 5 of the American Convention, in relation to Article 1(1) thereof, and the obligations established in Articles 1 and 6 of the Inter-American Convention against Torture, to the detriment of Maritza Urrutia.

In the 2002 case of Prosecutor v. Furundzija, the International Criminal Tribunal for the former Yugoslavia (ICTY) had to decide about a situation where a man was forced to watch a sexual assault on a woman he knew:

(Case 19)

1. Count 13: A VIOLATION OF THE LAWS OR CUSTOMS OF WAR (torture) recognised by Article 3 of the Statute

264. Count 13 is based on what happened in the large room and in the pantry of the Holiday Cottage. The Trial Chamber is satisfied that the accused was present in the large room and interrogated Witness A, whilst she was in a state of nudity. As she was being interrogated, Accused B rubbed his knife on the inner thighs of Witness A and threatened to cut out her private parts if she did not tell the truth in answer to the interrogation by the accused. The accused did not stop his interrogation, which eventually culminated in his threatening to confront Witness A with another person, meaning Witness D and that she would then confess to the allegations against her. To this extent, the interrogation by the accused and the activities of Accused B became one process. The physical attacks, as well as the threats to inflict severe injury, caused severe physical and mental suffering to Witness A.

265. The intention of the accused, as well as Accused B, was to obtain information which they believed would benefit the HVO. They therefore questioned Witness A about the activities of members of Witness A's family and certain other named individuals, her relationship with certain HVO soldiers and details of her alleged involvement with the ABiH.

266. The Trial Chamber has found that the accused was also present in the pantry where the second phase of the interrogation of Witness A occurred. Witness D was taken there for a confrontation with Witness A to make her confess as ‚promised' by the accused in the large room. Both Witness A and Witness D were interrogated by the accused and hit on the feet with a baton by Accused B in the course of this questioning. Accused B again assaulted Witness A who was still naked, before an audience of soldiers. He raped her by the mouth, vagina and anus and forced her to lick his penis clean. The accused continued to interrogate Witness A in the same manner as he had done earlier in the large room. As the interrogation intensified, so did the sexual assaults and the rape.

267. The intention of the accused, as detailed above, was to obtain information from Witness A by causing her severe physical and mental suffering. In relation to Witness D, the accused intended to extract information about his alleged betrayal of the HVO to the ABiH and his assistance to Witness A and her children.

(i) The Trial Chamber finds that in relation to Witness A, the elements of torture have been met. Within the provisions of Article 7(1) and the findings of the Trial Chamber on liability for torture, the accused is a co- perpetrator by virtue of his interrogation of her as an integral part of the torture. The Trial Chamber finds that the accused tortured Witness A.

(ii) In relation to Witness D, paragraph 26 of the Amended Indictment alleges that having been badly beaten in the Bungalow, he was then taken with Witness A to another room. While the accused continued to interrogate Witness A and Witness D, Accused B beat them both on the feet with a

baton. Witness D was then forced to watch Accused B's sexual attacks on Witness A, which have already been described. The physical attacks upon Witness D, as well as the fact that he was forced to watch sexual attacks on a woman, in particular, a woman whom he knew as a friend, caused him severe physical and mental suffering.

268. On the evidence on record, the Trial Chamber finds that the elements of torture have been met. Within the provisions of Article 7(1) and the findings of the Trial Chamber on liability for torture, the accused is a co- perpetrator of torture, he is individually responsible for torture. The Trial Chamber is satisfied that the Prosecution has proved the case against the accused beyond reasonable doubt.

269. The Trial Chamber therefore finds the accused, as a co-perpetrator, guilty of a Violation of the Laws or Customs of War (torture) on Count 13.

III. Cruel Treatment

Cruel treatment may be understood as a particular intense form of inhuman treatment, which does not reach the intensity of torture. With the exception of the European Convention on Human Rights, which does not mention such treatment specifically, cruel treatment is prohibited in all human rights treaties and may constitute a war crime or a crime against humanity.

In the 2007 case of Prosecutor v. Martic, the ICTY recapitulated the definition of cruel treatment and similar acts as follows:

(Case 20)

G. Cruel treatment

78. Milan Martic is charged with cruel treatment as a violation of the laws or customs of war, as recognised in Common Article 3, pursuant to Article 3(1)(a) of the Statute (Counts 9 and 18).

79. The crime of cruel treatment is defined in the jurisprudence as an intentional act or omission causing serious mental or physical suffering or injury, or constituting a serious attack on human dignity, committed against a person not taking an active part in hostilities.

(Celebici Appeal Judgement, para. 424; Limaj et al. Trial Judgement, para. 231.)

The perpetrator must be shown to have acted with direct intent or with indirect intent, that is, in the knowledge that cruel treatment was a likely consequence of his act or omission.

(The Trial Chamber notes that in the jurisprudence "likely" is synonymous to "probable", see e.g. Prosecutor v. Radoslav Br|anin and Momir Tali}, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 Jun 2001, para. 29; Simi} et al. Trial Judgement, para. 76, citing Vasiljevi} Trial Judgement, para. 236; Limaj et al. Trial Judgement, para. 231.)

80. It is not required that the suffering caused by the cruel treatment be "lasting".

(Kunarac et al. Trial Judgement, para. 501.)

In its assessment of the seriousness of the act or omission, the Trial Chamber will take all circumstances into consideration, including factors such as the age and health of the victim, and the physical and mental effects of the crime upon the victim.

(Simic et al. Trial Judgement, para. 75; Vasiljevic Trial Judgement, para. 235; Krnojelac Trial Judgement, para. 131.)

Moreover, it is not required that the seriousness of the suffering or injury amounts to the level of seriousness required for torture.

(Celebici Trial Judgement, para. 510; Kordic and Cerkez Trial Judgement, para. 245. See supra section II F.)

H. Other inhumane acts

81. Milan Martic is charged with three counts of other inhumane acts, as crimes against humanity pursuant to Article 5(i) of the Statute. Count 7 charges Milan Martic with "inhumane acts" in relation to events in detention centres, Count 11 charges Milan Martić with "inhumane acts (forcible transfers)" in relation to the removal of non-Serb inhabitants of the SAO Krajina and the RSK, and Count 17 charges Milan Martić with "inhumane acts" in relation to the shelling of Zagreb.

(The elements of the crime of other inhumane acts (forcible transfer) are discussed in the context of deportation pursuant to Article 5(d) of the Statute, see infra section II M.)

82. "Other inhumane acts" is a residual category of crimes against humanity recognised as forming part of customary international law.

(Stakić Appeal Judgement, para. 315, noting in fn 649 that the category of other inhumane acts was included in Art. 6(c) of the Nuremberg Charter, Art. 5(c) of the Tokyo Charter, and Art. II(1)(c) of Control Council Law No. 10, and that convictions have been entered on this ground. The Appeals Chamber also noted "that numerous human rights treaties also prohibit inhuman and degrading treatment", including the ICCPR and the ECHR, ibid. Kordić and Čerkez Appeal Judgement, para. 117, affirming Kupreškić et al. Trial Judgement, para. 563.)

It must be emphasised that the Trial Chamber must exercise great caution in finding that an alleged act, which is not regulated elsewhere in Article 5 of the Statute, amounts to "other inhumane acts" within the meaning of Article 5(i).

(Kordić and Čerkez Appeal Judgement, para. 117. In that case, the Appeals Chamber noted that "'other inhumane acts' [were] charged exclusively as injuries", ibid. See also Blagojević and Jokić Trial Judgement, para. 625, which held in relation to Article 5(i) that "norms of criminal law must always provide

individuals with sufficient notice of what is criminal behaviour and what is not.")

83. In addition to meeting the general requirements for application of Article 5, an act or omission must satisfy the following elements to fall within the category of other inhumane acts:

1. the act or omission was of similar seriousness to the other crimes enumerated in Article 5;

2. the act or omission caused serious mental or physical suffering or injury, or constituted a serious attack on human dignity; and

3. the act or omission was carried out intentionally by the accused or by persons for whom the accused bears criminal responsibility.

(Kordić and Čerkez Appeal Judgement, para. 117. See also Krnojelac Trial Judgement, paras 130-131; Vasiljevic Trial Judgement, para. 234.)

84. The element of "similar seriousness" is to be evaluated in light of all factual circumstances, including the nature of the act or omission, the context within which it occurred, the individual circumstances of the victim as well as the physical and mental effects on the victim.

(Galić Trial Judgement para. 153; Vasiljevic Trial Judgement, para. 235; Krnojelac Trial Judgement, para. 131; Celebici Trial Judgement, para. 536; Kunarac et al. Trial Judgement, para. 501.)

There is no requirement that the effects on the victim be long-term, however any such effects will form part of the determination whether the act or omission meets the "similar seriousness" requirement.

(Vasiljević Trial Judgement, para. 235.)

85. The mens rea required is that the perpetrator had direct or indirect intent to inflict, by act or omission, serious physical or mental suffering or to commit a serious attack on the victim's human dignity.

(Krnojelac Trial Judgement, para. 132; Vasiljevic Trial Judgement, para. 236; Kayishema and Ruzindana Trial Judgement, para. 153.)

In the 2010 Appeals Judgment in Prosecutor v. Haradinaj et al., the ICTY considered the definition of "cruel treatment":

(Case 21)
(a) Whether the Trial Chamber erred in finding that the treatment of Witness 1 did not cross the threshold for the offence of cruel treatment under Article 3

93. In deciding whether the treatment of Witness 1 satisfies the legal prerequisites for cruel treatment under Article 3, the Appeals Chamber recalls the Čelebići Trial Judgement, which held that:

The basis of the inclusion of cruel treatment within Article 3 of the Statute is its prohibition by common article 3(1) of the Geneva Conventions, which proscribes, "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture". In addition to its prohibition in common article 3, cruel treatment or cruelty is proscribed by article 87 of the Third Geneva Convention, which deals with penalties for prisoners of war, and article 4 of Additional Protocol II, which provides that the following behaviour is prohibited:

violence to life, health and physical and or mental well being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment.

As with the offence of inhuman treatment, no international instrument defines this offence, although it is specifically prohibited by article 5 of the Universal Declaration of Human Rights, article 7 of the ICCPR, article 5, paragraph 2, of the Inter-American Convention of Human Rights and article 5 of the African Charter of Human and Peoples' Rights. In each of these instruments, it is mentioned in the same category of offence as inhuman treatment.

(Čelebići Trial Judgement, paras 548-549.)

94. As is the case with the international law instruments mentioned above, the jurisprudence of the Tribunal does not provide a comprehensive definition of the offence of cruel treatment, but the Appeals Chamber has defined the elements of cruel treatment as a violation of the laws or customs of war as follows:

a. an intentional act or omission which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity,

b. committed against a person taking no active part in the hostilities.

(Blaškić Appeal Judgement, para. 595 (citing Čelebići Appeal Judgement, paras 424, 426.))

95. The Appeals Chamber considers that, although Witness 1 (a person taking no active part in the hostilities) was not the victim of an intentional act or omission causing serious physical suffering or injury, his treatment caused him serious mental suffering and constituted a serious attack on his human dignity. The testimony of Witness 61 (the wife of Witness 1) establishes that her husband knew who Toger was, and feared him, knowing him to have committed "massacres." (…) Moreover, after the couple had been forcibly awakened in the middle of the night and taken from their home by armed men and after Witness 1 had been incapacitated in a well, Witness 1's wife was taken away to be interrogated at a headquarters of the KLA, which had a reputation for

violence. Contrary to the finding of the Trial Chamber, the only reasonable inference from the evidence was that Witness 1 suffered serious mental harm when he was incapacitated in the well and separated from his wife, who was now in the hands of armed KLA soldiers. The actus reus of the crime was therefore proved by the Prosecution.

96. As to the mens rea, when all the evidence surrounding this incident is taken into account, the only reasonable inference to be drawn is that the KLA soldiers who threw Witness 1 into the well, as others led away his wife for interrogation, intended to cause serious mental suffering to Witness 1, a person taking no active part in the hostilities.

97. The Appeals Chamber therefore grants the Prosecution's ground of appeal, in part, and reverses the Trial Chamber's finding that the treatment of Witness 1 did not constitute cruel treatment under Article 3 of the Statute.

IV. Inhuman Treatment

As indicated above, certain interrogation methods were considered to be "inhuman" by the European Court of Human Rights in the Ireland v. United Kingdom judgment, because they were applied "with premeditation and for hours at a stretch; they caused, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation." This description covers many cases of inhuman treatment, although premeditation or intent is not a necessary requirement of inhuman treatment, as will be seen when discussing inhuman conditions of detention in Part 3 of this Compendium.

In the following sections various categories of cases are presented where treatment was considered to be "inhuman" by the European Court of Human Rights and other international tribunals.

1. Unnecessary use of force against a detained person

In the 1995 case of Tomasi v. France, the applicant had suffered various injuries while under the control of the police. The European Court of Human Rights found that, unless the Government provides a plausible explanation as to the cause of these injuries, it must be presumed that they have been inflicted by the police. Any unnecessary recourse to physical force used against a detained person normally violates the prohibition of inhuman or degrading treatment.

(Case 22)

108. According to the applicant, the observation made on 25 March 1983 by the Bastia investigating judge and the reports drawn up by various doctors at the end of his police custody (see paragraphs 45, 47, 48 and 50 above) confirmed his statements, even though it was, he said, to be regretted that the prison authorities had failed to communicate the X-rays effected on 2 April 1983 at Bastia Hospital (see paragraph 68 above). His body had borne marks which had only one origin, the ill-treatment inflicted on him for a period of forty odd hours by some of the police-officers responsible for his interrogation: he had been slapped, kicked, punched and given forearm blows, made to stand for long periods and without support, hands handcuffed behind the back; he had been spat upon, made to stand naked in front of an open window, deprived of food, threatened with a firearm and so on.

109. The Government acknowledged that they could give no explanation as to the cause of the injuries, but they maintained that they had not resulted from the treatment complained of by Mr Tomasi. The medical certificates showed, in their opinion, that the slight bruises and abrasions noted were totally inconsistent with the acts of violence described by the applicant; the certificate of the Chief Medical Officer of Bastia Prison of 4 July 1989 had been drawn up a long time after the event and was in complete contradiction with the earlier certificates. The chronology of the interrogation sessions, which had not been contested by the applicant, in no way corresponded to the allegations. Finally, the five other persons in police custody at the time had neither noticed nor heard anything, and although one of them referred to Mr Tomasi's losing a tooth, this fact was not mentioned by a doctor until six years later. In short, a clear doubt subsisted, which excluded any presumption of the existence of a causal connection.

110. Like the Commission, the Court bases its view on several considerations. In the first place, no one has claimed that the marks noted on the applicant's body could have dated from a period prior to his being taken into custody or could have originated in an act carried out by the applicant against himself or again as a result of an escape attempt. In addition, at his first appearance before the investigating judge, he drew attention to the marks which he bore on his chest and his ear; the judge took note of this and immediately designated an expert (see paragraphs 45 and 48 above). Furthermore, four different doctors - one of whom was an official of the prison authorities - examined the accused in the days following the end of his police custody. Their certificates contain precise and concurring medical observations and indicate dates for the occurrence of the injuries which correspond to the period spent in custody on police premises (see paragraphs 47, 48 and 50 above).

111. This conclusion makes it unnecessary for the Court to inquire into the other acts which it is claimed the officials in question carried out.

2. The gravity of the treatment complained of

112. Relying on the Ireland v. the United Kingdom judgment of 18 January 1978 (Series A no. 25), the applicant maintained that the blows which he had received constituted inhuman and degrading treatment. They had not only caused him intense physical and mental suffering; they had also aroused in him feelings of fear, anguish and inferiority capable of humiliating him and breaking his physical or moral resistance. He argued that special vigilance was required of the Court in this respect in view of the particular features of the French system of police custody, notably the absence of a lawyer and a lack of any contact with the outside world.

113. The Commission stressed the vulnerability of a person held in police custody and expressed its surprise at the times chosen to interrogate the applicant. Although the injuries observed might appear to be relatively slight, they nevertheless constituted outward signs of the use of physical force on an individual deprived of his liberty and therefore in a state of inferiority. The treatment had therefore been both inhuman and degrading.

114. According to the Government, on the other hand, the "minimum level of severity" required by the Court's case-law (see the Ireland v. the United Kingdom judgment cited above and the Tyrer v. the United Kingdom judgment of 25 April 1978, Series A no. 26) had not been attained. It was necessary to take into account not only that the injuries were slight, but also the other facts of the case: Mr Tomasi's youth and good state of health, the moderate length of the interrogations (fourteen hours, three of which were during the night), "particular circumstances" obtaining in Corsica at the time and the fact that he had been suspected of participating in a terrorist attack which had resulted in the death of one man and grave injuries to another. In the Government's view, the Commission's interpretation of Article 3 (art. 3) in this case was based on a misunderstanding of the aim of that provision.

115. The Court cannot accept this argument. It does not consider that it has to examine the system of police custody in France and the rules pertaining thereto, or, in this case, the length and the timing of the applicant's interrogations. It finds it sufficient to observe that the medical certificates and reports, drawn up in total independence by medical practitioners, attest to the large number of blows inflicted on Mr Tomasi and their intensity; these are two elements which are sufficiently serious to render such treatment inhuman and degrading. The requirements of the investigation and the undeniable difficulties inherent in the fight against crime, particularly with regard to terrorism, cannot result in limits being placed on the protection to be afforded in respect of the physical integrity of individuals.

3. Conclusion

116. There has accordingly been a violation of Article 3 (art. 3).

A similar case was decided 1995 in Ribitsch v. Austria:

(Case 23)

32. The Court reiterates that, under the Convention system, the establishment and verification of the facts is primarily a matter for the Commission (Article 28 para. 1 and Article 31) (art. 28-1, art. 31). It is not, however, bound by the Commission's findings of fact and remains free to make its own appreciation in the light of all the material before it (see, among other authorities, the Klaas v. Germany judgment of 22 September 1993, Series A no. 269, p. 17, para. 29). The Court further points out that in principle it is not its task to substitute its own assessment of the facts for that of the domestic courts, but that it is not bound by the domestic courts' findings any more than it is by those of the Commission.

Its scrutiny must be particularly thorough where the Commission has reached conclusions at variance with those of the courts concerned. Its vigilance must be heightened when dealing with rights such as those set forth in Article 3 (art. 3) of the Convention, which prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4 (P1, P4), Article 3 (art. 3) makes no provision for exceptions and, under Article 15 para. 2 (art. 15-2), there can be no derogation therefrom even in the event of a public emergency threatening the life of the nation (see the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, para. 163).

33. In the instant case the Court notes the following facts:

(1) The existence of injuries to Mr Ribitsch's person was established as early as 2 June 1988 in a report by Meidling Hospital and noted on 3 June 1988 by a general practitioner, Dr Scheidlbauer, and a number of other witnesses. During the proceedings at first instance Dr Scheidlbauer stated that he considered it rather unlikely that a fall against a car door had caused those injuries; during the appeal proceedings the expert in forensic medicine appointed by the Regional Criminal Court stated that such a fall could explain "only one of several injuries that may have been sustained". It is not disputed that the applicant had a number of bruises on the inside and the outside of his right arm (see paragraphs 13, 16, 17 and 20 above).

(2) The explanations given by Police Officer Markl contain discrepancies. His report, incorrectly dated 1 June 1988, had allegedly been drawn up on the advice of his superior officer, Mr Gross, although the latter asserted that he had not known about any injuries (see paragraphs 15 and 17 above). Mr Markl's statements as to when the applicant first showed him the injuries on his right arm are contradictory. Lastly, he took no action on the allegations by witnesses that Mr Ribitsch had been selling washing powder which he had passed off as heroin (see paragraph 17 above).

(3) Police Officer Fröhlich, the driver of the car, said that he had not seen Mr Ribitsch fall (see paragraph 15 above).

(4) The Vienna District Criminal Court, after conducting a detailed analysis of the evidence and conduct of Police Officer Markl, found him guilty of assault occasioning bodily harm. It considered Mr Ribitsch's version of events credible, basing its assessment in particular on the consistent nature of the witness evidence and on the general practitioner's statements. On the other hand, it described as "disquieting" the line of defence adopted by Mr Markl, whose statements seemed contradictory and confused (see paragraph 17 above).

(5) The Vienna Regional Criminal Court, on the other hand, acquitted Mr Markl, concluding that it was "unable to reach a conclusive decision either to reject the accused's evidence

or to accept even in part the evidence adduced by the civil party Ronald Ribitsch with the certainty which alone may be made the basis of a verdict of guilty in criminal proceedings". In stating its reasons, the Regional Criminal Court cast doubt on the applicant's credibility, notably on the basis of considerations unrelated to the course of events while he was in police custody. These included his conviction for a drug offence in October 1988, the fact that he was unemployed, the fact that he was living beyond his means and the fact that he "chose the course of making a public accusation on Austrian radio" rather than lodging a complaint. In justifying its departure from the view of the evidence taken by the court of first instance, the Regional Criminal Court also included the observation that "one cannot simply assume that a police officer, and one moreover who had good reason to be aware of the heightened vigilance of the media, would let himself be drawn into criminal acts in a way that defies all logic" (see paragraph 22 above).

(6) The Constitutional Court did not examine the merits of Mr Ribitsch's complaint of ill-treatment. It noted the unlawfulness of the searches and the arrest of the applicant and his wife (see paragraph 23 above).

34. It is not disputed that Mr Ribitsch's injuries were sustained during his detention in police custody, which was in any case unlawful, while he was entirely under the control of police officers. Police Officer Markl's acquittal in the criminal proceedings by a court bound by the principle of presumption of innocence does not absolve Austria from its responsibility under the Convention. The Government were accordingly under an obligation to provide a plausible explanation of how the applicant's injuries were caused. But the Government did no more than refer to the outcome of the domestic criminal proceedings, where the high standard of proof necessary to secure a criminal conviction was not found to have been satisfied. It is also clear that, in that context, significant weight was given to the explanation that the injuries were caused by a fall against a car door. Like the Commission, the Court finds this explanation unconvincing; it considers that, even if Mr Ribitsch had fallen while he was being moved under escort, this could only have provided a very incomplete, and therefore insufficient, explanation of the injuries concerned.

On the basis of all the material placed before it, the Court concludes that the Government have not satisfactorily established that the applicant's injuries were caused otherwise than - entirely, mainly, or partly - by the treatment he underwent while in police custody.

35. Mr Ribitsch maintained that the ill-treatment he suffered while in police custody constituted inhuman and degrading treatment. The blows he received and the insults and threats uttered against him and his wife, who was detained at the same time, had caused him intense physical and mental suffering. Moreover, a number of witnesses had confirmed that the applicant had sustained physical injuries and was suffering from considerable psychological trauma (see paragraph 16 above).

36. Taking into account the applicant's particular vulnerability while he was unlawfully held in police custody, the Commission declared itself fully satisfied that he had been subjected to physical violence which amounted to inhuman and degrading treatment.

37. The Government did not dispute that the applicant's injuries, assuming that it had been proved that they were deliberately inflicted on him while he was in police custody, reached a level of severity sufficient to bring them within the scope of Article 3 (art. 3).

38. The Court emphasises that, in respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (art. 3) of the Convention. It reiterates that the requirements of an investigation and the undeniable difficulties inherent in the fight against crime cannot justify placing limits on the protection to be afforded in respect of the physical integrity of individuals (see the Tomasi v. France judgment of 27 August 1992, Series A no. 241-A, p. 42, para. 115).

39. In the instant case the injuries suffered by Mr Ribitsch show that he underwent ill-treatment which amounted to both inhuman and degrading treatment.

40. Accordingly, there has been a breach of Article 3 (art. 3).

In the 2014 case of Anzhelo Georgiev and others v. Bulgaria, the applicants complained that they had been subjected to excessive force, including electroshocs, by masked police officers during a special operation:

(Case 24)

65. The Court reiterates that Article 3 of the Convention enshrines one of the fundamental values of a 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). Unlike most of the substantive clauses of the Convention, Article 3 makes no provision for exceptions, and no derogation from it is permissible under Article 15 of the Convention, even in the event of a public emergency threatening the life of the nation (see Assenov and Others, cited above, § 93; Van der Ven v. the Netherlands, no. 50901/99, § 46, ECHR 2003-II; Poltoratskiy v. Ukraine, no. 38812/97, § 130, ECHR 2003-V). In order to fall within the scope of Article 3, illtreatment must attain a minimum level of severity. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see A, B and C v. Ireland [GC], no. 25579/05, § 164, ECHR 2010-...; Hristozov and Others v. Bulgaria, nos. 47039/11 and 358/12, § 110, ECHR 2012 (extracts)).

66. The Court notes that Article 3 does not prohibit the use of force in certain well-defined circumstances. However, such force may be used only if indispensable and must not be excessive (see, among others, Klaas v. Germany, judgment of 22 September 1993, Series A no. 269, p. 17, § 30; Rehbock v. Slovenia, no. 29462/95, §§ 68-78, ECHR 2000-XII; Altay v. Turkey, no. 22279/93, § 54, 22 May 2001; Hulki Güneş v. Turkey, no. 28490/95, § 70, ECHR 2003-VII (extracts); Krastanov v. Bulgaria, no. 50222/99, §§ 52 and 53, 30 September 2004; and Günaydın v. Turkey, no. 27526/95, §§ 30-32, 13 October 2005; Kurnaz and Others v. Turkey, no. 36672/97, § 52, 24 July 2007; Ivan Vasilev v. Bulgaria, no. 48130/99, § 63, 12 April 2007). When a person is confronted by the police or other State agents, recourse to physical force which has not been made strictly necessary by the person's own conduct diminishes human dignity and is in principle an infringement of the rights set forth in Article 3 of the Convention (see Kop v. Turkey, no. 12728/05, § 27, 20 October 2009; Rachwalski and Ferenc v. Poland, no. 47709/99, § 59, 28 July 2009; Timtik v. Turkey, no. 12503/06, § 47, 9 November 2010). Such a strict proportionality approach has been accepted by the Court also in respect of situations in which an individual was already under the full control of the police (see, among others, Rehbock v. Slovenia, no. 29462/95, §§ 68-78, ECHR 2000-XII; Klaas v. Germany, 22 September 1993, § 30, Series A no. 269; Milan v. France, no. 7549/03, 24 January 2008, § 68). The Court attaches particular importance also to the type of injuries sustained and the circumstances in which force was used (see Güzel Şahin and Others v. Turkey, no. 68263/01, § 50, 21 December 2006; Timtik v. Turkey, cited above, § 49; Najafli v. Azerbaijan, no. 2594/07, § 38, 2 October 2012; R.L. and M.-J.D. v. France, no. 44568/98, § 68, 19 May 2004; Tzekov v. Bulgaria, no. 45500/99, § 57, 23 February 2006).

67. Where injuries have been sustained at the hands of the police, the burden to show the necessity of the force used lies on the Government (see, among other authorities, Altay v. Turkey, no. 22279/93, § 54, 22 May 2001; Rashid v. Bulgaria, no. 47905/99, § 46, 18 January 2007; Lewandowski and Lewandowska v. Poland, no. 15562/02, § 65, 13 January 2009; Lenev v. Bulgaria, no. 41452/07, § 113, 4 December 2012, Georgi Dimitrov v. Bulgaria, no. 31365/02, §§ 56-57, 15 January 2009).

68. Furthermore, where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation (see Labita v. Italy [GC], no. 26772/95, § 131, ECHR 2000-IV; Assenov and Others v. Bulgaria, 28 October 1998, § 102, Reports of Judgments and Decisions 1998-VIII; Gäfgen v. Germany [GC], no. 22978/05, § 117, 1 June 2010). The authorities must make a serious attempt to find out what happened and should not rely on hasty or illfounded conclusions to close their investigation (see Assenov and Others, cited above, § 103 et seq.).

(b) Application of the above principles to the present case

69. The Court notes that the prosecutor unequivocally established that masked CSCOC officers had used force, as well as handcuffs and electroshock batons, against some employees of the company who had sustained injuries as evidenced by medical reports submitted during the inquiry (see paragraphs 28 and 29 above). In addition, the forensic medical reports showed that the second, third and fifth applicants had been physically injured and, in particular, had sustained numerous bruises, abrasions and burns (see paragraph 22 above). Having regard to those injuries, as well as to the medical conclusions that they had caused the second, third and fifth applicants pain, suffering and temporary nonlifethreatening health disorders, the Court finds that the treatment and injuries were sufficiently serious to reach the minimum level of severity required for a complaint to pass the threshold of Article 3.

70. It remains to be established whether the use of force during the operation of 18 June 2008 was strictly necessary in the circumstances. The burden of proof rests on the authorities. They must account for the applicants' injuries by providing a satisfactory and convincing explanation of the circumstances in which they were caused. This is so in view of the fact that the authorities did not dispute that the injuries had been caused by the CSCOC officers and also taking into account the contents of the medical certificates of 19 June 2008, and the consistent description of the events by the second, third and fifth applicants.

71. The authorities started a preliminary inquiry aimed at establishing whether there was a legitimate reason and sufficient information showing that an offence had been committed, which in turn would have justified the opening of a fully-fledged investigation as part of criminal proceedings against the suspected offenders. At the end of this preliminary inquiry the prosecutors decided not to prosecute the police officers, and so not to carry out a full investigation (see paragraphs 28 and 29 above), on the ground that the used force was permitted by the law and was exercised in order to overcome the applicants' failure to abide by the police orders. The position of both the prosecution and the Government in their observations to the Court was that the police had not exceeded their statutory right under section 72 of the Ministry of Interior Act to use force as they had faced refusals to obey their orders.

72. However, the inquiry did not give an answer to the key question exactly what resistance the applicants had put up, nor did it explain whether the force used had been inevitable in the circumstances. The Court further notes that, while victims should be able to participate effectively in the investigation (see Husayn (Abu Zubaydah) v. Poland, no. 7511/13, § 480, 24 July 2014; Al-Skeini and Others v. the United Kingdom [GC], no. 55721/07, § 167), the applicants were not involved during the inquiry because they could only effectively participate once a full investigation had been opened and legal rights had been granted to them (see paragraph 39 above). In addition, the Court is not

convinced that a plausible explanation was provided during the inquiry of the circumstances in which the second, third and fifth applicants sustained their injuries during the police operation on 18 June 2008. In particular, the investigating authorities did not seek to establish whether there were video cameras in the company's offices as suggested by the employees (see paragraph 17 above) and, if so, whether they had been recording at the time of the operation to provide an objective picture of the events. Furthermore, the investigating authorities heard no independent witnesses; instead, they collected statements solely of police officers and employees present at the scene, but not of the certifying witnesses who had been called in during the operation to assist with the seizure of the computer equipment (see paragraph 9 above).

73. Although the terms of reference of the inquiry included the question who among the officers had used physical force and against whom of the employees (see paragraph 25 above), this was not determined. The questioning of the CSCOC police officers took place in Sofia by delegation at the request of the Varna investigation authorities (see paragraph 19 above). Taken together with the fact that at the time of the operation the CSCOC officers wore masks and had no identification signs, this made it impossible for the applicants to identify those directly involved in the use of force. This was also noted by the prosecutor (see paragraph 28 above). However, no further questions were posed and no further attempts were made with a view to clarifying their individual role in the events. The Court recalls that the investigation must be capable of leading to the identification of those responsible with a view to their punishment (see Stoev and Others v. Bulgaria, no. 41717/09, § 42, 11 March 2014; Nikolay Dimitrov v. Bulgaria, no 72663/01, § 68, 27 September 2007, and Biser Kostov v. Bulgaria, no 32662/06, § 78, 10 January 2012). In this connection the Court notes that it has earlier held that, where the circumstances are such that the authorities are obliged to deploy masked officers to effect an arrest, those officers should be required to visibly display some anonymous means of identification – for example a number or letter, thus allowing for their identification and questioning in the event of challenges to the manner in which the operation was conducted (see Hristovi v. Bulgaria, no. 42697/05, § 92, 11 October 2011). The Court further notes that the authorities did not establish whether specifically the second, third and fifth applicants disobeyed the CSCOC officers' orders and, if so, how exactly, or whether the officers themselves sustained any injuries as a result of the employees' disobedience and opposition. The Court finds it unsatisfactory and particularly striking that the prosecution authorities could conclude, without supporting evidence other than statements of police officers involved in the operation, that the employees actively had disobeyed the officers' orders in a manner which required the use of physical force. To make such an assumption runs contrary to the principle under Article 3 that, when the police confront an individual, recourse by them to physical force which had not been made strictly necessary by the individual's own conduct is in principle an infringement of his or her rights (see Assenov and Others, cited above, § 104; Kaçak and Ebinç v. Turkey, no. 54916/08, § 42, 7 January 2014).

74. The Court further observes that it has not been shown either that the authorities made an attempt to assess the veracity of the second, third and fifth applicants' particular allegations, despite their gravity, namely that the third applicant had been subjected to electroshocks while handcuffed to a window grill, that the second applicant had been subjected repeatedly to electroshocks and that the fifth applicant had been forced to crouch for an hour. Similarly, the authorities have not tried to evaluate whether the manner in which the CSCOC officers treated the applicants, had been strictly necessary to the latter's conduct. The Court observes that even if some officers may have been under the impression, as they claimed, that the employees would attack them so as to justify the use of the electroshock weapons, the prosecution authorities did not attempt to establish whether such an attack had been attempted, or indeed intended, and whether those officers had clearly warned the people to whom electroshock discharges had been applied before applying them.

75. What is more, the authorities have not identified either the CSCOC officers who had used electroshock weapons or the precise type of electroshock weapons used or the duration for which they had been applied to company employees. The Court observes that electroshock discharges applied in contact mode (known also as "drive-stun" mode) are known to cause intense pain and temporary incapacitation (see paragraphs 42 and 43 above). It further notes that at the time of the facts Bulgarian law lacked any specific provisions about the use of electroshock devices by the police and did not lay down any instructions for their usage (see, mutatis mutandis, in the context of the use of tear gas, Abdullah Yaşa and Others v. Turkey, no. 44827/08, § 48, 16 July 2013; İzci v. Turkey, no. 42606/05, § 64, 23 July 2013). The Regulations of the Bulgarian Ministry of Interior on the use of auxiliary means of restraint by police officers were issued in 2011, circumscribing the use of electroshock weapons to a limited number of situations (see paragraph 36 above) and following a warning. As the regulations were issued almost three years after the events, they were not applicable at the time of the operation.

76. However, the fact that there were no specific instructions related to the use of electroshock weapons did not in itself absolve the police authorities from their obligation to abide by the standard under Article 3 of the Convention of strict necessity of the use of force. In that regard the Court observes that section 72 of the Ministry of Interior Act, as applicable at the time, allowed the use of force only as a last resort. Furthermore, section 73 of the same Act specified that the police could use force and auxiliary means for restraint only after giving a warning and had to discontinue it as soon as the objective for which it was being used was attained (see paragraphs 32 and 33 above). The Court further points out with respect to the use of electroshock weapons that the CPT, it its 20th General Report (see paragraph 41 above), expressed strong reservations in particular in respect of the use of electrical discharge weapons used in contact mode, as the ones that allegedly have been used on the second and third applicants. The Court, like the CPT, considers that

properly trained law enforcement officers have many other control techniques available to them when they are in touching distance of a person who has to be brought under their control.

77. Insofar as the national authorities and the Government submit that the use of force was justified by the necessity to prevent destruction of electronic evidence contained in the company's computers, the Court is not convinced that this legitimate aim could not be achieved by more appropriate and less intrusive means which did not require using physical force after entering the offices.

78. Given the inquiry's failure to establish in detail the exact circumstances of the incident and to account in full for the reasons the CSCOC officers had used force, of the extent and type in which the second, third and fifth applicants sustained their injuries, the Court concludes that the authorities failed to discharge the burden satisfactorily to disprove the applicants' version of the events (see, mutatis mutandis, Abdullah Yaşa and Others, cited above, § 47). Consequently, the Government have not furnished convincing arguments to justify the degree of force used against the second, third and fifth applicants (see, mutatis mutandis, Zelilof, cited above, § 51; Mustafa Aldemir v. Turkey, no. 53087/07, §§ 49-51, 2 July 2013; Kaçak and Ebinç v. Turkey, no. 54916/08, § 41, 7 January 2014). The Court is therefore satisfied that during the police operation of 18 June 2008 the police subjected the second, third and fifth applicants to treatment incompatible with Article 3 of the Convention and that the authorities failed to carry out an effective official investigation into the applicants' allegations to this effect. There has, therefore, been a violation of both the substantive and the procedural aspects of Article 3.

2. Use of pepper spray and a restraint bed towards prisoners

In the case of Tali v. Estonia, decided in 2014, the applicant complained, inter alia, about the use of pepper spray and a restraint bed in the context of a confrontation with prison officers:

(Case 25)

75. The Court notes at the outset that it is aware of the difficulties the States may encounter in maintaining order and discipline in penal institutions. This is particularly so in cases of unruly behaviour by dangerous prisoners, a situation in which it is important to find a balance between the rights of different detainees or between the rights of the detainees and the safety of the prison officers.

76. In the present case, the Court has had regard to the evidence provided by the Government in respect of the risk posed by the applicant (his convictions for murder, attempted manslaughter, attacks against prison officers and other prisoners, disciplinary punishments and his characterisation in the individual action plans, see paragraph 6 above). Thus, the Court accepts that the applicant's character and prior behaviour gave the prison officers reason to be alert in relation to their safety and for taking immediate measures when the applicant displayed disobedience, threats and aggression towards them. The Court also notes that in two separate sets of domestic proceedings (criminal and administrative) the domestic authorities established after a thorough examination of the events that the applicant had behaved aggressively and that it had therefore been justified to take different measures to combat that aggression.

77. The Court observes that the prison officers relied on the use of several immobilisation techniques and special equipment in respect of the applicant. Thus, in addition to physical force and handcuffs they also used pepper spray and a telescopic baton. The Court considers that the applicant's injuries, such as haematomas on his body and blood in his urine (see paragraphs 23, 24, 26 and 32 above) indicate that a degree of force was used against the applicant. As regards the use of the telescopic baton, the Court notes that the domestic authorities were unable to establish with certainty – despite a thorough examination of the evidence, including the video recordings of the security cameras, both in criminal and administrative court proceedings – whether the applicant was hit with the baton before or after he had been handcuffed. The Court notes that it is in no better position than the domestic authorities to establish the exact factual circumstances relating to the use of the telescopic baton.

78. As regards the legitimacy of the use of pepper spray against the applicant, the Court refers to the concerns expressed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") in respect of the use of such agents in law enforcement. According to the CPT pepper spray is a potentially dangerous substance and should not be used in confined spaces; if exceptionally it needs to be used in open spaces, there should be clearly defined safeguards in place. Pepper spray should never be deployed against a prisoner who has already been brought under control (see İzci v. Turkey, no. 42606/05, §§ 40-41, 23 July 2013, and Ali Güneş v. Turkey, no. 9829/07, §§ 39-40, 10 April 2012; see also paragraph 52 above). The Court also notes that although pepper spray is not considered a chemical weapon and its use is authorised for the purpose of law enforcement, it can produce effects such as respiratory problems, nausea, vomiting, irritation of the respiratory tract, irritation of the tear ducts and eyes, spasms, chest pain, dermatitis and allergies. In strong doses it may cause necrosis of the tissue in the respiratory or digestive tract, pulmonary oedema or internal haemorrhaging (haemorrhaging of the adrenal gland) (see Ali Güneş, cited above, §§ 37-38, with further reference to Oya Ataman v. Turkey, no. 74552/01, §§ 17-18, ECHR 2006XIII; see also İzci, cited above, § 35, and paragraph 51 above). Having regard to these potentially serious effects of the use of pepper spray in a confined space on the one hand and the alternative equipment at the disposal of the prison guards, such as flak jackets, helmets and shields on the other, the Court finds that the circumstances did not justify the use of pepper spray.

79. Furthermore, the Court reiterates that it has had occasion to deal with a complaint concerning strapping of a prisoner to a restraint bed in the recent case of Julin v. Estonia (cited

above). In that case, the Court assessed both the domestic law underlying the use of this measure and its practice and application in that particular case (see Julin, cited above, §§ 124-128). The Court notes that the events giving rise to the complaint about the use of the restraint bed in the case of Julin and those of the present case took place at approximately the same time and under the same domestic law. In Julin the Court found that the applicant's strapping to the restraint bed for nearly nine hours had been in breach of Article 3 of the Convention.

80. The Government's main argument in the present case was that the applicant had been strapped to the restraint bed for three hours and forty minutes, in other words for a considerably shorter period of time than the applicant in the case of Julin. Furthermore, the Government pointed out that, unlike in Julin, the report drawn up in the present case had confirmed that the applicant had been aggressive throughout the period of his being strapped to the bed (see paragraph 20 above).

81. However, the Court considers that these factors are not sufficient to distinguish the present case from Julin. While it is true that the period for which the applicant was strapped to the restraint bed was shorter in the present case, and the report on the use of the restraint bed describes the applicant as having been aggressive, and notes that his situation was assessed on an hourly basis and that he was also checked on by medical staff, the Court nevertheless does not consider that these factors rendered the use of the restraint bed a justified measure in the circumstances of the present case. The Court notes that the applicant's behaviour was described as "aggressive" after a physical confrontation with prison officers. The Court reiterates, however, that means of restraint should never be used as a means of punishment, but rather in order to avoid self-harm or serious danger to other individuals or to prison security (see Julin, cited above, § 127). In the present case, the Court considers that it has not been convincingly shown that after the end of the confrontation with the prison officers the applicant – who had been locked in a single-occupancy disciplinary cell – posed a threat to himself or others that would have justified applying such a measure. Furthermore, the period for which he was strapped to the restraint bed was by no means negligible and the applicant's prolonged immobilisation must have caused him distress and physical discomfort.

82. In view of the above and considering the cumulative effect of the measures used in respect of the applicant on 4 July 2009, the Court finds that the applicant was subjected to inhuman and degrading treatment in violation of Article 3 of the Convention.

3. Ill-treatment in the course of an exercise of special forces

(Case 26)

In the 2010 case of Davydov and others v. Ukraine, the applicant prisoners complained about their involuntary participation in training exercises carried out by special police forces, about ill-treatment conducted in the course of such exercises, as well as the lack of medical treatment of injuries suffered in this context:

264. Turning to the facts of the present case in relation to each of the applicants, the Court observes that the first applicant, Mr Davydov, was held in Zamkova Prison from 3 February 2001 to 19 May 2001, when he was transferred to Shepetivka Penitentiary no. 98 for medical treatment. He returned to Zamkova Prison on 25 May 2001 and he was held there until 20 April 2002. The second applicant, Mr Ilchenko, arrived at Zamkova Prison on 3 February 2001 and left it on 27 September 2004. The third applicant, Mr Gomenyuk, was held in Zamkova Prison from 3 November 2001 to 27 September 2002. Thus, the Court will examine the first and the second applicants' complaints concerning ill-treatment in respect of both special training exercises and the third applicant's complaints in respect of the second training exercise only.

265. In relation to both training exercises, the Court has already remarked on the lack of information provided to the prisoners as to the fact that such trainings would be conducted. Lack of such information as to the training, from the Court's point of view, underlines proof ensuring from various reports confirming the domestic practice of treating prisoners as objects of the training and search exercises (see paragraphs 104-106 and 143 above), who are not asked for their consent and are not informed about searches or trainings. This seemed to be a normal and unquestionable practice for the witnesses that appeared on the part of the Government (see paragraphs 195-197 above), partly corresponding to the domestic regulations that allow requests for use of the special units to be used in problematic prisons upon requests of prison governors (see paragraphs 7780 above). Such an attitude on the part of the authorities suggests to the Court that the treatment to which the applicants were subjected was degrading and incompatible with their human dignity. Additionally, it finds that at least part of the aim of the training was to frighten and humiliate prisoners, and to coerce those who frequently violated the regime ("malicious violators of the regime of detention") to comply with the prison rules and regulations (see, for definitions of the malicious violators of the regime, paragraphs 119, 202 and 214-216 above). An example of such threatening, intimidating and uninformed use of special equipment was the use of the automatic guns at the moment of entering the cells, without any prior notification or explanation (see Annex, paragraphs 4 and 6). Also, the use of special units was a normal practice in the State Prison Department, aimed at dealing with prisons containing dangerous prisoners, as it ensued from various domestic and international human rights reports (see paragraphs 104-108 and 143 above).

266. The Court further finds that excessive force was used against the prisoners, without any justification or lawful grounds. The force and special equipment were used without any reasonable grounds and contrary to international standards for use of force and special equipment (see paragraphs 101-102 and 108 above). It also is of the opinion that the manner in which these trainings were organised

unavoidably led to the injury and humiliation of the prisoners. This resulted not only from the excessive use of force by the officers, who aimed to comply with short time-limits for inspections inside the cells, but also from dragging the prisoners out of the cells, their "speeding up" when they left their cells and enforcement of unjustified and humiliating orders by the officers participating in the training. Humiliating orders included those to completely undress and to swear in front of others that the applicants would comply with the prison administration's demands and that they would not break the regime of detention. Injuries were inflicted on the applicants if they resisted, refused to comply or were not sufficiently fast, from the officers' point of view, in complying with their orders or in reacting to a sudden inspection of the cell (see paragraphs 212-214 and 226-227 above).

267. As to the circumstances of each of the searches, the Court would underline that the prisoners of the Monastyr block, where the applicants were held, suffered most (see paragraphs 210 and 223 above, with further references) on both occasions. Furthermore, excessive force was used against particular prisoners, including the first and second applicants in the course of the first training and the first, second and third applicants in the course of the second training exercise. Particular force and humiliation was used against them as they were considered "malicious violators" of the detention regime (see paragraphs 213-214, 218 and 226-229 above).

268. The Court finds that the first and the second applicants were injured in the course of the first training exercise and that all three of them were injured as a result of the second exercise, in which officers from the State Department for the Enforcement of Sentences used excessive force against the applicants. The Court bears in mind the difficulties in policing modern societies, the unpredictability of human conduct and the need to train and keep staff prepared for possible unexpected conduct of prisoners, including conduct related to mass riots or taking of hostages, for which the special forces were being trained. It also notes that the applicants were convicted criminals, who were serving their sentences for serious crimes. However, even in the most difficult circumstances, such as the fight against terrorism, organised crime or dangerous criminals, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see Dikme v. Turkey, no. 20869/92, § 89, ECHR 2000VIII). Furthermore, Article 3 of the Convention establishes, like Article 2 of the Convention, a positive obligation on the State to train its law enforcement officials in such a manner as to ensure their high level of competence in their professional conduct so that no-one is subjected to torture or treatment that runs contrary to that provision (see, mutatis mutandis, Abdullah Yilmaz v. Turkey, no. 21899/02, § 57, 17 June 2008). This also presupposes that the training activities of law enforcement officials, including officials of the penitentiary institutions, are not only in line with that absolute prohibition, but also aim at prevention of any possible treatment or conduct of a State official, which might run contrary to the absolute prohibition of torture, inhuman or degrading treatment or punishment.

269. The Court considers that the excessive force and equipment used, such as helmets and masks, so as to conceal identity of the officers who participated in the trainings and so that those involved in the training could not be distinguished or identified, making any further complaints practically impossible, coupled with injuries and the humiliating manner in which the searches were conducted (see paragraphs 207-220 and 222-230), caused physical and mental pain or suffering to the first and second applicants as a result of the first training and to all three applicants as a result of the second training.

270. Furthermore, the Court finds that the applicants suffered not only from injuries and humiliation in the course of the training, but from fear and anguish as to what might happen to them when they awaited at least the second training exercise; having experienced the first training session, the applicants must have suffered distress from the rumours that another session was planned, and then, as the time approached, from noise coming from outside. They also were ill-treated due to being subjected to full body searches in the Monastyr's corridor in front of their cells, in the absence of any grounds for such full body searches or any reasonable necessity to perform them in the manner they were performed (see paragraphs 213-215 and 226 above). Moreover, the Court underlines that the manner in which the searches and the full body searches were conducted surpassed the usual degree of indignity that is inherent in the so-called "ordinary searches" (see paragraphs 67-76 above) that were conducted at Zamkova Prison.

271. The Court finds that the first and the second applicants, in the course of the first training, and all three applicants in the course of the second training exercise were ill-treated in a way that was likely to arouse in them feelings of fear, anxiety and vulnerability and was likely to humiliate and debase them and break their resistance and will. The Court further considers that such treatment was intentionally meted out to the applicants by agents of the State in the performance of their duties, with the aim of breaking the applicants' will as they were difficult to deal with, and to ensure that they cooperated with Zamkova Prison authorities. Nevertheless, it considers that the applicants' ill-treatment, physical and mental violence against them, considered as a whole, did not reach such a level of "severity" to be characterised as torture, within the meaning of Article 3 of the Convention. Thus, in view of the specific circumstances of the case, such as the duration of the treatment, its physical or mental effects, sex, age and state of health of the victims, the Court considers that the violence inflicted on the applicants was both inhuman and degrading (compare and contrast, Selmouni v. France [GC], cited above, §§ 103-105).

272. The Court therefore concludes that the State is responsible under Article 3 on account of the inhuman and degrading treatment to which the applicants were subjected in the course of the training exercises held on 30 May 2001 and 29 January 2002. Accordingly, there has been a violation of Article 3 of the Convention with regard to the ill-treatment of the first and second applicants in the course of the training held on 30 May 2001 and that there was a violation of Article 3 of the Convention on account of illtreatment of the first, second and third applicants in the course of the training exercise organised on 29 January 2002.
(…)

292. The applicants claimed that they had not been provided with the necessary medical treatment for the injuries sustained by them as a result of the police training exercises, and that the prison authorities had refused to record these injuries. They further alleged that they were not provided with adequate medical assistance while in detention.

293. The Government submitted that there were no records in the Prison's Medical Registers of requests from the applicants for medical assistance. The Government maintained that the applicants received necessary medical treatment and were provided with any required prescription drugs whilst serving their sentences and therefore concluded that Article 3 of the Convention was not breached. They further stated that the applicants were provided with necessary medical treatment and assistance in general.

294. The Court reiterates that Article 3 of the Convention imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty and to ensure that their health is adequately secured (see Kudła v. Poland [GC], no. 30210/96, § 94, ECHR 2000-XI), for example by provision of the requisite medical assistance to them (see Keenan v. the United Kingdom, no. 27229/95, § 111, ECHR 2001III, and Koval v. Ukraine, no. 65550/01, § 79, 19 October 2006). The lack of appropriate medical care may amount to treatment contrary to Article 3 (see İlhan v. Turkey [GC], no. 22277/93, § 87, ECHR 2000-VII, and Price v. the United Kingdom, no. 33394/96, § 26, ECHR 2001VII). In particular, in a situation where, exceptionally, impermissible conduct under Article 3 of the Convention had taken place and a prisoner had been ill-treated, which resulted in injuries, it is the duty of the State to ensure provision of timely and relevant treatment to the applicant's specific state of health and the injuries the prisoner suffers from. This positive obligation requires inter alia registration of medical complaints, timely identification and diagnosis of injuries, development of comprehensive medical strategy for injuries' treatment, documenting progress in medical treatment, assessing the state of health of the person after medical treatment and the possible need for post-injury treatment, which might include assessment of the psychological state of health (see, among many other authorities and in so far as relevant to the circumstances of the present case, Hummatov v. Azerbaijan, nos. 9852/03 and 13413/04, § 114, 29 November 2007; Mathew v. the Netherlands, no. 24919/03, § 193, ECHR 2005IX; Melnik v. Ukraine, § 106, cited above; and Dvoynykh v. Ukraine, no. 72277/01, § 56, 12 October 2006).

295. The Court has already found, on the basis of the evidence before it, that it could not be established that the applicants were ever examined by a medical officer in relation to their medical complaints of injuries sustained in the course of the training exercises and ill-treatment by officers of the special forces (see paragraphs 216-219 and 226-230 above). Furthermore, the Court notes that at the material time, only two medical officers, only one of whom was a doctor, worked in Zamkova Prison, where more than 750 prisoners were held.

296. For the Court, the lack of adequate medical treatment for the injuries the applicants received during the relevant training exercises, the lack of proper registration and follow up for medical complaints, are sufficient to conclude that there was a violation of Article 3 of the Convention in that no adequate medical treatment for injuries sustained by the applicants was ever provided to them. There is no need to examine other elements of the applicants' complaints in respect of lack of sufficient or adequate medical treatment and assistance.

4. Illegal detention as inhuman and degrading treatment

The applicant in the 2012 case of El-Masri v. the Former Yugoslav Republic of Macedonia was subject to a "secret rendition", i.e. he was secretly held in a hotel by Macedonian security forces and then handed over at Skopje airport to agents of the United States of America. As regards the stay at the hotel, the Court found as follows:

(Case 27)

Treatment in the hotel

200. As to the applicant's treatment in the hotel, the Court observes that he was under constant guard by agents of the Macedonian security forces, interrogated in a foreign language of which he had a limited command, threatened with a gun and consistently refused access to anyone other than his interrogators. Such treatment led the applicant to protest by way of a hunger strike for ten days.

201. The Government did not provide any justification for such treatment.

202. It is true that while he was kept in the hotel, no physical force was used against the applicant. However, the Court reiterates that Article 3 does not refer exclusively to the infliction of physical pain but also of mental suffering, which is caused by creating a state of anguish and stress by means other than bodily assault (see Iljina and Sarulienė v. Lithuania, no. 32293/05, § 47, 15 March 2011). There is no doubt that the applicant's solitary incarceration in the hotel intimidated him on account of his apprehension as to what would happen to him next and must have caused him emotional and psychological distress. The applicant's prolonged confinement in the hotel left him entirely vulnerable. He undeniably lived in a permanent state of anxiety owing to his uncertainty about his fate during the interrogation sessions to which he was subjected. The Court

notes that such treatment was intentionally meted out to the applicant with the aim of extracting a confession or information about his alleged ties with terrorist organisations (see Dikme v. Turkey, no. 20869/92, §§ 82 and 95, ECHR 2000VIII). Furthermore, the threat that he would be shot if he left the hotel room was sufficiently real and immediate which, in itself, may be in conflict with Article 3 of the Convention (see, mutatis mutandis, Campbell and Cosans v. the United Kingdom, 25 February 1982, § 26, Series A no. 48, and Gäfgen v. Germany [GC], no. 22978/05, § 91, ECHR 2010).

203. Lastly, the applicant's suffering was further increased by the secret nature of the operation and the fact that he was kept incommunicado for twenty-three days in a hotel, an extraordinary place of detention outside any judicial framework (see also paragraph 101 above, and paragraph 236 below).

204. In view of the foregoing, the Court considers that the treatment to which the applicant was subjected while in the hotel amounted on various counts to inhuman and degrading treatment in breach of Article 3 of the Convention.

Treatment at Skopje Airport

[The Court found the beatings and other ill-treatment of the applicant at the airport to constitute torture, see above.]

5. Threat of torture as inhuman treatment

In the 2010 case of Gäfgen v. Germany, the applicant had abducted a child. Threatened with the infliction of severe pain by German police officers, he made a statement and confessed that he had killed the child. The European Court of Human Rights had to decide how such a threat has to be qualified under Article 3 of the Convention:

(Case 28)

(β) Legal qualification of the treatment

101. The Court notes the Government's acknowledgment that the treatment the applicant was subjected to by E. violated Article 3 of the Convention. However, having regard to the serious allegations of torture made by the applicant and the Government's claim of loss of victim status, the Court considers it necessary to make its own assessment of whether this treatment can be said to have attained the minimum level of severity to bring it within the scope of Article 3 and, if so, how it is to be classified. Having regard to the relevant factors indicated in the Court's case-law (see paragraphs 88-91 above), it will examine, in turn, the duration of the treatment to which the applicant was subjected, its physical or mental effects on him, whether it was intentional or otherwise, its purpose and the context in which it was inflicted.

102. In so far as the duration of the impugned conduct is concerned, the Court notes that the interrogation under threat of ill-treatment lasted for approximately ten minutes.

103. As to its physical and mental effects, the Court notes that the applicant, who had previously refused to disclose J.'s whereabouts, confessed under threat as to where he had hidden the body. Thereafter, he continued to elaborate in detail on J.'s death throughout the investigation proceedings. The Court therefore considers that the real and immediate threats of deliberate and imminent ill-treatment to which the applicant was subjected during his interrogation must be regarded as having caused him considerable fear, anguish and mental suffering. The applicant, however, did not submit medical certificates to establish any long-term adverse psychological consequences suffered or sustained as a result.

104. The Court further observes that the threat was not a spontaneous act but was premeditated and calculated in a deliberate and intentional manner.

105. As regards the purpose of the threats, the Court is satisfied that the applicant was intentionally subjected to such treatment in order to extract information on J.'s whereabouts.

106. The Court further notes that the threats of deliberate and imminent ill-treatment were made in the context of the applicant being in the custody of law-enforcement officials, apparently handcuffed, and thus in a state of vulnerability. It is clear that D. and E. acted in the performance of their duties as State agents and that they intended, if necessary, to carry out that threat under medical supervision and by a specially trained officer. Moreover, D.'s order to threaten the applicant was not a spontaneous decision, since he had given such an order on a number of earlier occasions and had become increasingly impatient at the non-compliance of his subordinates with his directions. The threat took place in an atmosphere of heightened tension and emotions in circumstances where the police officers were under intense pressure, believing that J.'s life was in considerable danger.

107. In this connection, the Court accepts the motivation for the police officers' conduct and that they acted in an attempt to save a child's life. However, it is necessary to underline that, having regard to the provision of Article 3 and to its long-established case-law (see paragraph 87 above), the prohibition on ill-treatment of a person applies irrespective of the conduct of the victim or the motivation of the authorities. Torture, inhuman or degrading treatment cannot be inflicted even in circumstances where the life of an individual is at risk. No derogation is allowed even in the event of a public emergency threatening the life of the nation. Article 3, which has been framed in unambiguous terms, recognises that every human being has an absolute, inalienable right not to be subjected to torture or to inhuman or degrading treatment under any circumstances, even the most difficult. The philosophical basis underpinning the absolute nature of the right under Article 3 does not allow for any exceptions or justifying factors or balancing of interests, irrespective of the conduct of the person concerned and the nature of the offence at issue.

108. Having regard to the relevant factors for characterising the treatment to which the applicant was subjected, the Court is satisfied that the real and immediate threats against the applicant for the purpose of extracting information

from him attained the minimum level of severity to bring the impugned conduct within the scope of Article 3. It reiterates that according to its own case-law (see paragraph 91 above), which also refers to the definition of torture in Article 1 of the United Nations Convention against Torture (see paragraphs 64 and 90 above), and according to the views taken by other international human rights monitoring bodies (see paragraphs 66-68 above), to which the Redress Trust likewise referred, a threat of torture can amount to torture, as the nature of torture covers both physical pain and mental suffering. In particular, the fear of physical torture may itself constitute mental torture. However, there appears to be broad agreement, and the Court likewise considers, that the classification of whether a given threat of physical torture amounted to psychological torture or to inhuman or degrading treatment depends upon all the circumstances of a given case, including, notably, the severity of the pressure exerted and the intensity of the mental suffering caused. Contrasting the applicant's case to those in which torture has been found to be established in its case-law, the Court considers that the method of interrogation to which he was subjected in the circumstances of this case was sufficiently serious to amount to inhuman treatment prohibited by Article 3, but that it did not reach the level of cruelty required to attain the threshold of torture.

6. Inhuman treatment in international criminal law

A comprehensive definition of "inhuman treatment" and "cruel treatment" was developed by the ICTY in its 1998 case of Prosecutor v. Delalic et al. (Celebici case):

(Case 29)

(d) Inhuman Treatment

512. There are several counts of the Indictment which charge the accused with inhuman treatment, punishable under Article 2(b) of the Statute. The following discussion seeks to establish the content of the prohibition on inhuman (or inhumane) treatment.

(I) Arguments of the Parties

The Prosecution takes the position that:

1. Inhuman treatment is any act or omission that causes the physical, intellectual, or moral integrity of the victim to be impaired, or causes the victim to suffer indignity, pain or suffering. 2. the accused must have intended to unlawfully impair the physical, intellectual or moral integrity of the victim, otherwise subject the victim to indignities, pain or suffering out of proportion to the treatment expected of one human being by another. Recklessness would constitute a sufficient form of such intention. (…)

514. The Prosecution further states that it is unnecessary to prove that the act in question had grave consequences for the victim (…). In addition, it refers to the discussion in the Tadic Judgment of the meaning of "cruel treatment" as prohibited by common article 3(1) of the Geneva Conventions, where Trial Chamber II did not find such an element to be required (…). In that case it was held that the prohibition on cruel treatment is a means to an end, being that of "ensuring that persons taking no active part in the hostilities shall in all circumstances be treated humanely". (…)

515. The Defence submits, in its Motion to Dismiss (…), that the offence of inhumane treatment lacks sufficient specificity to form the basis of a criminal prosecution except in the clearest cases. The Defence, in its closing oral arguments (…), further adds that, due to this lack of specificity, it potentially violates the principle of nullum crimen sine lege.

(II) Discussion

516. The offence of inhuman treatment - or traitements inhumains in the French text - appears in each of the four Geneva Conventions as a grave breach (…). In addition, article 119 of the Fourth Geneva Convention provides that any disciplinary penalties inflicted upon detained civilians must not be "inhuman, brutal or dangerous for the health of internees". An equivalent prohibition with respect to prisoners of war is contained in article 89 of the Third Geneva Convention.

517. As with torture, there can be no doubt that inhuman treatment is prohibited under conventional and customary international law. The same international human rights and United Nations instruments that contain the prohibitions against torture, also proscribe inhuman treatment (…). On the strength of this almost universal condemnation of the practice of inhuman treatment, it can be said that its prohibition is a norm of customary international law. However, unlike the offence of torture, none of the aforementioned instruments have attempted to fashion a definition of inhuman treatment. It thus falls to this Trial Chamber to identify the essential meaning of the offence.

518. The Oxford English Dictionary defines treatment as inhuman when it is "brutal, lacking in normal human qualities of kindness, pity etc." The noun "inhumane" is simply defined as "not humane", which denotes "kind-hearted, compassionate, merciful". Similarly, in relation to the French version, the Le Nouveau Petit Robert dictionary defines "inhumain" as "qui manque d' humanité", "barbare, cruel, dur, impitoyable, insensible". It is therefore apparent from the plain ordinary meaning of the adjective "inhuman(e)", that the term "inhuman treatment" is defined by reference to its antonym, humane treatment.

519. This accords with the approach taken by the ICRC in its Commentary to article 147 of the Fourth Geneva Convention. In seeking to explain this term, the Commentary refers to article 27 of the same Convention, and states that "the sort of treatment covered by this article, therefore, would be one which ceased to be humane"" (…)

Further support is lent to this view by the Commentary to article 119, which states "[t]hat this paragraph … reaffirms the humanitarian ideas contained in Articles 27 and 32, and thus underlines the need never to lose sight of these essential principles"(…). The Commentary to inhuman treatment

as a grave breach under article 51 of the Second Geneva Convention also defines this offence by reference to article 12 of that Convention, which provides that protected persons must be treated with humanity. Accordingly, the Commentary to article 51 states that the "sort of treatment covered here would therefore be whatever is contrary to that general rule". (…)

520. Having identified the basic premise that inhuman treatment is treatment which is not humane, and which is thus in breach of a fundamental principle of the Geneva Conventions, the Trial Chamber now turns to a more detailed discussion of the meaning of the terms "inhuman treatment" and "humane treatment". While the dictionary meanings referred to above are obviously important to this consideration, in order to determine the essence of the offence of inhuman treatment, the terminology must be placed within the context of the relevant provisions of the Geneva Conventions and Additional Protocols.

521. The Commentary to article 147 of the Fourth Geneva Convention opines that inhuman treatment,

could not mean, it seems, solely treatment constituting an attack on physical integrity or health; the aim of the Convention is certainly to grant civilians in enemy hands a protection which will preserve their human dignity and prevent them from being brought down to the level of animals. That leads to the conclusion that by "inhuman treatment" the Convention does not mean only physical injury or injury to health. Certain measures, for example, which might cut the civilian internees off completely from the outside world and in particular from their families, or which caused grave injury to their human dignity, could conceivably be considered as inhuman treatment. (…)

522. This language is repeated in relation to article 51 of the Second Geneva Convention in the commentary to that Convention (…), and also in that concerning article 130 of the Third Geneva Convention (…). The only difference is that the words "could conceivably be" in the last sentence of the quotation above are replaced in the Commentary to the Second and Third Geneva Conventions by the words "should be". This difference in terminology would seem to indicate that the drafters of the commentaries to the Second and Third Geneva Conventions took a stronger position on the issue of whether acts causing grave injury to human dignity are also encompassed in the concept of inhuman treatment.

523. As has been previously stated in this Judgement, the concept of humane treatment permeates all four of the Geneva Conventions and the Additional Protocols, and is encapsulated in the Hague Regulations and the two Geneva Conventions of 1929 (…). The key provision of the Fourth Geneva Convention containing the obligation to treat protected persons humanely is contained in article 27, the first two paragraphs of which state that:

protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all attacks of violence and threats thereof and against insults and public curiosity. Women shall be especially protected against any attack of their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

524. This article is the 'basis of the Convention, proclaiming … the principles upon which the whole of the "Geneva Law' is founded" being the "principle of respect for the human person and the inviolable character of the basic rights of individual men and women. (…)" The Commentary makes the fundamental significance of humane treatment clear by stating that it is "in truth the leitmotiv of the four Geneva Conventions" (…). It goes on to state that the word "treatment",

must be understood here in its most general sense as applying to all aspects of man's life … The purpose of this Convention is simply to define the correct way to behave towards a human being, who himself wishes to receive humane treatment and who may, therefore, also give it to his fellow human beings. (…)

525. In its conclusion, the Commentary characterises humane treatment, and the prohibition of certain acts which are incompatible with it, as general and absolute in character, valid in all circumstances and at all times. (…)

526. After proclaiming the general principle of humane treatment, article 27 of Geneva Convention IV gives examples of acts that are incompatible with it, such as acts of violence or intimidation "inspired not by military requirements or a legitimate desire for security, but by a systematic scorn for human values", including insult and exposing people to public curiosity (…) This list has been supplemented by article 32 of the same Convention, which prohibits all acts causing physical suffering or extermination including murder, torture, corporal punishment, mutilation, medical or scientific experiments not necessitated by the medical treatment of the person concerned, and any other measures of brutality (…). This article is not exhaustive, it is as general as possible and only gives examples of the principal types of atrocities committed during the Second World War. (…)

527. Article 13 of the Third Geneva Convention similarly contains the principles and prohibitions of articles 27 and 32 of the Fourth Geneva Convention. It provides that prisoners of war must be treated humanely at all times. Again, the principle is stated by reference to behaviour that is inconsistent with it. After setting out the general principle that all prisoners shall be treated humanely, the article states that unlawful acts or omissions causing death or endangering the health of a prisoner of war are considered as serious breaches:

In particular no prisoner of war may be subjected to physical mutilation, or to medical or scientific experiments of any kind which are not justified … [l]ikewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation, and against insults and public curiosity.

528. The Commentary to the Third Geneva Convention, in relation to this provision, directly addresses the application of the principle of humane treatment, and the prohibition of acts which are inconsistent with it, in the situation where protected persons are legitimately detained. It states that:

[t]he requirement of humane treatment and the prohibition of certain acts inconsistent with it are general and absolute in character. They are valid at all times, and apply, for example, to cases where the repressive measures are legitimately imposed on a protected person, since the dictates of humanity must be respected even if measures of security or repression are being applied. The obligation remains fully valid in relation to persons in prison or interned, whether in the territory of a party to the conflict or in occupied territory. It is in such situations, when human values appear to be in greatest peril, that the provision assumes its full importance". (…)

This Commentary goes on to state that the concept of humane treatment implies, in the first place, an absence of any type of corporal punishment, but that it does not only have this negative aspect. It also involves a notion of protection of a prisoner of war, which means "to stand up for him, to give him assistance and support and also to defend or guard him from injury or danger." (…) Thus, a positive obligation of protection flows from the requirement of humane treatment, which "extends to moral values, such as the independence of the prisoner (protection against acts of intimidation) and his honour (protection against insults and public curiosity)." (…)

529. The principle of humane treatment is also enunciated in the second, third and fourth paragraphs of article 12 of both the First and Second Geneva Conventions, dealing with the wounded and sick on land and sea. The commentaries to these Conventions make the point that the purpose of these paragraphs was to develop and define the concept of humane care and treatment (…). After setting out the general obligation of humane treatment, article 12 provides that it is to be applied without discrimination, and prohibits any attempts upon life or violence to the person, in particular, murder, extermination, torture, biological experiments, wilfully being left without medical assistance or care, or the creation of conditions which expose persons to contagion or infection. The Commentary to the First Geneva Convention provides that treatment in this context is to be understood in its most general sense as applying to all aspects of a man's existence. (…)

530. The Third Geneva Convention also includes two further provisions that enshrine the fundamental principle of humane treatment. Article 20 provides that prisoners of war must be evacuated humanely, which includes being supplied with sufficient food, potable water, clothing and medical attention. The Commentary to the Third Geneva Convention recognises that there may be different physical and living conditions between prisoners of war and the troops of the detaining power. Moreover, "treatment which may be bearable for the captors might cause indescribable suffering for their prisoners. Account must be taken of varying habits with regard to climate, food, comfort, clothing, etc" (…). The determining factor is humane treatment - life or health must not be endangered and serious hardship and suffering must be avoided (…). In addition, article 46 of the Third Geneva Convention provides similar safeguards with respect to the transfer of prisoners of war. Indeed, it goes further than article 20 by expressly stating that account must be taken of climatic conditions to which the prisoners of war are accustomed. Accordingly, the prohibition on inhumane treatment also extends to the living conditions of protected persons and would be violated if adequate food, water, clothing, medical care and shelter, were not provided in light of the protected persons' varying habits and health.

531. Article 75 of Additional Protocol I and articles 4 and 7 of Additional Protocol II also enshrine the basic principle of humane treatment. Indeed, the Commentary to Additional Protocol II, states that the "right of protected persons to respect for their honour, convictions and religious practices is an element of humane treatment", with reference to article 27 of the Fourth Geneva Convention. (…)

532. Finally, and importantly, the principle of humane treatment constitutes the fundamental basis underlying common article 3 of the Geneva Conventions. This article prohibits a number of acts, including violence to life and to the person, such as murder, mutilation, cruel treatment, torture and outrages on personal dignity, and humiliating and degrading treatment. The Commentary to the First Geneva Convention, in relation to common article 3, addresses the issue of the definition of the concept of humane treatment, and hence inhumane treatment, thus:

It would therefore be pointless and even dangerous to try to enumerate things with which a human being must be provided for his normal maintenance as distinct from that of an animal, or to lay down in detail the manner in which one must behave towards him in order to show that one is treating him 'humanely', that is as a fellow human being and not as a beast or a thing. The details of such treatment may, moreover vary according to circumstances – particularly the climate - and to what is feasible. On the other hand, there is less difficulty in enumerating things which are incompatible with human treatment. That is the method followed in the Convention when it proclaims four absolute prohibitions … No possible loophole is left; there can be no excuse, no attenuating circumstances. (…)

In relation to the enumeration of prohibited behaviour, it continues that,

however much care were taken in establishing a list of all the various forms of infliction, one would never be able to catch up with the imagination of future torturers who wished to satisfy their bestial instincts; and the more specific and complete a list tries to be, the more restrictive it becomes. (…)

It is this Commentary which best explains the general approach of the Geneva Conventions to the concept of humane and inhuman treatment. As has been emphasised throughout this Judgement, humane treatment is the cornerstone of all four Conventions, and is defined in the negative in relation to a general, non-exhaustive catalogue of deplorable acts which are inconsistent with it, these constituting inhuman treatment.

533. The foregoing discussion with regard to inhuman treatment is also consistent with the concept of "inhumane acts", in the context of crimes against humanity. These acts are prohibited and punishable under Article 5 of the Statute and include murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial and religious grounds and other inhumane acts. This list is in accord with article 6(c) of the Nürnberg Charter and article II 1(c) of Control Council Law No. 10, which was the first time such acts were expressly recognised as crimes against humanity. Article 18(k) of the ILC Draft Code contains a more extensive list of acts which may constitute crimes against humanity than that contained in the foregoing provisions. It also provides that "other inhumane acts" are acts that, in fact, severely damage the physical or mental integrity of the victim, or his health or human dignity. The ILC also recognises that it is impossible to establish an exhaustive list of inhumane acts that may constitute crimes against humanity (…).

534. Having considered the meaning of inhuman treatment in the context of the Geneva Conventions, as well as in relation to the category of crimes against humanity, the Trial Chamber now turns to a consideration of how the prohibition has been interpreted by other international adjudicative bodies. As has been noted above, the European Court and the European Commission of Human Rights have developed a substantial body of jurisprudence addressing the various forms of ill-treatment prohibited under article 3 of the European Convention. Insofar as these bodies have sought to distinguish the various offences prohibited under article 3 of the European Convention, they have done so by reference to a sliding scale of severity (…). Using this approach, the European Court has found that the special stigma of torture attaches only to deliberate inhuman treatment causing very serious and cruel suffering (…). The Trial Chamber has already discussed the finding of the European Court in the Northern Ireland Case that this distinction between the notion of torture and that of inhuman or degrading treatment "derives principally from a difference in the intensity of the suffering inflicted." (…)

535. The European Court has also used the purpose for which the ill-treatment was inflicted to distinguish torture from other inhuman or degrading treatment. Two recent opinions of the European Court finding violations of article 3 amounting to torture have been discussed above, but are also relevant in this regard. In Aydin v. Turkey, the European Court noted that the suffering inflicted on the applicant that amounted to torture was calculated to enable the security forces to elicit information (…). Similarly, in Aksoy v. Turkey, the European Court noted that the ill-treatment found to constitute torture "would appear to have been administered with the aim of obtaining admissions or information from the applicant." (…)

536. At the other end of the scale, the European Court has held that, in order for ill-treatment to fall within the scope of the prohibition contained in article 3, it must;

. . . attain a minimum level of severity. [...] The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim. (…)

537. In Tomasi v. France, where the European Court made an explicit finding of inhuman treatment amounting to a violation of article 3, the applicant alleged that, during a police interrogation he had been slapped, kicked, punched, given forearm blows, made to stand for long periods without support, had his hands handcuffed behind his back, been spat upon, made to stand naked in front of an open window, deprived of food and threatened with a firearm. The court held that the "large number of blows inflicted on Mr. Tomasi and their intensity . . . are two elements which are sufficiently serious to render such treatment inhuman and degrading (…)." In Ribitsch v. Austria (…), the European Court found that the applicant had been subjected to inhuman and degrading treatment in violation of article 3 when he had been beaten while in police custody, and he and his wife, who was detained with him, had been threatened and insulted. The European Court went even further to find that:

[i]n respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in article 3 of the Convention. (…)

538. More recently, the European Court has found ill-treatment amounting to a violation of article 3 where a boy of nine years had been beaten with considerable force on more than one occasion with a garden cane (…) In the most coherent framing of the concept, the European Commission of Human Rights has described inhuman treatment as that which "deliberately causes serious mental and physical suffering." (…)

539. Article 7 of the ICCPR provides that:
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one

shall be subjected without his free consent to medical or scientific experimentation.

540. The Human Rights Committee has adopted a comprehensive approach to the application of article 7 in its General Comment to this provision, choosing not to "establish sharp distinctions between the different kinds of punishment or treatment(…)." The Committee has noted, however, that any distinction between the terms would depend on the "nature, purpose and severity of the treatment applied." (…)

541. In a few cases, the Human Rights Committee has made specific findings of inhuman treatment in violation of article 7 of the ICCPR. In Portorreal v. Dominican Republic (…), the applicant had been arrested and taken to a cell measuring 20 by 5 metres, where approximately 125 persons accused of various crimes were held, and where, owing to lack of space, some detainees had to sit on excrement. The applicant received no food and water until the following day and he was finally released after 50 hours in detention. The Committee found that this constituted inhuman and degrading treatment amounting to a violation of article 7 of the ICCPR. In Tshisekedi v. Zaire (…), the Committee also found there to have been a violation of article 7 amounting to inhuman treatment where the applicant had been "deprived of food and drink for four days after his arrest . . . and was subsequently kept interned under unacceptable sanitary conditions."(…) Again, in Bouton v. Uruguay, the Committee found that being forced to stand blindfolded and bound for 35 hours, while listening to the cries of other detainees being tortured, being threatened with punishment, and being forced to sit blindfolded and motionless on a mattress for many days, constituted inhuman treatment. (…)

541. Based on the Human Rights Committee's enumeration of the distinctions between torture and inhuman and degrading treatment, Nowak has remarked that inhuman treatment must include "all forms of imposition of severe suffering that are unable to be qualified as torture for lack of one of its essential elements." (…) Furthermore, in his view, inhuman treatment also includes ill-treatment that does not reach the requisite level of severity to qualify as torture (…).

542. Clearly, the international adjudicative bodies that have considered the application of this offence of inhuman(e) treatment have tended to define it in relative terms. That is, inhuman treatment is treatment which deliberately causes serious mental and physical suffering that falls short of the severe mental and physical suffering required for the offence of torture. Furthermore, the offence need not have a prohibited purpose or be committed under official sanction as required by torture.

(III) Findings

543. In sum, the Trial Chamber finds that inhuman treatment is an intentional act or omission, that is an act which, judged objectively, is deliberate and not accidental, which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity. The plain, ordinary meaning of the term inhuman treatment in the context of the Geneva Conventions confirms this approach and clarifies the meaning of the offence. Thus, inhuman treatment is intentional treatment which does not conform with the fundamental principle of humanity, and forms the umbrella under which the remainder of the listed "grave breaches" in the Conventions fall. Hence, acts characterised in the Conventions and Commentaries as inhuman, or which are inconsistent with the principle of humanity, constitute examples of actions that can be characterised as inhuman treatment.

544. In this framework of offences, all acts found to constitute torture or wilfully causing great suffering or serious injury to body or health would also constitute inhuman treatment. However, this third category of offence is not limited to those acts already incorporated into the other two and extends further to other acts which violate the basic principle of humane treatment, particularly the respect for human dignity. Ultimately, the question of whether any particular act which does not fall within the categories of the core group is inconsistent with the principle of humane treatment, and thus constitutes inhuman(e) treatment, is a question of fact to be judged in all the circumstances of the particular case.

(e) Cruel Treatment

545. The offences charged as cruel treatment in the Indictment are brought under Article 3 of the Statute, either in the alternative to charges of torture, or additional to charges of wilfully causing great suffering or serious injury or inhuman treatment, brought under Article 2 of the Statute.

(I) Arguments of the Parties

546. The Prosecution argues that cruel treatment has the same elements as the offence of inhuman treatment and encompasses situations where the accused mistreats the victim and subjects him or her to mental or physical pain or suffering, without thereby pursuing any of the purposes underlying the offence of torture (…). In its Response to the Motion to Dismiss (…), the Prosecution refers to the discussion in the Tadic Judgment of the meaning of "cruel treatment", in support of this proposition (…). In that case, Trial Chamber II held that the prohibition on cruel treatment is a means to an end, being that of "ensuring that persons taking no active part in the hostilities shall in all circumstances be treated humanely" (…). The Judgement further refers to article 4 of Additional Protocol II, wherein the prohibition refers to "violence to the life, health, and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment." (…)

547. The Defence has not made specific submissions with respect to the definition of the offence of cruel treatment. However, in its discussion of "great suffering or serious injury" in the Motion to Dismiss, the Defence stated that the "the drafters of Common Article 3 deliberately kept prohibited acts poorly defined". (…)

(II) Discussion

548. The basis of the inclusion of cruel treatment within Article 3 of the Statute is its prohibition by common article 3(1) of the Geneva Conventions, which proscribes, "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture". In addition to its prohibition in common article 3, cruel treatment or cruelty is proscribed by article 87 of the Third Geneva Convention, which deals with penalties for prisoners of war, and article 4 of Additional Protocol II, which provides that the following behaviour is prohibited:

violence to life, health and physical and or mental well being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment.

549. As with the offence of inhuman treatment, no international instrument defines this offence, although it is specifically prohibited by article 5 of the Universal Declaration of Human Rights, article 7 of the ICCPR, article 5, paragraph 2, of the Inter-American Convention of Human Rights and article 5 of the African Charter of Human and Peoples' Rights. In each of these instruments, it is mentioned in the same category of offence as inhuman treatment.

550. In the Tadic Judgment, Trial Chamber II provided its view of the meaning of this offence, stating that, according to common article 3, "the prohibition against cruel treatment is a means to an end, the end being that of ensuring that persons taking no active part in hostilities shall in all circumstances be treated humanely. (…)" Thus, that Trial Chamber acknowledged that cruel treatment is treatment that is inhuman.

551. Viewed in the context of common article 3, article 4 of Additional Protocol II, the various human rights instruments mentioned above, and the plain ordinary meaning, the Trial Chamber is of the view that cruel treatment is treatment which causes serious mental or physical suffering or constitutes a serious attack upon human dignity, which is equivalent to the offence of inhuman treatment in the framework of the grave breaches provisions of the Geneva Conventions.

(III) Findings

552. In light of the foregoing, the Trial Chamber finds that cruel treatment constitutes an intentional act or omission, that is an act which, judged objectively, is deliberate and not accidental, which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity. As such, it carries an equivalent meaning and therefore the same residual function for the purposes of common article 3 of the Statute, as inhuman treatment does in relation to grave breaches of the Geneva Conventions. Accordingly, the offence of torture under common article 3 of the Geneva Conventions is also included within the concept of cruel treatment. Treatment that does not meet the purposive requirement for the offence of torture in common article 3, constitutes cruel treatment.

553. Having considered in detail the meaning of the foregoing offences, the Trial Chamber shall now address inhumane conditions, which have been alleged in the Indictment as wilfully causing great suffering and cruel treatment.

(f) Inhumane Conditions

554. Counts 46 and 47 of the Indictment allege the existence of inhumane conditions in the Celebici prison-camp and these are charged as wilfully causing great suffering, under Article 2(c), and cruel treatment, under Article 3 of the Statute. While there is no offence of "inhumane conditions" recognised as such in international humanitarian law, it is necessary to determine whether this concept can be considered as being incorporated into the offences of wilfully causing great suffering or serious injury to body or health or cruel treatment.

555. In its Response to the Motion to Dismiss, the Prosecution addresses the issue of inhumane conditions (…). It rejects an argument made by the Defence that, if conditions at a detention facility are inadequate but are nonetheless all that could be provided in the circumstances prevailing at the relevant time, they are not inhumane. In support of its position, the Prosecution argues that, as a matter of law, a detaining authority is not allowed to starve or otherwise keep prisoners in clearly inhumane and life threatening conditions.

556. The phrase "inhumane conditions" is a factual description relating to the nature of the general environment in which detained persons are kept and the treatment which they receive. Accordingly, the Trial Chamber is bound to apply the legal standards found for the offences of wilfully causing great suffering or serious injury to body or health and cruel treatment to this factual category.

557. These legal standards are absolute and not relative. Thus, when considering the factual allegation of inhumane conditions with respect to these legal offences, no reference should be made to the conditions prevailing in the area of detention in order to determine what the standard of treatment should have been. The legal standard in each of the mistreatment offences discussed above delineates a minimum standard of treatment which also applies to conditions of detention. During an armed conflict, persons should not be detained in conditions where this minimum standard cannot be met and maintained.

558. Given that, in the context of Article 3 of the Statute, cruel treatment carries the same meaning as inhuman treatment in the context of Article 2, this allegation of inhumane conditions is appropriately charged as cruel treatment. However, in light of the above discussion of these offences, the Trial Chamber is of the view that, while it is possible to categorise inhumane conditions within the offence of wilfully causing great suffering or serious injury to body or health under Article 2, it is more appropriately placed within the offence of inhuman treatment.

V. Degrading Treatment

As described above, the European Court of Human Rights, in the Ireland v. United Kingdom judgment, considered acts to be degrading because "they were such as to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance". Whereas inhuman treatment is often connected with the infliction of physical pain on the victim, treatment is typically considered to be degrading because of its humiliating effect which does not necessarily go hand in hand with physical pain.

For national preventive mechanisms as well as for courts of justice the interpretation and application of the term "degrading treatment" is of special interest and importance. While acts of torture or inhuman treatment are usually far from any legal justification, the line between degrading and acceptable treatment is not always easy to draw.

1. Unjustified use of physical force or interference with physical integrity

Of course, state authorities, in particular police forces, are sometimes entitled – and, on occasion, obliged – to use physical force. As the Court pointed out in the 2007 judgment in Necdet Bulut v. Turkey:

(Case 30)

23. The Court reiterates that Article 3 does not prohibit the use of force in certain well-defined circumstances, such as to effect an arrest. However, such force may be used only if indispensable and must not be excessive.

In the case of Bouyid v. Belgium, two young men (one of them a minor) had been slapped by a police officer in a police station during questioning. In a Chamber judgment of 2013, the European Court of Human Rights unanimously considered that a slap did not reach the "minimum level of severity" required for treatment to be "degrading":

(Case 31)

46. In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see, among other authorities, Ribitsch v. Austria, 4 December 1995, § 38, Series A no. 336; Mete and Others, cited above, § 106; and El Masri v. the former Yugoslav Republic of Macedonia [GC], no. 39630/09, § 207, ECHR 2012).

47. However, in order for ill-treatment to fall within the scope of Article 3 it must attain a minimum level of severity. 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 (see, among other authorities, Ireland v. the United Kingdom, cited above, § 162, and Jalloh v. Germany [GC], no. 54810/00, § 67, ECHR 2006-IX). Further factors include the purpose for which the treatment was inflicted together with the intention or motivation behind it (see, for example, El-Masri, cited above, § 196).

48. Accordingly, some forms of violence, although they may be condemned on moral grounds and also in most cases – but not always (see Campbell and Cosans v. the United Kingdom, 25 February 1982, § 30, Series A no. 48, and Costello-Roberts v. the United Kingdom, 25 March 1993, § 32, Series A no. 247-C) – under the domestic law of the Contracting States, will not fall within Article 3 of the Convention (see Ireland v. the United Kingdom, cited above, § 167; see also paragraph 181 of that judgment).

49. In the present case, the applicants alleged that they had each been slapped on the face while they were in the Saint-Josse-ten-Noode police station. They produced medical certificates in support of their version of events. The Government, for their part, took the view that it could not be seen from the case file that their injuries had been the consequence of a slap inflicted on one or the other by a police officer. In particular, the medical certificates did not show that the injuries recorded had been caused by such slaps. The Government further argued that the police officers concerned had always vehemently denied acting in such a way. The Court, however, finds it pointless to rule on the veracity or otherwise of the applicants' allegations. It takes the view that, even supposing that they were proven, the acts complained of by the applicants would not constitute, in the circumstances of the case, treatment in breach of Article 3 of the Convention.

50. The Court would first point out that police officers who strike individuals while questioning them are at the very least committing a breach of ethics and acting in a manner that is deplorably unprofessional. It agrees with the recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment following its visit to Belgium in 2005: faced with the risk of ill-treatment of persons in custody, the competent authorities are required to be vigilant about this issue, particularly where minors are concerned (report to Belgian Government, CPT/Inf (2006) 15, § 11).

51. In the present case, however, even supposing that the slapping took place, in both cases it was an isolated slap inflicted thoughtlessly by a police officer who was exasperated by the applicants' disrespectful or provocative conduct, without seeking to make them confess. Moreover, there was apparently an atmosphere of tension between the members of the applicants' family and police officers in their neighbourhood. In those circumstances, even though one of the applicants was only 17 at the time and whilst it is comprehensible that, if the events really took place as the applicants described, they must have felt deep resentment, the Court cannot ignore the fact that these were one-off occurrences in a situation of nervous tension and without any serious or long-term effect. It takes the view that acts of this type, though unacceptable, cannot be regarded as

generating a sufficient degree of humiliation or debasement for a breach of Article 3 of the Convention to be established. In other words, in any event, the above-mentioned threshold of severity has not been reached in the present case, such that no question of a violation of that provision, under either its substantive or its procedural head, arises.

52. The Court thus concludes that in the circumstances of the case there has been no violation of Article 3 of the Convention.

However, this judgment was overturned in 2015, by fourteen votes to three, by the Grand Chamber of the Court reconsidering the Bouyid case under Article 43 of the European Convention on Human Rights:

(Case 32)

86. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, Ireland v. the United Kingdom, § 162; Jalloh, § 67; Gäfgen, § 88; El-Masri, § 196; and Svinarenko and Slyadnev, § 114, all cited above). Further factors include the purpose for which the ill-treatment was inflicted, together with the intention or motivation behind it (compare, inter alia, Aksoy v. Turkey, 18 December 1996, § 64, Reports 1996VI; Egmez v. Cyprus, no. 30873/96, § 78, ECHR 2000XII; and Krastanov v. Bulgaria, no. 50222/99, § 53, 30 September 2004; see also, among other authorities, Gäfgen, § 88, and El-Masri, § 196, both cited above), although the absence of an intention to humiliate or debase the victim cannot conclusively rule out a finding of a violation of Article 3 (see, among other authorities, V. v. the United Kingdom [GC], no. 24888/94, § 71, ECHR 1999IX, and Svinarenko and Slyadnev, cited above, § 114). Regard must also be had to the context in which the ill-treatment was inflicted, such as an atmosphere of heightened tension and emotions (compare, for example, Selmouni, § 104, and Egmez, § 78, both cited above; see also, among other authorities, Gäfgen, cited above, § 88).

87. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these aspects, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition set forth in Article 3 (see, among other authorities, Vasyukov v. Russia, no. 2974/05, § 59, 5 April 2011; Gäfgen, cited above, § 89; Svinarenko and Slyadnev, cited above, § 114; and Georgia v. Russia (I), cited above, § 192). It should also be pointed out that it may well suffice that the victim is humiliated in his own eyes, even if not in the eyes of others (see, among other authorities, Tyrer v. the United Kingdom, 25 April 1978, § 32, Series A no. 26, and M.S.S. v. Belgium and Greece [GC], no. 30696/09, § 220, ECHR 2011).

88. Furthermore, in view of the facts of the case, the Court considers it particularly important to point out that, in respect of a person who is deprived of his liberty, or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3 (see, among other authorities, Ribitsch, § 38; Mete and Others, § 106; and ElMasri, § 207, all cited above).

89. The word "dignity" appears in many international and regional texts and instruments (see paragraphs 45-47 above). Although the Convention does not mention that concept – which nevertheless appears in the Preamble to Protocol No. 13 to the Convention, concerning the abolition of the death penalty in all circumstances – the Court has emphasised that respect for human dignity forms part of the very essence of the Convention (see Svinarenko and Slyadnev, cited above, § 118), alongside human freedom (see C.R. v. the United Kingdom, 22 November 1995, § 42, Series A no. 335C, and S.W. v. the United Kingdom, 22 November 1995, § 44, Series A no. 335B; see also, among other authorities, Pretty v. the United Kingdom, no. 2346/02, § 65, ECHR 2002III).

90. Moreover, there is a particularly strong link between the concepts of "degrading" treatment or punishment within the meaning of Article 3 of the Convention and respect for "dignity". In 1973 the European Commission of Human Rights stressed that in the context of Article 3 of the Convention the expression "degrading treatment" showed that the general purpose of that provision was to prevent particularly serious interferences with human dignity (see East African Asians v. the United Kingdom, nos. 4403/70 and 30 others, Commission's report of 14 December 1973, Decisions and Reports 78-A, p. 56, § 192). The Court, for its part, made its first explicit reference to this concept in the judgment in Tyrer (cited above), concerning not "degrading treatment" but "degrading punishment". In finding that the punishment in question was degrading within the meaning of Article 3 of the Convention, the Court had regard to the fact that "although the applicant did not suffer any severe or long-lasting physical effects, his punishment – whereby he was treated as an object in the power of the authorities – constituted an assault on precisely that which it is one of the main purposes of Article 3 to protect, namely a person's dignity and physical integrity" (ibid., § 33). Many subsequent judgments have highlighted the close link between the concepts of "degrading treatment" and respect for "dignity" (see, for example, Kudła v. Poland [GC], no. 30210/96, § 94, ECHR 2000XI; Valašinas v. Lithuania, no. 44558/98, § 102, ECHR 2001VIII; Yankov v. Bulgaria, no. 39084/97, § 114, ECHR 2003XII; and Svinarenko and Slyadnev, cited above, § 138).

(b) Application to the present case

(I) Establishment of the facts

91. The Government did not contest the above-mentioned principle that where an individual displayed traces of blows after being under the control of the police and complained that those traces were the result of ill-treatment, there was a – rebuttable – presumption that this was indeed the case (see paragraphs 83-84 above). They also accepted that that principle applied in the instant case. However, they submitted that the medical certificates produced by the applicants established neither that the injuries mentioned had resulted from a slap nor that the latter had been inflicted by police officers, particularly since the police officers in question had always denied such acts. They added that none of the evidence gathered during the investigation contradicted their denial.

92. The Court observes that in order to benefit from the presumption in question, individuals claiming to be the victims of a violation of Article 3 of the Convention must demonstrate that they display traces of ill-treatment after being under the control of the police or a similar authority. Many of the cases with which the Court has dealt show that such persons usually provide medical certificates for that purpose, describing injuries or traces of blows, to which the Court attaches substantial evidential weight.

93. The Court further notes that the medical certificates produced in the present case – the authenticity of which is not contested – mention, in the case of the first applicant, his "state of shock", "erythema on the left cheek (disappearing)" and "erythema on the left-side external auditory canal" (see paragraph 12 above) and, in the case of the second applicant, "bruising [on the] left cheek" (see paragraph 16 above). These are the possible consequences of slaps to the face.

94. The Court also observes that the certificates were issued on the day of the events, shortly after the applicants had left the Saint-Josse-ten-Noode police station, which strengthens their evidential value. The certificate concerning the first applicant was issued on 8 December 2003 at 7.20 p.m., the first applicant having been in the police station from 4 p.m. to 5.30 p.m. (see paragraphs 12 and 14 above). The certificate for the second applicant is dated 23 February 2004 and was drawn up before 11.20 a.m. – when it was presented to Committee P (see paragraph 25 above) – the second applicant having been in the police station between 9.44 a.m. and 10.20 a.m. (see paragraphs 15-16 above).

95. The Court notes that it has not been disputed that the applicants did not display any such marks on entering the Saint-Josse-ten-Noode police station.

96. Lastly, throughout the domestic proceedings the police officers in question consistently denied having slapped the applicants. However, the applicants claimed the opposite just as consistently. Moreover, given that there were major shortcomings in the investigation (see paragraphs 124-34 below), it is impossible to conclude that the officers' statements were accurate from the mere fact that the investigation failed to provide any evidence to the contrary.

97. As to the hypothesis mentioned by the Government at the hearing to the effect that the applicants had slapped their own faces in order to make a case against the police (see paragraph 68 above), the Court notes that there is no evidence to corroborate it. Furthermore, having regard to the evidence produced by the parties, the hypothesis in question would not appear to have been mentioned in the domestic courts.

98. In the light of the foregoing the Court deems it sufficiently established that the erythema described in the certificates produced by the applicants occurred while they were under police control in the SaintJosseten-Noode station. It also notes that the Government failed to produce any evidence likely to cast doubt on the applicants' submissions to the effect that the erythema had resulted from a slap inflicted by a police officer. The Court therefore considers that fact proven.

99. It remains to be determined whether the applicants are justified in claiming that the treatment of which they complain was in breach of Article 3 of the Convention.

(II) Classification of the treatment inflicted on the applicants

100. As the Court has pointed out previously (see paragraph 88 above), where an individual is deprived of his or her liberty or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by the person's conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention.

101. The Court emphasises that the words "in principle" cannot be taken to mean that there might be situations in which such a finding of a violation is not called for, because the above-mentioned severity threshold (see paragraphs 86-87 above) has not been attained. Any interference with human dignity strikes at the very essence of the Convention (see paragraph 89 above). For that reason any conduct by law-enforcement officers vis-à-vis an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention. That applies in particular to their use of physical force against an individual where it is not made strictly necessary by his conduct, whatever the impact on the person in question.

102. In the present case the Government did not claim that the slaps of which the two applicants complained had corresponded to recourse to physical force which had been made strictly necessary by their conduct; they simply denied that any slaps had ever been administered. In fact, it appears from the case file that each slap was an impulsive act in response to an attitude perceived as disrespectful, which is certainly insufficient to establish such necessity. The Court consequently finds that the applicants' dignity was undermined and that there has therefore been a violation of Article 3 of the Convention.

103. In any event, the Court emphasises that a slap inflicted by a law-enforcement officer on an individual who is entirely under his control constitutes a serious attack on the individual's dignity.

104. A slap has a considerable impact on the person receiving it. A slap to the face affects the part of the person's body which expresses his individuality, manifests his social identity and constitutes the centre of his senses – sight, speech and hearing – which are used for communication with others. Indeed, the Court has already had occasion to note the role played by the face in social interaction (see S.A.S. v. France [GC], no. 43835/11, §§ 122 and 141, ECHR 2014, concerning the ban on wearing clothing intended to conceal the face in public places). It has also had regard to the specificity of that part of the body in the context of Article 3 of the Convention, holding that "particularly because of its location", a blow to an individual's head during his arrest, which had caused a swelling and a 2 cm bruise on his forehead, was sufficiently serious to raise an issue under Article 3 (see Samüt Karabulut v. Turkey, no. 16999/04, § 41, 27 January 2009).

105. The Court reiterates that it may well suffice that the victim is humiliated in his own eyes for there to be degrading treatment within the meaning of Article 3 of the Convention (see paragraph 87 above). Indeed, it does not doubt that even one unpremeditated slap devoid of any serious or long-term effect on the person receiving it may be perceived as humiliating by that person.

106. That is particularly true when the slap is inflicted by law-enforcement officers on persons under their control, because it highlights the superiority and inferiority which by definition characterise the relationship between the former and the latter in such circumstances. The fact that the victims know that such an act is unlawful, constituting a breach of moral and professional ethics by those officers and – as the Chamber rightly emphasised in its judgment – also being unacceptable, may furthermore arouse in them a feeling of arbitrary treatment, injustice and powerlessness (for consideration of this kind of feeling in the context of Article 3 of the Convention, see, for example, Petyo Petkov v. Bulgaria, no. 32130/03, §§ 42 and 47, 7 January 2010).

107. Moreover, persons who are held in police custody or are even simply taken or summoned to a police station for an identity check or questioning – as in the applicants' cases – and more broadly all persons under the control of the police or a similar authority, are in a situation of vulnerability. The authorities are consequently under a duty to protect them (see paragraphs 83-84 above). In inflicting the humiliation of being slapped by one of their officers they are clearly disregarding this duty.

108. The fact that the slap may have been administered thoughtlessly by an officer who was exasperated by the victim's disrespectful or provocative conduct is irrelevant here. The Grand Chamber therefore departs from the Chamber's approach on this point. As the Court has previously pointed out, even under the most difficult circumstances, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned (see paragraph 81 above). In a democratic society ill-treatment is never an appropriate response to problems facing the authorities. The police, specifically, must "not inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment under any circumstances" (European Code of Police Ethics, § 36; see paragraph 51 above). Furthermore, Article 3 of the Convention establishes a positive obligation on the State to train its law-enforcement officials in such a manner as to ensure their high level of competence in their professional conduct so that no one is subjected to torture or treatment that runs counter to that provision (see Davydov and Others, cited above, § 268).

109. Lastly, the Court notes, as a secondary consideration, that the first applicant was born on 22 August 1986 and was thus 17 years old on 8 December 2003. He was therefore a minor at the material time. Illtreatment is liable to have a greater impact – especially in psychological terms – on a minor (see, for example, Rivas, cited above, § 42, and Darraj v. France, no. 34588/07, § 44, 4 November 2010) than on an adult. More broadly, the Court has on numerous occasions stressed the vulnerability of minors in the context of Article 3 of the Convention. That was the case, for instance, in Okkalı v. Turkey (no. 52067/99, ECHR 2006XII); Yazgül Yılmaz v. Turkey (no. 36369/06, 1 February 2011) and Iurcu v. the Republic of Moldova (no. 33759/10, 9 April 2013). The need to take account of the vulnerability of minors has also been clearly affirmed at the international level (see paragraphs 52-53 above).

110. The Court emphasises that it is vital for law-enforcement officers who are in contact with minors in the exercise of their duties to take due account of the vulnerability inherent in their young age (European Code of Police Ethics, § 44; see paragraph 51 above). Police behaviour towards minors may be incompatible with the requirements of Article 3 of the Convention simply because they are minors, whereas it might be deemed acceptable in the case of adults. Therefore, law-enforcement officers must show greater vigilance and self-control when dealing with minors.

111. In conclusion, the slap administered to each of the applicants by the police officers while they were under their control in the Saint-Josse-ten-Noode police station did not correspond to recourse to physical force that had been made strictly necessary by their conduct, and thus diminished their dignity.

112. Given that the applicants referred only to minor bodily injuries and did not demonstrate that they had undergone serious physical or mental suffering, the treatment in question cannot be described as inhuman or, a fortiori, torture. The Court therefore finds that the present case involved degrading treatment.

113. Accordingly, there has been a violation of the substantive head of Article 3 in respect of each of the applicants.

The applicant in the 2020 case of A. P. v. Slovakia complained about the use of excessive force during arrest by the police:

(Case 33)

(a) Parties' arguments

45. The applicant alleged that he had been beaten and subjected to psychological pressure by police officers.

46. The Government contested the applicant's allegations as to the seriousness of his injury and the treatment he had been exposed to.

In particular, on the evidence available, the applicant had sustained only a light injury – bruising of the nose and swelling of the upper lip, in contradiction with his allegations at the domestic level (see, for example, paragraph 8 above). In the Government's submission, the applicant's injury had been caused by the lawful and legitimate measures used to overcome his resistance during his arrest.

Moreover, the Government considered that the applicant's version of the incident was not credible. The expert had excluded the possibility that the injury could have occurred in the way described by the applicant (see paragraph 22 above) and none of the witnesses had confirmed his version of the events (see paragraph 21 above).

47. The applicant disagreed, reiterating his complaints and referring to the medical records and witness statements. He pointed out that the medical expert report on which the Government had relied had been produced four months after the incident, by which time the expert had been unable to assess the injuries he had sustained. He maintained that he had not resisted the arrest and that the record on the use of coercive measures (see paragraph 13 above) had been produced by the police officers with the purpose of justifying the alleged ill-treatment.

Emphasising that he was of Romani origin and that he had still been a minor at the time of the incident, the applicant contended that the minimum level of severity of the treatment had been reached and that he had been subjected to treatment reaching the threshold required for a breach of Article 3 of the Convention.

(b) The Court's assessment

48. The Court notes first of all that the applicant's initial factual submissions before it include allegations of ill-treatment during his arrest, in the police car, as well as at the police station. However, the proceedings both at national level and before the Court concentrated on the circumstances of the applicant's arrest, and there are no material elements supporting any claim of subsequent ill-treatment.

49. The Court has recently summarised the applicable case-law principles in its judgment in the case of Bouyid (cited above, §§ 8190), and in the context of arrest in the judgment of Yusiv v. Lithuania (no. 55894/13, §§ 53-56, 4 October 2016).

50. In the present case, the applicant was examined the day of the incident by two doctors, namely a surgeon and an otolaryngologist. The medical examination confirmed that he had a swollen upper lip and bruising to the nose (see paragraph 9 above). Those findings were subsequently confirmed by another examination by an expert in the course of the criminal proceedings (see paragraph 22 above).

51. The Government did not contest the findings of those medical examinations, nor did they argue that any of the applicant's injuries had been sustained before or after his arrest on 11 February 2015. The doctors who examined the applicant on 11 February 2015 confirmed that he had sustained minor injuries and did not dispute that they had been the result of the events as described by the applicant (see paragraph 11 above). In addition, the expert appointed by the authorities stated that the applicant had suffered minor injuries corresponding to the effects of blunt force of a mild intensity applied to the face, which could have been caused by a slap or by having hit his face against the police car while getting into it. He excluded the possibility that the applicant's injuries could have been caused by a fist (see paragraph 22 above).

52. The Court has explained that where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. The burden of proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim. In the absence of such explanation, the Court can draw inferences which may be unfavourable for the Government. That is justified by the fact that persons in custody are in a vulnerable position and the authorities are under a duty to protect them (see Bouyid, cited above, § 83, with further references). A person who is deprived of his liberty, or, more generally, is confronted with lawenforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3 (see Bouyid, cited above, § 88, with further references).

53. The Court observes that in order to benefit from the presumption mentioned in the preceding paragraph, individuals claiming to be the victims of a violation of Article 3 of the Convention must demonstrate that they display traces of ill-treatment after having been under the control of the police or a similar authority. Many of the cases with which the Court has dealt show that such persons usually provide medical certificates for that purpose, describing injuries or traces of blows, to which the Court attaches substantial evidential weight (see Bouyid, cited above, § 92).

54. The Court further notes that the point of contention between the parties in this case was as to precisely how the applicant's condition had come about, rather than the extent of the injury.

55. Considering the medical evidence adduced by the applicant and by the authorities, as well as the witness statements (see paragraphs 11, 21 and 22 above), the Court finds that it has been established that the applicant was slapped in the face during his arrest and sustained the aforementioned injuries at the hands of the police (contrast Adam v. Slovakia, no. 68066/12, § 59, 26 July 2016). Thus it is incumbent on the Government to provide a plausible explanation for the cause of those injuries (see, among many other authorities, Selmouni v. France [GC], no. 25803/94, § 87, ECHR 1999V, and Yusiv, cited above, § 59).

56. The Court emphasises in this regard that in respect of a person who is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3 (see Bouyid, cited above, § 88, and Yusiv, cited above, § 59).

57. In the present case, the Government denied that the injuries sustained by the applicant had attained the minimum level of severity to fall within the scope of Article 3 (see paragraph 42 above). Nonetheless, they submitted that those injuries had resulted from his own resistance to the lawful actions of the officers, who had had no other choice but to put him in the police car using physical force. The domestic pre-trial investigation concluded that while being apprehended in front of his school, the applicant had resisted the orders of the police and had had to be subdued (see, in particular, paragraph 25 above).

58. Although the applicant denied resisting or insulting the officers in any way and claimed that he had been arbitrarily beaten up, the domestic authorities considered that his allegations had been refuted by the consistent statements of the police officers.

59. In this connection, the Court notes that the domestic medical examination concluded that the applicant had sustained minor injuries corresponding to the effects of blunt force of a mild intensity applied to the face (see paragraph 22 above). It has been established that one of the police officers at least grasped the applicant's arm, used an elbow-lock grip and slapped him in the face (see paragraphs 13, 15 and 23 above). The allegation that the applicant had been slapped in the face was thus found credible (see and contrast Brahmi v. Poland (dec.), no. 4972/14, 17 December 2015). However, no assessment was made as to whether inflicting those injuries on the applicant had been strictly necessary and proportionate in order to suppress his resistance (see Yusiv, cited above, § 61).

60. The Court further notes the absence of signs of physical injuries to the police officers which would indicate violent actions, such as kicking or biting, on the part of the applicant (see Iljina and Sarulienė v. Lithuania, no. 32293/05, § 50, 15 March 2011). The applicant in the present case was 16 years old at the time of his arrest and it was not alleged at any stage of the domestic proceedings that he might have been armed. Moreover, the incident happened without any prior warning from the police officers.

61. The Court has already considered that a slap to the face has a considerable impact on the person receiving it (see Bouyid, cited above, § 104). It has also had regard to the specificity of that part of the body in the context of Article 3 of the Convention (see Samüt Karabulut v. Turkey, no. 16999/04, §§ 41 and 58, 27 January 2009). In this regard, the Court reiterates that it may well suffice that the victim is humiliated in his own eyes for there to be degrading treatment within the meaning of Article 3 of the Convention. Indeed, it does not doubt that even one unpremeditated slap devoid of any serious or long-term effect on the person receiving it may be perceived as humiliating by that person (see Bouyid, cited above, § 105). Moreover, the public nature of the treatment, as in the instant case, may be a relevant or aggravating factor in assessing whether it is "degrading" within the meaning of Article 3 (see Svinarenko and Slyadnev v. Russia [GC], nos. 32541/08 and 43441/08, § 115, ECHR 2014 (extracts)).

62. Therefore, bearing in mind the vulnerability of minors in the context of Article 3 of the Convention (see, for example, Rivas v. France, no. 59584/00, § 42, 1 April 2004; Darraj v. France, no. 34588/07, § 44, 4 November 2010; and Bouyid, cited above, § 109), the requirement of professionalism and high level of competence on the part of lawenforcement officials (see Bouyid, cited above, §§ 108 and 110), and the fact that even if the applicant had indeed spat on the officers and had attempted to punch them (see, mutatis mutandis, Yusiv, cited above, § 61), it has not been shown that it was strictly necessary, in the particular circumstances of the case, for a trained police officer to resort to physical force in order to make the applicant more cooperative.

63. In the light of the above, the Court concludes that the severity threshold necessary for the applicability of Article 3 of the Convention in the present case has been attained. The Government have not demonstrated that the extent of the physical force used against the applicant had been strictly necessary in the circumstances. Accordingly, the Court concludes that the applicant was subjected to degrading treatment (see Bouyid, cited above, § 112), contrary to Article 3 of the Convention.

In sum, the Court rejects the Government's preliminary objection and holds that there has been a violation of Article 3 of the Convention in its substantive limb.

2. Other interferences with physical integrity
a. Use of handcuffs

In the 2011 case of Kashavelov v. Bulgaria, the Court criticised that handcuffs were routinely used each time the applicant left his prison cell, over a long period of time:

(Case 34)

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.

The Court made a similar finding in the 2012 case of Kaverzin v. Ukraine, where the applicant was completely blind:

(Case 35)

151. The applicant complained that in Dnipropetrovsk Colony he had been handcuffed every time he had left his cell. The applicant also submitted that he had been handcuffed during short family visits, despite the fact that this had been contrary to Article 106 of the Code on the Execution of Sentences.

152. The Government contended that the use of handcuffs on the applicant at Dnipropetrovsk Colony had not constituted inhuman or degrading treatment. According to them, the use of handcuffs when escorting the applicant within the colony had been an unavoidable aspect of the suffering and humiliation inherent in his lawful detention resulting from him being sentenced to life imprisonment. The Government further argued that the applicant's allegation of the use of handcuffs during daily walks was not supported by any evidence. They also noted that handcuffing during daily walks was not envisaged by the relevant regulations.

153. The Court reiterates that 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 level 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 (see, among many other authorities, Kudła v. Poland [GC], no. 30210/96, § 91, ECHR 2000XI, and Peers v. Greece, no. 28524/95, § 67, ECHR 2001-III).

154. Although the purpose of such treatment is a factor to be taken into account, in particular whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (see Peers, cited above, § 74).

155. The use of instruments of restraint, including handcuffs, does not normally give rise to an issue under Article 3 of the Convention where the measure has been imposed in connection with lawful detention and does not entail the use of force, or public exposure, exceeding what is reasonably considered necessary (see Gorodnitchev v. Russia, no. 52058/99, § 108, 24 May 2007, and Kucheruk v. Ukraine, no. 2570/04, § 139, ECHR 2007X). In such matters, it is important to consider the danger of the person's absconding or causing injury or damage (see Raninen v. Finland, 16 December 1997, § 56, Reports of Judgments and Decisions 1997VIII; and Kashavelov v. Bulgaria, no. 891/05, § 39, 20 January 2011).

156. The Court observes that the applicant was found by the domestic courts to be exceptionally dangerous to society (see paragraph 39 above). He was responsible for the murder of seven people, three of whom were police officers. The officers were killed by the applicant when they tried to stop him committing crimes. The Court considers that the applicant's criminal record arguably called for his placement under conditions of the highest level of security.

157. However, the question which must be addressed is whether specific measures applied to the applicant under such conditions, in particular the applicant's handcuffing, were justified given his personal situation.

158. In this context, the Court notes that the applicant was handcuffed whenever he was taken out of his cell. Although it appears that the applicant's handcuffing during daily walks at Dnipropetrovsk Colony was discontinued at some point in 2005 (see paragraph 30 above), he was still subjected to this measure of restraint during his being escorted and during family visits.

159. Turning to the applicant's personal situation, the Court notes that when he was placed in Dnipropetrovsk Colony he was completely blind and, according to his medical records, required outside assistance to manage aspects of daily life (see paragraph 21 above). There is no information to suggest that the applicant tried to escape or behaved violently during his pre-trial detention in Kharkiv and Khmelnytsk SIZOs or subsequently in Dnipropetrovsk Colony.

160. Given the applicant's personal situation and also the practical arrangements for his being escorted – the applicant being followed by three wardens with a dog – the Court considers that the use of handcuffs on the applicant during his detention in the colony could not be justified by security reasons (see, mutatis mutandis, Avcı and Others v. Turkey, no. 70417/01, §§ 39-43, 27 June 2006).

161. The Court further considers that the applicant's handcuffing, both in principle and in particular as regards the manner in which the restraint was used on him in Dnipropetrovsk Colony – with his hands behind his back, in spite of the applicant's limited autonomy due to complete blindness – caused him suffering and humiliation beyond that inevitably connected with a particular form of legitimate punishment (see, mutatis mutandis, Kudła, cited above, §§ 92-94, and Okhrimenko v. Ukraine, no. 53896/07, § 98, 15 October 2009).

162. In the light of the foregoing, the Court does not find it necessary to determine whether, as the applicant argued, his handcuffing during family visits had been contrary to the relevant domestic regulations. Nonetheless, the Court notes that the regulations required the authorities to use the impugned measure of restraint on all life-sentenced men, without giving consideration to their personal situation and the individual risk they might or might not present. Furthermore, the practice of systematically handcuffing all life-sentenced men whenever they were taken out of their cell is also evidenced by the findings made by the CPT following its visit to a colony in Ukraine in October 2005, when the applicant was serving his sentence under similar conditions in Dnipropetrovsk Colony.

163. Accordingly, the Court finds that the use of handcuffs on the applicant in Dnipropetrovsk Colony constituted inhuman and degrading treatment and that there has been a violation of Article 3 of the Convention in this respect.

b. Forced removal of a prisoner's hair

In the 2003 case of Yankov v. Bulgaria the applicant complained about the shaving of his head when he was put, while in detention, in a disciplinary cell:

(Case 36)

101. The applicant stated that the shaving of his head had been a barbaric act lacking any legal basis. The measure had not been necessary for hygienic reasons as there had been no allegation that a vermin problem had existed in the particular detention centre at the relevant time. The humiliation suffered by the applicant, 55 years old at the time, a person with higher education and a doctorate, had been particularly painful. Although no one had been present when hair was shaved off, the result had remained visible for a long period after that. The applicant further stated that the conditions in the disciplinary cell had been inhuman, particularly for a person who suffered from a serious chronic decease.

102. The Government stated that the shaving of the applicant's head had been a hygienic measure against parasites and had not been intended to humiliate him. In particular, the shaving had not taken place in front of other detainees.

B. The Court's assessment

1. General principles

103. The Court reiterates at the outset that 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, for example, Labita v. Italy [GC], no 26772/95, § 119, ECHR 2000IV).

104. Treatment has been held by the Court to be "inhuman" because, inter alia, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be "degrading" because it was such as to diminish the victims' human dignity or to arouse in them feelings of fear, anguish and inferiority capable of humiliating and debasing them (see, mutatis mutandis, the Tyrer v. the United Kingdom judgment of 25 April 1978, Series A no. 26, p. 15, § 30; the Soering v. the United Kingdom judgment of 7 July 1989, Series A no. 161, p. 39, § 100; see V. v. the United Kingdom [GC], no. 24888/94, § 71, ECHR 1999-IX; and Valasinas v. Lithuania, § 117, no. 44558/98, ECHR 2001-VIII).

105. 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. Even the absence of such a purpose cannot conclusively rule out a finding of a violation of Article 3 (see, for example, Peers v. Greece, no. 28524/95, § 74, ECHR 2001-III; and Kalashnikov v. Russia, no. 47095/99, § 101, ECHR 2002-VI).

106. Illtreatment 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 (see, Ireland v. the United Kingdom. judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

107. The Court has consistently stressed that the suffering and humiliation involved must 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. The State must ensure that a person is detained in 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 of an intensity 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 (Kudła v. Poland [GC], no. 30210/96, §§ 9394, ECHR 2000XI).

2. Application of those principles in the present case

108. The Court notes that the applicant's hair was shaved off before his placement in an isolation cell (see paragraph 70 above).

109. The Court has not had occasion to rule on whether or not the forced shaving off of a prisoner's hair may constitute degrading treatment contrary to Article 3 of the Convention.

110. In respect of other acts affecting the dignity of detainees, the Court has held that whilst strip searches may be necessary on occasion to ensure prison security or prevent disorder or crime, they must be conducted in an appropriate manner and must be justified. Even single occasions of strip-searches have been found to amount to degrading treatment in view of the manner in which the strip-search was carried out, the possibility that its aim was to humiliate and debase and the lack of justification (see Valasinas, cited above and Iwanczuk v. Poland, no. 25196/94, 15 November 2001). In the case of Van der Ven v. the Netherlands (no. 50901/99, ECHR 2003...), strip-searches, albeit carried out in a "normal" manner, had a degrading effect and violated Article 3 of the Convention as they were performed systematically on a weekly basis as a matter of practice which lacked clear justification in the particular case of the applicant.

111. On the other hand, the Court has also held that handcuffing does not normally give rise to an issue under Article 3 of the Convention where the measure was imposed in connection with lawful arrest or detention and did not entail use of force, or public exposure, exceeding what was reasonably considered necessary in the circumstances. Even where handcuffing was not made necessary by the detainee's own conduct and there was a short public exposure, the minimum threshold of severity under Article 3 of the Convention was not reached in the case of Raninen v. Finland (no. 20972/92, Reports of Judgments and Decisions 1997-VIII), as the police officer had acted in the belief that he had complied with relevant regulations; there was therefore no intention to humiliate and it had not been shown that the applicant had been adversely affected.

112. A particular characteristic of the treatment complained of, the forced shaving off of a prisoner's hair, is that it consists in a forced change of the person's appearance by the removal of his hair. The person undergoing that treatment is very likely to experience a feeling of inferiority as his physical appearance is changed against his will.

113. Furthermore, for at least a certain period of time a prisoner whose hair has been shaved off carries a mark of the treatment he has undergone. The mark is immediately visible to others, including prison staff, co-detainees and visitors or the public, if the prisoner is released or brought into a public place soon thereafter. The person concerned is very likely to feel hurt in his dignity by the fact that he carries a visible physical mark.

114. The Court thus considers that the forced shaving off of detainees' hair is in principle an act which may have the effect of diminishing their human dignity or may arouse in them feelings of inferiority capable of humiliating and debasing them. Whether or not the minimum threshold of severity is reached and, consequently, whether or not the treatment complained of constitutes degrading treatment contrary to Article 3 of the Convention will depend on the particular facts of the case, including the victim's personal circumstances, the context in which the impugned act was carried out and its aim.

115. The Court rejects as being unsubstantiated the Government's allegation that the applicant's hair was shaved off as a hygienic measure. It has not been alleged that a problem of infestation existed in the particular detention facility. It is also unclear why the hygienic requirements for entry into the isolation cell would differ from those concerning other cells in the same detention facility.

116. The Government have not offered any other explanation. Therefore, even assuming that there was a practice of shaving off of the hair of prisoners punished by confinement in an isolation cell (see paragraph 98 above, about the practice noted by the CPT in one prison in the former Yugoslav Republic of Macedonia), the act complained of had no legal basis and valid justification.

117. The Court thus considers that even if it was not intended to humiliate, the removal of the applicant's hair without specific justification contained in itself an arbitrary punitive element and was therefore likely to appear in his eyes to be aimed at debasing and/or subduing him.

118. Furthermore, in the particular case the applicant must have had reasons to believe that the aim had been to humiliate him, given the fact that his hair was shaved off by the prison administration in the context of a punishment imposed on him for writing critical and offensive remarks about prison warders, among others (see paragraphs 65-76 above).

119. Additional factors to be taken into consideration in the present case are the applicant's age - 55 at the relevant time - and the fact that he appeared at a public hearing nine days after his hair had been shaved off (see paragraphs 9 and 74 above).

120. Having regard to the foregoing, the Court considers that in the particular circumstances of the present case the shaving off of the applicant's hair in the context of his punishment by confinement in an isolation cell for writing critical and offensive remarks about prison warders and State organs constituted an unjustified treatment of sufficient severity to be characterised as degrading within the meaning of Article 3 of the Convention.

121. It follows that there has been a violation of Article 3 of the Convention on account of the forced removal of the applicant's hair.

3. Medical examinations and interventions in a degrading context

a. Unjustified gynaecological examination

In the 2011 case of Yazgül Yilmaz v. Turkey, the applicant, 16 years old, complained about an unnecessary gynaecological examination in police custody:

(Case 37) (Translation)

I. Gynaecological and medical examinations

43. The Court observes that the applicant, then aged sixteen, had been arrested on 15 July 2002 for aiding and abetting an illegal organisation. The case file does not show that her parents or legal representative were informed of the arrest. The minor was held for two days on the premises of the Kızıltepe Security Directorate. She was then remanded in custody until 3 October 2002.

44. During her detention, Ms Yılmaz underwent several medical examinations. The first and last examinations, which took place on 15 and 17 July 2002, were intended to establish her condition at the time she was taken into police custody and whether she had been subjected to violence during that period. In addition, on 16 July 2002 the Juvenile Commissioner of the Kızıltepe Security Directorate ordered a gynaecological examination. The purpose of the examination was to establish whether or not the applicant's hymen had ruptured.

45. However, in the present case, as regards the gynaecological examination, there is nothing in the file to suggest that the authorities sought to obtain the consent of the applicant or her legal representative. Admittedly, the application of 16 July 2002 stated that the gynaecological examination had been requested by the applicant. However, the Court has reservations as to whether the applicant's consent had actually been sought or obtained, inasmuch as no document signed by the applicant or her representative was submitted in support of that assertion. Moreover, it was clear from the gynaecologist's statements that he had never sought to ascertain whether the applicant's consent or that of her representative had been obtained (see paragraph 17 above). Moreover, the applicant stated before the public prosecutor that she had never given her consent (see paragraph 15 above).

In any event, in the Court's view, the process of obtaining the consent of a minor should have been surrounded by a minimum of safeguards commensurate with the importance of a gynaecological examination. Moreover, Ms Yılmaz could not have been expected to resist such an examination, given her vulnerability while in the hands of the authorities, who had exercised total control over her throughout her detention (Y.F. v. Turkey, no. 24209/94, § 34, ECHR 2003 IX). Thus, in the instant case, the Court cannot rely on the statement in the request for a gynaecological examination to the effect that the applicant had requested it.

46. The Court also notes that at the time there was a legal vacuum in relation to the gynaecological examination of women prisoners (see Y.F., cited above, § 43, and Juhnke v. Turkey, no. 52515/99, § 76, 13 May 2008). Based simply on the rules governing medical examinations of persons in police custody, such examinations were carried out without any legal guarantee against arbitrary acts (see Y.F., cited above, § 43).

47. In this connection, it should be noted that, unlike a physical medical examination whose main purpose is to establish the visible after-effects of traces of physical violence, a gynaecological examination, which always involves touching the genitals, may constitute an additional trauma for the person concerned. In the case of a gynaecological examination of a minor, it therefore seems necessary to consider additional safeguards to those provided for adults. For example, the consent of the minor and her representative should be obtained at all stages of the examination, she should be offered the choice of an accompanying person, a third party of her choice, the possibility of being examined by a male or female doctor according to her preference, she should be informed of the reason for the examination, how it is carried out and its results, and her modesty should be respected.

48. Consequently, the Court cannot agree with the widespread practice of automatically subjecting female detainees to a gynaecological examination, on the sole ground that the examination is necessary to prevent false accusations of sexual violence being made against members of the law-enforcement agencies. This practice in no way takes into account the interests of the women detained and does not refer to any medical necessity (compare Y.F., cited above, § 43). In this connection, it should also be pointed out that the applicant had never complained of being raped while in

police custody. Her allegations of sexual harassment could in no way be refuted by a hymen examination, the purpose of which is to provide an indication of a person's virginity.

49. The Court notes with interest that Articles 75, 76 and 77 of the new Code of Criminal Procedure, as amended on 25 May 2005, regulate for the first time internal examinations of the body, including gynaecological examinations. Procedural guarantees (the body competent to order such examinations, the person's consent, the choice of doctor, etc.) have been provided. In addition, on 1 June 2005, the Criminal Procedure Directive on body examinations, genetic investigations and physical identifications was adopted (paragraph 27 above). However, these texts do not provide for any specific measures to protect minors.

50. The Court also attaches weight to the fact that, according to the report of 13 October 2004 drawn up by a panel of the Izmir Medical Association, the medical certificates drawn up following the examinations to which the applicant had been subjected did not comply with the medical assessment criteria laid down in the circulars adopted by the Ministry of Health and in the Istanbul Protocol, inasmuch as they did not make it possible to detect whether the applicant had been subjected to any physical or psychological violence. According to the same report, carrying out a gynaecological examination without the applicant's consent could be considered sexual trauma. The report also confirmed the diagnosis of post-traumatic stress disorder and considered that the applicant's account that she had been subjected to violence while in police custody was largely corroborated by the findings of the medical reports (see paragraph 14 below). The fact that the report had been drawn up more than two years after the events did not alter this conclusion, since it was based on the findings of numerous examinations carried out between 7 November 2002 and 2 July 2004 by a general practitioner, an orthopaedist, a gynaecologist and a psychiatrist (see paragraph 14 above).

51. Taken together, the above elements, in particular the report of 13 October 2004, create a strong presumption in favour of the applicant's assertions as to the superficiality of the medical examinations in question.

52. Accordingly, the Court observes that the authorities, who had deprived Ms Yılmaz of her liberty, did not take any positive measures to protect her while in police custody. The rudimentary nature of the medical certificates deprived the medical examinations to which the applicant had been subjected of any useful effect. Similarly, although the authorities could have, and indeed should have, been aware that a gynaecological examination to which a minor was subjected without the benefit of adequate safeguards, such as proper consent or adequate accompaniment, was likely to cause additional trauma to that caused by the conditions of deprivation of liberty, they had taken no precautions.

53. The Court therefore considers that the lack of fundamental safeguards during the applicant's detention in the conditions described above placed her in a state of profound distress. It also considers that the authorities who decided to subject the minor to a gynaecological examination could not have been unaware of the psychological consequences of that examination. In view of the fact that the examination necessarily caused her a feeling of extreme anxiety, given her age and her situation as an unaccompanied minor, it meets the threshold for classification as degrading treatment.

54. There has therefore been a violation of Article 3 of the Convention in this respect.

b. Forcible administration of emetics

In the 2006 case of Jalloh v. Germany, the applicant complained about the forcible administration of emetics in order to obtain evidence of a drugs offence.

(Case 38)

11. On 29 October 1993 four plain-clothes policemen observed the applicant on at least two different occasions take a tiny plastic bag (a socalled "bubble") out of his mouth and hand it over to another person in exchange for money. Believing that these bags contained drugs, the police officers went to arrest the applicant, whereupon he swallowed another bubble he still had in his mouth.

12. The police officers did not find any drugs on the applicant. Since further delay might have frustrated the conduct of the investigation, the public prosecutor ordered that emetics (Brechmittel) be administered to the applicant by a doctor in order to provoke the regurgitation of the bag (Exkorporation).

13. The applicant was taken to a hospital in Wuppertal-Elberfeld. According to the Government, the doctor who was to administer the emetics questioned the applicant about his medical history (a procedure known as obtaining an anamnesis). This was disputed by the applicant, who claimed that he had not been questioned by a doctor. As the applicant refused to take the medication necessary to provoke vomiting, he was held down and immobilised by four police officers. The doctor then forcibly administered to him a salt solution and the emetic ipecacuanha syrup through a tube introduced into his stomach through the nose. In addition, the doctor injected him with apomorphine, another emetic that is a derivative of morphine. As a result, the applicant regurgitated one bubble containing 0.2182 grams of cocaine. Approximately an hour and a half after being arrested and taken to the hospital, the applicant was examined by a doctor and declared fit for detention.

14. When visited by the police in his cell two hours after being given the emetics, the applicant, who was found not to speak German, said in broken English that he was too tired to make a statement about the alleged offence.

15. Pursuant to an arrest warrant that had been issued by the Wuppertal District Court, the applicant was remanded in custody on 30 October 1993.

16. The applicant maintained that for three days following the treatment to which he was subjected he was only able to drink soup and that his nose repeatedly bled for two weeks because of wounds he had received when the tube was inserted. This was disputed by the Government, who stressed that the applicant had failed to submit a medical report to prove his allegation.

17. Two and a half months after the administration of the emetics, the applicant underwent a gastroscopy in the prison hospital after complaining of continuous pain in the upper region of his stomach. He was diagnosed as suffering from irritation in the lower area of the oesophagus caused by the reflux of gastric acid. The medical report did not expressly associate this condition with the forced administration of the emetics.

18. The applicant was released from prison on 23 March 1994. He claimed that he had had to undergo further medical treatment for the stomach troubles he had suffered as a result of the forcible administration of the emetics. He did not submit any documents to confirm that he had received medical treatment. The Government, for their part, maintained that the applicant had not received any medical treatment. (…)

B. The Court's assessment

1. Relevant principles

67. According to the Court's well-established case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. 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 (see, inter alia, Price v. the United Kingdom, no. 33394/96, § 24, ECHR 2001-VII; Mouisel v. France, no. 67263/01, § 37, ECHR 2002-IX; and Naumenko v. Ukraine, no. 42023/98, § 108, 10 February 2004). Allegations of ill-treatment must be supported by appropriate evidence (see, mutatis mutandis, Klaas v. Germany, 22 September 1993, § 30, Series A no. 269). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see Ireland v. the United Kingdom, 18 January 1978, § 161 in fine, Series A no. 25, and Labita v. Italy [GC], no. 26772/95, § 121, ECHR 2000-IV).

68. Treatment has been held by the Court to be "inhuman" because, inter alia, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering (see Labita, cited above, § 120). Treatment has been considered "degrading" when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance (see Hurtado v. Switzerland, 28 January 1994, opinion of the Commission, § 67, Series A no. 280), or when it was such as to drive the victim to act against his will or conscience (see, for example, Denmark, Norway, Sweden and the Netherlands v. Greece (the "Greek case"), nos. 3321/67, 3322/67, 3323/67 and 3344/67, Commission's report of 5 November 1969, Yearbook 12, p. 186, and Keenan v. the United Kingdom, no. 27229/95, § 110, ECHR 2001-III). Furthermore, in considering whether treatment is "degrading" within the meaning of Article 3, one of the factors which the Court will take into account is the question whether its object was to humiliate and debase the person concerned, although the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see Raninen v. Finland, 16 December 1997, § 55, Reports of Judgments and Decisions 1997VIII; Peers v. Greece, no. 28524/95, §§ 68 and 74, ECHR 2001-III; and Price, cited above, § 24). In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or 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 (see Labita, cited above, § 120).

69. With respect to medical interventions to which a detained person is subjected against his or her will, Article 3 of the Convention imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance. The persons concerned nevertheless remain under the protection of Article 3, whose requirements permit of no derogation (Mouisel, cited above, § 40, and Naumenko, cited above, § 112). A measure which is of therapeutic necessity from the point of view of established principles of medicine cannot in principle be regarded as inhuman and degrading (see, in particular, Herczegfalvy v. Austria, 24 September 1992, § 82, Series A no. 244, and Naumenko, cited above, § 112). This can be said, for instance, about forcefeeding that is aimed at saving the life of a particular detainee who consciously refuses to take food. The Court must nevertheless satisfy itself that a medical necessity has been convincingly shown to exist and that procedural guarantees for the decision, for example to force-feed, exist and are complied with (see Nevmerzhitsky v. Ukraine, no. 54825/00, § 94, ECHR 2005-II).

70. Even where it is not motivated by reasons of medical necessity, Articles 3 and 8 of the Convention do not as such prohibit recourse to a medical procedure in defiance of the will of a suspect in order to obtain from him evidence of his involvement in the commission of a criminal offence. Thus, the Convention institutions have found on several occasions that the taking of blood or saliva samples against a suspect's will in order to investigate an offence did not breach these Articles in the circumstances of the cases examined by them (see, inter alia, X v. the Netherlands, no. 8239/78, Commission decision of 4 December 1978, Decisions and Reports (DR) 16, pp. 187-89, and Schmidt v. Germany (dec.), no. 32352/02, 5 January 2006).

71. However, any recourse to a forcible medical intervention in order to obtain evidence of a crime must be convincingly justified on the facts of a particular case. This is especially true where the procedure is intended to retrieve from inside the individual's body real evidence of the very crime of which he is suspected. The particularly intrusive nature of such an act

requires a strict scrutiny of all the surrounding circumstances. In this connection, due regard must be had to the seriousness of the offence in issue. The authorities must also demonstrate that they took into consideration alternative methods of recovering the evidence. Furthermore, the procedure must not entail any risk of lasting detriment to a suspect's health (see, mutatis mutandis, Nevmerzhitsky, cited above, §§ 94 and 97, and Schmidt, cited above).

72. Moreover, as with interventions carried out for therapeutic purposes, the manner in which a person is subjected to a forcible medical procedure in order to retrieve evidence from his body must not exceed the minimum level of severity prescribed by the Court's case-law on Article 3 of the Convention. In particular, account has to be taken of whether the person concerned experienced serious physical pain or suffering as a result of the forcible medical intervention (see Peters v. the Netherlands, no. 21132/93, Commission decision of 6 April 1994, DR 77-B; Schmidt, cited above; and Nevmerzhitsky, cited above, §§ 94 and 97).

73. Another material consideration in such cases is whether the forcible medical procedure was ordered and administered by medical doctors and whether the person concerned was placed under constant medical supervision (see, for example, Ilijkov v. Bulgaria, no. 33977/96, Commission decision of 20 October 1997, unreported).

74. A further relevant factor is whether the forcible medical intervention resulted in any aggravation of his or her state of health and had lasting consequences for his or her health (see Ilijkov, cited above, and, mutatis mutandis, Krastanov v. Bulgaria, no. 50222/99, § 53, 30 September 2004).

2. Application of those principles to the present case

75. At the outset the Court notes that in the Government's view the removal of the drugs from the applicant's stomach by the administration of emetics could be considered to be required on medical grounds, as he risked death through poisoning. However, it is to be observed that the domestic courts all accepted that, when ordering the administration of emetics, the authorities had acted on the basis of Article 81a of the Code of Criminal Procedure. This provision entitles the prosecuting authorities to order a bodily intrusion to be effected by a doctor without the suspect's consent in order to obtain evidence, provided that there is no risk of damage to the suspect's health. However, Article 81a does not cover measures taken to avert an imminent danger to a person's health. Furthermore, it is undisputed that the emetics were administered in the absence of any prior assessment of the dangers involved in leaving the drug bubble in the applicant's body. The Government also stated that emetics are never administered to juvenile dealers unless they are suspected of selling drugs on a commercial basis. Juvenile dealers are, however, in no less need of medical treatment than adults. Adult dealers, for their part, run the same risks to their health as juvenile dealers when administered emetics. Consequently, the Court is not satisfied that the prosecuting authorities' decision to order the impugned measure was based on and required by medical reasons, that is, the need to protect the applicant's health. Instead, it was aimed at securing evidence of a drugs offence.

76. This finding does not by itself warrant the conclusion that the impugned intervention contravenes Article 3. As noted above (see paragraph 70 above), the Court has found on several occasions that the Convention does not, in principle, prohibit recourse to a forcible medical intervention that will assist in the investigation of an offence. However, any interference with a person's physical integrity carried out with the aim of obtaining evidence must be the subject of rigorous scrutiny, with the following factors being of particular importance: the extent to which forcible medical intervention was necessary to obtain the evidence, the health risks for the suspect, the manner in which the procedure was carried out and the physical pain and mental suffering it caused, the degree of medical supervision available and the effects on the suspect's health (compare and contrast also the criteria established by the United States courts in similar cases – see paragraphs 51-52 above). In the light of all the circumstances of the individual case, the intervention must not attain the minimum level of severity that would bring it within the scope of Article 3. The Court will now examine each of these elements in turn.

77. As regards the extent to which the forcible medical intervention was necessary to obtain the evidence, the Court notes that drug trafficking is a serious offence. It is acutely aware of the problem confronting Contracting States in their efforts to combat the harm caused to their societies through the supply of drugs (see, in particular, D. v. the United Kingdom, 2 May 1997, § 46, Reports 1997-III). However, in the present case it was clear before the impugned measure was ordered and implemented that the street dealer on whom it was imposed had been storing the drugs in his mouth and could not, therefore, have been offering drugs for sale on a large scale. This is reflected in the sentence (a six-month suspended prison sentence and probation), which is at the lower end of the range of possible sentences. The Court accepts that it was vital for the investigators to be able to determine the exact amount and quality of the drugs that were being offered for sale. However, it is not satisfied that the forcible administration of emetics was indispensable in the instant case to obtain the evidence. The prosecuting authorities could simply have waited for the drugs to pass through his system naturally. It is significant in this connection that many other member States of the Council of Europe use this method to investigate drugs offences.

78. As regards the health risks attendant on the forcible medical intervention, the Court notes that it is a matter of dispute between the parties whether and to what extent the administration of ipecacuanha syrup through a tube introduced into the applicant's nose and the injection of apomorphine posed a risk to his health. Whether or not such measures are dangerous is, as has been noted above (see paragraphs 41-44), also a matter of dispute among medical experts. While some consider it to be entirely harmless and in the suspect's best interest, others argue that in particular

the use of a nasogastric tube to administer emetics by force entails serious risks to life and limb and should therefore be prohibited. The Court is not satisfied that the forcible administration of emetics, a procedure that has to date resulted in the deaths of two people in the respondent State, entails merely negligible health risks. It also observes in this respect that the actual use of force – as opposed to the mere threat of force – has been found to be necessary in the respondent State in only a small proportion of the cases in which emetics have been administered. However, the fatalities occurred in cases in which force was used. Furthermore, the fact that in the majority of the German Länder and in at least a large majority of the other member States of the Council of Europe the authorities refrain from forcibly administering emetics does tend to suggest that such a measure is considered to pose health risks.

79. As to the manner in which the emetics were administered, the Court notes that, after refusing to take the emetics voluntarily, the applicant was pinned down by four police officers, which shows that force verging on brutality was used against him. A tube was then fed through his nose into his stomach to overcome his physical and mental resistance. This must have caused him pain and anxiety. He was subjected to a further bodily intrusion against his will through the injection of another emetic. Account must also be taken of the applicant's mental suffering while he waited for the emetics to take effect. During this time he was restrained and kept under observation by police officers and a doctor. Being forced to regurgitate under these conditions must have been humiliating for him. The Court does not share the Government's view that waiting for the drugs to pass through his body naturally would have been just as humiliating. Although it would have entailed some invasion of privacy because of the need for supervision, such a measure nevertheless involves a natural bodily function and so causes considerably less interference with a person's physical and mental integrity than forcible medical intervention (see, mutatis mutandis, Peters, cited above, and Schmidt, cited above).

80. As regards the medical supervision of the administration of the emetics, the Court notes that the impugned measure was carried out by a doctor in a hospital. In addition, after the measure was executed the applicant was examined by a doctor and declared fit for detention. However, it is a matter of dispute between the parties whether an anamnesis of the applicant was obtained prior to the execution of the measure in order to ascertain whether his health might be at risk if emetics were administered to him against his will. Since the applicant violently resisted the administration of the emetics and spoke no German and only broken English, the assumption must be that he was either unable or unwilling to answer any questions that were put by the doctor or to submit to a prior medical examination. The Government have not submitted any documentary or other evidence to show otherwise.

81. As to the effects of the impugned measure on the suspect's health, the Court notes that the parties disagree about whether the applicant has suffered any lasting damage to his health, notably to his stomach. Having regard to the material before it, it finds that it has not been established that either his treatment for stomach troubles in the prison hospital two and a half months after his arrest or any subsequent medical treatment he received was caused by the forcible administration of the emetics. This conclusion does not, of course, call into question the Court's above finding that the forcible medical intervention was not without possible risk to the applicant's health.

82. Having regard to all the circumstances of the case, the Court finds that the impugned measure attained the minimum level of severity required to bring it within the scope of Article 3. The authorities subjected the applicant to a grave interference with his physical and mental integrity against his will. They forced him to regurgitate, not for therapeutic reasons, but in order to retrieve evidence they could equally have obtained by less intrusive methods. The manner in which the impugned measure was carried out was liable to arouse in the applicant feelings of fear, anguish and inferiority that were capable of humiliating and debasing him. Furthermore, the procedure entailed risks to the applicant's health, not least because of the failure to obtain a proper anamnesis beforehand. Although this was not the intention, the measure was implemented in a way which caused the applicant both physical pain and mental suffering. He has therefore been subjected to inhuman and degrading treatment contrary to Article 3.

83. Accordingly, the Court concludes that there has been a violation of Article 3 of the Convention.

c. Forced psychiatric treatment

In the 2011 case of Gorobet v. Moldova, the applicant complained about being placed in a closed psychiatric establishment for forty-one days without any medical justification:

(Case 39)

41. The Court notes that according to the Government and to the findings of the Moldovan prosecutors, the applicant was hospitalised against his will on the basis of an official document referring him for psychiatric medical treatment, which was issued by the psychiatrist A.G. from the Rascani hospital. In reaching this conclusion, they relied on the statements made by Doctor A.G., who submitted that he had seen the applicant on 25 February 2008, when the latter was brought to his office by the two police officers who had arrested him on the same date (see paragraph 18 above). The Court has serious reservations about the truthfulness of this statement, since Doctor A.G.'s account was not confirmed by any of the other persons questioned. In particular, the police officers who had arrested the applicant on the evening of 25 February 2008 stated that they had taken him directly to the Bălți psychiatric hospital (see paragraph 17 above). The applicant's family doctor submitted that it had been the applicant's sister who had obtained the document from Doctor A.G. (see paragraph 14 above). The applicant's sister submitted that Doctor A.G.

had given her the document without seeing the applicant (see paragraph 16 above). Moreover, Doctor A.G.'s account of the events is inconsistent with his own actions, namely with the fact that only two months after the applicant's release from the Bălți psychiatric hospital, he issued him with a report confirming his mental health, without making any note that a mere two months earlier the applicant had been hospitalised in a psychiatric institution at his (Doctor A.G.'s) own initiative (see paragraph 11 above).

42. In such circumstances, the Court cannot but conclude that at the time of the applicant's forced hospitalisation there existed no expert opinion at all from a doctor concerning his state of health or the need for his compulsory confinement in a medical institution. Accordingly, it has not reliably been shown by the Government that the applicant was of unsound mind prior to his hospitalisation. It is true that after his confinement in the Bălți psychiatric hospital he was diagnosed with paranoid depression by the doctors treating him; however, it was not argued by the Government that those records contained information according to which the applicant presented any risk to himself or to other persons, and that therefore his mental disorder was of a kind or degree warranting compulsory confinement. (…)

51. With respect to medical interventions to which a detained person is subjected against his or her will the Court has held that a measure which is of therapeutic necessity from the point of view of established principles of medicine cannot in principle be regarded as inhuman and degrading (see, in particular, Herczegfalvy v. Austria, 24 September 1992, § 82, Series A no. 244, and Naumenko, cited above, § 112). The Court must nevertheless satisfy itself that a medical necessity has been convincingly shown to exist and that procedural guarantees for the decision exist and are complied with (see Nevmerzhitsky v. Ukraine, no. 54825/00, § 94, ECHR 2005-II).

52. The applicant argued that his confinement and forced psychiatric treatment in the Bălți psychiatric hospital caused him severe mental suffering amounting to inhuman and degrading treatment. In the circumstances of the present case, the Court sees no reasons to disagree with the applicant and notes that no medical necessity to subject the applicant to psychiatric treatment has been shown to exist and that his subjecting to psychiatric treatment was unlawful and arbitrary (see paragraphs 41 and 42 above). Moreover, the Court notes the considerable duration of the medical treatment which lasted for forty-one days and the fact that the applicant was not allowed having contact with the outside world during his confinement (see paragraph 8 above). In the Court's view such unlawful and arbitrary treatment was at the very least capable to arouse in the applicant feelings of fear, anguish and inferiority. Accordingly, the Court considers that the psychiatric treatment to which the applicant was subjected could amount at least to degrading treatment within the meaning of Article 3 of the Convention.

53. Accordingly, the Court concludes that there has been a violation of Article 3 of the Convention.

4. Strip searches

While searches, including strip searches, may be necessary in prison to preserve security, the circumstances of such a search may be degrading, as shown in the 2001 case of Iwanczuk v. Poland:

(Case 40)

15. On 19 September 1993 at 9.30 p.m the applicant requested the prison authorities to allow him to vote in the parliamentary elections, as there were voting facilities for detainees in the Wrocław prison. The prison guard took him to the guards' room. The applicant was then told by a group of four guards that in order to be allowed to vote he must get undressed and undergo a body search. The applicant took off his clothes except his underwear, whereupon the prison guards allegedly ridiculed him, exchanged humiliating remarks about his body and abused him verbally. The applicant was ordered to strip naked. He refused to do so and repeatedly requested permission to vote without a body search. As this was refused, the applicant was taken back to his cell without being allowed to vote. (…)

50. The Court further recalls that, according to the Convention organs' case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, § 162). The same holds true insofar as degrading treatment is concerned (Costello-Roberts v. the United Kingdom judgment of 25 March 1993, Series A no. 247-C, p. 59, § 30). As for the criteria concerning the notion of "degrading treatment", the Court notes that the treatment itself will not be degrading, unless the person concerned has undergone humiliation or debasement attaining a minimum level of severity. The assessment of this minimum level of severity is relative; it has to be assessed with regard to the circumstances of any given case (cf., among many authorities, Ireland v. the United Kingdom judgment; the Dougoz v. Greece, no. 40907/98, § 44).

51. It is also recalled that treatment may be considered degrading if it is such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see the Ireland v. the United Kingdom judgment cited above, pp. 66-67, § 167). Moreover, it is sufficient if the victim is humiliated in his or her own eyes (see the Tyrer v. the United Kingdom judgment of 25 April 1978, Series A no. 26, p. 16, § 32, Smith and Grady . the United Kingdom, nos. 33985/96 ; 33986/96, § 120).

52. Furthermore, in considering whether a 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. Even the absence of such a purpose cannot conclusively rule out a finding of a violation of Article 3 (Peers v. Greece, no. 28524/95, §§ 67-68, 74; Valašinas v. Lithuania, no.44558/98, § 101).

53. The Court stresses that a person detained on remand, and whose criminal responsibility has not been established by a final judicial decision, enjoys a presumption of innocence. This assumption does not apply only to his or her procedural rights in the criminal proceedings, but also to the legal regime governing the rights of such persons in detention centres, including the manner in which a detainee should be treated by prison guards. It must be further emphasised that the authorities exercise full control over a person held in custody and their way of treating a detainee must, in view of his or her vulnerability, be subjected to strict scrutiny under the Convention (cf., mutatis mutandis, the Tomasi v. France judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 113-115).

54. In the present case the applicant wished to avail himself of his basic right, the right to vote in parliamentary elections, in the election room arranged for that purpose within the confines of the prison. The Court considers that it is doubtful whether the exercise of this right by persons detained on remand should be subject to any special conditions other than those dictated by normal requirements of prison security. In any event, the Court does not find, on the facts of the case, that it was justified that such conditions should include an order to strip naked in front of a group of prison guards.

55. The Court first notes in this connection that in their submissions the Government have confined themselves to pointing out to the lawfulness of the measures complained of. However, they have not addressed the question of how the relevant provisions of domestic law were applied in practice at the material time in the context of voting in parliamentary elections organised in prisons and detention centres. In particular, it has not been argued or shown that this measure was applied uniformly to all detainees in the Wrocław detention centre on the material day so as to ensure security of the elections.

56. The Court further considers that, given the applicant's personality, his peaceful behaviour during the entire period of his detention, the fact that he was not charged with a violent crime and had no previous criminal record, it has not been shown that there were grounds on which to fear that he would behave violently. Consequently, it has not been shown that the order of body search was indeed justified.

57. Also, in the assessment of the treatment complained of, regard must be had to the intentions of the persons inflicting it, namely whether they acted with a deliberate intention to degrade or humiliate. It is noted in this connection that the applicant was insulted and derided by four prison guards. The submissions of the Government in this respect do not allow for establishing that these submissions are untrue. This is so as no internal administrative enquiry of an adversarial character was held into the circumstances of the case. The only factual findings were made in the framework of the applicant's complaint to the Supreme Court. The Court requested the local Regional Court to conduct investigations in this respect. The Regional Court subsequently requested the prison authorities to submit written declarations of the persons involved in the case and the Supreme Court made its findings on the basis of a note prepared on the basis of testimony given by the prison guards. The applicant was not questioned in the course of that enquiry, nor had it been shown that he had any opportunity to be acquainted with this testimony, or to comment on the statement of the guards. This, in the Court's view, shows the reluctance on the part of the authorities to investigate the incident properly. Consequently, the Court cannot attach much weight to the Government's arguments refuting the applicant's allegations.

58. Against the above background, the Court observes that the applicant was ordered to strip naked in front of a group of prison guards. No compelling reasons have been adduced to find that this order was, in the light of the applicant's personality and all the other circumstances of the case, necessary and justified by security reasons.

59. In addition, whilst strip searches may be necessary on occasions to ensure prison security or prevent disorder in prisons, they must be conducted in an appropriate manner. In the present case, the prison's guards verbally abused and derided the applicant. Their behaviour was intended to cause in the applicant feelings of humiliation and inferiority. This, in the Court's view, showed a lack of respect for the applicant's human dignity. Given that such treatment was afforded to a person who, as stated above, wished to exercise his right to vote within the framework of arrangements specially provided for in Wrocław prison for persons detained on remand, and in view of the absence of persuasive justification therefor, the Court is of the view that in the present case such behaviour which humiliated and debased the applicant, amounted to degrading treatment contrary to Article 3.

60. Accordingly, there has been a violation of Article 3 of the Convention.

In the 2007 case of Wieser v. Austria, the applicant complained about being strip-searched in the course of arrest:

(Case 41)

36. (…) in considering whether treatment is "degrading" within the meaning of Article 3, one of the factors which the Court will take into account is the question whether its object was to humiliate and debase the person concerned, although the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see Raninen v. Finland, judgment of 16 December 1997, Reports of Judgments and Decisions 1997-VIII, pp. 2821-22, § 55; Peers v. Greece, no. 28524/95, §§ 68 and 74, ECHR 2001-III; Price, cited above, § 24). In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or 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 (see Labita, cited above, § 120).

37. Turning to the particular circumstances of the present case, the Court observes that the police, as a result of the suspicion against the applicant and further information given by his wife, had reason to believe that they were preparing the arrest of a person who was violent, dangerous, and, furthermore, in possession of a firearm and trained in hand-to-hand combat. In this context, the Court finds that the intervention of six specially equipped, masked, police officers does not in itself raise an issue under Article 3 of the Convention. Furthermore, the Court does not find that in the light of these circumstances the applicant's handcuffing during all the time of his arrest – some four hours –which did not entail public exposure and had not caused any physical injuries or long-term effects on the applicant's mental state attained the threshold of Article 3 (see mutatis mutandis Raninen v. Finland, cited above, §§ 56-59).

38. The Court notes that the applicant further submitted that in the course of the intervention he was threatened to be "picked off" and forced to the ground where he remained lying face down while a police officer pressed his knee on the back during some 15 minutes. However, these facts were disputed by the police officers in the domestic proceedings and neither the domestic courts nor the Government made any conclusive statement on that issue. There being no further information before the Court, the question of whether the applicant had in fact been subjected to the described treatment remains a matter for speculation and assumption. Accordingly, the Court cannot establish, beyond reasonable doubt, that the impugned treatment allegedly contrary to Article 3 of the Convention had actually taken place (see mutatis mutandis Ireland v. the United Kingdom, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). Furthermore, the Court finds that the domestic authorities by questioning the police officers in the domestic proceedings carried out sufficient investigation in this matter and, therefore, no issue arises under the procedural aspect of Article 3 either (see mutatis mutandis Boicenco v. Moldova, no. 41088/05, §§ 12027, 11 July 2006)

39. The applicant next complained about the fact that he was strip searched. The Court notes that it has already had occasion to apply the principles of Article 3 of the Convention set out above in the context of strip and intimate body searches. A search carried out in an appropriate manner with due respect for human dignity and for a legitimate purpose (see mutatis mutandis, Yankov v. Bulgaria, no. 39084/97, §§166-67, ECHR 2003-XII where there was no valid reason established for the shaving of the applicant prisoner's head) may be compatible with Article 3. However, where the manner in which a search is carried out has debasing elements which significantly aggravate the inevitable humiliation of the procedure, Article 3 has been engaged: for example, where a prisoner was obliged to strip in the presence of a female officer, his sexual organs and food touched with bare hands (Valašinas v. Lithuania, no. 44558/98, § 117, ECHR 2001VIII) and where a search was conducted before four guards who derided and verbally abused the prisoner (Iwańczuk v. Poland, no. 25196/94, § 59, 15 November 2001). Similarly, where the search has no established connection with the preservation of prison security and prevention of crime or disorder, issues may arise (see, for example, Iwańczuk, cited above, §§ 58-59 where the search of the applicant, a remand prisoner detained on charges of non-violent crimes, was conducted on him when he wished to exercise his right to vote; Van der Ven v. the Netherlands, no. 50901/99, §§ 61-62, ECHR 2003-II, where the strip-searching was systematic and long term without convincing security needs). Finally, in a case concerning the strip search of visitors to a prisoner which had a legitimate aim but had been carried out in breach of the relevant regulations, the Court found that this treatment did not reach the minimum level of severity prohibited by Article 3 but was in breach of the requirements under Article 8 § 2 of the Convention (see Wainwright v. the United Kingdom, no. 12350/04, 20 September 2006).

40. In the present case, the Court notes first that the applicant in the present case was not simply ordered to undress, but was undressed by the police officers while being in a particular helpless situation. Even disregarding the applicant's further allegation that he was blindfolded during this time which was not established by the domestic courts, the Court finds that this procedure amounted to such an invasive and potentially debasing measure that it should not have been applied without a compelling reason. However, no such argument has been adduced to show that the strip search was necessary and justified for security reasons. The Court notes in this regard that the applicant, who was already handcuffed was searched for arms and not for drugs or other small objects which might not be discerned by a simple body search and without undressing the applicant completely.

41. Having regard to the foregoing, the Court considers that in the particular circumstances of the present case the strip search of the applicant during the police intervention at his home constituted an unjustified treatment of sufficient severity to be characterised as "degrading" within the meaning of Article 3 of the Convention.

42. It follows that there has been a violation of Article 3 of the Convention.

In the 2003 case of Lorsé v. the Netherlands, the applicant had been subjected to a weekly strip-search during a period of more than six years:

(Case 42)

63. In this context, the Court has previously held that complete sensory isolation, coupled with total social isolation, can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason. On the other hand, the removal from association with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or degrading punishment (see Messina v. Italy (dec.), no. 25498/94, ECHR 1999-V). In assessing whether such a measure may fall within the ambit of Article 3 in a given case, regard must be had to the particular conditions, the

stringency of the measure, its duration, the objective pursued and its effects on the person concerned (see Dhoest v. Belgium, application no. 10448/83, Commission's report of 14 May 1987, Decisions and Reports (DR) 55, pp. 20-21, §§ 11718; McFeeley et al. v. the United Kingdom, application no. 8317/78, Commission decision of 15 May 1980, DR 20, p. 44).

b. Application to the present case

64. Turning to the circumstances of the present case, the Court observes first of all that the applicants' complaints of the conditions of Mr Lorsé's detention do not concern the material conditions within the EBI but rather the regime to which he was subjected. To this extent the case may be compared to a series of applications lodged against Italy where the applicants alleged that the special prison regime to which they were subjected pursuant to section 41 bis of the Prison Administration Act resulted in conditions which violated Article 3 of the Convention (see, for instance, Messina v. Italy (dec.), cited above; Indelicato v. Italy (dec.), no. 31143/96, 6 July 2000, unreported; Ganci v. Italy (dec.), no. 41576/98, 20 September 2001, unreported; Bonura v. Italy (dec.), no. 57360/00, 30 May 2002, unreported).

65. The Court notes that paragraphs 62-66 of the CPT report quoted above (paragraph 43) contain a detailed description of conditions obtaining in the EBI drawn up following a visit to the facility. Since neither party have argued that this description is factually incorrect, the Court accepts that it adequately reflects the situation in the EBI. However, the question whether or not Mr Lorsé was subjected to inhuman or degrading treatment within the meaning of Article 3 of the Convention depends on an assessment of the extent to which he was personally affected (see paragraph 62 above).

66. It is not in dispute that, throughout his detention in the EBI, Mr Lorsé was subjected to very stringent security measures. The Court further considers that Mr Lorsé's social contacts were strictly limited, taking into account that he was prevented from having contact with more than three fellow inmates at a time, that direct contact with prison staff was limited, and that, apart from once a month in the case of visits from members of his immediate family, he could only meet with visitors behind a glass partition. However, as it did in the cases against Italy referred to in paragraph 64 above, the Court cannot find that Mr Lorsé was subjected either to sensory isolation or to total social isolation. As a matter of fact, the Italian special regime was significantly more restrictive both as regards association with other prisoners and as regards visits: association with other prisoners was entirely prohibited and only family members were allowed to visit, once a month and for one hour (see Messina, cited above, § 13).

67. Mr Lorsé was placed in the EBI because he was considered extremely likely to attempt to escape from detention facilities with a less strict regime, and if he were to escape, he was deemed to pose an unacceptable risk to society in terms of again committing serious violent crimes (see paragraph 33 above). Although Mr Lorsé denied that he harboured any such intentions, it is not for the Court to examine the validity of the assessment carried out by the domestic authorities. In view of the very serious offences of which Mr Lorsé was convicted (see paragraph 11 above), the Court accepts the assessment made by the domestic authorities.

68. In support of their claim that the EBI regime had such serious damaging effects on Mr Lorsé's mental health as to bring it within the scope of Article 3 of the Convention, the applicants submitted a number of reports relating to examinations of Mr Lorsé's psychological condition. Two of the reports submitted were drawn up during Mr Lorsé's stay in the EBI, while the other two were compiled shortly after his transfer from the EBI. The first two reports, prepared by Mr V. and Dr S. respectively, leave no doubt that Mr Lorsé had difficulties coping with his stay in the EBI and that it had adverse consequences for his functioning, increasingly so as time went on (see paragraphs 25 and 26 above). Dr C., who examined Mr Lorsé two months after his transfer from the EBI, found that he was suffering from a "moderately serious depression with endogenous features" and a "moderately serious panic disorder". In his opinion, there was a causal link between Mr Lorsé's complaints and the psychiatric disorders found by him and Mr Lorsé's long stay in the EBI (see paragraph 27 above). However, Dr S., who examined Mr Lorsé during the latter's stay in the EBI, found insufficient indications to conclude that he was suffering from a depression (see paragraph 26 above), and when Dr D. examined him some five months after his transfer from the EBI, Mr Lorsé did not display any symptoms of a disturbance of a depressive nature. Dr D. thus replied in the negative to the question put by the Government as to whether Mr Lorsé was indeed suffering from a "moderately serious depression" as reported by Dr C. She concluded in addition that the adjustment disorder which had affected Mr Lorsé following his transfer from the EBI had gone into remission by the time of her examination (see paragraph 28 above).

69. The Court does not diverge from the view expressed by the CPT that the situation in the EBI is problematic and gives cause for concern. This must be even more so if detainees are subjected to the EBI regime for protracted periods of time – like Mr Lorsé in the present case, who was held in the EBI for approximately six and a quarter years.

70. The applicants also submitted that, if not inhuman, the treatment to which Mr Lorsé had been subjected was at the very least degrading. In this respect the Court observes that pursuant to the EBI house rules, Mr Lorsé was strip-searched prior to and following an "open" visit as well as after visits to the clinic, the dentist's surgery or the hairdresser's. In addition to this, for more than six years he was also obliged to submit to a strip-search, including an anal inspection, at the time of the weekly cell-inspection (see paragraph 37 above), even if in the week preceding that inspection he had had no contact with the outside world (see paragraph 65 of the CPT report) and despite the fact that he would already have been strip-searched had he received an "open" visit or visited the clinic, dentist or hairdresser's. Thus, this weekly strip-search was carried out as a matter of routine and was not based on any concrete security need or Mr Lorsé's behaviour.

The strip-search as practised in the EBI obliged Mr Lorsé to undress in the presence of prison staff and to have his rectum inspected, which required him to adopt embarrassing positions.

71. For Mr Lorsé, this was one of the features of the regime which was hardest to endure, but the Government maintained that the strip-searches were necessary and justified.

72. The Court has previously found that strip-searches may be necessary on occasions to ensure prison security or to prevent disorder or crime (see Valašinas v. Lithuania, no. 44558/98, § 117, ECHR 2001-VIII; Iwańczuk v. Poland, no. 25196/94, § 59, 15 November 2001, unreported; McFeeley et al. v. the United Kingdom, cited above, §§ 6061). In the cases of Valašinas and Iwańczuk one occasion of strip-search was at issue, whereas the case of McFeeley et al. concerned so-called "close body" searches, including anal inspections, which were carried out at intervals of seven to ten days, before and after visits and before prisoners were transferred to a new wing of the Maze Prison in Northern Ireland, where dangerous objects had in the past been found concealed in the recta of protesting prisoners.

73. In the present case, the Court is struck by the fact that Mr Lorsé was submitted to the weekly strip-search in addition to all the other strict security measures within the EBI. In view of the fact that the domestic authorities, through the reports drawn up by the Psychological Department of their Penitentiary Selection Centre, were well aware that Mr Lorsé was experiencing serious difficulties coping with the regime, and bearing in mind that at no time during Mr Lorsé's stay in the EBI did it appear that anything untoward was found in the course of a strip-search, the Court is of the view that the systematic strip-searching of Mr Lorsé required more justification than has been put forward by the Government in the present case.

74. The Court considers that in the situation where Mr Lorsé was already subjected to a great number of control measures, and in the absence of convincing security needs, the practice of weekly strip-searches that was applied to Mr Lorsé for a period of more than six years diminished his human dignity and must have given rise to feelings of anguish and inferiority capable of humiliating and debasing him.

Accordingly, the Court concludes that the combination of routine strip-searching with the other stringent security measures in the EBI amounted to inhuman or degrading treatment in violation of Article 3 of the Convention. There has thus been a breach of this provision.

In the 2001 case of Valasinas v. Lithuania, the applicant, a male prisoner, complained about having been obliged to undergo a strip-search in the presence of a female officer.

(Case 43)

B. Oral evidence before the Court's delegates

1. The applicant

11. The evidence of the applicant was taken by the Court delegates in Vilnius on 25 May 2000 and then in Pravieniškės on 26 May 2000. The applicant's statements may be summarised as follows (…)

26. On 7 May 1998 the applicant had a personal visit when he was given some additional food. Afterwards he was stopped in the access zone for the usual security check to establish whether he had been given any illegal items. The chief guard, P., conducted the search, while two other officers looked on. P. told the applicant to take off his clothes. When the applicant was only in his underwear, a female prison officer, J., came into the room. P. then told the applicant to strip naked. The officer threatened him with a reprimand in case of non-compliance. The applicant submitted to the order, taking off his underwear, in the presence of Ms J. She was watching the check with the rest of the officers and was smoking. The applicant's body, including his testicles, was examined by the male officers. The officers wore no gloves, touching the applicant's sexual organs and then the food given to him by his relatives, without washing their hands. The applicant was also ordered to do sit-ups to establish whether he had concealed anything in his anus. No unauthorised item was found on him. He alleged that the purpose of the check had been to ridicule him in front of the woman. (…)

114. The applicant complained that the search of his person on 7 May 1998 amounted to degrading treatment in breach of Article 3 of the Convention (see paragraph 26 above). In particular, he was allegedly obliged to strip naked in the presence of a female prison officer, with the intention of humiliating him. He was then ordered to squat, and his sexual organs and the food he had received from his visitor were examined by guards who were not wearing gloves.

115. The Government submitted that they doubted the truth of these allegations as the staff were aware of the relevant regulations and the norms of hygiene.

116. As regards the disputed fact involving the presence of a female officer during the search, the Court notes that its delegates found that a woman, identified by the applicant as Ms J., worked in the prison and that her presence during the check of 7 May 1998 was possible both theoretically and practically. They also found that a search after a personal visit could include stripping the prisoner naked. In the Court's view, the absence of any record of an inquiry by the prison governor into the applicant's complaints at the material time about this search shows a reluctance on the part of the prison authorities to investigate the incident properly. Given that no evidence was presented for the Court to disbelieve the applicant's allegations and that, on the contrary, the Court received some evidence tending to corroborate his claims (see, mutatis mutandis, Timurtaş v. Turkey, no. 23531/94, § 45, ECHR 2000-VI), the Court finds that the search was conducted in the manner described by the applicant.

117. The Court considers that, while strip-searches may be necessary on occasions to ensure prison security or prevent disorder or crime, they must be conducted in an appropriate manner. Obliging the applicant to strip naked in the presence of a woman, and then touching his sexual organs and food with bare hands showed a clear lack of respect for the applicant, and diminished in effect his human dignity. It must have left him with feelings of anguish and inferiority capable of humiliating and debasing him. The Court concludes, therefore, that the search of 7 May 1998 amounted to degrading treatment within the meaning of Article 3 of the Convention.

118. Accordingly, there has been a violation of Article 3 in this respect.

5. Other cases of degrading treatment

a. Use of metal cages for accused persons in a criminal trial

In the 2014 case of Svinarenko and Slyadnev v. Russia, the applicants complained about being put in a metal cage in the courtroom during their trial:

(Case 44)

2. The applicants alleged, in particular, that keeping them in a "metal cage" in a courtroom had amounted to degrading treatment prohibited by Article 3 of the Convention (…).

C. The Court's assessment

1. Relevant principles

113. As the Court has repeatedly stated, 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, among many other authorities, Labita v. Italy [GC], no. 26772/95, § 119, ECHR 2000-IV).

114. Illtreatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum 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 (see, for example, Jalloh v. Germany [GC], no. 54810/00, § 67, ECHR 2006IX). Although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see, among other authorities, V. v. the United Kingdom [GC], no. 24888/94, § 71, ECHR 1999-IX).

115. Treatment is considered to be "degrading" within the meaning of Article 3 when it humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or when it arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance (see M.S.S. v. Belgium and Greece [GC], no. 30696/09, § 220, ECHR 2011, and El-Masri v. the former Yugoslav Republic of Macedonia [GC], no. 39630/09, § 202, ECHR 2012). The public nature of the treatment may be a relevant or aggravating factor in assessing whether it is "degrading" within the meaning of Article 3 (see, inter alia, Tyrer v. the United Kingdom, 25 April 1978, § 32, Series A no. 26; Erdoğan Yağız v. Turkey, no. 27473/02, § 37, 6 March 2007; and Kummer v. the Czech Republic, no. 32133/11, § 64, 25 July 2013).

116. In order for treatment to be "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment (see V. v. the United Kingdom, cited above, § 71). Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that the execution of detention on remand in itself raises an issue under Article 3. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention (see Kudła v. Poland [GC], no. 30210/96, §§ 92-94, ECHR 2000XI).

117. As regards measures of restraint such as handcuffing, these do not normally give rise to an issue under Article 3 of the Convention where they have been imposed in connection with lawful arrest or detention and do not entail the use of force, or public exposure, exceeding what is reasonably considered necessary in the circumstances. In this regard, it is of importance for instance whether there is reason to believe that the person concerned would resist arrest or try to abscond or cause injury or damage or suppress evidence (see Raninen v. Finland, 16 December 1997, § 56, Reports of Judgments and Decisions 1997VIII; Öcalan v. Turkey [GC], no. 46221/99, § 182, ECHR 2005IV; and Gorodnitchev v. Russia, no. 52058/99, §§ 101, 102, 105 and 108, 24 May 2007; see also Mirosław Garlicki v. Poland, no. 36921/07, §§ 73-75, 14 June 2011).

118. Respect for human dignity forms part of the very essence of the Convention (see Pretty v. the United Kingdom, no. 2346/02, § 65, ECHR 2002III). The object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective. Any interpretation of the rights and freedoms guaranteed has to be consistent with the general spirit of the Convention, an instrument designed to maintain and promote the ideals and values of a democratic society (see Soering v. the United Kingdom, 7 July 1989, § 87, Series A no. 161).

2. Approach in previous similar cases

119. The Court has examined in recent years several cases concerning the use of metal cages in the courtroom from the standpoint of Article 3. The Court viewed the treatment in question as "stringent" and "humiliating" (see Ramishvili and Kokhreidze, cited above, § 102; Ashot Harutyunyan, cited above, §§ 128129; and Piruzyan, cited above, §§ 7374). It assessed whether such treatment could be justified by security considerations in the circumstances of a particular

case, such as the applicant's personality (see Ramishvili and Kokhreidze, cited above, § 101), the nature of the offences with which he was charged, though this factor alone was not considered sufficient justification (see Piruzyan, cited above, § 71), his criminal record (see Khodorkovskiy, cited above, § 125, and Khodorkovskiy and Lebedev v. Russia, nos. 11082/06 and 13772/05, §§ 485-486, 25 July 2013), his behaviour (see Ashot Harutyunyan, cited above, § 127) or other evidence of the risk to safety in the courtroom or the risk of the applicant's absconding (ibid.). It also took into account such additional factors as the presence of the public and media coverage of the proceedings (see Sarban, cited above, § 89, and Khodorkovskiy, cited above, § 125).

120. It was the unjustified or "excessive" use of such a measure of restraint in particular circumstances which led the Court to conclude, in the above cases, that the placement in a metal cage in the courtroom amounted to degrading treatment. However, in one case the Court found by a majority that there had been no violation of Article 3 (see Titarenko, cited above, §§ 58-64).

3. The Chamber judgment

121. The Chamber followed the approach that had been adopted in the abovecited cases (see paragraph 119 above). Having found no evidence capable of giving serious grounds for the fear that the applicants would pose a danger to order and security in the courtroom, or a danger that they would resort to violence or abscond, or that there was a risk for their own safety, it held that their placement in a metal cage in the courtroom had not been justified and, therefore, amounted to degrading treatment (see paragraph 70 of the Chamber judgment).

4. The Grand Chamber's assessment

122. The Court is confronted in the present case with a practice of placing defendants in metal cages when they appear before a court in criminal proceedings while remanded in custody. This practice was once standard after the break-up of the Soviet Union in some of the Contracting States which had previously been Republics of the latter, but it has since largely been abandoned. Even those few Contracting States which retain that practice, including the respondent State, have started the process of removing metal cages from courtrooms (see paragraphs 75 and 101 above).

123. Recourse to metal cages in courtrooms applied to each and every suspect and accused detained on remand in Russia (see paragraphs 57 and 93 above). It remains an approved practice in today's Russia without any commitment on the part of the State to abandon the use of metal cages (see paragraphs 65-66 and 101 above). The conditions for remanding persons in custody (see paragraphs 67-69 above) and the Government's statistics – 17.7% or 241,111 defendants in custody in 2007 and 12.8% or 134,937 defendants in custody in 2012 (see paragraph 94 above) – illustrate the scale of that practice.

124. The Court notes, in particular, that such practice was regulated by an unpublished ministerial order (see paragraphs 57 and 61 above). Such fact is highly problematic in itself, given the fundamental importance of the rule of law in a democratic society which presupposes the accessibility of legal rules (see, for example, Silver and Others v. the United Kingdom, 25 March 1983, §§ 86-87, Series A no. 61).

125. The Court observes, on the basis of photographs of a courtroom at the Magadan Regional Court, that the applicants were confined in an enclosure formed by metal rods on four sides and a wire ceiling (see paragraph 48 above), which can be described as a cage. The applicants were guarded by armed police guards who remained beside the cage (see paragraph 49 above).

126. The applicants were kept in a cage in the context of their jury trial held by the Magadan Regional Court in 2008-2009 on indictment for robberies with violence as members of a gang and other offences allegedly committed in 2001-2002 (see paragraphs 9, 10 and 19 above). The Government argued that the violent nature of the crimes with which the applicants had been charged, together with their criminal records, negative references from the places of their residence and the witnesses' fears of the applicants' unlawful behaviour, were sufficient to confirm their predisposition to violence and the existence of real security risks in the courtroom such as to justify recourse to a cage for ensuring the proper conditions for holding the trial. The applicants disagreed, arguing, in particular, that the first applicant's full acquittal and the second applicant's acquittal on most of the charges, including banditry and robbery, had confirmed that the charges against them had been unfounded, and that this in any event could not be a relevant argument in view of the principle of the presumption of innocence.

127. The Court agrees with the Government that order and security in the courtroom are of great importance and can be seen as indispensable for the proper administration of justice. It is not the Court's task to discuss questions concerning the architecture of the courtroom, nor to give indications as to what specific measures of physical restraint may be necessary. However, the means chosen for ensuring such order and security must not involve measures of restraint which by virtue of their level of severity (see paragraph 114 above) or by their very nature would bring them within the scope of Article 3. For, as the Court has repeatedly stated, Article 3 prohibits in absolute terms torture and inhuman or degrading treatment or punishment, which is why there can be no justification for any such treatment.

128. The Court will therefore first examine whether the minimum level of severity referred to in paragraph 127 above has been reached in the circumstances. In doing so, it will have regard to the effects which the impugned measure of restraint had on the applicants.

129. In this respect, the Court observes that the applicants' case was tried by a court composed of twelve jurors, with two

further substitute jurors present, and the presiding judge. It also notes the presence in the courtroom of other participants in the proceedings, including a large number of witnesses – more than seventy gave testimony at the trial – and candidate jurors who appeared before the court for the empanelling process (see paragraph 38 above), as well as the fact that the hearings were open to the general public. It considers that the applicants' exposure to the public eye in a cage must have undermined their image and must have aroused in them feelings of humiliation, helplessness, fear, anguish and inferiority.

130. The Court further observes that the applicants were subjected to the impugned treatment during the entire jury trial before the Magadan Regional Court which lasted more than a year with several hearings held almost every month.

131. Moreover, the fact that the impugned treatment took place in the courtroom in the context of the applicant's trial brings into play the principle of the presumption of innocence in criminal proceedings as one of the elements of a fair trial (see, mutatis mutandis, Allen v. the United Kingdom [GC], no. 25424/09, § 94, ECHR 2013) and the importance of the appearance of the fair administration of justice (see Borgers v. Belgium, 30 October 1991, § 24, Series A no. 214B; Zhuk v. Ukraine, no. 45783/05, § 27, 21 October 2010; and Atanasov v. the former Yugoslav Republic of Macedonia, no. 22745/06, § 31, 17 February 2011). What is at stake is the confidence which the courts in a democratic society must inspire in the public and above all, as far as criminal proceedings are concerned, in the accused (see, mutatis mutandis, De Cubber v. Belgium, 26 October 1984, § 26, Series A no. 86).

132. The Court notes that the United Nations Human Rights Committee found recently that keeping a handcuffed defendant in a metal cage during his public trial amounted to his degrading treatment, which also affected the fairness of his trial (see paragraph 70 above). The United Nations Standard Minimum Rules for the Treatment of Prisoners and the Rules of Procedure of international criminal tribunals provide, with regard to certain instruments of restraint, that they may be used only as a precaution against escape during a transfer, provided that they are removed once the accused appears before a court (see paragraphs 71 and 72 above). The Amnesty International Fair Trials Manual provides that holding the accused in "a cell within the courtroom" might impact upon the presumption of innocence (see paragraph 74 above).

133. The Court takes the view that the applicants must have had objectively justified fears that their exposure in a cage during hearings in their case would convey to their judges, who were to take decisions on the issues concerning their criminal liability and liberty, a negative image of them as being dangerous to the point of requiring such an extreme physical restraint, thus undermining the presumption of innocence. This must have caused them anxiety and distress, given the seriousness of what was at stake for them in the proceedings in question.

134. The Court would note that other fair trial considerations may also be relevant in the context of a measure of confinement in the courtroom (albeit not matters of concern in the present case), notably an accused's rights to participate effectively in the proceedings (see Stanford v. the United Kingdom, 23 February 1994, §§ 2732, Series A no. 282A) and to receive practical and effective legal assistance (see Insanov v. Azerbaijan, no. 16133/08, §§ 168-170, 14 March 2013, and Khodorkovskiy and Lebedev, cited above, §§ 642-648).

135. Lastly, the Court finds no convincing arguments to the effect that, in presentday circumstances, holding a defendant in a cage (as described in paragraph 125, above) during a trial is a necessary means of physically restraining him, preventing his escape, dealing with disorderly or aggressive behaviour, or protecting him against aggression from outside. Its continued practice can therefore hardly be understood otherwise than as a means of degrading and humiliating the caged person. The object of humiliating and debasing the person held in a cage during a trial is thus apparent.

136. Against this background, the Court finds that the applicants' confinement in a cage in the courtroom during their trial must inevitably have subjected them to distress of an intensity exceeding the unavoidable level of suffering inherent in their detention during a court appearance, and that the impugned treatment has attained the minimum level of severity to bring it within the scope of Article 3.

137. The Court does not consider that the use of cages (as described above) in this context can ever be justified under Article 3 (see paragraph 138 below) as the Government have sought to show in their submissions with reference to an alleged threat to security (see paragraph 126 above). On this latter point, in any event, the Court does not accept that such a threat has been substantiated. It observes that the Magadan Regional Court never assessed whether the applicants' physical restraint was at all necessary during the hearings. Moreover no reasons were given for keeping the applicants in a cage. Nor can those reasons be found in court detention orders, contrary to the Government's submissions that the applicants posed a threat to witnesses, and that it was this threat that warranted their detention on remand. The first applicant was not remanded in custody for the duration of the third trial. He was detained on remand in unrelated proceedings for reasons that are not known (see paragraphs 34 and 46 above). The second applicant's detention was ordered by the same court decisions as those which the Court has examined in the case of the applicants' codefendant and found to lack "relevant and sufficient" reasons for detention on remand to be compatible with Article 5 § 3 of the Convention, and, in particular, to lack reasons which would show the risk of retaliation against, or pressure on, the witnesses now alleged by the Government (see Mikhail Grishin, cited above, §§ 149-150). That conclusion is fully applicable to the present case, and there is nothing in the Government's submissions to the Grand Chamber which would warrant departing from it. Nor can the accusations that the applicants had committed violent crimes or their previous convictions – some of them with conditional sentences

– six or more years before the trial in question, or the first applicant's subsequent conviction, be reasonably considered to support the Government's submissions in this respect. As to the negative references referred to by the Government (see paragraph 96 above), they do not suggest that the applicants' personalities were such as to require their physical restraint during their trial; and the second applicant also had positive references from the administrations of his remand centre and prison (see paragraph 44 above).

138. Regardless of the concrete circumstances in the present case, the Court reiterates that the very essence of the Convention is respect for human dignity and that the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective. It is therefore of the view that holding a person in a metal cage during a trial constitutes in itself – having regard to its objectively degrading nature which is incompatible with the standards of civilised behaviour that are the hallmark of a democratic society – an affront to human dignity in breach of Article 3.

139. Consequently, the applicants' confinement in a metal cage in the courtroom amounted to degrading treatment prohibited by Article 3. There has accordingly been a violation of that provision.

b. Treatment of witnesses

In the 2011 case of Soare and others v. Romania, the applicants complained about the circumstances of their examination as witnesses in criminal proceedings, where they were obliged to remain at a police station for ten hours during the night, without nutrition, water and rest.

(Case 45) (Translation)

212. The applicants complained, under Article 3 of the Convention, that they had been subjected to degrading treatment during their deprivation of liberty on the night from 19 to 20 May 2000, which they considered unlawful. They further submitted that their allegations had not been effectively investigated.

A. Submissions of the parties

213. The second and third applicants complained that they had been unlawfully detained for ten hours at the police station on the night of 19 to 20 May 2000 and that they had been deprived of food, water and rest. In addition, the investigators in charge of their interrogation had allegedly subjected them to psychological pressure in order to induce them to change their statements concerning the circumstances in which the shot which had hit the first applicant had been fired. The investigators had deliberately prolonged their questioning in order to take advantage of their tiredness and physical and mental exhaustion to force them to accept the false statements made by the police. The severe physical and mental suffering inflicted on the applicants had been aggravated by the fear of the consequences that their refusal to change their statements might have had for them, as the investigators had made direct threats to them. The second applicant had remained confined to his home for a long time because of the fear that the police officers had allegedly inspired in him. The treatment complained of violated Article 3 of the Convention.

214. The excessive length of their detention could not be justified by the complexity of the case, since it presented no difficulties, since the perpetrator, the witnesses and the body of the offence had been identified from the outset. Moreover, no procedural rule would authorise the detention of witnesses, even for a short period, and the delay in questioning the witnesses could not be explained by the fact that an on-site investigation had been carried out beforehand. Moreover, the fact that the other witnesses had not denounced the conduct complained of by means of a criminal complaint in no way contradicted the applicants' case. Lastly, the reason why the applicants did not repeat their allegations of ill-treatment at the hearing on 6 December 2001 was that they had been heard as witnesses and had had to confine themselves to answering questions put by the military prosecutor about the attack on the first applicant.

215. The Government submitted that the detention of several hours at the police station complained of by the two applicants was due to the fact that the military prosecutor had had to conduct an immediate investigation at the scene. The applicants' allegations that they had been subjected to pressure and refused permission to read their statements before signing them, even though they had not been investigated, were contradicted by the fact that their statements contained no inconsistencies with their own.

216. Moreover, the other witnesses present at the police station on the evening of 19 May 2000, namely the first applicant's brother and uncle, had never complained of having been subjected to pressure. Moreover, at their hearing on 6 December 2001, the two applicants did not mention the degrading treatment to which they claimed to have been subjected. In those circumstances, they had not proved the truth of their allegations beyond all reasonable doubt.

B. The Court's assessment

1. Admissibility

217. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence (see Mamatkoulov and Askarov v. Turkey [GC], nos. 46827/99 and 46951/99, § 70, ECHR 2005-I).

218. In assessing the evidence, the Court applies the criterion of proof "beyond reasonable doubt". However, it was never the Court's intention to adopt the approach of national legal systems which apply that test. Its task is not to rule on guilt under criminal law or on civil liability, but on the responsibility of the Contracting States under the Convention. The specific nature of the task assigned to it by Article 19 of the Convention - to ensure compliance by the High Contracting Parties with their undertaking to recognise the fundamental rights enshrined in that instrument - determines its approach

to questions of evidence. In the proceedings before the Court, there are no procedural obstacles to the admissibility of evidence and no predefined formulae applicable to its assessment. The Court adopts the conclusions which, in its opinion, are supported by an independent assessment of all the evidence, including the inferences which it can draw from the facts and the submissions of the parties. In accordance with its established case law, evidence may be based on a body of sufficiently serious, precise and concordant evidence or unrebutted presumptions. Moreover, the degree of conviction required to reach a particular conclusion and, in that regard, the apportionment of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the treaty right at stake. The Court is also mindful of the seriousness of a finding that a Contracting State has violated fundamental rights (see Nachova, cited above, § 147).

219. In the instant case, in the absence of any prima facie evidence of the threats and pressure allegedly exerted by the military prosecutor and the police officers on the two applicants during their hearing, it seems difficult for the Court to conclude that the facts complained of were genuine. The Court considers that the applicants' statements are not sufficient to prove beyond reasonable doubt the existence of the alleged threats and pressure. Moreover, it is not disputed that the statements made and signed by the applicants corresponded to what they had said. Consequently, neither can the national authorities be criticised for failing to conduct an investigation in that regard.

This part of the complaint is therefore manifestly ill-founded.

220. On the other hand, the applicants' complaint that they had remained at the police station without food or water was not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Moreover, there are no other grounds for inadmissibility. It should therefore be declared admissible.

2. Merits

221. The Court notes that the Government do not dispute that the applicants were detained at the police station late at night, without food or water. Furthermore, the Government did not produce before the Court any document regulating the status of witnesses in criminal cases and specifying the manner in which they were to be treated when they were required, as in the instant case, to remain for several hours at the disposal of the investigating bodies.

222. In the light of the foregoing, the circumstances of the case - in particular the length of the interrogations to which the applicants were subjected after dramatic events - and the feelings of anxiety and inferiority which the treatment complained of gave rise to in the applicants, the Court considers that it must be classified as degrading.

223. There has therefore been a violation of Article 3 of the Convention in this respect.

C. Circumstances of arrest

The circumstances of an arrest may amount to degrading treatment, as in the 2013 case of Gutsanovi v. Bulgaria where a well-known politician was arrested by a special police operation in the early morning in the presence of his wife and his little daughters:

(Case 46)

1. The parties' submissions

(a) The applicants

105. The applicants submitted that the manner in which the police operation at their home had been carried out was incompatible with Article 3 of the Convention. On 31 March 2010, before dawn, a group of masked and heavily armed police officers had forced their way into their house without prior authorisation. The special officers had entered Mr and Mrs Gutsanovi's bedroom and pointed their weapons at the couple's two minor daughters. Mr Gutsanov, an influential and respected politician, had been forced to kneel down and been handcuffed.

106. In the applicants' view, there had been no reason for the police operation to be planned and carried out in this manner, in particular as Mr and Mrs Gutsanovi were respectable people who were well known in the city. Neither of them had a criminal record and there had been no reason to suppose that they would offer resistance to the law-enforcement officers. The search of their home did not constitute an urgent investigative measure under Article 161 § 2 of the Code of Criminal Procedure. According to the applicants, all these elements pointed to a real intention to intimidate them, undermine their dignity and induce a feeling of powerlessness in the face of the actions of the law-enforcement officers.

107. The police officers' actions had had an adverse psychological impact on the applicants. In particular, Mrs Gutsanova and her two daughters, aged five and seven, had been subjected to considerable psychological pressure, as noted by the psychiatrists who had examined them shortly after the events in issue. Mr Gutsanov, a respected politician belonging to an opposition political party, had been the victim of a brutal arrest which had been widely covered in the media and which, together with the arrests of other politicians, formed part of a propaganda campaign by the ruling party. The psychological effects of the treatment complained of had been sufficiently severe to exceed the threshold required by Article 3 and for the treatment in question to be characterised as "degrading".

(b) The Government

108. The Government contested the applicants' allegations and their version of events. They submitted that the police operation of 31 March 2010 had been planned meticulously and carried out in a way which respected the applicants' dignity and their rights. Mr Gutsanov's arrest and the search of his home had been carried out in the context of a criminal investigation into serious offences involving several suspected accomplices. The police had been informed that Mr Gutsanov kept a gun in his home.

109. The police operation had been launched after sunrise, that is to say after 6 a.m. The police had knocked on the gate of the applicants' property, announced their presence and requested that the metal gate be opened. The security guard had opened the gate but explained that he did not have a key to the front door of the house. The police had run towards the door and knocked on it, demanding that it be opened immediately. Mr Gutsanov had appeared twice at the window of the house; he had seen and identified the police by their uniforms but had not come down to open the door. At that point, fearing that he might destroy evidence, fetch his firearm or try to escape, the special officers had forced open the door of the house. They had apprehended Mr Gutsanov on the second floor while he was trying to enter a bedroom where his wife and two children were.

110. According to the Government, Mr Gutsanov had not been forced to kneel down. The officers had placed the handcuffs on him without using special immobilisation techniques and they had not pointed their weapons at his wife and daughters. The only officer who had gone into the bedroom on the second floor had been carrying only an electric stun gun and had not addressed the children or Mrs Gutsanova. The special officers had stayed in the house for only a few minutes and had left the premises after Mr Gutsanov's arrest. Shortly afterwards, the applicant's handcuffs had been removed.

111. The police officers' actions had complied with domestic law. The search had been approved by a judge within twenty-four hours of being carried out and the regional public prosecutor's office, on the basis of the information supplied by the authorities, had found that the police officers had not committed any criminal offence.

112. The Government conceded that the entry of the police into their home, and the search of the house, had undoubtedly aroused negative feelings in the applicants. However, they submitted that these were the normal and inevitable consequence of this kind of investigative measure; hence, the unpleasantness caused had not exceeded the threshold of severity beyond which Article 3 of the Convention applied. This was borne out, for instance, by the fact that the elder of the two girls had been taken to school as usual. The Government also maintained that if Mr Gutsanov had opened the front door of the house, the police officers would not have needed to resort to special measures to enter his home, which would have spared the members of his family the unpleasantness they had experienced.

2. The Court's assessment

(a) Establishment of the facts

113. The Court reiterates that allegations of ill-treatment contrary to Article 3 of the Convention must be supported by appropriate evidence. To establish the facts, the Court applies the standard of proof "beyond reasonable doubt" (see Ireland v. the United Kingdom, 18 January 1978, § 161 in fine, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see Salman, cited above, § 100).

114. The Court notes that the events surrounding the police operation at the home of the four applicants were not the subject of any review by the domestic courts. When faced with similar situations, the Court has carried out its own assessment of the facts while complying with the rules laid down by its own case-law (see, by way of example, Sashov and Others v. Bulgaria, no. 14383/03, § 48, 7 January 2010).

115. On the basis of these principles, the Court deems it appropriate to take as the starting-point of its analysis the circumstances not disputed between the parties and the evidence adduced by them. It will also take into account those allegations by the parties which are sufficiently corroborated by the undisputed facts and the evidence adduced.

116. It is not disputed between the parties that the police operation at the applicants' home began shortly after 6.30 a.m. on 31 March 2010. The footage from the property's CCTV cameras made available to the Court, and the weather report from the Varna meteorological service, corroborated the applicants' allegation that the operation took place before sunrise, mainly around dawn (see paragraphs 20 and 21 above).

117. The parties also agree that the police operations team was made up of uniformed officers, plain clothes officers and special officers who were armed and masked. The video footage submitted by the applicants (see paragraph 21 above) and the reports submitted by the Government (see paragraphs 22, 24 and 27 above) corroborate this.

118. The fact that there was a firearm and ammunition in the applicants' home is also undisputed and is established by the search report. It is clear from the Government's observations and the reports they submitted that the police officers had been alerted by their superior officers to the presence of the weapon (see paragraphs 23 and 27 above).

119. It is also common ground between the parties that the gate to the applicants' property was opened voluntarily by the security guard at the request of the police officers (see paragraphs 13 and 24 above). Moreover, the scene was filmed and recorded by the property's CCTV system (see paragraph 21 above). The parties also agree that the security guard informed the police officers of the identity of those present in the house and the fact that he did not have a key to the front door, and that the door was forced by the special officers who entered the house and arrested Mr Gutsanov (see paragraphs 13, 14, 24 and 25 above).

120. Neither of the parties disputes the fact that the applicants were not physically injured during the police operation. The certificates attesting to the psychiatric examinations carried out on Mrs Gutsanova and her two daughters (see paragraphs 30 and 31 above) were not disputed by the Government.

121. The first discrepancy between the parties' version of events concerns the description of Mr Gutsanov's conduct. According to the Government, he appeared twice at one of the windows of the house, saw the police officers and heard

their calls but did not open the front door (see paragraph 25 above). The first applicant, meanwhile, stated that he had not realised that it was a police operation until the special officers entered the house and began to climb the stairs (see paragraph 16 above).

122. The evidence available to the Court does not enable it to determine whether the applicant did actually appear at the window of his house and deliberately refused to open the front door to the police officers. However, it notes that it is not disputed that the police officers knocked at the front gate of the property and announced their presence to the security guard by calling out. According to the police officers, they then knocked on the front door of the house and called out "Police! Open up!". This assertion is corroborated by the statements made by Mr and Mrs Gutsanovi, according to which they were woken by shouts and knocking at the door of the house (see paragraph 15 above). Mr Gutsanov stated that he had gone down to the first floor of the house to fetch the two children before going back up to the bedroom on the second floor. This claim was corroborated by the version of the police officers who saw the outline of a man through the windows of the house (see paragraph 25 above).

123. As to the exact place in which Mr Gutsanov was arrested, the Court observes that he himself admitted in his statement that when the police officers forced the door and issued verbal warnings, he had run up to the bedroom on the second floor where his wife and children were (see paragraph 16 above). The Court is not in a position to determine whether Mr Gutsanov was arrested inside the bedroom on the second floor of the house, as he claimed, or on the second-floor landing after he had come out of the bedroom of his own volition, as claimed by the Government. Nor has it been established beyond any reasonable doubt that the police officers spoke to Mrs Gutsanova and asked her to cover the children with the duvet. In any event the Court observes that, according to the witness evidence given by the special officers (see paragraphs 25 and 27 above), they saw Mr Gutsanov's wife and children inside the bedroom when they went up to the second floor of the house in pursuit of Mr Gutsanov. The Court accepts that Mrs Gutsanova and her two daughters also saw the armed and masked men, if only through the bedroom door.

124. In the Court's view, Mr Gutsanov's claim that he was forced to kneel down so that the police officers could place the handcuffs on him has not been proved beyond all reasonable doubt. As regards the handcuffing, it is not disputed that the special officers placed handcuffs on Mr Gutsanov downstairs (see paragraph 16 above). However, the Court observes that neither of the parties specified the length of time for which Mr Gutsanov remained in handcuffs. In any event, it cannot but observe that there is no evidence in the file to demonstrate that the first applicant was made to appear in handcuffs before the cameras of the journalists who had gathered outside the entrance to the property that day. Furthermore, the photograph taken as he was leaving the house, at around 1 p.m., shows no signs of him being handcuffed ... Accordingly, the Court considers that the present case falls to be distinguished in that regard from the case of Mirosław Garlicki, (cited above, § 75), in which the applicant was arrested at his workplace in front of his colleagues and patients, placed in handcuffs and filmed.

(b) Compliance with Article 3 in the instant case

125. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum 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. Treatment has been held by the Court to be "inhuman" because, inter alia, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering, and also "degrading" because it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see Labita v. Italy [GC], no. 26772/95, § 120, ECHR 2000IV). Psychological suffering may result from a situation in which State agents deliberately instil fear in individuals by threatening to kill or ill-treat them (see Hristovi, cited above, § 80).

126. Article 3 does not prohibit the use of force by police officers during an arrest. Nevertheless, the use of force must be proportionate and absolutely necessary in the circumstances of the case (see, among many other authorities, Rehbock v. Slovenia, no. 29462/95, § 76, ECHR 2000XII, and Altay v. Turkey, no. 22279/93, § 54, 22 May 2001). In this regard, it is of importance for instance whether there is reason to believe that the person concerned would resist arrest or abscond, cause injury or damage or suppress evidence (see Raninen v. Finland, 16 December 1997, § 56, Reports 1997VIII). The Court reiterates in particular that any recourse by agents of the State to physical force against a person which has not been made strictly necessary by his or her own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see Rachwalski and Ferenc v. Poland, no. 47709/99, § 59, 28 July 2009). This strict proportionality test has also been applied by the Court in situations where the individuals concerned were already in the hands of the lawenforcement agencies (see, among other authorities, Klaas v. Germany, 22 September 1993, § 30, Series A no. 269; Rehbock, cited above, §§ 68-78; and Milan v. France, no. 7549/03, §§ 52-65, 24 January 2008).

127. Turning to the facts of the present case, the Court observes that the operation pursued the legitimate aim of carrying out an arrest, a search and a seizure of items as well as the public-interest objective of prosecuting criminal offences. The Court must be satisfied that a fair balance was struck in the circumstances of the case between the demands of the general interest and the requirements of the protection of the individual's fundamental rights. It notes that, although the four applicants were not physically injured in the course of the impugned police operation, the latter necessarily entailed a degree of physical force. The front door of the house was forced open by the special operations team, Mr Gutsanov was immobilised by masked armed officers, led downstairs

by force and handcuffed. The Court must therefore establish whether this use of physical force was proportionate and absolutely necessary in the instant case.

128. The aim of the police operation at the applicants' home that day was to arrest Mr Gutsanov, who was a suspect in a criminal case concerning misappropriation of public funds, and to carry out a search of the premises to look for physical and documentary evidence in the context of the same criminal investigation. It emerges from the evidence in the file that the investigation in question had been opened five months previously, that there were several suspects in the case and that the authorities suspected the existence of a conspiracy (see paragraph 9 ... above). The case clearly did not concern a group of individuals suspected of committing violent criminal acts.

129. With regard to Mr Gutsanov's personality, the Court observes that he was a well-known political figure in Varna: at the material time he was Chairman of the city's municipal council. Furthermore, there is no evidence in the file to suggest that he had a history of violence or that he might have presented a danger to the police officers conducting the operation at his home.

130. It is true that Mr Gutsanov was the lawful owner of a firearm and ammunition which he kept at his home. This fact was known to the police and had been specifically mentioned at the briefing of the police team before the operation (see paragraph 23 above). This was undoubtedly a relevant factor which had to be taken into account by the officers during the operation at the applicants' home. However, the Court considers that the presence of the weapon in the applicants' home was not sufficient in itself to justify the deployment of a special operations team or the degree of force that was used in the instant case.

131. It is clear from the file that the possible presence of Mr Gutsanov's wife and minor children was not taken into consideration at any stage in planning and carrying out the police operation. The fact was not mentioned during the pre-operation briefing (see paragraph 23 above) and the police officers apparently paid no heed to the warning by the security guard that young children were present in the house (see paragraph 24 above).

132. Of course, the Court cannot go so far as to require the lawenforcement agencies not to arrest persons suspected of criminal offences in their homes whenever their children or spouses are present. However, it considers that the possible presence of family members at the scene of an arrest is a circumstance that must be taken into consideration in planning and carrying out this type of police operation. This was not done in the present case and the law-enforcement agencies did not contemplate any alternative means of carrying out the operation at the applicants' home, such as staging the operation at a later hour or even deploying a different type of officer in the operation. Consideration of the legitimate interests of Mrs Gutsanova and her daughters was especially necessary since the former was not under suspicion of involvement in the criminal offences of which her husband was suspected, and her two daughters were psychologically vulnerable because they were so young (five and seven years of age).

133. The Court also observes that the lack of prior judicial review of the necessity and lawfulness of the search left the planning of the operation entirely at the discretion of the police and the criminal investigation bodies and did not enable the rights and legitimate interests of Mrs Gutsanova and her two minor daughters to be taken into consideration. In the Court's view, such prior judicial review, in the specific circumstances of the present case, would have enabled their legitimate interests to be weighed against the public-interest objective of arresting persons suspected of committing a criminal offence.

134. As regards the psychological effects of the police operation on the applicants, the Court observes that police operations which entail intervention in the home and the arrest of suspects inevitably arouse negative emotions in the persons targeted. However, in the present case, there is concrete, undisputed evidence that Mrs Gutsanova and her two minor daughters were very severely affected by the events. Mrs Gutsanova consulted a psychiatrist on two occasions complaining of insomnia and acute anxiety and was prescribed tranquillisers (see paragraph 31 above). The two girls were also examined by a psychiatrist who observed that, when recalling the events, they reacted by crying or displaying acute anxiety (see paragraph 30 above). Mrs Gutsanova stated that her younger daughter, B., had started stammering again (see paragraph 28 above). As for S., the couple's elder daughter, the statements by her aunt and her schoolteacher indicated that she had been deeply affected by the police operation at her home and by her father's arrest (see paragraph 29 above). The Court also considers that the fact that the police operation took place in the early morning and involved special officers wearing masks, who were seen by Mrs Gutsanova and her two daughters, served to heighten the feelings of fear and anxiety experienced by these three applicants, to the extent that the treatment to which they were subjected exceeded the threshold of severity required for Article 3 of the Convention to apply. The Court therefore considers that these three applicants were subjected to degrading treatment.

135. As regards the adverse psychological effects of the police operation on Mr Gutsanov, the Court cannot but observe that the first applicant did not produce any medical evidence to this effect. Nevertheless, he stated that the humiliation and anxiety he had experienced during the heavy-handed operation to arrest him, in front of the members of his family, had been sufficiently intense for Article 3 to apply in his case (see paragraph 107 above).

136. The Court reiterates its findings to the effect that the police operation in question was planned and carried out without regard for a number of relevant factors such as the nature of the criminal offences of which Mr Gutsanov was suspected, the fact that he had no history of violence, and

the possible presence of his wife and daughters in the family home. All these elements point clearly to the excessive nature of the deployment of special officers and special procedures in order to arrest the first applicant and enable the police to enter his home. The Court considers that, in the light of these circumstances, the manner in which Mr Gutsanov's arrest was carried out – very early in the morning, by several armed and masked officers who forced their way in through the door of the house, and under the frightened gaze of Mr Gutsanov's wife and two young daughters – aroused strong feelings of fear, anguish and powerlessness in the first applicant, capable of humiliating and debasing him in his own eyes and in the eyes of his close relatives. The Court considers that the intensity of these feelings exceeded the threshold of severity required for Article 3 to apply. Accordingly, Mr Gutsanov too was subjected to degrading treatment.

137. In conclusion, having taken into account all the relevant circumstances in the present case, the Court considers that the police operation at the applicants' home was not planned and carried out in such a way as to ensure that the means employed were strictly necessary in order to attain the ultimate objectives of arresting a person suspected of committing criminal offences and gathering evidence in the context of a criminal investigation. The four applicants were subjected to a psychological ordeal which aroused in them strong feelings of fear, anguish and powerlessness and which, on account of its adverse effects, amounted to degrading treatment for the purposes of Article 3. There has therefore been a violation of that provision in the present case.

VI. Inhuman or degrading punishment

In the case of Tyrer v. United Kingdom, decided in 1978, applicant complained about corporal punishment on the Isle of Man:

(Case 47)

9. Mr. Anthony M. Tyrer, a citizen of the United Kingdom born on 21 September 1956, is resident in Castletown, Isle of Man. On 7 March 1972, being then aged 15 and of previous good character, he pleaded guilty before the local juvenile court to unlawful assault occasioning actual bodily harm to a senior pupil at his school. The assault, committed by the applicant in company with three other boys, was apparently motivated by the fact that the victim had reported the boys for taking beer into the school, as a result of which they had been caned. The applicant was sentenced on the same day to three strokes of the birch in accordance with the relevant legislation (see paragraph 11 below).

He appealed against sentence to the Staff of Government Division of the High Court of Justice of the Isle of Man. The appeal was heard and dismissed on the afternoon of 28 April 1972; the court considered that an unprovoked assault occasioning actual bodily harm was always very serious and that there were no reasons for interfering with the sentence. The court had ordered the applicant to be medically examined in the morning of the same day and had before it a doctor's report that the applicant was fit to receive the punishment.

10. After waiting in a police station for a considerable time for a doctor to arrive, Mr. Tyrer was birched late in the afternoon of the same day. His father and a doctor were present. The applicant was made to take down his trousers and underpants and bend over a table; he was held by two policemen whilst a third administered the punishment, pieces of the birch breaking at the first stroke. The applicant's father lost his self-control and after the third stroke "went for" one of the policemen and had to be restrained.

The birching raised, but did not cut, the applicant's skin and he was sore for about a week and a half afterwards.

11. The applicant was sentenced pursuant to section 56 (1) of the Petty Sessions and Summary Jurisdiction Act 1927 (as amended by section 8 of the Summary Jurisdiction Act 1960) whereby:

"Any person who shall -

(a) unlawfully assault or beat any other person;
(b) make use of provoking language or behaviour tending to a breach of the peace, shall be liable on summary conviction to a fine not exceeding thirty pounds or to be imprisoned for a term not exceeding six months and, in addition to, or instead of, either such punishment, if the offender is a male child or male young person, to be whipped."

The expressions "child" and "young person" mean, respectively, an individual of or over the age 10 and under 14 and an individual of or over the age of 14 and under 17. (…)

28. The applicant claimed before the Commission that the facts of his case constituted a breach of Article 3 (art. 3) of the Convention which provides:

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

He alleged that there had been torture or inhuman or degrading treatment or punishment, or any combination thereof.

In its report, the Commission expressed the opinion that judicial corporal punishment, being degrading, constituted a breach of Article 3 (art. 3) and that, consequently, its infliction on the applicant was in violation of that provision.

29. The Court shares the Commission's view that Mr. Tyrer's punishment did not amount to "torture" within the meaning of Article 3 (art. 3). The Court does not consider that the facts of this particular case reveal that the applicant underwent suffering of the level inherent in this notion as it was interpreted and applied by the Court in its judgment of 18 January 1978 (Ireland v. the United Kingdom, Series A no. 25, pp. 66-67 and 68, paras. 167 and 174).

That judgment also contains various indications concerning the notions of "inhuman treatment" and "degrading treatment" but it deliberately left aside the notions of "inhuman punishment" and "degrading punishment" which alone are relevant in the present case (ibid., p. 65, para. 164). Those indications accordingly cannot, as such, serve here. Nevertheless, it remains true that the suffering occasioned must attain a particular level before a punishment can be classified as "inhuman" within the meaning of Article 3 (art. 3). Here again, the Court does not consider on the facts of the case that that level was attained and it therefore concurs with the Commission that the penalty imposed on Mr. Tyrer was not "inhuman punishment" within the meaning of Article 3 (art. 3). Accordingly, the only question for decision is whether he was subjected to a "degrading punishment" contrary to that Article (art. 3).

30. The Court notes first of all that a person may be humiliated by the mere fact of being criminally convicted. However, what is relevant for the purposes of Article 3 (art. 3) is that he should be humiliated not simply by his conviction but by the execution of the punishment which is imposed on him. In fact, in most if not all cases this may be one of the effects of judicial punishment, involving as it does unwilling subjection to the demands of the penal system.

However, as the Court pointed out in its judgment of 18 January 1978 in the case of Ireland v. the United Kingdom (Series A no. 25, p. 65, para. 163), the prohibition contained in Article 3 (art. 3) of the Convention is absolute: no provision is made for exceptions and, under Article 15 (2) (art. 15-2) there can be no derogation from Article 3 (art. 3). It would be absurd to hold that judicial punishment generally, by reason of its usual and perhaps almost inevitable element of humiliation, is "degrading" within the meaning of Article 3 (art. 3). Some further criterion must be read into the text. Indeed, Article 3 (art. 3), by expressly prohibiting "inhuman" and "degrading" punishment, implies that there is a distinction between such punishment and punishment in general.

In the Court's view, in order for a punishment to be "degrading" and in breach of Article 3 (art. 3), the humiliation or debasement involved must attain a particular level and must in any event be other than that usual element of humiliation referred to in the preceding subparagraph. The assessment is, in the nature of things, relative: it depends on all the circumstances of the case and, in particular, on the nature and context of the punishment itself and the manner and method of its execution.

31. The Attorney-General for the Isle of Man argued that the judicial corporal punishment at issue in this case was not in breach of the Convention since it did not outrage public opinion in the Island. However, even assuming that local public opinion can have an incidence on the interpretation of the concept of "degrading punishment" appearing in Article 3 (art. 3), the Court does not regard it as established that judicial corporal punishment is not considered degrading by those members of the Manx population who favour its retention: it might well be that one of the reasons why they view the penalty as an effective deterrent is precisely the element of degradation which it involves. As regards their belief that judicial corporal punishment deters criminals, it must be pointed out that a punishment does not lose its degrading character just because it is believed to be, or actually is, an effective deterrent or aid to crime control. Above all, as the Court must emphasise, it is never permissible to have recourse to punishments which are contrary to Article 3 (art. 3), whatever their deterrent effect may be.

The Court must also recall that the Convention is a living instrument which, as the Commission rightly stressed, must be interpreted in the light of present-day conditions. In the case now before it the Court cannot but be influenced by the developments and commonly accepted standards in the penal policy of the member States of the Council of Europe in this field. Indeed, the Attorney-General for the Isle of Man mentioned that, for many years, the provisions of Manx legislation concerning judicial corporal punishment had been under review.

32. As regards the manner and method of execution of the birching inflicted on Mr. Tyrer, the Attorney-General for the Isle of Man drew particular attention to the fact that the punishment was carried out in private and without publication of the name of the offender.

Publicity may be a relevant factor in assessing whether a punishment is "degrading" within the meaning of Article 3 (art. 3), but the Court does not consider that absence of publicity will necessarily prevent a given punishment from falling into that category: it may well suffice that the victim is humiliated in his own eyes, even if not in the eyes of others.

The Court notes that the relevant Isle of Man legislation, as well as giving the offender a right of appeal against sentence, provides for certain safeguards. Thus, there is a prior medical examination; the number of strokes and dimensions of the birch are regulated in detail; a doctor is present and may order the punishment to be stopped; in the case of a child or young person, the parent may attend if he so desires; the birching is carried out by a police constable in the presence of a more senior colleague.

33. Nevertheless, the Court must consider whether the other circumstances of the applicant's punishment were such as to make it "degrading" within the meaning of Article 3 (art. 3).

The very nature of judicial corporal punishment is that it involves one human being inflicting physical violence on another human being. Furthermore, it is institutionalised violence that is in the present case violence permitted by the law, ordered by the judicial authorities of the State and carried out by the police authorities of the State (see paragraph 10 above). Thus, although the applicant did not suffer any severe or long-lasting physical effects, his punishment - whereby he was treated as an object in the power of the authorities - constituted an assault on precisely that which it is one of the

main purposes of Article 3 (art. 3) to protect, namely a person's dignity and physical integrity. Neither can it be excluded that the punishment may have had adverse psychological effects.

The institutionalised character of this violence is further compounded by the whole aura of official procedure attending the punishment and by the fact that those inflicting it were total strangers to the offender.

Admittedly, the relevant legislation provides that in any event birching shall not take place later than six months after the passing of sentence. However, this does not alter the fact that there had been an interval of several weeks since the applicant's conviction by the juvenile court and a considerable delay in the police station where the punishment was carried out. Accordingly, in addition to the physical pain he experienced, Mr. Tyrer was subjected to the mental anguish of anticipating the violence he was to have inflicted on him.

34. In the present case, the Court does not consider it relevant that the sentence of judicial corporal punishment was imposed on the applicant for an offence of violence. Neither does it consider it relevant that, for Mr. Tyrer, birching was an alternative to a period of detention: the fact that one penalty may be preferable to, or have less adverse effects or be less serious than, another penalty does not of itself mean that the first penalty is not "degrading" within the meaning of Article 3 (art. 3).

35. Accordingly, viewing these circumstances as a whole, the Court finds that the applicant was subjected to a punishment in which the element of humiliation attained the level inherent in the notion of "degrading punishment" as explained at paragraph 30 above. The indignity of having the punishment administered over the bare posterior aggravated to some extent the degrading character of the applicant's punishment but it was not the only or determining factor.

The Court therefore concludes that the judicial corporal punishment inflicted on the applicant amounted to degrading punishment within the meaning of Article 3 (art. 3) of the Convention.

VII. Protection from inter-prisoner violence

In the case of Premininy v. Russia, the applicant complained about being seriously ill-treated by his cell-mates in detention, for which he held the prison authorities to be responsible:

(Case 48)
2. Merits
(a) General principles
70. The Court observes that the first applicant drew his complaint in two directions, laying blame on the authorities of the respondent State for the incitement of ill-treatment and humiliation to which he was allegedly subjected by his cellmates while at the same time suggesting that, even if this systematic ill-treatment had not been organised by State agents, the authorities knew or ought to have known that he had been at risk of physical violence at the hands of his cellmates and failed to take appropriate measures to protect him against that risk. In this connection, the Court notes that there is no evidence in the file capable of founding an "arguable claim" of any direct involvement of State agents in the first applicant's beatings. There is no indication that violence against the first applicant was, in any way, permitted by the facility administration.

71. However, the absence of any direct State involvement in acts of violence that meet the condition of severity such as to engage Article 3 of the Convention does not absolve the State from its obligations under this provision. The Court reiterates that the engagement undertaken by a Contracting State under Article 1 of the Convention is confined to "securing" the listed rights and freedoms to persons within its own "jurisdiction" (see Soering v. the United Kingdom, 7 July 1989, § 86, Series A no. 161).

72. It is true that, taken together, Articles 1 and 3 place a number of positive obligations on the High Contracting Parties, designed to prevent and provide redress for torture and other forms of ill-treatment. Thus, in A. v. the United Kingdom (23 September 1998, § 22, Reports 1998-VI) the Court held that, by virtue of these two provisions, States are required to take certain measures to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including ill-treatment administered by private individuals (see, for similar reasoning, Moldovan and Others v. Romania (no. 2), nos. 41138/98 and 64320/01, § 98, ECHR 2005-VII (extracts), and M.C. v. Bulgaria, no. 39272/98, § 149, ECHR 2003-XII). In Aksoy v. Turkey (18 December 1996, § 98, Reports 1996-VI) it was established that Article 13 in conjunction with Article 3 imposes an obligation on States to carry out a thorough and effective investigation of incidents of torture and, in Assenov and Others v. Bulgaria (28 October 1998, § 102, Reports 1998VIII), the Court held that where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. Such a positive obligation cannot be considered to be limited solely to cases of ill-treatment by State agents (see Denis Vasilyev v. Russia, no. 32704/04, § 99, 17 December 2009).

73. Admittedly, it goes without saying that the obligation on States under Article 1 of the Convention cannot be interpreted as requiring a State to guarantee through its legal system that inhuman or degrading treatment is never inflicted by one individual on another or, if it has been, that criminal proceedings should necessarily lead to a particular punishment. However, it has been the Court's constant approach that Article 3 imposes on States a duty to protect the physical well-being of persons who find themselves in a

vulnerable position by virtue of being within the control of the authorities, such as, for instance, detainees or conscripted servicemen (see Chember v. Russia, no. 7188/03, § 50, 3 July 2008; Sarban v. Moldova, no. 3456/05, § 77, 4 October 2005; Jalloh v. Germany [GC], no. 54810/00, § 69, ECHR 2006-IX; and Mouisel v. France, no. 67263/01, § 40, ECHR 2002-IX).

74. Article 3 also requires that authorities conduct an effective official investigation into any alleged ill-treatment even if such treatment has been inflicted by private individuals (see Ay v. Turkey, no. 30951/96, § 60, 22 March 2005, and M.C. v. Bulgaria, cited above, § 151). Even though the scope of a State's positive obligations might differ between cases where treatment contrary to Article 3 has been inflicted through the involvement of State agents and cases where violence is inflicted by private individuals (see Beganović v. Croatia, no. 46423/06, § 69, ECHR 2009... (extracts)), the requirements for an official investigation are similar. For the investigation to be regarded as "effective", it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means. Authorities must take the reasonable steps available to them to secure the evidence concerning the incident, including, inter alia, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard, and a requirement of promptness and reasonable expedition is implicit in this context (see, among many other authorities, Mikheyev v. Russia, no. 77617/01, § 107 et seq., 26 January 2006, and Assenov and Others v. Bulgaria, 28 October 1998, §§ 102 et seq., Reports 1998-VIII). In cases under Articles 2 and 3 of the Convention where the effectiveness of the official investigation has been at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see Labita v. Italy [GC], no. 26772/95, §§ 133 et seq., ECHR 2000IV). Consideration has been given to the opening of investigations, delays in taking statements (see Timurtaş v. Turkey, no. 23531/94, § 89, ECHR 2000-VI, and Tekin v. Turkey, 9 June 1998, § 67, Reports 1998-IV) and to the length of time taken for the initial investigation (see Indelicato v. Italy, no. 31143/96, § 37, 18 October 2001).

(b) Application of the above-mentioned principles to the circumstances of the present case

75. The Court observes that the present complaint which the first applicant raised under Article 3 of the Convention in fact poses two separate but interconnected questions: the credibility of his version of events and the gravity of the ill-treatment to which he was allegedly subjected, and the State's accountability for that treatment.

(I) Obligation of the State to prevent ill-treatment or mitigate its harm

(α) Establishment of the facts and assessment of the severity of the ill-treatment

76. The Court notes that the facts were disputed by the parties. In particular, the first applicant argued that for at least a week prior to the culmination of the events on 10 June 2002 he had been systematically humiliated and assaulted by his cellmates in cell no. 131. On 10 June 2002 he had been brutally attacked by his cellmates, sustaining concussion and numerous injuries to his body. The Government averred that the first applicant's injuries had resulted from a one-off fight between the first applicant and his cellmate K., in which the latter had kicked the first applicant in the stomach.

77. The Court reiterates that for the treatment to fall within the scope of Article 3 of the Convention it must attain a minimum level of severity. The assessment of this minimum is, by nature, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment or punishment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see, amongst many other authorities, Soering, cited above, § 100). Treatment has been held by the Court to be "inhuman" because, inter alia, it was premeditated, applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering, and also "degrading" because it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see T. v. the United Kingdom [GC], no. 24724/94, § 69, 16 December 1999).

78. The Court further reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see Ireland v. the United Kingdom, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see Salman v. Turkey [GC], no. 21986/93, § 100, ECHR 2000-VII).

79. Turning to the circumstances of the present case, the Court observes that on the morning of 10 June 2002 the first applicant was examined by a prison doctor who recorded numerous injuries to his arms, legs, back, shoulders, face and ears and also diagnosed him with concussion. The doctor's conclusion was that the injuries resulted not from a sporadic occurrence but were evidence of systematic beatings sustained within the week preceding the medical examination. The first applicant was recommended bed rest (see paragraph 34 above). The parties do not dispute that those injuries as recorded in medical certificate no. 226 were sustained by the first applicant during his detention, that is, when he was under the full control of the administration of Yekaterinburg no.1 detention facility.

80. The Court is not convinced by the Government's argument that the first applicant's injuries resulted from a one-off

fight with his cellmate K. It observes that the first applicant alleged that he had suffered physical and psychological abuse at the hands of his cellmates in cell no. 131 for over a week. It appears that attacks on the first applicant were initiated almost immediately after his transfer to that cell (see paragraph 32 above). The Court notes that the Government contested the first applicant's allegations and argued that they were false and unsubstantiated. They submitted that the first applicant's injuries as recorded in medical certificate no. 226 had resulted from a blow to the stomach he had received from cellmate K. and the subsequent fall he had taken after hitting his head and back against a wall. The Court considers that the Government's explanation sits ill with the nature and location of the first applicant's injuries. It does not lose sight of the prison doctor's finding that the first applicant had numerous injuries covering a substantial surface of his body, although no injuries to his stomach were recorded (see paragraph 34 above). The Court finds, and this finding is also supported by the prison doctor's opinion (see paragraph 34 above), that the description of the first applicant's injuries corresponds to physical sequelae from systematic beatings rather than to injuries sustained as a result of a single blow and the subsequent collision of the first applicant with a concrete wall. The Court further observes that a forensic psychiatric examination of the first applicant carried out on 25 July 2002 revealed a strong link between the deterioration of his mental health and a psychologically traumatic experience encountered by the first applicant through systematic ill-treatment and physical and psychological abuse in detention. The Court is therefore bound to conclude that the first applicant was a victim of systematic ill-treatment at the hands of his cellmates which lasted for at least a week.

81. The Court further finds that all the injuries recorded in the medical certificate and the first applicant's statements regarding the ill-treatment to which he had been subjected in detention establish the existence of physical and undoubtedly mental pain and suffering. The acts complained of were such as to arouse in the first applicant feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and emotional resistance. This conclusion is supported by the experts' finding that physical and psychological abuse led to the first applicant feeling afraid, depressed and hopeless (see paragraph 14 above). An important element to be taken into consideration is also the long-term consequences of the ill-treatment on the first applicant's mental health (see paragraphs 14 and 16 above). The Court also attaches great importance to the first applicant's young age at the time of the events, which made him particularly vulnerable at the hands of his aggressors. Having regard to the nature and degree of the ill-treatment and its effect on the first applicant's mental health, the Court finds that there are elements which are sufficiently serious to render such treatment inhuman and degrading contrary to the guarantees of Article 3 of the Convention. It therefore remains to determine whether the State authorities can be held accountable for the ill-treatment of which the first applicant was a victim.

(β) State responsibility: supervision and control system in detention

82. The Court notes that the Government refused to take any responsibility for the ill-treatment in question, arguing that there had been no failing or omission on the part of the detention facility administration. They submitted that the State could neither be implicated in instigating a conflict between the inmates nor accused of failing to take all necessary steps to prevent the occurrence of such a conflict. In the Government's opinion, violence was an inevitable element of prison life and its existence was not related to the efficiency of the system of supervision and control existing in a detention facility.

83. In this connection, the Court firstly reiterates that Article 3 enshrines one of the most fundamental values of democratic societies and, in accordance with this notion, prohibits in absolute terms torture and inhuman or degrading treatment or punishment (see, among other authorities, Chahal v. the United Kingdom, 15 November 1996, § 79, Reports 1996-V). It imposes an obligation on the Contracting States not only to refrain from provoking ill-treatment, but also to take the necessary preventive measures to preserve the physical and psychological integrity and well-being of persons deprived of their liberty (see Mouisel v. France, no. 67263/01, § 40, ECHR 2002IX, and Keenan v. the United Kingdom, no. 27229/95, § 111, ECHR 2001III). At the same time the Court has consistently interpreted that obligation in such a manner as not to impose an impossible or disproportionate burden on the authorities (see Pantea v. Romania, no. 33343/96, § 189, ECHR 2003VI (extracts)). The Court has also stated that the scope of the State's positive obligation under Article 3 must be compatible with the other rights and freedoms under the Convention (see Keenan, cited above, §§ 89-91).

84. Having regard to the absolute character of the protection guaranteed by Article 3 of the Convention and given its fundamental importance in the Convention system, the Court has developed a test for cases concerning a State's positive obligation under that Convention provision. In particular, it has held that to successfully argue a violation of his Article 3 right it would be sufficient for an applicant to demonstrate that the authorities had not taken all steps which could have been reasonably expected of them to prevent real and immediate risks to the applicant's physical integrity, of which the authorities had or ought to have had knowledge. The test does not, however, require it to be shown that "but for" the failing or omission of the public authority the ill-treatment would not have occurred. The answer to the question whether the authorities fulfilled their positive obligation under Article 3 will depend on all the circumstances of the case under examination (see Pantea, cited above, §§ 191-96). The Court also reiterates that State responsibility is engaged by a failure to take reasonably available measures which could have had a real prospect of altering the outcome or mitigating the harm to the applicant (see E. and Others v. the United Kingdom, no. 33218/96, §§ 89-101, 26 November 2002). The Court therefore has to establish whether, in the circumstances of the present case, the authorities knew or ought to have known that the

first applicant was suffering or at risk of being subjected to ill-treatment at the hands of his cellmates, and if so, whether the administration of the detention facility, within the limits of their official powers, took reasonable steps to eliminate those risks and to protect the first applicant from that abuse.

85. The Court notes the Government's argument that the authorities could not have foreseen a sporadic fight breaking out between the first applicant and his cellmate K. They stressed that conflicts among detainees were not rare and therefore there existed no means of eliminating them entirely. In this connection, the Court notes that it is the State's utmost responsibility to prevent and address violence among inmates in prisons in accordance with its obligation to respect, protect and fulfil the right of individuals not to be subjected to torture or to inhuman or degrading treatment or punishment.

86. Furthermore, the Court has already made a finding on the materials before it, which are uncontroverted, that the first applicant suffered systematic abuse at the hands of his cellmates. The acts of violence against the first applicant continued for at least a week (see paragraph 80 above). The materials before the Court also disclose the authorities' knowledge of the situation. In particular, as can be seen from the decision of 24 December 2004 given by the assistant prosecutor of the Sverdlovsk Region, the administration of the detention facility was aware of the acts of violence against the first applicant, which they considered to be a response to his own aggressive behaviour (see paragraph 49 above). Irrespective of the cause of the abuse which the first applicant suffered, the Court is of the opinion that the authorities, apprised of the first applicant's allegedly provocative behaviour, could have reasonably foreseen that such behaviour rendered him more vulnerable than an average detainee. The authorities should have enquired into the first applicant's psychological state, having considered that, in view of his relatively young age, background and no previous experience of the criminal justice system, the detention could have exacerbated his feeling of distress, already inherent in any measure of deprivation of liberty, making him more prone to episodes of anger and irascibility, which he allegedly manifested against other inmates (see, for similar reasoning, Pantea, cited above, § 192). Moreover, apart from a general knowledge that the first applicant was at risk of violence as a consequence of his unconventional behaviour, the administration of the detention facility could not but have noticed actual signs of abuse, as it was not disputed by the parties that at least part of the first applicant's injuries were visible. In this situation the Court takes the view that even if the facility administration was not immediately aware of the first attack inflicted on the first applicant, within a few days they should have been alerted to the fact that the first applicant had been subjected to ill-treatment and that there was cause to introduce specific security and surveillance measures to prevent him being the subject of continual verbal and physical aggression.

87. The Court notes that responding to prison violence requires prompt action by facility staff, including ensuring that the victim is protected from further abuse and can access the necessary medical and mental health services. Such response should include the coordination of security staff, forensic, medical, and mental health practitioners and facility management. However, in the present case, notwithstanding the existence of a serious risk to the first applicant's well-being, no specific and prompt security or surveillance measures were introduced at the detention facility. In particular, there is no evidence in the materials submitted by the parties that the administration of the detention facility had ever considered the specific details of the first applicant's personal situation in their choice of co-detainees to place in his cell (see, for similar reasoning, Rodić and Others v. Bosnia and Herzegovina, no. 22893/05, § 71, 27 May 2008). In fact, it appears that the management of the detention facility lacked a clear policy on the classification and housing of detainees, key to promoting internal prison security and preventing prison violence. The Court reiterates that a proper classification system which includes screening for the risk of victimisation and abusiveness, consideration of the traits known to place someone at risk and of an individual's own perception of vulnerability is critical to ensuring that potential predators and potential victims are not housed together (see, also for guidance, paragraph 54 above).

88. Furthermore, there is no indication that the facility administration attempted to monitor, on a regular basis, the conduct of inmates prone to being violent or those who were at risk of being subjected to violence. Nor is there evidence that disciplinary measures were taken against the offenders. As to the monitoring, the Court is not satisfied that keeping the lights on at night and having cells occasionally checked on by warders were sufficient measures to enhance inmate security, and, in particular, to protect the first applicant from continual abuse. The Government, however, did not suggest any other protective measures which could have prevented further attacks on the first applicant. In respect of the disciplinary action, the Court is not convinced that the facility administration adhered to a standardised policy of punishments for inmates who perpetrated abuse. The absence of such a policy shows that prison violence was not taken as seriously as other crimes and that the facility administration allowed detainees to act with impunity to the detriment of the rights of other inmates, including the right guaranteed by Article 3 of the Convention.

89. At the same time, what is more striking is that it was not until the incident of 10 June 2002, which the first applicant described as the culmination of the ill-treatment, that he was removed from the cell where he had been subjected to systematic assault. The Court attributes particular weight to this fact in view of the absence of any other mechanisms for promoting inmates' security in the detention facility. The Court also finds it regrettable that the facility administration did not make any meaningful attempts to provide the first applicant with psychological rehabilitation in the aftermath of the events.

90. In sum, the facility administration did not maintain a safe environment for the first applicant, having failed to detect, prevent or monitor, and respond promptly, diligently and effectively to the systematic inhuman and degrading treatment to which he had been subjected by his cellmates. The Court therefore concludes that the authorities did not fulfil their positive obligation to adequately secure the physical and psychological integrity and well-being of the first applicant.

91. Accordingly, there has been a violation of Article 3 of the Convention in this respect.

(II) Obligation to investigate

92. The Court holds that medical evidence of serious damage to the first applicant's health, together with his allegation of being subjected to systematic beatings by his cellmates, amounted to an "arguable claim" of ill-treatment. Accordingly, the authorities had an obligation to carry out an effective investigation into the events. For the purposes of its further analysis, the Court refers to the requirements as to the effectiveness of an investigation set out in paragraph 74 above.

93. The Court notes that the first applicant was entirely reliant on the prosecuting authorities to assemble the evidence necessary to corroborate his allegation of ill-treatment. The prosecutor had the legal powers to interview the warders and inmates, visit the scene of the incident, collect forensic evidence and take all other crucial steps for the purpose of establishing the veracity of the first applicant's account. The prosecutor's role was critical not only to the pursuit of criminal proceedings against the perpetrators of the offence but also to the pursuit by the first applicant of other remedies to redress the harm he had suffered (see paragraph 51 above).

94. The Court observes, firstly, that the competent prosecution authorities were particularly slow in opening a criminal investigation into the alleged ill-treatment. The situation was initially addressed by the acting director of the detention facility who on 11 June 2002, the day following the most serious incident of ill-treatment, gave a decision finding no cause to take any action. In this connection the Court has serious doubts as to the ability of the facility's administration to carry out an independent investigation as required by Article 3. The initial one-day investigation was closed on the basis of the unreasonable finding that the first applicant had had a sporadic fight with his cellmate K. and that the first applicant had had no intention of pressing charges. That decision was sent to the Sverdlovsk Regional Prosecutor's Office in compliance with the established procedure. It was more than two years later that the prosecution authorities responded, having quashed the decision of 11 June 2002 as premature. An additional investigation into the events of June 2002 was authorised. However, the initial delay in opening the investigation resulted in a loss of precious time and made it impossible to secure evidence of the incident. That failure also made it impossible to bring the perpetrators to justice owing to the expiry of the statutory limitation period.

95. The Court notes the Government's argument that it was the second applicant's failure to appeal against the decision of 11 June 2002 that had led to the prosecution's futile attempts to investigate the events. In this respect, the Court does not lose sight of the fact that Russian law entrusts prosecution authorities with a function of supervision over decisions of the management of detention facilities, particularly those which concern instances of alleged ill-treatment of detainees. The authorities must act of their own motion, once the matter has come to their attention, and they cannot leave it to the initiative of the victims or their relatives (see paragraphs 52 and 53 above). It appears that by not linking the obligation to investigate to the presence of a complaint, that legal provision has been designed to protect the interests of detainees, individuals in a vulnerable situation who, owing to intimidation and fear of reprisal, are not inclined to complain of unlawful actions committed against them in detention. The fact that the investigation was only initiated after the second applicant's complaint that the decision of 11 June 2002 was unlawful is evidence of a manifest breach of the applicable procedures by the prosecution authorities in the present case.

96. The Court is also not convinced that, once instituted, the proceedings were conducted in a diligent manner. The responsibility for the investigation was transferred from the prosecution authorities to the facility administration and back to the prosecution authorities. Within a period of four months two decisions not to institute criminal proceedings were given, only to be subsequently quashed by supervising prosecutors. The decisions ordering the reopening of the proceedings consistently referred to the need for further and more thorough investigation. However, this direction was not followed by the investigators in charge of the case, and the decisions to discontinue the proceedings were based on identical evidence and reasoning. It appears that the authorities took no meaningful steps to ensure, as far as possible, that all the facts were established, that culpable conduct was exposed and that those responsible were held accountable. The scope of the investigation has not evolved over time to include verification of new versions of events, such as the one that the first applicant was systematically beaten up in cell no. 131 and that a number of his co-detainees had been involved. The Court also notes that the investigation is currently pending without any evidence of progress being made.

97. In the light of the very serious shortcomings identified above, the Court concludes that the investigation was not prompt, expeditious or sufficiently thorough. The Court accordingly holds that there has been a violation of Article 3 of the Convention under its procedural limb in that the investigation into the first applicant's allegations of systematic ill-treatment by inmates in detention facility no. 1 in Yekaterinburg was not effective.

Summary of Part 1. Deliberate ill-treatment

International human rights law prohibits torture as well as cruel, inhuman or degrading treatment or punishment. These concepts are interrelated to each other, in that torture is always inhuman and inhuman treatment is always degrading. In other words, torture is the most severe form of ill-treatment. Cruel treatment is a severe form of inhuman treatment not amounting to torture.

Ill-treatment may take many different forms, ranging from torture, to inhuman or degrading treatment to treatment that humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance.

The prohibition of torture and other ill-treatment enshrines one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against organised terrorism and crime, human rights law prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Unlike most rules of human rights law, the prohibition of torture makes no provision for exceptions and no derogation from it is permissible, even in the event of a public emergency threatening the life of the nation.

Torture

In determining whether a particular form of ill-treatment should be qualified as torture, consideration must be given to the distinction between this notion and that of inhuman or degrading treatment. According to the case-law of the European Court of Human Rights, it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering.

In addition to the severity of the treatment, the European Court now also considers that there is a purposive element in the concept of torture. Such an element is also recognised in Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which defines torture in terms of the intentional infliction of severe pain or suffering for a purpose such as obtaining information, inflicting punishment or intimidating the victim, and others. Similarly, the Inter-American Court of Human Rights understands that the elements of torture are a) an intentional act; b) which causes severe physical or mental suffering, c) committed with a given purpose or aim. The case-law of the international ad hoc criminal tribunals is in line with this reasoning.

In contrast, the definitions contained in the Statute of the International Criminal Court, as well as the corresponding "Elements of Crimes", provide support for the opinion that, apart from the desire to inflict pain and humiliate the victim, no specific purpose is required by the term "torture". Accordingly, there may be a lack of coherence between

the various definitions of "torture" considered in this Compendium. The relevance of this (possible) incoherence, however, is limited, since normally severe suffering is inflicted for a purpose, and in any case, even "purposeless" inhuman treatment not amounting to torture is, like torture, prohibited in absolute terms and at all times.

Examples of torture found by international courts include, inter alia, "palestinian hanging", a combination of severe beatings and other, very humiliating acts (Selmouni case), beatings on the head causing brain damage (Ilhan case), beatings combined with a strip-search, shackling, hooding and sensory deprivation in the course of a "secret rendition" (El-Masri case). In further cases torture had been found when the victims had been deprived of sleep and subjected to a spraying with water, beatings and "falaka" (Bati case), or repeatedly beaten on different parts of his body and given electric shocks to force them to confess to a criminal offence. Rape in police custody is a clear case of torture (Aydin case), the same is true for "waterboarding" (Husayn (Abu Zubaydah) case).

The European and the Inter-American Courts of Human Rights as well as the international criminal tribunals recognize that torture is not necessarily connected with the infliction of physical pain. Torture and other ill-treatment may be carried out by inflicting merely psychological pain or exercising psychological pressure. A case in point would be if a person is forced to watch the torture of another person.

Cruel treatment

Cruel treatment may be understood as a particular intense form of inhuman treatment, which does not reach the intensity of torture. With the exception of the European Convention on Human Rights, which does not mention such treatment specifically, cruel treatment is expressly prohibited in all human rights treaties and may constitute a war crime or a crime against humanity.

In international criminal law, cruel treatment is defined as an intentional act or omission causing serious mental or physical suffering or injury, or constituting a serious attack on human dignity. It is not required that the suffering caused by the cruel treatment be "lasting". The offence of torture under common article 3 of the Geneva Conventions is also included within the concept of cruel treatment. According to the ICTY, treatment that does not meet the purposive requirement for the offence of torture, constitutes cruel treatment.

In its assessment of the seriousness of the act or omission, the courts take all circumstances into consideration, including factors such as the age and health of the victim, and the

physical and mental effects of the crime upon the victim. For example, in a case before the ICTY a couple was woken up by soldiers in the middle of the night, the husband incapacitated in a well and the wife taken away by the soldiers to be interrogated at an unknown destination. The court considered that this situation must have caused great mental suffering to the husband, and found cruel treatment to be established.

Inhuman Treatment

In the Ireland v. United Kingdom judgment, certain interrogation methods were considered to be "inhuman" by the European Court of Human Rights, because they were applied "with premeditation and for hours at a stretch; they caused, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation." This description covers many cases of inhuman treatment, although premeditation or intent is not always a necessary requirement, as will be seen when discussing inhuman conditions of detention in Part 3 of this Compendium.

Among the typical examples of inhuman (or, in less severe cases, degrading) treatment is the unnecessary use of force by the police. International human rights law does not prohibit the use of force in certain well-defined circumstances. However, such force may be used only if indispensable and must not be excessive. In respect of persons deprived of his liberty, any recourse to physical force which has not been made strictly necessary by their own conduct diminishes human dignity and is in principle an infringement of the prohibition of inhuman and degrading treatment. This is particularly true in cases where a person has already been brought under control. The requirements of an investigation and the undeniable difficulties inherent in the fight against crime cannot justify placing limits on the protection to be afforded in respect of the physical integrity of individuals. Where injuries have been sustained at the hands of the police, the burden to show the necessity of the force used lies on the Government.

In order to fall within the scope "inhuman or degrading treatment", illtreatment must attain a minimum level of severity. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim. In international criminal law, according to the ICTY (Celebici case) inhuman treatment encompasses the following:

- treatment constituting an attack on physical integrity or health;
- certain measures, for example, which might cut the internees off completely from the outside world and in particular from their families, or
- which caused grave injury to their human dignity,

The prohibition on inhumane treatment also extends to the living conditions of protected persons and would be violated if adequate food, water, clothing, medical care and shelter, were not provided in light of the protected persons' varying habits and health.

In sum, the ICTY found that inhuman treatment is an intentional act or omission, that is an act which, judged objectively, is deliberate and not accidental, which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity. The plain, ordinary meaning of the term inhuman treatment in the context of the Geneva Conventions confirms this approach and clarifies the meaning of the offence. Thus, inhuman treatment is intentional treatment which does not conform with the fundamental principle of humanity, and forms the umbrella under which the remainder of the listed "grave breaches" in the Conventions fall. Hence, acts characterised in the Conventions and Commentaries as inhuman, or which are inconsistent with the principle of humanity, constitute examples of actions that can be characterised as inhuman treatment.

In this framework of offences, all acts found to constitute torture or wilfully causing great suffering or serious injury to body or health would also constitute inhuman treatment. However, this third category of offence is not limited to those acts already incorporated into the other two and extends further to other acts which violate the basic principle of humane treatment, particularly the respect for human dignity. Ultimately, the question of whether any particular act which does not fall within the categories of the core group is inconsistent with the principle of humane treatment, and thus constitutes inhuman(e) treatment, is a question of fact to be judged in all the circumstances of the particular case.

According to the European Court of Human Rights inhuman treatment had taken place in cases where electroshocs had been used against persons (Anzhelo Georgiev case), pepper spray had been applied against a prisoner in a closed room and he was subsequently fixed to a restraint bed for more than three hours (Tali case), where prisoners were forced to participate in exercises of special forces and been subject to beatings and intimidation in the course of these exercises (Davydov case). Secret and illegal detention for twenty days in a hotel room, outside of any judicial framework und without contact to the outside world, may in itself be inhuman and degrading (El Masri case). A threat of torture may constitute inhuman treatment (Gäfgen case).

Degrading Treatment

The European Court of Human Rights has considered acts to be degrading because "they were such as to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance". Whereas inhuman treatment is often connected with the infliction of physical pain on the victim, treatment is typically considered to be degrading because of its humiliating effect which does not necessarily go hand in hand with physical pain or suffering.

In the context of this Compendium, the interpretation and application of the term "degrading treatment" is of special interest and importance. While acts of torture or inhuman treatment are usually far from any legal justification, the line between degrading and acceptable treatment is not always easy to draw.

It is the constant case-law of the European Court of Human Rights that in order to be "degrading", ill-treatment must attain a minimum level of severity. 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. Further factors include the purpose for which the treatment was inflicted together with the intention or motivation behind it.

Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these aspects, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition set forth in Article 3. It should also be pointed out that it may well suffice that the victim is humiliated in his own eyes, even if not in the eyes of others.

In respect of a person who is deprived of his liberty, or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, at least "degrading treatment". Accordingly, even a slap given by a police officer to a young man due to disrespectful behaviour was considered by the Court to be degrading, because – in addition to physical pain – this constituted an abuse of the police officer's superior position and therefore had a humiliating effect (Bouyid case).

Degrading treatment may also occur in the course of criminal proceedings. However, according to the European Court of Human Rights, in order for treatment to be "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment. Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that the execution of detention on remand – or of a custodial sentence – in itself raises an issue under Article 3 of the European Convention on Human Rights. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. Corporal punishment is degrading punishment (Tyrer case).

As regards measures of restraint such as handcuffing, these do not normally give rise to an issue under Article 3 of the Convention where they have been imposed in connection with lawful arrest or detention and do not entail the use of force, or public exposure, exceeding what is reasonably considered necessary in the circumstances. In this regard, it is of importance for instance whether there is reason to believe that the person concerned would resist arrest or try to abscond or cause injury or damage or suppress evidence. However, the frequent use of handcuffs on prisoners in a secure environment (Kashavelov case), in particular where the prisoner is completely blind (Kaverzin case), was found to be obviously unnecessary and therefore degrading by the Court. In addition, the European Court of Human Rights considered the routine placement of accused persons in a metal cage during trial in Russian courtrooms, apart from undermining the presumtion of innocence, to be degrading treatment (Svinarenko and Slyadnev case).

The prohibition of degrading treatment was also violated when witnesses in criminal proceedings were obliged to remain at a police station for ten hours during the night, without nutrition, water and rest (Soare case). The circumstances of arrest may be degrading if a person is arrested, without a convincing need, by a special police operation in the early morning in the presence of his wife and his little children (Gutsanovi case).

Medical examinations and interventions may also constitute degrading treatment, for example an unnecessary gynaecological examination (Yazgül Yilmaz case), the forced administration of emetics in order to obtain evidence (Jalloh case), or forced placement in a closed psychiatric establishment without any medical justification (Gorobet case). Strip searches may be justified, but if used excessively they may also constitute degrading treatment (Iwanczuk, Wieser and Lorsé cases), in particular if a man has to undergo a strip-search in the presence of a female officer (Valasinas case). The forced removal of a prisoner's hair was also found to be degrading (Yankov case).

Protection from inter-prisoner violence

While the prohibition of torture and ill-treatment primarily requires state authorities to refrain from inflicting inhuman or degrading treatment actively on persons deprived of their liberty, the absence of any direct State involvement in acts of violence does not absolve the State from its obligations under human rights law. States have a number of positive obligations, designed to prevent and provide redress for torture and other forms of ill-treatment. They are required to ensure, as far as possible, that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including ill-treatment administered by private individuals. Of course, States cannot guarantee that inhuman or degrading treatment is never inflicted by one individual on another. However, States have a duty to protect the

physical well-being of persons, in particular of those who find themselves in a vulnerable position by virtue of being within the control of the authorities, such as, for instance, detainees or conscripted servicemen.

In this context, governments cannot simply rely on the view that violence is an inevitable element of prison life. To the contrary, they have to take the necessary preventive measures to preserve the physical and psychological integrity and well-being of persons deprived of their liberty. This obligation should not be understood to impose an impossible or disproportionate burden on the authorities. However, authorities have to take all steps which can be reasonably expected of them to prevent real and immediate risks to a person's physical integrity, of which the authorities had or ought to have had knowledge. In particular, once the authorities are aware of a case of inter-prisoner violence prompt action by facility staff is required, including ensuring that the victim is protected from further abuse and can access the necessary medical and mental health services (Premininy case).

Part 2. Conditions of detention

I. Conditions of detention: a combination of various factors.

For various reasons, conditions of detention are very harsh, and poor, in many places in the world. In certain circumstances, they may be so bad that they have to be considered inhuman or degrading.

The European Court of Human Rights has given an overview of the underlying principles in its 2016 judgment of Mursic v. Croatia:

(Case 49)
2. Recapitulation of the relevant principles
(a) General principles
96. 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, for example, Labita v. Italy [GC], no. 26772/95, § 119, ECHR 2000-IV; and Svinarenko and Slyadnev v. Russia [GC], nos. 32541/08 and 43441/08, § 113, ECHR 2014 (extracts)).

97. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum 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 (see, among other authorities, Ireland v. the United Kingdom, 18 January 1978, § 162, Series A no. 25; Jalloh v. Germany [GC], no. 54810/00, § 67, ECHR 2006IX; Idalov, cited above, § 91; and also, Kalashnikov v. Russia, no. 47095/99, § 95, ECHR 2002VI).

98. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see, among other authorities, Idalov, cited above, § 92; and also, Pretty v. the United Kingdom, no. 2346/02, § 52, ECHR 2002III; Ananyev and Others, cited above, § 140; Varga and Others, cited above, § 70). Indeed, the prohibition of torture and inhuman or degrading treatment or punishment is a value of civilisation closely bound up with respect for human dignity (see Bouyid v. Belgium [GC], no. 23380/09, § 81, ECHR 2015).

99. In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his or her health and well-being are adequately secured (see Kudła v. Poland [GC], no. 30210/96, §§ 92-94, ECHR 2000XI; Idalov, cited above, § 93; Svinarenko and Slyadnev, cited above, § 116; Mozer v. the Republic of Moldova and Russia [GC], no. 11138/10, § 178, ECHR 2016; and also, Valašinas v. Lithuania, no. 44558/98, § 102, ECHR 2001VIII; and Ananyev and Others, cited above, § 141).

100. Even the absence of an intention to humiliate or debase a detainee by placing him or her in poor conditions, while being a factor to be taken into account, does not conclusively rule out a finding of a violation of Article 3 of the Convention (see, inter alia, Peers v. Greece, no. 28524/95, § 74, ECHR 2001III; Mandić and Jović, cited above, § 80; Iacov Stanciu, cited above, § 179; and generally under Article 3, Svinarenko and Slyadnev, cited above, § 114, and Bouyid, cited above, § 86). Indeed, it is incumbent on the respondent Government to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see, amongst many others, Mamedova v. Russia, no. 7064/05, § 63, 1 June 2006; Orchowski, cited above, § 153; Neshkov and Others, cited above, § 229; and Varga and Others, cited above, § 103).
Among the most important, typical problems in detention are

- overcrowding,
- poor hygienic conditions,
- lack of access to natural light,
- lack of access to fresh air, ventilation and heating, and
- lack of access to outdoor exercise.

The Court described these typical factors to be considered when assessing conditions of detention in detail in the 2012 case of Ananyev and others v. Russia:

(Case 50)
1. General principles (…)
142. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see Dougoz v. Greece, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person is detained in the particular conditions also has to be considered (see, among other authorities, Alver v. Estonia, no. 64812/01, 8 November 2005).

(a) Overcrowding

143. The extreme lack of space in a prison cell weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were "degrading" from the point of view of Article 3 (see Karalevičius v. Lithuania, no. 53254/99, § 36, 7 April 2005).

144. The Court notes that the General Reports published by the Committee for the Prevention of Torture do not appear to contain an explicit indication as to what amount of living space per inmate should be considered the minimum standard for a multi-occupancy prison cell. It transpires, however, from the individual country reports on the CPT's visits and the recommendations following on those reports that the desirable standard for the domestic authorities, and the objective they should attain, should be the provision of four square metres of living space per person in pre-trial detention facilities (see, among others, CPT/Inf (2006) 24 [Albania], § 93; CPT/Inf (2004) 36 [Azerbaijan], § 87; CPT/Inf (2008) 11 [Bulgaria], §§ 55, 77; CPT/Inf (2008) 29 [Croatia], §§ 56, 71; CPT/Inf (2007) 42 [Georgia], §§ 42, 51, 61, 74; CPT/Inf (2009) 22 [Lithuania], § 35; CPT/Inf (2006) 11 [Poland], §§ 87, 101, 111; CPT/Inf (2009) 1 [Serbia], § 49, and CPT/Inf (2008) 22 [FYRO Macedonia], § 38).

145. Whereas the provision of four square metres remains the desirable standard of multi-occupancy accommodation, the Court has found that where the applicants have at their disposal less than three square metres of floor surface, the overcrowding must be considered to be so severe as to justify of itself a finding of a violation of Article 3 (see, among many other authorities, Trepashkin (no. 2), § 113, and Kozhokar, § 96, both cited above; Svetlana Kazmina v. Russia, no. 8609/04, § 70, 2 December 2010; Kovaleva v. Russia, no. 7782/04, § 56, 2 December 2010; Roman Karasev, cited above, §§ 48-49; Aleksandr Leonidovich Ivanov v. Russia, no. 33929/03, § 35, 23 September 2010; Vladimir Krivonosov, § 93, and Gubin, § 57, both cited above; Salakhutdinov v. Russia, no. 43589/02, § 72, 11 February 2010; Denisenko and Bogdanchikov v. Russia, no. 3811/02, § 98, 12 February 2009; Guliyev, cited above, § 32; Lind v. Russia, no. 25664/05, § 59, 6 December 2007; Kantyrev v. Russia, no. 37213/02, §§ 50-51, 21 June 2007; Andrey Frolov v. Russia, no. 205/02, §§ 47-49, 29 March 2007; Labzov v. Russia, no. 62208/00, § 44, 16 June 2005; and Mayzit v. Russia, no. 63378/00, § 40, 20 January 2005).

146. In some earlier cases, the number of detainees exceeded the number of sleeping places in the cell and insufficiency of floor surface was further aggravated by the lack of an individual sleeping place. Inmates had to take turns to sleep (see Gusev v. Russia, no. 67542/01, § 57, 15 May 2008; Dorokhov v. Russia, no. 66802/01, § 58, 14 February 2008; Bagel v. Russia, no. 37810/03, § 61, 15 November 2007; Babushkin v. Russia, no. 67253/01, § 44, 18 October 2007; Igor Ivanov, § 36, Benediktov, § 36, Khudoyorov, § 106, Romanov, § 77, and Labzov, § 45, all cited above; and Kalashnikov v. Russia, no. 47095/99, § 97, ECHR 2002VI).

147. Where the cell accommodated not so many detainees but was rather small in overall size, the Court noted that, deduction being made of the place occupied by bunk beds, a table, and a cubicle in which a lavatory pan was placed, the remaining floor space was hardly sufficient even to pace out the cell (see Yevgeniy Alekseyenko v. Russia, no. 41833/04, § 87, 27 January 2011; Petrenko v. Russia, no. 30112/04, § 39, 20 January 2011; Gladkiy, § 68, Trepashkin (no. 2), § 113, both cited above; Arefyev v. Russia, no. 29464/03, § 59, 4 November 2010; and Lutokhin, cited above, § 57).

148. It follows that, in deciding whether or not there has been a violation of Article 3 on account of the lack of personal space, the Court has to have regard to the following three elements:

(a) each detainee must have an individual sleeping place in the cell;
(b) each detainee must have at his or her disposal at least three square metres of floor space; and
(c) the overall surface of the cell must be such as to allow the detainees to move freely between the furniture items.

The absence of any of the above elements creates in itself a strong presumption that the conditions of detention amounted to degrading treatment and were in breach of Article 3.

(b) Other aspects

149. In cases where the inmates appeared to have at their disposal sufficient personal space, the Court noted other aspects of physical conditions of detention as being relevant for the assessment of compliance with that provision. Such elements included, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of heating arrangements, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements. Thus, even in cases where a larger prison cell was at issue – measuring in the range of three to four square metres per inmate – the Court found a violation of Article 3 since the space factor was coupled with the established lack of ventilation and lighting (see, for example, Vlasov v. Russia, no. 78146/01, § 84, 12 June 2008; Babushkin, cited above, § 44; and Trepashkin v. Russia, no. 36898/03, § 94, 19 July 2007).

(I) Outdoor exercise

150. Of the other elements relevant for the assessment of the conditions of detention, special attention must be paid to the availability and duration of outdoor exercise and the conditions in which prisoners could take it. The Prison Standards developed by the Committee for the Prevention of Torture make specific mention of outdoor exercise and consider it a basic safeguard of prisoners' well-being that all of them, without exception, be allowed at least one hour of exercise in the open air every day and preferably as part of a broader programme of out-of-cell activities. The Standards emphasise that outdoor exercise facilities should be reasonably spacious and whenever possible offer shelter

from inclement weather (see paragraph 48 of the 2nd General Report, cited in paragraph 56 above).

151. The Court has frequently observed that a short duration of outdoor exercise limited to one hour a day was a factor that further exacerbated the situation of the applicant, who was confined to his cell for the rest of the time without any kind of freedom of movement (see, most recently, Yevgeniy Alekseyenko, § 88, Gladkiy, § 69, and Skachkov, § 54, all cited above). In one case the applicant's situation was even worse because the exercise yard had been closed for renovation and he was forced to stay indoors for more than a month (see Trepashkin, cited above, §§ 32 and 94).

152. The physical characteristics of outdoor exercise facilities also featured prominently in the Court's analysis. In Moiseyev v. Russia, the exercise yards in a Moscow prison were just two square metres larger than the cells and hardly afforded any real possibility for exercise. The yards were surrounded by three-metre-high walls with an opening to the sky protected with metal bars and a thick net. The Court considered that the restricted space coupled with the lack of openings undermined the facilities available for recreation and recuperation (see Moiseyev v. Russia, no. 62936/00, § 125, 9 October 2008).

(II) Access to natural light and fresh air

153. The Court has constantly emphasised the importance of giving prisoners unobstructed and sufficient access to natural light and fresh air within their cells. Until the early 2000s Russian remand prisons were equipped with metal shutters or inclined plates fitted to windows, which had apparently been designed to prevent communication between prisoners. As the Committee for the Prevention of Torture noted, not only did such contraptions have the effect of depriving prisoners of access to natural light and preventing fresh air from entering the accommodation but they also created conditions favourable to the spread of diseases and in particular tuberculosis (see paragraph 30 of the 11th General Report, cited in paragraph 56 above).

154. In the Court's view, restrictions on access to natural light and air owing to the fitting of metal shutters seriously aggravated the situation of prisoners in an already overcrowded cell and weighed heavily in favour of a violation of Article 3 (see Goroshchenya, § 71, Salakhutdinov, § 73, Shilbergs, § 97, all cited above; Grigoryevskikh v. Russia, no. 22/03, § 64, 9 April 2009; Aleksandr Makarov, § 96, Belashev, § 59, Moiseyev, § 125, Vlasov, § 82, all cited above; and Novoselov v. Russia, no. 66460/01, § 44, 2 June 2005). However, absent any indications of overcrowding or malfunctioning of the ventilation system and artificial lighting, the negative impact of shutters did not reach, on its own, the threshold of severity required under Article 3 (see Pavlenko, cited above, §§ 81-82, and Matyush v. Russia, no. 14850/03, § 58, 9 December 2008).

155. The Court has also made it clear that the free flow of natural air should not be confused with inappropriate exposure to inclement outside conditions, including extreme heat in summer or freezing temperatures in winter. In some cases the applicants found themselves in particularly harsh conditions because the cell window was fitted with shutters but lacked glazing. As a result, they suffered both from inadequate access to natural light and air and from exposure to low winter temperatures, having no means to shield themselves from the cold freely penetrating into the cell from the outside (see Zakharkin, §§ 125-127, Gultyayeva, §§ 159-162, both cited above, and Starokadomskiy v. Russia, no. 42239/02, § 45, 31 July 2008).

(III) Sanitary facilities and hygiene

156. The Court considers, as does the Committee for the Prevention of Torture, that access to properly equipped and hygienic sanitary facilities is of paramount importance for maintaining the inmates' sense of personal dignity (see paragraph 49 of the 2nd General Report, cited in paragraph 56 above). Not only are hygiene and cleanliness integral parts of the respect that individuals owe to their bodies and to their neighbours with whom they share premises for long periods of time, they also constitute a condition and at the same time a necessity for the conservation of health. A truly humane environment is not possible without ready access to toilet facilities or the possibility of keeping one's body clean (see point 15 of the Standard Minimum Rules for the Treatment of Prisoners and point 19.4 of the European Prison Rules, cited in paragraphs 55 and 58 above, respectively).

157. As regards access to toilets, the Court has noted in many cases that in Russian remand prisons the lavatory pan was placed in the corner of the cell and either lacked any separation from the living area or was separated by a single partition approximately one to one a half metres high. Such close proximity and exposure was not only objectionable from a hygiene perspective but also deprived a detainee using the toilet of any privacy because he remained at all times in full view of other inmates sitting on the bunks and also of warders looking through the peephole (see, among other authorities, Aleksandr Makarov, § 97, Trepashkin, § 94, Grishin, § 94, and Kalashnikov, § 99, all cited above). In one case the Court considered that the lack of privacy resulting from the openness of the toilet area must have taken a particularly heavy toll on the applicant, who was undergoing treatment for haemorrhoids and had to apply his medication in front of his cellmates and warders (see Moiseyev, cited above, § 124).

158. The Court has frequently noted that the time for taking a shower which has normally been afforded to inmates in Russian remand prisons has been limited to fifteen to twenty minutes once a week and has been manifestly insufficient for maintaining proper bodily hygiene. The way the showering was organised did not afford the detainees any elementary privacy, for they were taken to shower halls as a group, one cell after another, and the number of functioning shower heads was occasionally too small to accommodate all of them (see Goroshchenya, § 71, Shilbergs, § 97, Aleksandr Makarov, § 99, Seleznev, § 44, Grishin, § 94, and Romanov, § 79, all cited above).

159. Finally, the necessary sanitary precautions should include measures against infestation with rodents, fleas, lice, bedbugs and other vermin. Such measures comprise sufficient and adequate disinfection facilities, provision of detergent products, and regular fumigation and checkups of the cells and in particular bed linen, mattresses and the areas used for keeping food. This is an indispensable element for the prevention of skin diseases, such as scabies, which appear to have been a common occurrence in Russian remand prisons (see Kozhokar, § 87, Shcherbakov, § 14, Buzhinayev, § 17, Grigoryevskikh, § 25, Belashev, §§ 34-35, Novoselov, § 23, and Kalashnikov, §§ 18 and 29, all cited above).

In Peers v. Greece (2001) the applicant had to spend a considerable part of the day, during very hot climatic conditions, in a cell with an open toilet, no ventilation and no window:

(Case 51)

70. Concerning the conditions of detention in the segregation unit, the Court has had regard to the Commission's delegates' findings and especially their findings concerning the size, lighting and ventilation of the applicant's cell, that is, elements which would not have changed between the time of the applicant's detention there and the delegates' visit. As regards ventilation, the Court notes that the delegates' findings do not correspond fully with those of the CPT, which visited Koridallos Prison in 1993 and submitted its report in 1994. However, the CPT's inspection took place in March, whereas the delegates went to Koridallos Prison in June, a period of the year when the climatic conditions are closer to those of the period of which the applicant complains. Furthermore, the Court takes into account the fact that the delegates investigated the applicant's complaints in depth, giving special attention, during their inspection, to the conditions in the very place where the applicant had been detained. In these circumstances, the Court considers that the findings of the Commission's delegates are reliable.

71. The Court notes that the applicant accepts that the cell door was open during the day, when he could circulate freely in the segregation unit. Although the unit and its exercise yard were small, the limited possibility of movement enjoyed by the applicant must have given him some form of relief.

72. Nevertheless, the Court recalls that the applicant had to spend at least part of the evening and the entire night in his cell. Although the cell was designed for one person, the applicant had to share it with another inmate. This is one aspect in which the applicant's situation differed from the situation reviewed by the CPT in its 1994 report. Sharing the cell with another inmate meant that, for the best part of the period when the cell door was locked, the applicant was confined to his bed. Moreover, there was no ventilation in the cell, there being no opening other than a peephole in the door. The Court also notes that, during their visit to Koridallos, the delegates found that the cells in the segregation unit were exceedingly hot, although it was only June, a month when temperatures do not normally reach their peak in Greece. It is true that the delegates' visit took place in the afternoon, when the applicant would not normally be locked up in his cell. However, the Court recalls that the applicant was placed in the segregation unit during a period of the year when temperatures have the tendency to rise considerably in Greece, even in the evening and often at night. This was confirmed by Mr Papadimitriou, an inmate who shared the cell with the applicant and who testified that the latter was significantly physically affected by the heat and the lack of ventilation in the cell.

73. The Court also recalls that in the evening and at night when the cell door was locked the applicant had to use the Asian-type toilet in his cell. The toilet was not separated from the rest of the cell by a screen and the applicant was not the cell's only occupant.

74. In the light of the foregoing, the Court considers that in the present case there is no evidence that there was a positive intention of humiliating or debasing the applicant. However, the Court notes that, although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see V. v. the United Kingdom [GC], no. 24888/94, § 71, ECHR 1999-IX).

75. Indeed, in the present case, the fact remains that the competent authorities took no steps to improve the objectively unacceptable conditions of the applicant's detention. In the Court's view, this omission denotes lack of respect for the applicant. The Court takes into account, in particular, that, for at least two months, the applicant had to spend a considerable part of each 24-hour period practically confined to his bed in a cell with no ventilation and no window, which would at times become unbearably hot. He also had to use the toilet in the presence of another inmate and be present while the toilet was being used by his cell-mate. The Court is not convinced by the Government's allegation that these conditions did not affect the applicant in a manner incompatible with Article 3. On the contrary, the Court is of the opinion that the prison conditions complained of diminished the applicant's human dignity and aroused in him feelings of anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical or moral resistance. In sum, the Court considers that the conditions of the applicant's detention in the segregation unit of the Delta wing of Koridallos Prison amounted to degrading treatment within the meaning of Article 3 of the Convention.

There has thus been a breach of this provision.

Very poor conditions were examined by the Court in the 2002 case of Kalashnikov v. Russia:

(Case 52)

95. (…) the State must ensure that a person is detained in 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 of an intensity 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 Kudla v. Poland cited above, §§ 92-94).

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).

96. In the present case, the Court notes that the applicant was held in the Magadan detention facility IZ-47/1 from 29 June 1995 to 20 October 1999, and from 9 December 1999 to 26 June 2000. It recalls that, according to the generally recognised principles of international law, the Convention is binding on the Contracting States only in respect of facts occurring after its entry into force. The Convention entered into force in respect of Russia on 5 May 1998. However, in assessing the effect on the applicant of his conditions of detention, which were generally the same throughout his period of detention, both on remand and following his conviction, the Court may also have regard to the overall period during which he was detained, including the period prior to 5 May 1998.

97. The Court notes from the outset that the cell in which the applicant was detained measured between 17 m^2 (according to the applicant) and 20.8 m^2 (according to the Government). It was equipped with bunk-beds and was designed for 8 inmates. It may be questioned whether such accommodation could be regarded as attaining acceptable standards. In this connection the Court recalls that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment ("the CPT") has set 7 m^2 per prisoner as an approximate, desirable guideline for a detention cell (see the 2nd General Report - CPT/Inf (92) 3, § 43), i.e. 56 m^2 for 8 inmates.

Despite the fact that the cell was designed for 8 inmates, according to the applicant's submissions to the Court the usual number of inmates in his cell throughout his detention was between 18 and 24 persons. In his application for release from custody of 27 December 1996, the applicant stated that there were 21 inmates in his 8-bed cell. In a similar application of 8 June 1999, he referred to 18 inmates (see paragraphs 43 and 73 above).

The Court notes that the Government, for their part, acknowledged that, due to the general overcrowding of the detention facility, each bed in the cells was used by 2 or 3 inmates. Meanwhile, they appear to disagree with the applicant as to the number of inmates. In their submission there were 11 or more inmates in the applicant's cell at any given time and that normally the number of inmates was

14. However, the Government did not submit any evidence to substantiate their contention. According to the applicant, it was only in March-April 2000 that the number of inmates was reduced to 11.

The Court does not find it necessary to resolve the disagreement between the Government and the applicant on this point. The figures submitted suggest that that any given time there was 0.9-1,9 m^2 of space per inmate in the applicant's cell. Thus, in the Court's view, the cell was continuously, severely overcrowded. This state of affairs in itself raises an issue under Article 3 of the Convention.

Moreover, on account of the acute overcrowding, the inmates in the applicant's cell had to sleep taking turns, on the basis of eight-hour shifts of sleep per prisoner. It appears from his request for release from custody on 16 June 1999, that at that time he was sharing his bed with two other inmates (see paragraph 74 above). Sleeping conditions were further aggravated by the constant lighting in the cell, as well as the general commotion and noise from the large number of inmates. The resulting deprivation of sleep must have constituted a heavy physical and psychological burden on the applicant.

The Court further observes the absence of adequate ventilation in the applicant's cell which held an excessive number of inmates and who apparently were permitted to smoke in the cell. Although the applicant was allowed outdoor activity for one or two hours a day, the rest of the time he was confined to his cell, with a very limited space for himself and a stuffy atmosphere.

98. The Court next notes that the applicant's cell was infested with pests and that during his detention no anti-infestation treatment was effected in his cell. The Government conceded that infestation of detention facilities with insects was a problem, and referred to the 1989 ministerial guideline obliging detention facilities to take disinfection measures. However, it does not appear that this was done in the applicant's cell.

Throughout his detention the applicant contracted various skin diseases and fungal infections, in particular during the years 1996, 1997 and 1999, necessitating recesses in the trial. While it is true that the applicant received treatment for these diseases, their recurrence suggests that the very poor conditions in the cell facilitating their propagation remained unchanged.

The Court also notes with grave concern that the applicant was detained on occasions with persons suffering from syphilis and tuberculosis, although the Government stressed that contagion was prevented.

99. An additional aspect of the crammed and insanitary conditions described above was the toilet facilities. A partition measuring 1,1 meters in height separated the lavatory pan in the corner of the cell from a wash stand next to it, but not

from the living area. There was no screen at the entrance to the toilet. The applicant had thus to use the toilet in the presence of other inmates and be present while the toilet was being used by his cellmates. The photographs provided by the Government show a filthy, dilapidated cell and toilet area, with no real privacy.

Whilst the Court notes with satisfaction the major improvements that have apparently been made to the area of the Magadan detention facility where the applicant's cell was located (as shown in the video recording which they submitted to the Court), this does not detract from the wholly unacceptable conditions which the applicant clearly had to endure at the material time.

100. The applicant's conditions of detention were also a matter of concern for the trial court examining his case. In April and June 1999 it requested medical expert opinions on the effect of the conditions of detention on his mental and physical health after nearly 4 years of detention in order to determine whether he was unfit to take part in the proceedings and whether he should be hospitalised (see paragraphs 71 and 76 above). Even though the experts answered both questions in the negative, the Court notes their conclusions of July 1999, listing the various medical conditions from which the applicant suffered, i.e. neurocirculatory dystonia, astheno-neurotic syndrome, chronic gastroduodenitis, a fungal infection on his feet, hands and groin and mycosis (see paragraph 30 above).

101. The Court accepts that in the present case there is no indication that there was a positive intention of humiliating or debasing the applicant. However, although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot exclude a finding of violation of Article 3 (see Peers v. Greece cited above). It considers that the conditions of detention, which the applicant had to endure for approximately 4 years and 10 months, must have caused him considerable mental suffering, diminishing his human dignity and arousing in him such feelings as to cause humiliation and debasement.

102. In the light of the above, the Court finds the applicant's conditions of detention, in particular the severely overcrowded and insanitary environment and its detrimental effect on the applicant's health and well-being, combined with the length of the period during which the applicant was detained in such conditions, amounted to degrading treatment.

103. Accordingly, there has been a violation of Article 3 of the Convention.

In the case of Ilascu and others v. Russia and Moldova, decided in 2004, the applicants complained about their conditions of detention:

(Case 53)

(II) Mr Leşco and Mr Petrov-Popa

450. The Court notes at the outset that at no time in the proceedings before it have the respondent Governments denied that the alleged incidents took place.

It further considers that the descriptions given by the witnesses heard, including the applicants and their wives, are sufficiently precise and are corroborated by other evidence in its possession.

451. Consequently, the Court considers that it can take it as established that during their detention, including that part of it which followed the Convention's entry into force with regard to the two respondent States, Mr Leşco and Mr Petrov-Popa experienced extremely harsh conditions of detention:

- visits and parcels from their families were subject to the discretionary authorisation of the prison administration;
- at times they were denied food, or given food unfit for consumption, and most of the time they were denied all forms of appropriate medical assistance despite their state of health, which had been weakened by these conditions of detention; and
- they were not given the dietetically appropriate meals prescribed by their doctors (see paragraph 265 above).

The Court emphasises also that these conditions have deteriorated since 2001 (see paragraph 254 above).

In addition, Mr Petrov-Popa has been held in solitary confinement since 1993, having no contact with other prisoners or access to newspapers in his own language (see paragraphs 240, 254 and 255 above).

Both Mr Petrov-Popa and Mr Leşco were denied access to a lawyer until June 2003 (see paragraph 257 above).

452. In the Court's opinion, such treatment is such as to engender pain or suffering, both physical and mental. Taken as a whole and regard being had to its seriousness, the treatment inflicted on Mr Leşco and Mr Petrov-Popa can be qualified as inhuman and degrading treatment within the meaning of Article 3 of the Convention.

453. As Mr Leşco and Mr Petrov-Popa were detained at the time when the Convention came into force with regard to the Russian Federation, the latter is responsible, for the reasons set out above (see paragraph 393) on account of their conditions of detention, the treatment inflicted on them and the suffering caused to them in prison.

Regard being had to the conclusions the Court reached on the question of Moldova's responsibility for the acts complained of on account of its failure to discharge its positive obligations after May 2001 (see paragraph 352 above), Moldova is responsible for the violation of Article 3 of the Convention with regard to Mr Leşco and Mr Petrov-Popa from May 2001 onwards.

454. In conclusion, as regards Mr Leşco and Mr Petrov-Popa, there has been a violation of Article 3 of the Convention by the Russian Federation from the time of its ratification of the Convention on 5 May 1998 and by Moldova from May 2001 onwards.

In the case of Idalov v. Russia, decided in 2012, the applicant alleged that he had been detained in inhuman and degrading conditions in a remand prison and a courthouse, and he complained about the conditions of his transport to the court:

(Case 54)
58. The applicant provided the following description of the conditions of his detention in, and transport to and from, the courthouse.

(I) Conditions of transport
[see below, section "Transfers"]
(…)

(II) Conditions of detention in the courthouse
62. The applicant submitted that the holding cells at the courthouse were overcrowded, dirty, poorly lit and unventilated. They measured no more than 5 sq. m. The applicant did not receive any food when he was held there. Nor was there a toilet in the cell. On at least two occasions, when the hearing of his case was adjourned, the applicant spent up to fifteen hours in such conditions. On other days he spent several hours in such cells before and after the hearing.
(…)

2. The Court's assessment (…)
(I) Conditions of detention in remand prison n. IZ-77/2 in Moscow
96. The Court notes that the parties disagreed on most aspects of the conditions of the applicant's detention. However, where conditions of detention are in dispute, there is no need for the Court to establish the veracity of each and every disputed or contentious point. It can find a violation of Article 3 on the basis of any serious allegations which the respondent Government do not dispute (see, mutatis mutandis, Grigoryevskikh v. Russia, no. 22/03, § 55, 9 April 2009).

97. Firstly, the Court notes that it has recently found a violation of Article 3 on account of overcrowding in the same remand prison at around the same time as the facts in issue in this case (see Skachkov, cited above, §§ 50-59; Sudarkov, cited above, §§ 40-51; Denisenko and Bogdanchikov, cited above, §§ 97100; and Bychkov, cited above, §§ 34-43). Overcrowding in Russian remand prisons, generally, has been a matter of particular concern to the Court. In a great number of cases, the Court has consistently found a violation of the applicants' rights on account of a lack of sufficient personal space during their pre-trial detention. The present case is no exception in this respect. In view of the foregoing, the Court accepts that the applicant was detained in severely overcrowded cells for over a year. He had an opportunity to spend just one hour a day in the exercise yard and was otherwise confined to his cell for the rest of the day.

98. Furthermore, the Court observes that Convention proceedings do not in all cases lend themselves to a rigorous application of the principle affirmanti incumbit probatio ("he who alleges must prove") because in certain instances, such as in the present case, the respondent Government alone have access to information capable of corroborating or refuting allegations. Failure on the Government's part to submit such information without a satisfactory explanation for such a failure may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see Ahmet Özkan and Others v. Turkey, no. 21689/93, § 426, 6 April 2004).

99. In the present case the Government failed to provide any original documents to refute the applicant's allegations, claiming that they had been destroyed after the expiry of the statutory time-limit for their storage (see paragraph 83 above). Their submissions were based on the statements of the remand prison officers made some four years after the events under consideration. Moreover, the Court cannot but note a certain discrepancy between this and other cases as far as the data submitted are concerned. For instance, in the case of Skachkov the Government submitted that between 11 February and 8 August 2003, cell no. 159 had accommodated twenty-two detainees (see Skachkov, cited above, § 18), while in the present case the national authorities affirmed that in the periods from 18 February to 23 April 2003 and from 25 April to 15 August 2003, the same cell had accommodated only thirteen inmates. The obvious inconsistency in the Government's submissions in each case cannot but undermine the credibility of the information given in respect of cell no. 159. It also reduces the weight to be attached to the information they provided in respect of the other cells.

100. In such circumstances, the documents which were prepared by the authorities several years after the period under consideration in the present case cannot be viewed as sufficiently reliable (see, among other authorities, Novinskiy v. Russia, no. 11982/02, § 105, 10 February 2009).

101. Having regard to the above, the Court considers the applicant's allegations concerning the overcrowding of the remand prison to be credible. As a result of such overcrowding, the applicant's detention did not meet the minimum requirement, as laid down in the Court's case-law, of 3 square metres per person (see, among many other authorities, Trepashkin v. Russia (no. 2), no. 14248/05, § 113, 16 December 2010; Kozhokar v. Russia, no. 33099/08, § 96, 16 December 2010; and Svetlana Kazmina v. Russia, no. 8609/04, § 70, 2 December 2010). The inmates had to take turns to sleep, given the absence of individual sleeping places (see the applicant's allegations in paragraph 40 above). Having regard also to the fact that the applicant had to spend twenty-three hours per day in such an overcrowded cell, the Court finds that he was subjected to inhuman and degrading treatment in breach of Article 3 of the Convention on account of the conditions of his detention in remand prison no. IZ-77/2 in Moscow from 29 October 2002 to 20 December 2003.

102. In view of the above, the Court does not consider it necessary to examine the remainder of the parties' submissions concerning other aspects of the conditions of the applicant's detention during the period in question.

In the 2016 case of Mozer v. Russia and Moldova, the applicant complained about harsh conditions of detention, combined with a lack of the necessary medical assistance:

(Case 55)
2. The Court's assessment (…)
178. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure of deprivation of liberty do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention (see Kudła, cited above, § 94, and Svinarenko and Slyadnev v. Russia [GC], nos. 32541/08 and 43441/08, § 116, ECHR 2014) and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see Kudła, cited above, § 94, and Idalov v. Russia [GC], no. 5826/03, § 93, 22 May 2012). In most of the cases concerning the detention of persons who were ill, the Court has examined whether or not the applicant received adequate medical assistance in prison. The Court reiterates in this regard that, even though Article 3 does not entitle a detainee to be released "on compassionate grounds", it has always interpreted the requirement to secure the health and well-being of detainees, among other things, as an obligation on the part of the State to provide detainees with the requisite medical assistance (see Pakhomov v. Russia, no. 44917/08, § 61, 30 September 2010, and Gladkiy v. Russia, no. 3242/03, § 83, 21 December 2010).

179. In the present case the Court notes that, although the doctors considered the applicant's condition to be deteriorating and the specialists and equipment required to treat him to be lacking, the "MRT" authorities not only refused to transfer him to a civilian hospital for treatment but also exposed him to further suffering and a more serious risk to his health by transferring him to an ordinary prison on 15 February 2010 (see paragraph 38 above). It is indisputable that the applicant suffered greatly from his asthma attacks. The Court is also struck by the fact that the applicant's illness, while considered serious enough to warrant the transfer to a civilian hospital of a convicted person, was not a ground for the similar transfer of a person awaiting trial (see paragraph 35 above). In view of the lack of any explanation for the refusal to offer him appropriate treatment, the Court finds that the applicant did not receive adequate medical assistance.

180. The Court will now turn to the conditions of the applicant's detention. According to him, the cell was very hot, humid and poorly ventilated and lacked access to natural light. It was overcrowded and full of cigarette smoke as well as parasitic insects. He Idid not have access to a toilet for hours on end and was unable to dry clothes outside the cell. The food was inedible and there were no hygiene products. Throughout his detention he did not receive the medical assistance required by his condition (see paragraphs 28-41 above).

181. While the respondent Governments have not commented on the description provided by the applicant (see paragraphs 28-38 above), it is largely confirmed by the reports of the CPT and the United Nations Special Rapporteur on visits to various places of detention in the "MRT" (see paragraphs 61-64 above). The Court notes in particular that the latter's visit took place in July 2008, some four months before the applicant was taken into detention.

182. On the basis of the material before it, the Court finds it established that the conditions of the applicant's detention amounted to inhuman and degrading treatment within the meaning of Article 3, in particular on account of severe overcrowding, lack of access to daylight and lack of working ventilation which, coupled with cigarette smoke and dampness in the cell, aggravated the applicant's asthma attacks.

3. Responsibility of the respondent States
183. The Court considers that there is no material difference in the nature of each respondent State's responsibility under the Convention in respect of the various complaints made in the present case. Accordingly, for the same reasons given in respect of the complaint under Article 5 § 1 of the Convention (see paragraphs 151-55 above), the Court finds that there has been no violation of Article 3 of the Convention by the Republic of Moldova.

184. For the same reasons as above (see paragraphs 156-59), the Court finds that there has been a violation of Article 3 of the Convention by the Russian Federation.

As can be seen from these cases, sometimes poor conditions as to one of these aspects – in particular, as regards overcrowding – were sufficient for the Court to conclude that the applicant was subjected to inhuman or degrading treatment. In many cases, however, the Court found a combination of various factors leading it to the conclusion that the conditions of detention were inhuman or degrading. In such cases it is clear that the combination of problematic aspects, taken together, was in violation of human rights, but it is uncertain whether each factor, taken individually, would have brought the Court to the same conclusion. Accordingly, it is not always possible to infer from the case-law with certainty the exact minimum standard for each of the criticised factors, taken individually.

However, for the important standard of minimum space for each prisoner in the cell, the Court has developed relatively clear criteria.

II. Accommodation and overcrowding

The European Court of Human Rights had often been called to decide whether the lack of personal space, by itself, can amount to degrading treatment. It clarified and consolidated the applicable principles in the 2016 case of Mursic v. Croatia as follows:

(Case 56)

74. The applicant complained of inadequate conditions of detention in Bjelovar Prison. He alleged that he had been allocated less than 3 sq. m of personal space for several non-consecutive periods amounting in total to fifty days, and that there had also been several non-consecutive periods in which he was allocated between 3 and 4 sq. m of personal space in the cells. In this connection he also alleged poor sanitary and hygiene conditions and nutrition, a lack of work opportunities, and insufficient access to recreational and educational activities. (…)

C. The Court's assessment

1. Introductory remarks

91. The Court is frequently called upon to rule on complaints alleging a violation of Article 3 of the Convention on account of insufficient personal space allocated to prisoners. In the present case, the Court finds it appropriate to clarify the principles and standards for the assessment of the minimum personal space per detainee in multi-occupancy accommodation in prisons under Article 3 of the Convention.

92. The Court would further note that different questions might arise in the context of single-occupancy accommodation, isolation or other similar detention regimes, or waiting rooms or similar spaces used for very short periods of time (such as police stations, psychiatric establishments, immigration detention facilities), which are however not in issue in the present case (see paragraph 50 above; and Georgia v. Russia (I) [GC], no. 13255/07, §§ 192-205, ECHR 2014 (extracts)).

93. The matter of prison overcrowding in multi-occupancy accommodation was one of the issues considered by the Grand Chamber in the Idalov v. Russia case ([GC], no. 5826/03, §§ 96-102, 22 May 2012). It has also been addressed in several pilot and leading judgments in which the Court has already indicated specific aspects related to the assessment of the problem of prison overcrowding, and the duty of the States to address the deficiencies identified by the Court in these judgments.

94. In particular, the Court has so far adopted pilot judgments addressing the question of prison overcrowding in respect of the following States: Bulgaria (see Neshkov and Others v. Bulgaria, nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, 27 January 2015); Hungary (see Varga and Others, cited above); Italy (see Torreggiani and Others, cited above); Poland (see Orchowski v. Poland, no. 17885/04, 22 October 2009; and Norbert Sikorski v. Poland, no. 17599/05, 22 October 2009); and Russia (see Ananyev and Others, cited above),

95. The Court has also addressed the question of prison overcrowding by indicating the necessity of improving conditions of detention under Article 46 of the Convention in leading judgments with regard to the following States: Belgium (see Vasilescu v. Belgium, no. 64682/12, 25 November 2014); Greece (see Samaras and Others v. Greece, no. 11463/09, 28 February 2012; Tzamalis and Others v. Greece, no. 15894/09, 4 December 2012; and Al. K. v. Greece, no. 63542/11, 11 December 2014); Romania (see Iacov Stanciu v. Romania, no. 35972/05, 24 July 2012); Slovenia (see Mandić and Jović v. Slovenia, nos. 5774/10 and 5985/10, 20 October 2011; and Štrucl and Others v. Slovenia, nos. 5903/10, 6003/10 and 6544/10, 20 October 2011); and the Republic of Moldova (see Shishanov v. the Republic of Moldova, no. 11353/06, 15 September 2015).

(…)

(b) Principles concerning prison overcrowding

102. The Court notes that the relevant principles and standards for the assessment of prison overcrowding flowing from its case-law in particular concern the following issues: (1) the question of minimum personal space in detention under Article 3 of the Convention; (2) whether the allocation of personal space below the minimum requirement creates a presumption or leads in itself to a violation of Article 3 of the Convention; and (3) what factors, if any, could compensate for the scarce allocation of personal space.

(I) The question of minimum personal space under Article 3

(α) The relevant case-law

103. The Court has stressed on many occasions that under Article 3 it cannot determine, once and for all, a specific number of square metres that should be allocated to a detainee in order to comply with the Convention. Indeed, the Court has considered that a number of other relevant factors, such as the duration of detention, the possibilities for outdoor exercise and the physical and mental condition of the detainee, play an important part in deciding whether the detention conditions satisfied the guarantees of Article 3 (see Samaras and Others, cited above, § 57; Tzamalis and Others, cited above, § 38; and Varga and Others, cited above § 76; see further, for instance, Trepashkin v. Russia, no. 36898/03, § 92, 19 July 2007; Semikhvostov v. Russia, no. 2689/12, § 79, 6 February 2014; Logothetis and Others v. Greece, no. 740/13, § 40, 25 September 2014; and Suldin v. Russia, no. 20077/04, § 43, 16 October 2014).

104. Nevertheless, extreme lack of space in prison cells weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were "degrading" within the meaning of Article 3.

105. In a substantial number of cases when the allocation of space to a detainee in multi-occupancy accommodation fell below 3 sq. m, the Court found the overcrowding so severe as

to justify the finding of a violation of Article 3 (see the cases cited in Orchowski, cited above, § 122; Ananyev and Others, cited above, § 145; and Varga and Others, cited above, § 75).

106. When inmates appeared to have at their disposal personal space measuring between 3 and 4 sq. m the Court examined the (in)adequacy of other aspects of physical conditions of detention when making an assessment under Article 3. In such instances a violation of Article 3 was found only if the space factor was coupled with other aspects of inappropriate physical conditions of detention related to, in a particular context, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of heating arrangements, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements (see Orchowski, cited above, § 122; Ananyev and Others, cited above, § 149; Torreggiani and Others, cited above, § 69; Vasilescu, cited above, § 88; and Varga and Others, cited above, § 78; see also, for example, Jirsák v. the Czech Republic, no. 8968/08, §§ 64-73, 5 April 2012; Culev v. Moldova, no. 60179/09, §§ 35-39, 17 April 2012; Longin, cited above, §§ 59-61; and Barilo v. Ukraine, no. 9607/06, §§ 80-83, 16 May 2013).

107. In the above-mentioned pilot and leading judgments the Court has fixed for its assessment the relevant minimum standard of personal space allocated to a detainee in multi-occupancy accommodation at 3 sq. m of floor surface (see Orchowski, cited above, § 123; Ananyev and Others, cited above, § 148; Torreggiani and Others, cited above, § 68; Vasilescu, cited above, § 88; Neshkov and Others, cited above, § 232; Samaras and Others, cited above, § 58; Tzamalis and Others, cited above, § 39; Varga and Others, cited above, § 74; Iacov Stanciu, cited above, § 168; and Mandić and Jović, cited above, § 75). Moreover, in the Grand Chamber Idalov case (cited above, § 101), when finding a violation of Article 3 on account of inadequate conditions of the applicant's detention, the Grand Chamber noted, among other things, that "the applicant's detention [had not met] the minimum requirement, as laid down in the Court's case-law, of 3 square metres per person".

108. However, in a minority of cases the Court has considered that personal space of less than 4 sq. m is already a factor sufficient to justify a finding of a violation of Article 3 (see, inter alia, Cotleț v. Romania (no. 2), no. 49549/11, §§ 34 and 36, 1 October 2013; and Apostu v. Romania, no. 22765/12, § 79, 3 February 2015). This standard corresponds to the minimum standard of living space per detainee in multi-occupancy accommodation as developed in the practice of the CPT and recently elaborated in its policy document (see paragraph 51 above).

(β) The approach to be taken

109. The Court reiterates that, while it is not formally bound to follow its previous judgments, it is in the interests of legal certainty, foreseeability and equality before the law that it should not depart, without good reason, from precedents laid down in previous cases (see, for example, Christine Goodwin v. the United Kingdom [GC], no. 28957/95, § 74, ECHR 2002VI; Scoppola v. Italy (no. 2) [GC], no. 10249/03, § 104, 17 September 2009; and Sabri Güneş v. Turkey [GC], no. 27396/06, § 50, 29 June 2012).

110. The Court sees no grounds for departing from the approach taken in the pilot judgments and leading cases cited above and in the Grand Chamber Idalov case (see paragraph 107 above). It therefore confirms that the requirement of 3 sq. m of floor surface per detainee in multi-occupancy accommodation should be maintained as the relevant minimum standard for its assessment under Article 3 of the Convention (see paragraphs 124-128 below).

111. With regard to the standards developed by other international institutions such as the CPT, the Court would note that it has declined to treat them as constituting a decisive argument for its assessment under Article 3 (see, for instance, Orchowski, cited above, § 131; Ananyev and Others, cited above, §§ 144-145; Torreggiani and Others, cited above, §§ 68 and 76; see also Sulejmanovic, cited above, § 43; Tellissi v. Italy (dec.), no. 15434/11, § 53, 5 March 2013; and G.C. v. Italy, no. 73869/10, § 81, 22 April 2014). The same applies with regard to the relevant national standards, which, although capable of informing the Court's decision in a particular case (see Orchowski, cited above, § 123), cannot be considered decisive for its finding under Article 3 (see, for instance, Pozaić, cited above, § 59; and Neshkov and Others, cited above, § 229).

112. The central reason for the Court's reluctance to take the CPT's available space standards as a decisive argument for its finding under Article 3 relates to its duty to take into account all relevant circumstances of a particular case before it when making an assessment under Article 3, whereas other international institutions such as the CPT develop general standards in this area aiming at future prevention (see paragraph 47 above; see also, Trepashkin, cited above, § 92; and Jirsák, cited above, § 63). Likewise, the relevant national standards vary widely and operate as general requirements of adequate accommodation in a particular penitentiary system (see paragraphs 57 and 61 above).

113. Moreover, as the CPT has recognised, the Court performs a conceptually different role to the one assigned to the CPT, whose responsibility does not entail pronouncing on whether a certain situation amounts to inhuman or degrading treatment or punishment within the meaning of Article 3 (see paragraph 52 above). The thrust of CPT activity is pre-emptive action aimed at prevention, which, by its very nature, aims at a degree of protection that is greater than that upheld by the Court when deciding cases concerning conditions of detention (see paragraph 47 above, the First General Report, § 51). In contrast to the CPT's preventive function, the Court is responsible for the judicial application in individual cases of an absolute prohibition against torture and inhuman or degrading treatment under Article 3 (see paragraph 46 above). Nevertheless, the Court would emphasise that it remains attentive to the standards developed by the CPT and, notwithstanding their different positions, it gives careful

scrutiny to cases where the particular conditions of detention fall below the CPT's standard of 4 sq. m (see paragraph 106 above).

114. Lastly, the Court finds it important to clarify the methodology for the calculation of the minimum personal space allocated to a detainee in multi-occupancy accommodation for its assessment under Article 3. The Court considers, drawing from the CPT's methodology on the matter, that the in-cell sanitary facility should not be counted in the overall surface area of the cell (see paragraph 51 above). On the other hand, calculation of the available surface area in the cell should include space occupied by furniture. What is important in this assessment is whether detainees had a possibility to move around within the cell normally (see, for instance, Ananyev and Others, cited above, §§ 147-148; and Vladimir Belyayev, cited above, § 34).

115. The Court would also observe that no distinction can be discerned in its case-law with regard to the application of the minimum standard of 3 sq. m of floor surface to a detainee in multi-occupancy accommodation in the context of serving and remand prisoners. Indeed, in the Orchowski pilot judgment the Court applied the same standards for the assessment of minimum personal space under Article 3 with regard to prisons and remand centres (see Orchowski, cited above, § 124), and the same standard was applicable in other pilot judgments relevant for the conditions of detention of remand prisoners (see Ananyev and Others, §§ 143-148) and serving prisoners (see Torreggiani and Others, cited above, §§ 65-69). Other leading judgments on the matter followed the same approach (see Iacov Stanciu, cited above, §§ 171-179; Mandić and Jović, cited above, §§ 72-76; and Štrucl and Others, cited above, § 80). Moreover, the same standard was applied in more recent case-law with regard to Russian correctional colonies (see Butko v. Russia, no. 32036/10, § 52, 12 November 2015; for the previous case-law see, for example, Sergey Babushkin v. Russia, no. 5993/08, § 56, 28 November 2013 and cases cited therein).

(II) Whether the allocation of personal space below the minimum requirement creates a presumption or in itself leads to a violation of Article 3

(α) The relevant case-law

116. In assessing whether there has been a violation of Article 3 on account of an extreme lack of personal space in detention the Court has not always been consistent with regard to the question whether the allocation of personal space falling below 3 sq. m leads in itself to a violation of Article 3 or whether it creates a presumption of a violation, which could be rebutted by other relevant considerations. Different approaches can be distinguished in this respect.

117. First, in a number of cases the finding that a detainee had disposed of less than 3 sq. m of personal space in itself led to the conclusion that there had been a violation of Article 3 (see, for example, Sulejmanovic, cited above, § 43; Trepashkin v. Russia (no. 2), no. 14248/05, § 113, 16 December 2010; Mandić and Jović, cited above, § 80; Lin v. Greece, no. 58158/10, §§ 53-54, 6 November 2012; Blejuşcă v. Romania, no. 7910/10, §§ 43-45, 19 March 2013; Ivakhnenko v. Russia, no. 12622/04, § 35, 4 April 2013; A.F. v. Greece, no. 53709/11, §§ 77-78, 13 June 2013; Kanakis v. Greece (no. 2), no. 40146/11, §§ 106-107, 12 December 2013; Gorbulya v. Russia, no. 31535/09, §§ 64-65, 6 March 2014; and T. and A. v. Turkey, no. 47146/11, §§ 96-98, 21 October 2014).

118. There are also cases where the Court has held that personal space allocated to a detainee below 3 sq. m was a violation of Article 3, and then examined other conditions of detention only as further aggravating circumstances (see, for example, Torreggiani and Others, cited above, § 77; and Vasilescu, cited above, §§ 100-104).

119. Another approach is based on the "strong presumption" test set out in the Ananyev and Others pilot judgment (cited above). On the basis of a thorough analysis of its previous case-law on the matter, in the Ananyev and Others judgment, the Court set out the following test for overcrowding: (1) each detainee must have an individual sleeping place in the cell; (2) each must dispose of at least 3 sq. m of floor space; and (3) the overall surface area of the cell must be such as to allow detainees to move freely between items of furniture. It stressed that the absence of any of the above elements created in itself a strong presumption that the conditions of detention amounted to degrading treatment and were in breach of Article 3 (see Ananyev and Others, cited above, § 148).

120. Similarly to the "strong presumption" test, in the Orchowski pilot judgment (cited above, § 123) the Court emphasised that all situations in which a detainee was deprived of the minimum of 3 sq. m of living space inside his or her cell would be regarded as giving rise to a strong indication that Article 3 had been violated (see further Olszewski v. Poland, no. 21880/03, § 98, 2 April 2013). Moreover, the "strong presumption" test has been reiterated in several of the above-mentioned pilot judgments on the question of prison overcrowding (see Neshkov and Others, cited above, § 232; and Varga and Others, cited above, §§ 74 and 77).

121. In line with that approach, the finding of a violation of Article 3 was based on the assessment whether or not, in the circumstances, "a strong presumption" of a violation was rebutted by other cumulative effects of the conditions of detention (see Orchowski, cited above, § 135; Ananyev and Others, cited above, § 166; Lind v. Russia, no. 25664/05, §§ 59-61, 6 December 2007; Kokoshkina v. Russia, no. 2052/08, §§ 62-63, 28 May 2009). Accordingly, in a number of post-Ananyev cases concerning various factual circumstances, the Court consistently examined the cumulative effects of the conditions of detention before reaching a final conclusion as to the alleged violation of Article 3 on account of prison overcrowding (see, for example, Idalov, cited above, § 101; Iacov Stanciu, cited above, §§ 176-178; Asyanov v. Russia, no. 25462/09, § 43, 9 October 2012; Nieciecki v. Greece, no. 11677/11, §§ 49-51, 4 December 2012; Yefimenko v. Russia, no. 152/04, §§ 80-84, 12 February 2013; Manulin v. Russia, no. 26676/06, §§ 47-48, 11 April 2013; Shishkov v.

Russia, no. 26746/05, §§ 90-94, 20 February 2014; Bulatović v. Montenegro, no. 67320/10, §§ 123-127, 22 July 2014; Tomoiagă v. Romania (dec.), no. 47775/10, §§ 22-23, 20 January 2015; Neshkov and Others, cited above, §§ 246-256; Varga and Others, cited above, § 88; and Mironovas and Others v. Lithuania, nos. 40828/12, 29292/12, 69598/12, 40163/13, 66281/13, 70048/13 and 70065/13, §§ 118-123, 8 December 2015).

(β) The approach to be taken

122. In harmonising the above divergences, the Court will be guided by the general principles of its well-established case-law under Article 3 of the Convention. In this connection it would reiterate that according to this case-law the assessment of the minimum level of severity for any ill-treatment to fall within the scope of Article 3 is, in the nature of things, relative (see paragraphs 97-98 above). The assessment of this minimum, as emphasised ever since the Ireland v. the United Kingdom case (cited above, § 162), will depend 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 (see paragraph 97 above).

123. Accordingly, the Court's assessment whether there has been a violation of Article 3 cannot be reduced to a numerical calculation of square metres allocated to a detainee. Such an approach would, moreover, disregard the fact that, in practical terms, only a comprehensive approach to the particular conditions of detention can provide an accurate picture of the reality for detainees (see paragraphs 62-63 above).

124. Nevertheless, having analysed its case-law and in view of the importance attaching to the space factor in the overall assessment of prison conditions, the Court considers that a strong presumption of a violation of Article 3 arises when the personal space available to a detainee falls below 3 sq. m in multi-occupancy accommodation.

125. The "strong presumption" test should operate as a weighty but not irrebuttable presumption of a violation of Article 3. This in particular means that, in the circumstances, the cumulative effects of detention may rebut that presumption. It will, of course, be difficult to rebut it in the context of flagrant or prolonged lack of personal space below 3 sq. m. The circumstances in which the presumption may be rebutted will be set out below (see paragraphs 130-135).

126. It follows that, when it has been conclusively established that a detainee disposed of less than 3 sq. m of floor surface in multi-occupancy accommodation, the starting point for the Court's assessment is a strong presumption of a violation of Article 3. It then remains for the respondent Government to demonstrate convincingly that there were factors capable of adequately compensating for the scarce allocation of personal space. The cumulative effect of those conditions should inform the Court's decision whether, in the circumstances, the presumption of a violation is rebutted or not.

127. With regard to the methodology for that assessment, the Court refers to its well-established standard of proof in conditions-of-detention cases (see, for example, Ananyev and Others, cited above, §§ 121-125). In this context the Court is particularly mindful of the objective difficulties experienced by applicants in collecting evidence to substantiate their claims about conditions of their detention. Still, in such cases applicants must provide a detailed and consistent account of the facts complained of (ibid. § 122). In certain cases applicants are able to provide at least some evidence in support of their complaints. The Court has considered as evidence, for example, written statements by fellow inmates or if possible photographs provided by applicants in support of their allegations (see, for example, Golubenko v. Ukraine (dec.), no. 36327/06, § 52, 5 November 2013, and cases cited therein; see further Tehrani and Others v. Turkey, nos. 32940/08, 41626/08 and 43616/08, § 88, 13 April 2010).

128. Once a credible and reasonably detailed description of the allegedly degrading conditions of detention, constituting a prima facie case of ill-treatment, has been made, the burden of proof is shifted to the respondent Government who alone have access to information capable of corroborating or refuting these allegations. They are required, in particular, to collect and produce relevant documents and provide a detailed account of an applicant's conditions of detention. Relevant information from other international bodies, such as the CPT, on the conditions of detention, as well as the competent national authorities and institutions, should also inform the Court's decision on the matter (see further Ananyev and Others, cited above, §§ 122-125; and Neshkov and Others, cited above, §§ 71-91).

(III) Factors which may compensate for the scarce allocation of personal space

129. In view of its findings above (see paragraphs 124-125 above), the Court has to determine which factors may compensate for the scarce allocation of personal space to a detainee, and thus rebut the strong presumption of a violation of Article 3 arising where the detainee disposes of less than 3 sq. m of personal space in multi-occupancy accommodation in prisons.

130. The Court firstly notes, in the light of its post-Ananyev case-law, that normally only short, occasional and minor reductions in the required personal space will be such as to rebut the strong presumption of a violation of Article 3. This was, for example, the case in Fetisov and Others (cited above, §§ 134-138) where a prisoner disposed of approximately 2 sq. m of floor surface for nineteen days (see further Dmitriy Rozhin, cited above, §§ 52-53), or Vladimir Belyayev (cited above, §§ 33-36) where a prisoner disposed of 2.95 sq. m of personal space for a period of ten days, and then non-consecutively 2.65 sq. m for a period of two days and 2.97 sq. m for a period of twenty-six days. Moreover, referring to its case-law in Fetisov and Others and Dmitriy Rozhin, the Court found no violation of Article 3 in the Kurkowski case (cited above, §§ 66-67) where the applicant disposed of approximately 2.1 sq. m of floor space for four days, and then subsequently 2.6 sq. m of floor space for another four days.

131. Nevertheless, the Court has already held that, while the length of a detention period may be a relevant factor in assessing the gravity of suffering or humiliation caused to a detainee by the inadequate conditions of his or her detention, the relative brevity of such a period alone will not automatically remove the treatment complained of from the scope of Article 3 if other elements are sufficient to bring it within the scope of that provision (see, for example, Vasilescu, cited above, § 105; Neshkov and Others, cited above, § 249; and Shishanov, cited above, § 95).

132. The Court would further note that in other cases concerning the inadequate allocation of personal space to detainees it examined whether the reductions in the required personal space were accompanied by sufficient freedom of movement and adequate out-of-cell activities, as well as confinement in, viewed generally, an appropriate detention facility (see, for example, Samaras and Others, cited above, §§ 63-65; and Tzamalis and Others, cited above, §§ 44-45). The examples of cases in which the scarce allocation of personal space did not give rise to a violation of Article 3 include: Andrei Georgiev v. Bulgaria, no. 61507/00, §§ 57-62, 26 July 2007; Alexov v. Bulgaria, no. 54578/00, §§ 107-108, 22 May 2008; and Dolenec, cited above, §§ 133-136. In the Court's view, the strong presumption of a violation of Article 3 arising from the allocation of less than 3 sq. m in multi-occupancy accommodation will normally be capable of being rebutted only where the requirements are cumulatively met, namely where short, occasional and minor reductions of personal space are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities and confinement in what is, when viewed generally, an appropriate detention facility (see, mutatis mutandis, Varga and Others, cited above, § 77; and Mironovas and Others, cited above, § 122).

133. With regard to the question of sufficient freedom of movement, in particular, in the Ananyev and Others case (cited above, §§ 150-152) the Court has referred to the relevant CPT standards according to which all prisoners, without exception, must be allowed at least one hour of exercise in the open air every day and preferably as part of a broader programme of out-of-cell activities, bearing in mind that outdoor exercise facilities should be reasonably spacious and whenever possible offer shelter from inclement weather (see further Neshkov and Others, cited above, § 234). Indeed, according to the relevant international standards prisoners should be able to spend a reasonable part of the day outside their cells, engaged in purposeful activity of a varied nature (work, recreation, education). Regimes in establishments for sentenced prisoners should be even more favourable (see further paragraphs 48, 53, 55 and 59 above).

134. Lastly, with regard to the overall appropriateness of the detention facility, the Court refers to general aspects of detention identified in its case-law (see further Ananyev and Others, cited above, §§ 153-159; and Neshkov and Others, §§ 237-244; see further Iacov Stanciu, cited above, §§ 173-179; and Varga and Others, cited above, §§ 80-92) and the relevant international standards (see paragraphs 48, 53, 55, 59 and 63-64 above). Accordingly, in addition to sufficient freedom of movement and adequate out-of-cell activities, no violation of Article 3 would be found where no other aggravating circumstance arises with regard to general conditions of an applicant's detention (see, for instance, the approach in Alver v. Estonia, no. 64812/01, § 53, 8 November 2005; Andrei Georgiev, cited above, § 61; and Dolenec, cited above, § 134).

135. It follows from the above that, when considering whether measures of compensation for the scarce allocation of personal space below 3 sq. m of floor surface in multi-occupancy accommodation are capable of rebutting the strong presumption of a violation of Article 3, the Court will have regard to factors such as: the time and extent of restriction; freedom of movement and adequacy of out-of-cell activities; and general appropriateness of the detention facility.

(c) Summary of relevant principles and standards for the assessment of prison overcrowding

136. In the light of the considerations set out above, the Court confirms the standard predominant in its case-law of 3 sq. m of floor surface per detainee in multi-occupancy accommodation as the relevant minimum standard under Article 3 of the Convention.

137. When the personal space available to a detainee falls below 3 sq. m of floor surface in multi-occupancy accommodation in prisons, the lack of personal space is considered so severe that a strong presumption of a violation of Article 3 arises. The burden of proof is on the respondent Government which could, however, rebut that presumption by demonstrating that there were factors capable of adequately compensating for the scarce allocation of personal space (see paragraphs 126-128 above).

138. The strong presumption of a violation of Article 3 will normally be capable of being rebutted only if the following factors are cumulatively met:

(1) the reductions in the required minimum personal space of 3 sq. m are short, occasional and minor (see paragraph 130 above):
(2) such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities (see paragraph 133 above);
(3) the applicant is confined in what is, when viewed generally, an appropriate detention facility, and there are no other aggravating aspects of the conditions of his or her detention (see paragraph 134 above).

139. In cases where a prison cell – measuring in the range of 3 to 4 sq. m of personal space per inmate – is at issue the space factor remains a weighty factor in the Court's assessment of the adequacy of conditions of detention. In such instances a violation of Article 3 will be found if the space factor is coupled with other aspects of inappropriate physical conditions of detention related to, in particular, access to

outdoor exercise, natural light or air, availability of ventilation, adequacy of room temperature, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements (see paragraph 106 above).

140. The Court also stresses that in cases where a detainee disposed of more than 4 sq. m of personal space in multi-occupancy accommodation in prison and where therefore no issue with regard to the question of personal space arises, other aspects of physical conditions of detention referred to above (see paragraphs 48, 53, 55, 59 and 63-64 above) remain relevant for the Court's assessment of adequacy of an applicant's conditions of detention under Article 3 of the Convention (see, for example, Story and Others v. Malta, nos. 56854/13, 57005/13 and 57043/13, §§ 112-113, 29 October 2015).

141. Lastly, the Court would emphasise the importance of the CPT's preventive role in monitoring conditions of detention and of the standards which it develops in that connection. The Court reiterates that when deciding cases concerning conditions of detention it remains attentive to those standards and to the Contracting States' observance of them (see paragraph 113 above).

3. Application of the above principles in the present case

142. The Court observes at the outset that, although the problem of prison overcrowding has been examined in several cases against Croatia in which a violation of Article 3 was found (see Cenbauer v. Croatia, no. 73786/01, ECHR 2006-III; Testa v. Croatia, no. 20877/04, 12 July 2007; Štitić v. Croatia, no. 29660/03, 8 November 2007; Dolenec, cited above; Longin, cited above; and Lonić v. Croatia, no. 8067/12, 4 December 2014), it has not so far considered that conditions of detention in Croatia disclosed a structural problem from the standpoint of Article 3 of the Convention (see, by contrast, paragraphs 94-95 above). Moreover, none of the cited cases concerned the conditions of detention in Bjelovar Prison which give rise to the applicant's complaints in the present case. With regard to the conditions of detention in Bjelovar Prison the Court has so far examined one case, in which it found no violation of Article 3 (see Pozaić, cited above).

143. The present case does not raise a structural issue concerning the conditions of detention in Croatia. The Court's task is to address the applicant's particular complaint of overcrowding in Bjelovar Prison, where he was serving a prison sentence in the period between 16 October 2009 and 16 March 2011 (see Polufakin and Chernyshev v. Russia, no. 30997/02, §§ 155-156, 25 September 2008).

144. The applicant in particular complained that for several non-consecutive periods, amounting in total to fifty days, including a period of twenty-seven consecutive days, he disposed of less than 3 sq. m of personal space, and that there were also several non-consecutive periods in which he was allocated between 3 and 4 sq. m of personal space in the cells (see paragraph 15 above).

145. In view of the relevant test enunciated above (see paragraphs 136-139 above), the Court will address the applicant's complaints separately with regard to the period in which he disposed of less than 3 sq. m of personal space, and the period in which he was allocated between 3 and 4 sq. m of personal space in Bjelovar Prison.

(a) Period in which the applicant disposed of less than 3 sq. m of personal space

(I) Whether the strong presumption of a violation of Article 3 arises in the present case

146. The Court notes that the particular details of the personal space allocated to the applicant are based on the documentation provided by the respondent Government which the applicant did not contest (see paragraph 17 above). Specifically, during his stay in Bjelovar Prison, which lasted for one year and five months (see paragraphs 13-14 above), the applicant was detained in four cells in which he had between 3 and 6.76 sq. m of personal space. Only during the following non-consecutive periods did he have personal space which fell below 3 sq. m, by 0.45 and 0.38 sq. m: on 21 April 2010 (one day – 2.62 sq. m), and between 3 and 5 July 2010 (three days – 2.62 sq. m); 18 July and 13 August 2010 (twenty-seven days – 2.62 sq. m); 31 August and 2 September 2010 (three days – 2.55 sq. m); 19 and 26 November 2010 (eight days – 2.55 sq. m); 10 and 12 December 2010 (three days – 2.62 sq. m); 22 and 24 December 2010 (three days – 2.62 sq. m); and 24 and 25 February 2011 (two days – 2.62 sq. m).

147. There were also certain periods in which there were reductions in the minimum required personal space of 3 sq. m by 0.08, 0.04 and 0.01 sq. m (see paragraph 17 above). Although such reductions are not of the same degree and extent as those noted above, particularly given that some of them can hardly be demonstrated and distinguished in terms of space, and are therefore not decisive for the determination of the case at issue, the Court considers that they cannot be ignored in the overall assessment of conditions of the applicant's confinement in Bjelovar Prison.

148. In view of these findings, and the relevant principles enunciated in its case-law (see paragraph 137 above), the Court finds that a strong presumption of a violation of Article 3 arises in the case at issue. Accordingly, the question to be answered is whether there were factors capable of rebutting that presumption.

(II) Whether there were factors capable of rebutting the strong presumption of a violation of Article 3

149. The Court notes that the relevant reductions in the applicant's personal space below 3 sq. m were of relatively short duration. This is in particular true as to single non-consecutive periods of one (2.62 sq. m), two (2.62 sq. m) and eight days (2.55 sq. m), three non-consecutive periods of three days during which the applicant had 2.62 sq. m of personal space, and one period of three days during which the applicant had 2.55 sq. m of personal space. The Court notes, however, that there was also a period of twenty-seven days

(between 18 July and 13 August 2010) in which the applicant disposed of 2.62 sq. m of personal space (see paragraph 146 above).

150. In these circumstances, sharing the Chamber's concerns with regard to the period of twenty-seven days, the Court will first consider whether that period could be regarded as a short and minor reduction in the required personal space.

(α) The period of twenty-seven days

151. In this connection the Court observes that in a comparably similar case of Vladimir Belyayev (cited above), concerning several non-consecutive periods of reductions in the applicant's personal space below 3 sq. m, the longest period lasted twenty-six days during which the applicant disposed of 2.97 sq. m of personal space (see paragraph 130 above). However, in the case at issue the applicant disposed of 2.62 sq. m of personal space for a period of twenty-seven days (see paragraph 146 above).

152. These circumstances are sufficient for the Court to conclude that the period of twenty-seven days when the applicant had only 2.62 sq. m at his disposal cannot call into question the strong presumption of a violation of Article 3.

153. Accordingly, the Court finds that in the period of twenty-seven days in which he disposed of less than 3 sq. m of personal space in Bjelovar Prison, the conditions of the applicant's detention subjected him to hardship going beyond the unavoidable level of suffering inherent in detention and thus amounting to degrading treatment prohibited by Article 3 of the Convention.

(β) The remaining periods

154. As regards the remaining periods which were of short duration and in respect of which the strong presumption of a violation of Article 3 of the Convention can accordingly be rebutted on other grounds, the Court must have regard to other relevant factors, namely the possibility of sufficient freedom of movement and out-of-cell activities and the general conditions of the applicant's detention (see paragraphs 137-138 above). The burden of proving that there were such factors is on the Government.

155. With regard to the question of freedom of movement and out-of-cell activities, the Court notes the Government's submissions concerning the amenities available for inmates in Bjelovar Prison. The Government explained that the inmates were allowed to move freely outside their cells in the morning and afternoon, and to use the indoor and outdoor facilities of Bjelovar Prison. This in particular included two hours of outdoor exercise and in addition free out-of-cell movement inside the prison between 4 and 7 p.m. The Government also explained in detail the prisoners' daily regime and described the facilities available in Bjelovar Prison (see paragraphs 19-20 above).

156. In support of their claims the Government provided photographs, floor plans and other relevant documentation related to the available facilities in Bjelovar Prison (see paragraph 21 above). This in particular concerns the photographs, taken in 2007, 2010 and 2011 in the context of the renovation of the prison and visits of various officials to the prison, showing the interior of Bjelovar Prison, the recreation yard, the cells and their sanitary facilities. These photographs correspond to the Government's description of the relevant facilities available to prisoners. The Government also provided documentation concerning the availability of entertainment for prisoners in Bjelovar Prison, which further supports the claims made in their submissions (see, by contrast, Orchowski, cited above, §§ 125 and 129).

157. For his part, the applicant sought to challenge the Government's submission only in very general terms insisting on the fact that he had not been engaged in any work. At the same time he did not provide a detailed description disputing the Government's claims concerning the opportunities for outdoor exercise and other details of the relevant prison regime in Bjelovar Prison (compare Golubenko, cited above, § 61). He conceded the fact that he had had a possibility of three hours per day of movement outside his cell but argued that the outdoor facilities were inadequate and insufficient, particularly given that there was only an open recreation yard (see paragraph 16 above).

158. The Court observes at the outset that the Government's submissions are very detailed and consistent with their position in the Pozaić case concerning the relevant facilities available to detainees in the same prison at the relevant time (see Pozaić, cited above, §§ 15 and 60; and, by contrast, Idalov, cited above, § 99). Moreover, there is no indication that the relevant materials submitted by the Government were prepared after they had been given notice of the applicant's complaint. There is therefore no reason for the Court to doubt the authenticity, objectivity and relevancy of such materials (see Sergey Chebotarev v. Russia, no. 61510/09, §§ 40-41, 7 May 2014).

159. On the other hand, in the absence of any detailed information from the applicant about his daily routines at Bjelovar Prison, and regard being had to the materials submitted by the Government on the issue, the Court is unable to accept the applicant's submissions as sufficiently established or credible (see Ildani v. Georgia, no. 65391/09, § 27, 23 April 2013). It also attaches particular importance to the fact that the applicant never complained at the domestic level about certain aspects of his confinement, such as, in particular, the lack of outdoor exercise or insufficient time for free movement.

160. In view of the above, the Court's task in the present case is to determine whether it can be ascertained, from the material submitted before it, that the applicant was given sufficient freedom of movement and adequate out-of-cell activities, which were capable of alleviating the situation created by the scarce allocation of personal space.

161. In this connection the Court notes that in the ordinary daily regime in Bjelovar Prison the applicant was allowed the possibility of two hours of outdoor exercise, which is a standard set out in the relevant domestic law (see paragraph 43 above, section 14 (1.9) of the Enforcement of Prison Sentences Act above) and above the minimum standards set out by the CPT (see paragraph 53 above). The photographs available to the Court show the recreation yard, which according to the Government's undisputed submission, has a surface area of 305 sq. m and includes a lawn and asphalted parts as well as protection from inclement weather and is equipped with various recreational facilities, such as a gym, basketball court and ping-pong table.

162. Furthermore, it is undisputed by the applicant that he was allowed three hours per day of free movement outside his cell within the prison facility. Taking also into account the period of two hours of outdoor exercise, as well as the periods necessary for serving breakfast, lunch and dinner, it cannot be said that the applicant was left to languish in his cell for a significant proportion of his day without any purposeful activity. This is particularly true given the entertainment facilities available in Bjelovar Prison, such as the possibility of watching TV or borrowing books from the local library, as follows from the material available before the Court (compare Valašinas, cited above, § 111).

163. Against the above background, the Court finds that, even taking into account that the applicant was unable to obtain work, which related not only to the objective impossibility (see paragraph 20 above) but also arguably to the applicant's previous behaviour (see paragraph 13 above), the possibility of free out-of-cell movement and the facilities available to the applicant in Bjelovar Prison could be seen as significantly alleviating factors in relation to the scarce allocation of personal space.

164. It remains to be determined whether the applicant was detained in generally appropriate conditions in Bjelovar Prison (see paragraphs 134 and 138 above). The Court is of the view that the above considerations concerning the material available before it hold true for the general conditions of the applicant's detention. In particular, the Government's detailed submission is corroborated by relevant evidence (see paragraph 21 above) and the findings of the competent domestic authorities in the applicant's case, notably the competent judicial authorities, the Ministry of Justice Prison Administration and the Ombudsperson (see paragraphs 25, 28, 30 and 38 above). In this context the Court would note that there is no reason for it to call into question these findings of the competent domestic authorities. It also attaches particular importance to the fact that the applicant did not raise, let alone substantiate, allegations concerning poor hygiene conditions in the cells and poor nutrition, or notably inadequate recreational and educational activities, in his constitutional complaint before the Constitutional Court.

165. Moreover, the applicant's statements concerning the general conditions of his detention are inconsistent and contrary to the available evidence. Specifically, at one instance the applicant argued that the cells where he had been accommodated were insufficiently equipped with the relevant furniture for every inmate (see paragraph 16 above), whereas elsewhere, when he intended to show that he had not had sufficient freedom of movement inside the cell, he argued that he had been unable to pace normally due to the furniture available to every inmate (see paragraph 80 above), which contradicts his own above-cited statement. Moreover, the applicant argued that the sanitary facilities were in the same room as the living area from which they were not fully separated (see paragraph 16 above), while the photographs and floor plans of the prison dating back to 1993, the authenticity and relevancy of which are not in dispute, show that the prison cells in Bjelovar Prison were equipped with a fully partitioned sanitary facility.

166. Likewise, the Court observes that it appears from the material available to it that the food served to the prisoners was regularly inspected by the prison doctor and the competent State authorities, and that prisoners were served three meals per day which, on the basis of the menu presented by the Government, do not appear substandard or inadequate (compare Alexov, cited above, § 106; and, by contrast, Kadiķis v. Latvia (no. 2), no. 62393/00, § 55, 4 May 2006, where prisoners had only one meal per day). Moreover, prisoners had free access to the sanitary facilities and there is no issue with regard to the access to natural light and fresh air in the cell.

167. There was also, as it appears from the available materials, a possibility to shower three times per week (see paragraph 26 above; see further paragraph 55 above, Rule 19.4 of the European Prison Rules; and by contrast Shilbergs v. Russia, no. 20075/03, § 97, 17 December 2009, where the applicant had a possibility to shower no more than once every ten days). The facilities of Bjelovar Prison were constantly renovated and maintained, including in the period before and during the applicant's stay in that prison (see paragraphs 18 and 38 above). In this connection the Court notes the photographs, the authenticity of which is not in dispute, showing the interior of Bjelovar Prison, the recreation yard, the cells and their sanitary facilities, which appear to be in an adequate state of repair and cleanliness (see, by contrast for example, Zuyev v. Russia, no. 16262/05, § 59, 19 February 2013), and which accordingly correspond to the Government's description of the relevant facilities available to prisoners.

168. In view of the above, the Court considers that the applicant was detained in generally appropriate conditions in Bjelovar Prison.

169. Against the above background, as regards the other periods during which the applicant disposed of less than 3 sq. m of personal space, the Court finds that the Government have rebutted the strong presumption of a violation of Article 3. Those non-consecutive periods can be regarded as short and minor reductions in personal space, during which sufficient freedom of movement and out-of-cell activities

were available to the applicant. Moreover, he was detained in, viewed generally, an appropriate detention facility.

170. The Court therefore considers that it cannot be established that the conditions of the applicant's detention, although not completely adequate as regards personal space, reached the threshold of severity required to characterise the treatment as inhuman or degrading within the meaning of Article 3 of the Convention. This conclusion is not altered by the fact that the relevant domestic law provided for a standard of 4 sq. m of personal space per detainee, which, as already indicated above, may inform the Court's decision but cannot be considered a decisive argument for its assessment under Article 3 (see paragraph 111 above). This is particularly true in the context of the Croatian domestic system given that the Constitutional Court, in its assessment of the minimum personal space allocated to a detainee, referred to the Court's minimum standard of 3 sq. m of personal space set out in its Ananyev and Others judgment (see paragraph 45 above).

171. In the light of the above, the Court considers that the conditions of the applicant's detention during the remaining periods in which he disposed of less than 3 sq. m of personal space did not amount to degrading treatment prohibited by Article 3 of the Convention.

(γ) Conclusion
172. The Court finds that there has been a violation of Article 3 of the Convention with regard to the period of twenty-seven days (between 18 July and 13 August 2010) in which the applicant disposed of less than 3 sq. m of personal space (see paragraph 153 above).

173. Conversely, with regard to the remainder of the periods in which the applicant disposed of less than 3 sq. m (see paragraph 171 above), the Court finds that there has been no violation of Article 3 of the Convention.

(b) Periods in which the applicant disposed of between 3 and 4 sq. m of personal space
174. As the applicant also complained about the periods in which his personal space in detention was more than 3 sq. m but less than 4 sq. m, where the space element remains a weighty factor in the Court's assessment (see paragraph 139 above), it remains to be examined whether the impugned limitation on personal space was incompatible with Article 3.

175. The Court notes that it follows from the undisputed material available before it concerning the details of the applicant's confinement in Bjelovar Prison that for several non-consecutive periods he disposed of between 3 and 4 sq. m of personal space ranging from 3.38 sq. m to 3.56 sq. m (see paragraph 17 above).

176. In view of the above considerations concerning the remainder of the period in which the applicant disposed of less than 3 sq. m of personal space (see paragraphs 154-171 above), the Court finds that it cannot be considered that the conditions of his detention in the period when he disposed of between 3 and 4 sq. m of personal space amounted to inhuman or degrading treatment within the meaning of Article 3 of the Convention.

177. The Court therefore finds that in this respect there has been no violation of Article 3 of the Convention.

The main issue in the 2013 case of Torreggiani and others v. Italy was the overcrowding in the cells in Italian prisons:

(Case 57) (Translation)
70. The Court observes first of all that the Government have not disputed that Mr Torreggiani, Mr Biondi and Mr Bamba occupied 9 m^2 cells, each with two other persons, throughout their detention in Busto Arsizio prison.

71. On the other hand, the parties' versions differ as to the size of the cells occupied by the applicants detained in Piacenza prison and the number of occupants of those cells. Each of the five applicants concerned claimed that they shared cells measuring 9 m^2 with two other persons, whereas the Government maintained that the cells in question measured 11 m^2 and were as a rule occupied by two persons. The Court further notes that the Government did not provide any documents concerning the applicants or any information concerning the actual dimensions of the cells occupied by them. In its view, it was for the applicants to prove the reality of their assertions concerning the personal space available to them and the duration of the treatment alleged before the Court.

72. Sensitive to the particular vulnerability of persons under the exclusive control of State agents, such as detained persons, the Court reiterates that the Convention procedure does not always lend itself to a rigorous application of the principle affirmanti incumbit probatio (the burden of proof lies with the person who asserts) because, inevitably, the respondent Government are sometimes the only ones to have access to information that might confirm or refute the applicant's assertions (Khoudoyorov v. Russia, no. 6847/02, § 113, ECHR 2005-X (extracts); and Benediktov v. Russia, no. 106/02, § 34, 10 May 2007; Brânduşe v. Romania, no. 6586/03, § 48, 7 April 2009; Ananyev and Others v. Russia, cited above, § 123). It follows that the mere fact that the Government's version contradicted that provided by the applicant could not, in the absence of any relevant document or explanation from the Government, lead the Court to dismiss the applicant's allegations as unsubstantiated (Ogică v. Romania, no. 24708/03, § 43, 27 May 2010).

73. Accordingly, in so far as the Government have not submitted to the Court any relevant information capable of substantiating their assertions, the Court will examine the question of the applicants' conditions of detention on the basis of the allegations of the persons concerned and in the light of all the information in its possession.

74. In that regard, the Court notes that the versions of the applicants detained in Piacenza are unanimous as to the size of their cells. Moreover, the fact that the majority of the

prison's cells measure 9 m^2 is confirmed by the orders of the Reggio Emilia enforcement judge (see paragraph 11 above). As to the number of persons accommodated in the cells, the Government did not submit any relevant documents from the prison registers, even though it was the only party to have access to such information, although it acknowledged that the overcrowding situation at Piacenza Prison had made it necessary to place a third person in some of the prison's cells.

75. In the absence of any documentary evidence to the contrary and in view of the widespread overcrowding at Piacenza Prison, the Court has no reason to doubt the allegations of Mr Sela, Mr Ghisoni, Mr Hajjoubi and Mr Haili that they shared their cells with two other persons, thus having, like Mr Torreggiani, Mr Bamba and Mr Biondi (see paragraph 70 above), an individual living space of 3 m^2. It notes that this space was further restricted by the presence of furniture in the cells.

76. In the light of the foregoing, the Court considers that the applicants were not provided with a living space that complied with the criteria it has found acceptable in its case-law. It wishes to recall once again in this context that the standard for living space in collective cells recommended by the CPT is four square metres (see Ananyev and Others, cited above, §§ 144 and 145).

77. The Court next observes that the severe lack of space from which the seven applicants suffered for periods ranging from fourteen to fifty-four months (see paragraphs 6 and 7 above), which in itself amounts to treatment contrary to the Convention, appears to have been further aggravated by other treatment alleged by the applicants. The lack of hot water for long periods in both establishments, which was acknowledged by the Government, and the inadequate lighting and ventilation in the cells in Piacenza prison, on which the Government did not comment, did not fail to cause the applicants additional suffering, although they did not in themselves constitute inhuman and degrading treatment.

78. Although the Court accepts that in the instant case there is no indication that there was any intention to humiliate or demean the applicants, the absence of such an aim cannot rule out a finding of a violation of Article 3 (see, among other authorities, Peers v. Greece, no. 28524/95, § 74, ECHR 2001 III). The Court considers that the conditions of detention in issue, having regard also to the length of the applicants' imprisonment, subjected them to an ordeal of an intensity which exceeded the unavoidable level of suffering inherent in detention.

79. There has therefore been a violation of Article 3 of the Convention.

III. Hygiene

In the 2006 case of Montero-Aranguren et al. v. Venezuela, the Inter-American Court of Human rights described appalling conditions in the Detention Center of Cania:

(Case 58)

88. The Court deems it convenient to point out some of the facts acknowledged by the State as a violation of the right of the victims in this case to humane treatment, during their detention at the Detention Center of Catia. Said events are related to overcrowding, health services and hygiene and medical assistance to inmates.

i) Overcrowding

89. Pursuant to the proven facts (supra para. 60(7) to 60(15)), persons detained in the Detention Center of Catia lived in conditions of severe prison overcrowding and overpopulation. The exact number of inmates at the time of the events of the instant case is not known with certainty due, inter alia, to the lack of an adequate record of the basic data of inmates. However, according to some estimates, the population of Catia Detention facilities ranged between 2286 to 3618 inmates, although its maximum capacity was 900 inmates. That is to say, the overpopulation was between 254 and 402 percent over its capacity. The available space for each inmate was about 30 square centimeters. Some cells used to house inmates during the night were designed for two persons, however, not less than six persons were held inside them.

90. The Court takes into account that, according to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter, the "CPT"), an overcrowded prison is characterized by non-hygienic and restricted living conditions, where privacy is absent even for the most basic activities such as the use of sanitary facilities; by the few out-of-the-cell activities due to the number of inmates that exceeded the available services; overburdened health services; increase of the climate of tension and therefore, increase of violence between prisoners and prison staff. This enumeration is not limited. Furthermore, the CPT provided that 7 square meters available for each prisoner is an approximate guideline and convenient space for a prison cell.

(Cf. CPT/Inf (92) 3 [EN], 2nd General Report, 13 April 1992, para. 43.)

On the other hand, the European Court of Human Rights held that a space of about 2 square meters available for an inmate involves a level of overcrowding that is per se questionable in the light of Article 3 of the European Convention on Human Rights,

(Cf. ECHR, Case of Kalashnikov v. Russia. Judgment of 15 July 2002. Application No. 47095/99, para. 97.)

and that it cannot be considered an acceptable standard,

(Cf. ECHR, Case of Ostrovar v. Moldova. Judgment of 13 September 2005. Application
No. 35207/03, para. 82.)

and that a cell of 7 square meters for two inmates was a relevant aspect to determine the existence of a violation of said Article.

(Cf. ECHR, Case of Peers v. Greece. Judgment of 19 April 2001. Application No. 28524/95,
para. 70-72.)

Similarly, the European Court held that a cell measuring 16.65 square meters where 10 detainees were held, involved a severe lack of space.

(Cf. ECHR, Case of Karalevicius v Lithuania. Judgment of 7 April 2005. Application No. 53254/99, para. 36.)

91. In the instant case, the space of about 30 square centimeters available for each inmate is absolutely unacceptable and involves per se cruel, inhuman and degrading treatment, contrary to the dignity inherent to human being and, therefore, a violation to Article 5(2) of the American Convention.

92. Likewise, large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives. Moreover, the risk of intimidation and violence is high. Such accommodation arrangements are prone to foster the development of offender subcultures and to facilitate the maintenance of the cohesion of criminal organisations. They can also render proper staff control extremely difficult, if not impossible; more specifically, in case of prison disturbances, outside interventions involving the use of considerable force are difficult to avoid. With such accommodation, the appropriate allocation of individual prisoners, based on a case by case risk and needs assessment, also becomes an almost impossible exercise.

(Cf. CPT/Inf (2001) 16, 11th General Report, para. 29.)

93. The Court considers that the solitary confinement cells where some inmates of
the Detention Center of Catia were sent, were deplorable and extremely small.

94. The Court deems that solitary confinement cells must be used as disciplinary measures or for the protection of persons

(Cf. ECHR, Case of Mathew v. The Netherlands. Judgment of 29 September 2005. Application No. 24919/03, para. 199.)

only during the time necessary and in strict compliance with the criteria of reasonability, necessity and legality. Such places must fulfill the minimum standards for proper accomodation, sufficient space and adequate ventilation, and they can only be used if a physician certifies that that the prisoner is fit to sustain it.

(Cf. Standard Minimum Rules for the Treatment of Prisoners. Adopted by the First United Nations Congress on Prevention of Crime and Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council through its Resolutions 663C (XXIV) of July 31, 1957 and 2076 (LXII) of May 13, 1977, Article 32(1).)

The Court emphatically points out that confinement in a dark cell

(Cf. Standard Minimum Rules for the Treatment of Prisoners, supra note 152, Article 31.)

and incommunicado

(Cf. Case of García Asto y Ramírez Rojas, supra note 144, para. 221; Case of Raxcacó Reyes,
supra note 144, para. 95, and Case of Fermín Ramírez, supra note 144, para. 118.)

are forbidden. To such end, the United Nations Committee against Torture has established that confinement cells measuring 60 x 80 centimeters, where no light or ventilation exists, and where the prisoner can only be standing or crouched down, "are torture instruments."

(Cf. Committee against Torture´s Report on Turkey, United Nations, 48th Session Term,
(A/48/44/Add.1), 1994, para. 52.)

ii) Sanitary facilities and hygiene

95. The State has acknowledged that the Detention Center of Catia did not comply with the minimum standards required to mantain the good health of inmates.
In this regard, the testimony of the Advisor of the Committee of Internal Policy of the
House of Deputies

(Statements made by Tahís Peñalver, Advisor of the Commission on Domestic Policy of Deputies, and member of the Trojan Horse project carried out by the company Topten C.A., upon request of the Ministry of Justice to Newpaper "El Nacional, "Las mafias carcelarias chocan desde despacho de Min-Justicia", March 25, 1996. Petition of the Commission (record on the merits and contingent reparations and indemnities, Volume I, page 17).

is really revealing:

[We found] some horrible barracks standing at the lower part. There were some men that lived there amidst putrid water that was running down from other floors. Refuse amid putrid water covered half leg. There was a locked room, but with a hole on its lower right corner. Through this hole, prisoners received their food, provided it is possible to call it "food." They took the food mixed with excrements. We knocked the door and heard some voices. They did not know how many persons were there. We started to dismantle the door once the welded joints had been removed, but it was not possible to open the

door yet since the thick layer of excrements was even harder than the welded joints. Monsters came out of such place: the forgotten maximum-security inmates.

96. This statement is consistent with the testimony given by Arturo Peraza, at the public hearing conducted in the instant case (supra para. 59(o)).

97. This Court deems that the poor physical and sanitary conditions existing in detention centers, as well as the lack of adequate lightning and ventilation, are per se violations to Article 5 of the American Convention, depending on their intensity, length of detention and personal features of the inmate, since they can cause hardship that exceed the unavoidable level of suffering inherent in detention, and because they involve humiliation and a feeling of inferiority.

98. In this sense, the European Court held that the fact that a person had been forced to live, sleep and use sanitary facilities together with a great number of inmates was, per se, sufficient to be considered a degrading treatment.

(Cf. ECHR, Case of Khudoyorov v. Russia. Judgment of 8 November 2005, Application
No. 6847/02, para. 107; ECHR, Case of Karalevicius v Lithuania. supra note 149, para. 39; ECHR, Case of I.I v Bulgaria. supra note 142, para. 73.)

99. In the instant case, certain inmates of the Detention Center of Catia not only had to defecate in the presence of their mates, but they also had to live amid excrements and even eat their food under such humiliating conditions. The Court considers that said detention conditions are absolutely unacceptable, they involve disdain for human dignity; cruel, inhuman and degrading treatment; high risk for health and life and a clear violation of Articles 5(1) and 5(2) of the American Convention.

100. Neither the Inter-American Convention, nor the representatives stated that the victims identified in this case were held in the cells referred to in the preceding paragraph. However, the Court, considering the testimonies presented before it (supra para.59), deems that the sanitary conditions existing on the higher floors of Detention Center of Catia, though not so bad as those described above, did not comply with the minimum standards of humane treatment. The State itself pointed out that "during many decades" the Detention Center of Catia "represented for Venezuela the idea of evil, where everything was possible, the gloomy place where society purges its misery," and all those who "suffered there and succeeded in leaving it […] are survivors."

(Oral final arguments of the State, public hearing held on April 4, 2006, supra para. 26.)
(…)

104. In the light of the aforementioned, and taking into account the admission by the State (supra para.26), the Court considers that the latter violated the rights enshrined in Articles 4(1) (Right to Life) and 5(1), 5(2) and 5(4) (Right to Humane Treatment) of the American Convention, regarding Article 1(1) of same, in detriment of the 37 victims listed in paragraph 60(26) of this Judgment, due to the disproportionate use of force inflicted on them, to the detention conditions to which they were subjected during their detention at Detention Center of Catia, and to the absence of a classification of inmates under trial or already convicted prisoners. Moreover, the Court deems that the State violated Article 5(1) of the Convention, regarding Article 1(1) thereof, in detriment of the next of kin of the victims, who are identified in paragraph 60(26) of this Judgment, for the pain they endured due to the death of their beloved ones, aggravated by the failure of government authorities to give them any information on the events occurred, and by the denial of justice (supra para. 60(36)).

IV. Drinking water and nutrition

In the 2007 case of Stepuleac v. Moldova, the applicant complained about the conditions of his detention, in particular, about the insufficient access to drinking water and food:

(Case 59)
51. The Government also submitted photographs taken in the GDFOC centre to confirm their statements, as well as documents confirming the provision of food to the centre. It appears from the latter documents that the detainees received one meal per day and in addition some tea and bread. (…)

52. The applicant contested the Government's submissions, stating that the cell's area was four square metres, as was evident also from the pictures submitted by the Government. The applicant had had to bring his own bed linen and his wife was allowed to send him food only once a week, as proved by a letter from the GDFOC head dated 30 January 2006. In the absence of any cold storage, the applicant had not been able to keep such foods as meat, fish or soup. The Government's documents supported the applicant's claim that there was no toilet in the cell but only in a separate facility, which he was allowed to visit once a day. Neither was there any running water in the cell and he was allowed to use lavatories during 10 minutes in the morning. There was no heating in the cell and he had to sleep in his clothes. The applicant also submitted that during his solitary detention for alleged security reasons four other former law enforcement officers and a lawyer had been detained there, thus denying the Government's submission that no other persons could have been placed in the applicant's cell.

53. The applicant submitted that he had asked about ten times for an ambulance to be called and noted that the Government had provided only two records of ambulance visits to him, on 6 and 7 February 2006, while having confirmed

five relevant requests by the applicant. In the ambulance visit records provided by the Government the doctors noted that the applicant had been suffering from nausea, vertigo, anxiety and insomnia. The applicant emphasised that these ambulance visits and complaints had coincided with the period when he had complained through his lawyer about visits to his cell by unidentified persons to intimidate him (see paragraph 28 above). Moreover, on 19 February 2006 the applicant's family doctor had diagnosed him with obstructive chronic bronchitis, which had been confirmed by the same doctor in the presence of the doctor from Prison no. 13 on 18 April 2006. The applicant finally relied on the reports of the CPT, which confirmed his description of the conditions of detention.

2. The Court's assessment

54. The Court refers to the principles established in its case-law on Article 3 of the Convention regarding, in particular, conditions of detention and medical assistance to detainees (see, amongst others, Kudła v. Poland [GC], no. 30210/96, § 91, ECHR 2000-XI, Ostrovar v. Moldova, no. 35207/03, §§ 76-79, 13 September 2005, and Sarban, cited above, §§ 75-77).

a. Conditions of detention at the GDFOC detention centre

55. The Court notes that the applicant was given one full meal per day at the GDFOC (see paragraph 51 above). It also notes that the applicant's wife was given the right to send him food once a week. In this regard, the Court observes that the permissions given to the applicant's wife to send him food, submitted by the Government, confirm that he generally received food from her once a week. The Court can but note the clear insufficiency of food given to the applicant, which in itself raises an issue under Article 3 of the Convention (see Kadiķis v. Latvia (no. 2), no. 62393/00, § 55, 4 May 2006).

56. The parties submitted contradicting views regarding access to daylight in the cells. However, the Court notes that one of the documents submitted by the Government and issued apparently by the GDFOC management (annex 8, see paragraph 38 above), expressly mentions that the cells did not have windows. The Court concludes that the applicant was detained in a cell without access to daylight.

57. The Court further notes that the Government did not contradict the applicant's claim that he was allowed to visit the toilet and running water facilities once a day, nor that the cell was not heated and he had to sleep in his clothes and had to use his own bedding.

58. The Court finds that the description of at least some of the above conditions of detention coincides with that made by the CPT in 2001 (see paragraphs 54-57 and 63). The CPT concluded that EDPs (detention centres) run by the Ministry of Internal Affairs (including the GDFOC) "will never be able to offer suitable detention conditions for persons remanded in custody for prolonged periods, even several months". The Court concludes that the applicant was detained in conditions inconsistent with Article 3 of the Convention.

b. Medical assistance

59. The Court refers to the Government's opinion that it was impossible for a non-specialist doctor to be certain of the applicant's medical diagnosis of bronchitis in the absence of results from in-depth medical tests (see paragraph 50 above). It notes that, despite this preliminary diagnosis which therefore needed confirmation, the applicant was not subjected to any such tests, nor examined by a specialist doctor, at least until the end of his detention at the GDFOC and for two more weeks thereafter (see paragraph 53 above). The Government did not deny that humidity in the cells could contribute to deterioration in the applicant's bronchitis. Moreover, the applicant was not given daily medical care since, as appears also from the Government's observations, there were no medical personnel at the GDFOC detention centre and an ambulance was called in more serious cases. In this respect, the Court notes the answer given to the applicant in response to his request for a transfer to a centre staffed with medical personnel (see paragraph 30 above). He was promised medical assistance whenever he needed it, despite his express claim that he already needed such assistance. As a result, the applicant was in a vicious circle where he could not get assistance until he "really needed" it, while at the same time he could not prove such a medical need in the absence of qualified medical opinion to confirm his fears. It follows that the applicant did not receive sufficient medical treatment while being detained in the GDFOC detention centre. (…)

d. Conclusion

65. To sum up, the Court finds that the applicant's detention for over three months with insufficient food and no access to daylight for up to 22 hours a day, no access to toilet and tap water whenever needed, and insufficient medical assistance, amount to a violation of Article 3 of the Convention.

V. Transfers

In the case of Idalov v. Russia, decided in 2012, the applicant complained, inter alia, about the conditions of his transport to the court:

(Case 60)

58. The applicant provided the following description of the conditions of his detention in, and transport to and from, the courthouse.

(i) Conditions of transport

59. On approximately fifteen occasions the applicant was transported from the remand prison to the courthouse and back. On those days he normally had to wake up at 5 a.m. and had no breakfast. The prison van had three compartments which measured 3.8 m by 2.35 m by 1.6 m in total. Two compartments housed twelve persons each and the third one was for single occupancy. There were usually eighteen detainees held in each of the bigger compartments. There were not enough seats for everyone and some people had to stand or sit on someone else's lap. The applicant was transported

once in a single occupancy compartment on 24 November 2003 following the delivery of the verdict in his case.

60. The natural ventilation of the van through the hatches was insufficient and it was stiflingly hot in the summer. During the winter the vans were not heated when the engines were off. The floor in the van was extremely dirty. It was covered with cigarette butts, food crumbs, plastic bottles and bags of urine. It was impossible to use the toilet during the journey. The vans had no windows or internal lighting.

61. The van collected inmates from different prisons and made several stops at different courthouses. As a result, the journey from the remand prison to the courthouse for the applicant lasted between one and a half and two hours. The return journey took up to five hours. On the days of the court hearings, the applicant was not provided with any food.

(ii) Conditions of detention in the courthouse

62. The applicant submitted that the holding cells at the courthouse were overcrowded, dirty, poorly lit and unventilated. They measured no more than 5 sq. m. The applicant did not receive any food when he was held there. Nor was there a toilet in the cell. On at least two occasions, when the hearing of his case was adjourned, the applicant spent up to fifteen hours in such conditions. On other days he spent several hours in such cells before and after the hearing. (…)

2. The Court's assessment (…)

(…)

(ii) Conditions of detention in and transport to and from the courthouse

103. The Court observes that the Government were unable to provide, apart from the description of the vans (see paragraph 54 above), any detailed information on the conditions in which the applicant was transported to and from the courthouse. Given the vans' height (approximately 1.6 metres), detainees should have been kept there only in a seated position. However, given that the compartments in ZIL vans measured in total 11.28 sq. m and those in GAZ vans measured in total 8.93 sq. m (see paragraph 54 above), the Court does not find it conceivable that thirty-six persons in ZIL vans or twenty-five persons in GAZ vans were provided with adequate seating and space for transport under humane conditions. In view of these facts, the Court accepts as credible the applicant's allegations concerning the overcrowding in the vans, the negative effects of which increased in proportion to the duration of the journeys to and from the courthouse (see paragraph 61 above).

104. As to the applicant's detention at the courthouse, the Government have not provided any official data as to the duration of such detention or any other details on the cells in which the applicant was held. The Court therefore accepts the applicant's account (see paragraph 62 above) and finds that he was confined in cramped and inhumane conditions during his detention in the courthouse.

105. Furthermore, the Court is not convinced that the applicant received appropriate nutrition on the days of the court hearings. As can be seen from the report prepared by the domestic authorities (see paragraph 90 above), the detainees generally left the remand prison before breakfast time and were brought back after dinner time. No evidence was submitted to the effect that the applicant had received any "dry rations" or other sustenance.

106. The Court observes that it has found a violation of Article 3 of the Convention in a number of cases against Russia on account of the cramped conditions of the applicants' detention at, and transport to and from, a courthouse (see, for example, Khudoyorov v. Russia, no. 6847/02, §§ 118120, ECHR 2005X; and Starokadomskiy v. Russia, no. 42239/02, §§ 53-60, 31 July 2008).

107. Having regard to the material in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

108. The above considerations, taken cumulatively, are sufficient to warrant the conclusion that the applicant was subjected to inhuman and degrading treatment in breach of Article 3 of the Convention whilst detained at and during his transfer to and from the courthouse. There has therefore also been a violation of that provision in this regard.

VI. Inhuman or degrading conditions of detention as a structural problem. Judicial recommendations as to the necessary measures to overcome the problem

In a number of countries, the European Court of Human Rights has found structural problems to exist with regards to inhuman or degrading conditions of detention. In many of these cases, the Court has given recommendations under Article 46 of the European Convention on Human Rights in order to overcome the problems. These recommendations are particularly interesting from the point of view of the prevention of future ill-treatment.

In the 2014 case of Vasilescu v. Belgium the Court found as follows:

(Case 61) (Translation)

99. Firstly, the Court notes that, in addition to the problem of prison overcrowding, the applicant's allegations regarding hygiene conditions, in particular access to running water and toilets, are more than plausible and reflect the realities described by the CPT in the various reports drawn up following its visits to Belgian prisons (see paragraphs 46-52 above).

100. As regards in particular the personal space granted to the applicant, the Court observes that, during part of his detention, the applicant suffered the effects of prison overcrowding. The parties agreed that, for several weeks, the applicant's individual space was below the standard

recommended by the CPT for collective cells, i.e. less than 4 m^2 (see Torreggiani and Others, cited above, § 68). For a fortnight, the applicant even had an individual space of less than 3 m^2, which, according to the Court's case-law, constitutes personal space which, on its own, is sufficient to conclude that there has been a violation of Article 3 of the Convention (see Ananyev and Others, cited above, § 145).

101. This lack of individual living space was exacerbated in the instant case by the fact that, according to the applicant, he had to sleep on a mattress on the floor for several weeks, which did not comply with the basic rule established by the CPT: "one prisoner, one bed" (see paragraph 48 above). In this connection, the Court recalls that it has already held that, in the case of persons under the exclusive control of State agents, such as detained persons, the mere fact that the Government's version contradicted that provided by the applicant could not, in the absence of any relevant document or explanation from the Government, lead the Court to reject the applicant's allegations as unsubstantiated (see Torreggiani and Others, cited above, §§ 72-73). In the instant case, the Government stated that one of the inmates in the cell had indeed had to sleep on a mattress on the floor, but that it was not possible to ascertain whether it had in fact been the applicant who had been made to sleep on the floor. In so far as the Government had not adduced any evidence to the contrary of the applicant's version, the Court had no reason to doubt the applicant's allegations in the instant case that he had had to sleep on the mattress on the floor. These allegations are all the more plausible in that it is not disputed that the applicant suffers from back problems.

102. As regards sanitation and hygiene, the Court notes that, according to the information provided by the Government, the applicant did not always have access to a toilet in accordance with the CPT's recommendations. In fact, in one of the cells occupied by the applicant in Antwerp prison, the toilet was behind a screen. The Court recalls that, according to the CPT, a sanitary annexe that is only partially partitioned is not acceptable in a cell occupied by more than one prisoner (see Canali v. France, no. 40119/09, § 52, 25 April 2013).

103. In addition, the Court notes that during the sixty days of detention in the cell block of Merksplas prison, the cells occupied by the applicant had no toilet and no access to running water. While the parties disagreed as to whether the applicant had free access to the toilet in the prison corridor during the day, they agreed that, in any event, during the night the applicant had only a sanitary bucket at his disposal to satisfy his natural needs. In any event, the Court has already found the use of a toilet bucket in cells to be unacceptable (Iordan Petrov v. Bulgaria, no. 22926/04, § 125, 24 January 2012). The situation in the Merksplas cell block has also been described as "poor" by the CPT, which has called on the Belgian authorities, since its first visit to Merksplas in 1998, to take urgent steps to remedy the lack of access to toilets and running water in the cell block (see paragraph 50 above). The Court notes that, sixteen years later, the situation does not appear to have improved.

104. All the conditions described above were further aggravated by the fact that the applicant was a victim of passive smoking, since it is not disputed by the Government that for most of his detention he had to share his cell with prisoners who smoked (see paragraphs 6 and 13 above). The Court notes in this connection that the applicant had only a relatively limited amount of time outside his cell (see paragraphs 12 and 17 above).

105. The Court accepts that in the present case there is no indication that there was any real intention to humiliate or demean the applicant during his detention. However, the absence of such an aim cannot rule out a finding of a violation of Article 3 (see Kalashnikov v. Russia, no. 47095/99, § 101, ECHR 2002 VI). Irrespective of the relatively short periods of time during which the applicant was subjected to the above-mentioned conditions of detention, the Court considers that the conditions of detention in issue, considered as a whole, did not fail to subject the applicant to an ordeal of an intensity which exceeded the unavoidable level of suffering inherent in detention (Kaja v. Greece, no. 32927/03, § 49, 27 July 2006, Tadevosyan v. Armenia, no. 41698/04, § 55, 2 December 2008, and Pop Blaga v. Romania, no. 37379/02, § 46, 27 November 2012).

106. Accordingly, the Court considers that the material conditions of the applicant's detention in Antwerp and Merksplas prisons, taken as a whole, reached the minimum threshold of severity required by Article 3 of the Convention and amounted to inhuman and degrading treatment within the meaning of that provision.

107. There has therefore been a violation of that provision. (...)

V. application of articles 46 and 41 of the convention
A. Article 46 of the Convention

124. Article 46 of the Convention provides that

" 1. The High Contracting Parties undertake to abide by the final judgments of the Court in cases to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution. (...)"

1. Applicable principles

125. The Court recalls that under Article 46 of the Convention the Contracting Parties have undertaken to abide by the final judgments of the Court in cases to which they are parties, the Committee of Ministers being responsible for supervising their execution. It follows in particular that the respondent State found responsible for a violation of the Convention or the Protocols thereto is required not only to pay the persons concerned the sums awarded in just satisfaction, but also to choose, under the supervision of the Committee of Ministers, the general and/or, where appropriate, individual measures to be adopted in its domestic legal order in order to put an end to the violation found by the Court and to erase as far

as possible the consequences (see, among many other authorities, Scozzari and Giunta v. Italy [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000 VIII, Del Rio Prada v. Spain [GC], no. 42750/09, § 137, ECHR 2013, and Legal Resources Centre on behalf of Valentin Câmpeanu v. Romania [GC], no. 47848/08, § 158, ECHR 2014). The Court also reiterates that it is primarily for the State in question, under the supervision of the Committee of Ministers, to choose the means to be used in its domestic legal order to fulfil its obligation under Article 46 of the Convention (see Scozzari and Giunta, cited above, Del Rio Prada, cited above, § 138, and Legal Resources Centre on behalf of Valentin Câmpeanu, cited above).

126. However, in order to assist the respondent State in fulfilling its obligations under Article 46, the Court may seek to indicate to it the type of measures, individual and/or general, that it might take to put an end to the situation found (see, among many others, Del Rio Prada, cited above, § 138, and the Legal Resource Centre on behalf of Valentin Câmpeanu, cited above, § 159).

2. Application to the present case

127. In the instant case the Court found a violation of Article 3 of the Convention on account of the material conditions in which the applicant was detained (see paragraphs 106-107 above). The Court also found that the problems arising from prison overcrowding in Belgium and the hygiene and dilapidated state of the establishments were of a structural nature and did not relate solely to the applicant's personal situation (see paragraph 73 above and the extracts from the international reports in paragraphs 46-47 above). Indeed, the conditions of detention reported by the applicant in the present case have been denounced by national and international observers for many years without there appearing to have been any positive developments in the prisons where the applicant was held. On the contrary, in 2012 the CPT emphasised that the problem of prison overcrowding had continued to worsen in Belgium in recent years (see paragraph 47 above). In addition, the Court rejected the Government's objection of inadmissibility, finding that none of the remedies mentioned by the Government could be regarded, at present, as effective remedies to be exhausted (see paragraphs 78-79, above).

128. In this context, the Court recommends that the respondent State consider adopting general measures. On the one hand, measures should be taken to guarantee detainees conditions of detention in conformity with Article 3 of the Convention. Secondly, a remedy should be available to detainees to prevent the continuation of an alleged violation or to enable them to obtain an improvement in their conditions of detention (see, in this connection, Torreggiani and Others, cited above, § 50).

The 2017 judgment in the case of Rezmives and others v. Romania concerned the problem of overcrowding in Romanian prisons:

(Case 62) (Translation)

75. The general principles relating to prison overcrowding are summarised in Khlaifia and Others v. Italy ([GC], no. 16483/12, §§ 164 166, 15 December 2016), where the Court recalled, inter alia, that when overcrowding reaches a certain level, the lack of space in an establishment may be the central element to be taken into account in assessing whether a given situation complies with Article 3 (see, in relation to prisons, Karalevičius v. Lithuania, no. 53254/99, § 39, 7 April 2005). Indeed, the extreme cramped conditions in a prison cell are a particularly important aspect that must be taken into account in order to establish whether the conditions of detention at issue were "degrading" within the meaning of Article 3 of the Convention (Muršić v. Croatia [GC], no. 7334/13, § 104, 20 October 2016).

76. Thus, when confronted with cases of severe overcrowding, the Court has held that this element alone was sufficient to find a violation of Article 3 of the Convention. As a general rule, although the space considered desirable by the CPT for collective cells was 4 m^2, there were cases where the personal space granted to the applicant was less than 3 m^2 (Torreggiani and Others v. Italy, nos. 43517/09 et al, § 68, 8 January 2013; Ananyev and Others, cited above, §§ 144-145; Sulejmanovic v. Italy, no. 22635/03, § 43, 16 July 2009; Kantyrev v. Russia, no. 37213/02, §§ 50-51, 21 June 2007; Andrei Frolov v. Russia, no. 205/02, §§ 47-49, 29 March 2007; and Kadikis v. Latvia, no. 62393/00, § 55, 4 May 2006).

77. The Court recently confirmed that the requirement of 3 m^2 of floor space per prisoner (including the space occupied by furniture but excluding that occupied by sanitary facilities) in a collective cell must remain the relevant minimum standard for the purposes of assessing the conditions of detention under Article 3 of the Convention (see Muršić, cited above, §§ 110 and 114). It also stated that a personal space of less than 3 m^2 in a collective cell gives rise to a strong but not irrefutable presumption of a violation of that provision. The presumption in question may be rebutted, inter alia, by the cumulative effects of other aspects of the conditions of detention which are such as to compensate adequately for the lack of personal space; in this regard, the Court takes into account factors such as the duration and extent of the restriction, the degree of freedom of movement and the availability of out-of-cell activities, and whether or not the conditions of detention in the establishment in question are generally decent (ibid., §§ 122-138).

iv. Other aspects of material conditions of detention

78. On the other hand, in cases where overcrowding was not so significant as to raise a problem in itself under Article 3, the Court has noted that other aspects of the conditions of detention were relevant to the assessment of compliance with that provision. These included the possibility of private use of the toilet, the availability of ventilation, access to natural light and air, the quality of the heating and compliance with basic sanitary requirements (see also the elements emerging from the European Prison Rules adopted by the Committee of Ministers, cited in paragraph 43 above). As the Court stated in

its Muršić judgment (cited above, § 139; see also Khlaifia, cited above, § 167), where a prisoner has between 3 and 4 m^2 of personal space in the cell, the spatial factor remains a significant factor in assessing whether the conditions of detention are adequate. Accordingly, in such cases the Court has found a violation of Article 3 where the lack of space was accompanied by other poor material conditions of detention, such as a lack of ventilation and light (see Torreggiani and Others, cited above, § 69; see also Moisseiev v. Russia, no. 62936/00, §§ 124-127, 9 October 2008; Vlassov v. Russia, no. 78146/01, § 84, 12 June 2008; and Babushkin v. Russia, no. 67253/01, § 44, 18 October 2007), limited access to outdoor exercise (István Gábor Kovács v. Hungary, no. 15707/10, § 26, 17 January 2012; Efremidze v. Greece, no. 33225/08, § 38, 21 June 2011; Yevgeniy Alekseyenko v. Russia, no. 41833/04, §§ 88-89, 27 January 2011; Gladkiy v. Russia, no. 3242/03, § 69, 21 December 2010; Shuvaev v. Greece, no. 8249/07, § 39, 29 October 2009; and Vafiadis v. Greece, no. 24981/07, § 36, 2 July 2009) or a total lack of privacy in the cells (Szafransky v. Poland, no. 17249/12, §§ 39-41, 15 December 2015; Veniosov v. Ukraine, no. 30634/05, § 36, 15 December 2011; Mustafayev v. Ukraine, no. 36433/05, § 32, 13 October 2011; Belevitski v. Russia, no. 72967/01, §§ 73-79, 1 March 2007; Khoudoyorov v. Russia, no. 6847/02, §§ 106-107, ECHR 2005-X (extracts); and Novosselov v. Russia, no. 66460/01, §§ 32 and 40-43, 2 June 2005).

79. As regards sanitary facilities and hygiene, the Court reiterates that free access to suitable toilets and the maintenance of good hygienic conditions are essential elements of a humane environment and that detainees must enjoy easy access to such facilities, which must ensure the protection of their privacy (see Ananyev and Others, cited above, §§ 156 and 157; see also the points made in the European Prison Rules adopted by the Committee of Ministers, cited in paragraph 43 above). In this connection, the Court reiterates that a sanitary annexe which is only partially isolated by a partition is not acceptable in a cell occupied by more than one prisoner (Canali v. France, no. 40119/09, § 52, 25 April 2013), that it has already found a violation of Article 3 of the Convention on account of poor hygiene conditions in cells (Vasilescu v. Belgium, no. 64682/12, § 103, 25 November 2014; Ananyev and Others, cited above, §§ 156-159; Florea v. Romania, no. 37186/03, § 59, 14 September 2010; Modarca v. Moldova, no. 14437/05, §§ 65-69, 10 May 2007; and Kalashnikov, cited above, §§ 98-103). Another aspect of hygiene sanctioned by the Court was the presence of cockroaches, rats, lice, bedbugs or other parasites. It pointed out that the authorities in detention centres must combat this type of infestation by effective means of disinfection, cleaning products, fumigation and regular checks of the cells, in particular the condition of the sheets and the places where food is stored (see Ananyev and Others, cited above, § 159).

v. Detention in police stations

80. The Court would point out that it has already found a violation of Article 3 in applications against Greece by foreigners awaiting expulsion who were detained in police stations (see, in particular, Horshill v. Greece, no. 70427/11, §§ 43-53, 1 August 2013; Chkhartishvili v. Greece, no. 22910/10, §§ 52-64, 2 May 2013; and Bygylashvili v. Greece, no. 58164/10, §§ 55-62, 25 September 2012).

(b) Application of these principles to the present cases

81. The Court observes first of all that for most of their detention the applicants occupied overcrowded cells in the prisons at Gherla, Aiud and Oradea (the first applicant), Craiova, Târgu-Jiu and Pelendava (the second applicant), Rahova, Tulcea, Iasi and Vaslui (the third applicant) and Gherla (the fourth applicant). This situation is confirmed by the information provided by the Government (see paragraphs 10-12, 15, 18 and 25 of this judgment). The Court notes that the personal space allocated to the applicants was less than 3 m^2 for most of their detention, which leads the Court to conclude, in accordance with its case-law (see paragraph 77 above), that there is a strong presumption of a violation of Article 3 in the present case. As to the first applicant's requests for transfers between different cells in Gherla prison (see paragraph 10 above), the Court reiterates that they do not relieve the authorities of the obligation to ensure that all persons are held in conditions compatible with respect for human dignity and that they are not exposed to prison overcrowding (see paragraph 72 above).

82. The Court must therefore ascertain whether there are factors capable of rebutting that presumption. In this connection, it notes that the severe lack of living space from which the applicants suffered for several months appears to have been further aggravated by other treatment alleged by the applicants. The Court took into consideration, in particular, the lack of natural light, the very short duration of the daily walk, the unsanitary toilets, sometimes without partitions, as well as the lack of socio-cultural activities (for the first applicant), the inadequacy of the sanitary facilities and the insufficient access to hot water (for the second applicant), the lack of ventilation in the cells, the presence of mould in some of the cells, the presence of insects and rats, the age of the mattresses, the poor quality of the food, the presence of bedbugs (for the third applicant), the poor quality of the food, the inadequacy of the sanitary facilities and the lack of hygiene (for the fourth applicant). Although all these conditions did not in themselves constitute inhuman and degrading treatment, they did cause the applicants additional suffering.

83. The Court further notes that the Government disputed the aspects of the material conditions of detention complained of by the applicants and referred to the information letters received from the ANP management. In this connection, recalling that in similar cases the Court has applied the principle of affirmanti incumbit probatio where the Government were the only party to have access to information capable of confirming or refuting the applicant's claims, it must be observed that the description of the material conditions as complying with the requirements of Article 3 is not supported by sufficient evidence (see, mutatis mutandis, Artimenco v. Romania, no. 12535/04, § 35, 30 June 2009, and Branduse v. Romania, no. 6586/03, § 48, 7 April 2009). As to the documents submitted by the Government

concerning the material conditions of detention suffered by the third applicant in Tulcea, Iasi and Vaslui prisons (see paragraphs 19-21 above), the Court notes that, despite the efforts made by the domestic authorities to improve the third applicant's conditions of detention, they were not able to counteract the material conditions of detention, they were unable to contradict his allegations concerning the lack of ventilation in the cells, the presence of mould in some of them, the presence of insects and rats and the dilapidated state of the mattresses (see paragraph 17 above). It is even apparent from these documents that the third applicant had to endure poor hygiene conditions in the Iasi and Vaslui prisons (see paragraphs 20-21 above). The Government therefore provided no relevant documents or explanations to lead the Court to dismiss the applicant's allegations as unsubstantiated (see, mutatis mutandis, Ogica v. Romania, no. 24708/03, § 43, 27 May 2010). The same applied to the fourth applicant's complaints concerning the material conditions of detention in the Baia Mare police station. The Government did not dispute the absence of toilets and the lack of ventilation, and in no way substantiated their denial of the other aspects complained of (the absence of running water and natural lighting and the presence of rats) (see paragraph 25 above).

84. That being so, with regard to the allegations made by the third applicant concerning possible cohabitation with prisoners suffering from tuberculosis or hepatitis, the Court notes that, as is clear from the material placed on the file by the Government (see paragraph 22 above), the suspicion of tuberculosis contamination was rebutted following screening tests and no case of hepatitis was recorded during the third applicant's imprisonment.

85. The Court goes on to note that the applicants' detailed description of the material conditions in the prisons in which they were held is similar to the situation found by the Court in several other cases of this kind. In this connection, the Court refers to the findings concerning the Gherla prisons (Ciprian Vladut and Ioan Florin Pop v. Romania, nos. 43490/07 and 43304/07, §§ 59-63, 16 July 2015; Apostu v. Romania, no. 22765/12, § 83, 3 February 2015; Tirean v. Romania, no. 47603/10, §§ 37 46, 28 October 2014; Axinte v. Romania, no. 24044/12, §§ 49-50, 22 April 2014; Leontiuc v. Romania, no. 44302/10, §§ 56-62, 4 December 2012; and Radu Pop v. Romania, no. 14337/04, §§ 95-101, 17 July 2012), Aiud (Tirean, cited above, §§ 40-46; Macovei v. Romania, no. 28255/08, §§ 29-32, 19 November 2013; and Gagiu v. Romania, no. 63258/00, §§ 77-82, 24 February 2009), Oradea (Ardelean v. Romania, no. 28766/04, §§ 51-54, 30 October 2012, and Hadade v. Romania, no. 11871/05, §§ 73-78, 24 September 2013), Craiova (see Axinte, cited above, §§ 44-50; Enache v. Romania, no. 10662/06, §§ 56-62, 1 April 2014; and Ciolan v. Romania, no. 24378/04, §§ 39-46, 19 February 2013), Târgu-Jiu (Bordenciu v. Romania, no. 36059/12, §§ 22-33, 22 September 2015), Pelendava (see Application no. 46833/14 of the Matei and 17 Others v. Romania, nos. 32435/13 and 17 others, judgment of 7 April 2016), Rahova (see Apostu, cited above, § 83; Iacov Stanciu, cited above, §§ 171-179; Flamanzeanu v. Romania, no. 56664/08, §§ 89-100, 12 April 2011; and Pavalache v. Romania, no. 38746/03, §§ 87-101, 18 January 2011), Tulcea (Bahna v. Romania, no. 75985/12, §§ 43-53, 13 November 2014), Iasi (Todireasa v. Romania (no. 2) no. 18616/13, §§ 56-64, 21 April 2015; Bahna, cited above, §§ 43-53; Axinte, cited above, §§ 46-50; Ticu v. Romania, no. 24575/10, §§ 62-68, 1 October 2013; Olariu v. Romania, no. 12845/08, §§ 26-32, 17 September 2013; Mazalu v. Romania, no. 24009/03, §§ 42-54, 12 June 2012; Petrea v. Romania, no. 4792/03, §§ 43-50, 29 April 2008), and Vaslui (Todireasa v. Romania (no. 2), cited above, §§ 56-64, and Bahna, cited above, §§ 43-53).

86. The material conditions of detention in Romanian police detention facilities have been examined by the Court in a number of cases, in which it has found overcrowding, poor hygiene, inadequate sanitary facilities and very limited opportunities to spend time outside the cell (see, in particular, Gomoi v. Romania, no. 42720/10, §§ 24-28, 22 March 2016; Ghiroga v. Romania, no. 53168/12, §§ 31-36, 16 May 2015; Valerian Dragomir v. Romania, no. 51012/11, § 47, 16 September 2014; Mihăilescu v. Romania, no. 46546/12, § 57, 1 July 2014; Zamfirachi v. Romania, no. 70719/10, § 66, 17 June 2014; Voicu v. Romania, no. 22015/10, § 53, 10 June 2014; Florin Andrei v. Romania, no. 33228/05, § 45, 15 April 2014; Ciobanu v. Romania and Italy, no. 4509/08, §§ 47-50, 9 July 2013; Marin Vasilescu v. Romania, no. 62353/09, §§ 33-37, 11 June 2013); Artimenco, cited above, § 35; and Viorel Burzo v. Romania, nos. 75109/01 and 12639/02, §§ 98-99, 30 June 2009).

87. Further, having regard to the CPT's findings during its visits in 2010 and 2014 to certain prisons and police stations (paragraphs 52-54 above), the Committee of Ministers' assessments of the general measures adopted in pursuance of the Bragadireanu (cited above) group of cases (paragraphs 44, 46 and 47 above) the recommendations made by the People's Advocate following the investigations into the complaints made by certain detainees (see paragraphs 39-40 above), and the official statistical data on the prison population in Romania (see paragraph 37 above), the Court cannot but consider the applicants' allegations concerning the material conditions of their detention to be credible.

88. These circumstances are sufficient for the Court to conclude that the strong presumption of a violation of Article 3 (see paragraph 77 above) cannot be rebutted, as the Government have failed to demonstrate the presence of factors capable of adequately compensating for the lack of personal space. Even if the Court accepts that in the instant case there is no indication of any intention to humiliate or demean the applicants, the absence of such an aim cannot rule out a finding of a violation of Article 3 (see, among other authorities, Peers, cited above, § 74). The Court considers that the conditions of detention in issue, having regard also to the length of the applicants' imprisonment, subjected them to an ordeal of an intensity which exceeded the unavoidable level of suffering inherent in detention.

89. There had therefore been a violation of Article 3 of the Convention. (...)

102. The Court reiterates that Article 46 of the Convention, as interpreted in the light of Article 1, imposes on the respondent States a legal obligation to apply, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the applicant's rights which the Court has found to be violated. Such measures must also be taken as regards other persons in the applicant's position, notably by solving the problems that have led to the Court's findings of a violation (see, among other authorities, Rutkowski and Others v. Poland, nos. 72287/10 and others, § 200, 7 July 2015; Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia [GC], no. 60642/08, § 78, ECHR 2014; Torreggiani and Others v. Italy, nos. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10, § 83, 8 January 2013; and Broniowski v. Poland [GC], no. 31443/96, §§ 192-93, ECHR 2004-V, and the references cited therein).

103. In order to facilitate effective implementation of its judgments, the Court may adopt a pilot-judgment procedure allowing it to clearly identify structural problems underlying the breaches and to indicate measures to be applied by the respondent States to remedy them (see Resolution Res(2004)3 on judgments revealing an underlying systemic problem, adopted by the Committee of Ministers on 12 May 2004, and Broniowski, cited above, §§ 189-94). This adjudicative approach is, however, pursued with due respect for the Convention institutions' respective functions: it falls to the Committee of Ministers to evaluate the implementation of individual and general measures under Article 46 § 2 of the Convention (see Rutkowski and Others, cited above, § 201, and the references cited therein).

104. Another important aim of the pilot-judgment procedure is to induce the respondent State to resolve large numbers of individual cases arising from the same structural problem at the domestic level, thus implementing the principle of subsidiarity which underpins the Convention system. Indeed, the Court's task as defined by Article 19, namely to "ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto", is not necessarily best achieved by repeating the same findings in large series of cases (see Rutkowski and Others, cited above, § 202, and Varga and Others v. Hungary (nos. 14097/12 et al., § 96, 10 March 2015).

105. The object of the pilot-judgment procedure is to facilitate the speediest and most effective resolution of a dysfunction affecting the protection of the Convention rights in question in the national legal order. While the respondent State's action should primarily aim at the resolution of such a dysfunction and at the introduction, where appropriate, of effective domestic remedies in respect of the violations in question, it may also include ad hoc solutions such as friendly settlements with the applicants or unilateral remedial offers in line with the Convention requirements (see Rutkowski and Others, cited above, § 202; Varga and Others, cited above, § 97; and Torreggiani and Others, cited above, § 86). The Court may decide to adjourn the examination of similar cases, thus giving the respondent States a chance to settle them in such various ways. If, however, the respondent State fails to adopt such measures following a pilot judgment and continues to violate the Convention, the Court will have no choice but to resume the examination of all similar applications pending before it and to take them to judgment in order to ensure effective observance of the Convention (see Ališić and Others, cited above, § 143).

2. Application of these principles in the present case

(a) Whether the situation in the present case is incompatible with the Convention and requires the application of the pilot-judgment procedure

106. The Court notes that the first findings of a violation of Article 3 of the Convention on account of inadequate detention conditions in certain prisons in Romania date back to 2007 and 2008 (see Bragadireanu v. Romania, no. 22088/04, 6 December 2007, and Petrea v. Romania, no. 4792/03, 29 April 2008) and that, since the adoption of the judgments in question, there have been increasing numbers of such findings. Between 2007 and 2012 there were ninety-three judgments finding a violation. Most of these cases, like the present ones, concerned overcrowding and various other recurrent aspects linked to material conditions of detention (lack of hygiene, insufficient ventilation and lighting, sanitary facilities not in working order, insufficient or inadequate food, restricted access to showers, presence of rats, cockroaches and lice, and so on).

107. Having regard to the significant inflow of cases concerning the same subject, the Court found it necessary in 2012 to issue guidance to the Romanian authorities under Article 46 of the Convention. The existence and extent of the structural problem identified by the Court in Iacov Stanciu (cited above) justified the indication of general measures to improve the material conditions in Romanian prisons, in combination with an adequate and effective system of domestic preventive and compensatory remedies, in order to achieve full compliance with Articles 3 and 46 of the Convention (see Iacov Stanciu, cited above, §§ 195-99).

108. At the same time, the Committee of Ministers has twice assessed the general measures adopted by the Romanian authorities in response to the Court's findings, and its conclusions only served to confirm the worrying state of affairs in the vast majority of Romanian police detention facilities and prisons, which continued to be beset by severe overcrowding and precarious material conditions. The Committee of Ministers found that additional measures were needed in order to set up an adequate and effective system of remedies (see paragraph 47 above). The reality of the situation is also confirmed by the latest CPT reports, emphasising the significance of the problem of overcrowding in Romanian custodial facilities. The same reports note that police detention facilities are inappropriate for prolonged periods of detention as they are generally overcrowded,

have no direct access to a toilet and are poorly ventilated and unhygienic. The CPT has also found that overcrowding is a persistent problem in Romanian prisons, at some of which it has noted a lack of hygiene, insufficient lighting and ventilation, sanitary facilities not in working order, inadequate food and insufficient sociocultural activities (see paragraphs 52-54 above). All these findings are also borne out by the recommendations of the People's Advocate, who, after visiting certain prisons, called on the prison authorities to put an end to overcrowding, poor hygiene conditions, the lack of a canteen, the presence of rats, mice and bedbugs and the lack of partitions for toilets, and also urged them to provide drinking water and sufficient furniture and to allow access to working showers (see paragraphs 39-40 above).

109. More than four years after identifying the structural problem, the Court is now examining the present cases, having already found a violation of Article 3 of the Convention in 150 judgments on account of overcrowding and inadequate material conditions in several Romanian prisons and police detention facilities. The number of findings of Convention violations on this account is constantly increasing. The Court notes that as of August 2016, 3,200 similar applications were pending before it and that these could give rise to further judgments finding violations of the Convention. The continuing existence of major structural deficiencies causing repeated violations of the Convention is not only an aggravating factor as regards the State's responsibility under the Convention for a past or present situation, but is also a threat for the future effectiveness of the supervisory system put in place by the Convention (see, mutatis mutandis, Broniowski, cited above, § 193).

110. The Court notes that the applicants' situation cannot be detached from the general problem originating in a structural dysfunction specific to the Romanian prison system, which has affected large numbers of people and is likely to continue to do so in future. Despite the legislative, administrative and budgetary measures taken at domestic level, the structural nature of the problem identified in 2012 still persists and the situation observed thus constitutes a practice that is incompatible with the Convention (see, mutatis mutandis, Torreggiani and Others, cited above, § 88).

111. Having regard to that state of affairs, the Court considers that the present cases are suitable for the pilot-judgment procedure (see, mutatis mutandis, Varga and Others, cited above, § 100; Neshkov and Others v. Bulgaria, nos. 36925/10 et al., § 271, 27 January 2015; Torreggiani and Others, cited above, § 90; and Ananyev and Others, cited above, § 190).

(b) General measures

112. The Court reiterates that its judgments are essentially declaratory in nature and that in principle it is for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in order to discharge its legal obligation under Article 46 of the Convention (see Scozzari and Giunta v. Italy [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII). However, this does not prevent the Court from suggesting, purely by way of indication, the type of measures that the Romanian State could take in order to put an end to the structural problem found in the present case (see, mutatis mutandis, Ananyev and Others, cited above, § 195).

113. It observes that the Romanian State has recently taken measures that may help to reduce overcrowding and its consequences in Romanian prisons. It welcomes the steps taken by the national authorities and can only encourage the Romanian State to continue this work. Nevertheless, it has to be observed that despite these efforts, the occupancy rate in Romanian prisons remains very high, a situation that confirms the findings of the People's Advocate, the Committee of Ministers and the CPT (see paragraphs 39-40, 46 and 54 above).

114. In the Court's view, two types of general measures should be implemented to remedy the systemic problem observed in this judgment.

(i) Measures to reduce overcrowding and improve the material conditions of detention

115. As is indicated by the official data published by the ANP, the occupancy rate for all Romanian prisons ranges from 149.11% to 154.36% (see paragraph 37 above). In this connection, it should be noted that the majority of the more recent judgments have concerned applicants who had a living space of less than 3 sq. m, or even, in some cases, less than 2 sq. m. while serving their sentences. The Court reiterates that where a State is unable to guarantee that each prisoner is detained in conditions compatible with Article 3 of the Convention, the Court encourages it to take action with a view to reducing the prison population, for example by making greater use of non-custodial punitive measures (see Norbert Sikorski, cited above, § 158) and minimising recourse to pre-trial detention (see, among other authorities, Varga and Others, cited above, § 104; Ananyev and Others, cited above, § 197; and Orchowski v. Poland, no. 17885/04, § 150, 22 October 2009).

116. Admittedly, it is not for the Court to indicate how States are to organise their criminal-law and penal systems, since these processes raise complex legal and practical issues going beyond the Court's judicial function (see Torreggiani and Others, cited above, § 95). Nevertheless, the Court would refer to the recommendations issued by the CPT, the assessments made by the Committee of Ministers and the recommendations set out in the White Paper on Prison Overcrowding, which identify a number of possible solutions to tackle overcrowding and inadequate material conditions of detention (see, respectively, paragraphs 49 and 54, 42 and 46, and 57 above).

117. With regard to pre-trial detention, the Court notes firstly that the cells at police stations have been found by the CPT and the Committee of Ministers to be "structurally unsuitable" for detention beyond a few days (see paragraphs 44, 46, 52 and 54 above). The Court also notes that it has already found

that these facilities are intended to house detainees for only very short periods (see, for example, Horshill v. Greece, no. 70427/11, §§ 43-53, 1 August 2013; Chkhartishvili v. Greece, no. 22910/10, §§ 52-64, 2 May 2013; and Bygylashvili v. Greece, no. 58164/10, §§ 55-62, 25 September 2012). In view of these findings, the domestic authorities should ensure that any pre-trial detainees are transferred to a prison at the end of their time in police custody. The Court notes that the reform implemented by the Government has resulted in some reduction in the number of pre-trial detainees (see paragraph 92 above). It welcomes the steps taken and encourages the Romanian State both to ensure that this reform is pursued and also to explore the possibility of facilitating more widespread use of alternatives to pre-trial detention (see paragraphs 42 and 92 above).

118. With regard to post-conviction detention, the Court notes with interest the reform initiated by the Government, which focuses in particular on the reduction of the maximum sentences for certain offences, the imposition of fines as an alternative to imprisonment, discharge and suspension of sentences, and the positive effects of the probation system (see paragraph 92 above). Although this reform has not had a significant effect on overcrowding levels, which remain fairly high (see paragraph 37 above), such measures, coupled with a more diverse range of alternatives to imprisonment (see paragraphs 46 and 57 above), could have a positive impact in reducing the prison population. Other possible options, such as relaxing the conditions for waiving the imposition of a sentence, suspending sentences (see paragraph 32 above), and above all expanding the possibility of access to parole (see paragraphs 31 and 42 above) and ensuring the effective operation of the probation service (see paragraph 97 above), could be sources of inspiration for the respondent Government with a view to resolving the problem of the growing prison population and inadequate material conditions of detention.

119. The Court further notes that the Government's new strategy also envisages investment to create additional detention capacity (see paragraphs 94 and 97 above). Although this initiative highlights the authorities' desire to find a solution to the problem of prison overcrowding, the Court would draw attention to Recommendation Rec(99)22 of the Committee of Ministers, according to which such a measure is generally unlikely to offer a lasting solution to this problem (see paragraph 42 above). Furthermore, bearing in mind the precarious physical conditions and poor state of hygiene in Romanian prisons, funds should also continue to be set aside for renovation work at existing detention facilities.

120. The Court leaves it to the respondent State, subject to supervision by the Committee of Ministers, to take the practical steps it deems appropriate to achieve the aims pursued by the above indications in a manner compatible with the conclusions set out in this judgment.

(ii) Remedies

121. As to the domestic remedy or remedies to be adopted in order to tackle the systemic problem identified in the present case, the Court reiterates that where conditions of detention are concerned, the "preventive" and "compensatory" remedies have to be complementary. Thus, where an applicant is held in conditions that are in breach of Article 3 of the Convention, the best possible form of redress is to put a rapid end to the violation of the right not to be subjected to inhuman and degrading treatment. Furthermore, anyone who has been detained in conditions undermining his or her dignity must be able to obtain redress for the violation that has occurred (see Ananyev and Others, cited above, §§ 97-98 and 210-31, and Benediktov v. Russia, no. 106/02, § 29, 10 May 2007).

122. As the Court has already held in the Iacov Stanciu judgment (cited above, §§ 197-98), the respondent State must put in place a preventive remedy allowing post-sentencing judges and the courts to put an end to situations found to breach Article 3 of the Convention and to award compensation if such findings are made.

123. Concerning preventive remedies, the Court notes with interest that the examples provided by the Government (see paragraph 96 above) show that the domestic courts have examined situations of overcrowding following complaints by prisoners, and it acknowledges the substantial ongoing efforts by the authorities to ensure compliance with the domestic standards regarding living space for each detainee. The Court acknowledges this significant recent development in the domestic courts' case-law, but nevertheless observes that it is difficult to envisage a genuine prospect for detainees to obtain redress for their situation following a decision in their favour unless there is a general improvement in the conditions of detention in Romanian prisons, as described in paragraphs 106 and 108 above.

124. With regard to compensatory remedies, the Court notes with satisfaction that certain courts have examined the various aspects relating to material conditions of detention and have awarded compensation to detainees on that account (see paragraph 96 above). However, it notes that in Romanian law, the system of liability in tort is based on personal liability and therefore requires fault on the part of the person who caused the damage (see paragraph 36 above). The Court would emphasise that in the case of poor detention conditions, the burden of proof, which rests with the individual, must not be excessive. Moreover, it reiterates that substandard conditions of detention are not necessarily due to problems within the prison administration as such, but usually have more complex causes, such as problems in penal policy (see Iacov Stanciu, cited above, § 199). Even where it provides for the possibility of compensation, a remedy may not offer reasonable prospects of success, for example if the award is conditional on the establishment of fault on the part of the authorities (see Ananyev and Others, cited above, § 113; Roman Karasev v. Russia, no. 30251/03, §§ 8185, 25 November 2010; and Shilbergs v. Russia, no. 20075/03, §§ 7179, 17 December 2009). Accordingly, the examples provided

by the Government do not demonstrate with the requisite degree of certainty that there is an effective compensatory remedy in this regard.

125. The Court encourages the Romanian State to introduce a specific compensatory remedy allowing appropriate compensation to be awarded for any violation of the Convention that has already been found on account of inadequate living space and/or precarious material conditions. In this context, the Court notes with interest the legislative initiative concerning the remission of sentences (see paragraph 41 above), which may afford appropriate redress in respect of poor conditions of detention, provided that, firstly, such a remission is explicitly granted to redress the violation of Article 3 of the Convention and, secondly, it has a measurable impact on the sentence served by the person concerned (see Stella and Others v. Italy (dec.), nos. 49169/09 et al., §§ 59-60, 16 September 2014). Lastly, the Court notes that a compensatory remedy was recently implemented by the Hungarian authorities in the wake of the Varga and Others judgment (cited above).

126. In this connection, having regard to the importance and urgency of the problem identified and the fundamental nature of the rights in question, the Court considers that a reasonable deadline must be set for the implementation of the general measures. However, it finds that it is not for the Court to set such a deadline at this stage and that the Committee of Ministers is better placed to do so. That being so, the Court concludes that within six months from the date on which this judgment becomes final the Romanian Government must provide, in cooperation with the Committee of Ministers, a precise timetable for the implementation of the appropriate general measures.

As described above, the main issue in the 2013 case of Torreggiani and others v. Italy was the overcrowding in the cells in Italian prisons. The Court has given a number of relevant recommendations under Article 46 of the Convention:

(Case 63) (Translation)
III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

80. Under Article 46 of the Convention:

" 1. The High Contracting Parties undertake to abide by the final judgments of the Court in cases to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution".

A. Arguments of the parties
81. The Government did not object to the application of the pilot judgment procedure provided for in Article 46 of the Convention, while pointing out that the Italian authorities had introduced a series of important measures aimed at resolving the problem of prison overcrowding. He urged the Court to take account of the efforts made by the Italian State.

82. The applicants alleged the existence of a structural problem in Italy and declared themselves in favour of the application of the procedure in question. Only Mr Torreggiani (application no. 43517/09) opposed the application of the pilot judgment procedure, on the grounds that he did not accept that his case should receive treatment similar to that of other applicants.

B. The Court's assessment
1. Relevant general principles
83. The Court reiterates that, as interpreted in the light of Article 1 of the Convention, Article 46 creates a legal obligation on the respondent State to take, under the supervision of the Committee of Ministers, such general and/or individual measures as are necessary to safeguard the applicant's right which the Court has found to have been violated. Such measures must also be taken in respect of other persons in the same situation as the applicant, as the State is expected to put an end to the problems which gave rise to the Court's findings (see Scozzari and Giunta v. Italy [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000 VIII; S. and Marper v. the United Kingdom [GC], nos. 30562/04 and 30566/04, § 134, 4 December 2008).

84. In order to facilitate effective implementation of its judgments in accordance with the above principle, the Court may adopt a pilot-judgment procedure enabling it to highlight clearly in its judgment the existence of structural problems giving rise to violations and to indicate the specific measures or actions that the respondent State will have to take to remedy them (Hutten-Czapska v. Poland [GC], no. 35014/97, §§ 231-239 and its operative part, ECHR 2006 VIII, and Broniowski v. Poland [GC], no. 31443/96, §§ 189-194 and its operative part, ECHR 2004 V). When adopting such an approach, however, it takes due account of the respective powers of the Convention organs: under Article 46 § 2 of the Convention, it is for the Committee of Ministers to assess the implementation of individual or general measures taken in execution of the Court's judgment (see, mutatis mutandis, Broniowski v. Poland (friendly settlement) [GC], no. 31443/96, § 42, ECHR 2005 IX).
85. Another important aim of the pilot judgment procedure is to encourage the respondent State to find, at national level, a solution to the many individual cases arising from the same structural problem, thereby giving effect to the principle of subsidiarity which underlies the Convention system (see Bourdov v. Russia (no. 2), no. 33509/04, § 127, ECHR 2009). Indeed, the Court does not necessarily perform its task to the best of its ability, which, under Article 19 of the Convention, is to "ensure the observance of the engagements undertaken by the High Contracting Parties under ... the Convention and the Protocols thereto", by repeating the same conclusions in a large number of cases (ibid.).

86. The purpose of the pilot judgment procedure is to facilitate the most rapid and effective resolution of a systemic malfunction affecting the protection of the Convention right at issue in the domestic legal order (Wolkenberg and Others v. Poland (dec.), no. 50003/99, § 34, ECHR 2007 (extracts)).

While the main aim of the respondent State's action must be to remedy these shortcomings and, where appropriate, to establish effective domestic remedies for reporting violations, it may also include the adoption of ad hoc solutions such as amicable settlements with the applicants or unilateral offers of compensation, in accordance with the requirements of the Convention (see Bourdov (no. 2), cited above, § 127).

2. Application of the above-mentioned principles in the present case

(a) The existence of a situation incompatible with the Convention requiring application of the pilot judgment procedure in the present case

87. The Court has just observed that prison overcrowding in Italy does not exclusively concern the applicants' cases (see paragraph 54 above). In particular, it notes that the structural and systemic nature of prison overcrowding in Italy is clear from the statistical data referred to above and from the terms of the declaration of a state of emergency at national level issued by the President of the Italian Council of Ministers in 2010 (see paragraphs 23-29 above).

88. Taken together, these facts show that the violation of the applicants' right to adequate conditions of detention was not the result of isolated incidents but stemmed from a systemic problem resulting from a chronic malfunctioning of the Italian prison system, which had affected and was likely to continue to affect many people (see, mutatis mutandis, Broniowski v. Poland, cited above, § 189). In the Court's view, the situation found in the instant case therefore constituted a practice incompatible with the Convention (see Bottazzi v. Italy [GC], no. 34884/97, § 22, ECHR 1999 V; and Bourdov (no. 2), cited above, § 135).

89. Moreover, the structural nature of the problem identified in the present cases is confirmed by the fact that several hundred applications against Italy raising a problem of the compatibility with Article 3 of the Convention of inadequate conditions of detention linked to prison overcrowding in various Italian prisons are currently pending before the Court. The number of applications of this kind is constantly increasing.

90. In accordance with the criteria laid down in its case-law, the Court decided to apply the pilot judgment procedure in the present case, having regard to the growing number of persons potentially concerned in Italy and the judgments of violation to which the applications in question might give rise (Maria Atanasiu and Others v. Romania, nos. 30767/05 and 33800/06, §§ 217-218, 12 October 2010). It also noted the urgent need to provide the persons concerned with appropriate redress at national level (see Burdov (no. 2), cited above, §§ 129-130).

b) General measures

91. The Court reiterates that its judgments are essentially declaratory in nature and that it is in principle for the respondent State to choose, under the supervision of the Committee of Ministers, the means of discharging its legal obligation under Article 46 of the Convention (see Scozzari and Giunta, cited above, § 249).

92. It observes that the Italian State has recently taken measures likely to help reduce the phenomenon of overcrowding in prisons and its consequences. It welcomes the steps taken by the national authorities and can only encourage the Italian State to continue its efforts.

However, despite the legislative and logistical efforts made by Italy in 2010, the national overcrowding rate remained very high in April 2012 (having risen from 151% in 2010 to 148% in 2012). It observes that this mixed record is all the more worrying in that the emergency response plan drawn up by the national authorities is of limited duration, since the construction of new prisons is scheduled to be completed by the end of 2012 and the provisions on the enforcement of sentences, which are of an extraordinary nature, are applicable only until the end of 2013 (see paragraph 27 above).

93. The Court is aware that consistent and sustained efforts over the long term are needed to resolve the structural problem of prison overcrowding. However, it reiterates that, in view of the non-derogable nature of the right protected by Article 3 of the Convention, the State is under an obligation to organise its penitentiary system in such a way that the dignity of prisoners is respected (see Mamedova v. Russia, no. 7064/05, § 63, 1 June 2006).

94. In particular, where the State is unable to guarantee every prisoner conditions of detention which comply with Article 3 of the Convention, the Court encourages it to act in such a way as to reduce the number of persons imprisoned, in particular by making greater use of non-custodial punitive measures (see Norbert Sikorski, cited above, § 158) and by reducing to a minimum the use of pre-trial detention (see, inter alia, Ananyev and Others, cited above, § 197).

In the latter connection, the Court is struck by the fact that approximately 40% of the inmates of Italian prisons are persons remanded in custody pending trial (see paragraph 29 above).

95. It is not for the Court to indicate to States provisions concerning their penal policies and the organisation of their prison systems. These processes raise a number of complex legal and practical issues which, in principle, go beyond the Court's judicial function. Nevertheless, it wishes to recall in this context the recommendations of the Committee of Ministers of the Council of Europe inviting States to encourage prosecutors and judges to make the widest possible use of alternatives to detention and to redirect their penal policy towards less recourse to imprisonment with the aim, inter alia, of solving the problem of the growing prison population (see, in particular, Committee of Ministers Recommendations Rec(99)22 and Rec(2006)13).

96. With regard to the domestic remedy or remedies to be adopted to deal with the systemic problem identified in the present case, the Court reiterates that, in matters of prison conditions, "preventive" and "compensatory" remedies must co-exist in a complementary manner. Thus, where an

applicant is detained in conditions contrary to Article 3 of the Convention, the best possible remedy is the prompt cessation of the violation of the right to be free from inhuman and degrading treatment. Moreover, any person who has suffered detention that violates his or her dignity must be able to obtain redress for the violation suffered (see Benediktov v. Russia, cited above, § 29; and Ananyev and Others, cited above, §§ 97-98 and 210-240).

97. The Court observes that it found that the only remedy indicated by the respondent Government in the present cases that was likely to improve the conditions of detention complained of, namely a complaint to the enforcement judge under sections 35 and 69 of the Prison Administration Act, was a remedy which, although accessible, was not effective in practice, inasmuch as it did not make it possible to put an early end to imprisonment in conditions contrary to Article 3 of the Convention (see paragraph 55 above). Secondly, the Government had not demonstrated the existence of a remedy which would enable persons who had been imprisoned in conditions which had violated their dignity to obtain any form of reparation for the violation they had suffered. In that connection, it observed that the recent case-law conferring on the enforcement judge the power to order the administration to pay pecuniary compensation was far from constituting an established and consistent practice of the national authorities (see paragraphs 20-22 above).

98. The Court does not need to specify how best to introduce the necessary domestic remedies (see Hutten-Czapska, cited above, § 239). The State may either amend existing remedies or create new ones so that violations of Convention rights can be remedied in a genuinely effective manner (Xenides-Arestis v. Turkey, no. 46347/99, § 40, 22 December 2005). It is also incumbent on the State party, under the supervision of the Committee of Ministers, to ensure that the newly established remedy or remedies comply, both in theory and in practice, with the requirements of the Convention.

99. It concludes that the national authorities must without delay put in place a remedy or combination of remedies that will have preventive and compensatory effects and genuinely guarantee effective redress for violations of the Convention resulting from prison overcrowding in Italy. Such remedy or remedies must be in conformity with the principles of the Convention, as recalled inter alia in the present judgment (see, inter alia, paragraphs 50 and 95 above), and must be put in place within one year of the date on which the judgment becomes final (see, by way of comparison, Xenides-Arestis, cited above, § 40, and paragraph 5 of the operative part).

c) Procedure to be followed in similar cases

100. The Court reiterates that it may rule in the pilot judgment on the procedure to be followed in examining all similar cases (see, mutatis mutandis, Broniowski, cited above, § 198; and Xenides-Arestis, cited above, § 50).

101. In that connection, the Court decides that, pending the adoption by the domestic authorities of the necessary measures at national level, consideration of the outstanding applications concerning prison overcrowding in Italy shall be deferred for a period of one year from the date on which this judgment becomes final. This is without prejudice to the Court's power, at any time, to declare a case of this kind inadmissible or to strike it out of its list of cases following an amicable settlement between the parties or the resolution of the dispute by other means, in accordance with Articles 37 and 39 of the Convention. On the other hand, as regards applications already communicated to the respondent Government, the Court will be able to continue examining them under the normal procedure.

The 2015 case of Varga and others v. Hungary concerned mainly the problem of overcrowding in Hungarian prisons:

(Case 64)

79. The Court first observes that the Government did not dispute the facts as submitted by the applicants concerning the actual dimension and occupancy of the cells in which they were held during their detentions. The Court further notes that the Government have not provided any information or documents regarding the additional circumstances of the applicants' detention. Therefore, the Court will proceed with the assessment of the applicants' detention conditions based on their submissions and in the light of all information in its possession.

80. As regards Mr Varga, the Court notes that he was held in Baracska Prison. During his approximately eight months of detention he disposed of less than 1.8 square metres of personal living space. In addition, during his solitary confinement he had access to outdoor stay only 30 minutes a day and the poor sanitary conditions resulted in a skin infection.

81. Mr Lakatos spent about a year at Hajdú-Bihar County Prison where he was detained together with two detainees in a cell measuring 9 square metres, thus having 3 square metres of living space. The Court is particularly mindful of the fact that since spring 2012 he has been afforded 2.25 square metres gross living space at Jász-Nagykun-Szolnok County Prison. The applicant's situation was further exacerbated by the fact that he has been held in a cell with poor ventilation where the toilet was separated from the living area only with a curtain.

82. Mr Tóth was detained for more than four years in various prison facilities, where the living space varied between 2.5 and 3.3 square metres. It is of particular concern for the Court that although a partition, namely a curtain, was installed between the living area and the toilet, it did not offer sufficient privacy to the detainees.

83. Mr Pesti spent about three years in Márianosztra Prison where he was afforded a maximum of 2.86 square metres gross living space. Following his transfer to Sopronkőhida Prison, he was placed in a prison cell where inmates were afforded around 3.1 square metres of personal space.

84. Mr Fakó served his prison sentence at Pálhalma Prison, where the conditions were cramped, inmates having 1.5 to 2.2 square metres of living space per person. The Court further observes that Mr Fakó was confined to his cell day and night, save for one hour of outdoor exercise. The Court notes some further aspects of the applicant's detention, undisputed by the parties, namely limited access to the shower, absence of a ventilation system and the ensuing heat, and the presence of bed bugs, lice and cockroaches.

85. Mr Kapczár has been held in fourteen different cells at Szeged Prison where the living space per inmate was 2.4 to 3 square metres. The cells were not provided with adequate ventilation and some of them lacked proper sleeping arrangement.

86. These findings also coincide with the observations of the CPT subsequent to its visit in 2013 regarding the problem of overcrowding at, in particular, Sopronkőhida Prison and Szeged Prison, which provide a reliable basis for the Court's assessment (see Kehayov v. Bulgaria, no. 41035/98, § 66, 18 January 2005), especially since the Government, in their response, did not dispute the very fact of overcrowding. The visits of the Hungarian Commissioner of Fundamental Rights also corroborate the evidence of a problem of overcrowding at the prison facilities of Márianosztra, Sopronkőhida and Budapest (see paragraphs 31-33 and 38 above). The Court must also have regard to the findings of the different domestic courts, which established in a number of cases that the conditions of detention, in particular placement in overcrowded prison cells, infringed the plaintiffs' personality rights, that is, their right to dignity (see paragraphs 18-22, 24-25 and 28-29 above).

87. In the absence of any objection on the Government's side or any document proving the opposite and given the widespread overcrowding as established by the CPT and the Hungarian Commissioner for Fundamental Rights, the Court has no reason to doubt the allegations of the applicants concerning their living space. It further observes that this space was on most occasions further restricted by the presence of furniture in the cells.

Therefore, these conditions do not satisfy the European standards established by the CPT and the Court's case-law.

88. In the particular case of Mr Pesti, detained for a period no less than three years in Márianosztra Prison where the living space per inmate was maximum 2.86 square metres, the Court considers that the lack of space was so severe as constituting treatment contrary to the Convention, especially in view of the duration of the detention (see Sergey Babushkin, cited above, § 54) and in the absence of any evidence furnished by the Government pointing to circumstances which could have alleviated this situation (see, a contrario, Fetisov and Others, cited above, §§ 134-138; and Dmitriy Rozhin, cited above, §§ 52-53).

89. As regards the remaining applicants, the Court observes that other aspects of the detention, while not in themselves capable of justifying the notion of "degrading" treatment, are relevant in addition to the focal factor of the overcrowding to demonstrate that the conditions of detention went beyond the threshold tolerated by Article 3 of the Convention (see Novoselov v. Russia, no. 66460/01, § 44, 2 June 2005).

90. It notes in particular that in some cells of these applicants, the lavatory was separated from the living area only by a curtain, the living quarters were infested with insects and had no adequate ventilation or sleeping facilities; and detainees had very limited access to the shower and could spend little time away from their cells.

The Government did not refute either the allegations made by the applicants on these points or the findings of the various bodies which had visited the detention facilities where the applicants were detained.

91. The Court finds that the limited living space available to these detainees, aggravated by other adverse circumstances, amounted to "degrading treatment".

92. Having regard to the circumstances of the applicants' cases and their cumulative effect on them, the Court considers that the distress and hardship endured by the applicants exceeded the unavoidable level of suffering inherent in detention and went beyond the threshold of severity under Article 3. Therefore, there has been a violation of Article 3 of the Convention.

V. Application of article 46 of the convention

93. Article 46 provides, in so far as relevant:

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

A. General principles

94. The Court recalls that Article 46 of the Convention, as interpreted in the light of Article 1, imposes on the respondent State a legal obligation to implement, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the right of the applicant which the Court found to be violated. Such measures must also be taken in respect of other persons in the applicant's position, notably by solving the problems that have led to the Court's findings (see Scozzari and Giunta v. Italy [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; and S. and Marper v. the United Kingdom [GC], nos. 30562/04 and 30566/04, § 134, ECHR 2008). This obligation has consistently been emphasised by the Committee of Ministers in the supervision of the execution of the Court's judgments (see, among many authorities, Interim Resolutions DH(97)336 in cases

concerning the length of proceedings in Italy; DH(99)434 in cases concerning the action of the security forces in Turkey; ResDH(2001)65 in the case of Scozzari and Giunta v. Italy; ResDH(2006)1 in the case of Ryabykh and Volkova v. Russia).

95. In order to facilitate effective implementation of its judgments along these lines, the Court may adopt a pilot-judgment procedure allowing it to clearly identify in a judgment the existence of structural problems underlying the violations and to indicate specific measures or actions to be taken by the respondent State to remedy them (see Broniowski v. Poland [GC], 31443/96, §§ 189-194 and the operative part, ECHR 2004-V; and Hutten-Czapska v. Poland [GC], no. 35014/97, ECHR 2006-VIII §§ 231-239 and the operative part). This adjudicative approach is, however, pursued with due respect for the Convention organs' respective functions: it falls to the Committee of Ministers to evaluate the implementation of individual and general measures under Article 46 § 2 of the Convention (see, mutatis mutandis, Broniowski v. Poland (friendly settlement) [GC], no. 31443/96, § 42, ECHR 2005-IX, and Hutten-Czapska v. Poland (friendly settlement) [GC], no. 35014/97, § 42, 28 April 2008).

96. Another important aim of the pilot-judgment procedure is to induce the respondent State to resolve large numbers of individual cases arising from the same structural problem at the domestic level, thus implementing the principle of subsidiarity which underpins the Convention system. Indeed, the Court's task, as defined by Article 19, that is to "ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto", is not necessarily best achieved by repeating the same findings in a large series of cases (see, mutatis mutandis, E.G. v. Poland (dec.), no. 50425/99, § 27, 23 September 2008).

97. The object of the pilot-judgment procedure is to facilitate the speediest and most effective resolution of a dysfunction affecting the protection of the Convention rights in question in the national legal order (see Wolkenberg and Others v. Poland (dec.), no. 50003/99, § 34, ECHR 2007 (extracts)). While the respondent State's action should primarily aim at the resolution of such a dysfunction and at the introduction, where appropriate, of effective domestic remedies in respect of the violations in question, it may also include ad hoc solutions such as friendly settlements with the applicants or unilateral remedial offers in line with the Convention requirements.

B. Application of those principles to the present cases
1. Existence of a structural problem warranting the application of the pilot-judgment procedure

98. The Court has previously found a violation of Article 3 on account of similar conditions of detention in four cases (see Szél, cited above; István Gábor Kovács v. Hungary, no. 15707/10, 17 January 2012; Hagyó, cited above; and Fehér v. Hungary, no. 69095/10, 2 July 2013). Moreover, in the Szél judgment the Court concluded that there had been a violation of Article 13 on account of the absence of any effective domestic remedies for the applicants' complaints about the conditions of their detention (see paragraph 61 above). A similar conclusion was reached in Hagyó (see paragraph 58 above).

According to the Court's case management database, there are at present approximately 450 prima facie meritorious applications against Hungary awaiting first examination which feature, as their primary grievance, a complaint about inadequate conditions of detention. The above numbers, taken on their own, are indicative of the existence of a recurrent structural problem (see, among other authorities, Bottazzi v. Italy [GC], no. 34884/97, § 22, ECHR 1999-V; Lukenda v. Slovenia, no. 23032/02, §§ 90-93; ECHR 2005X; and Rumpf v. Germany, no. 46344/06, §§ 64-70, 2 September 2010).

99. The violations of Article 3 found in the previous judgments, as well as those found in the present case, originated in prison facilities that were located in various administrative entities of Hungary and in geographically diverse regions. Nevertheless, the set of facts underlying these violations was substantially similar: detainees suffered inhuman and degrading treatment on account of an acute lack of personal space in their cells, restriction on access to shower facilities and outdoor activities and lack of privacy when using the sanitary facilities. It appears, therefore, that the violations were neither prompted by an isolated incident nor attributable to a particular turn of events in those cases, but originated in a widespread problem resulting from a malfunctioning of the Hungarian penitentiary system and insufficient legal and administrative safeguards against the proscribed kind of treatment. This problem has affected, and has remained capable of affecting, a large number of individuals who have been detained in detention facilities throughout Hungary (compare Broniowski, § 189; and Hutten-Czapska, § 229, both cited above).

100. Taking into account the recurrent and persistent nature of the problem, the large number of people it has affected or is capable of affecting, and the urgent need to grant them speedy and appropriate redress at the domestic level, the Court considers it appropriate to apply the pilot-judgment procedure in the present case (see Burdov (no. 2), cited above, § 130; and Finger v. Bulgaria, no. 37346/05, § 128, 10 May 2011).

2. General measures
101. As the Court's judgments are essentially declaratory, the respondent State remains free, subject to the supervision of the Committee of Ministers, to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see Scozzari and Giunta v. Italy [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; and Aleksanyan v. Russia, no. 46468/06, § 238, 22 December 2008).

102. However, in exceptional cases, with a view to helping the respondent State to fulfil its obligations under Article 46, the Court will seek to indicate the type of measure that might be

taken in order to put an end to a situation it has found to exist (see, for example, Broniowski, cited above, § 194).

103. Furthermore, the Court is aware that substantial and constant efforts are needed to solve the structural problem of prison overcrowding. However, the Court notes that, given the intangible nature of the right protected under Article 3 of the Convention, it is incumbent on the respondent Government to organise its penitentiary system in such a way that ensures respect for the dignity of detainees, regardless of financial or logistical difficulties (see Mamedova v. Russia, no. 7064/05, § 63, 1 June 2006). The Court has already indicated in a number of cases general measures to facilitate the speediest and most effective solutions of the recurrent irregularities in detention conditions (see Orchowski v. Poland, no. 17885/04, § 154, 22 October 2009; Norbert Sikorski v. Poland, no. 17599/05, § 161, 22 October 2009; Ananyev and Others, §§ 197-203 and 214-231; Torreggiani and Others, cited above, §§ 91-99).

(a) Avenues for the improvement of detention conditions

104. In particular, when a State is not able to guarantee each detainee conditions of detention consistent with Article 3 of the Convention, it has been the constant position of the Court and all Council of Europe bodies that the most appropriate solution for the problem of overcrowding would be the reduction of the number of prisoners by more frequent use of non-custodial punitive measures (see Norbert Sikorski, cited above, § 158) and minimising the recourse to pre-trial detention (see Ananyev and Others, cited above, § 197).

In this latter regard, the Court notes that by the end of 2013 over five thousand of the inmates held in Hungarian prisons were persons detained on remand (see paragraph 6 above).

105. It is not for the Court to indicate to States the manner in which their criminal policy and prison system should be organised. These matters raise a number of complex legal and practical issues which, in principle, go beyond the judicial function of the Court (see Torreggiani and Others, cited above. § 95). However, it would recall in this context the recommendations of the Committee of Ministers inviting States to encourage prosecutors and judges to use as widely as possible alternatives to detention and redirect their criminal policy towards reduced use of imprisonment in order to, among other things, solve the problem of prison population inflation (see in particular Recommendation No. R (99) 22 and Recommendation Rec(2006)13 of the Committee of Ministers).

The recent example of Italy shows that such measures, implemented in the context of a pilot procedure, can contribute to solving the problem of overcrowding (see Stella and Others v. Italy (dec.), nos. 49169/09, 54908/09, 55156/09, 61443/09, 61446/09, 61457/09, 7206/10, 15313/10, 37047/10, 56614/10, 58616/10, §§ 11-14, 21-24 and 51-52, 16 September 2014).

(b) Putting in place effective remedies

106. The Court reiterates that the applicants in the present case were victims of a violation of Article 13 of the Convention on account of the absence of an effective domestic remedy. The Court found that the domestic remedy suggested by the Government, although accessible, was ineffective in practice, in that it did not afford plaintiffs adequate compensation for periods of detention spent under poor conditions. Furthermore, the Government has not demonstrated the existence of a remedy which was likely to improve the impugned conditions of detention (see paragraph 65 above).

107. It is not for the Court to specify what would be the most appropriate way of setting up such remedial procedures (see Hutten-Czapska, cited above, § 239). The State can either modify existing remedies or introduce new ones which secure genuinely effective redress for Convention violations (see Xenides-Arestis v. Turkey, no. 46347/99, § 40, 22 December 2005). It is also responsible, under the supervision of the Committee of Ministers, to ensure that the remedy or the newly introduced remedies meet both in theory and in practice the requirements of the Convention (see Torreggiani and Others, cited above, § 98).

108. Furthermore, the Court recalls that in order to assist the domestic authorities in finding appropriate solutions it has already considered specific options for preventive and compensatory remedies (see Ananyev and others, cited above, §§ 214-231).

109. The Court reiterates that a measureable reduction of a prison sentence represented, under certain conditions, satisfactory redress for a violation of the Convention in criminal cases, where the national authorities have explicitly or in substance recognised the breach of the Convention on account of the protraction of the procedure (see Cocchiarella v. Italy [GC], no. 64886/01, § 77, ECHR 2006V). In respect of conditions of detention, the Court has also affirmed that a reduced prison sentence offered adequate redress to poor material conditions of detention, provided that the reduction was carried out in an express and measurable way (see Stella and Others, cited above, §§ 5963).

110. The Court concludes that the national authorities should promptly provide an effective remedy or a combination of remedies, both preventive and compensatory in nature and guaranteeing genuinely effective redress for Convention violations originating in prison overcrowding.

(c) Time-limit

111. The Court decided to apply the pilot-judgment procedure in the present case, referring notably to the large number of people affected and the urgent need to grant them speedy and appropriate redress at domestic level. It is therefore convinced that the purpose of the present judgment can only be achieved if the required changes take effect in the Hungarian legal system and practice without undue delay.

112. The Court considers that a reasonable time-limit is warranted for the adoption of the measures, given the importance and urgency of the matter and the fundamental nature of the right which is at stake. Nonetheless, it does not find it appropriate to indicate a specific time frame for the arrangements which could lead to an overall improvement of conditions detention and the reduction of overcrowding, and for the introduction of a combination of preventive and compensatory remedies in respect of alleged violations of Article 3, which may involve the preparation of draft laws, amendments and regulations, then their enactment and implementation, together with the provision of appropriate training for the State officials concerned. The Court is of the opinion that given the nature of the problem the Government should make the appropriate steps as soon as possible.

113. In view of the foregoing, the Court concludes that the Government should produce, under the supervision of the Committee of Ministers, within six months from the date on which this judgment becomes final, a time frame in which to make appropriate arrangements and to put in practice preventive and compensatory remedies in respect of alleged violations of Article 3 of the Convention on account of inhuman and degrading conditions of detention.

The Court will examine the information provided by the Government and decide accordingly whether the continued examination of pending cases, or else their adjournment, is justified (see in next chapter below).

3. Procedure to be followed in similar cases

114. The Court reiterates that one of the aims of the pilot-judgment procedure is to allow the speediest possible redress to be granted at the domestic level to the large numbers of people suffering from the structural problem identified in the pilot judgment (see Burdov (no. 2), cited above, § 142). Rule 61 § 6 of the Rules of Court provides for the possibility of adjourning the examination of all similar applications pending the implementation of the remedial measures by the respondent State. The Court would emphasise that adjournment is a possibility rather than an obligation, as clearly shown by the inclusion of the words "as appropriate" in the text of Rule 61 § 6 and the variety of approaches used in the previous pilot-case judgments (see Burdov (no. 2), cited above, §§ 143-146, where the adjournment concerned only the applications lodged after the delivery of the pilot judgment; and Rumpf, cited above, § 75, where an adjournment was not considered to be necessary).

115. Furthermore, as regards the applications that were lodged before the delivery of this judgment, the Court reiterates that "it would be unfair if the applicants in such cases who had already suffered through periods of detention in allegedly inhuman or degrading conditions and, in the absence of an effective domestic remedy, sought relief in this Court, were compelled yet again to resubmit their grievances to the domestic authorities, be it on the grounds of a new remedy or otherwise" (see Ananyev, cited above, § 237).

116. Having regard to the fundamental nature of the right protected by Article 3 of the Convention and the importance and urgency of complaints about inhuman or degrading treatment, the Court does not consider it appropriate at this stage to adjourn the examination of similar cases pending the implementation of the relevant measures by the respondent State. Rather, the Court finds that continuing to process all conditions of detention cases in the usual manner will remind the respondent State on a regular basis of its obligation under the Convention and in particular resulting from this judgment (see Rumpf, loc. cit.).

The conditions of detention were found to be structurally defective in the 2015 case of Neshkov and others v. Bulgaria:

(Case 65)

(a) The case of Mr Neshkov

245. The case of Mr Neshkov concerned the conditions of his detention in Varna Prison in 2002-05 and in Stara Zagora Prison on a number of occasions between 2002 and 2008, when he spent short periods of time there during transfers to court hearings.

(i) Varna Prison

246. In Varna Prison, where he remained for almost exactly three years, between June 2002 and June 2005, Mr Neshkov was first kept for about three months in a cell that was severely overcrowded. From the findings of the Varna Administrative Court it can been seen that between June and August 2002 Mr Neshkov had to share this cell, which, according to the Government measured 6.5 by 3.2 metres, with ten to fifteen other inmates (see paragraph 32 above). After that, he was moved, for about two months, to a small and dark isolation cell that had no toilet and had a window covered by a metal sheet, and then, for eight or nine months, to an even smaller cell that measured about 2 by 2 metres, and had no toilet and a window covered with a perforated metal sheet (ibid.). These cells remained locked except for three periods of 30 to 40 minutes in the morning, at lunch and in the evening (see paragraph 12 above). There is no evidence that this state of affairs came to an end in August 2003. After it visited Varna Prison in 2010, the CPT described it as "marked by extreme overcrowding", with space per prisoner being at best around two square metres and on occasion little more than one square metre (see paragraph 72 above). The CPT also noted the extreme dilapidation of the prison building and the very poor hygiene in it (ibid.). It is true that this visit took place about five years after Mr Neshkov had been transferred to another prison. But there is nothing to suggest that the material conditions in Varna Prison dramatically changed between 2003 and 2010, or that the level of overcrowding there in 2002-05 – when the overall number of prisoners in Bulgaria was about the same as in 2010 (see paragraph 219 above) – was significantly lower than in 2010. The CPT's findings may therefore inform the Court's assessment (see, mutatis mutandis, Iovchev, cited above, § 130, and Todor Todorov v. Bulgaria, no. 50765/99, § 47, 5 April 2007). It is very unlikely that Mr Neshkov remained unaffected by the problems noted by the CPT, or that the living conditions

that he was afforded in Varna Prison between 2003 and 2005 were up to Convention standards (see, mutatis mutandis, Orchowski, cited above, § 131).

247. The lack of ready access to the toilets, which forces a detainee to relieve his sanitary needs in a bucket in the cell, often in the presence of his cellmates, is a practice that has been consistently criticised by this Court in cases against Bulgaria (see Harakchiev and Tolumov, cited above, § 211, with further references). Coupled with the extremely limited amount of personal space available to Mr Neshkov, part of the time as a result of overcrowding and part of the time as a result of the small size of the cells in which he was kept alone, it is sufficient to find that the conditions in which he was kept in Varna Prison amounted to inhuman and degrading treatment. As noted by the CPT in paragraph 50 of the Second General Report on its activities, the cumulative effect of overcrowding and inadequate access to toilet facilities can prove extremely detrimental to prisoners (see paragraph 145 above).

248. There has therefore been a breach of Article 3 of the Convention in relation to the conditions in which Mr Neshkov was kept in Varna Prison.

(ii) Stara Zagora Prison

249. The conditions of Mr Neshkov's detention in Stara Zagora Prison, as established by the Vratsa Administrative Court, included lack of bed linen, presence of vermin in the cells, lack of proper lighting at day and a constant light at night, lack of an in-cell toilet and a resulting need for Mr Neshkov to relieve himself in a bucket and urinate in a plastic bottle (see paragraph 19 above). The relative brevity of the periods spent by Mr Neshkov in these conditions – one to two days on each occasion when he transited through this prison (ibid.) – do not automatically exclude the treatment complained of from the scope of Article 3 of the Convention (see Tadevosyan, § 55, and Brega, §§ 42-43, both cited above). The Court has already found that even a very short period of time – twenty-two hours – spent in conditions quite similar to these endured by Mr Neshkov in Stara Zagora Prison were in breach of this provision (see Fedotov v. Russia, no. 5140/02, §§ 20, 55, 67, 68 and 104, 25 October 2005).

250. There has therefore been a breach of Article 3 of the Convention in relation to the conditions in which Mr Neshkov was kept during his stays in Stara Zagora Prison.

(b) The case of Mr Yordanov

251. The case of Mr Yordanov concerned the conditions of his detention in four correctional facilities in which was successively kept: Sofia Prison, where he spent about two months; Pleven Prison, where he spent two years and almost ten months; Lovech Prison, where he spent one and a half years; and Atlant Prison Hostel in Troyan, where he has thus far spent almost three years (see paragraphs 49, 51, 56 and 61 above). In the circumstances, the Court finds that it must examine these conditions as a continuing situation (see Seleznev, §§ 34-36; Sudarkov, § 40; and Iacov Stanciu, §§ 136-38, all cited above).

252. During his stay in Sofia Prison between 13 August and 4 October 2007, Mr Yordanov was for a period of time not provided with bed sheets, blankets and cutlery (see paragraph 50 above). In Pleven Prison he was kept in overcrowded conditions, first in a cell providing between 3.1 and 2.1 square metres per person and then in a cell providing between 3.3 and 2.9 square metres per person (see paragraph 54 above). Moreover, throughout the entire period 2007-10 the floor on which Mr Yordanov was kept was overcrowded as a whole, as was Pleven Prison in general (see paragraph 55 above). In addition, until September 2008 Mr Yordanov was forced, as a result of the lack of ready access to toilet facilities at night, to relieve himself in a bucket in the cell in the presence of his cellmates (see paragraph 54 above). There is no information on the amount of space per inmate in Lovech Prison, where Mr Yordanov was transferred in July 2010, but the data supplied by the Government shows that on 31 December 2013 it was overcrowded. Moreover, in this prison there were apparently problems with heating in winter and with hygiene in the toilets. In Atlant Prison Hostel, where Mr Yordanov was transferred in January 2012, he is apparently also kept in overcrowded conditions, in a cell providing between 4.2 and 2.7 square metres per person, without discounting the space taken by furniture and fixtures in the cell (see paragraph 61 above).

253. Assessing these conditions as a whole, the Court finds that they were in breach of Article 3 of the Convention.

(c) The cases of Mr Tsekov and Mr Zlatev

254. Mr Tsekov was detained in Burgas Prison for a little more than two years, between January 2012 and February 2014, when he was transferred to Stroitel open-type prison hostel, attached to Burgas Prison (see paragraph 36 above). Mr Zlatev has been detained in Burgas Prison for twelve years and a little more than three months, since September 2002, with gaps of several months in 2007 and again in 2008-09, when he was placed in Zhitarovo open-type prison hostel, attached to Burgas Prison, and a gap of about four months in 2009, when he escaped from detention and was recaptured (see paragraph 65 above). In the circumstances, the Court finds that it must examine the conditions of Mr Zlatev's detention as a continuing situation (see Seleznev, §§ 34-36; Sudarkov, § 40; and Iacov Stanciu, §§ 136-38, all cited above).

255. In 2006 the CPT found that overcrowding in Burgas Prison was above 300% (see paragraph 71 above). In 2011 the Bulgarian Helsinki Committee made similar findings, noting that in August 2011 866 inmates had been accommodated in the main building of the prison, whose official capacity was 371 inmates (see paragraph 74 above). In 2012 the CPT found that conditions in this prison were as bad as before, characterised by an "outrageous level of overcrowding" – less than one square metre of living space per prisoner in many dormitories –; extremely low staffing levels; a building in an advanced state of dilapidation and insalubrity; dilapidated and filthy toilet facilities, shower rooms and kitchens; and severe problems with the provision of health care to inmates (see paragraph 73 above). The Ombudsman made similar

findings (see paragraph 78, 83-85 and 87 above). All of these findings almost fully match the applicants' allegations (see paragraphs 37-42 and 67-68 above). There is no reason to think that between 2002, when Mr Zlatev was first placed in Burgas Prison, and 2006, when the CPT first noted the conditions there, there were any marked changes.

256. Such conditions of detention, especially as regards overcrowding, hygiene and access to the toilets, and access to health care, can without doubt be regarded as giving rise to a serious breach of Article 3 of the Convention.

VI. APPLICATION OF ARTICLE 46 OF THE CONVENTION

257. The Court finds it appropriate to consider the present case under Article 46 of the Convention, which provides, in so far as relevant:

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution. ..."

A. Submissions before the Court

1. The Government

258. The Government submitted that they had the will to tackle unsatisfactory conditions of detention, but that any steps in this direction were dependent on the availability of funding. Despite their financial difficulties, the Bulgarian authorities had taken effective steps to improve prison conditions. For instance, resorting to alternative modes of punishments, such as probation, and the re-distribution of prisoners between correctional facilities had led to a reduction in the amount of overcrowding. There had been about 11,000 prisoners in the country in 2007, and only about 9,000 at the end of 2013. Significant advances had been made in material conditions: a new medical centre had been built in Sliven Prison with Norwegian financing; all cells in Varna Prison had been renovated and fitted with toilets; the heating system in Lovech Prison had been fully renovated; a number of urgent repairs had been carried out in most prisons; and a new hostel attached to Burgas Prison was due to be built soon. The Government had devised a strategy for developing the correctional facilities in 2009-15, but its full implementation had been postponed until 2019, with a view to bringing conditions in these facilities in line with international standards. That strategy had been accompanied by an action plan for the period 2012-13. The main difficulty standing in the way of the full realisation of these instruments had been the lack of funds.

259. The Government conceded that in spite of the measures taken by the authorities, material conditions in Bulgarian prisons remained below international standards. They referred to a statement by the Chief Directorate for the Execution of Punishments that said that unsatisfactory buildings, poor material conditions and overcrowding in the prisons were justifiably being criticised by various international bodies. The penitentiary system had for several decades experienced serious difficulties relating to the old and dilapidated prison buildings, which had to be operated above capacity. The main prison buildings in Lovech, Pazardzhik, Vratsa, Stara Zagora, Varna and Burgas had been built in the 1920s and 1930s. The oldest was Sofia Prison, which had been built about a century ago. The prisons in Bobov Dol and Pleven were former workers' dormitories adopted for use as prisons. The capacity of closed-type correctional facilities, which housed the highest number of inmates, had not been increased for years. The funds earmarked for their refurbishment were minimal. Space in correctional facilities was insufficient and they were overcrowded, largely because for years no new prison had been built. Bulgaria was the only member State of the European Union that had not constructed a new prison building for more than 80 years. It was difficult to adapt antiquated and dysfunctional prison buildings to modern requirements. Moreover, for years no serious financial means had been set aside for the refurbishment and modernisation of these buildings. As a result, most were in a poor state of repair and provided bad material conditions. The available budgetary funds were scarce, and for this reason the Ministry of Justice was trying to find external financing.

260. The Government however went on to emphasise that improvement in prison conditions was a long process that engaged not only the authorities but society as a whole. In their view, the fact that the authorities had made efforts to improve these conditions and that overcrowding, while still a problem, had decreased as a result showed that the cases of the applicants were not representative of the penitentiary system as a whole. In recent times, there had been a discernible improvement in material conditions and the provision of medical care to inmates. The situation in the present case was different from that obtaining in Orchowski and Norbert Sikorski (both cited above), as in Bulgaria the Constitutional Court had not given any ruling with respect of conditions of detention. Nor were the prison authorities systemically failing to provide proper conditions of detention; any failings in relation to the refurbishment of old facilities and the construction of new ones, and the resulting poor conditions and overcrowding, were not due to a lack of efforts on the part of these authorities but to financial difficulties engendered by the country's economic situation. The situation in the present case also differed from that obtaining in Ananyev and Others (cited above) because the number of cases against Bulgaria in which that Court had found a breach of Article 3 of the Convention in relation to this issue was not very high, and neither was the number of pending applications. Moreover, unlike in that case, in recent times overcrowding in Bulgarian prisons had ebbed as a result of measures taken by the authorities.

261. The Government also submitted that there was no systemic problem with regard to the availability of effective domestic remedies in respect of conditions of detention. In their view, Bulgarian law provided a range of such remedies, whose practical application had recently evolved in a positive direction. The effectiveness of the compensatory remedy

under section 1 of the State and Municipalities Liability for Damage Act 1988 had been confirmed by this Court in a number of cases, and there were no reasons to call this into doubt. It could not be said that there existed a problem in the application of this provision. While any court could go wrong in a particular case, the general trend was in favour of detainees' claims and towards a convergence of the standards applied by this Court and the domestic courts. As regards preventive remedies, there was a combination of administrative and judicial remedies, which to an extent made it possible to put an end to conditions of detention that went beyond the acceptable threshold of severity.

262. In conclusion, the Government submitted that there was no reason to apply the pilot-judgment procedure in this case.

2. The applicants

263. Mr Neshkov submitted that poor conditions in Bulgarian correctional facilities had been a systemic problem for decades, especially as regarded overcrowding; they had given rise to many findings of violation. It was true that repairs had been carried out in some prisons, but conditions in general remained poor. In these circumstances, it was for the Court to decide whether to resort to the pilot-judgment procedure.

264. Mr Yordanov submitted that overcrowding and poor material conditions were systemic problems in Bulgarian prisons. His own experience showed this, and his case was not an isolated one. The number of applications to this Court in relation to this issue was likely to rise, unless adequate steps were taken to tackle these problems in short order. It was therefore warranted to apply the pilot-judgment procedure.

265. Mr Tsekov and Mr Zlatev made no submissions on this point.

3. The third parties

266. Bulgarian Lawyers for Human Rights submitted that in recent years the Bulgarian courts had been more willing to apply the Convention and this Court's case-law in cases relating to conditions of detention. However, there was a problem with the exceedingly high threshold that they required in relation to the proof of non-pecuniary damage, especially damage to health flowing from poor conditions of detention or lack of proper medical care. There was therefore a need for guidance from this Court on the standard of proof in such cases, as well as on the level of compensation required under the Convention in such cases. Overcrowding in Bulgarian prisons was also a systemic problem noted by the Committee of Ministers and the CPT. In view of its prevalence, there were no effective remedies available. Another systemic problem was the lack of proper medical care in prisons, due to an acute shortage of qualified medical personnel and excessive reliance on feldshers. The lack of properly functioning administrative preventive remedies in respect of conditions of detention was also a structural problem requiring legislative amendments. Lastly, the judicial preventive remedy under the Code of Administrative Procedure 2006 required improvements to start operating effectively.

B. The Court's assessment

1. General principles

267. The general principles governing the application of Article 46 of the Convention in pilot-judgment proceedings, set out in paragraphs 180-83 of the Court's judgment in Ananyev and Others (cited above), are as follows:

(a) Article 46 § 1, construed in the light of Article 1 of the Convention, imposes on the respondent State a legal obligation to implement, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the right of the applicant which the Court found to be violated. Such measures must also be taken in respect of other persons in the applicant's position, notably by solving the problems that led to the Court's findings. The Committee of Ministers has consistently emphasised this obligation when supervising the execution of the Court's judgments.

(b) To facilitate the effective implementation of its judgments along these lines, the Court may resort to a pilot-judgment procedure allowing it clearly to identify in its judgment the structural problem underlying the breach and to indicate the measures that need to be taken by the respondent State to remedy them. This adjudicative approach is however pursued with due respect for the Convention organs' respective functions: under Article 46 § 2 of the Convention it falls to the Committee of Ministers to evaluate the implementation of individual and general measures.

(c) Another important aim of the pilot-judgment procedure is to induce the respondent State to resolve large numbers of individual cases arising from the same structural problem at domestic level, thus implementing the principle of subsidiarity that underpins the system of the Convention. The Court's task, as defined by Article 19 of the Convention, is not necessarily best achieved by repeating the same findings in a large series of cases. The object of the pilot-judgment procedure is to facilitate the speediest and most effective resolution of a dysfunction affecting the protection of the Convention rights in question in the national legal order. While the respondent State's actions should primarily aim at the resolution of such a dysfunction and at the introduction, where appropriate, of effective domestic remedies in respect of the violations in question, it may also include ad hoc solutions such as friendly settlements with the applicants or unilateral remedial offers in line with Convention requirements. The Court may decide to adjourn examination of all similar cases, thus giving the respondent State an opportunity to settle them in such ways.

(d) If the respondent State fails to adopt such measures following a pilot judgment, the Court will have no choice but to resume examination of all similar applications pending before it and to take them to judgment, with a view to ensuring effective observance of the Convention.

2. Existence of a structural problem calling for the application of the pilot-judgment procedure

268. Since its first judgment concerning inhuman and degrading conditions in Bulgarian detention facilities (Iorgov v. Bulgaria, no. 40653/98, §§ 80-86, 11 March 2004), the Court has found a breach of Article 3 of the Convention on account of poor conditions of detention in such facilities in twenty-five cases (see Appendix 2). While the breaches in these cases, and in the present case, related to various detention facilities, the underlying facts were very similar. The most recurring issues were lack of sufficient living space, unjustified restrictions on access to natural light and air, poor hygiene, and lack of privacy and personal dignity when using sanitary facilities. The breaches were therefore not prompted by isolated incidents or the particular turn of events in each individual case; they originated in a widespread problem resulting from a malfunctioning of the Bulgarian penitentiary system and insufficient safeguards against treatment incompatible with Article 3. This can be seen from the decisions of the Committee of Ministers relating to the execution of these judgments (see paragraphs 140-142 above). The problem has affected and remains capable of affecting a large number of persons placed in correctional facilities in Bulgaria.

269. The Government denied the existence of a structural problem, but conceded that conditions in these facilities were deficient in many respects, in particular as regards overcrowding. The Government also submitted that the problem had recently been addressed, chiefly as a result of the reduction of the number of inmates in these facilities. However, the Chief Directorate for the Execution of Punishments, the authority in charge of the penitentiary system in Bulgaria, accepted that unsatisfactory buildings, poor material conditions and overcrowding in Bulgarian prisons were justifiably being criticised, and pinpointed a number of problem areas (see paragraph 259 above). The reality of the problem is also confirmed by several recent reports. In the report on its 2012 to Bulgaria, the CPT found that conditions in Varna and Burgas Prisons were totally unacceptable, with "disturbing" levels of overcrowding. It went on to say that overcrowding remained a major problem in Bulgaria's penitentiary system. The CPT also expressed concern at the lack of progress with respect to prison staffing levels, at the large number of allegations of corrupt practices by prison staff, and at the slight progress with respect to inter-prisoner violence (see paragraph 73 above). In his annual report for 2012, the Ombudsman of the Republic, having visited most prisons in the country, concluded that conditions in almost all prisons and closed-type prison hostels could be characterised as inhuman and degrading, and noted that all prisons in the country, except two correctional institutions for juveniles and Sliven Prison, which housed female prisoners, were overcrowded (see paragraphs 78-81 above). In 2013 he made similar findings with respect to Belene, Burgas and Varna Prisons (see paragraphs 83-87 above). Similar findings were also made in the 2011 report drawn up by the Bulgarian Helsinki Committee (see paragraph 74 above), and in the 2014 McManus report, which, while noting progress in some respects, pointed to a number of ongoing problems (see paragraphs 88 and 89 above). The decision of the Bulgarian authorities to postpone the introduction of the rule requiring a minimum of four square metres per inmate until 2019, said to be made necessary by the impossibility of complying with it in practice, also shows the persistent nature of the problem (see paragraph 115 above). Lastly, the statistical data supplied by the Government to the Department for the Execution of Judgments (see paragraph 143 above) shows that, based on official capacity, presumably calculated on the basis of four square metres per inmate, on 31 December 2013 nine out of the eleven male prisons in the country were overcrowded, some slightly and some horrendously so, the worst case being Burgas Prison, where overcrowding was to the tune of 239%. Two out of the four closed-type prison hostels in the country were likewise overcrowded.

270. There are at present almost forty prima facie meritorious applications against Bulgaria awaiting first examination that contain a complaint about conditions of detention. It is true that this figure may seem insignificant in comparison with those in pilot cases such as Ananyev and Others (cited above, § 184) and Torreggiani and Others (cited above, § 89). However, the identification of a systemic problem that justifies the application of the pilot-judgment procedure is not necessarily linked to the number of applications that are already pending; the potential inflow of future cases is also an important consideration (see Hutten-Czapska v. Poland [GC], no. 35014/97, § 236, ECHR 2006-VIII). This is confirmed by the wording of Rule 61 § 1 of the Rules of Court, which says that the "structural or systemic problem" justifying a pilot-judgment procedure can be one that "has given" or one that "may give" rise to similar applications. In 2013, there were 9,347 prisoners in Bulgaria (see paragraph 219 above). The latest available number stands at just over 9,000 (see paragraph 89 above). As noted in the above-cited reports, many of these prisoners are kept in overcrowded and otherwise unsatisfactory conditions. Moreover, as already found, they are likely to face obstacles when seeking monetary compensation in respect of these conditions, and do not have an effective remedy enabling them to obtain their improvement (see paragraphs 195-205 and 209-212 above). The question whether any individual domestic authority is at fault for this state of affairs is immaterial, because what is at issue in proceedings before the Court is the responsibility of the State under international law, not that of individual domestic authorities or officials (see, mutatis mutandis, Finger v. Bulgaria, no. 37346/05, §§ 95-96, 10 May 2011). As noted above, under Article 3 of the Convention it is incumbent on a High Contracting State to organise its penitentiary system in a way that does not give rise to inhuman and degrading conditions of detention, regardless of financial or logistical difficulties (see paragraph 229 in fine above). Contrary to what was suggested by the Government in their observations, under the Court's settled case-law the fact that it is not intended to place a detainee in poor conditions does not preclude these conditions from constituting inhuman or degrading treatment in breach of this Article (see paragraph 230 above).

271. In view of all this, and taking into account the nature of the problem, which has persisted for many years (see paragraphs 71-73 and 74 above), the large number of people affected, and the need to grant speedy and appropriate redress at domestic level, the Court considers that it must apply the pilot-judgment procedure.

3. Origin of the problem and general measures required to deal with it

272. The systemic problem underlying the breach of Article 3 of the Convention found in this case is of considerable magnitude and complexity. It does not stem from a particular legal provision or single other cause but from a plethora of factors. Some of these, such as the insufficient capacity of the Bulgarian correctional facilities and their obsolescence and poor state of repair, may chiefly be attributed to the protracted lack of investment by the authorities in the penitentiary system's facilities. Others, such as the lack of ready access to the toilet for inmates at night, appear to be due to the physical characteristics of the correctional facilities, the inmate management practices followed in them, and perhaps an insufficient number of guards.

273. By contrast, the systemic problem underlying the breach of Article 13 of the Convention appears to be due chiefly to the statutory law and its interpretation by the courts (see paragraphs 195-199 and 202-205 above).

(a) Avenues for the improvement of detention conditions

274. The improvement of conditions of detention in Bulgarian correctional facilities raises issues that go beyond the Court's judicial function. It is not the Court's task to give directions about such a complex reform process, let alone make specific recommendations on how the respondent State should organise its penal and penitentiary systems. The Committee of Ministers is better placed to do so (see Ananyev and Others, § 19 4, and Torreggiani and Others, § 95, both cited above). However, these considerations do not bar the Court from highlighting specific issues that may warrant the respondent State's in-depth consideration, as such an indication may make it possible to ascertain better the contours of the problem outlined in the pilot judgment and find appropriate solutions to it (see Ananyev and Others, § 195, and, mutatis mutandis, Orchowski, §§ 14953, both cited above).

275. There are two issues that Bulgaria will inevitably need to tackle when implementing this judgment.

276. The first concerns overcrowding which, as can be seen from the McManus report and the statistical data presented by the Government (see paragraphs 91 and 143 above), varies between the different correctional facilities in Bulgaria. The Court has held that if a High Contracting State is unable to ensure that prison conditions comply with the requirements of Article 3 of the Convention, it must either abandon its strict penal policy or put in place a system of alternative means of punishment (see Orchowski, cited above, § 153 in fine). While, as already noted, it is not within the Court's remit to indicate how the respondent State should organise its penal and penitentiary systems, the Court would note that the reports and recommendations of the CPT and the Committee of Ministers, and, in relation specifically to Bulgaria, the McManus report (see paragraphs 90, 91, 146, 147 and 148 above), have highlighted a number of possible approaches that could be considered by the Bulgarian authorities as potential solutions to the problem of overcrowding: a combination of measures that includes the construction of new correctional facilities, better allocation of prisoners in existing correctional facilities, and a reduction of the number of persons serving custodial sentences. Measures recommended or undertaken in other cases before this Court have included reduced recourse to imprisonment as a form of penalty, resorting to shorter custodial sentences, replacing imprisonment with other forms of penalty, increasing the use of various forms of early release, and suspending the enforcement of some custodial sentences (see Łatak v. Poland (dec.), no. 52070/08, § 44, 12 October 2010, and Stella and Others, cited above, §§ 11-14, 21-24 and 51-52).

277. The second issue concerns material conditions and hygiene. As noted in various reports and in the Government's submissions in this case, many of the prison buildings in Bulgaria are very old, unsuitable for modern needs, and often dilapidated almost beyond repair (see paragraphs 72, 73, 74, 78, 83 and 259 above). The Court notes with disappointment that, in spite of the many reports that have highlighted the problem for years, the authorities have not done more to tackle it. At this stage, the only way to do so is either by carrying out major renovation works or by replacing these buildings with new ones. Having regard to the fundamental nature of the right protected by Article 3 of the Convention and the importance of urgently putting an end to conditions of detention which result in inhuman or degrading treatment for a considerable number of persons, this should be done without any delay.

278. It is true that the solution of these problems may require significant financial resources. However, as already noted, lack of resources cannot in principle justify conditions of detention that are so poor as to amount to treatment contrary to Article 3 of the Convention, and it is incumbent on the Contracting States to organise their penitentiary systems in ways that ensure compliance with this provision, regardless of financial or logistical difficulties (see Mandić and Jović, cited above, § 126, with further references).

(b) Putting in place effective domestic remedies

279. The Court has abstained from giving specific indications on the general measures that need to be taken by Bulgaria with a view to bringing conditions of detention in its correctional facilities into line with Article 3 of the Convention in execution of this judgment. While voicing some concerns and pointing out possible ways of dealing with deficiencies, the Court has found that, given the nature of the issues involved, specific instructions on these points would exceed its judicial function. However, the position in relation to the general measures required to redress the systemic problem underlying the breach of Article 13 of the Convention found

in the present case is different. The Court's findings under this Article require specific changes in the Bulgarian legal system that will enable any person in the applicants' position to complain of a breach of Article 3 of the Convention resulting from poor detention conditions and obtain adequate relief for any such breach at domestic level.

280. The Court has already highlighted the shortcomings in Bulgarian law and set out the Convention principles that should guide the authorities in setting up the domestic remedies required by Article 13 of the Convention in this context (see paragraphs 180-190, 195-199 and 202-205 above). The Bulgarian State is naturally free, under the supervision of the Committee of Ministers, to choose the means to discharge its duty under Article 46 § 1 of the Convention (see Ananyev and Others, cited above, § 213). It may put in place new remedies or amend existing ones with a view to rendering them compliant with the requirements of Article 13 of the Convention (ibid., § 232, and Torreggiani and Others, cited above, § 98). However, to assist it in finding appropriate solutions, the Court will address in turn possible preventive and compensatory remedies.

(i) Preventive remedies

281. A preventive remedy must conform fully to the requirements outlined in paragraph 183 above and, above all, be capable of providing swift redress.

282. The best way of putting such a remedy into place would be to set up a special authority to supervise correctional facilities. The examination of inmates' grievances by a special authority normally produces speedier results than dealing with them in ordinary judicial proceedings. For this to constitute an effective remedy, the authority in question should have the power to monitor breaches of prisoners' rights, be independent from the authorities in charge of the penitentiary system, have the power and duty to investigate complaints with the participation of the complainant, and be capable of rendering binding and enforceable decisions indicating appropriate redress. Examples of such authorities are the Independent Monitoring Boards (formerly Boards of Visitors) in the United Kingdom and the Complaints Commission (beklagcommissie) in the Netherlands (see Ananyev and Others, cited above, § 215), as well as judges for the execution of sentences in Italy, with the powers that they were granted in 2014 (see Stella and Others, cited above, §§ 18 and 48-49, as well as Orchowski, cited above, § 154 in fine).

283. Another option would be to set up such a procedure before existing authorities, for instance public prosecutors. As noted in paragraph 212 above, public prosecutors have broad supervisory powers in relation to correctional facilities. However, a complaint to a public prosecutor falls short of the requirements of an effective domestic remedy as it is not based on a personal right for the person concerned to obtain redress, and as there is no requirement for such a complaint to be examined with the participation of the inmate concerned or for the prosecutor to ensure his or her effective participation in the proceedings (ibid.). This means that if Bulgaria chooses to comply with this judgment by amending the procedure for complaining to a supervising prosecutor, it should, as a minimum, make provision for the complaining prisoner to be given an opportunity to comment on any factual submissions made by the prison authorities at the prosecutor's request, to put questions, and to make additional submissions to the prosecutor. The complaint does not have to be examined in public or even in oral proceedings, but the prosecutor should be duty-bound to render a binding and enforceable decision within a reasonably short time-limit (ibid., § 216).

284. Turning to a possible judicial remedy, the Court notes its finding above that such a remedy could in principle be found in injunction proceedings under Articles 250 § 1, 256 or 257 of the Code of Administrative Procedure 2006, but that this remedy did not appear, for the time being, to be operating properly in practice. However, as noted in the Court's recent judgment in Harakchiev and Tolumov (cited above, § 228), this remedy could be moulded to accommodate grievances relating to conditions of detention, if all unclear points, such as the courts' approach to such claims, the proper defendants, the duration of the injunctions against the authorities and the exact way in which they are to be enforced, even where overcrowding is concerned, were properly elucidated.

(ii) Compensatory remedies

285. In cases where a breach of Article 3 of the Convention has already taken place, the State must be prepared to acknowledge the breach and provide some form of compensation. The introduction of a preventive remedy alone would not be enough because a remedy that prevents or stops breaches of this Article cannot make good inhuman or degrading treatment that has already taken place. The respondent State must therefore have in place a remedy that can redress past breaches. Such a remedy is particularly important in view of the subsidiarity principle, so that aggrieved persons are not forced to refer to this Court complaints that require the finding of basic facts and the fixing of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic courts (see Ananyev and Others, cited above, § 221, with further references).

286. Unlike the situation in other High Contracting States (for a survey of the situation in a number of these States, see Uzun v. Turkey (dec.), no. 10755/13, §§ 43-51, 30 April 2013; see also, for instance, Łatak, cited above, §§ 35-37, 39, 47-54 and 80, regarding the protection of "personal rights" under Polish civil law; and Donnan v. the United Kingdom (dec.), no. 3811/04, 8 November 2005, regarding the Human Rights Act 1998 in the United Kingdom), in Bulgaria, even though the Convention is in principle regarded as directly applicable and part of domestic law (see paragraphs 95-97 above), there is no general remedy allowing protection at domestic level of the rights and freedoms enshrined in it. Reforms bringing domestic remedial practice into line with Convention requirements have usually proceeded by way of dedicated legislation consisting in amendments to the

State and Municipalities Liability for Damage Act 1988 (see Goranova-Karaeneva v. Bulgaria, no. 12739/05, §§ 25 and 30, 8 March 2011, regarding covert surveillance; Zaharieva v. Bulgaria (dec.), no. 6194/06, § 45, 20 November 2012, regarding court fees under the 1988 Act; Balakchiev and Others v. Bulgaria (dec.), no. 65187/10, §§ 20-22 and 25-29, 18 June 2013, and Valcheva and Abrashev v. Bulgaria (dec.), nos. 6194/11 and 34887/11, §§ 49-51 and 5458, 18 June 2013, regarding remedies in respect of length of proceedings; and Kostadinov v. Bulgaria, no. 37124/10, communicated on 29 January 2013, regarding compensation for breaches of Article 5 §§ 2-4 of the Convention). Thus, one way for the Bulgarian State to comply with the relevant part of this judgment is to put in place a general remedy allowing those complaining of a breach of their Convention rights – in this case, the right not to be subjected to inhuman or degrading treatment – to seek the vindication of these rights in a procedure specially designed for this purpose. Another option is to put in place special rules laying down in detail the manner in which claims concerning conditions of detention are to be examined and determined, as was recently done in Italy (see Stella and Others, cited above, §§ 19-20 and 56-63).

287. One form of compensation may consist in reducing the sentence of the person concerned in proportion to each day that he or she has spent in inhuman or degrading conditions. In Ananyev and Others (cited above, §§ 222-26) the Court expressed some misgivings in relation to this form of redress. However, more recently, in Stella and Others (cited above, §§ 19 and 58-60), it upheld it as capable of providing adequate and sufficient redress to persons who are still incarcerated. However, it should be emphasised that, as noted in that decision, a reduction of the sentence can only constitute adequate and sufficient redress if it entails an acknowledgement of the breach of Article 3 of the Convention and provides measurable reparation of this breach. Obviously, such a remedy can only be adequate in respect of persons who are still in detention.

288. Another form of redress – the only one possible in respect of persons who are no longer incarcerated – would be the provision of monetary compensation. Any such remedy must comply fully with the requirements set out in paragraphs 184-188 and 190 above. Moreover, the amount of compensation in respect of non-pecuniary damage that can be obtained must not be unreasonable in comparison with the awards of just satisfaction made by this Court under Article 41 of the Convention in similar cases. The principles outlined by the Court in paragraph 299 below may serve as guidance in this respect. It should be emphasised in this connection that the right not to be subjected to inhuman or degrading treatment is so fundamental that the domestic authority or court dealing with the matter will have to give exceptionally compelling reasons to justify a decision to award lower or no compensation in respect of non-pecuniary damage (see Ananyev and Others, cited above, § 228-30).

289. To be truly effective and compliant with the principle of subsidiarity, such a remedy must operate retrospectively, in the sense of providing redress in respect of breaches of Article 3 of the Convention that predate its introduction, both in cases where the impugned situation has already come to an end with the prisoner's release or in another way, and in cases where the prisoner concerned continues to be held in the conditions in issue (ibid., § 231).

(iii) Time-limit for making the above remedies available

290. The required preventive and compensatory remedies must be made available not later than eighteen months after this judgment becomes final (see, mutatis mutandis, Torreggiani and Others, cited above, § 99).

4. Procedure to be followed in similar cases

291. Under Rule 61 § 6 of its Rules, the Court can adjourn the examination of all similar applications pending implementation of the measures set out in this pilot judgment by the respondent State. However, adjournment is optional rather than mandatory, as shown by the words "as appropriate" in this Rule and the variety of approaches in the previous pilot cases (see Ananyev and Others, cited above, § 235, with further references). In view of the principles established in Ananyev and Others (cited above, § 236), the Court does not find it appropriate at this juncture to adjourn the examination of similar cases, whether pending or impending.

5. Individual measures

292. The Court also finds it necessary to indicate individual measures for the execution of this judgment as regards Mr Zlatev, who is still placed in Burgas Prison, in conditions that were and apparently still are particularly harsh (see paragraph 255 above), and who appears to be particularly vulnerable. To redress the effects of the breach of his rights under Article 3 of the Convention, the authorities must, if he so wishes, urgently transfer him to another correctional facility (see, mutatis mutandis, Assanidze v. Georgia [GC], no. 71503/01, §§ 202-03, ECHR 2004-II; Aleksanyan v. Russia, no. 46468/06, § 240, 22 December 2008; and Stanev v. Bulgaria [GC], no. 36760/06, § 257, ECHR 2012).

In the 2009 case of Orchowski v. Poland, the Court addressed mainly the issue of overcrowding in Polish prisons, and identified it as a structural problem:

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121. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see Dougoz v. Greece, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person is detained in the particular conditions also has to be considered (see among others Alver v. Estonia, no. 64812/01, 8 November 2005).

122. The extreme lack of space in a prison cell weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were "degrading" from the point of view of Article 3 (see Karalevičius v. Lithuania, no. 53254/99, 7 April 2005).

In its previous cases where applicants had at their disposal less than 3 m² of personal space, the Court found that the overcrowding was so severe as to justify of itself a finding of a violation of Article 3 of the Convention (see, among many others, Lind v. Russia, no. 25664/05, § 59, 6 December 2007; Kantyrev v. Russia, no. 37213/02, § 50-51, 21 June 2007; Andrey Frolov v. Russia, no. 205/02, §47-49, 29 March 2007; Labzov v. Russia, no. 62208/00, § 44, 16 June 2005).

By contrast, in other cases where the overcrowding was not so severe as to raise in itself an issue under Article 3 of the Convention, the Court noted other aspects of physical conditions of detention as being relevant for its assessment of compliance with that provision. Such elements included, in particular, the availability of ventilation, access to natural light or air, adequacy of heating arrangements, compliance with basic sanitary requirements and the possibility of using the toilet in private. Thus, even in cases where a larger prison cell was at issue – measuring in the range of 3 to 4 m² per inmate – the Court found a violation of Article 3 since the space factor was coupled with the established lack of ventilation and lighting (see, for example, Babushkin v. Russia, no. 67253/01, § 44, 18 October 2007; Ostrovar v. Moldova, no. 35207/03, § 89, 13 September 2005, and Peers v. Greece, no. 28524/95, §§ 70-72, ECHR 2001-III) or the lack of basic privacy in his or her everyday life (see, mutatis mutandis, Belevitskiy v. Russia, no. 72967/01, §§ 73-79, 1 March 2007; Valašinas, cited above, § 104; Khudoyorov, cited above, §§ 106 and 107; Novoselov v. Russia, no. 66460/01, §§ 32, 40-43, 2 June 2005).

(b) Application of these principles to the present case

(i) Overcrowding

123. The Court must have regard to the findings of the Constitutional Court and different State authorities, which identified the systemic nature of the problem of overcrowding of detention facilities in Poland (see paragraph 85 above). In this connection the Court refers to the judgment of 26 May 2008 in which the Constitutional Court found that a person cannot be afforded humane treatment in a prison cell, in which individual living space is less than 3 m² (Article 41 § 4 of the Constitution) and that overcrowding of such a serious character as had existed in Poland, could in itself be qualified as inhuman and degrading treatment (Article 40 of the Constitution).

The Court observes that Article 40 of the Constitution is drafted almost identically to Article 3 of the Convention. Therefore, the Court, mindful of the principle of subsidiarity, finds that the above-mentioned ruling of the Constitutional Court can constitute a basic criterion in the Court's assessment whether the overcrowding in Polish detention facilities breaches the requirements of Article 3 of the Convention. In consequence, all situations in which a detainee is deprived of the minimum of 3 m² of personal space inside his or her cell, will be regarded as creating a strong indication that Article 3 of the Convention has been violated.

124. Applying the above principles to the present case, the focal point for the Court's assessment is the living space afforded to the applicant during his detention in Słupsk, Gdańsk, Wejherowo, Warszwa Mokotów and Wrocław Remand Centres and Sztum, Kamińsk and Goleniów Prisons.

125. The Government acknowledged that Słupsk, Gdańsk and Wejherowo Remand Centres had been generally overcrowded at the time when the applicant had been detained there (see paragraphs 11, 28, 41 above). On the other hand, their submissions as to the precise occupancy rate of the applicant's cells there are selective and not corroborated by any official documents (see paragraphs 11, 27, 29 and 40 above).

The applicant for his part submitted a copy of a letter from the Office of the Prison Service which confirmed that at the relevant time the overcrowding ranged from 3 to 14 % in Słupsk Remand Centre (see paragraph 17 above), from 3 to 17% in Gdańsk Remand Centre (see paragraph 39 above) and from 3 to nearly 11% in Wejherowo Remand Centre (see paragraph 49 above).

He further claimed that for the most part he had been detained in cells in which the space per person had been below 3 and at times, even below 2 m² (see paragraphs 16, 36-38, 47 and 58 above). To that effect the applicant corroborated his submissions by furnishing copies of the Gdańsk Remand Centre's detailed records which the Government claimed not to have been able to produce (see paragraphs 35-38 above) and of the letter from the governor of Wejherowo Remand Centre (see paragraph 48 above).

126. As concerns Sztum Prison, the Government acknowledged that for two months in 2006 the applicant had been assigned to a cell in which the space per person had not exceeded 2.2 m², whereas for the remainder of the time the living conditions afforded to him had been in compliance with domestic standards (see paragraph 19 above).

The applicant, however, claimed that during his first and second periods of detention in that prison, he had been held in cells in which the personal space available to prisoners had been 2.6 and 2.25 m² per person respectively. To that end he supported his submission by providing a letter obtained from the Office of the Prison Service which stated that Sztum Prison had been overpopulated by 10% during the applicant's first detention, 20% during his second detention and by 25% during his last period of detention there (see paragraphs 24-25 above).

127. The Government did not make any comments with regard to Kamińsk Prison.

The applicant on the other hand submitted a copy of a letter sent by the Kamińsk Prison administration to the Ministry of Justice in which it had been stated that for one month in mid-2007 the applicant had been detained in a cell in which the personal space available to prisoners had not exceeded 2.7 m² per person (see paragraph 53 above). In addition, the letter obtained from the Office of the Prison Service indicates that

the rate of overcrowding in this prison peaked at the relevant time at nearly 15 % (see paragraph 54 above).

128. Lastly, in the period following the applicant's civil action for compensation filed with the domestic court on account of the allegedly inadequate conditions of his detention, namely in the period from February 2008 onwards, the applicant was detained subsequently in Goleniów Prison and Warszawa Mokotów and Wrocław Remand Centres.

129. The Court notes that the Government commented on the short period of the applicant's detention in Goleniów Prison and did not make any submissions with regard to the remainder of the applicant's detention (see paragraphs 56, 61 and 64 above). The applicant, for his part, made submissions regarding the entire period of his detention in Goleniów Prison and Warszawa Mokotów Remand Centre (see paragraphs 57-59 and 62 above). He did not, however, make any comments regarding Wrocław Remand Centre, where he is currently detained (see paragraph 64 above).

130. The Court takes note of the fact, which is not in dispute, that from 20 February 2008 until an unspecified date, no later than the end of 2008, the minimum statutory standard of 3 m^2 of space per person was respected in the applicant's cell in Goleniów Prison (see paragraphs 56 and 59 above). At the same time, however, the Court observes that the applicant's argument that during approximately seven months prior to that date, he was detained in cells in which the space per person ranged between 2.5 and 2.57 m^2 was not challenged by the Government. Moreover, the fact that the maximum capacity of Goleniów Prison was indeed exceeded by almost 7%, is confirmed by the official statistics from the Office of the General Director of the Prison Service (see paragraph 57 above).

As regards the Warszawa Mokotów Remand Centre in which the applicant was detained from an unspecified date in late-2008 until 13 February 2009, the Court, in the absence of the Government's comments, takes note of the applicant's submission that the space afforded to him in that facility ranged between 1.75 and 2.5 m^2 (see paragraph 62 above).

Lastly, the Court refers to the official general statistics, confirmed by the Government, that the rate of overcrowding in Polish prisons and remand centres was still at 8.1% in September 2008 and at 4% in June 2009 (see paragraph 89 above).

131. The Court notes that the Government acknowledged that the majority of the detention facilities in question had been overpopulated at the material time. Moreover, it is not convinced by the Government's assertion, which is not supported by conclusive documentary evidence, that the applicant's cells, only with the exception of a few short periods of time, had remained unaffected by that problem and that the living conditions which he had been afforded had complied with Convention standards.

It is to be further observed in this connection that the applicant's allegations of overcrowding were, to a great extent, corroborated by the letter sent to his lawyer by the Office of the Prison Service and the letter sent by the prison administration to the Ministry of Justice.

The Court therefore finds it established to the standard of proof required under Article 3 of the Convention that the majority of the applicant's cells, in which he had been held for most of his detention were overcrowded beyond their designated capacity, leaving the applicant with less than 3 m^2 of personal space and at times, with less than 2 m^2. Even if occasionally the cell was within or below its designated capacity, the applicant was usually afforded only a little more than 3 m^2 of personal space (see paragraphs 28, 38 and 42 above).

In connection with the latter, the Court would reiterate that the CPT's standard recommended living space per prisoner for Polish detention facilities is higher than the national statutory minimum standard, namely 4 m^2 (see paragraph 86 above).

The applicant's situation was further exacerbated by the fact that he was confined to his cells day and night, save for one hour of daily outdoor exercise and, possibly, an additional, although short, time spent in an entertainment room.

(ii) Other elements

132. The applicant also complained of a number of additional aggravating features of the living and sanitary conditions during his detention.

In the light of the parties' submissions the Court considers the following elements to be established: (1) the applicant was allowed a one-hour long outdoor exercise daily, and (2) one hot shower per week; (3) he had his showers together with a group of fellow inmates equal to the number of shower heads available, sometimes between twelve and twenty-five; (4) his bed linen was changed once every two weeks, and (5) his underwear, usually once a week; (6) he had all his meals inside the cell; and (7) the overall conditions of the applicant's cells, including their cleanliness, ventilation and lighting, was adequate vis-à-vis the Convention standards.

133. The Court also takes note of another important element, namely the fact that during his detention, which has so far lasted approximately six years, the applicant had been transferred twenty-seven times between eight different prisons and remand centres. He was also very frequently moved between cells within each of the detention facilities in question.

In this connection the Court notes that too frequent transfers of a person under the existing system of rotating transfers of detainees may create a problem under the Convention. By using this system, the authorities provide an urgent but short-term and superficial relief to the individuals concerned and to the facilities in which the rate of overcrowding is particularly high. As shown by the example of the applicant in the instant

case, in the light of massive overcrowding the system does not provide a real improvement of a detainee's situation. On the contrary, such frequent transfers may, in the Court's opinion, increase the feelings of distress experienced by a person deprived of liberty and who is held in conditions which fall short of the Convention (see Khider v. France; no. 39364/05; §§110 and 111).

(c) Conclusion

134. It has been established that the applicant in the instant case for the most part of his detention had been afforded below 3 and at times, even below 2 m^2 of personal space inside his cells.

In addition, as the applicant's personal space was particularly limited for almost the entire day and night, he had to have his meals inside his overcrowded cell and to shower along with the group of strangers, sometimes as many as twenty-four, and finally, as he had constantly been moved between cells and facilities, the Court considers that those conditions obviously did not allow any elementary privacy and aggravated the applicant's situation (see Kalashnikov v. Russia, no. 47095/99, § 99, ECHR 2002-VI).

135. Having regard to the circumstances of the case and their cumulative effect on the applicant, the Court considers that the distress and hardship endured by the applicant exceeded the unavoidable level of suffering inherent in detention and went beyond the threshold of severity under Article 3. Therefore, there has been a violation of Article 3 of the Convention on account of the conditions in which the applicant has been detained since 2003. (…)

IV. Application of articles 46 and 41 of the convention

142. Article 46 of the Convention provides:

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution." (…)

147. In this context, the Court observes that approximately 160 applications raising an issue under Article 3 of the Convention with respect to overcrowding and consequential inadequate living and sanitary conditions are currently pending before the Court. Ninety-five of these applications have already been communicated to the Polish Government.

Moreover, the seriousness and the structural nature of the overcrowding in Polish detention facilities have been acknowledged by the Constitutional Court in its judgment of 28 May 2008 and by all the State authorities involved in the proceedings before the Constitutional Court, namely the Prosecutor General, the Ombudsman and the Speaker of the Sejm, (see paragraph 85 above), and by the Government (see paragraph 146 above).

The statistical data referred to above taken together with the acknowledgements made by the Constitutional Court and the State authorities demonstrate that the violation of the applicant's right under Article 3 of the Convention originated in a widespread problem arising out of the malfunctioning of the administration of the prison system insufficiently controlled by Polish legislation, which has affected, and may still affect in the future, an as yet unidentified, but potentially considerable number of persons on remand awaiting criminal proceedings or serving their prison sentences (see mutatis mutandis Broniowski v. Poland [GC], no. 31443/96, §§ 189, ECHR 2004-V).

The Court concludes that for many years, namely from 2000 until at least mid-2008, the overcrowding in Polish prisons and remand centres revealed a structural problem consisting of "a practice that is incompatible with the Convention" (see mutatis mutandis Broniowski v. Poland, cited above, §§ 190-191, ECHR 2004-V; Scordino v. Italy (no. 1) [GC], no. 36813/97, §§ 229-231, ECHR 2006-...; Bottazzi v. Italy [GC], no. 34884/97, § 22, ECHR 1999-V with respect to the Italian length of proceedings cases).

148. In this connection, it is to be reiterated that, where the Court finds a violation, the respondent State has a legal obligation under Article 46 of the Convention not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. The respondent State remains free, subject to monitoring by the Committee of Ministers, to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see Scozzari and Giunta v. Italy [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII, and Broniowski v. Poland cited above, §§ 192).

149. The Court observes that the Constitutional Court in its judgment of 26 May 2008 obliged the State authorities to bring the situation concerning the overcrowding of detention facilities in Poland into compliance with the requirements of the Constitution, namely with the relevant provisions prohibiting, in absolute terms, torture and inhuman and degrading treatment. The Constitutional Court observed in particular, that apart from the indicated legislative amendments the authorities had to undertake a series of measures to reorganise the whole penitentiary system in Poland in order to, ultimately, eliminate the problem of overcrowding. It was also noted that, in parallel, a reform of criminal policy was desired with the aim of achieving a wider implementation of preventive measures other than deprivation of liberty.

150. In this connection, it must be observed that recently in the case of Kauczor v. Poland (see Kauczor v. Poland, no. 45219/06, § 58 et seq, 3 February 2009), the Court held,

referring to the conclusions of the Committee of Ministers of the Council of Europe, that the excessive length of pre-trial detention in Poland revealed a structural problem consisting of a practice that was incompatible with Article 5 § 3 of the Convention. The Court observes that the solution of the problem of overcrowding of detention facilities in Poland is indissociably linked to the solution of the one identified in the Kauczor case.

151. The Court also notes that for many years the authorities appeared to ignore the existence of overcrowding and inadequate conditions of detention and, instead, chose to legitimise the problem on the basis of a domestic law which was ultimately declared unconstitutional (see paragraph 85 above). As was observed by the Polish Constitutional Court in its judgment of 26 May 2008, the flawed interpretation of the relevant provision, which through its imprecision allowed for an indefinite and arbitrary placement of detainees in cells below the statutory size of 3 m^2 per person, sanctioned the permanent state of overcrowding in Polish detention facilities.

In the Court's opinion, such practice undermined the rule of law and was contrary to the requirements of special diligence owed by the authorities to persons in a vulnerable position such as those deprived of liberty.

152. On the other hand, the Court takes note of the fact that the respondent State has recently taken certain general steps to remedy the structural problems related to overcrowding and the resulting, inadequate conditions of detention (see paragraphs 89-91 above). By virtue of Article 46 of the Convention, it will be for the Committee of Ministers to evaluate the general measures adopted by Poland and their implementation as far as the supervision of the Court's judgment is concerned. However, the Court cannot but welcome these developments and considers that they may ultimately contribute to reducing the number of persons detained in Polish prisons and remand centres, as well as to the improvement of the overall living and sanitary conditions in these facilities. They cannot, however, operate with retroactive effect so as to remedy past violations. However, as already noted by the Constitutional Court (see paragraph 85 above), in view of the extent of the systemic problem at issue, consistent and long-term efforts, such as the adoption of further measures, must continue in order to achieve compliance with Article 3 of the Convention.

153. The Court is aware of the fact that solving the systemic problem of overcrowding in Poland may necessitate the mobilisation of significant financial resources. However, it must be observed that lack of resources cannot in principle justify prison conditions which are so poor as to reach the threshold of treatment contrary to Article 3 of the Convention (see among others Nazarenko v. Ukraine, no. 39483/98, § 144, 29 April 2003) and that it is incumbent on the respondent Government to organise its penitentiary system in such a way that ensures respect for the dignity of detainees, regardless of financial or logistical difficulties (see Mamedova v. Russia, no. 7064/05, § 63, 1 June 2006). If the State is unable to ensure that prison conditions comply with the requirements of Article 3 of the Convention, it must abandon its strict penal policy in order to reduce the number of incarcerated persons or put in place a system of alternative means of punishment.

154. Lastly, the Court takes note of the civil courts' emerging practice which allows prisoners to claim damages in respect of prison conditions. In this connection, the Court would like to emphasise the importance of the proper application by civil courts of the principles which had been set out in the judgment of the Polish Supreme Court of 26 February 2007.

The Court observes, nonetheless, that a civil action under Article 24 of the Civil Code, in conjunction with Article 445 of this code, may, in principle, due to its compensatory nature, be of value only to persons who are no longer detained in overcrowded cells in conditions not complying with Article 3 requirements (see paragraphs 108-109 above).

The Court would in any event, observe that a ruling of a civil court cannot have any impact on general prison conditions because it cannot address the root cause of the problem. For that reason, the Court would encourage the State to develop an efficient system of complaints to the authorities supervising detention facilities, in particular a penitentiary judge and the administration of these facilities which would be able to react more speedily than courts and to order, when necessary, a detainee's long-term transfer to Convention compatible conditions.

In the 2012 case of Samaras and others v. Greece, the Court found the conditions of detention in a Greek prison to be in violation of the prohibition of inhuman and degrading treatment:

(Case 67) (Translation)
56. The Court reiterates that Article 3 of the Convention, which enshrines one of the fundamental values of democratic societies, prohibits in absolute terms torture and inhuman or degrading treatment or punishment, whatever the nature of the conduct of which the person concerned is accused (see Saadi v. Italy [GC], no. 37201/06, § 127, 28 February 2008, and Labita v. Italy [GC], no. 26772/95, § 119, ECHR 2000-IV). It requires the State to ensure that every prisoner is detained in conditions compatible with respect for human dignity, that the manner in which the measure is carried out does not subject the person concerned to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, having regard to the practical requirements of imprisonment, the prisoner's health and well-being are adequately ensured (Kudła v. Poland [GC], no. 30210/96, § 92-94, ECHR 2000-XI).

57. The Court also reiterates that severe prison overcrowding is in itself a problem under Article 3 of the Convention (Kalashnikov v. Russia, no. 47095/99, § 97, ECHR 2002-VI). However, the Court cannot give a precise and definitive measure of the personal space to be granted to each prisoner under the Convention, as this question may depend on many factors, such as the length of the deprivation of liberty, the

possibilities of access to the open-air promenade or the prisoner's mental and physical condition (Trepachkine v. Russia, no. 36898/03, § 92, 19 July 2007).

58. Nevertheless, in some cases the lack of personal space for the prisoners was so flagrant as to justify, in itself, a finding of a violation of Article 3. In these cases, the applicants individually had less than 3 m^2 (Aleksandr Makarov v. Russia, no. 15217/07, § 93, 12 March 2009; Lind v. Russia, no. 25664/05, § 59, 6 December 2007; Kantyrev v. Russia, no. 37213/02, 21 June 2007, §§ 50-51; Andrei Frolov, cited above, §§ 47-49; Labzov v. Russia, no. 62208/00, § 44, 16 June 2005, and Mayzit v. Russia, no. 63378/00, § 40, 20 January 2005).

59. On the other hand, in cases where overcrowding was not so significant as to raise a problem in itself under Article 3, the Court reiterates that it has noted that other aspects of the conditions of detention were relevant to the assessment of compliance with that provision. These included the possibility of private use of the toilet, the method of ventilation, access to natural light and air, the quality of the heating and compliance with basic sanitary requirements. Thus, even in cases where each prisoner had 3 to 4 m^2 at his disposal, the Court found a violation of Article 3 where the lack of space was accompanied by a lack of ventilation and light (Moisseiev v. Russia, no. 62936/00, 9 October 2008; Vlassov v. Russia, no. 78146/01, § 84, 12 June 2008, Babushkin v. Russia, no. 67253/01, § 44, 18 October 2007, Trepachkine, cited above, and Peers v. Greece, no. 28524/95, §§ 70-72, ECHR 2001-III). Moreover, the Court has often found that outdoor exercise of very limited duration was a factor which aggravated the applicant's situation, as he was confined to his cell for the rest of the day without any freedom of movement (Gladkiy v. Russia, no. 3242/03, § 69, 21 December 2010 and Yevgeniy Alekseyenko v. Russia, no. 41833/04, § 88, 27 January 2011). In one case, the applicant's situation was even more serious because the prison yard had been closed for work and he had been obliged to remain inside for more than a month (see Trepachkine v. Russia, cited above, §§ 32 and 94).

60. With regard to the present case, the Court considers it necessary to highlight at the outset some of the findings contained in the report drawn up by the Ombudsman following his visit to Ioannina prison in 2009. The Ombudsman noted that, given the number of inmates, the dormitories and cells were "absolutely inadequate", and that the space/inmate ratio was "absolutely intolerable". It noted that prisoners did not even have a space of 1 m^2 in which to stand; that, in the absence of a refectory, chairs and tables, they were obliged to eat sitting on their beds; that there was also no space for physical exercise and that foreigners did not have the opportunity to work; and that, lastly, the proportion of prisoners authorised to work in relation to the total prison population (57/248) was unsatisfactory. In this connection, the Court further notes that, in a letter of 19 January 2008, the doctor at Ioannina Prison had informed the prison governor that prisoners were at increased risk of psychiatric disorders and physical illnesses as a result of prison overcrowding and lack of physical exercise.

61. The Court would also point out that it has already had to rule on the living conditions of prisoners in Ioannina Prison. In the Nisiotis case (cited above, § 44), it found that it had been established beyond reasonable doubt that for a considerable period of time the applicant had had to endure a high degree of overcrowding in Ioannina Prison, given that the personal space available to him - 1, 65 m^2 - like all the other prisoners - was less than the ‚humanitarian' minimum of 6 m^2 per prisoner, guaranteed both at domestic level by Article 21 § 4 of Law 2776/1999 and at European level, in accordance with the standards set by the European Committee for the Prevention of Torture. It reached the same conclusion in Taggatidis and Others v. Greece (no. 2889/09, 11 October 2011).

62. The only difference between the present case and the above-mentioned Nisiotis and Taggatidis judgments - and the Government rightly point this out - was that eleven of the thirteen applicants worked in the prison workshops and thus escaped for part of the day from the promiscuity prevailing in the dormitories and cells.

63. The Court does not intend to call into question its case-law to the effect that factors other than overcrowding or the amount of personal space available to a prisoner may be taken into account in assessing whether the requirements of Article 3 have been met in this respect. The possibility of moving around outside the dormitory or cell is certainly one such factor. However, in the Court's view, that factor cannot in itself be regarded as so decisive that it would suffice, if proved, to tip the balance in the above-mentioned examination in favour of a finding of no breach of Article 3. The Court must also examine the manner and duration of that freedom of movement in relation to the overall length of detention and the general conditions prevailing within the prison. In the Court's view, factors which had helped to alleviate the harshness of the conditions of detention could be taken into account for the purposes of just satisfaction in determining the amount that might be awarded to the applicants following any finding of a violation.

64. In the present case, the Court notes that eleven of the thirteen applicants worked while in detention for periods ranging from three to sixteen months. More specifically, Mr Samaras worked for sixteen months out of a period of thirty-six months in detention; Mr Karapanos worked for eleven months out of twenty; Mr Hussein worked for three months out of fifteen; Mr Aspiotis worked for three months out of seventeen; Mr Zygouris worked for nine months out of twenty-two; Mr Papazoglou worked for twenty-one months out of a period of thirty-six months in detention. Papazoglou twenty-one months out of twenty-seven; Mr Garnavos six months out of eleven; Mr Bazakas four months out of seventeen; Mr Boulios eleven months out of forty-two; Mr Bikas three months out of ten and Mr Dimitriadis three months out of eighteen. Mr Ramadanoglou and Mr Al Abid el Hilal, detained for twenty-seven and fourteen months respectively, did not work at all, the latter being of Somali nationality and therefore unable to work, as the Ombudsman points out in his report.

65. The Court notes that, in most of the above-mentioned cases, the period during which the applicants worked was a limited fraction of the total duration of their imprisonment. The rest of the time was spent in the same conditions as those prevailing for all prisoners, who were confined to their dormitories and cells. Even supposing that the working day was eight hours long, all the applicants met after the end of the working day for the rest of the day, lived in overcrowded cells, were obliged to eat on their beds and were deprived of all privacy and of any space allowing them to amuse themselves or take exercise.

66. In the circumstances, the Court considers that the conditions in which the applicants were detained reached the minimum level of severity required to constitute "degrading" treatment within the meaning of Article 3 of the Convention.

There had therefore been a violation of Article 3 of the Convention.

II. Application of articles 41 and 46 of the convention

(...)

72. The Court also points out that, under Article 46 of the Convention, the Contracting Parties have undertaken to abide by the final judgments of the Court in cases to which they are parties, the Committee of Ministers being responsible for supervising their execution. It follows in particular that the respondent State, found responsible for a violation of the Convention or the Protocols thereto, is required not only to pay the persons concerned the sums awarded in just satisfaction, but also to choose, under the supervision of the Committee of Ministers, the general and/or, where appropriate, individual measures to be adopted in its domestic legal order in order to put an end to the violation found by the Court and to erase as far as possible the consequences (De Clerck v. Belgium, no. 34316/02, § 97, 25 September 2007). It is further understood that the respondent State remains free, under the supervision of the Committee of Ministers, to choose the means of discharging its legal obligation under Article 46 of the Convention, provided that those means are compatible with the conclusions contained in the Court's judgment (Scozzari and Giunta v. Italy [GC], nos. 39221/98 and 41963/98, ECHR 2000-VIII).

73. The Court notes that both the Ombudsman and the prison doctor have repeatedly alerted the authorities (the former as long ago as 2000) to the situation in Ioannina prison. It also points out that, in the Nisiotis and Taggatidis and Others judgments cited above, it had had occasion to rule on the conditions of detention in the prison in question and that, having found a violation of Article 3, it had been led to award substantial sums for the non-pecuniary damage suffered by the applicants. The Court shares the Government's concern about the need to improve living conditions in prisons. For that reason, the Court considers that the authorities should take prompt action to ensure that the conditions of detention in the prison complied with the requirements of Article 3 and thus avoid future violations such as the one found in the present case.

In the 2011 case of Mandic and Jovic v. Slovenia, the Court found a violation of Article 3 of the European Convention on Human Rights due to overcrowding in Ljubljana prison:

(Case 68)

77. The Court notes that the applicants were held in the remand section of Ljubljana prison for about seven months. The cell in which they were held measured 16.28 square metres. The applicants alleged that six inmates were held in the cell. The Government, while acknowledging that there were six sleeping places in the cell, stated that the number of inmates varied between five and six but provided no official documents to demonstrate that during the period of the applicants' detention fewer then six inmates were held in their cell. In this connection, the Court notes that the overcrowding in the prison in question has been acknowledged by the prison authorities. During the relevant period the occupancy of the prison twice exceeded its official capacity (see paragraph 44 above). The situation was particularly serious as regards remand prisoners (see paragraphs 47 and 48 above). The Court therefore finds that even if occasionally they were afforded a little more than 3 square metres of personal space, the applicants were at least for a significant part of their detention held in a cell in which the personal space available to them was 2.7 square metres, which was further reduced by the furniture in the cell. This state of affairs in itself raises an issue under Article 3 of the Convention (see, mutatis mutandis, Sulejmanovic, cited above, §§ 43 and 44, and Modarca v. Moldova, no. 14437/05, § 63, 10 May 2007).

78. The Court finds that the applicants' situation was further exacerbated by the fact that they were confined to their cell day and night, save for two hours of daily outdoor exercise, and an additional two hours per week in the recreation room (see paragraphs 19, 20, 43 and 47 above). As there was no roof over the outdoor yard, it is hard to see how the prisoners could use the yard in bad weather conditions in any meaningful way. It is true that the applicants were allowed to watch TV, listen to radio and read books in the cell. This, however, cannot make up for the lack of possibility to exercise or spent time outside of the overcrowded cell. The Court moreover notes that the information supplied by the Government indicates that the temperatures in the cells in the late afternoon during the summer 2009 were by average around 28 oC and could occasionally even exceed 30 oC (see paragraph 14 above). The applicant's complaint concerning high temperatures in the cell was further supported by the Human Rights Ombudsman's findings which, although they concerned the year 2007, are of relevance as the methods of ventilation of prison cells, namely opening the windows and using personal fans, appear to have been the same then as in 2009 (see paragraph 49 above). The Court therefore finds that during the summer the conditions of the applicants' detention were further exacerbated by the very high temperatures in the cell.

79. On the other hand, the Court notes that the applicants were able to use the sanitary annex, containing a basin and toilet, in private. The sanitary annex was attached to the cell and was constantly at the disposal of the prisoners

accommodated in the cell. They were also allowed to shower once a day in a shower room which contained partitions between the shower heads. It further observes that the sanitary annex contained a functioning ventilation system. While it can accept that the sanitary conditions might have been affected by the fact that the facilities were overcrowded, the Court does not find on the basis of the material before it that the cleanliness of the relevant areas of the prison was inadequate vis-à-vis the Convention standards.

80. The Court accepts that in the present case there is no indication that there was a positive intention to humiliate or debase the applicants. However, having regard to fact that for the most part of their detention they had less than 3 square metres of personal space inside their cell for almost the entire day and night, the Court considers that the distress and hardship endured by the applicants exceeded the unavoidable level of suffering inherent in detention and went beyond the threshold of severity under Article 3 and therefore amounted to degrading treatment. In view of these findings, the Court does not find it necessary to undertake the fact-finding measures suggested by the Government (see paragraph 70 above) as these measures would not be able to alter the above conclusion.

Therefore, there has been a violation of Article 3 of the Convention on account of the conditions in which the applicants were detained.

(…)

V. Application of article 46 of the convention

121. Article 46 of the Convention provides:

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

A. The parties' submissions

122. Referring to the official reports of the Administration for the Execution of Penal Sentences, the applicants argued that their allegations related to a structural problem of overcrowding in Slovenian prisons, which could only be resolved by building new prisons.

123. The Government affirmed that the situation in certain Slovenian prisons did not comply with the national statutory requirements, which were higher than those set by the Court's case-law relating to Article 3. The situation in those highly populated prisons was not permanent but could fluctuate significantly. The Government asked the Court to decide on a case-by-case basis whether a prisoner's particular circumstances amounted to a violation of Article 3. A potential finding of a violation in a particular case cannot automatically lead to a conclusion that there was a practice incompatible with the Convention.

B. The Court's assessment

124. The Court observes that the violation of Article 3 of the Convention in the present case was caused by the overcrowded conditions in the Ljubljana prison, which had existed over a number of years. It further notes that the official reports and information submitted by the Government, in particular those concerning the occupancy rate of the prison and the size and number of sleeping places in the large cells, indicate that a considerable number of prisoners are and may still be affected in the future by the severe overcrowding. This includes many prisoners on remand, whose situation is particularly difficult due to, inter alia, very limited freedom of movement .

125. The Court notes that the Government have not submitted any information which would indicate that any steps were taken to tackle the problem of overcrowding in Ljubljana prison and that the building of the new facility is still uncertain. In this connection, it is to be reiterated that, where the Court finds a violation, the respondent State has a legal obligation under Article 46 of the Convention not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress, in so far as possible, the effects. The respondent State remains free, subject to monitoring by the Committee of Ministers, to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see Scozzari and Giunta v. Italy [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII).

126. The Court is aware that the solving of the overcrowding may necessitate the mobilisation of significant finical resources, in particular as the problem is not limited to Ljubljana prison, but exists, though to a lesser extent, in most of the closed prison facilities in the country. However, it must be observed that a lack of resources cannot in principle justify prison conditions which are so poor as to reach the threshold of treatment contrary to Article 3 of the Convention (see among others Nazarenko v. Ukraine, no. 39483/98, § 144, 29 April 2003) and that it is incumbent on the respondent Government to organise its penitentiary system in such a way that ensures respect for the dignity of detainees, regardless of financial or logistical difficulties (see Mamedova v. Russia, no. 7064/05, § 63, 1 June 2006).

127. Although the Court does not consider that it can at present conclude that there exists a structural problem consisting of "a practice that is incompatible with the Convention" nationwide, it would emphasize the need to take steps to reduce the number of prisoners in Ljubljana prison and by doing so to put an end to the existing situation which appears to disregard the dignity of a considerable number of detainees held therein and to prevent future violations of Article 3 on that account. It would draw the Government's attention to the CPT's recommendation for Ljubljana prison

that no more than four prisoners should be held in cells measuring 18 square metres (including the sanitary annex, see paragraphs 42 and 43 above).

128. Lastly, the Court takes note of the judgment of 9 May 2011 and observes that the civil claim for compensation under section 174 of the Civil Code may, if proved effective in future, due to its compensatory nature, be of value only to persons who are no longer detained in overcrowded cells in conditions not complying with Article 3 requirements (see paragraph 116 above). A ruling of a civil court cannot, however, have any impact on general prison conditions because it cannot address the root cause of the problem. For that reason, the Court would, in addition to the measures aimed at reducing the occupancy level in cells in Ljubljana prison, encourage the State to develop an effective instrument which would provide a speedy reaction to complaints concerning inadequate conditions of detention and ensure that, when necessary, a transfer of a detainee is ordered to Convention compatible conditions (see Orchowski, cited above, § 154).

In the 2012 case of Ananyev and Others v. Russia, mentioned at the beginning of this part of the Compendium, the Court made findings and gave recommendations as follows:

(Case 69)
2. Application in the present case

160. The Court will now proceed to assess, in the light of the above-mentioned general principles and requirements, whether or not the facts, as established above, disclosed a violation of Article 3 in relation to the applicants.

(a) Personal space
161. The present case concerned the conditions of detention in two different remand prisons: Smolensk prison IZ-67/1 and Astrakhan prison IZ-30/1. The Court found it established, to the standard required under Article 3 of the Convention, that at the material time both of those prisons were plagued with a severe shortage of personal space available to inmates.

162. The applicant Mr Bashirov in the Astrakhan prison was held in conditions that provided no more than two square metres of floor surface per inmate (see paragraph 138 above). The situation of the applicant Mr Ananyev was even worse: not only was the personal space per detainee marginally greater than one square metre, but also the number of detainees per cell significantly exceeded the number of sleeping places (see paragraph 133 above).

(b) Other aspects
163. In the light of the parties' submissions and the legal and normative regulations regarding the regime in Russian remand prisons, as applicable at the material time (see paragraph 26 et seq. above), the Court considers the following additional elements to be established.

164. The applicants were allowed a one-hour period of outdoor exercise daily. Windows were not fitted with metal shutters or other contraptions preventing natural light from penetrating into the cell. Where available, a small window pane could be opened for fresh air. Cells were additionally equipped with artificial lighting and ventilation.

165. As regards sanitary and hygiene conditions, both the dining table and the lavatory pan were located inside the applicants' cells, sometimes as close to each other as one or one and a half metres. A partition, approximately one to one a half metres in height, separated the toilet on one side; the prison regulations did not allow the toilet to be completely shielded from view by means of a door or a curtain. Cold running water was normally available in cells and detainees had access to showers once every seven to ten days.

(c) Conclusion
166. It has been established that the applicants Mr Ananyev and Mr Bashirov were afforded less than three square metres of personal space. They remained inside the cell all the time, except for a one-hour period of outside exercise; they had to have their meals and answer the calls of nature in those cramped conditions. As far as Mr Bashirov is concerned, it is noted that he spent in those conditions more than three years. The Court therefore considers that the applicants Mr Ananyev and Mr Bashirov were subjected to inhuman and degrading treatment in breach of Article 3 of the Convention. (…)

VII. Application of article 46 of the convention
179. The Court notes that inadequate conditions of detention appear to constitute a recurrent problem in Russia which has led it to find violations of Articles 3 and 13 of the Convention in more than eighty judgments that have been adopted since the first such finding in the Kalashnikov case in 2002. The Court therefore considers it timely and appropriate to examine the present case under Article 46 of the Convention which reads, in the relevant part, as follows:

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution..."

A. General principles
180. The Court recalls that Article 46 of the Convention, as interpreted in the light of Article 1, imposes on the respondent State a legal obligation to implement, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the right of the applicant which the Court found to be violated. Such measures must also be taken in respect of other persons in the applicant's position, notably by solving the problems that have led to the Court's findings (see Scozzari and Giunta v. Italy [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; Christine Goodwin v. the United Kingdom [GC], no. 28957/95, § 120, ECHR 2002-VI; Lukenda v. Slovenia, no. 23032/02, § 94, ECHR 2005-X; and S. and Marper v. the United Kingdom [GC], nos. 30562/04 and 30566/04, § 134, ECHR 2008 ...). This obligation

has consistently been emphasised by the Committee of Ministers in the supervision of the execution of the Court's judgments (see, among many authorities, Interim Resolutions DH(97)336 in cases concerning the length of proceedings in Italy; DH(99)434 in cases concerning the action of the security forces in Turkey; ResDH(2001)65 in the case of Scozzari and Giunta v. Italy; ResDH(2006)1 in the cases of Ryabykh and Volkova v. Russia).

181. In order to facilitate effective implementation of its judgments along these lines, the Court may adopt a pilot-judgment procedure allowing it to clearly identify in a judgment the existence of structural problems underlying the violations and to indicate specific measures or actions to be taken by the respondent State to remedy them (see Broniowski v. Poland [GC], 31443/96, §§ 189-194 and the operative part, ECHR 2004-V, and Hutten-Czapska v. Poland [GC] no. 35014/97, ECHR 2006-... §§ 231-239 and the operative part). This adjudicative approach is, however, pursued with due respect for the Convention organs' respective functions: it falls to the Committee of Ministers to evaluate the implementation of individual and general measures under Article 46 § 2 of the Convention (see, mutatis mutandis, Broniowski v. Poland (friendly settlement) [GC], no. 31443/96, § 42, ECHR 2005-IX, and Hutten-Czapska v. Poland (friendly settlement) [GC], no. 35014/97, § 42, 28 April 2008).

182. Another important aim of the pilot-judgment procedure is to induce the respondent State to resolve large numbers of individual cases arising from the same structural problem at the domestic level, thus implementing the principle of subsidiarity which underpins the Convention system. Indeed, the Court's task, as defined by Article 19, that is to "ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto", is not necessarily best achieved by repeating the same findings in a large series of cases (see, mutatis mutandis, E.G. v. Poland (dec.), no. 50425/99, § 27, 23 September 2008). The object of the pilot-judgment procedure is to facilitate the speediest and most effective resolution of a dysfunction affecting the protection of the Convention rights in question in the national legal order (see Wolkenberg and Others v. Poland (dec.), no. 50003/99, § 34, ECHR 2007 ... (extracts)). While the respondent State's action should primarily aim at the resolution of such a dysfunction and at the introduction, where appropriate, of effective domestic remedies in respect of the violations in question, it may also include ad hoc solutions such as friendly settlements with the applicants or unilateral remedial offers in line with the Convention requirements. The Court may decide to adjourn examination of all similar cases, thus giving the respondent State an opportunity to settle them in such various ways (see, mutatis mutandis, Broniowski, cited above, § 198, and Xenides-Arestis v. Turkey, no. 46347/99, § 50, 22 December 2005).

183. If, however, the respondent State fails to adopt such measures following a pilot judgment and continues to violate the Convention, the Court will have no choice but to resume examination of all similar applications pending before it and to take them to judgment so as to ensure effective observance of the Convention (see Burdov (no. 2), cited above, § 128).

B. Existence of a structural problem warranting the application of the pilot-judgment procedure

184. Since its first judgment concerning the inhuman and degrading conditions of detention in Russian pre-trial remand centres (see Kalashnikov, cited above), the Court has found a violation of Article 3 on account of similar conditions of detention in more than eighty cases (see Annex). A number of those judgments also concluded that there had been a violation of Article 13 on account of the absence of any effective domestic remedies for the applicants' complaints about the conditions of their detention. According to the Court's case management database, there are at present approximately two hundred and fifty prima facie meritorious applications against Russia awaiting first examination which feature, as their primary grievance, a complaint about inadequate conditions of detention. The above numbers, taken on their own, are indicative of the existence of a recurrent structural problem (see, among other authorities, Bottazzi v. Italy [GC], no. 34884/97, § 22, ECHR 1999-V; Lukenda, cited above, §§ 90-93; and Rumpf v. Germany, no. 46344/06, §§ 64-70, 2 September 2010).

185. The violations of Article 3 found in the previous judgments, as well as those found in the present case, originated in remand centres that were located in various administrative entities of the Russian Federation and in geographically diverse regions. Nevertheless, the set of facts underlying these violations was substantially similar: detainees suffered inhuman and degrading treatment on account of an acute lack of personal space in their cells, a shortage of sleeping places, unjustified restrictions on access to natural light and air, and non-existent privacy when using the sanitary facilities. It appears, therefore, that the violations were neither prompted by an isolated incident, nor attributable to a particular turn of events in those cases, but originated in a widespread problem resulting from a malfunctioning of the Russian penitentiary system and insufficient legal and administrative safeguards against the proscribed kind of treatment. This problem has affected, and has remained capable of affecting, a large number of individuals who have been detained in remand centres throughout Russia (compare Broniowski, § 189, and Hutten-Czapska, § 229, both cited above).

186. It is further recalled that the obligation to improve without delay the "practically inhuman conditions" in pre-trial detention centres in line with Recommendation R(87)3 on European prison rules (cited in paragraph 58 above) was one of the accession commitments of the Russian Federation which it undertook to implement when joining the Council of Europe (see Parliamentary Assembly's Opinion No. 193 (1996), § 7 (ix)). In its Resolution 1277 (2002) on the honouring of obligations and commitments by the Russian Federation, the Parliamentary Assembly noted a sharp decrease in the numbers of detainees in custodial institutions but deplored detention conditions, in particular prison overcrowding,

poor health care and insufficient financing. It called on Russian authorities to improve the conditions in pre-trial detention centres and ensure respect for the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and to implement the recommendations made by the Committee for the Prevention of Torture (point 8 (ix)). A more recent report by the Monitoring Committee on the honouring of obligations and commitments by the Russian Federation (Doc. 10568, 3 June 2005) noted that, as a result of mass amnesties, the use of alternative sentencing and reduction of penalties in the Criminal Code, as well as the transfer of competence for the ordering and extending of pre-trial detention from prosecutors to courts, and the construction of new remand centres, the average overcrowding in pre-trial detention had been reduced to only one per cent above the facilities' normal capacity. Nevertheless, a detailed region-by-region analysis showed that pre-trial detention centres remained overcrowded at different levels in thirty-four regions: in fifteen of them the overcrowding is less than 20%, in sixteen between 20 and 50%. In three regions – the Tuva Republic, the Chita and Kostroma regions – the pre-trial detention facilities remained more severely overcrowded (§§ 204-210 of the report).

187. Since the adoption of the Kalashnikov judgment in 2002, the problem of overcrowding in Russian remand centres has featured prominently on the agenda of the Committee of Ministers of the Council of Europe in accordance with Article 46 of the Convention. In its first Interim Resolution concerning the execution of the Kalashnikov judgment, the Committee of Ministers noted that the problem of overcrowding plagued remand centres in fifty-seven out of eighty-nine Russian regions and that prompt action was necessary to remedy the problem and to align the sanitary conditions of detention with the requirements of the Convention (Interim Resolution CM/ResDH(2003)123, cited in paragraph 59 above). A second interim resolution adopted in 2010 concerned the execution of the Kalashnikov judgment and thirty-one further similar judgments that the Court had issued in the meantime (Interim Resolution CM/ResDH(2010)35, cited in paragraph 60 above). The resolution recalled that the existence of structural problems and the pressing need for comprehensive general measures had been stressed by the Committee of Ministers and acknowledged by the Russian authorities, and reiterated the need for an integrated approach to finding solutions to the problem of overcrowding in remand prisons, including in particular changes to the legal framework, practices and attitudes.

188. The Russian authorities did not deny the existence of a structural problem related to overcrowding in pre-trial detention facilities. Its magnitude and urgency were acknowledged both in the Government's submissions in the present case and in the documents and position papers adopted at national level, such as for instance the Federal Programme for Development of the Penitentiary of 5 September 2006 (cited in paragraph 54 above). The Programme expressly referred to Russia's accession commitments and the standards for pre-trial detention set by the Court and the Committee for the Prevention of Torture and declared as its objective the alignment of the conditions of detention with the Russian legal norms and further transition to international standards. Taking stock of the situation in the penitentiary system, it noted that only forty Russian regions possessed facilities capable of providing accommodation to detainees in accordance with the domestic sanitary norm of four square metres per inmate, whereas pre-trial detention centres in eighteen regions could offer less than three square metres per inmate. The Programme's annual targets were to bring sixty per cent of remand centres into compliance with the Russian sanitary norm by 2011 and all of them by 2016. However, less than one per cent of remand centres were expected to be compatible with the international standard of seven square metres per inmate by 2011 and only 11.4 per cent by 2016.

189. Notwithstanding a perceptible trend towards an improvement in material conditions of detention and a reduction in the number of prisoners awaiting trial, the urgency of the problem of overcrowding has not abated in recent years. The Court's findings in the instant case and the continuing influx of new applications illustrate the gravity of the situation in some remand centres where inmates still do not have at their disposal an individual sleeping place, as was the case for Mr Ananyev, and highlight the absence of effective domestic remedies for either putting an end to an ongoing violation or obtaining compensation for a period of detention that has already ended. It is a reason for grave concern for the Court that the violations identified in the present judgment occurred more than five years after the Kalashnikov judgment in which the problem of overcrowding had been identified for the first time, notwithstanding the respondent Government's obligation under Article 46 to adopt, under the supervision of the Committee of Ministers, the necessary remedial and preventive measures, both at individual and general levels (compare Burdov (no. 2), cited above, § 134).

190. Taking into account the recurrent and persistent nature of the problem, the large number of people it has affected or is capable of affecting, and the urgent need to grant them speedy and appropriate redress at the domestic level, the Court considers it appropriate to apply the pilot-judgment procedure in the present case (see Burdov (no. 2), cited above, § 130, and Finger v. Bulgaria, no. 37346/05, § 128, 10 May 2011). As it has emphasised above, the mere repetition of the Court's findings in similar individual cases would not be the best way to achieve the Convention's purpose. The Court thus feels compelled to address the underlying structural problems in greater depth, to examine the source of those problems and to provide further assistance to the respondent State in finding the appropriate solutions and to the Committee of Ministers in supervising the execution of the judgments (see Resolution Res(2004)3 of the Committee of Ministers on judgments revealing an underlying systemic problem, and the Declarations adopted by the High Contracting Parties at the Interlaken and Izmir conferences).

C. Origin of the problem and general measures required to address it

191. The Court acknowledges that the recurrent violations of Article 3 resulting from inadequate conditions of detention in some Russian remand centres constitute an issue of considerable magnitude and complexity. It is not the product of a defective legal provision or regulation or a particular lacuna in Russian law. Rather, it is a multifaceted problem owing its existence to a large number of negative factors, both legal and logistical in nature. Some of them – such as the insufficient number of remand prisons, their antiquity and poor state of repair, misallocation of resources, and a lack of transparency in prison management – may be traced back to the penitentiary system, whereas others – such as the excessive and often unjustified recourse to detention on remand, rather than alternative preventive measures, or a lack of efficient remedies to ensure that the conditions comply with the Russian legislation – have originated elsewhere.

1. Avenues for improvement of detention conditions

192. It is undisputable that the situation in Russian remand centres as described above still requires comprehensive general measures at national level, measures which must take into consideration a large number of individuals who are currently affected by it. The Court welcomes the efforts that have been deployed so far by the Russian authorities with a view to bringing the conditions of detention in remand centres into line with the domestic and international standards. In the period from 2002 to 2006, a federal programme for reforming prisons permitted renovation and reconstruction of a number of remand centres and resulted in a tangible increase in the number of places and floor space per inmate. It was followed by a still more ambitious programme, approved by a Government decision of 5 September 2006 for a period from 2007 to 2016, which provides in particular for the construction of more than twenty new remand centres providing remand prisoners with seven square metres of personal space. Most importantly, one of the programme's objectives is to ensure that, by the year 2016, the accommodation in all remand prisons should meet the Russian legal requirement of four square metres per person.

193. The Court, however, notes with regret that the other measures for improvement of the material conditions of detention that can be implemented in the short term and at little extra cost – such as for instance shielding the toilets located inside the cell with curtains or partitions, removal of thick netting on cell windows blocking access to natural light and a reasonable increase in the frequency of showers – have not yet been implemented. The Court also observes that the adoption of such measures has been considered by the Committee of Ministers in close co-operation with the Russian authorities (see the Interim Resolutions cited in paragraphs 59 and 60 above). The Committee's Resolutions demonstrate that some progress has been achieved and that further action is being considered and taken to tackle the problem.

194. The Court, like the Committee of Ministers, supports the Russian authorities' position that there should be an integrated approach to finding solutions to the problem of overcrowding in remand prisons, including in particular changes to the legal framework, practices and attitudes (see the Committee's Interim Resolution CM/ResDH(2010)35, cited above). Having examined a variety of the measures already adopted and still being taken for the improvement of conditions of pre-trial detention in Russia, the Court notes that this process raises a number of complex legal and practical issues which go, in principle, beyond the Court's judicial function. It is not the Court's task to advise the respondent Government about such a complex reform process, let alone recommend a particular way of organising its penal and penitentiary system. While the pilot-judgment procedure has been instrumental in helping Contracting States to comply with their obligations under the Convention, the Court does not have the capacity, nor is it appropriate to its function as an international court, to involve itself in reforms of that type in parallel with the Committee of Ministers or to order a specific general measure to be adopted in that process by the respondent State. The Committee of Ministers is better placed and equipped to monitor the measures that need to be adopted by Russia to ensure adequate conditions of pre-trial detention in accordance with the Convention (see, mutatis mutandis, Finger, cited above, § 115; Burdov (no. 2), cited above, §§ 136 and 137; and Yuriy Nikolayevich Ivanov v. Ukraine, no. 40450/04, §§ 90-92, ECHR 2009-... (extracts)).

195. The above considerations do not prevent the Court, however, from indicating the existence of a general issue or voicing a particular concern that warrant the respondent State's in-depth consideration in the light of its findings in individual cases. Such indications from the Court would be all the more useful and appropriate as they contribute to a better identification of complex structural problems underlying the violations and to the establishment of appropriate solutions to such problems.

196. Thus, the Court considers it important for the purposes of the present judgment to highlight two such issues which need inevitably to be addressed by the Russian authorities in their ongoing struggle against persistent overcrowding of remand centres. The first issue concerns the close affinity between the problem of overcrowding, which falls to be considered under Article 3 of the Convention, and an excessive length of pre-trial detention, which has been found by the Court to violate another provision of the Convention, namely Article 5, in an equally significant number of Russian cases. The second issue, which is closely linked to the first, concerns possible additional ways of combating the overcrowding through provisional arrangements and safeguards for the admission of prisoners in excess of the prison capacity.

(a) Reducing recourse to pre-trial detention

197. It has been the constant and common position of all Council of Europe bodies that a reduction in the number of remand prisoners would be the most appropriate solution to the problem of overcrowding. The Court has reiterated in many of its judgments that, in view of both the presumption of innocence and the presumption in favour of liberty, remand in

custody must be the exception rather than the norm and only a measure of last resort (see, among many others, McKay v. the United Kingdom [GC], no. 543/03, § 41, ECHR 2006X). The Committee for the Prevention of Torture considered that in the context of high incarceration rates, such as those persisting in Russia, "throwing increasing amounts of money at the prison estate will not offer a solution" (see paragraph 28 of the 11th General Report, CPT/Inf(2001)16), and has advocated active review of pre-trial custody policy. As recently as in 2010 the Committee of Ministers indicated that "the creation of new places of detention cannot in itself provide a lasting solution to the problem of prison overcrowding and that this measure should be closely supported by others aimed at reducing the overall number of remand prisoners" (see Interim Resolution CM/ResDH(2010)35, and also point I(2) of the Appendix to Recommendation R(99)22, cited in paragraph 57 above).

198. The statistical information from the Russian judicial system demonstrates a substantial reduction in the number of initial applications for a detention order, down approximately thirty-four per cent in 2010 as compared to 2007 (see paragraph 53 above). The number of applications for an extension order also diminished but in a much less perceptible manner, only by some eight per cent in the same four-year period. A decreasing number of applications for initial detention orders may be interpreted as a consequence of the recent steps towards decriminalising certain non-violent offences and also as an indication of a more reserved approach on the part of investigative authorities to using custody as a preventive measure at the pre-trial stage. Even though the number of requests by the prosecutors has decreased in relative terms, the absolute number still appears to be much too high.

199. What seems to be a reason for concern is that in the same time period the percentage of applications for a detention order granted by courts has remained at a constant and inordinately high level and has never varied despite a decreasing global number of such applications. Indeed, in the years 2007 to 2010 the Russian courts have ordered placement in custody in more than ninety per cent of cases in which this measure was sought by the investigative authorities, and approved applications for a further extension order in approximately ninety-eight per cent of cases. In practical terms, this meant that the prosecutor's request for a custodial measure was rejected only in respect of one in ten defendants and that only one out of fifty incarcerated defendants was set free before the opening day of the trial. In the second half of the year 2008, bail was used in 407 cases; in the first half of 2009, their number grew to 599 (see point II (4) of Appendix II to Interim Resolution CM/ResDH(2010)35, cited above), which still represented less than one per cent of the cases in which the suspect was remanded in custody. The statistics for the year 2010 did not show any visible change in the judicial practice and the percentage of rejected applications for detention or extension orders increased by less than 0.2 per cent, notwithstanding the fact that on 22 October 2009 the Supreme Court of the Russian Federation adopted a special ruling (see paragraph 52 above) by which it reminded the courts that detention on remand should only be ordered if other preventive measures could not be applied.

200. The Court, for its part, has already identified a malfunctioning of the Russian judicial system on account of excessively lengthy detention on remand without proper justification. Starting with the Kalashnikov judgment in 2002, the Court has to date found a violation of the obligation to guarantee a trial within a reasonable time or release pending trial, under Article 5 § 3 of the Convention, in more than eighty cases against Russia where the domestic courts extended an applicant's detention relying essentially on the gravity of the charges and employing the same stereotyped formulae, without addressing specific facts or considering alternative preventive measures (see, among many other authorities, Belevitskiy v. Russia, no. 72967/01, §§ 99 et seq., 1 March 2007; Mamedova, cited above, §§ 72 et seq.; Dolgova v. Russia, no. 11886/05, §§ 38 et seq., 2 March 2006; Khudoyorov, cited above, §§ 172 et seq.; Rokhlina v. Russia, no. 54071/00, §§ 63 et seq., 7 April 2005; Panchenko v. Russia, no. 45100/98, §§ 91 et seq., 8 February 2005; and Smirnova v. Russia, nos. 46133/99 and 48183/99, §§ 56 et seq., ECHR 2003-IX (extracts)). The Court noted in particular that "the lack of reasoning was not an accidental or short-term omission but rather a customary way of dealing with applications for release" (see Khudobin v. Russia, no. 59696/00, § 108, ECHR 2006-... (extracts)).

201. Unjustified and excessive recourse to custodial measures at the pre-trial stage of criminal proceedings has also been pinpointed by the Committee of Ministers as a structural problem in Russia. Its existence has been confirmed by the continuous flow of new similar applications to the Court and by the data available at national level and it has been closely linked with the problem of overcrowding in pre-trial detention centres (see points 3 and 4 of the Memorandum "Detention on remand in the Russian Federation: Measures required to comply with the European Court's judgments" prepared by the Department of the Execution of Judgments of the European Court of Human Rights CM/InfDH(2007)4 of 12 February 2007, and Interim Resolution CM/ResDH(2010)35, cited above). The Committee of Ministers noted the repeated statements by the Russian President and high-ranking State officials, including the Prosecutor General and the Minister of Justice, to the effect that up to thirty per cent of individuals held in custody should not have been deprived of their liberty, having been suspected or accused of offences of low or medium gravity, and welcomed the unambiguous commitment at the highest political level to change this unacceptable situation and to adopt urgent legislative and other measures to that effect (see Interim Resolution CM/ResDH(2010)35, cited above).

202. The Court welcomes the steps that have already been taken by the Russian authorities to reduce the number of individuals remanded in custody at the pre-trial stage of criminal proceedings. It reiterates that Russian prosecutors should be formally encouraged to decrease the number of applications for detention orders, except in the most serious cases involving violent offences. However, the above judicial

statistics, read together with the findings of a violation of Article 5 § 3 in the Court's recent judgments and the Committee of Ministers' assessment, demonstrate that the successful prevention of overcrowding of remand centres is contingent on further consistent and long-term measures for achieving full compliance with the requirements of Article 5 § 3. In addition to the Committee of Ministers' conclusions in its Interim Resolution CM/ResDH(2010)35 and Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, the Court strongly doubts that the existing trend to use deprivation of liberty as the preventive measure of predilection can be reversed unless the relevant provisions of the Russian Code of Criminal Procedure have been amended to reflect expressly the requirements flowing from Article 5 of the Convention. As the Court has consistently reiterated, the first among these requirements is that the presumption should in all cases be in favour of release and that remand in custody should be an exceptional measure rather than the norm. Until conviction, the defendant must be presumed innocent and may be remanded in custody only if it has been convincingly established by reference to specific facts and evidence collected by the prosecution that (i) there is reasonable suspicion that he or she committed an offence, and (ii) there is a substantial risk of his or her absconding, reoffending, obstructing the course of justice or threatening public order, and (iii) these risks cannot be satisfactorily allayed through the use of bail or any other preventive measure not related to deprivation of liberty (see points II (6)-(9) of Recommendation Rec(2006)13, and, among other authorities, Bykov v. Russia [GC], no. 4378/02, §§ 61-64, ECHR 2009..., and Kudła, cited above, §§ 110 et seq.).

203. Finally, any such amendment to the existing legislative framework should be accompanied by effective measures to implement the changes in judicial practice. The Court notes, as an interesting example, that some Contracting States responded to its judgments by redistributing judicial duties and appointing special judges to decide on the application of preventive measures and supervise the observance of human rights in criminal proceedings (see, in particular, Resolution CM/ResDH(2009)131 on the execution of the Court's judgments in Lavents and Jurjevs against Latvia; see also Resolution ResDH(2003)50 on the execution of the Court's judgment in Muller against France presenting the French Law on Presumption of Innocence of 15 June 2000, which introduced the function of juge des libertés et de la detention). Adequate in-service training of judges dealing with applications for detention orders is also indispensable, as was highlighted in the Committee of Ministers' Recommendation (2004)4 of 12 May 2004 on the Convention and professional training.

(b) Provisional arrangements for preventing and alleviating overcrowding

204. A realistic outlook on the situation as it obtains at the present time in Russian pre-trial detention centres demonstrates that a significant number of them are still suffering from overcrowding and other deviations from the standards of detention established in Russian legislation. Notwithstanding a marked improvement in material conditions over recent years and the additional efforts that have already been planned and budgeted for, substandard conditions of detention are likely to persist for several more years (see, for instance, the data in Appendix II to Interim Resolution CM/ResDH(2010)35 and in the Federal Programme for Development of the Penitentiary, both cited above). This situation calls for the prompt introduction of additional legal safeguards that would be capable of preventing or at least alleviating the overcrowding in those prisons where it has remained, and ensuring effective respect for the rights of individuals who have been or will be detained there.

205. The European Prison Rules require that the national law set specific minimum requirements in respect of the accommodation provided for prisoners, with particular regard being had to the floor space, cubic content of air, lighting, heating and ventilation (Rules 18.1-18.3). It would appear therefore appropriate to establish the maximum capacity (numerus clausus) for each remand prison through the definition of space per inmate as a minimum of square and possibly cubic metres, which would at least be compatible with the current requirements of the Pre-trial Detention Act and would be periodically reviewed to reflect the evolving penitentiary standards. In addition, an operational capacity may be defined which is different from the maximum capacity and based on control, security and the proper operation of the regime, with a view to ensuring a smooth turnover of inmates and accommodating partial renovation work or other contingencies.

206. In order to ensure better compliance with the rules set out in law, the powers and responsibility of the governors of remand centres need to be reviewed. At present, there does not appear to be any possibility for the governors not to accept detainees beyond the prison capacity. The situation could be improved by creating such a possibility in connection with the introduction of rules on maximum capacity, as described in the preceding paragraph, in order to ensure that the operational capacity of remand centres is not exceeded other than in strictly defined and exceptional circumstances.

207. The law may, however, provide for special transitional arrangements which could apply pending an overall improvement of conditions of detention in the remand prison. By way of example, the Court would point to the legislative amendments that were introduced in the Polish Code of Execution of Sentences in the wake of the pilot judgment concerning the conditions of detention in Polish prisons (see paragraph 61 et seq. above). The crucial features of special transitional arrangements should be the following: (i) a short and defined duration; (ii) judicial supervision; and (iii) availability of compensation.

208. Allowing only a short period in which to find a detention facility that meets the adequate conditions requirements should ensure that the endurance of inadequate conditions

would not be long enough to entail a violation of Article 3. The duration of the transitional period in a specific case should be decided upon by a court by reference to concrete factual circumstances, but the law should set the maximum duration of such detention which should not be exceeded under any circumstances. The law should also exhaustively define the situations in which the court may order the detainee's temporary placement in an overcrowded facility. It is finally important to establish some form of compensation for such temporary placement, whether it is monetary compensation, extended hours of outdoor exercise, increased access to out-of-cell recreational activities, or a combination of these.

209. The Court further notes that it would be advisable if prosecutors and prison governors could use the additional time gained through transitional arrangements to examine the possibilities for freeing up places in the remand prison that offer adequate conditions of detention. Working in co-operation, they would be able to diligently identify the detainees whose authorised period of detention is about to expire or is no longer needed, and to make a proposal to the judicial or prosecutorial authorities for their immediate release. Such concerted action by the prison and prosecution authorities is an important element for easing the level of overcrowding and ensuring adequate material conditions.

2. Setting-up of effective remedies

210. The Court further reiterates that the applicants in the present case were victims of a violation of Article 13 of the Convention on account of the absence of an effective domestic remedy for ventilating arguable claims of allegedly inadequate conditions of detention. The Court reached this conclusion following a careful examination of the situation obtaining in Russian law. The Court also noted the structural nature of this problem in the Russian legal system, finding that it does not currently allow the aggrieved individual either to put an end to an ongoing violation or to obtain adequate compensation for a period of detention that has already ended.

211. In view of the time elapsed since its first judgments highlighting that problem, the Court considers that the Russian Federation's obligations under the Convention compel it to set up the effective domestic remedies required by Article 13 without further delay. The need for such remedies is all the more pressing as large numbers of people affected by violations of a fundamental Convention right have no other choice but to seek relief through time-consuming international litigation before the Court. This situation is at odds with the principle of subsidiarity, which is prominent in the Convention system (see Demopoulos and Others v. Turkey (dec.), nos. 46113/99 et al., § 69, ECHR 2010...; Nagovitsyn and Nalgiyev (dec.), nos. 27451/09 and 60650/09, § 40, 23 September 2010). Less than full application of the guarantees of Article 13 in this context would unacceptably weaken the effective functioning, on the national and international level, of the scheme of human rights protection set up by the Convention (see Finger, cited above, § 121, and McFarlane v. Ireland [GC], no. 31333/06, § 112, ECHR 2010..., with further references). The Contracting States have consistently emphasised the need for effective domestic remedies, not least in the context of repetitive cases, which become vital for guaranteeing the long-term effectiveness of the Convention and containing the Court's workload (see Recommendation Rec(2004)6 to member States on the improvement of domestic remedies, and the Declarations adopted by the High Contracting Parties at the Interlaken and Izmir conferences).

212. The Court reiterates that it has expressly abstained from requiring the respondent State to take any specific general measure for the purpose of bringing the conditions of detention in remand centres into line with Article 3 of the Convention. While voicing its concerns and indicating possible ways to address the existing deficiencies, the Court has found that any substantive mandate in this area would go beyond its judicial function, given the nature of the issues involved. The situation is, however, not the same as regards the violation of Article 13 on account of the lack of effective domestic remedies in respect of the applicants' complaints about inadequate conditions of detention. In accordance with Article 46 of the Convention, the Court's findings under this provision require clear and specific changes in the domestic legal system that would allow all people in the applicants' position to complain about alleged violations of Article 3 resulting from inadequate detention conditions and to obtain adequate and sufficient redress for such violations at domestic level.

213. The Court has already highlighted the existing shortcomings in Russian law and set out the Convention principles which should guide the authorities in setting up effective domestic remedies as required by the Convention. It is recalled that the respondent State is free to choose the means to meet those requirements subject to supervision of the Committee of Ministers under Article 46 of the Convention. In order to assist the authorities in finding the appropriate solutions, the Court will give further consideration to that matter. It will do by addressing first the preventive remedies and then turning to the compensatory remedy.

(a) Preventive remedies

214. An important safeguard for the prevention of violations resulting from inadequate conditions of detention is an efficient system of detainees' complaints to the domestic authorities (see Orchowski, cited above, § 154). To be efficient, the system must ensure a prompt and diligent handling of prisoners' complaints, secure their effective participation in the examination of grievances, and provide a wide range of legal tools for the purpose of eradicating the identified breach of Convention requirements.

215. Filing a complaint with an authority supervising detention facilities is normally a more reactive and speedy way of dealing with grievances than litigation before courts. The authority in question should have the mandate to monitor the violations of prisoners' rights. The title of such authority or its place within the administrative structures is not crucial as long as it is independent from the penitentiary

system's bodies, such as for instance Independent Monitoring Boards in the United Kingdom (formerly Boards of Visitors) or the Complaints Commission (beklagcommissie) in the Netherlands. In the Russian legal system, this mandate is entrusted to prosecutors' offices that have independent standing and responsibility for overseeing compliance by the prison authorities with the Russian legislation.

216. In addition to being independent, the supervising authority must have the power to investigate the complaints with the participation of the complainant and the right to render binding and enforceable decisions. As the Court has observed above, the Pre-trial Detention Act and Prosecutors Act have vested broad investigative powers with supervising prosecutors and instituted a requirement on the prison authorities to report to them on the enforcement of their decisions. However, a complaint to a prosecutor falls short of the requirements of an effective remedy in so far as the process of its examination does not provide for participation of the detainee. The Court considers that, for the procedure before the supervising prosecutor to be compliant with such requirements, the complainant must at least be provided with an opportunity to comment on factual submissions by the prison governor produced at the prosecutor's request, to put questions and to make additional submissions to the prosecutor. The treatment of the complaint does not have to be public or call for the institution of any kind of oral proceedings, but there should be a legal obligation on the prosecutor to issue a decision on the complaint within a reasonably short time-limit.

217. Turning now to the possibility of complaining to a court of general jurisdiction about an infringement of rights or liberties under the provisions of Chapter 25 of the Code of Civil Procedure ("a Chapter 25 claim"), the Court notes that proceedings on a Chapter 25 claim are attended with appropriate safeguards of their adversarial nature and make provision for a fair trial and effective participation of the claimant. It also welcomes the ruling by the Plenary Supreme Court of 10 February 2009, which explicitly characterised complaints about inadequate conditions of detention as being actionable Chapter 25 claims. The Court has little doubt that this type of claim has the potential of becoming an effective domestic remedy, subject, however, to the following reservations.

218. Under the Code of Civil Procedure, a justified Chapter 25 claim may result in a declaration of unlawfulness and a requirement to make good the violation found. There is no mention of the possibility of claiming, or being awarded, compensation in respect of the violation that has already occurred. It is likewise unclear whether a Chapter 25 claim may be combined with an ordinary claim for damages under Articles 151 and 1064 of the Civil Code and be examined in the same set of proceedings. If the joining of these claims is impossible as a matter of law or judicial practice, this would impose an excessive burden on the claimant, who would be required first to litigate over his or her substantive grievance and then to bring the declaration of unlawfulness back to the same court with a view to instituting a new set of proceedings for compensation. The Court considers that the Chapter 25 claim should provide for the possibility of granting compensation in respect of an infringement of the claimant's right that has already occurred.

219. Furthermore, enforcement of a Chapter 25 judgment may be frustrated by legal and practical impediments. The Code of Civil Procedure does not specify the kind of remedial action a court may order and, as the Court has observed above, there is no case-law that could give indications as to the prevailing judicial practice. It is therefore impossible to ascertain whether a Chapter 25 judgment would be limited to a general statement that the established violation be removed or could also order specific measures that would be needed to combat overcrowding and other forms of ill-treatment, affecting not just the claimant but large segments of the prison population. Taking into account the pervasive and structural nature of the problem of overcrowding, consideration should be given to equipping the Russian courts with appropriate legal tools allowing them to consider the problem underlying an individual complaint and effectively deal with situations of massive and concurrent violations of prisoners' rights resulting from inadequate detention conditions in a given remand facility.

220. Finally, an important issue arises with regard to enforcement of a Chapter 25 court order and a lack of appropriate sanctions for non-enforcement. The recently enacted Compensation Act of 30 April 2010 is not applicable to Chapter 25 court orders as it only allows the creditor to claim monetary compensation in connection with the belated enforcement of a judgment debt against the State budgets (see Nagovitsyn and Nalgiyev (dec.), cited above). Furthermore, Chapter 25 orders do not appear to be subject to mandatory enforcement by the court bailiffs. It follows that such a judicial order may remain without effect in practice. Admittedly, a State official who persistently sabotages enforcement of a judicial decision may be held criminally liable under Article 315 of the Criminal Code; however, the Court has not yet seen evidence of an established practice of instituting criminal proceedings against defaulting officials (see Burdov (no. 2), cited above, § 104). It is therefore important to introduce measures which ensure that the requirement to report back to the court is respected.

(b) Compensatory remedy

221. In all cases where a violation of Article 3 has already occurred, the Court considers that the State must be prepared to acknowledge the violation and make readily available some form of compensation to the aggrieved individual. The introduction of the preventive remedy alone would clearly not be sufficient because a remedy designed to prevent the overcrowding and other violations of Article 3 from occurring would not be adequate to redress a situation in which the individual has already endured for some time inhuman or degrading treatment. The respondent Government must therefore put in place a remedy which can provide redress for the violations that have already occurred. The Court would add

that the introduction of an effective compensatory remedy would be particularly important in view of the subsidiarity principle, so that individuals are not systematically forced to refer to the Court in Strasbourg complaints that require the finding of basic facts or the calculation of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions (see Demopoulos and Others (dec.), cited above, § 69, and also, mutatis mutandis, Scordino v. Italy (no. 1) [GC], no. 36813/97, § 188, ECHR 2006V).

222. A mitigation of sentence may under certain conditions be a form of compensation afforded to defendants in connection with violations of the Convention that occurred in the criminal proceedings against them. The Court has previously accepted that in cases concerning the failure to observe the reasonable-time requirement guaranteed by Article 6 § 1 of the Convention, the national authorities can afford adequate redress in particular by reducing the applicant's sentence in an express and measurable manner (see Finger, cited above, § 128; Morby v. Luxembourg (dec.), no. 27156/02, 13 November 2003; Beck v. Norway, no. 26390/95, §§ 27-28, 26 June 2001, and Laurens v. Netherlands, no. 32366/96, Commission decision of 1 July 1998). In the Court's view, such a mitigation of the sentence is also capable of affording adequate redress for a violation of Article 5 § 3 in cases in which the national authorities had failed to process the case of an applicant held in pre-trial detention with special diligence (see Dzelili v. Germany, no. 65745/01, § 83, 10 November 2005).

223. The Court has not yet had an opportunity to decide on a case in which the applicant's sentence has been mitigated in redress for a prior violation of Article 3 of the Convention. It notes that, according to the official bulletin of the State Duma of the Russian Federation, a draft amendment of the sentencing provisions of the Criminal Code, introduced and prepared for first reading, provides for an increased crediting of the period spent in pre-trial detention towards the sentence (Draft Law no. 73983-5 amending Article 72 of the Criminal Code). The proposal envisages that the time in pre-trial detention would be multiplied by certain standard reduction coefficients and the resulting period deducted from the duration of the custodial sentence. Whereas it is not for the Court to express an opinion on such an legislative issue, it considers it relevant to reiterate in this connection the requirements of an effective remedy, set out in paragraph 94 above, which may be useful for the Russian authorities in their implementation of the present judgment irrespective of the outcome of the above legislative amendment.

224. First, a compensatory remedy in the form of a mitigation of sentence will necessarily be of a limited remit, for it will be accessible only to the persons convicted and sentenced to a period of imprisonment of a certain duration. It does nothing to accommodate the rights of persons who have been acquitted or convicted but given a sentence shorter than the time they had already spent in pre-trial detention adjusted by the applicable coefficient.

225. Second, the courts must acknowledge the violation of Article 3 in a sufficiently clear way and afford redress by reducing the sentence in an express and measurable manner. Without a specific explanation in the domestic courts' judgments as to the extent to which the finding and acknowledgement of a violation of Article 3 entailed a reduction of the sentence, the mitigation of the sentence would not deprive, on its own, the aggrieved individual of his status as a victim of the violation (see Dzelili, cited above, § 85). This measurability requirement presupposes the legal possibility for an individualised assessment of the impact of the violation on the Convention rights and of the specific redress that should be afforded to the aggrieved individual. An automatic mitigation operated by means of standard reduction coefficients is unlikely to be compatible with individualised assessment. Besides, it should be taken into account that an automatic reduction of sentence for convicted criminals on account of their previous stay in substandard detention facilities may adversely affect the public interest of criminal punishment (see Dimitrov and Hamanov v. Bulgaria, nos. 48059/06 and 2708/09, § 129, 10 May 2011).

226. Finally, it is also clear that while an automatic mitigation of sentence on account of inhuman conditions of detention may be considered as a part of a wide array of general measures to be taken, it will not provide on its own a definitive solution to the existing problem of deficient remedies nor contribute, to a decisive extent, to eradication of genuine causes of overcrowding, namely the excessive use of custodial measures at the pre-trial stage and poor material conditions of detention.

227. As regards the possibility of obtaining monetary compensation for a violation of Article 3, in the light of the Court's conclusions set out in paragraphs 113-118 above, it appears unlikely that an effective compensatory remedy can become operational without changing the provisions of the domestic legislation on certain crucial points (see Burdov (no. 2), cited above, § 138). For the sake of clarity and given the importance of the matter, the Court finds it appropriate to provide guidance to the Government, in order to assist them in the performance of their duty under Article 46 § 1 of the Convention.

228. Monetary compensation should be accessible to anyone who has been subjected to inhuman or degrading treatment in breach of Article 3 of the Convention and who has made an application to that effect. The Court emphasises that the burden of proof imposed on the claimant in compensation proceedings should not be excessive. He or she may be required to show a prima facie case of ill-treatment and produce such evidence as is readily accessible to him or her, such as a detailed description of conditions of detention, statements from witnesses or replies from supervisory bodies. It would then fall to the authorities to refute the allegations of ill-treatment by means of documentary evidence capable of demonstrating that the conditions of the claimant's detention were not in breach of Article 3. The procedural rules governing the examination of such a claim must conform to the principle

of fairness enshrined in Article 6 of the Convention, including that it be heard within a reasonable time, and the rules governing costs must not place an excessive burden on litigants where their claim is justified (see Finger, cited above, § 125).

229. The finding of an incompatibility of the conditions of detention with the requirements of Article 3, on the basis of the criteria outlined in paragraphs 143-158 above, is of a factual nature and creates a strong legal presumption that such conditions have occasioned non-pecuniary damage to the aggrieved individual. The domestic law on compensation must reflect the existence of this presumption rather than, as it does now, make the award of compensation conditional on the claimant's ability to prove the fault of specific officials or bodies and the unlawfulness of their actions. As the Court has previously found, substandard material conditions are not necessarily due to failings of prison governors or other officials but may be the product of structural malfunctioning of the domestic framework of detention on remand, whereas overcrowding may result from deficiencies originating outside the penitentiary system, for instance in courts or prosecutorial offices. It is also recalled in this connection that, even in a situation where every aspect of the conditions of detention complies with the domestic regulations, their cumulative effect may be such as to constitute inhuman treatment (see paragraph 115 above). It must therefore be made clear that neither a high crime rate, nor a lack of resources, nor other structural problems may be regarded as circumstances excluding or attenuating the domestic authorities' liability for non-pecuniary damage incurred through inhuman or degrading conditions of detention. As the Court repeatedly stressed, it is incumbent on the Government to organise its penitentiary system in such a way that it ensures respect for the dignity of detainees, regardless of any financial or logistical difficulties (see, among others, Yevgeniy Alekseyenko, § 87, and Mamedova, § 63, both cited above).

230. The level of compensation awarded for non-pecuniary damage must not be unreasonable in comparison with the awards made by the Court in similar cases. The principles outlined by the Court in paragraph 172 above may serve as guidance for the Russian authorities in determining the amount of compensation. The right not to be subjected to inhuman or degrading treatment is so fundamental and central to the system of the protection of human rights that the domestic authority or court dealing with the matter will have to provide exceptionally compelling and serious reasons to justify their decision to award lower or no compensation in respect of non-pecuniary damage (compare Finger, cited above, § 130).

231. The Court would finally emphasise that, to be truly effective and compliant with the principle of subsidiarity, a compensatory remedy needs to operate retrospectively and provide redress in respect of the violations of Article 3 which predated its introduction, both in situations where the detention has already ended with the detainee's release or transfer to a different detention regime and in situations where the detainee is still held in the conditions that fall short of the requirements of Article 3 (compare Finger, cited above, § 131).

3. Time-limit for making effective domestic remedies available

232. The Court decided to apply the pilot-judgment procedure in the present case, referring notably to the large number of people affected and the urgent need to grant them speedy and appropriate redress at domestic level. It is therefore convinced that the purpose of the present judgment can only be achieved if the required changes take effect in the Russian legal system without undue delay. It is not the Court's task to specify what would be the most appropriate way to set up the necessary remedies. The State may either amend the existing range of legal remedies or add new remedies to secure genuinely effective redress for the violation of the Convention rights concerned in the light of the Court's findings and recommendations set out above. It is also for the State to ensure, under the supervision of the Committee of Ministers, that such combination of remedies respects both in theory and in practice the requirements of the Convention as set out in this judgment (see Burdov (no. 2), cited above, § 140).

233. Whatever the approach chosen by the authorities, the creation of effective domestic remedies for complaints concerning inadequate conditions of detention may require, in the Court's preliminary assessment, a longer period of time than that which was required for the setting-up of a compensatory remedy in respect of the non-enforcement of domestic judicial decisions in response to the Burdov pilot judgment (see Nagovitsyn and Nalgiyev (dec.), cited above, § 38). The Court is convinced that a reasonable time-limit must be fixed for the adoption of the measures, given the importance and urgency of the matter and the fundamental nature of the right which is at stake. Nonetheless, it does not find it appropriate' to indicate a specific time frame for the introduction of a combination of preventive and compensatory remedies in respect of alleged violations of Article 3, involving as it does the preparation of draft laws, amendments and regulations, then their enactment and implementation, together with the provision of appropriate training for the State officials concerned. The Committee of Ministers is better equipped for that kind of task.

234. In view of the foregoing, the Court concludes that the Russian Government must produce, in co-operation with the Committee of Ministers, within six months from the date on which this judgment becomes final, a binding time frame in which to make available preventive and compensatory remedies in respect of alleged violations of Article 3 of the Convention on account of inhuman and degrading conditions of detention.

D. Redress to be granted in similar cases

235. The Court reiterates that one of the aims of the pilot-judgment procedure is to allow the speediest possible redress to be granted at the domestic level to the large numbers of

people suffering from the structural problem identified in the pilot judgment (see Burdov (no. 2), cited above, § 142). Rule 61 § 6 of the Rules of Court provides for the possibility of adjourning the examination of all similar applications pending the implementation of the remedial measures by the respondent State. The Court would emphasise that adjournment is a possibility rather than an obligation, as clearly shown by the inclusion of the words "as appropriate" in the text of Rule 61 § 6 and the variety of approaches used in the previous pilot-case judgments (see Burdov (no. 2), cited above, §§ 143-146, where the adjournment concerned only the applications lodged after the delivery of the pilot judgment, or Rumpf, cited above, § 75, where an adjournment was not considered to be necessary).

236. Having regard to the fundamental nature of the right protected by Article 3 of the Convention and the importance and urgency of complaints about inhuman or degrading treatment, the Court does not consider it appropriate to adjourn the examination of similar cases. On the contrary, the Court observes that continuing to process all conditions-of-detention cases in a diligent manner will remind the respondent State on a regular basis of its obligations under the Convention and in particular those resulting from this judgment (see Rumpf, loc. cit.).

237. Furthermore, as regards the applications that were lodged before the delivery of this judgment, the Court considers that it would be unfair if the applicants in such cases who had already suffered through periods of detention in allegedly inhuman or degrading conditions and, in the absence of an effective domestic remedy, sought relief in this Court, were compelled yet again to resubmit their grievances to the domestic authorities, be it on the grounds of a new remedy or otherwise (compare Burdov (no. 2), cited above, § 144, and Łatak, cited above, § 85).

238. The Court is convinced, however, that adjudication of hundreds pending cases of this kind will be a time-consuming process which can only be accelerated by the respondent State's efficient response to the present judgment, including the resolution of the well-founded cases at the domestic level by means of friendly settlements or unilateral remedial offers. An accelerated settlement of the individual cases at the domestic level is not only required because of the gravity of the applicants' allegations under Article 3, a provision of fundamental importance in the Convention system. The need for such a settlement is also dictated by the principle of subsidiarity: once the Court has clarified the obligations of the respondent State under the Convention, it is in principle for the latter to take the necessary remedial measures, so that the Court does not have to reiterate its finding of a violation in a long series of comparable cases.

239. The Court therefore considers that the respondent State must grant adequate and sufficient redress to all victims of inhuman or degrading conditions of detention in Russian remand prisons (SIZOs) who lodged their applications with the Court before the delivery of this judgment. Such redress will have to be made available within twelve months from the date on which this judgment become final or from the date on which the application will have been communicated to the Government under Rule 54 § 2 (b) of the Rules of Court, whichever comes later. In the Court's view, such redress may notably be achieved through ad hoc solutions such as friendly settlements with the applicants or unilateral remedial offers in line with the Convention requirements (see Burdov (no. 2), cited above, § 145). It is recalled that the compatibility of the conditions of detention with the requirements of Article 3 of the Convention will be assessed by reference to the criteria defined in this judgment (see paragraphs 143-158 above) and that the amounts of compensation in respect of non-pecuniary damage will be determined in the light of the Court's case-law and the principles outlined in paragraph 172 above.

240. The Court will examine the information provided by the Government regarding the redress offered in each particular case and accordingly decide whether the circumstances justify its continued examination.

Summary of Part 2. Conditions of detention

General considerations

Inhuman or degrading treatment usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may also be characterised as degrading treatment prohibited by international human rights law. Indeed, the prohibition of torture and inhuman or degrading treatment or punishment is a value of civilisation closely bound up with respect for human dignity.

In the context of deprivation of liberty, the European Court of Human Rights has consistently stressed that, to be inhuman or degrading, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention or punishment. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and punishment and that, given the practical demands of imprisonment, his or her health and well-being are adequately secured.

Even the absence of an intention to humiliate or debase a detainee by placing him or her in poor conditions, while being a factor to be taken into account, does not conclusively rule out a finding that a person is subjected to inhuman or degrading treatment. Indeed, it is incumbent on the government to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties.
Among the typical problems which may violate human rights of persons deprived of their liberty are overcrowding, poor hygienic conditions, lack of access to natural light, lack of access to fresh air, ventilation and heating, and lack of access to outdoor exercise.

Accommodation and overcrowding

The European Court of Human Rights considers that the minimum standard in a detention cell must be 3 sq. m of floor surface per detainee in multi-occupancy accommodation. When the space available to a detainee falls below 3 sq. m of floor surface in prisons, this lack of personal space alone is considered so severe that a strong presumption arises that the prohibition of inhuman and degrading treatment has been violated. The burden of proof is on the government which could rebut that presumption by demonstrating that there were factors capable of adequately compensating for the scarce allocation of personal space. This presumption may be rebutted only if the following factors are cumulatively met:

(1) the reductions in the required minimum personal space of 3 sq. m are short, occasional and minor;
(2) such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities; and
(3) the inmate is confined in what is, when viewed generally, an appropriate detention facility, and there are no other aggravating aspects of the conditions of his or her detention.

In cases where a prison cell – measuring in the range of 3 to 4 sq. m of personal space per inmate – is at issue the space factor remains a weighty factor in assessment of the adequacy of conditions of detention. In such instances inhuman or degrading treatment may be established if the space factor is coupled with other aspects of inappropriate physical conditions of detention related to, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of room temperature, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements.

In cases where a detainee disposes of more than 4 sq. m of personal space in multi-occupancy accommodation in prison, no issue with regard to the question of personal space arises, but at the same time other aspects of physical conditions of detention may still be problematic and make the detention inhuman or degrading.

In addition, each detainee must have an individual sleeping place in the cell, and the surface of the cell must be such as to allow the detainees to move freely between the furniture items.

If detainees are transferred from one place to another, the transfer must be carried out in adequate, not cramped conditions.

Sanitary facilities and hygiene

Access to properly equipped and hygienic sanitary facilities is of paramount importance for maintaining the inmates' sense of personal dignity. Not only are hygiene and cleanliness integral parts of the respect that individuals owe to their bodies and to their neighbours with whom they share premises for long periods of time, they also constitute a condition and at the same time a necessity for the conservation of health. A truly humane environment is not possible without ready access to toilet facilities and the possibility of keeping one's body clean. In prisons where the lavatory pan is placed in the corner of the cell with no proper separation from the living area, such close proximity and exposure is objectionable from a hygiene perspective and also deprives detainees using the toilet of any privacy.

In cases where the time for taking a shower had been limited to fifteen to twenty minutes once a week the European Court of Human Rights considered this to be manifestly insufficient for maintaining proper bodily hygiene. The number of functioning showers must be sufficient so that all detainees may make proper use of them.

Sanitary precautions should also include measures against infestation with rodents, fleas, lice, bedbugs and other vermin. Such measures comprise sufficient and adequate disinfection facilities, provision of detergent products, and regular fumigation and checkups of the cells and in particular bed linen, mattresses and the areas used for keeping food. This is also an indispensable element for the prevention of skin diseases.

Access to natural light and fresh air

It is important that prisoners have unobstructed and sufficient access to natural light and fresh air within their cells. Any security devices must not deprive prisoners of access to natural light and preventing fresh air from entering the accommodation. Restrictions on access to natural light and air may aggravate the situation of prisoners in an already overcrowded cell.

Free flow of natural air should not be confused with inappropriate exposure to inclement outside conditions, including extreme heat in summer or freezing temperatures in winter.

Outdoor exercise

Of the other elements relevant for the assessment of the conditions of detention, special attention must be paid to the availability and duration of outdoor exercise and the conditions in which prisoners could take it. All prisoners, without exception, must be allowed at least one hour of exercise in the open air every day and preferably as part of a broader programme of out-of-cell activities. Outdoor exercise facilities should be reasonably spacious and whenever possible offer shelter from inclement weather. A short duration of outdoor exercise may be a factor further exacerbating the situation of prisoners if they are confined to their cells for the rest of the time without any kind of freedom of movement.

Inhuman or degrading conditions of detention as a combination of problematic factors

In the case-law of the European Court of Human Rights, sometimes poor conditions as to one of the factors described above – in particular, overcrowding – were sufficient to conclude that the applicant was subjected to inhuman or degrading treatment. In many cases, however, the Court found that combination of various factors made the conditions of detention inhuman or degrading. In such cases it is clear that the combination of problematic aspects, taken together, was in violation of human rights, but it is uncertain whether each factor, taken individually, would have brought the Court to the same conclusion. Accordingly, it is not always possible to infer from the case-law with certainty the exact minimum standard for each of the criticised factors, taken individually.

Examples from the voluminous case-law include conditions of detention where to Court found

- a combination of a lack or a very low quality of food, a lack of medical assistance, and strong restrictions as to the possibility to receiving family visits and parcels as well as the denial of access to a lawyer to be inhuman and degrading (Ilascu case),
- a combination of severe overcrowding, lack of access to daylight, inadequate medical assistance and a dysfunctional ventilation which, coupled with cigarette smoke and dampness in the cell, aggravated the applicant's asthma attacks to be inhuman and degrading (Mozer case),
- insufficient food and no access to daylight for up to 22 hours a day, no access to toilet and tap water whenever needed, combined with inadequate medical assistance to be at least degrading (Stepuleac case),
- a situation where the applicant had to spend a considerable part of the day practically confined to his bed in a cell with no ventilation and no window, which would at times become unbearably hot, and he had to use the toilet in the presence of another inmate and be present while the toilet was being used by his cell-mate, to be degrading (Peers case),
- a combination of severe overcrowding coupled with the necessity to share beds with other inmates and to sleep in shifts, in a noisy cell with constant lighting, inadequate ventilation, and infested with pests, to be degrading (Kalashnikov case),
- overcrowding in a courtroom cell without a toilet and without access to food to be inhuman and degrading (Idalov case)

A combination of severe overcrowding and extremely bad hygienic conditions was considered to be in violation of the prohibition of cruel, inhuman and degrading treatment by the Inter-American Court of Human Rights (Montero-Aranguren case).

Inhuman or degrading conditions of detention as a structural problem

In a number of countries, the European Court of Human Rights has found structural problems with regard to inhuman or degrading conditions of detention. In many of these cases, the Court has given recommendations under Article 46 of the European Convention on Human Rights in order to overcome the problems. These recommendations are particularly interesting from the point of view of the prevention of future ill-treatment.

Typical problems, as identified by the Court, included

- a combination of overcrowding and a lack of beds with insufficient access to a toilet and to running water in Belgium (Vasilescu case),
- overcrowding combined a lack of natural light, unsanitary toilets, lack of ventilation, sometimes the presence of insects and rats in Romania (Rezmives case),
- overcrowding combined with inadequate light and ventilation as well as a lack of access to hot water in Italy (Torreggiani case),
- overcrowding combined with the insufficient separation of the lavatory from the living area, the infestation with insects, inadequate ventilation or sleeping facilities, very limited access to the shower and little time to spend away from their cells in Hungary (Varga case),
- overcrowding, hygiene and access to the toilets as well as access to health care in Bulgaria (Neshkov case),
- serious overcrowding in Polish prisons (Orchowski case),
- serious overcrowding in Greek prisons (Samaras case),
- overcrowding combined with high temperatures in the cell during summer in Slovenian prisons (Mandic and Jovic case),
- overcrowding combined with a shortage of sleeping places, unjustified restrictions on access to natural light and air, and non-existent privacy when using the sanitary facilities in Russian pre-trial detention centres (Ananyev case).

With regard to each of these states, the European Court of Human Rights has indicated general measures considered necessary for bringing the conditions of detention throughout the country in line with the requirements of international human rights law. The Court is aware that, in general, the improvement of conditions of detention raises issues that go beyond its judicial function, and that it is not its task to make recommendations on how states should organise their penal and penitentiary systems.

Still the Court makes it absolutely clear that if a state is unable to ensure prison conditions in line with international human rights law, it must either abandon its strict penal policy or put in place a system of alternative means of punishment.

In order to improve detention conditions, and in particular to tackle the problem of overcrowding, it may be necessary to renovate old correctional facilities or to construct new ones. This may require significant financial resources. However, lack of resources can never justify conditions of detention that are so poor as to amount to inhuman or degrading treatment, and states must organise their penitentiary systems in ways that ensure compliance with international human rights law, regardless of financial or logistical difficulties.

In various states the Court has also indicated that the problem of overcrowding might be solved by reduced recourse to imprisonment as a form of penalty, resorting to shorter custodial sentences, replacing imprisonment with other forms of penalty, increasing the use of various forms of early release, and suspending the enforcement of some custodial sentences. In particular, a reduction in the number of remand prisoners could contribute significantly to solving the problem of overcrowding. The Court has reiterated in many of its judgments that, in view of both the presumption of innocence and the presumption in favour of liberty, pre-trial detention must be the exception rather than the norm and only a measure of last resort.

The Court also considered it necessary in many states that effective domestic remedies be introduced in order to enable detained persons to enforce speedily their right to humane treatment within the national legal system, without the need to introduce (again) complex and time-consuming international court proceedings in each individual case. International courts certainly fulfil a very important function as regards respect for human rights; still, in the long run, the rights of each and every person deprived of their liberty can only be made a reality by the states themselves, that is, by domestic judicial and executive authorities.

Part 3. Health care for detained persons

I. Inhuman or degrading treatment in the context of health care: general considerations

The prohibition of inhuman or degrading treatment in detention requires that the health of the detained persons is adequately secured by providing them with the necessary medical assistance, as stated in the 2000 judgment in Kudla v. Poland:

(Case 70)

90. 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, among many other authorities, V. v. the United Kingdom [GC], no. 24888/94, § 69, ECHR 1999-IX, and Labita v. Italy [GC], no. 26772/95, § 119, ECHR 2000-IV).

91. However, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see, for example, the Raninen v. Finland judgment of 16 December 1997, Reports of Judgments and Decisions 1997-VIII, pp. 2821-22, § 55).

92. The Court has considered treatment to be "inhuman" because, inter alia, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. On the other hand, 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 (see, mutatis mutandis, the Tyrer v. the United Kingdom judgment of 25 April 1978, Series A no. 26, p. 15, § 30; the Soering v. the United Kingdom judgment of 7 July 1989, Series A no. 161, p. 39, § 100; and V. v. the United Kingdom cited above, § 71).

93. Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that the execution of detention on remand in itself raises an issue under Article 3 of the Convention. Nor can that Article be interpreted as laying down a general obligation to release a detainee on health grounds or to place him in a civil hospital to enable him to obtain a particular kind of medical treatment.

94. Nevertheless, under this provision the State must ensure that a person is detained in 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 of an intensity 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 by, among other things, providing him with the requisite medical assistance (see, mutatis mutandis, the Aerts v. Belgium judgment of 30 July 1998, Reports 1998-V, p. 1966, §§ 64 et seq.).

II. Lack of treatment

In the 2007 case of Testa v. Croatia, the applicant complained about the lack of adequate treatment of her illness (chronic hepatitis) as well as the general conditions of detention:

(Case 71)

1. General principles enshrined in the case-law

42. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a 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, judgment of 6 April 2000, Reports of Judgments and Decisions 2000-IV, § 119).

43. 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 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 (see, among other authorities, Ireland v. the United Kingdom, judgment of 18 January 1978, Series A no. 25, p. 65, § 162). Although the purpose of such treatment is a factor to be taken into account, in particular the question of whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (Peers v. Greece, no. 28524/95, § 74, ECHR 2001-III, and Valašinas v. Lithuania, no. 44558/98, § 101, ECHR 2001-VIII).

44. The Court has consistently stressed that the suffering and humiliation involved must in any event exceed the inevitable element of suffering or humiliation connected with a legitimate deprivation of liberty. Nevertheless, in the light of Article 3 of the Convention, the State must ensure that a person is detained under conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the individual to distress or hardship exceeding the unavoidable level of suffering inherent in detention, and that, given the practical demands of imprisonment, the person's health and well-being are adequately secured (see Kudła v. Poland [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI), with the provision of the requisite medical assistance and treatment (see, mutatis mutandis, Aerts v. Belgium, judgment of 30 July 1998, Reports

1998-V, p. 1966, §§ 64 et seq.). When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as the specific allegations made by the applicant (see Dougoz v. Greece, no. 40907/98, § 46, ECHR 2001-II).

45. In exceptional cases, where the state of a detainee's health is absolutely incompatible with the detention, Article 3 may require the release of such person under certain conditions (see Papon v. France (no. 1) (dec.), no. 64666/01, CEDH 2001-VI, and Priebke v. Italy (dec.), no. 48799/99, 5 April 2001) There are three particular elements to be considered in relation to the compatibility of the applicant's health with her stay in detention: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention and (c) the advisability of maintaining the detention measure in view of the state of health of the applicant (see Mouisel v. France, no. 67263/01, §§ 40-42, ECHR 2002-IX).

46. However, Article 3 cannot be construed as laying down a general obligation to release detainees on health grounds. It rather imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty. The Court accepts that the medical assistance available in prison hospitals may not always be at the same level as in the best medical institutions for the general public. Nevertheless, the State must ensure that the health and well-being of detainees are adequately secured by, among other things, providing them with the requisite medical assistance (see Kudła, cited above, § 94, ECHR 2000-XI; see also Hurtado v. Switzerland, judgment of 28 January 1994, Series A no. 280-A, opinion of the Commission, pp. 15-16, § 79, and Kalashnikov v. Russia, no. 47095/99, §§ 95 and 100, ECHR 2002-VI). Furthermore, if the authorities decide to place and maintain a seriously ill person in detention, they shall demonstrate special care in guaranteeing such conditions of detention that correspond to his special needs resulting from his disability (see Farbtuhs v. Latvia, no. 4672/02, § 56, 2 December 2004)

2. Scope of the issues for consideration

47. The Court notes that the applicant's complaints under Article 3 of the Convention mainly concern two issues:

- first, whether the conditions of the applicant's detention were compatible with that provision; and
- second, whether the applicant was provided with the necessary medical treatment and assistance.

The Court has, however, examined these issues together.

a. The parties' submissions

48. The Government did not comment on all of the applicant's complaints under Article 3 of the Convention. Instead, they commented only on a few issues she raised, concentrating mainly on the applicant's attitude towards her prison sentence and the prison environment (see paragraphs 25 and 26 above). In particular they submitted that the penitentiary premises were adequately furnished, ventilated and clean; the inmates' hygienic needs were satisfactorily ensured; the time was adequately organised both for working and non-working inmates; the penitentiary had a library, a fitness hall and computer equipment; and the applicant was provided with an adequate diet and medical assistance (see paragraph 27 above).

49. In support of their submissions the Government forwarded to the Court a number of photographs allegedly taken on the premises of Požega Penitentiary on an unspecified date. The photographs depict a courtyard and inner premises such as the sleeping areas, dining room, toilets, showers and halls.

50. The applicant maintained her allegations. She claimed that her description of the conditions of detention was accurate (see paragraphs 17 and 18 above). She claimed that she received no adequate medical treatment for her disease and that she had been subjected to unnecessary hardships incompatible with her state of health (see paragraphs 19-22 above).

b. The Court's assessment

51. The Government did not appear to dispute that the applicant suffered from a very serious form of chronic hepatitis – a potentially fatal disease – and that during her second stay in Požega Penitentiary from May 2005 onwards, she had not been seen by a hepatologist, a specialist for her disease. It is further undisputed that the only medical assistance provided to the applicant in respect of her chronic hepatitis was a test done on 4 January 2006 which confirmed that she had contracted the hepatitis C virus and showed the number of viruses in her blood.

52. The Court notes that chronic hepatitis is an illness that primarily attacks the liver and with time can lead to liver cirrhosis, liver cancer and death. In this connection the Court considers that it is essential that the applicant undergo an adequate assessment of her current health state in order to be provided with adequate treatment. Such an assessment could be obtained from a liver biopsy and relevant blood tests. However, the applicant has not been provided with appropriate diagnostic treatment and has been left without relevant information in respect of her illness, thus keeping her in dark about her health condition and depriving her of any control over it, which must have caused her perpetual anguish and fear. In this respect the Court considers irrelevant the Government's submission that the applicant had seen a prison doctor on more than fifty occasions since these visits did not provide the applicant with the medical care and assistance indispensable for her particular health condition. As a consequence of the lack of adequate medical examinations, due to which the exact effect of chronic hepatitis on the applicant's health has not been established, the applicant cannot have been provided with proper medical assistance.

53. Furthermore, although chronic hepatitis is associated with constant exhaustion and reduced physical ability, the applicant has been obliged to line up every day in the penitentiary's courtyard, irrespective of the weather conditions. She has also been unable to rest when she has felt weak without obtaining a special permit from the prison

doctor each time, which explains the large number of visits that the applicant has made to him. In the Court's view, such additional hardship placed on the applicant in her present state of health has been unnecessary and has gone beyond the inevitable element of suffering or humiliation connected with a legitimate deprivation of liberty.

54. As to the conditions of detention, the excessive number of persons in the cell and the lack of proper hygiene, heating or appropriate clean bedding, plus the general state of repair, the Court has examined them as a whole on the basis of the applicant's submissions and the lack of relevant comments from the Government.

55. The Court notes that the Government have sent, in support of their submissions, some photographs allegedly showing the conditions of detention in Požega Penitentiary. Since it is impossible to ascertain when and in what circumstances these images were created, the Court does not consider it possible to take them into consideration.

56. One of the characteristics of the applicant's detention that requires examination is her allegation that the cells were overpopulated. She submitted that she had been placed in a cell measuring 12 square metres with five other inmates. The Government have submitted that the penitentiary was able to accommodate 157 inmates, whereas on 5 October there had been 72 inmates, but as they have not provided any further details of the applicant's current circumstances they have failed to refute her allegations. It follows that the applicant has been confined to a space measuring 2.4 square metres.

57. In this connection the Court recalls that the European Committee for the Prevention of Torture and Inhuman or Degrading treatment or punishment (CPT) has set 4 sq.m per prisoner as an appropriate, desirable guideline for a detention cell (see, for example, the CPT Report on its visit to Latvia in 2002 – CPT/Inf (2005) 8, § 65). This approach has been confirmed by the Court's case law. The Court recalls that in the Peers case a cell of 7 sq. m for two inmates was noted as a relevant aspect in finding a violation of Article 3, albeit that in that case the space factor was coupled with an established lack of ventilation and lighting (see Peers v. Greece, no. 28524/95, §§ 70–72, ECHR 2001-III). In the Kalashnikov case the applicant had been confined to a space measuring less than 2 sq. m. In that case the Court held that such a degree of overcrowding raised in itself an issue under Article 3 of the Convention (see Kalashnikov v. Russia, no. 47095/99, §§ 96–97, ECHR 2002-VI). The Court reached a similar conclusion in the Labzov case, where the applicant was afforded less than 1 sq. m of personal space during his 35-day period of detention (see Labzov v. Russia, no. 62208/00, §§ 41-49, 16 June 2005), and in the Mayzit case, where the applicant was afforded less than 2 sq. m during nine months of his detention (see Mayzit v. Russia, no. 63378/00, § 40, 20 January 2005).

58. By contrast, in some other cases no violation of Article 3 was found, as the restricted space in the sleeping facilities was compensated for by the freedom of movement enjoyed by the detainees during the day time (see Valašinas, cited above, §§ 103, 107, and Nurmagomedov v. Russia (dec.), no. 30138/02, 16 September 2004).

59. As regards the question of how many hours per day the applicant was confined to her cell, the Court observes first that the applicant's illness requires her to take frequent rests, thus necessitating her prolonged stay in her cell. Therefore, the actual prison regime in this respect is of no relevance for the applicant's situation. The Court also takes note of the applicant's allegations, uncontested by the Government, that the beds were old and partly broken, the mattresses were torn and soiled and that another inmate in the same cell who took heavy sedatives soiled her bed almost every night, which created an unbearable smell in the cell. In these circumstances, the Court considers that the lack of space combined with these additional factors weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned conditions of detention were "degrading" from the standpoint of Article 3.

60. As to the sanitary conditions, the Court notes that the Government did not expressly contest the applicant's allegations that there were approximately two toilets on average for thirty inmates and that she had occasionally been sent to take a shower in the basement where the showers were mouldy and mice, cockroaches, rats and cats were often running around.

61. As to the general state of repair, the Court notes that the applicant's allegations that the buildings were old and in a very bad state of repair, including malfunctioning heating facilities and damaged roofing which resulted in the prison premises being cold and rain leaking into them, are corroborated by the Government's Report of 21 December 2006 (see paragraph 33 above).

The Court considers that these facts demonstrate that the applicant has been detained in an unsanitary and unsafe environment.

62. As to the Government's contentions regarding the applicant's behaviour and attitude, the Court reiterates that it does not accept the argument that the conditions of imprisonment could be determined according to whether an inmate showed a passive attitude and lacked initiative to participate in the prison activities, since all inmates should be afforded prison conditions which are in conformity with Article 3 of the Convention (see, mutatis mutandis, Cenbauer v. Croatia, no. 73786/01, § 47, ECHR 2006-...).

63. In the Court's view, the lack of requisite medical care and assistance for the applicant's chronic hepatitis coupled with the prison conditions which the applicant has so far had to endure for more than two years diminished the applicant's human dignity and aroused in her feelings of anguish and inferiority capable of humiliating and debasing her and possibly breaking her physical or moral resistance. In the light of the above, the Court considers that the nature, duration

and severity of the ill-treatment to which the applicant was subjected and the cumulative negative effects on her health can qualify the treatment to which she was subjected as inhuman and degrading (see Egmez v. Cyprus, no. 30873/96, § 77, ECHR 2000-XII; Labzov v. Russia, cited above, § 45; Mayzit v. Russia, cited above, § 42; and Koval v. Ukraine, no. 65550/01, § 82, 19 October 2006).

64. There has accordingly been a violation of Article 3 of the Convention in the circumstances of the present case.

In Blokhin v. Russia, decided in 2016, the applicant was twelve years old and suffering from attention-deficit hyperactivity disorder (ADHD). He had been taken to a police station on suspicion of extorting money from a nine-year-old. No criminal proceedings were opened against him, but a court placed him in a temporary detention centre for juvenile offenders for a period of thirty days to "correct his behaviour". He complained that he did not receive the necessary medical treatment during this period.

(Case 72)

136. Article 3 (…) imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty by, among other things, providing them with the requisite medical care (see Kudła v. Poland [GC], no. 30210/96, § 94, ECHR 2000XI; Mouisel v. France, no. 67263/01, § 40, ECHR 2002-IX; and Khudobin v. Russia, no. 59696/00, § 93, 26 October 2006). Thus, the Court has held on many occasions that lack of appropriate medical care may amount to treatment contrary to Article 3 (see, for example, M.S. v. the United Kingdom, cited above, §§ 4446; Wenerski v. Poland, no. 44369/02, §§ 56-65, 20 January 2009; and Popov v. Russia, no. 26853/04, §§ 210-13 and 231-37, 13 July 2006).

137. In this connection, the "adequacy" of medical assistance remains the most difficult element to determine. The Court reiterates that the mere fact that a detainee is seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate (see Hummatov v. Azerbaijan, nos. 9852/03 and 13413/04, § 116, 29 November 2007). The authorities must also ensure that a comprehensive record is kept concerning the detainee's state of health and his or her treatment while in detention (see Khudobin, cited above, § 83), that diagnosis and care are prompt and accurate (see Melnik v. Ukraine, no. 72286/01, §§ 104-06, 28 March 2006, and Hummatov, cited above, § 115), and that, where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation, rather than addressing them on a symptomatic basis (see Popov, cited above, § 211; Hummatov, cited above, §§ 109 and 114; and Amirov v. Russia, no. 51857/13, § 93, 27 November 2014). The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through (see Holomiov v. Moldova, no. 30649/05, § 117, 7 November 2006, and Hummatov, cited above, § 116). Furthermore, medical treatment provided within prison facilities must be appropriate, that is, at a level comparable to that which the State authorities have committed themselves to provide to the population as a whole. Nevertheless, this does not mean that every detainee must be guaranteed the same level of medical treatment that is available in the best health establishments outside prison facilities (see Cara-Damiani v. Italy, no. 2447/05, § 66, 7 February 2012).

138. On the whole, the Court reserves sufficient flexibility in defining the required standard of health care, deciding it on a case-by-case basis. That standard should be "compatible with the human dignity" of a detainee, but should also take into account "the practical demands of imprisonment" (see Aleksanyan v. Russia, no. 46468/06, § 140, 22 December 2008). When dealing with children, the Court considers that, in line with established international law, the health of juveniles deprived of their liberty shall be safeguarded according to recognised medical standards applicable to juveniles in the wider community (see, for example, Rules 57, 62.2, 62.5, 69.2, and 73 (d) of the 2008 European Rules for juvenile offenders subject to sanctions or measures, Article 3 § 3 of the CRC, and Rules 49-53 of the Havana Rules in paragraphs 79, 81 and 87 above). The authorities should always be guided by the child's best interests, and the child should be guaranteed proper care and protection. Moreover, if the authorities are considering depriving a child of his or her liberty, a medical assessment should be made of the child's state of health to determine whether or not he or she can be placed in a juvenile detention centre. (…)

2. Application to the present case

141. The Court notes from the outset that both the applicant's young age and his state of health are circumstances of relevance in assessing whether the minimum level of severity has been attained (see paragraph 135 above) and it will have particular regard to the principles set out in paragraph 138 above.

142. In the present case, the Court notes that the Government have submitted numerous documents in support of their submissions before the Grand Chamber to show that the conditions at the temporary detention centre were good and that medical treatment was provided. However, the great majority of these documents date from 2008 to 2014, several years after the applicant's stay at the temporary detention centre and, consequently, do not shed light on the conditions in the centre during his placement there. Moreover, as concerns the report by the head of the temporary detention centre, dated 28 December 2010, and the explanation of a supervisor at the centre, dated 23 December 2010, the Court finds it unlikely that they would remember whether or not one child, who had stayed at the temporary detention centre for thirty days almost six years earlier, had complained of the conditions or access to the toilets. It has also on previous occasions found that reports or certificates like those submitted by the Russian Government were of little evidentiary value as they lacked references to original documentation held by the relevant prison or detention centre (see Ananyev and Others, cited above, § 124, with further references).

143. Thus, while the Court does not question the submission that some of the documents from the temporary detention centre relating to the applicant may have been destroyed in accordance with the relevant rules in force at that time, this does not absolve the Government from the obligation to support their factual submissions with appropriate evidence (ibid., § 125).

144. The parties have submitted a number of relevant documents that allow the Court to examine the applicant's complaints in depth. In particular, it finds it established through the medical certificates submitted by the applicant that he was examined by a neurologist and a psychiatrist on 27 December 2004 and 19 January 2005, that is, only slightly over a month before being placed in the temporary detention centre. At that time, medication was prescribed for him, as well as regular supervision by a neurologist and a psychiatrist and regular psychological counselling for his ADHD. It has further been established through medical records that the applicant was hospitalised the day after his release from the temporary detention centre and treated for neurosis and ADHD. He remained in hospital at least until 12 April 2005, thus for approximately three weeks.

145. Moreover, the Court notes that the applicant's grandfather submitted medical certificates at the detention hearing on 21 February 2005 to show that the applicant suffered from ADHD, thereby ensuring that the authorities were aware of his condition. In this connection, the Court observes that an officer from the Juveniles Inspectorate was present at the hearing on 21 February 2005 and that, in accordance with section 31.2 of the Minors Act, a representative of the temporary detention centre was also required to be present. Since the applicant's grandfather drew attention to the applicant's medical condition during the hearing, the relevant authorities responsible for the applicant's placement at the temporary detention centre were made aware of his condition.

146. Thus, even if the applicant's personal file from the temporary detention centre has been destroyed, the Court considers that there is sufficient evidence to show that the authorities were aware of the applicant's medical condition upon his admission to the temporary detention centre and that he was in need of treatment. Moreover, the fact that he was hospitalised the day after his release, and kept in the psychiatric hospital for almost three weeks, provides an indication that he was not given the necessary treatment for his condition at the temporary detention centre. The applicant has thereby provided the Court with a prima facie case of lack of adequate medical treatment. Having regard to the considerations set out above (see paragraphs 142-43 above) concerning the documents submitted by the Government and the lack of any other convincing evidence, the Court finds that the Government have failed to show that the applicant received the medical care required by his condition during his stay at the temporary detention centre where he was kept for thirty days without the right to leave and entirely under the control and responsibility of the staff at the centre. In these circumstances, the authorities were under an obligation to safeguard the applicant's dignity and well-being, and are responsible under the Convention for the treatment he experienced (see M.S. v. the United Kingdom, cited above, § 44).

147. As concerns the applicant's enuresis, the Court notes that it is not mentioned in the medical certificates of 27 December 2004 and 19 January 2005 and that it was not the reason for his hospitalisation following his detention. Thus, in the Court's view, the applicant has not submitted sufficient prima facie evidence to show whether and, if so, to what extent he suffered from enuresis on admission to the temporary detention centre and whether the personnel at the centre were, or should have been, aware of it. Since most of the medical certificates and files from the temporary detention centre concerning the applicant have been destroyed, it appears difficult to obtain any clarification on this point. On the other hand, the Court has already found it established that the applicant suffered from ADHD.

148. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of the applicant's rights under Article 3 on account of the lack of necessary medical treatment at the temporary detention centre for juvenile offenders, having regard to his young age and particularly vulnerable situation, suffering as he was from ADHD.

149. There has, accordingly, been a violation of Article 3 of the Convention.

In the 2016 case of Mozer v. Russia and Moldova the Court found the lack of adequate treatment of the applicant's asthma attacks an important factor in considering the conditions of his detention to be inhuman and degrading:

(Case 73)

178. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure of deprivation of liberty do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention (see Kudła, cited above, § 94, and Svinarenko and Slyadnev v. Russia [GC], nos. 32541/08 and 43441/08, § 116, ECHR 2014) and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see Kudła, cited above, § 94, and Idalov v. Russia [GC], no. 5826/03, § 93, 22 May 2012). In most of the cases concerning the detention of persons who were ill, the Court has examined whether or not the applicant received adequate medical assistance in prison. The Court reiterates in this regard that, even though Article 3 does not entitle a detainee to be released "on compassionate grounds", it has always interpreted the requirement to secure the health and well-being of detainees, among other things, as an obligation on the part of the State to provide detainees with the requisite medical assistance (see Pakhomov v. Russia, no. 44917/08, § 61, 30 September 2010, and Gladkiy v. Russia, no. 3242/03, § 83, 21 December 2010).

179. In the present case the Court notes that, although the doctors considered the applicant's condition to be deteriorating and the specialists and equipment required to treat him to be lacking, the "MRT" authorities not only refused to transfer him to a civilian hospital for treatment but also exposed him to further suffering and a more serious risk to his health by transferring him to an ordinary prison on 15 February 2010 (see paragraph 38 above). It is indisputable that the applicant suffered greatly from his asthma attacks. The Court is also struck by the fact that the applicant's illness, while considered serious enough to warrant the transfer to a civilian hospital of a convicted person, was not a ground for the similar transfer of a person awaiting trial (see paragraph 35 above). In view of the lack of any explanation for the refusal to offer him appropriate treatment, the Court finds that the applicant did not receive adequate medical assistance.

180. The Court will now turn to the conditions of the applicant's detention. According to him, the cell was very hot, humid and poorly ventilated and lacked access to natural light. It was overcrowded and full of cigarette smoke as well as parasitic insects. He did not have access to a toilet for hours on end and was unable to dry clothes outside the cell. The food was inedible and there were no hygiene products. Throughout his detention he did not receive the medical assistance required by his condition (see paragraphs 28-41 above).

181. While the respondent Governments have not commented on the description provided by the applicant (see paragraphs 28-38 above), it is largely confirmed by the reports of the CPT and the United Nations Special Rapporteur on visits to various places of detention in the "MRT" (see paragraphs 61-64 above). The Court notes in particular that the latter's visit took place in July 2008, some four months before the applicant was taken into detention.

182. On the basis of the material before it, the Court finds it established that the conditions of the applicant's detention amounted to inhuman and degrading treatment within the meaning of Article 3, in particular on account of severe overcrowding, lack of access to daylight and lack of working ventilation which, coupled with cigarette smoke and dampness in the cell, aggravated the applicant's asthma attacks.

In the 2009 case of Paladi v. Moldova, the Court found

(Case 74)

71. The Court reiterates that "the State must ensure that a person is detained in 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 of an intensity 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 by, among other things, providing him with the requisite medical assistance" (see Kudła v. Poland [GC], no. 30210/96, § 94, ECHR 2000XI).

72. The Grand Chamber notes that the applicant had a serious medical condition which was confirmed by a number of medical specialists (see paragraphs 22-43 above). It is also clear from the facts of the case that the applicant was not provided with the level of medical assistance required by his condition, as detailed in the Chamber's judgment (see Chamber judgment, §§ 76-85). The Grand Chamber agrees with the Chamber that, in view of the applicant's medical condition and the overall level of medical assistance he received while in detention, the treatment to which he was subjected was contrary to Article 3 of the Convention.

In the Chamber judgment of 2007, the Court had found as follows:

(Case 75)

75. The Court refers to the principles established in its case-law regarding the medical care of detainees (see, for instance, Sarban, cited above, §§ 75-77).

76. The Court notes that the applicant suffered from a number of serious illnesses. Several doctors recommended his treatment as an in-patient under medical supervision, some of them considering that operations were necessary which could be carried out only in medical units specialising in cardiology, neurology or endocrinology (see paragraphs 17–20 above). It is therefore clear that the applicant was in need of constant medical supervision, in the absence of which he faced major health risks. Moreover, the applicant, his wife and his lawyer complained to a number of authorities about the insufficient medical treatment, but were able to obtain only sporadic visits by doctors and urgent medical assistance in emergencies (see paragraphs 17 and 18 above). Indeed, according to the Government's submissions, the applicant was visited by doctors approximately once a month (see paragraph 74 above). The Court also recalls its finding in Sarban (cited above, § 81) that there was no medical personnel in the CFECC remand centre before 11 February 2005.

77. It follows that the applicant was not given appropriate medical supervision and assistance while in detention in the CFECC remand centre.

78. The Court notes that on 20 May 2005 Doctor V.P., who saw the applicant on the order of the Ministry of Health and who worked at the RNC, recommended transferring him to an institution where he could receive HBO therapy (see paragraph 22 above). It further notes that the director of the hospital in which the applicant was detained informed the domestic court of the inability of his institution to carry out the full treatment recommended by Doctor V.P. owing to a lack of equipment (see paragraphs 23, 25 and 27 above).

79. The Court acknowledges the need for the domestic court to rely on medical opinions before deciding on a transfer to another hospital. However, the domestic court took an unreasonably long time to obtain the medical opinion and took no measures to speed up the process, resulting in a four-month delay before the applicant's transfer. It is striking that

the medical board first saw the applicant only on 7 September 2005.

80. The domestic court should also have taken into account the recommendation to transfer him to a neurological clinic, which was made by a doctor whose qualification and independence were not called into question. The court itself considered the applicant to be unfit to participate in its hearings as of 1 June 2005 (see paragraph 24 above). At the same time, however, it did not consider it necessary to allow him to start a course of treatment. Since the court did not rely on any specific evidence that the applicant could attempt an escape, there is no justification for the court's failure to order the applicant's transfer at a much earlier date.

81. The failure to transfer the applicant to a neurological clinic within a reasonable time, and the resulting delay in beginning the recommended treatment, unnecessarily exposed the applicant to a risk to his health and must have resulted in stress and anxiety (see Sarban, cited above, § 87).

82. The Court also notes that, while both Doctor V.P. and the medical board prescribed HBO therapy for the applicant, neither of them referred to the RNC as the appropriate institution (see paragraphs 22 and 26 above). The Centru District Court decided on the applicant's transfer to the RNC, although it appears from the file that the applicant's HBO treatment was carried out at the RCH (see paragraph 32 above). It follows that the RCH was the competent medical authority to advise the court on the necessity of continuing the applicant's course of HBO therapy. Notwithstanding that, the court based its decision only on the letter from the RNC.

83. The Court is furthermore struck by the urgency with which the domestic court decided to order the applicant's transfer from the RNC and to implicitly end his course of HBO therapy. While in the possession of two apparently divergent medical opinions (that of the RNC recommending the applicant's release from hospital, and making no reference to HBO therapy, and that of the RCH recommending that the HBO therapy should be continued), the court chose to simply ignore one of them. This is in clear contrast to the same court's position taken after 20 May 2005, when it was presented with only one – unchallenged – medical opinion, but where it was prepared to wait four months for a second opinion (see paragraphs 22–29 above). Moreover, the domestic court did not balance the potential risk to the applicant's health from the interruption of his HBO treatment against any security risk or other reason for the urgent transfer of the applicant.

84. The Court considers that by interrupting the applicant's HBO treatment, which had been recommended by the doctors and had already yielded positive results, the domestic court further undermined the effectiveness of his belated treatment. It also caused stress and anxiety to the applicant in excess of the level inherent in any deprivation of liberty.

85. The Court concludes that the lack of proper medical assistance at the CFECC remand centre, the incomplete treatment of the applicant at the prison hospital after 20 May 2005 and the abrupt termination of his HBO treatment each amounted to a violation of Article 3 of the Convention.

In the 2021 case of Shmorgunov and others v. Ukraine, the Court criticised the lack of treatment of the applicant in police custody:

(Case 76)

438. The Court reiterates that a lack of appropriate medical care for detainees may amount to treatment contrary to Article 3 of the Convention (see İlhan v. Turkey [GC], no. 87 § ,93/22277, ECHR 2000-VII, and Sarban v. Moldova, no. 4 ,90 § ,05/3456 October 2005).

439. In previous cases concerning the adequacy of medical care in Ukrainian detention facilities, the Court has stressed that it is for the Government to provide credible and convincing evidence showing, in the face of prima facie evidence provided by an applicant, that the latter received comprehensive and adequate medical care while in detention (see, among other authorities, Sergey Antonov v. Ukraine, no. 40512/13, § 86, 22 October 2015).

440. In the present case, the Court notes that the applicant concerned sustained serious injuries in the hands of the police, including concussion and an injury to his right eye (see paragraph 90 above). It is true that the applicant was examined by medical personnel without delay, within hours. However, for about four days the police refused to let him stay in a hospital and receive the treatment recommended by doctors as urgently necessary although he complained repeatedly of acute pain and his generally poor medical condition (see paragraphs 91-95 above). It appears that between 1 and 5 December 2013 he received nothing more than a patch (bandage) and a painkiller. The Government's explanation for this four-day delay is unconvincing. While apparently there were no special wards for detainees at the hospital to which the applicant was initially taken, it has not been shown that it was impossible to hospitalise him elsewhere or find an appropriate solution so as to provide him with adequate health care without delay (see paragraphs 9194 above).

441. The Court therefore finds that, following ill-treatment amounting to torture at the hands of the police, the authorities failed to react adequately to the applicant's resulting medical problems while he was in detention between 1 and 5 December 2013 (see paragraphs 393-396 above). It considers that the authorities' actions and omissions in this regard constituted ill-treatment beyond the threshold of severity under Article 3.

442. There has accordingly been a violation of Article 3 of the Convention on that account. In these circumstances, the Court finds it unnecessary to deal with Mr V. Zagorovka's other arguments in that regard.

The Inter-American Court of Human Rights, in the 2006 case of Montero-Araguren et al. v. Venezuela, criticised the lack of medical assistance in the detention center of Catia:

(Case 77)

iii) Medical Assistance

101. Among the facts accepted by the State, it is worth noting that medical assistance provided to the inmates of Detention Center of Catia did not comply with the minimum standards. Several of the inmates injured during the events ocurred between November 27 and 29, 1992, did not receive any medical assistance or the adequate medicine (supra para. 60(21). Furthermore, no proper medical assistance was provided to inmates that were ill.

102. This Court has pointed out that lack of adequate medical assistance does not satisfy the minimum material requisites of a treatment consistent with the human condition as stipulated in Article 5 of the American Convention.

(Cf. Case of García Asto and Ramírez Rojas vs. Perú, supra note 144, para. 226.)

The State has the duty to provide detainees with regular medical checks and care and adequate treatment whenever necessary. Besides, the State must allow and facilitate medical assistance to detainees by a professional physician of their choice or selected by their legal representatives,

(Cf. Case of García Asto and Ramírez Rojas v. Perú, supra note 144, para. 227; Case of De la Cruz Flores. Judgment of November 18, 2004. Series C No. 115, para. 122, and Case of Tibi. Judgment of September 7, 2004. Series C No. 114, para. 157. Likewise, the Set of Principles for the Protection of all Persons under any kind Detention or Imprisonment, Adopted by the General Assembly through its Resolution 3/173, dated December 9, 1988, Principle 24.)

although this does not imply the existence of a duty to satisfy all wishes and preferences of a person deprived of liberty regarding medical assistance, but only those real needs consistent with the actual circumstances and condition of the detainee. Assistance by a physician not related to prison or detention center authorities is an important safeguard against torture and physical or mental ill-treatment of inmates.

(Cf. ECHR, Case of Mathew v. The Netherlands, supra note 151, para. 187.)

103. Lack of adequate medical assistance could be considered per se a violation of Articles 5(1) and 5(2) of the Convention depending on the specific circumstances of the person, the type of disease or ailment, the time spent without medical attention and its cumulative effects.

In the 2004 case of Tibi v. Ecuador, the affected person complained before the Inter-American Court of Human Rights, inter alia, about a lack of medical treatment:

(Case 78)

143. There is an international legal system that absolutely forbids all forms of torture, both physical and psychological, and this system is now part of ius cogens.

(See Case of the Gómez Paquiyauri Brothers, supra note 8, para. 112; and Case of Maritza Urrutia, supra note 8, para. 92.)

Prohibition of torture is complete and non-derogable, even under the most difficult circumstances, such as war, the threat of war, the struggle against terrorism, and any other crimes, state of siege or of emergency, internal disturbances or conflict, suspension of constitutional guarantees, domestic political instability, or other public disasters or emergencies.

(See Case of the Gómez Paquiyauri Brothers, supra note 8, para. 111; Case of Maritza Urrutia, supra note 8, para. 89; and Case of Cantoral Benavides, supra note 139, para. 95.)

144. This Court has said that "the interpretation of a treaty must take into account not only the agreements and instruments related to the treaty (paragraph 2 of Article 31 of the Vienna Convention), but also the system of which it is part (paragraph 3 of Article 31)." This orientation is especially important for International Human Rights Law, which has moved forward substantially by means of an evolutive interpretation of the international protection instruments.

(See Case of the Gómez Paquiyauri Brothers, supra note 8, para. 165; Case of the "Street Children" (Villagrán Morales et al.), supra note 145, paras. 192 and 193; and The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, supra note 133, para. 113.)

145. The Inter-American Convention against Torture, which entered into force in the State on December 9, 1999, is part of the inter-American corpus iuris that this Court must resort to in establishing the content and scope of the general provision contained in Article 5(2) of the American Convention. Special attention must be paid to Article 2 of the Inter-American Convention against Torture, which defines the latter as:

[…]any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

This same provision adds that:

The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.

151. Daniel Tibi was incarcerated in overcrowded and unhealthy conditions for 45 days, in a cell block of the Penitenciaría del Litoral known as "the quarantine". He had to remain there all day, with insufficient light and ventilation, and he was not given food. Afterwards, he spent several weeks in the corridor of the cell block of said penitentiary, sleeping on the ground, until he was finally able to occupy a cell, by force (supra para. 90(46), and 90(47)). Once, he was confined to the undisciplined inmates pavilion, where other inmates attacked him (supra para. 90(48)). There was no classification of the inmates at the penitentiary center (supra para. 90(49)).

152. The description of the conditions under which Daniel Tibi lived during his detention shows that they did not fulfill the minimum requirements for decent treatment, as a human being, as set forth in Article 5 of the Convention.

153. It has also been proven that while he was in the prison, Daniel Tibi was twice examined by physicians supplied by the State, who established that he had suffered wounds and traumatism, but he never received medical treatment and the cause of said injuries was never investigated (supra para. 90(51)).

154. Regarding this specific matter, we must refer to Principle twenty-four of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which establishes that: "[a] proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge."

(United Nations, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, supra note 126, Principle 24.)

155. The European Court has asserted that under [Article 3 of the Convention], the State must ensure that a person is detained in conditions which are compatible regarding for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity 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 by, among other things, providing him with the requisite medical assistance.

(See Kudla v. Poland, No. 30210/96, para. 93-94, ECHR 2000-XI.)

156. It is the understanding of the Inter-American Court, in turn, pursuant to Article 5 of the American Convention, that the State has the duty to provide regular medical examinations and care to the detainees, as well as adequate treatment when required. The State must also allow and facilitate examination of the detainees by a physician of their choice or chosen by their legal representative or custodian.

(See Case of Bulacio, supra note 129, para. 131.)

157. This Court notes that, despite his serious physical and psychological situation, Mr. Tibi never received adequate and timely medical treatment or care at the penitentiary, and this has had adverse effects on his current health conditions. The deficient medical care received by the alleged victim constitutes a violation of Article 5 of the American Convention.

158. On the other hand, the representatives of the alleged victim and his next of kin argued that the State had breached, to Tibi's detriment, Article 5(4) of the American Convention, which establishes that, "save in exceptional circumstances," unconvicted persons shall be segregated from convicted prisoners, and shall receive adequate treatment according to their status as such. In the instant case, it has been proven (supra para. 90)(49)) that there was no system to classify the detainees at the penitentiary where Mr. Tibi was incarcerated, and that for this reason he had to be with convicted inmates and was exposed to greater violence. The Court deems that the lack of segregation of the inmates that has been described constitutes a violation of Article 5(4) of the American Convention.

159. It is the understanding of the Court that, in light of the general obligation of the States party to respect and ensure the rights of all persons under their jurisdiction, contained in Article 1(1) of the American Convention, the State has the duty to immediately and ex officio begin an effective investigation to identify, try, and punish those responsible, when there is a complaint or there are grounds to believe that an act of torture has been committed in violation of Article 5 of the American Convention. In the instant case, the Court notes that the State did not act in accordance with these provisions. Daniel Tibi suffered serious injuries while he was detained at the Penitenciaría del Litoral, and this should have been sufficient reason for the competent authorities to begin, upon their own initiative, an investigation of what happened to him. This action is also specifically set forth in Articles 1, 6 and 8 of the Inter-American Convention against Torture, which place the States Party under the obligation to take such effective measures as may be necessary to prevent and punish all acts of torture under their jurisdiction.

(See Case of Maritza Urrutia, supra note 8, para. 95.)

Since said Inter-American Convention against Torture entered into force in Ecuador (December 9, 1999), the State is demandable regarding compliance with the obligations set forth in that treaty. It has been proven that, in the period since that date, the State has not investigated, tired, or punished those responsible for the tortures suffered by the alleged victim. Therefore, the Court deems that this conduct constitutes a violation of Article 5 of the American Convention, in combination with Article 1(1) of this same Convention, as well as non-compliance with the obligations set forth in Articles 1, 6 and 8 of the Inter-American Convention against Torture.

160. This Court notes that the right to humane treatment of Beatrice Baruet, of her daughters Sarah y Jeanne Camila Vachon, of Lisianne Judith Tibi, her and Mr. Tibi's daughter, and of Valerian Edouard Tibi, Mr. Tibi's son, suffered detriment as a consequence of the unlawful and arbitrary detention, lack of due process, and torture suffered by the alleged victim. This detriment consisted, among other things, of the anguish caused by not knowing the whereabouts of the alleged victim immediately after his detention, and the feeling of powerlessness and insecurity due to negligence of the State authorities to make Mr. Tibi's unlawful and arbitrary detention cease, as well as their fear for the life of the alleged victim.

161. In the sub judice case, it has been proven that the members of Daniel Tibi's household were affected by numerous circumstances, such as: constant trips made by Mrs. Baruet, sometimes with her daughters, more than six hundred miles from their place of residence in the city of Quito; return of minor Sarah Vachon to France, where she remained over two years far from her family; visits to the Penitenciaría del Litoral by minor Jeanne Camila Vachon, who after witnessing a riot in the prison refused to visit her stepfather again; lack of a father figure for minor Lisianne Judith Tibi during her first two years of life; and lack of contact of Mr. Tibi with his son Valerian Edouard Tibi. Some of these circumstances continued even after Mr. Tibi's release and his return to France, for which reason this Court deems that Mr. Tibi's unlawful and arbitrary detention contributed to break-up of the family nucleus and to frustration of personal and family plans.

162. As a consequence of the foregoing, the Court finds that the State breached Article 5(1), 5(2), 5(4) of the American Convention, in combination with Article 1(1) of that same Convention, and failed to comply with the obligations set forth in Articles 1, 6 and 8 of the Inter-American Convention against Torture, to the detriment of Daniel Tibi; and breached Article 5(1) of the American Convention, in combination with Article 1(1) of that same Convention, to the detriment of Beatrice Baruet, Sarah and Jeanne Camila Vachon, Lisianne Judith Tibi and Valerian Edouard Tibi.

III. Adequacy of treatment

In the 2011 case of Goginashvili v. Georgia, the applicant, who suffered from various illnesses, considered the treatment in prison to be inadequate. The European Court of Human Rights disagreed:

(Case 79)

3. The Court's assessment

(a) General principles

69. The Court reiterates that Article 3 of the Convention cannot be interpreted as laying down a general obligation to release a detainee on health grounds (see Aleksanyan v. Russia, no. 46468/06, § 138, 22 December 2008). However, this provision requires the State to ensure that prisoners are detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured by, among other things, providing them with the requisite medical assistance. Indeed, the detention of a person who is ill raises arguable issues under Article 3 of the Convention, and a lack of appropriate medical care may thus amount to treatment contrary to that provision (see, amongst many others, Naumenko v. Ukraine, no. 42023/98, § 112, 10 February 2004).

70. There are at least three specific elements to be considered in relation to the compatibility of an applicant's health with his stay in detention: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention, and (c) the advisability of maintaining the detention measure in view of the state of health of an applicant (see, amongst others, Rivière v. France, no. 33834/03, § 63, 11 July 2006). The Court is mindful of the fact that the adequacy of the medical assistance is always the most difficult element to determine. In this task, it must reserve, in general, sufficient flexibility, defining the required standard of health care, which must accommodate the legitimate demands of imprisonment but remain compatible with human dignity and the due discharge of its positive obligations by the State, on a case-by-case basis (see Aleksanyan, cited above, § 140).

(b) Application of these principles to the present case

71. The Court notes that the major issue of the present application is whether or not the respondent State has been able to maintain the stability of the applicant's health in prison by dispensing adequate treatment for his serious renal disorders which, it should be noted, developed prior to his placement in detention. In its assessment of this issue, the Court considers that it must be guided by the due diligence test, since the State's obligation to cure a seriously ill detainee is one of means, not of result. Notably, the mere fact of a deterioration of the applicant's state of health, albeit capable of raising, at an initial stage, certain doubts concerning the adequacy of the treatment in prison, could not suffice, as such, for a finding of a violation of the State's positive obligations under Article 3 of the Convention, if, on the other hand, it can be established that the relevant domestic authorities have in timely fashion resorted to all reasonably possible medical measures in a conscientious effort to hinder development of the disease in question.

72. The Court further notes that, since the communication of the present application, the Government have submitted a copy of the full medical file of the applicant's treatment, from the beginning of his detention until the present day. Thus, the Government, by disclosing all the information necessary for the assessment of the quality of the disputed treatment, have discharged their part of burden of proof and duly assisted the Court in its task of factual determination (see, a contrario, Malenko v. Ukraine, no. 18660/03, §§ 56-57, 19 February 2009). That being so, the applicant's subsequent objections must be treated with caution.

73. Having due regard to his medical file, the Court notes that the prison authority first took charge of the applicant's health problems by transferring him to the prison hospital on 8 July 2006, that is only two days after the authority had learnt, on 6 July 2006, on the basis of the results of the relevant laboratory test, of the relevant medical risks. The applicant then stayed in the prison hospital, receiving comprehensive in-patient treatment for his nephrology/urology problems (which included various laboratory tests, repeated consultations with medical specialists and so on) for almost four months, until a qualified doctor opined that the patient's improved condition would permit him to be discharged back into the ordinary prison (see paragraphs 14-16 above). The two subsequent medical check-ups conducted in the first half of 2007 confirmed that the applicant's condition remained stable and that he could continue receiving the relevant treatment on an out-patient basis.

74. Nevertheless, in August 2007, the applicant was admitted to the prison hospital again, where he received an additional course of the relevant nephrology/urology treatment. Then again, as soon as the applicant suffered the relapse of 29 January 2008, which had as unpredictable a cause as food poisoning, he was on the very same day placed as an emergency to the prison hospital, where he stayed pending his full recovery and was discharged only after the qualified doctor authorised it on 3 April 2008 (see paragraphs 19-21 above).

75. On 30 October 2008, following the Court's interim instruction under Rule 39 of the Rules of Court, the prison authority placed the applicant in the prison hospital for the fourth time. The Court notes that, even after it decided to lift its interim measure on 30 August 2010, the prison authority continued of its own accord the applicant's in-patient treatment in the prison hospital, where he remains. During this period he again had comprehensive treatment, which included numerous blood and urine tests, various ultrasound scans, repeated examinations by the relevant medical specialists, and so on (see paragraphs 25-26 and 63-66 above and contrast with Testa v. Croatia, no. 20877/04, § 52, 12 July 2007, and Poghosyan v. Georgia, no. 9870/07, § 57, 24 February 2009). As regards the question of whether the prison hospital could be considered a medical establishment capable of dispensing nephrology/urology treatment of adequate quality, the Court, having regard to the descriptions of the Government and the CPT and to the absence of any evidence to the contrary from the applicant (see paragraphs 44 and 62-68 above), considers that that hospital is, in its current condition, indeed equivalent to a civilian hospital of average standard. This level of equivalence is sufficient for the purposes of Article 3 of the Convention, since this provision may not be interpreted as providing detained persons with medical assistance of the same level as those as in the best civilian clinics (see Mirilashvili v. Russia (dec.), no. 6293/04, 10 July 2007).

76. Admittedly, the medical staff of the prison hospital does not include a nephrologist, which is somewhat at odds with the medical experts' recommendation that the applicant should benefit from permanent supervision by that particular medical specialists. However, this particular limitation of the resources of the prison hospital is not sufficient to qualify as a breach of Article 3 of the Convention, since it is fully compensated by the prison authority's willingness to arrange for the applicant to be examined by nephrologists invited in from civilian hospitals. Indeed, it is praiseworthy that the domestic authorities did not hesitate to resort to the services of specialised medical facilities in the civilian sector (see, a contrario, Aleksanyan, cited above, §§ 155-157, and Akhmetov, cited above, § 81). As to the frequency with which the applicant has been examined so far in prison by nephrologists invited from the outside, the Court, bearing in mind the unavoidability of certain restrictions imposed by the fact of imprisonment, finds that frequency to be sufficient and the applicant's expectations to be excessive. This is particularly so because, as the Government noted by reference to the applicant's medical file, each time the nephrologist examined the applicant, the clinician did not note any significant deterioration of the patient's condition, thus either simply maintaining the previously prescribed treatment or slightly amending the medication regimen (see paragraph 63 above).

77. As regards the applicant's representatives' unsupported claim that certain medication has been withheld from the applicant by the prison authority, the Court, having due regard to the relevant excerpts from the applicant's medical file provided by the Government, cannot but dismiss this wholly unsubstantiated allegation. Thus, the medical records show that, on the contrary, numerous various types of medication were administered to the applicant in the prison hospital, as well as on an out-patient basis during his detention period in Rustavi Prison, with the State bearing the cost (contrast with, for example, Pitalev v. Russia, no. 34393/03, § 57, 30 July 2009; Hummatov v. Azerbaijan, nos. 9852/03 and 13413/04, § 117, 29 November 2007; and Holomiov v. Moldova, no. 30649/05, § 119, 7 November 2006).

78. The Court also notes that the prison authority dispensed adequate treatment for the applicant's HCV, a transmissible disease which is widespread in Georgian prisons, with the relevant anti-viral agents, as a result of which the viral activity has, as the repeated blood tests showed, significantly reduced (see paragraph 65 above). It is also praiseworthy that, when the applicant developed the suspicious symptom of a dry cough, the prison authority screened the applicant for tuberculosis, another widespread disease in Georgian prisons, the results of which confirmed that he was not contaminated by the relevant mycobacterium. Instead, the doctors then diagnosed him with chronic bronchitis and prescribed him the relevant medication which, as the applicant's medical file confirms, was duly administered to the patient in the prison hospital (see paragraph 66 above).

79. As regards the question of the applicant's conditional release on health grounds, the Court reiterates that Article 3 of the Convention cannot be construed as laying down a general obligation to release detainees on health grounds. Rather,

the compatibility of a detainee's state of health with his or her continued detention, even if he or she is seriously ill, is contingent on the State's ability to provide relevant treatment of the requisite quality in prison (see Rozhkov v. Russia, no. 64140/00, § 104, 19 July 2007). The circumstances of the present case, however, show that the prison authority has been able to cope with the applicant's serious renal disorders by having him treated in the prison hospital, thus rendering the question of his early release redundant.

80. Thus, the Court finds that not only was the applicant promptly and with sufficient regularity consulted by the relevant doctors in prison, who made an accurate diagnosis and prescribed him the relevant form of treatment, but also the prison authority then ensured that the prescribed treatment was duly administered to the applicant in the prison hospital, which has all the necessary medical facilities, at State expense (contrast with Hummatov, cited above, § 116, and Melnik, also cited above, §§ 104106). Indeed, the applicant's medical supervision has proved to be of a regular and systematic nature, rather than addressing his renal disorders on a symptomatic basis, and has made use of a truly comprehensive therapeutic strategy (compare with Sarban v. Moldova, no. 3456/05, § 79, 4 October 2005, and Popov v. Russia, no. 26853/04, § 211, 13 July 2006). No less important is the fact that the prison authority has been able to maintain a comprehensive medical record of the applicant's state of health, monitoring the treatment he underwent from the beginning of his detention until the present day (compare with, for example, Khudobin v. Russia, no. 59696/00, § 83, ECHR 2006XII (extracts)).

81. In the light of the foregoing, the Court concludes that the prison authority has shown a sufficient degree of due diligence, providing the applicant with prompt and systematic medical care. Accordingly, there has been no violation of Article 3 of the Convention.

In contrast, in the 2007 case of Hummatov v. Azerbaijan, the Court had found, for various reasons, the medical treatment of the applicant to be inadequate:

(Case 80)

2. The Court's assessment

(a) General principles

104. The Court reiterates that Article 3 of the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, Labita v. Italy [GC], no 26772/95, § 119, ECHR 2000-IV). Illtreatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum 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 (see, among other authorities, Ireland v. the United Kingdom, judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

105. Ill-treatment that attains such minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see Pretty v. the United Kingdom, no. 2346/02, § 52, ECHR 2002III, with further references).

106. A deprivation of liberty may often involve degrading elements. Yet it cannot be said that detention after conviction in itself raises an issue under Article 3 of the Convention. Nor can that Article be interpreted as laying down a general obligation to release a person on health grounds or to place him in a civil hospital to enable him to obtain specific medical treatment. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity 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, and Popov v. Russia, no. 26853/04, § 208, 13 July 2006).

(b) Application to the present case

107. At the outset, the Court refers to its finding that the part of this complaint relating to the events that had occurred prior to 15 April 2002, the date of the Convention's entry into force with respect to Azerbaijan, was outside of the Court's competence ratione temporis (see Hummatov v. Azerbaijan (dec.), nos. 9852/03 and 13413/04, 18 May 2006). However, as the complaint concerns a situation of a continuing nature, namely the alleged lack of adequate medical treatment spanning a period of several years, the Court considers that it is necessary to have regard to the overall period in question, including the period prior to 15 April 2002, in order to properly assess the applicant's situation as it existed at the time of the Convention's entry into force with respect to Azerbaijan (see, mutatis mutandis, Kalashnikov v. Russia, no. 47095/99, § 96, ECHR 2002VI, and Khokhlich v. Ukraine, no. 41707/98, §§ 166 and 187, 29 April 2003).

108. During the period of the applicant's imprisonment prior to 15 April 2002, he had been diagnosed as having a number of serious diseases which he had not suffered from prior to his arrest and detention. In particular, the applicant had no history of tuberculosis prior to his transfer to Bayil Prison. During a medical examination on 8 November 1995 in Investigative Isolator No. 1, it was specifically noted that the applicant was not suffering from tuberculosis. Likewise, no serious diseases were discovered during the period from 28 December 1995 to 3 June 1996 when he was detained in the detention facility of the Ministry of National Security. It was after his transfer to Bayil Prison in June 1996 that the first symptoms of tuberculosis started to appear. The Government

did not dispute the applicant's submission that he had been placed in a cell together with other prisoners who were already seriously ill with the active form of tuberculosis. Arguably, starting at least from February 1997, the early symptoms of the disease, such as chest pains and significant loss of weight (see paragraph 33 above), began to manifest themselves. Finally, in April 1997 the applicant was diagnosed with pulmonary tuberculosis. Having regard to these factual circumstances of the case as well as the statistical estimations that the incidence of tuberculosis was very high in the Azerbaijani prisons at the material time, with some reports indicating that it was nearly 50 times higher than the country average (see paragraph 80 above), it is apparent that the applicant contracted tuberculosis in Bayil Prison.

109. The quality of the treatment provided to the applicant following the initial detection of tuberculosis, specifically during the period between 1997 and 2002, appears to be inadequate. In particular, the evidence put before the Court shows that the applicant was given irregular symptomatic treatment without adhering to a strict medication regime necessary for the tuberculosis therapy. Although he was prescribed a number of antibacteriological medications, the disease was still active for more than a year after the initial diagnosis. The medical records indicate that, subsequently, the disease went into remission in September 1998 but that the applicant's condition severely deteriorated in February 2000. The Court notes that only after the intervention by the representatives of the Azerbaijani National Committee of the Helsinki Citizens Assembly did the prison doctors acknowledge the re-activation of the disease and subsequently hospitalised the applicant. In general, although the applicant's medical records pertaining to this period contain a number of entries, it is not clear from these records whether there were regular check-ups on the applicant's condition, whether he was under constant medical supervision or whether medicines prescribed for the applicant were always correctly administered to him, with regard to the specified dosage, frequency and duration.

110. The applicant's treatment in the hospital from March to May 2000 lasted for 49 days, which was shorter than the two-month initial phase of the tuberculosis treatment recommended by WHO. Furthermore, it is not clear from the medical records whether the initial phase was followed up by the four-month or six-month continuation phase and, if so, whether the intake of medicines during this period was supervised as required by the DOTS strategy. Therefore, regardless of the outcome of the in-patient treatment which, according to the Government's medical records was positive, since the applicant was judged to have recovered, the evidence submitted by the Government is insufficient to establish that the in-patient treatment was adequate. In this respect, the Court also has regard to the HCA Opinion, which concluded that the applicant's in-patient treatment did not correspond to the DOTS standards.

111. Accordingly, by the time of the Convention's entry into force with respect to Azerbaijan, the applicant had already suffered for several years from a number of various diseases, including tuberculosis which he contracted due to bad conditions of detention in Bayil Prison where he had been detained prior to his transfer to Gobustan Prison. By that time, his overall health condition had deteriorated significantly. As from 15 April 2002, the date of the Convention's entry into force with respect to Azerbaijan, Article 3 of the Convention required the State authorities to adequately secure the applicant's health and well-being in Gobustan Prison (see paragraphs 104-106 above). The Court shall, therefore, determine whether, after 15 April 2002, the applicant still needed regular medical assistance, whether he had been deprived of it as he claims and, if so, whether this amounted to inhuman or degrading treatment contrary to Article 3 of the Convention (see Sarban v. Moldova, no. 3456/05, § 78, 4 October 2005).

112. The medical records indicate that, at the time of the Convention's entry into force, the applicant still suffered from a number of serious medical conditions including inter alia chronic bronchopneumonia, chronic enterocolitis, radiculitis, hypertension, atherocardiosclerosis, internal haemorrhoids, stenocardia, ischemia, and osteochondrosis. He continued to suffer from focal tuberculosis which, according to the prison doctors, was no longer active since his in-patient treatment but, according to the HCA Opinion, acquired a chronic character with the possibility of relapse (see paragraph 59 above). The available evidence shows that the applicant became ill with the majority, if not all, of these diseases at one point or another during his imprisonment. The fact that the applicant suffered from such a large number of serious ailments and continued to complain about health problems until his release in September 2004 indicates that he still needed regular medical care during the period falling within the Court's competence ratione temporis.

113. The Court finds that, in the present case, there is convincing evidence giving rise to serious doubts as to the adequacy of the medical care provided to the applicant. In particular, the HCA Opinion reached the conclusion that, throughout the period from 1996 to the end of 2003, the applicant had received grossly inadequate medical treatment (see paragraphs 54-59 above). The Government contested the "professionalism" of the expert who authored the HCA Opinion. The Court notes, however, that this is the only independent comprehensive medical opinion available in the present case. It is not the Court's task to determine the accuracy of expert evaluations relating to a specific field of expertise such as the medicine and health sciences. The Government has neither procured nor submitted any independent or otherwise credible medical expert reports which would contradict the conclusions reached in the HCA Opinion or at least reveal the "non-professionalism" of the HCA expert in a convincing manner. In these circumstances, the Court accepts the conclusions arrived at in the HCA Opinion, in so far as they are relevant to the period after 15 April 2002.

114. The prison records submitted by the Government indicate that the applicant had been attended to a number of times throughout the years 2002 and 2004 and had been prescribed medication. However, it does not appear that the applicant was attended by doctors on a regular or systematic basis. On the contrary, it appears that, on many occasions, the applicant was attended to only after he complained about the lack of systematic attention and specifically requested to see a doctor. The treatment prescribed to him was mainly symptomatic and there is no indication that there was a comprehensive therapeutic strategy aimed at curing his diseases.

115. In several instances, the prison doctors attended to the applicant with notable delays. In particular, after his lawyer's request of 14 November 2002 for medical assistance to the applicant, the applicant was examined only on 28 November 2002 (see paragraph 43 above). After another such request made on 18 February 2003 and repeated on 27 February 2003, the applicant was finally examined on 5 March 2003 (see paragraph 48 above). In the Court's view, this cannot be deemed to be adequate and reasonable medical attention, given the diseases from which the applicant was suffering.

116. Moreover, the mere fact that the applicant was seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate. The authorities had to ensure not only that the applicant be attended by a doctor and his complaints be heard, but also that the necessary conditions be created for the prescribed treatment to be actually followed through. For example, on 3 December 2002 the applicant was advised to go on a diet and take warm sitz baths. However, it was not specified what kind of a diet the applicant should adhere to and for what duration. Nor was the frequency and total duration of treatment with sitz baths mentioned. Moreover, no explanation has been forthcoming from the Government as to how it would be possible for the applicant to follow this particular medical advice taking into account his conditions of detention in Gobustan Prison where he did not have hot water in his cell and was allowed to shower once a week. There is no indication that the prison administration provided the applicant with some special dietary ration different from the usual prison menu or gave him access to hot water on a daily basis.

117. In addition, although the prison doctors' journal submitted by the Government indicates that on a number of occasions the applicant was given certain medicines in the years 2001 to 2003, the Court accepts the applicant's statement that he was not always provided with the medicines prescribed to him and had to rely on his relatives to obtain them. This statement is corroborated by independent reports concerning the Azerbaijani prison system at the relevant time (see paragraph 77 above). In any event, this statement was not contested by the Government. The Court considers that the situation where the applicant had to resort to his family's financial means to procure him the necessary medication which could, in the case of serious diseases, be quite expensive, rendered the overall quality of medical assistance in prison inadequate.

118. The conditions in which life prisoners were detained in Gobustan Prison also contributed to the difficulties in receiving timely assistance by medical staff in urgent cases. The daily closure of the applicant's wing of Gobustan Prison from 19:00 in the evening until 11:00 the following morning practically eliminated the possibility to see a doctor during these hours if an emergency occurred.

119. Having regard to the above, the Court finds that the medical attention provided to the applicant in Gobustan Prison during the period after 15 April 2002 cannot be considered adequate.

120. The Court considers that, in the present case, there is no evidence showing that there was a positive intention to humiliate or debase the applicant. However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 of the Convention (see V. v. the United Kingdom [GC], no. 24888/94, § 71, ECHR 1999-IX, and Peers v. Greece, no. 28524/95, § 74, ECHR 2001-III).

121. It does not appear from the evidence available that, during the period after 15 April 2002, there was a relapse in the applicant's tuberculosis condition or that the applicant was exposed to prolonged severe pain due to lack of adequate medical assistance in respect of other diseases. In such circumstances, the Court finds that the suffering he may have endured did not amount to inhuman treatment. However, the Court considers that the lack of adequate medical treatment in Gobustan Prison must have caused the applicant considerable mental suffering diminishing his human dignity, which amounted to degrading treatment within the meaning of Article 3 of the Convention.

122. Accordingly, the Court finds that there has been a violation of Article 3 of the Convention.

In the 2006 case of Melnik v. Ukraine, the applicant complained, inter alia, about the inadequate treatment of tuberculosis:

(Case 81)

A. Compliance with Article 3 of the Convention

1. The Court's case-law

92. The Court reiterates that Article 3 of the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, Labita v. Italy [GC], no 26772/95, § 119, ECHR 2000-IV). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum 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 (see, among other authorities, Ireland v. the United Kingdom, judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

93. A deprivation of liberty may often involve degrading elements. Yet it cannot be said that detention after conviction in itself raises an issue under Article 3 of the Convention. Nor can that Article be interpreted as laying down a general obligation to release a person on health grounds or to place him in a civil hospital to enable him to obtain specific medical treatment. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity 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). 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).

94. There are three particular elements to be considered in relation to the compatibility of the applicant's health with his stay in detention: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention and (c) the advisability of maintaining the detention measure in view of the state of health of the applicant (see Mouisel v. France, no. 67263/01, §§ 40-42, ECHR 2002IX).

(…)

4. The Court's assessment

101. The Court considers that there are essentially three elements in the applicant's complaints under Article 3 of the Convention which require consideration on their merits:

- firstly, the applicant's complaints regarding overcrowding in his prison cells;
- secondly, the applicant's complaints regarding the domestic authorities' failure to prevent, diagnose and cure his tuberculosis in due time;
- thirdly, the applicant's complaints regarding the lack of proper nutrition, ventilation, daily walks or conditions of hygiene and sanitation.

(a) Overcrowding in prison cells

102. In the present case, the Court notes that during the period in which the applicant was detained in Vinnytsia Prison No. 1, namely from 29 September to 18 October 2000, his cell measured 44.7 m^2. Between 15 prisoners (according to the Government) and up to 60 prisoners (according to the applicant) were held in it. The applicant submitted that each of the detainees had between 1 and 1.5 m^2 of personal space (2.98 m^2 according to the Government). As to the applicant's conditions of detention in Penitentiary No. 316/83, from 31 October 2000 to 19 April 2001, he was held in a dormitory with 32 other inmates. The applicant's conditions of detention were the same in Snigurivska Penitentiary No. 5. During his stay in these penitentiaries he had approximately 2-2.5 m^2 of living space (as established by the legislation).

103. The Court does not find it necessary to resolve the disagreement between the Government and the applicant on the particular measurements of the cells. The figures submitted suggest that at any given time there was 1-2.5 m^2 of space per inmate in the applicant's cell. In this connection the Court recalls that the CPT set 7 m^2 per prisoner as an approximate, desirable guideline for a detention cell (see the 2nd General Report - CPT/Inf (92) 3, § 43), i.e. 56 m^2 for 8 inmates (see paragraph 47 above). Thus, in the Court's view, the cells in which the applicant was detained were continuously and severely overcrowded. This state of affairs in itself raises an issue under Article 3 of the Convention (see the judgment in Kalashnikov v. Russia, no. 47095/99, § 97, ECHR 2002VI).

(b) The alleged failure by the domestic authorities to prevent, diagnose and cure the applicant's tuberculosis

104. The Court notes that, from the parties' submissions, it appears that the applicant was diagnosed by a doctor as having contracted tuberculosis almost two and half months after he first complained about shortness of breath and phlegm (see paragraph 33 above). The Court finds that the incorrect provisional diagnoses of 13 and 14 April 2001 confirm the applicant's claims as to the inadequacy of the medical care provided and the failure to detect his tuberculosis rapidly, or to isolate him and provide him with adequate and timely treatment (see paragraphs 33 and 34 above).

105. Furthermore, on arrival at Penitentiary No. 316/83, he did not undergo the required medical check for possible tuberculosis (see paragraph 29 above). Prior to detention, the applicant had not been suffering from any form of lung disease (as ascertained at his examination on 29 September 2000; see paragraph 25 above). After being diagnosed with tuberculosis in June 2001, he was examined more regularly and transferred to a special penitentiary institution for inmates suffering from tuberculosis, where he was treated for this disease and the prevention of its recurrence until 11 August 2003. The applicant's health only started improving in October 2001. However, the lengthy treatment for tuberculosis led to side-effects, such as sight impairment (погіршення зору) and dizziness (paragraph 38 above).

106. In the Court's view, the aforementioned circumstances lead to the conclusion that the applicant was not provided with adequate or timely medical care, given the seriousness of the disease and its consequences for his health.

(c) Lack of proper nutrition, ventilation, daily walks and adequate conditions of sanitation and hygiene

107. The Court observes that, although the applicant was allowed outdoor activity for one hour a day at Vinnytsia Prison No. 1, the rest of the time he was confined to his cell, with very limited space for himself. As to his detention in Penitentiary No. 5, the Court notes that the applicant had unlimited access to the outdoor quarters. However, the fact that the applicant had only once-weekly access to a shower and that his linen and clothes could be washed only once a week raises concerns as to the conditions of hygiene and sanitation, given

the acutely overcrowded accommodation. Such conditions would have had an aggravating effect on his poor health.

108. As to the applicant's complaints concerning inadequate nutrition, the Court observes that the parties have agreed that the level of nutrition complied with the statutory norms. In the absence of proof to the contrary, it assumes that the applicant received adequate nutrition. His food was supplemented by parcels from his relatives.

109. Taking the aforementioned factors into account, the Court concludes that the applicant's conditions of hygiene and sanitation were unsatisfactory and would have contributed to the deterioration of his poor health.

(d) The Court's conclusions

110. The Court finds in the present case that there is no indication that there was a positive intention of humiliating or debasing the applicant, or an intention to subject him to treatment contrary to Article 3 of the Convention. However, the absence of any such purpose cannot exclude a finding of violation of Article 3 (see Peers v. Greece, no. 28524/95, § 74, ECHR 2001III). It considers that the applicant's conditions of detention from 28 September 2000 until the present day (more than 5 years) must have caused him considerable mental and physical suffering, diminishing his human dignity and arousing in him such feelings as to cause humiliation and debasement.

111. In the light of the above conclusions as to overcrowding, inadequate medical care and unsatisfactory conditions of hygiene and sanitation (paragraphs 103, 106 and 109 above), the Court finds that, taken together with their duration, the applicant's detention in such conditions amounted to degrading treatment.

112. Accordingly, there has been a violation of Article 3 of the Convention.

In the 2006 case of Holomiov v. Moldova, the applicant, suffering from numerous diseases related to his kidneys, complained about inadequate treatment in detention:

(Case 82)

I. Alleged violation of article 3 of the convention

109. The Government argued that the conditions of detention in Prison No. 3, where the applicant was detained, could not be considered inhuman and degrading. They showed that public expenditure on the prison system had increased in the years 2005-2006 and argued that much had been done of late to improve the conditions of detention in this prison.

110. According to the Government, the applicant had received all necessary medical care while in Prison No. 3. They submitted that during his stay there he had been seen by the prison medical personnel on approximately 70 occasions and on almost 30 occasions he had refused to see them. According to the Government, the medical personnel from the prison were well qualified and licensed to practice by the Ministry of Health. The applicant twice claimed to be suffering from high blood pressure, which showed that he was capable of exaggerating his health problems.

111. The applicant argued that there were no urologists, cardiologists or neurologists in the prison or the Prison Hospital. His state of health was serious enough to be incompatible with his prolonged detention.

112. The Court recalls that although Article 3 of the Convention cannot be construed as laying down a general obligation to release detainees on health grounds, it nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance (see Sarban v. Moldova, no. 3456/05, § 77, 4 October 2005).

113. The Court has to determine whether the applicant needed regular medical assistance, whether he was deprived of it, as he claims, and, if so, whether this amounted to treatment contrary to Article 3 of the Convention (cf. Farbtuhs v. Latvia, no. 4672/02, § 53, 2 December 2004).

114. The Government do not appear to dispute that the applicant suffered from numerous serious urological diseases, some of which were chronic, and that he was prescribed treatment and even surgery on one of his kidneys (see paragraphs 17 and 18 above).

115. The Court notes the disagreement between the parties as to the availability of medical care in Prison No. 3. The core issue, however, appears to be not the lack of medical care in general but rather the lack of adequate medical care for the applicant's particular condition, namely chronic hepatitis, second-degree hydronephrosis, uric diathesis, increased ecogenicity of pancreatic parenchyma, chronic bilateral pyelonephritis with functional impairment of the right kidney, hydronephrosis of the right kidney with functional impairment, stones in the urinary tract, somatoform disorder, chronic renal failure, head trauma and generalised anxiety disorder of hypertensive type.

116. When communicating this case, the Court asked the Government to present it with full information on the medical treatment received by the applicant in respect of all his health problems. Unfortunately, no such information was presented and the Government focused mainly on proving the applicant's bad faith in refusing to be seen by the prison doctors, the high number of consultations which he had had with doctors and the many occasions on which he had been hospitalised in the medical section of the prison or in the Prison Hospital.

117. The Court is not convinced by the Government's submission. Having the applicant seen by doctors, without later following up their recommendations, is not enough. It is noted in that respect that the applicant was prescribed

inter alia urgent surgery on one of his kidneys in 2002 and 2003 (see paragraph 18 above); however, it appears that the recommendations have never been followed up. One of the doctors who prescribed surgery stressed the seriousness of the applicant's condition and pointed to the risk that the applicant could loose his kidney if surgery was not performed. It appears that even this serious prognosis failed to convince the authorities to act.

118. Moreover, the Court notes that the domestic courts accepted that there was a lack of appropriate medical care during the applicant's detention in Remand Centre No. 3. The applicant's remand in custody was for this reason changed to home arrest (see paragraphs 13 and 14 above).

119. As to the Government's arguments about the applicant's bad faith, the Court notes that there were no doctors specialised in the treatment of the applicant's condition either in prison or in the Prison Hospital, where he was hospitalised on occasion (see paragraphs 23 and 24 above). Moreover, it appears from the letter of the Ministry of Justice of 23 September 2003 (see paragraph 22 above) that the treatment was inadequate and that the applicant had to rely on his relatives to obtain the necessary medication. He even went on hunger strike to protest against the conditions of his treatment in the prison (see paragraph 21 above). Accordingly, the Court cannot conclude that the applicant's refusal to accept medical treatment in such conditions could be interpreted as bad faith.

120. An important factor to be taken into consideration is the time spent by the applicant in detention without appropriate medical care. It is to be noted that he was detained in prison for almost four years, between January 2002 and December 2005. While noting that the applicant was partly responsible for the length of proceedings and consequently for the length of his remand in custody (see paragraph 144 below), it was nonetheless incumbent on the State to ensure that he was detained in conditions which did not breach Article 3.

121. In the light of the above, the Court concludes that while suffering from serious kidney diseases entailing serious risks for his health, the applicant was detained for a very long period of time without appropriate medical care. The Court finds that the applicant's suffering went beyond the threshold of severity under Article 3 of the Convention and constituted inhuman and degrading treatment.

122. The Court therefore finds that the denial of adequate medical care to the applicant was contrary to Article 3 of the Convention.

In the 2010 case of Slyusarev v. Russia, the applicant complained that his glasses had been taken away from him for a period of five months:

(Case 83)

34. The Court notes that the applicant's glasses were taken from him shortly after his arrest on 3 July 1998. The Government admitted that the taking of the glasses had been unlawful in domestic terms. However, it does not automatically make the authorities responsible for a breach of Article 3 of the Convention. The Court recalls in this respect that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. Previously the Commission has held that a few days spent in detention without glasses did not amount to ill-treatment (see A.K. v the Netherlands (dec.), no. 24774/94, 6 April 1995; cf. Jamal-Aldin v. Switzerland (dec.), no. 19959/92, 23 May 1999), and the Court does not see any reason to disagree with that. Therefore, if the glasses had been returned to the applicant quickly, no issue under Article 3 would have arisen.

35. As opposed to the example cited above, in the case at hand the applicant did not have glasses for several months. The applicant alleged that it had resulted in serious impairment of his eyesight. However, he did not produce any medical evidence relating to the period before his arrest. Furthermore, the domestic expert concluded that the impairment of the applicant's eyesight had been due to natural causes (see paragraph 25 above). The Court does not see any reason to disagree with that finding.

36. On the other hand, even if having no glasses had no permanent effect on the applicant's health, he must have suffered because of it. As follows from the case file, he had myopia of medium severity. Without glasses he was able to "attend to himself, orient himself and move around indoors" (see the doctors' report cited in paragraph 18 above), but it is clear that he could not read or write normally, and, besides that, it must have created a lot of distress in his everyday life, and given rise to a feeling of insecurity and helplessness. The Court thus considers that the applicant's situation, due to its duration, was serious enough to fall within the scope of Article 3 of the Convention.

37. The Government maintained that the applicant himself had been responsible for that situation. He had not complained about the taking of his glasses until December 1998. The Court recalls that, indeed, in certain contexts the behaviour of the alleged victim may be taken into account in defining whether the authorities can be held responsible for the treatment complained of. As a rule, Article 3 prohibits ill-treatment irrespective of the circumstances and the victim's behaviour (see Labita v. Italy [GC], no. 26772/95, § 119, ECHR 2000-IV). However, this rule is not without exceptions. Thus, if a prisoner does not receive requisite medical assistance from the authorities, it may entail the State's responsibility only if he made reasonable steps to avail himself of such assistance (see Valašinas v. Lithuania, no. 44558/98, § 105, ECHR 2001VIII, and Knyazev v. Russia, no. 25948/05, § 103, 8 November 2007). Therefore, in the present case the applicant's own conduct is an important element which should be assessed among other relevant factors.

38. Before addressing this argument of the Government it is necessary to rule upon the facts of the case, which are disputed between the parties. Whereas the Government alleged that the applicant had not complained about the

taking of his glasses until December 1998, the applicant contested that assertion. He claimed to have raised that complaint several times throughout the investigation, in particular, in his application for release of 14 July 1998.

39. The case file contains no evidence that the applicant raised that issue in July-August 1998. Indeed, in his application for release of 14 July 1998 the applicant mentioned the situation concerning his glasses (see paragraph 13 above). However, in that application he primarily sought to prove that he was innocent, that his arrest and the criminal prosecution had been unlawful, and that he should be released. The applicant did not ask to have his glasses returned or to have his eyesight examined. In any event, it is unclear whether the court reviewing the lawfulness of the detention was competent to examine that issue and take appropriate measures.

40. In other circumstances the Court might have interpreted the applicant's wording as an implicit request warranting appropriate reaction from the authorities (see, mutatis mutandis, Aksoy v. Turkey, 18 December 1996, § 56, Reports of Judgments and Decisions 1996-VI). However, in the circumstances there are no reasons to speculate on it, especially given that the applicant was represented by a lawyer of his choice who could have advised him to raise this issue before a competent authority (the investigator) in a more straightforward manner.

41. On the other hand, the Court cannot accept the Government's contention that the applicant did not raise the issue of the glasses until 2 December 1998. Having examined the materials in its possession the Court finds that the investigator had been aware of the applicant's problem well before that date. On 9 September 1998 the investigator ordered an examination of the applicant by an ophthalmologist – apparently in response to a request lodged by the defence some time earlier. It is unclear when such a request was lodged, but the Court is prepared to conclude that as from early September 1998 the prosecution knew about the difficult situation of the applicant. In any event, on 14 September 1998 the applicant's wife requested the district prosecutor to return the glasses to her husband (see paragraph 15 above).

42. It is true that the authorities did not remain passive; the applicant was sent to an ophthalmologist who made a prescription, and finally the applicant was given new glasses. However, it took the authorities almost five months to procure new glasses for him. Furthermore, the Government did not explain why his old glasses were not given back to him as soon as the investigator learned about the applicant's problem. Even though they were partially broken, they could have alleviated the difficulty he faced.

43. The Court has consistently stressed that certain forms of legitimate treatment or punishment – for example, a deprivation of liberty – may involve an inevitable element of suffering or humiliation. However, under Article 3 of the Convention the States must ensure that a person is detained in conditions which are compatible with respect for his human dignity, and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance (see Kudła v. Poland [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI). Taking the applicant's glasses could not be explained in terms of the "practical demands of imprisonment", and, even more so, was unlawful in domestic terms. The Government did not explain why the investigator had not returned old glasses when he had learned about the applicant's situation. Finally, the Government did not provide any explanation for the delay of two and half months before the applicant was examined by a specialist doctor or why it took a further two months to have the new glasses made.

44. In such circumstances the Court concludes that the treatment complained of was to a large extent imputable to the authorities. Having regard to the degree of suffering involved in this case, and its duration, the Court concludes that the applicant was subjected to degrading treatment. There was, therefore, a violation of Article 3 of the Convention.

IV. Persons with disabilities

In the 2001 case of Price v. United Kingdom, the applicant was four-limb deficient as a result of phocomelia due to thalidomide, and, in addition, suffering from kidney problems. She complained about being detained for several days without precautions being made for her special situation:

(Case 84)

24. The Court recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. 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.

In considering whether treatment is "degrading" within the meaning of Article 3, one of the factors which the Court will take into account is the question whether its object was to humiliate and debase the person concerned, although the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see Peers v. Greece, no. 28524/95, §§ 67-68 and 74, ECHR 2001-III).

25. In this case the applicant, a four-limb-deficient thalidomide victim with numerous heath problems including defective kidneys, committed contempt of court in the course of civil proceedings and was ordered by a judge to be detained for seven days (although, as a result of the rules on remission of sentences, she was in fact detained for three nights and four days). It appears that, in accordance with English law and practice, the sentencing judge took no steps, before committing the applicant to immediate imprisonment – a particularly harsh sentence in this case – to ascertain where she would be detained or to ensure that it would be possible to provide facilities adequate to cope with her severe

level of disability.

26. The applicant and the Government have submitted different accounts of the treatment she received while in detention and, so long after the event and in the absence of any findings by the domestic courts, it is difficult to establish in detail precisely what occurred. However, the Court considers it significant that the documentary evidence submitted by the Government, including the contemporaneous custody and medical records, indicate that the police and prison authorities were unable adequately to cope with the applicant's special needs.

27. During her first night of detention the applicant was kept in a cell in a local police station because it was too late in the day to take her to prison. The custody record shows that she was complaining of the cold every half hour – a serious problem for the applicant who suffered from recurring kidney problems and who, because of her disability, could not move around to keep warm. Finally, a doctor was called, who noted that the applicant could not use the bed and had to sleep in her wheelchair, that the facilities were not adapted to the needs of a disabled person and that the cell was too cold. The Court notes, however, that despite the doctor's findings no action was taken by the police officers responsible for the applicant's custody to ensure that she was removed to a more suitable place of detention, or released. Instead, the applicant had to remain in the cell all night, although the doctor did wrap her in a space blanket and gave her some painkillers.

28. The following day the applicant was taken to Wakefield Prison, where she was detained for three days and two nights. During her first night's detention the nursing record states that the duty nurse was unable to lift the applicant alone and thus had difficulty in helping her use the toilet. The applicant submits that, as a result, she was subjected to extremely humiliating treatment at the hands of male prison officers. The Government deny her account, but nonetheless it seems clear that male officers were required to assist in lifting the applicant on and off the toilet.

29. The Court observes that there are notes in the applicant's admission records by a doctor and staff nurse expressing concern over the problems that were likely to be encountered during her detention, including reaching the bed and toilet, hygiene and fluid intake, and mobility if the battery of her wheelchair ran down. Such was the concern that the prison governor authorised staff to try and find the applicant a place in an outside hospital. In the event, however, they were unable to transfer her because she was not suffering from any particular medical complaint. By the time of her release the applicant had to be catheterised because the lack of fluid intake and problems in getting to the toilet had caused her to retain urine. She claims to have suffered health problems for ten weeks thereafter, but has supplied no medical evidence to support this.

30. There is no evidence in this case of any positive intention to humiliate or debase the applicant. However, the Court considers that to detain a severely disabled person in conditions where she is dangerously cold, risks developing sores because her bed is too hard or unreachable, and is unable to go to the toilet or keep clean without the greatest of difficulty, constitutes degrading treatment contrary to Article 3 of the Convention. It therefore finds a violation of this provision in the present case.

In the 2013 case of Grimailovs v. Latvia, the applicant, a paraplegic, complained about inadequate medical care in a prison facility which was not suited for persons in need of a wheelchair:

(Case 85)

150. The Court reiterates that Article 3 of the Convention cannot be interpreted as laying down a general obligation to release a detainee on health grounds or to transfer him to a public hospital, even if he is suffering from an illness that is particularly difficult to treat. However, this provision does require the State to ensure that prisoners are detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured (see Kudła v. Poland [GC], no. 30210/96, §§ 92-94, ECHR 2000XI; Melnītis v. Latvia, no. 30779/05, § 69, 28 February 2012; and Savičs v. Latvia, no. 17892/03, § 130, 27 November 2012).

151. Moreover, the Court has considered that where the authorities decide to place and keep a disabled person in continued detention, they should demonstrate special care in guaranteeing such conditions as correspond to the special needs resulting from his disability (see Farbtuhs, cited above, § 56; Jasinskis, cited above § 59; Z.H. v. Hungary, no. 28973/11, § 29, 8 November 2012; and the international law material in paragraphs 78-82 above).

152. In the above-cited case of Farbtuhs, the Court noted that the prison authorities had permitted family members to stay with the applicant for twenty-four hours at a time and that this took place on a regular basis. In addition to the applicant, who had a physical disability, being cared for by his family, he was assisted during working hours by the medical staff and outside working hours was helped by other inmates on a voluntary basis. The Court expressed its concerns in the following terms (§ 60):

"The Court doubts the appropriateness of such a solution, leaving as it did the bulk of responsibility for a man with such a severe disability in the hands of unqualified prisoners, even if only for a limited period. It is true that the applicant did not report having suffered any incident or particular difficulty as a result of the impugned situation; he merely stated that the prisoners in question sometimes 'refused to cooperate', without mentioning any specific case in which they had refused. However, the anxiety and unease which such a

severely disabled person could be expected to feel, knowing that he would receive no professional assistance in the event of an emergency, in themselves raise a serious issue from the standpoint of Article 3 of the Convention."

153. The Court has also held that detaining a disabled person in a prison where he could not move around and, in particular, could not leave his cell independently, amounted to degrading treatment (see Vincent v. France, no. 6253/03, § 103, 24 October 2006). Similarly, the Court has found that leaving a person with a serious physical disability to rely on his cellmates for assistance with using the toilet, bathing and getting dressed or undressed, contributed to its finding that the conditions of detention had amounted to degrading treatment (see Engel v. Hungary, no. 46857/06, §§ 27 and 30, 20 May 2010).

(b) Application of these principles to the present case

154. The Court observes that the crux of the applicant's complaint relates to the material conditions of his detention in Valmiera Prison in view of his physical disability and the lack of any organised assistance in that regard. The Court notes that the applicant himself specifically pointed out that his complaint did not relate to his continued detention in view of his state of health (compare and contrast with the above-cited Farbtuhs case).

155. The Court notes that the applicant's medical condition is not disputed between the parties. While serving his sentence in Valmiera Prison, the applicant was paraplegic and was confined to a wheelchair. The Court considers that the applicant's state of health following his release is irrelevant for the purposes of the present complaint under Article 3 of the Convention and will therefore not examine the parties' submissions in this regard. Nor shall any importance be attached to the Government's suggestion that the applicant might have faked his physical disability while in detention, since the diagnosis of his medical condition lies within the competence of the domestic authorities. The Court considers that there can be no question over the adequacy of medical assistance in the absence of a timely and accurate diagnosis. It is important to note that when the applicant was placed in detention he could walk; his paraplegia was first recorded in prison and his Category 1 disability was subsequently confirmed by the relevant domestic authority. Had there been any imprecision on their part in establishing an accurate diagnosis of the applicant's medical condition, or indeed had the domestic authorities subsequently failed to detect any changes in the applicant's condition, the State would have to bear responsibility for such an omission as it is its obligation to ensure that persons deprived of their liberty receive the requisite medical assistance.

156. The Court notes that neither parties' submissions suggest that the applicant while in Valmiera Prison suffered from any conditions, problems or ailments other than his physical disability, as a result of which he was confined to a wheelchair (compare and contrast with the above-cited cases of Mouisel and Farbtuhs, and also with Price v. the United Kingdom, no. 33394/96, § 25, ECHR 2001VII; Kupczak v. Poland, no. 2627/09, § 60, 25 January 2011; Turzynski v. Poland (dec.), no. 61254/09, §§ 2 and 37, 17 April 2012; D.G. v. Poland, no. 45705/07, § 143, 12 February 2013; Todorov v. Bulgaria (dec.), no. 8321/11, § 64, 12 February 2013).

157. First of all, as concerns the material conditions of the applicant's detention in Valmiera Prison, the Court notes that it is common ground between the parties that he was detained for nearly two-and-a-half years in a regular detention facility, which was not adapted for a wheelchair-bound person such as the applicant. The Government insisted that the applicant had been placed in a special unit for inmates with health problems, yet these facilities do not appear to have had less architectural or technical barriers than the facilities in the ordinary wings of that prison. The Court notes that a ramp had been installed to facilitate the applicant's access to the outdoor yard. Yet other areas, such as the canteen, toilets, sauna, library, shop, gym, meeting room and telephone room, remained inaccessible for the applicant in a wheelchair, a fact which the Government did not deny. Special arrangements had been put in place to alleviate the hardships of the accessrelated problems, but only in relation to the canteen and not the other facilities. While it appears that the applicant was not locked up in his cell during daytime and could move around in the living area of his unit, his ability to use any facilities therein was restricted owing to his paraplegia.

158. In this regard, the Court considers that the accessibility of the sanitation facilities raises a particular concern under Article 3 of the Convention (see, in a more complex context, D.G. v. Poland, cited above, §§ 147 and 150). In the present case, the applicant submitted, and the Government did not deny, that his physical disability had prevented him from being able to access the toilets and sauna. While, according to the Government, the toilets had been adapted to the applicant's special needs, the Court notes that it can hardly be considered as alleviating his hardship, given that these facilities themselves remained inaccessible without the help of other inmates. Moreover, it appears that the only possibility for the applicant to wash himself had been during the weekly sauna visits, facilities which were also inaccessible to the applicant without the help of others. Nor does it transpire from the case materials that the sauna facilities had been adapted for the applicant's special needs. The Court considers such a state of affairs unacceptable. It has already found that restricting prisoners' access to showers once a week did not allow them to wash themselves properly and that this shortcoming had contributed to the cumulative effect of conditions of detention in the Prison Hospital in violation of Article 3 of the Convention (see Čuprakovs v. Latvia, no. 8543/04, §§ 44-45, 18 December 2012). The international standard in this respect currently stands at least at twice a week (see paragraph 83 above), to which the CPT has also invited the Contracting States to adhere[1]. In the present case, the applicant did not have access to a shower at all. The Court considers that weekly sauna visits did not provide him with an adequate opportunity to maintain his personal hygiene, given their inaccessibility and limited availability

(contrast with the above-cited Todorov case, where the applicant had daily access to common showers and later had an en suite toilet and shower).

159. The Court further notes that the applicant's special needs were further disregarded as no measures were adopted to alleviate the hardship caused by the inaccessibility of the sanitation facilities while meeting his wife for conjugal visits, which under Latvian legislation could last up to forty-eight hours (see Aleksejeva v. Latvia, no. 21780/07, § 28, 3 July 2012). Acknowledging that the Convention does not require the Contracting States to make provisions for such visits (see Epners-Gefners, cited above, § 62), the Court nevertheless notes that they have to ensure that prisoners are detained in conditions which are compatible with respect for human dignity. In exercising their wide margin of appreciation in deciding whether or not to allow conjugal visits, the States have to have due regard to the needs and resources of the community and of individuals (ibid.). The Court finds that placing the applicant, who is confined to a wheelchair, in facilities where he cannot properly wash and use the toilet, even if only for a limited period of time, could be hardly considered compatible with respect for his human dignity.

160. Turning to the second point in its analysis, the Court notes that the applicant, who has a physical disability and is wheelchair-bound, was in need of daily assistance with his mobility around the prison. While the Court recognises that the administration of Valmiera Prison had made certain efforts to lessen his inability to move about in the prison, the fact remains that he had to rely on the help of his cellmate to enter and leave the living area of his unit; he also had to rely on the help of other inmates to access various facilities, such as the toilets, sauna, library, shop, gym, meeting room and telephone room, as they were inaccessible to him in a wheelchair. Although the medical staff visited the applicant in his cell for ordinary medical check-ups, they did not provide any assistance with his daily routine (contrast with the above-cited cases of Turzynski, § 40, and Todorov, § 65).

161. The Court finds that the applicant had to rely on his fellow inmates to assist him with his daily routine and mobility around the prison, even though they had not been trained nor had the necessary qualifications to provide such assistance. The Government argued that the applicant's cellmate had voluntarily agreed to assist him in case of necessity. The Court is not persuaded by such an argument and does not consider that the applicant's special needs were thereby attended to and that the State has complied with its obligations under Article 3 of the Convention in that respect. The Court has already stressed its disapproval of a situation in which the staff of a prison feel relieved of their duty to provide security and care to more vulnerable detainees by making their cellmates responsible for providing them with daily assistance or, if necessary, with first aid (see, mutatis mutandis, Kaprykowski v. Poland, no. 23052/05, § 74, 3 February 2009). It is clear that in the present case the help offered by the applicant's cellmate did not form part of any organised assistance by the State to ensure that the applicant was detained in conditions compatible with respect for his human dignity. It cannot therefore be considered suitable or sufficient in view of the applicant's physical disability (see the above-cited cases of Farbtuhs, § 60, and D.G. v. Poland, § 147). While it is true that the Convention does not guarantee as such a right to social assistance, the Court considers that the State's obligation to ensure adequate conditions of detention includes provision for the special needs of prisoners with a physical disability such as the present applicant (see paragraph 151), and the State cannot merely absolve itself from that obligation by shifting the responsibility to the applicant's cellmate.

162. In the light of the foregoing considerations and their cumulative effects, the Court holds that the conditions of the applicant's detention in view of his physical disability and, in particular, his inability to have access to various prison facilities independently, including the sanitation facilities, and in such a situation the lack of any organised assistance with his mobility around the prison or his daily routine, reached the threshold of severity required to constitute degrading treatment contrary to Article 3 of the Convention. There has, accordingly, been a violation of that provision.

In the 2012 case of Z. H. v. Hungary, the applicant was deaf and dumb, suffering from intellectual disability, illiterate and unable to avail himself of the official sign language:

(Case 86)

28. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. 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. In considering whether treatment is "degrading" within the meaning of Article 3, one of the factors which the Court will take into account is the question whether its object was to humiliate and debase the person concerned, although the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see among many other authorities Price v. the United Kingdom, no. 33394/96, § 24, ECHR 2001VII; Peers v. Greece, no. 28524/95, §§ 67-68 and 74, ECHR 2001–III; and Engel v. Hungary, no. 46857/06, § 26, 20 May 2010).

29. Moreover, where the authorities decide to detain a person with disabilities, they should demonstrate special care in guaranteeing such conditions as correspond to the person's individual needs resulting from his disability (see mutatis mutandis Jasinskis v. Latvia, no. 45744/08, § 59, 21 December 2010; Price v. the United Kingdom, op.cit., § 30). States have an obligation to take particular measures which provide effective protection of vulnerable persons and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge (see Z and Others v. the United Kingdom [GC], no. 29392/95, § 73, ECHR 2001V). Any interference with the rights of persons belonging to particularly vulnerable groups – such as those with mental disorders – is required to be subject to strict scrutiny, and only

very weighty reasons could justify any restriction (see Alajos Kiss v. Hungary, no. 38832/06, § 42, 20 May 2010).

(b) Application of those principles to the present case

30. In the instant application, the Court observes that Mr Z.H. – deaf and dumb, suffering from intellectual disability, illiterate and unable to avail himself of the official sign language – was detained at SzabolcsSzatmárBereg County Prison for a period lasting almost three months (see paragraph 11 above). It notes the Government's submission according to which special measures, incarnated by an instruction issued by the prison governor, were put in place to address his situation, as of 23 May 2011 (see paragraph 12 above). However, it is unclear to what extent these measures concerned the phase of the applicant's detention occurring prior to this date, that is, between 10 April and 23 May 2011.

31. In any case, the Court is not convinced that even the aggregate of the measures referred to by the Government – namely, the applicant's incarceration together with a relative in a cell close to the warden's office, the involvement of other inmates and the applicant's mother in handling the situation and the facilitation of his correspondence (see paragraph 25 above) – was sufficient to remove the applicant's treatment from the scope of Article 3.

Given that the applicant undoubtedly belongs to a particularly vulnerable group (see paragraphs 20 and 29 in fine above) and that as such he should have benefited from reasonable steps on the side of the authorities to prevent situations likely to result in inhuman and degrading treatment, the Court considers that it was incumbent on the Government to prove that the authorities took the requisite measures. This redistribution of the burden of proof is analogous to the manner in which the Court examines situations where an individual is taken into police custody in good health but is found to be injured at the time of release, so that it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see among many other authorities Selmouni v. France [GC], no. 25803/94, § 87, ECHR 1999V).

32. In the present circumstances, however, the Court notes that the Government have failed to meet this burden of proof in a satisfactory manner, especially in respect of the initial period of the detention.

The Court considers in particular that the inevitable feeling of isolation and helplessness flowing from the applicant's disabilities, coupled with the presumable lack of comprehension of his own situation and of that of the prison order¸ must have caused the applicant to experience anguish and inferiority attaining the threshold of inhuman and degrading treatment, especially in the face of the fact that he had been severed from the only person (his mother) with whom he could effectively communicate. Moreover, while the applicant's allegations about being molested by other inmates have not been supported by evidence, the Court would add that had this been the case, the applicant would have faced significant difficulties in bringing such incidents to the wardens' attention, which may have resulted in fear and the feeling of being exposed to abuse.

The Court also observes that the District Court eventually released the applicant for quite similar considerations.

33. In sum, the Court cannot but conclude that – despite the authorities laudable but belated efforts to address his situation – the applicant's incarceration without the requisite measures taken within a reasonable time must have resulted in a situation amounting to inhuman and degrading treatment, in breach of Article 3 of the Convention, on account of his multiple disabilities.

There has accordingly been a breach of that provision.

In the 2014 case of Amirov v. Russia, the applicant, a paraplegic suffering from a number of serious diseases, complained about his insufficient treatment in detention:

(Case 87)

82. The Court reiterates that 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, for example, Labita v. Italy [GC], no. 26772/95, § 119, ECHR 2000-IV). Illtreatment must, however, attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum 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 (see, among other authorities, Verbinț v. Romania, no. 7842/04, § 63, 3 April 2012, with further references).

83. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see Pretty v. the United Kingdom, no. 2346/02, § 52, ECHR 2002-III, with further references).

84. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure of deprivation of liberty do not subject him to distress or hardship of an intensity 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, and Popov v. Russia, no. 26853/04, § 208, 13 July 2006). In most cases concerning the detention of

persons who were ill, the Court has examined whether or not the applicant received adequate medical assistance in prison. The Court reiterates in this regard that even though Article 3 does not entitle a detainee to be released "on compassionate grounds", it has always interpreted the requirement to secure the health and well-being of detainees, among other things, as an obligation on the State to provide detainees with the requisite medical assistance (see Kudła, cited above, § 94; Kalashnikov v. Russia, no. 47095/99, § 95, ECHR 2002-VI; and Khudobin v. Russia, no. 59696/00, § 96, ECHR 2006-XII (extracts)).

85. The "adequacy" of medical assistance remains the most difficult element to determine. The Court insists that, in particular, authorities must ensure that diagnosis and care are prompt and accurate (see Hummatov v. Azerbaijan, nos. 9852/03 and 13413/04, § 115, 29 November 2007; Yevgeniy Alekseyenko v. Russia, no. 41833/04, § 100, 27 January 2011; Gladkiy v. Russia, no. 3242/03, § 84, 21 December 2010; Khatayev v. Russia, no. 56994/09, § 85, 11 October 2011; and, mutatis mutandis, Holomiov v. Moldova, no. 30649/05, § 121, 7 November 2006), and that, where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation (see Hummatov, cited above, §§ 109 and 114; Sarban v. Moldova, no. 3456/05, § 79, 4 October 2005; and Popov, cited above, § 211).

86. On the whole, the Court reserves sufficient flexibility in defining the required standard of health care, deciding it on a case-by-case basis. That standard should be "compatible with the human dignity" of a detainee, but should also take into account "the practical demands of imprisonment" (see Aleksanyan v. Russia, no. 46468/06, § 140, 22 December 2008).

(b) Application of the above principles to the present case

87. Turning to the circumstances of the present case, the Court observes that the applicant is a paraplegic wheelchair-bound inmate suffering from a long list of illnesses, affecting his nervous, urinary, muscular and endocrine systems (see paragraph 21 above). Relying on a large number of expert opinions issued by Russian and foreign medical specialists, the applicant argued that his condition was extremely serious, or even life-threatening, particularly given that he had not received adequate medical care in detention (see paragraphs 22, 26, 38-43 above). He submitted that neither the quality nor the quantity of the medical services he was being provided with corresponded to his needs. In addition, he was being left in unsanitary conditions in which any medical procedure administered to him on a daily basis could be fatal.

88. The Government disagreed. They drew the Court's attention to the reports prepared by doctors from hospital no. 20, as well as the medical certificates issued by the Russian prison authorities. They insisted that the applicant was not suffering from a serious illness listed in the Governmental decree, that his condition did not therefore call for his release and that the quality of the medical services afforded to him was beyond reproach (see paragraphs 23, 28, and 32-35 above).

89. The Court has already stressed its difficult task of evaluating the contradictory and even mutually exclusive evidence submitted by the parties in the present case (see paragraph 70 above). Its task has been further complicated by the need to assess evidence calling for expert knowledge in various medical fields. In this connection it emphasises that it is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see McKerr v. the United Kingdom (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Article 3 of the Convention the Court must apply a "particularly thorough scrutiny" (see, mutatis mutandis, Ribitsch v. Austria, 4 December 1995, § 32, Series A no. 336, and Georgiy Bykov v. Russia, no. 24271/03, § 51, 14 October 2010).

90. The Court has examined a large number of cases against Russia raising complaints of inadequate medical services afforded to inmates (see, among the most recent ones, Koryak v. Russia, no. 24677/10, 13 November 2012; Dirdizov v. Russia, no. 41461/10, 27 November 2012; Reshetnyak v. Russia, no. 56027/10, 8 January 2013; Mkhitaryan v. Russia, no. 46108/11, 5 February 2013; Gurenko v. Russia, no. 41828/10, 5 February 2013; Bubnov v. Russia, no. 76317/11, 5 February 2013; Budanov v. Russia, no. 66583/11, 9 January 2014, and Gorelov v. Russia, no. 49072/11, 9 January 2014). In the absence of an effective remedy in Russia to air those complaints, the Court has been obliged to perform the first-hand evaluation of evidence before it to determine whether the guarantees of Articles 2 or 3 of the Convention had been respected. In that role, paying particular attention to the vulnerability of applicants in view of their detention, the Court has called on the Government to provide credible and convincing evidence showing that the applicant concerned had received comprehensive and adequate medical care in detention.

91. Coming back to the medical reports and opinions submitted by the applicant in the present case, the Court is satisfied that there is prima facie evidence in favour of his submissions and that the burden of proof should shift to the respondent Government. The Court finds some merit in the Government's argument that the expert evidence produced by the applicant has the major defect of having been drawn up without the experts having examined the applicant in person. However, in the particular circumstances of the present case, it does not consider that argument valid given that the Government failed to organise a medical expert examination of the applicant in disregard of the interim measure indicated by the Court (see paragraph 75 above) and given that the Russian authorities denied the applicant access to medical experts of his choice (see paragraph 74 above).

92. Having regard to its findings under Article 34 of the Convention, the Court considers that it can draw inferences from the Government's conduct and is ready to apply a particularly thorough scrutiny to the evidence submitted by

them in support of their position. It therefore finds that the Government have failed to demonstrate conclusively that the applicant was receiving effective medical treatment for his illnesses while in detention. The evidence submitted by the Government is unconvincing and insufficient to rebut the applicant's account of the treatment to which he was being subjected in detention.

93. The Court thus finds that the applicant was being left without the medical assistance vital for his illnesses. The treatment he was receiving was incomplete and the medical supervision afforded to him was insufficient to maintain his health. There had been no thorough evaluation of his condition or adequate diagnosis in response to the increasing number of his health-related complaints. The medical personnel of the detention facilities were taking no steps to address his concerns or to apply the recommendation of the experts commissioned by the applicant. The poor quality of the medical services was accentuated by the fact that the applicant was being kept in unsterile and unsanitary detention conditions posing a serious danger to him, given that his immune system was already compromised. The Court is also concerned that the information provided by the prison doctor from the detention facility in Rostov-on-Don in respect of the quality of the medical care currently afforded to the applicant does not lead it to conclude that the medical care he is continuing to receive in detention is such as to be capable of securing his health and well-being and preventing further aggravation of his condition (see paragraph 49 above). The Court believes that, as a result of the lack of comprehensive and adequate medical treatment, the applicant is being exposed to prolonged mental and physical suffering that is diminishing his human dignity. The authorities' failure to provide the applicant with the medical care he needs amounts to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

94. Accordingly, there has been a violation of Article 3 of the Convention.

V. Mental health problems

In the 2009 case of Slawomir Musial v. Poland, the applicant suffered from schizophrenia and other mental diseases. He complained that he was detained in a regular detention facility which did not take care of his special needs:

(Case 88)

85. The Court reiterates that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level is, in the nature of things, 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 (see Kudła v. Poland [GC], no. 30210/96, § 91, ECHR 2000-XI, and Peers v. Greece, no. 28524/95, § 67, ECHR 2001-III). Although the purpose of such treatment is a factor to be taken into account, in particular whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (see Peers, ibid., § 74).

86. Article 3 of the Convention cannot be interpreted as laying down a general obligation to release a detainee on health grounds or to transfer him to a civil hospital, even if he is suffering from an illness that is particularly difficult to treat (see Mouisel v. France, no. 67263/01, § 40, ECHR 2002IX). However, this provision does require the State to ensure that prisoners are detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured by, among other things, providing them with the requisite medical assistance (see, Kudła ibid., § 94, and Mouisel, ibid., § 40).

87. The Court has held on many occasions that the detention of a person who is ill may raise issues under Article 3 of the Convention (see Mouisel, ibid., § 37) and that the lack of appropriate medical care may amount to treatment contrary to that provision (see İlhan v. Turkey [GC], no. 22277/93, § 87, ECHR 2000-VII; Naumenko v. Ukraine, no. 42023/98, § 112, 10 February 2004; and Farbtuhs v. Latvia, no. 4672/02, § 51, 2 December 2004). In particular, the assessment of whether the particular conditions of detention are incompatible with the standards of Article 3 has, in the case of mentally ill persons, to take into consideration their vulnerability and their inability, in some cases, to complain coherently or at all about how they are being affected by any particular treatment (see, for example, Herczegfalvy v. Austria, judgment of 24 September 1992, Series A no. 244, pp. 25-26, § 82, and Aerts v. Belgium, judgment of 30 July 1998, Reports 1998-V, p. 1966, § 66).

88. The Court observes that there are three particular elements to be considered in relation to the compatibility of an applicant's health with his stay in detention: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention, and (c) the advisability of maintaining the detention measure in view of the state of health of an applicant (see Mouisel, ibid., §§ 40-42; Melnik v. Ukraine, no. 72286/01, § 94, 28 March 2006; and Rivière v. France, no. 33834/03, § 63, 11 July 2006).

(b) Application of these principles to the present case

89. The Court observes that the applicant's medical condition, namely his chronic and severe mental disorders including schizophrenia, is undisputed. The applicant suffers from hallucinations, has suicidal thoughts and in January 2006 he attempted to hang himself (see paragraphs 6, 9, 13, 14, 16, 19 and 23 above).

The case therefore raises the issue of the compatibility of the applicant's state of health with his detention in a facility designed for healthy detainees where he is not treated or

monitored on a daily basis by specialist medical personnel. The Court must also answer the question of whether that situation attained the minimum level of severity to fall within the ambit of Article 3 of the Convention.

90. The Court notes that the applicant has been detained since April 2005, with a short break between 28 August and 7 September 2007 when he was released home. During his nearly three and a half years of detention the applicant, for the most part, has been detained with healthy inmates in ordinary detention facilities (see paragraphs 8, 10, 11, 12, 15-17, 23 and 24 above).

91. As regards the applicant's medical treatment, the Court observes that between April and July 2005 and between April and June 2007 he received in-patient medical treatment in a psychiatric hospital (see paragraphs 10 and 22 above). On three occasions he received short-term emergency treatment in a psychiatric hospital (see paragraphs 9, 13 and 15 above). Medical evidence furnished by the parties revealed that the applicant was under regular pharmacological treatment, comprising psychotropic drugs. He had access to prison in-house medical staff and, upon appointment, to specialist doctors, including psychiatrists.

92. On the other hand, the Court observes that, except for the two periods in 2005 and 2007 when the applicant was an in-patient in a prison psychiatric hospital, he shared his cell with inmates who were in good health and, except in cases of medical emergency, he received the same attention as them, notwithstanding his particular condition. As transpires from the documents, almost all doctors who examined the applicant during the different stages of his detention suggested that he should remain under regular psychiatric supervision. It is therefore clear that the applicant has been in need of constant and specialised medical supervision, in the absence of which he faces major health risks. Nonetheless, although he has had more or less regular access to prison in-house medical staff, he does not remain under psychiatric supervision and his access to a psychiatrist has been restricted to emergencies or to the dates when he has made an appointment.

93. The Court notes with concern that after the applicant attempted to commit suicide in Sosnowiec Remand Centre on 23 January 2006 he was examined only by an in-house doctor. It was not until the following day that he was seen by a psychiatrist, albeit only as an outpatient. On the very same day he was transferred back to the remand centre because two psychiatric hospitals had refused to admit him owing to the lack of places.

94. Mindful of the above considerations, the Court finds that while maintaining the detention measure is not, in itself, incompatible with the applicant's state of health, detaining him in establishments not suitable for incarceration of the mentally-ill, raises a serious issue under the Convention.

95. In addition the Court has concerns about the living and sanitary conditions of the applicant's detention. In this regard the parties' submissions are contradictory; however, it is undisputed that all of those establishments, at the relevant time, faced the problem of overcrowding (see paragraphs 27, 33 and 37 above). The Government did not contest the applicant's submissions that in Zabrze Remand Centre he had shared his cell of 6.7 square metres with two other inmates, that in Sosnowiec Remand Centre he had initially been detained in a cell of sixteen square metres together with four to five other persons, and finally, that in Herby Stare Prison his cell no. 32 measured eighteen square metres and had been occupied by nine or ten detainees. The Court also notes that in the detention facilities concerned the applicant was entitled to merely one hour of outdoor exercise per day and in reality had a very limited access to a library and an entertainment room (see paragraphs 29 and 34 above). Lastly, in the light of the conflicting statements the Court is not convinced that the hygienic and sanitary conditions in the detention facilities concerned met the minimum required standards (see paragraphs 28, 31, 34, 35, 38 and 40 above).

The Court finds that those conditions would not be considered appropriate for any person deprived of his liberty, still less for someone like the applicant with a history of mental disorder and in need of a specialised treatment. In this connection the Court refers to the judgment of the Constitutional Court which held that the overcrowding in itself could be qualified as inhuman and degrading treatment and, if combined with additional aggravating circumstances, as torture (see paragraph 61 above).

96. Undeniably, detained persons who suffer from a mental disorder are more susceptible to the feeling of inferiority and powerlessness. Because of that an increased vigilance is called for in reviewing whether the Convention has been complied with. While it is for the authorities to decide, on the basis of the recognised rules of medical science, on the therapeutic methods to be used to preserve the physical and mental health of patients who are incapable of deciding for themselves, and for whom they are therefore responsible, such patients nevertheless remain under the protection of Article 3.

The Court accepts that the very nature of the applicant's psychological condition made him more vulnerable than the average detainee and that his detention in the conditions described above, with the exception of the two short periods in 2005 and 2007 when the applicant was an in-patient in a prison hospital, may have exacerbated to a certain extent his feelings of distress, anguish and fear. In this connection, the Court considers that the failure of the authorities to hold the applicant during most of his detention in a suitable psychiatric hospital or a detention facility with a specialised psychiatric ward has unnecessarily exposed him to a risk to his health and must have resulted in stress and anxiety.

Moreover, the Court finds that the fact that for the most part the applicant has received the same attention as the other inmates, notwithstanding his particular state of health, shows the failure of the authorities' commitment to improving the conditions of detention in compliance with the recommendations of the Council of Europe. In particular, the Court notes that the recommendations of the Committee of Ministers to the member States, namely Recommendation No. R (98) 7 concerning the ethical and organisational aspects of health care in prison and Recommendation on the European Prison Rules provide that prisoners suffering from serious mental disturbance should be kept and cared for in a hospital facility which is adequately equipped and possesses appropriately trained staff (see paragraphs 62 and 63 above). In recent judgments the Court has drawn the authorities' attention to the importance of this recommendation, notwithstanding its non-binding nature for the member States (see Dybeku v. Albania, no. 41153/06, § 48, 18 December 2007; Rivière, cited above, § 72; and Naumenko, cited above, § 94).

(c) Conclusion

97. Assessing the facts of the case as a whole, having regard in particular to the cumulative effects of the inadequate medical care and inappropriate conditions in which the applicant was held throughout his pretrial detention, which clearly had a detrimental effect on his health and well-being (see Kalashnikov v. Russia, no. 47095/99, § 98, ECHR 2002VI), the Court considers that the nature, duration and severity of the ill-treatment to which the applicant was subjected are sufficient to be qualified as inhuman and degrading (see Egmez v. Cyprus, no. 30873/96, § 77, ECHR 2000-XII; Labzov v. Russia, no. 62208/00, § 45, 16 June 2005; and Mayzit v. Russia, no. 63378/00, § 42, 20 January 2005).

98. There has accordingly been a violation of Article 3 of the Convention.

In the 2020 case of Strazimiri v. Albania, the applicant, who suffered from paranoid schizophrenia, complained about being subjected to a state of "therapeutic abandonment" during his detention:

(Case 89)

103. The Court refers to the general principles laid down in the recent Grand Chamber judgment in the case of Rooman v. Belgium ([GC], no. 18052/11, §§ 141-48, 31 January 2019). In particular, the Court refers to the following paragraphs (references omitted):

"147. In this connection, the "adequacy" of medical assistance remains the most difficult element to determine. The Court reiterates that the mere fact that a detainee has been seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate. The authorities must also ensure that a comprehensive record is kept concerning the detainee's state of health and his or her treatment while in detention, that diagnosis and care are prompt and accurate, and that where necessitated by the nature of a medical condition supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation, rather than addressing them on a symptomatic basis. The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through. Furthermore, medical treatment provided within prison facilities must be appropriate, that is, at a level comparable to that which the State authorities have committed themselves to provide to the population as a whole. Nevertheless, this does not mean that every detainee must be guaranteed the same level of medical treatment that is available in the best health establishments outside prison facilities (...).

148. Where the treatment cannot be provided in the place of detention, it must be possible to transfer the detainee to hospital or to a specialised unit (...)."

Application of the above principles in the present case

104. In the first place, the Court considers that the applicant's mentalhealth problems, at the origin of his court-ordered compulsory medical treatment, have not been disputed. He was placed in a court-ordered compulsory medical treatment in a medical institution on the basis of several medical reports certifying that he suffered from paranoid schizophrenia. It is for this reason that the applicant has been detained in Kruja Prison and in the Prison Hospital since April 2009.

105. Since the applicant has complained under Article 3 of the Convention of the material conditions of his detention and the inadequacy of the medical treatment he received, the Court will concentrate the examination of the complaint under Article 3 on those elements in respect of the period served in the Prison Hospital, regard being had to its findings in paragraphs 93-95 above. When examining the Article 3 complaint, account has to be taken of the cumulative effects of the conditions of detention, the duration of the detention and the inadequacy of the medical treatment (see Dybeku v. Albania, no. 41153/06, § 38, 18 December 2007).

106. As regards the material conditions in the Prison Hospital, the Court takes note of the People's Advocate's findings in 2015 and 2016 concerning that institution's advanced state of dilapidation, the widespread damp and the almost complete lack of central heating. The CPT, following its ad hoc and periodic visits in 2017 and 2018, echoed those findings in its two recent reports of 24 May 2018 and 17 September 2019, stating that the living conditions had further deteriorated in comparison to earlier visits. The Court takes note of the deterioration of the living conditions, including the lack of central heating in the Prison Hospital, which has persisted for a very long time. Of concern is also the fact that patients, like the applicant, benefited from inadequate out-of-room activities, as evidenced in the CPT report of 3 March 2016 (see paragraph 75 above). The Court considers that the applicant, having been detained in the Prison Hospital since June 2011,

has been directly affected by the overall decline of the living conditions and the regime to which he was subjected.

107. As regards the applicant's medical treatment, a number of medical reports were produced in the course of the domestic proceedings, which showed that the applicant continued to suffer from paranoid schizophrenia, as a result of which he was following a course of medicine. In particular, according to the medical reports of 11 September 2015 and 27 March 2017, the applicant was continuously receiving the medication prescribed by doctors (see paragraphs 37 and 40 above).

108. The Court recalls its general principles in paragraph 103 above (see also Blokhin v. Russia [GC], no. 47152/06, § 146, 23 March 2016). There is however no indication that there was a comprehensive therapeutic strategy aimed at treating the applicant. For their part, the Government have failed to show that the applicant received adequate medical care, in particular the therapeutic treatment required by his condition. They did not submit an individualised treatment plan drawn up for the applicant, or substantiate the administration of therapeutic treatment to his benefit or the provision of adequate psychiatric care.

109. Furthermore, the Court places emphasis on the CPT's findings, at least since 2014, in respect of the insufficient level of psychiatric care and the "impression of therapeutic abandonment" of many psychiatric patients, especially those subject to court-ordered compulsory medical treatment, such as the applicant. Furthermore, the medical report of 27 March 2017 took issue with the complete lack of provision of psychotherapy (see paragraph 40 above). The Court considers that it is for the authorities to decide, on the basis of the recognised rules of medical science, on the therapeutic methods to be used to preserve the physical and mental health of patients affected by mental health disorders (see Dybeku, cited above, § 47). Still, the Court cannot accept that patients, such as the applicant, be subjected to a state of "therapeutic abandonment". This is all the more so when the Ministry of Health has developed and approved a protocol on the diagnostics and therapeutic care of schizophrenia which decrees a combination of programmes of pharmacological treatment and psychosocial counselling (see paragraph 64 above).

110. Lastly, the Court notes that the applicant complained several times before the domestic courts of the inadequacy of the medical treatment and the conditions of his detention by articulating that a special medical institution would be the appropriate facility for him to be detained in. As a matter of fact, the domestic courts and the authorities, in particular the prosecutor's office and the Ministry of Justice, have acknowledged the absence of a special medical institution for mentally ill persons subjected to a court-ordered compulsory medical treatment. In the case of mentally ill individuals, the Court has held that the assessment of whether the treatment or punishment concerned is incompatible with the standards of Article 3 has to take into consideration the vulnerability of those individuals and, in some cases, their inability, to complain coherently or at all about how they are being affected by any particular treatment (see, for example, Murray v. the Netherlands [GC], no. 10511/10, § 106, 26 April 2016).

111. In these circumstances, the Court considers that the cumulative effect of the deterioration of the living conditions in the Prison Hospital where the applicant has been confined since 2011, and the insufficient psychiatric and therapeutic treatment administered to the applicant at the Prison Hospital, amounted to inhuman and degrading treatment.

112. Accordingly, there has been a violation of Article 3 of the Convention.

VI. Release on health grounds

In the case of Mouisel v. France, decided in 2002, the applicant was suffering from leukaemia and complained that his continued detention constituted inhuman or degrading treatment:

(Case 90)

36. The Court observes in the first place that the applicant was granted parole on 22 March 2001. It will therefore examine his complaint alleging a violation of Article 3 of the Convention in relation to the period extending from that date back to 8 January 1999, the date of the medical report in which the applicant's illness was first diagnosed – that is to say, a period of more than two years.

37. The Court reiterates that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level is, in the nature of things, 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 (see Kudła v. Poland [GC], no. 30210/96, § 91, ECHR 2000-XI, and Peers v. Greece, no. 28524/95, § 67, ECHR 2001-III). Although the purpose of such treatment is a factor to be taken into account, in particular whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (see Peers, cited above, § 74).

38. The Convention does not contain any provision relating specifically to the situation of persons deprived of their liberty, let alone where they are ill, but it cannot be ruled out that the detention of a person who is ill may raise issues under Article 3 of the Convention (see Chartier v. Italy, no. 9044/80, Commission's report of 8 December 1982, Decisions and Reports (DR) 33, p. 41; De Varga-Hirsch v. France, no. 9559/81, Commission decision of 9 May 1983, DR 33, p. 158; and B. v. Germany, no. 13047/87, Commission decision of 10 March 1988, DR 55, p. 271). In the case of a prisoner suffering from disorders associated with hereditary obesity, the Commission expressed the opinion that there had been no violation of Article 3 of the Convention because the applicant had been provided with care appropriate to his state of health. It considered, however, that detention per se inevitably

affected prisoners suffering from serious disorders. It took care to point out that "in particularly serious cases situations may arise where the proper administration of criminal justice requires remedies to be taken in the form of humanitarian measures" and stated in conclusion that it would "appreciate any measures the Italian authorities could take vis-à-vis the applicant in order to alleviate the effects of his detention or to terminate it as soon as circumstances require" (see Chartier, Commission's report cited above, pp. 57-58). The Court recently observed that the detention of an elderly sick person over a lengthy period could fall within the scope of Article 3, although in the decision in question it held that the applicant's complaint under that Article was manifestly ill-founded (see Papon (no. 1), cited above). Health, age and severe physical disability are now among the factors to be taken into account under Article 3 of the Convention in France and the other member States of the Council of Europe in assessing a person's suitability for detention (see paragraphs 26, 27, 29 and 30 above).

39. Thus, in assessing a prisoner's state of health and the effects of detention on its development, the Court has held that certain types of treatment may infringe Article 3 on account of the fact that the person being subjected to them is suffering from mental disorders (see Keenan v. the United Kingdom, no. 27229/95, §§ 111-15, ECHR 2001-III). In Price v. the United Kingdom the Court held that detaining the applicant, who was four-limb deficient, in conditions inappropriate to her state of health amounted to degrading treatment (no. 33394/96, § 30, ECHR 2001-VII).

40. Although Article 3 of the Convention cannot be construed as laying down a general obligation to release detainees on health grounds, it nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance (see Hurtado v. Switzerland, judgment of 28 January 1994, Series A no. 280-A, opinion of the Commission, pp. 15-16, § 79). The Court has also emphasised the right of all prisoners to conditions of detention which are compatible with human dignity, so as to ensure that the manner and method of execution of the measures imposed do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention; in addition, besides the health of prisoners, their well-being also has to be adequately secured, given the practical demands of imprisonment (see Kudła, cited above, § 94).

41. In the instant case the Court observes that the judge responsible for the execution of sentences considered that the applicant's state of health was in itself incompatible with detention from 22 March 2001 onwards. The fact that he required medical treatment during regular visits to hospital justified releasing him on parole, subject to his staying with his relatives (see paragraph 24 above).

42. Accordingly, the instant case raises the question whether the applicant's state of health, which was giving serious cause for concern, was compatible with his continued imprisonment in that condition. In a climate of increasing awareness of the prison situation, France is faced with the problem of sick prisoners and their continued detention in circumstances which no longer appear justified in terms of protecting society (see the National Assembly report referred to in paragraph 25 above).

43. The Court takes note of developments in France's legislation on the matter, which has increased the powers of the judge responsible for the execution of sentences in respect of seriously ill prisoners. As it has already pointed out, French law affords the national authorities various means of intervening where detainees are suffering from serious medical problems. A prisoner's health may be taken into account in a decision to grant parole under Article 729 of the Code of Criminal Procedure as amended by the Law of 15 June 2000, in particular where the prisoner has "to undergo treatment". Furthermore, under the Law of 4 March 2002 on patients' rights, prisoners' sentences may be suspended if they are suffering from a life-threatening illness or if their condition is incompatible in the long term with their continued detention (see paragraph 26 above). The Court accordingly notes that the health of a detainee is now among the factors to be taken into account in determining how a custodial sentence is to be served, particularly as regards its length. In that way, practical expression has been given to the Court's statement that "the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies" (see Selmouni v. France [GC], no. 25803/94, § 101, ECHR 1999-V).

44. The Court notes that the procedural arrangements introduced by the laws of 15 June 2000 and 4 March 2002 have provided for new remedies before the judge responsible for the execution of sentences, enabling prisoners whose health has deteriorated significantly to apply to be released at short notice; those remedies are available in addition to the possibility of applying for a pardon on medical grounds, which the French President alone is empowered to grant. It considers that these judicial procedures may provide sufficient guarantees to ensure the protection of prisoners' health and well-being, which States must reconcile with the legitimate requirements of a custodial sentence. However, it must be acknowledged that those procedures were not available to the applicant during the period of detention considered by the Court and that the State's only response to his situation was to refuse his applications for a pardon on medical grounds without stating any reasons. As the Government noted, the applicant could not have been released on parole until he satisfied the eligibility requirements – that is to say, not until 2001. Moreover, the possibility of applying to have his sentence suspended did not exist at the time of his detention.

45. That being so, the Court will examine whether the applicant's continued detention gave rise to a situation which attained a sufficient level of severity to fall within the scope of Article 3 of the Convention. The Court observes that the

applicant's health was found to be giving more and more cause for concern and to be increasingly incompatible with detention. The report of 28 June 2000 referred to the difficulty of providing cancer treatment in prison and recommended transferring him to a specialist unit. It also mentioned the applicant's psychological condition, which had been aggravated by the stress of being ill and had affected his life expectancy and caused his health to decline. The letter of 20 November 2000 from the UCSA doctor to the applicant confirmed that his health was deteriorating and referred only to the possibility of a remission in the disease. All those factors show that the applicant's illness was progressing and that the prison was scarcely equipped to deal with it, yet no special measures were taken by the prison authorities. Such measures could have included admitting the applicant to hospital or transferring him to any other institution where he could be monitored and kept under supervision, particularly at night.

46. The conditions in which the applicant was taken to hospital also raise a number of issues. There is no doubt that the applicant was kept in chains while under escort, although the chains started to be applied less tightly once the doctors advised against using restraints. However, it has not been established that he was chained up while receiving treatment or that members of the prison escort were present on those occasions. The Court notes, however, that the reply from the Regional Director of the Prison Service about the use of handcuffs implicitly suggests that the applicant's illness did not exempt him from being handcuffed and that the manner in which the handcuffs were used is standard practice in the context of detention.

47. The Court reiterates that handcuffing 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 use of force, or public exposure, exceeding what is reasonably considered necessary. In this regard, it is important to consider, for instance, whether there is a danger that the person concerned might abscond or cause injury or damage (see Raninen v. Finland, judgment of 16 December 1997, Reports of Judgments and Decisions 1997-VIII, p. 2822, § 56). In the instant case, having regard to the applicant's health, to the fact that he was being taken to hospital, to the discomfort of undergoing a chemotherapy session and to his physical weakness, the Court considers that the use of handcuffs was disproportionate to the needs of security. As regards the danger presented by the applicant, and notwithstanding his criminal record, the Court notes the absence of any previous conduct or other evidence giving serious grounds to fear that there was a significant danger of his absconding or resorting to violence. Lastly, the Court notes the recommendations of the European Committee for the Prevention of Torture concerning the conditions in which prisoners are transferred to hospital to undergo medical examinations – conditions which, in the Committee's opinion, continue to raise problems in terms of medical ethics and respect for human dignity (see paragraph 28 above). The applicant's descriptions of the conditions in which he was escorted to and from hospital do not seem very far removed from the situations causing the Committee concern in this area.

48. In the final analysis, the Court considers that the national authorities did not take sufficient care of the applicant's health to ensure that he did not suffer treatment contrary to Article 3 of the Convention. His continued detention, especially from June 2000 onwards, undermined his dignity and entailed particularly acute hardship that caused suffering beyond that inevitably associated with a prison sentence and treatment for cancer. In conclusion, the Court considers that the applicant was subjected to inhuman and degrading treatment on account of his continued detention in the conditions examined above.

There has therefore been a violation of Article 3 of the Convention.

Also in the 2017 case of Dorneanu v. Romania, the applicant was suffering from a terminal illness:

(Case 91)

75. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. 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 applicant's sex, age and state of health (see, among other authorities, Price v. the United Kingdom, no. 33394/96, § 24, ECHR 2001VII, and Mouisel v. France, no. 67263/01, § 37, ECHR 2002-IX).

76. As regards, in particular, persons deprived of their liberty, Article 3 of the Convention imposes on the State the positive obligation to ensure that a person is detained in 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 of an intensity exceeding the unavoidable level of suffering inherent in detention. The suffering which flows from natural illness, whether physical or mental, may fall foul of Article 3, where it is, or risks being, exacerbated by conditions of detention for which the authorities can be held responsible. The prisoner's health and well-being must be adequately secured by, among other things, providing him with the requisite medical assistance. Thus the detention of a person who is ill in inappropriate material and medical conditions may, in principle, amount to treatment contrary to Article 3 (see Gülay Çetin, cited above, § 101, with the references therein).

77. In order to determine whether the detention of a person who is ill complies with Article 3 of the Convention, the Court considers three different factors (see, for example, Sakkopoulos v. Greece, no. 61828/00, § 39, 15 January 2004; Gülay Çetin, cited above, § 102; Bamouhammad v. Belgium, no. 47687/13, §§ 120-123, 17 November 2015; and Rywin v. Poland, nos. 6091/06, 4047/07 and 4070/07, § 139, 18 February 2016, with the references therein).

78. The first factor is the applicant's state of health and the effect on the latter of the manner of his imprisonment. Conditions of detention may under no circumstances subject a person deprived of his liberty to feelings of fear, anxiety or inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance. Thus, the detention of a person who is ill under inappropriate material and medical conditions can, in principle, amount to treatment incompatible with Article 3 of the Convention.

79. The second factor to be considered is the adequacy or inadequacy of the medical care and treatment provided in detention. It is not sufficient for the prisoner to be examined and a diagnosis to be made; it is vital that treatment suited to the diagnosis be provided, together with appropriate medical after-care.

80. The third and last factor is the decision whether or not to continue the person's detention in view of his state of health. Clearly, the Convention does not lay down any "general obligation" to release a prisoner for health reasons, even if he is suffering from a disease which is particularly difficult to treat. Nevertheless, the Court cannot rule out the possibility that in particularly serious cases, situations may arise where the proper administration of criminal justice requires remedies in the form of humanitarian measures.

ii. Application of those principles in the present case

81. The Court observes, first of all, that the applicant provided no precise details concerning his material conditions of detention. However, he described those conditions as "inhuman" and complained that the authorities had constantly transferred him to various places of detention, even during the terminal phase of his illness. The Government submitted that in both the civilian and prison hospitals the applicant had enjoyed conditions of detention satisfying the requirements of Article 3 of the Convention. They argued that the transfers had taken place for medical reasons.

82. The Court notes that it transpires from the documents supplied by the prison authorities that the applicant had suffered the effects of a problem of severe overcrowding in Vaslui Prison, where his personal living area had measured under 3 m^2 (see paragraph 33 above).

83. In that regard, the Court reiterates that the requirement of 3 m^2 of floor space per prisoner in multi-occupancy accommodation in prisons is the relevant minimum standard for assessing conditions of detention under Article 3 of the Convention. Where the personal space falls below this minimum standard, the situation is considered so severe that a strong presumption of a violation of Article 3 of the Convention arises (see Muršić v. Croatia [GC], no. 7334/13, §§ 110 and 124, ECHR 2016).

84. That presumption may be rebutted if the reductions in the required minimum personal space of 3 sq. m are short, occasional and minor, if they are accompanied by sufficient freedom of movement and if the applicant is not subjected to other aggravating aspects of the conditions of his or her detention (see Muršić, cited above, § 138).

85. In the present case, given that the applicant's detention in Vaslui Prison lasted eight days in all (see paragraph 33 above), the Court is prepared to consider that period short, occasional and minor for the purposes of its case-law. However, it emphasises that the lack of sufficient personal space at Vaslui Prison had been exacerbated by detention in ordinary cells unsuited to the applicant's state of health, at a time when his physical capacities had been in constant decline, such that towards the end of his time in prison he had become blind and deaf and was suffering excruciating bone pain. Moreover, the Court reiterates that the unacceptable conditions of detention and overcrowding in Vaslui Prison have already induced it to find a violation of Article 3 of the Convention (see, for example, Todireasa v. Romania (no. 2), no. 18616/13, §§ 56-63, 21 April 2015).

86. The Court therefore reaches the conclusion that despite the short time during which the applicant was detained in a personal space of under 3 m^2, he was subjected to circumstances which exacerbated the poor conditions of detention. It further notes that the Government have put forward no cogent arguments to rebut the strong presumption of a violation of Article 3 concerning the applicant's detention in Vaslui Prison.

87. As regards Iași Prison, where the applicant allegedly had a personal space of between 3 and 4 m^2 (see paragraph 33 above), even though that area does not lead to a strong presumption of a violation of Article 3 of the Convention the Court cannot overlook the fact that the ordinary cells in that prison were unsuited to the applicant's severe disability. Furthermore, the poor conditions of hygiene in that prison, which the Court has noted in past cases (see, for example, Mazalu v. Romania, no. 24009/03, §§ 52-54, 12 June 2012; Olariu v. Romania, no. 12845/08, § 31, 17 September 2013; and Axinte v. Romania, no. 24044/12, § 49, 22 April 2014), amount, in the present case, to an exacerbating circumstance, given the applicant's state of health.

Therefore, the Court holds that the conditions of detention in Iași Prison also subjected the applicant to an ordeal of a severity exceeding the unavoidable level of suffering inherent in detention.

88. The Court also notes that from 4 March to 25 June 2013 and from 31 August to 24 December 2013, the date of the applicant's death at Bacău Hospital, he had been transferred seventeen times between prisons and seven times to the medical establishments in Bacău, Iași and Bucharest (see paragraphs 12, 18, 21, 22, 24 and 28 above).

89. The Court observes that although most of those transfers were justified on medical grounds, it cannot overlook the fact that those establishments were located far apart, some of them at distances of several hundred kilometres.

90. Having regard to the applicant's ever-worsening state of health, the Court considers that the repeated changes of hospital imposed on the applicant had disastrous consequences for his well-being. It holds that those transfers were such as to create and exacerbate his feelings of anxiety regarding his adaptation to the different places of detention, the implementation of the medical treatment protocol and his continued contact with his family.

91. The Court accepts that in the instant case there was no suggestion of intent to humiliate or debase the applicant. However, the absence of such intent cannot conclusively rule out a finding of a violation of Article 3 of the Convention (see, among other authorities, V. v. the United Kingdom [GC], no. 24888/94, § 71, ECHR 1999IX; Peers v. Greece, no. 28524/95, §§ 68 and 74, ECHR 2001III; and Khlaifia and Others v. Italy [GC], no. 16483/12, § 160, ECHR 2016).

92. In the light of the particular circumstances of the present case, the Court, reiterating that it has already ruled that it would be better to avoid imposing very long, arduous journeys on prisoners who are ill (see Viorel Burzo v. Romania, nos. 75109/01 and 12639/02, § 102, 30 June 2009, and Flamînzeanu v. Romania, no. 56664/08, § 96, 12 April 2011), considers that the frequent transfers of the applicant could not fail to subject him to an ordeal of a severity exceeding the unavoidable level of suffering inherent in detention.

93. As regards the quality of the medical care and assistance provided, the Court first of all reiterates that no one disputes the seriousness of the applicant's illness or the fact that his state of health constantly worsened over time. As the Government in fact noted in their observations, on his arrival in prison on 4 March 2013 the applicant was already suffering from a disease which would be fatal in the short term because of its spread to his skeleton (see paragraphs 9 and 73 above). The Court has already found that, apart from the shortcomings pointed out by the senior medical officer of the oncology department of Bacău Hospital, the applicant had been treated in accordance with the doctors' prescriptions (see paragraph 53 above). However, it does not transpire from the case file that the domestic authorities ever considered the possibility of providing all the different types of treatment in the same place, which would have spared the applicant some of the transfers, or at least limited their number and reduced the harmful consequences for the patient's well-being. Furthermore, the Court has already expressed the view that during the final stages of the illness when there is no further hope of remission, the stress inherent in prison life can have repercussions on the prisoner's life expectancy and state of health (see, mutatis mutandis, Gülay Çetin, cited above, § 110).

94. The Court further observes that a time came when the applicant had become very severely weakened and diminished, both physically and mentally (see paragraphs 19, 20, 21 and 24 above), such that he could no longer perform basic everyday activities without assistance, and a fellow prisoner was appointed to assist him (see paragraph 19 above). The Court reiterates that it has already voiced doubts as to the adequacy of assigning unqualified persons responsibility for looking after an individual suffering from a serious illness (see Gülay Çetin, cited above, § 112, with the references therein). In the present case, it cannot be ascertained whether the prisoner who agreed to assist the applicant was qualified to provide support for an end-of-life patient or whether the applicant actually received proper moral or social support. Nor does it transpire from the case-file that the applicant received appropriate psychological support during his periods in hospital or prison, given that he was displaying symptoms of depression (see paragraphs 20 and 21 above).

95. The Court notes therefore that as his illness progressed, the applicant could no longer cope with it in prison. The national authorities should consequently have taken specific action based on humanitarian considerations (see Gülay Çetin, cited above, § 113).

96. In connection with the latter aspect, and more specifically with the appropriateness of continuing the applicant's detention, the Court cannot substitute its views for those of the domestic courts. However, it cannot be overlooked that the court of appeal, in rejecting the request for an interruption of the sentence, put forward no arguments concerning a possible threat posed to law and order by the applicant's release, having regard to his state of health (see paragraph 17 above; see also, mutatis mutandis, Gülay Çetin, cited above, § 122). Moreover, the Court notes that the applicant had at first been sentenced to a fairly short prison term, a third of which he had served (see paragraph 15 above). It also observes that the applicant had displayed good behaviour during the trial, that he had been afforded the most favourable detention regime (see paragraphs 15 and 23 above) and that because of his state of health the risk of reoffending could only have been minimal.

97. The Court also reiterates that the prisoner's clinical picture is now one of the aspects to be taken into account in the procedure for enforcing a prison sentence, particularly as regards the continued detention of individuals suffering from a life-threatening pathology or persons whose condition is incompatible in the long term with prison life (see Gülay Çetin, cited above, § 102, and the references therein). According to the case file, however, in the present case the authorities called upon to act did not have proper regard to the realities imposed by the applicant's individual case and failed to consider his real capacity for remaining in prison under the impugned conditions of detention. Even though in its judgment of 29 August 2013 the court of appeal found that the applicant could be provided with the prescribed treatment in detention (see paragraph 17 above), it did not consider the practical conditions and methods for administering the complicated treatment in the applicant's specific situation. It failed to assess the material conditions under which the applicant was being held or to ascertain whether, in view of his state of health, those conditions were satisfactory in the light of his specific needs. Nor did it have regard to the conditions of the transfers to the various prisons and hospitals,

the distances to be covered between these establishments or the number of hospitals attended by the applicant in order to receive his treatment, nor again the combined effect of all these elements on his already precarious state of health. The fact is that under such exceptional circumstances as those encountered in the present case, the said elements should, if only on humanitarian grounds, have been examined by the court of appeal in order to evaluate the compatibility of the applicant's state of health with his conditions of detention. It was never argued that the national authorities could not have coped with those exceptional circumstances by taking due account of the serious humanitarian considerations at issue in the case. On the other hand, the Court considers that the decisions reached by the domestic authorities show that the impugned proceedings were conducted with the emphasis on formalities rather than on humanitarian considerations, thus preventing the dying applicant to live out his last few days in dignity (see, mutatis mutandis, Gülay Çetin, cited above, §§ 120-124).

98. Moreover, the Court has already noted that the length of the proceedings brought by the applicant seeking an interruption of the enforcement of his sentence on medical grounds had been excessive in the light of the applicant's terminal illness (see paragraph 67 above). Similarly, it notes that the answers provided by the prison authorities, from whom the applicant had requested help in seeking his release, were characterised by their scant consideration of the applicant's specific situation (see paragraphs 25 and 27 above).

99. Finally, the Court reiterates that the increasingly high standard required in the area of the protection of human rights and fundamental liberties necessitates greater firmness in assessing breaches of the fundamental values of democratic societies (see, mutatis mutandis, Selmouni v. France [GC], no. 25803/94, § 101, ECHR 1999V). In the instant case, the applicant had been imprisoned despite his end-of-life situation and the effects of serious medical treatment in difficult prison conditions. The Court takes the view that in such a context, lack of diligence on the authorities' part renders the person even more vulnerable and robs him of his dignity in the face of the fatal outcome towards which his illness is ineluctably progressing (see, mutatis mutandis, Gülay Çetin, cited above, § 122).

100. Having conducted an overall assessment of the relevant facts on the basis of the evidence presented before it, the Court finds that the national authorities failed to provide the applicant with treatment compatible with the provisions of Article 3 of the Convention, and that they inflicted inhuman treatment on someone who was suffering from a terminal illness, owing to his detention under the conditions described above.

There was therefore a violation of Article 3 of the Convention in that regard.

Summary of Part 3. Health care for detained persons

Inhuman or degrading treatment in the context of health care: general considerations

The prohibition of inhuman or degrading treatment requires that all persons are detained in conditions which are compatible with respect for their human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured by, among other things, providing them with the requisite medical assistance and treatment.

The mere fact that a detainee has been seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate. The authorities must also ensure that a comprehensive record is kept concerning the detainee's state of health and his or her treatment while in detention, that diagnosis and care are prompt and accurate, and that where necessitated by the nature of a medical condition supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation, rather than addressing them on a symptomatic basis. The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through. Furthermore, medical treatment provided within prison facilities must be appropriate, that is, at a level comparable to that which the State authorities have committed themselves to provide to the population as a whole. This does not mean that every detainee must be guaranteed the same level of medical treatment that is available in the best health establishments outside prison facilities. Nevertheless, the State must ensure that the health and well-being of detainees are adequately secured. If the authorities decide to place and maintain a seriously ill person in detention, they shall demonstrate special care in guaranteeing such conditions of detention that correspond to his special needs resulting from his disability.

Lack of treatment

A total lack of treatment of a serious disease usually constitutes, in itself, inhuman or degrading treatment of the detained person. Accordingly, the European Court of Human Rights has found human rights violations for lack of medical treatment, for example, in cases where prisoners suffered from

- chronic hepatitis (Testa case),
- asthma attacks (Mozer case),
- a combination of serious diseases (Paladi case).

The Court also found a violation of the prohibition of inhuman and degrading treatment in a case where a twelve-year-old boy who was suffering from attention-deficit hyperactivity disorder (ADHD), was placed in a temporary detention centre for juvenile offenders for a period of thirty days to "correct his behaviour", and did not receive the necessary medical treatment during this period (Blokhin case).

If persons – for whatever reason – suffer injuries during arrest, they must be treated in police custody without undue delay (Shmorgunov case).

An example from the jurisprudence of the Inter-American Court of Human Rights is the Tibi case, where the detainee, suffering from wounds and traumatism, did not receive any medical treatment.

Adequacy of treatment

If treatment is provided, it must be adequate. In this context, three specific elements are to be considered in relation to the compatibility of an applicant's health with his stay in detention:

(a) the medical condition of the prisoner,
(b) the adequacy of the medical assistance and care provided in detention, and
(c) the advisability of maintaining the detention measure in view of the state of health of an applicant.

The adequacy of the medical assistance may be a difficult element to determine. The required standard of health care must accommodate the legitimate demands of imprisonment but remain compatible with human dignity. If the prison authorities are able to cope adequately with an inmate's serious sickness by having him treated in the prison hospital, human rights do not require his early release (Goginashvili case).

In contrast, if a prisoner suffers from a combination of serious diseases, prison authorities are responsible for developing a comprehensive therapeutic strategy aimed at curing them (see, for example, the Hummatov case where the applicant suffered, inter alia, from tuberculosis, chronic bronchopneumonia, chronic enterocolitis, radiculitis, hypertension, atherocardiosclerosis, internal haemorrhoids, stenocardia, ischemia, and osteochondrosis).

Further examples from the case-law of the European Court of Human Rights include the inadequate treatment of tuberculosis (Melnik case) and various kidney diseases (Holomiov case). The Court also found degrading treatment where the applicant was left without his eyeglasses for a period of five months (Slyusarev case).

Persons with disabilities

Where the authorities decide to place and keep disabled persons in continued detention, they should demonstrate special care in guaranteeing such conditions as correspond to the special needs resulting from their disabilities. Detaining disabled persons in a prison where they cannot move around and, in particular, cannot leave their cell independently, may amount to inhuman or degrading treatment. The same is true if a person with a serious physical disability is left to rely on his cellmates for assistance with using the toilet, bathing and getting dressed or undressed.

The European Court of Human Rights found inhuman or degrading treatment where the applicant was four-limb deficient as a result of phocomelia due to thalidomide, and, in addition, suffering from kidney problems, being detained for several days without precautions being made for her special situation (Price case).

In addition, medical care was not considered to be adequate, where

- a paraplegic complained about inadequate medical care in a prison facility which was not suited for persons in need of a wheelchair, in particular about inability to have access to various prison facilities independently, including the sanitation facilities (Grimailovs case),

- a detainee was deaf and dumb, suffering from intellectual disability, illiterate and unable to avail himself of the official sign language (Z.H. v. Hungary case),

- a paraplegic suffering from a number of serious diseases complained about his insufficient treatment in detention (Amirov case).

Similarly, the Court found inhuman and degrading treatment in cases

- where a mentally ill prisoner, suffering from schizophrenia, was detained in a regular prison facility and, accordingly, did not receive adequate psychiatric treatment and supervision (Slawomir Musial case).

- where the psychiatric and therapeutic treatment of a detainee suffering from paranoid schizophrenia was insufficient (Strazimiri case).

Release on health grounds

In very exceptional cases, where the state of a detainee's health is absolutely incompatible with the detention, human rights may require the release of such person under certain conditions. The European Court of Human Rights has considered that release for such humanitarian reasons were or would have been required in cases where the detainee was suffering from a terminal disease with a very limited life expectancy (Mouisel and Dorneanu cases).

Part 4. Special measures and special categories of detained persons

I. High security and safety measures

The prohibition of torture and inhuman or degrading treatment or punishment is applicable in all cases, without exception, including where, for any reason, high security and safety measures are considered to be necessary.
In the 2011 case of Hellig v. Germany, the applicant complained, inter alia, about his placement in a disciplinary cell, deprived of all his clothes:

(Case 92)

1. Submissions by the applicant

41. The applicant complained about having been detained for seven days in the security cell, where he was without clothes and did not have facilities for personal hygiene. He emphasised that it had been confirmed by the domestic courts that his placement in a multi-occupancy cell, as originally envisaged by the prison authority, would have been unlawful. It followed that he was entitled to resist the prison officer's coercive measures aimed at forcing him into the multi-occupancy cell. Consequently, there was no legal ground for transferring him to the security cell.

42. The applicant further submitted that it had not been true that he had violently attacked prison staff, as was already demonstrated by the fact that none of the prison officers had been injured. He had merely wished to remain in a single cell. He would have left the specially secured room immediately and without resistance if he had been offered such accommodation.

43. The applicant further submitted that his confinement in the security cell had been intended to coerce him into consenting to placement in a multi-occupancy cell.

2. Submissions by the Government

44. The Government considered that the applicant's placement in a security cell, in view of the specific circumstance of the present case, did not amount to inhuman or degrading treatment within the meaning of Article 3 of the Convention. The applicant's treatment had been in line with the relevant provisions of the Prison Act and of the administrative guidelines.

45. With regard to the length of the placement, the Government did not consider that the threshold for inhuman treatment had been crossed. The specific circumstances of his confinement did not cause the applicant to suffer physical or emotional distress to the extent that it could be viewed as inhuman treatment. They pointed out that the applicant, besides having been visited by the medical service on an almost daily basis, also received visits by the psychological service and by a spiritual adviser.

46. Because the facts of the case dated back almost ten years, the full details of the placement could no longer be ascertained. The written documents did not clearly show whether the applicant was naked during his entire stay in the security cell. However, it was common practice to place inmates without clothing in this type of cell in order to protect them from self-injury as long as their excitable and/or emotional condition persisted. The decision as to whether this danger persisted was made in consultation with the medical service. It was also the general rule that prisoners received two blankets when being placed in this type of cell and that the room-temperature was adapted to their wishes.

47. The applicant's placement in the security cell was the only remaining possibility of averting a present danger of injuries to the prison guards and of guaranteeing security and order in view of the applicant's recognisable propensity for violence, as was evidenced by the attack on the prison guards. The proportionality of the measure was monitored at appropriate intervals. The prison management had been endeavouring to lift the security measure as soon as possible. However, this was initially made impossible by the applicant's lack of co-operation. With his consent, the applicant was temporarily transferred to the hospital on 19 October 2000 because no single-occupancy cell had been available at the prison.

48. The Government further considered that neither the short duration of the applicant's confinement, nor the concrete circumstances, nor the aims pursued brought the applicant's detention within the scope of Article 3 of the Convention. The purpose of placing the applicant in the security cell had not been to punish him for his refusal to move into a multi-occupancy cell; rather, the placement had been due to the fact that a significant disruption in the prison order was to be feared because of his attack on the prison guards and his subsequent conduct.

49. The Government finally submitted that it should also be taken into account that the applicant had, in the end, reached his aim not to be placed in a multi-occupancy cell.

3. Assessment by the Court

(…)

52. Turning to the circumstances of the instant case, the Court observes, at the outset, that the applicant had been placed in the security cell in order to prevent him from attacking prison staff. With regard to the specific circumstances of his detention, the Court notes that the cell had a surface of approximately 8.46 square metres and was equipped with a mattress and a squat toilet. The Court considers that the very basic facilities found in the security cell were not suited for long-term accommodation. The Court notes, however, that the applicant's placement in this cell was, at no timconsidered

by the prison authorities as a long-term measure. This is demonstrated by the fact that the prison authorities and the psychological service, on 16 and 17 October 2000, tried to convince the applicant to vacate the security cell and eventually moved him to the prison hospital as no other single occupancy cell had been available at the relevant time.

53. The Court further observes that it is not clear from the material submitted by the parties if the applicant, after having been strip-searched and placed in the security cell, remained naked during his entire stay in that cell. The Court notes in this respect that it does not appear that the applicant had, at any time during his placement in the security cell or during the proceedings before the domestic courts, expressly complained of having been denied access to clothes. He only complained about having been naked in his complaint before the Court.

54. On the other hand, the Court takes note of the Government's submissions that it had been common practice to place inmates without clothing in this type of cell in order to protect them from self-injury as long as their agitated state persisted. The Court further notes that the prison pastor, who briefly visited the applicant three days after his placement in the security cell, in his statement recorded in the decision given by the Gießen Regional Court on 8 April 2004, had reported that the applicant, who had been in a very agitated state, had been naked.

55. The Court, assuming the application of the general rule referred to by the Government (see §§ 46 and 54, above) in the applicant's case, concludes that there are sufficiently strong, clear and concordant indications that the applicant had been naked during the entire period of his stay in the security cell. The Court further observes that the domestic authorities had knowledge of these indications and would have been in a position further to examine these facts. Accordingly, the Court bases its further examination of the applicant's complaint on the assumption that the applicant had indeed been naked during his seven-day placement in the security cell.

56. The Court considers that to deprive an inmate of clothing is capable of arousing feelings of fear, anguish and inferiority capable of humiliating and debasing him. As to the aims pursued, the Court takes note of the Government's submissions that, as a rule, inmates were placed without clothes in the security cell in order to prevent them from inflicting harm on themselves. The Court notes, however, that the Gießen Regional Court, which had the benefit to examine the facts of the case at an earlier stage than the Court and to hear witnesses, could not establish for certain whether there was a serious danger of self-injury or suicide during the time of the applicant's placement in the cell. The Court further observes that there is no indication that the prison authorities had considered the use of less intrusive means, such as providing the applicant with tear-proof clothing, as recommended by the European Committee for the Prevention of Torture (see § 29, above).

57. Having regard to all these elements the Court considers that the seven days placement in the security cell as such may have been justified by the circumstances of this particular case. However, the Court considers that the Government have failed to submit sufficient reasons which could justify such harsh treatment as to deprive the applicant of his clothes during his entire stay. The applicant has therefore been subjected to inhuman and degrading treatment contrary to Article 3.

58. It follows that there has been a violation of Article 3 of the Convention.

II. Solitary confinement

On various occasions, the Inter-American Court of Human Rights has considered solitary confinement to be incompatible with the prohibition of inhuman or degrading treatment. In the 1999 case Castillo Petruzzi et al. v. Peru the Court considered as follows:

(Case 93)

192. In the instant case, Chilean citizen Jaime Francisco Castillo Petruzzi was held incommunicado, in the hands of government authorities, for 36 days before being brought before a court. Mrs. Pincheira Sáez, Mr. Astorga Valdez and Mr. Mellado Saavedra were held incommunicado for 37 days. This, combined with the Commission's allegations – which the State did not challenge – to the effect that when their statements were to be taken in the preliminary proceedings, the persons in question appeared in court either blindfolded or hooded, and either in restraints or handcuffs, is in itself a violation of Article 5(2) of the Convention.

193. Also, on January 7, 1994, the court of first instance convicted Mr. Castillo Petruzzi, Mr. Mellado Saavedra and Mrs. Pincheira Sáez of treason and sentenced them to life imprisonment. The highest appellate court upheld their convictions on May 3, 1994, and there sentenced Mr. Alejandro Astorga Valdez to life imprisonment as well. The lower court rulings also stipulated the terms of the incarceration, which included "continuous confinement to cell for the first year of incarceration, and then forced labor, which sentences they [the alleged victims] are to serve in solitary-confinement cells chosen by the Director of the National Bureau of Prisons."

194. The Court has held that "prolonged isolation and deprivation of communication are in themselves cruel and inhuman punishment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being."

(Velásquez Rodríguez Case, supra note 19, para. 156; Godínez Cruz Case, supra note 19, para. 164; Fairén Garbi and Solís Corrales Case, supra note 19, para. 149.)

195. The Court has also ruled that under "Article 5(2) of the Convention, every person deprived of her or his liberty has the right to live in detention conditions compatible with

her or his personal dignity, and the State must guarantee to that person the right to life and to humane treatment. Consequently, since the State is the institution responsible for detention establishments, it is the guarantor of these rights of the prisoners."

(Neira Alegría et al. Case, supra note 104, para. 60.)

Incommunicado detention is considered to be an exceptional method of confinement because of the grave effects it has on persons so confined. "Isolation from the outside world produces moral and psychological suffering in any person, places him in a particularly vulnerable position, and increases the risk of aggression and arbitrary acts in prison."

(Suárez Rosero Case, supra note 80, para. 90.)

196. In the Loayza Tamayo Case, the Court ruled that:

The violation of the right to physical and psychological integrity of persons is a category of violation that has several gradations and embraces treatment ranging from torture to other types of humiliation or cruel, inhuman or degrading treatment with varying degrees of physical and psychological effects caused by endogenous and exogenous factors (...) The degrading aspect is characterized by the fear, anxiety and inferiority induced for the purpose of humiliating and degrading the victim and breaking his physical and moral resistance.

(Cf. Case of Ireland v. the United Kingdom, Judgment of 18 January 1978, Series A No. 25. para. 167; and Loayza Tamayo Case, supra note 4, para. 57.)

197. In that same case, the Court held that:
Any use of force that is not strictly necessary to ensure proper behavior on the part of the detainee constitutes an assault on the dignity of the person […], in violation of Article 5 of the American Convention. The exigencies of the investigation and the undeniable difficulties encountered in the anti-terrorist struggle must not be allowed to restrict the protection of a person's right to physical integrity.

The Court added that "incommunicado detention, […] solitary confinement in a tiny cell with no natural light, […] a restrictive visiting schedule […] all constitute forms of cruel, inhuman or degrading treatment in the terms of Article 5(2) of the American Convention."

198. The terms of confinement that the military tribunals imposed upon the victims with enforcement of Article 20 of Decree-Law No. 25,475 and Article 3 of Decree-Law No. 25,744, constituted cruel, inhuman and degrading forms of punishment that violated Article 5 of the American Convention. Evidence supplied by the parties showed that in practice, some of the conditions, such as the solitary confinement, changed at a given point in time. The fact that a change eventually came about does not alter the Court's finding.

199. The Court therefore finds that the State violated Article 5 of the Convention.

Before the European Court of Human Rights, in the 2005 case of Öcalan v. Turkey, the applicant, former leader of the Workers' Party of Kurdistan (PKK), complained, inter alia, about his solitary confinement:

(Case 94)
B. Conditions of detention on the island of İmralı
1. The applicant's submissions
186. The applicant disagreed with the Chamber's finding that the conditions of his detention on the island of İmralı did not infringe Article 3. He submitted that the conditions were inhuman within the meaning of Article 3 or at the very least entailed disproportionate interference with the exercise of his rights under Article 8. He had been the sole inmate in the prison for more than five years and his social isolation was made worse by the ban on his having a television set or communicating by telephone, and by the practical obstacle inadequate sea transport facilities posed to visits by his lawyers and members of his family. The applicant pointed out that the CPT's recommendations for reduced social isolation had not been followed by the prison authorities. His prison conditions were, in his submission, harsher than those of other prisoners.

The applicant said that his health had deteriorated as a result of the particular weather conditions that prevailed on the island of İmralı and that the Government's insistence on keeping him in that prison had more to do with their repressive attitude than security. There was no justification for the Government's refusal to transfer him to an ordinary prison or to allow visitors to travel to the island by helicopter.

2. The Government's submissions
187. The Government invited the Grand Chamber to endorse the Chamber's finding that the conditions of the applicant's detention on the island of İmralı did not infringe Article 3. They pointed out that the applicant had at no stage been held in cellular confinement. He received visits from his lawyers and members of his family every week. The adverse maritime weather conditions in the winter of 2002-03 that had been responsible for the cancellation of some visits were highly unusual.

188. The Government produced photographs which in their submission showed that the applicant's cell was suitably furnished. They pointed out that the applicant had been tried and convicted of being the head of a major armed separatist organisation that continued to regard him as its leader. All the restrictions imposed on his telephone communications were intended to prevent the applicant from continuing to run the organisation from his prison cell, and that was a national security issue. However, he was able to read books and daily newspapers of his choice and to listen to the radio. No restrictions had been placed on his written communications with the outside world. As to the applicant's health, he was examined frequently by doctors and psychologists, whose daily medical reports were sent to the Court on a regular basis.

189. The Government asserted that the applicant was treated in strict conformity with European standards governing conditions of detention. In the cases in which the Court had found a violation of Article 3, the conditions of detention were far worse than in Mr Öcalan's case (for instance, Poltoratskiy v. Ukraine, no. 38812/97, ECHR 2003-V, and Kuznetsov v. Ukraine, no. 39042/97, 29 April 2003).

3. The Court's assessment

190. The Court must first determine the period of the applicant's detention to be taken into consideration when examining his complaints under Article 3. It points out that the "case" referred to the Grand Chamber embraces in principle all aspects of the application previously examined by the Chamber in its judgment, the scope of its jurisdiction in the "case" being limited only by the Chamber's decision on admissibility (see, mutatis mutandis, K. and T. v. Finland [GC], no. 25702/94, §§ 139-41, ECHR 2001-VII; Kingsley v. the United Kingdom [GC], no. 35605/97, § 34, ECHR 2002-IV; Göç v. Turkey [GC], no. 36590/97, §§ 35-37, ECHR 2002-V; and Refah Partisi (the Welfare Party) and Others v. Turkey [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 56, ECHR 2003-II). More specifically, within the compass delimited by the decision on the admissibility of the application, the Court may deal with any issue of fact or law that arises during the proceedings before it (see, among many other authorities, Guerra and Others v. Italy, judgment of 19 February 1998, Reports 1998-I, p. 223, § 44; Chahal, cited above, p. 1856, § 86; and Ahmed v. Austria, judgment of 17 December 1996, Reports 1996-VI, p. 2207, § 43). There is no justification for excluding from the scope of that general jurisdiction events that took place up to the date of the Grand Chamber's judgment, provided that they are directly related to the complaints declared admissible.

Furthermore, in the instant case, the applicant has already made submissions in the proceedings before the Chamber outlining his arguments on the effects his prolonged social isolation while in custody were likely to have.

The Court will therefore take into consideration the conditions of the applicant's detention between 16 February 1999 and the date this judgment is adopted. The fact that the applicant has in the interim lodged a new application concerning the latter part of his detention does not alter the position.

191. Complete sensory isolation coupled with total social isolation can destroy the personality and constitutes a form of inhuman treatment that cannot be justified by the requirements of security or any other reason. On the other hand, the prohibition of contact with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment (see, among other authorities, Messina v. Italy (no. 2) (dec.), no. 25498/94, ECHR 1999-V).

192. In the present case, it is true that the applicant's detention posed exceptional difficulties for the Turkish authorities. The applicant, as the leader of a large, armed separatist movement, is considered in Turkey to be the most dangerous terrorist in the country. Reactions to his arrest and differences of opinion that have come to light within his own movement show that his life is genuinely at risk. It is also a reasonable presumption that his supporters will seek to help him escape from prison. In those circumstances, it is understandable that the Turkish authorities should have found it necessary to take extraordinary security measures to detain the applicant.

193. The applicant's prison cell is indisputably furnished to a standard that is beyond reproach. From the photographs in its possession and the findings of the delegates of the CPT, who inspected the applicant's prison during their visit to Turkey from 2 to 14 September 2001, the Court notes that the cell the applicant occupies alone is large enough to accommodate a prisoner and furnished with a bed, table, armchair and bookshelves. It is also air-conditioned, has washing and toilet facilities and a window overlooking an inner courtyard. The applicant appears to be under medical supervision that is both strict and regular. The Court considers that these conditions do not give rise to any issue under Article 3 of the Convention.

194. Further, the Court considers that the applicant cannot be regarded as being kept in sensory isolation or cellular confinement. It is true that, as the sole inmate, his only contact is with prison staff. He has books, newspapers and a radio at his disposal. He does not have access to television programmes or a telephone. He does, however, communicate with the outside world by letter. He sees a doctor every day and his lawyers and members of his family once a week (his lawyers were allowed to see him twice a week during the trial). The difficulties in gaining access to İmralı Prison in adverse weather conditions appear to have been resolved, as the prison authorities were provided with a suitable craft at the end of 2004.

195. The Court notes the CPT's recommendations that the applicant's relative social isolation should not be allowed to continue for too long and that its effects should be attenuated by giving him access to a television and to telephone communications with his lawyers and close relatives. However, like the Chamber, the Grand Chamber is also mindful of the Government's concerns that the applicant may seek to take advantage of communications with the outside world to renew contact with members of the armed separatist movement of which he was leader. These concerns cannot be said to be unfounded. An added consideration is the Government's fear that it would be difficult to protect the applicant's life in an ordinary prison.

196. While concurring with the CPT's recommendations that the longterm effects of the applicant's relative social isolation should be attenuated by giving him access to the same facilities as other high security prisoners in Turkey, such as television and telephone contact with his family, the Grand Chamber agrees with the Chamber that the general conditions in which he is being detained at İmralı Prison have not thus far reached the minimum level of severity required to constitute inhuman or degrading treatment within the meaning of Article 3 of the Convention. Consequently, there has been no violation of that provision on that account.

In the 2006 case of Ramirez Sanchez v. France, the applicant, who was convicted for various terrorist offences, complained about his solitary confinement for a period of (roughly) eight years:

(Case 95)

C. The Court's assessment

112. The Court must first determine the period of detention to be taken into consideration when examining the complaint under Article 3. It points out that the "case" referred to the Grand Chamber embraces in principle all aspects of the application previously examined by the Chamber in its judgment, the scope of its jurisdiction in the "case" being limited only by the Chamber's decision on admissibility (see, mutatis mutandis, K. and T. v. Finland [GC], no. 25702/94, §§ 139-41, ECHR 2001-VII; Kingsley v. the United Kingdom [GC], no. 35605/97, § 34, ECHR 2002-IV; Göç v. Turkey [GC], no. 36590/97, §§ 35-37, ECHR 2002-V; Refah Partisi (the Welfare Party) and Others v. Turkey [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, ECHR 2003-II; and Öcalan v. Turkey [GC], no. 46221/99, ECHR 2005IV). More specifically, within the compass thus delimited by the decision on the admissibility of the decision, the Court may deal with any issue of fact or law that arises during the proceedings before it (see, among many other authorities, Guerra and Others v. Italy, 19 February 1998, § 44, Reports of Judgments and Decisions 1998I; Chahal v. the United Kingdom, 15 November 1996, § 86, Reports 1996V; and Ahmed v. Austria, 17 December 1996, § 43, Reports 1996VI).

113. In the present case, the applicant's solitary confinement was interrupted between 17 October 2002 and 18 March 2004 when he was detained in Saint-Maur Prison, near Châteauroux, under normal prison conditions. He was then held in solitary confinement successively in Fresnes, Fleury-Mérogis and La Santé. Since 6 January 2006 he has been in Clairvaux Prison, where normal conditions have been restored.

The parties have not provided any information on the conditions in which the applicant was kept in solitary confinement in the various prisons to which he was transferred during the period from March 2004 to January 2006. Nor has the applicant ever challenged his solitary confinement on the merits since that became possible on 30 July 2003 (see paragraph 82 above). In particular, he did not make use of any remedy on the merits during this latter period (March 2004 to January 2006) although he could have done so from the moment he returned to solitary confinement. The Court will return to this point when it examines the complaint under Article 13.

114. In these specific circumstances, the Grand Chamber, like the Chamber, considers it appropriate to restrict its examination to the conditions in which the applicant was held from 15 August 1994 to 17 October 2002 (contrast Öcalan, cited above, § 190).

1. General principles

115. Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. Even in the most difficult of circumstances, such as the fight against terrorism or crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment.

116. In the modern world, States face very real difficulties in protecting their populations from terrorist violence. However, unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see Labita v. Italy [GC], no. 26772/95, § 119, ECHR 2000-IV; Selmouni v. France [GC], no. 25803/94, § 95, ECHR 1999-V; and Assenov and Others v. Bulgaria, 28 October 1998, § 93, Reports 1998-VIII). The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned (see Chahal, cited above, § 79). The nature of the offence allegedly committed by the applicant is therefore irrelevant for the purposes of Article 3 (see Indelicato v. Italy, no. 31143/96, § 30, 18 October 2001).

117. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, for instance, Ireland v. the United Kingdom, 18 January 1978, § 162, Series A no. 25). In assessing the evidence on which to base the decision whether there has been a violation of Article 3, the Court adopts the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.

118. The Court has considered treatment to be "inhuman" because, inter alia, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see, among other authorities, Kudła v. Poland [GC], no. 30210/96, § 92, ECHR 2000XI). In considering whether a punishment or 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 (see, among other authorities, Raninen v. Finland, 16 December 1997, § 55, Reports 1997-VIII). However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see, among other authorities, Peers v. Greece, no. 28524/95, § 74, ECHR 2001III).

119. In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or 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 (see, among other authorities, V. v. the United Kingdom [GC], no. 24888/94, § 71, ECHR 1999-IX; Indelicato, cited above, § 32; Ilaşcu and Others v. Moldova and Russia [GC], no. 48787/99, § 428, ECHR 2004VII; and Lorsé and Others v. the Netherlands, no. 52750/99, § 62, 4 February 2003).

In that connection, the Court notes that measures depriving a person of his liberty may often involve such an element. Nevertheless, Article 3 requires the State to ensure that prisoners are detained in conditions that are compatible with respect for their human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured (see Kudła, cited above, §§ 92-94, and Kalashnikov v. Russia, no. 47095/99, § 95, ECHR 2002-VI). The Court would add that the measures taken must also be necessary to attain the legitimate aim pursued.

Further, 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).

120. The applicant's allegations in the present case specifically concern the length of time spent in solitary confinement.

The European Commission of Human Rights expressed the following opinion on this particular aspect of detention in Ensslin, Baader and Raspe v. Germany (nos. 7572/76, 7586/76 and 7587/76, Commission decision of 8 July 1978, Decisions and Reports (DR) 14, p. 64):

"The Commission has already been confronted with a number of such cases of isolation (cf. Decisions on Applications No. 1392/62 v. FRG, Coll. 17, p. 1; No. 5006/71 v. UK, Coll. 39, p. 91; No. 2749/66 v. UK, Yearbook X, p. 382; No. 6038/73 v. FRG, Coll. 44, p. 155; No. 4448/70 "Second Greek Case" Coll. 34, p. 70). It has stated that prolonged solitary confinement is undesirable, especially where the person is detained on remand (cf. Decision on Application No. 6038/73 v. FRG, Coll. 44, p. 151). However, in assessing whether such a measure may fall within the ambit of Article 3 of the Convention in a given case, regard must be had to the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned. Complete sensory isolation coupled with complete social isolation can no doubt ultimately destroy the personality; thus it constitutes a form of inhuman treatment which cannot be justified by the requirements of security, the prohibition on torture and inhuman treatment contained in Article 3 being absolute in character (cf. the Report of the Commission on Application No. 5310/71, Ireland v. the United Kingdom; Opinion, p. 379)."

121. In Kröcher and Möller v. Switzerland (no. 8463/78, Commission's report of 16 December 1982, DR 34, p. 24), the Commission also considered the length of the solitary confinement, which lasted for approximately ten and a half months. It observed:

"With regard to the duration of their detention on remand and detention under security conditions, the Commission finds that each of these periods was fairly brief considering the circumstances of the case. As to the special isolation measures to which the applicants were subjected, neither the duration nor the severity of these exceeded the legitimate requirements of security. In any case, the applicants' exclusion from the prison community was not prolonged excessively."

122. The Commission reiterated in a later case that prolonged solitary confinement was undesirable (see Natoli v. Italy, no. 26161/95, Commission decision of 18 May 1998, unreported).

123. Similarly, the Court has for its part established the circumstances in which the solitary confinement of even a dangerous prisoner will constitute inhuman or degrading treatment (or even torture in certain instances).

It has thus observed:

"... complete sensory isolation, coupled with total social isolation can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason. On the other hand, the prohibition of contacts with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment." (see Messina v. Italy (no. 2) (dec.), no. 25498/94, ECHR 1999-V; Öcalan, cited above, § 191; and Ilaşcu and Others, cited above, § 432)

124. Similarly, in Ilaşcu and Others, the Court stated:

"As regards the applicant's conditions of detention while on death row, the Court notes that Mr Ilaşcu was detained for eight years, from 1993 until his release in May 2001, in very strict isolation: he had no contact with other prisoners, no news from the outside – since he was not permitted to send or receive mail – and no right to contact his lawyer or receive regular visits from his family. His cell was unheated, even in severe winter conditions, and had no natural light source or ventilation. The evidence shows that Mr Ilaşcu was also deprived of food as a punishment and that in any event, given the restrictions on receiving parcels, even the food he received from outside was often unfit for consumption. The applicant could take showers only very rarely, often having to wait several months between one and the next. On this subject the Court refers to the conclusions in the report produced by the CPT following its visit to Transdniestria in 2000 ..., in which it described isolation for so many years as indefensible.

The applicant's conditions of detention had deleterious effects on his health, which deteriorated in the course of the many years he spent in prison. Thus, he did not receive proper care, having been deprived of regular medical examinations and treatment ... and dietetically appropriate meals. In addition, owing to the restrictions on receiving parcels, he

could not be sent medicines and food to improve his health." (see Ilaşcu and Others, cited above, § 438; contrast Rohde v. Denmark, no. 69332/01, § 97, 21 July 2005)

2. Application of the principles to the present case

125. As to the present case, the Court accepts that the applicant's detention posed serious problems for the French authorities. The applicant, who was implicated in various terrorist attacks that took place in the 1970s, was at the time considered one of the world's most dangerous terrorists. It is to be noted on this point that on the many occasions he has since had to state his views (in his book, newspaper articles and interviews) he has never disowned or expressed remorse for his acts. Accordingly, it is understandable that the authorities should have considered it necessary to combine his detention with extraordinary security measures.

(a) Conditions in which the applicant was held

(i) Physical conditions

126. The physical conditions in which the applicant was held must be taken into account when examining the nature and duration of his solitary confinement.

127. The Court notes that the cell which the applicant occupied when in solitary confinement at La Santé Prison was large enough to accommodate a prisoner, was furnished with a bed, table and chair, and had sanitary facilities and a window giving natural light.

128. In addition, the applicant had books, newspapers, a reading light and a television set at his disposal. He had access to the exercise yard two hours a day and to a cardio-training room one hour a day.

129. These conditions of detention contrast with those that were examined by the Court in the case of Mathew, in which the Court found a violation of Article 3. The applicant in that case had been detained in conditions similar to solitary confinement for more than two years in a cell on the last (second) floor of the prison. For seven or eight months, a large hole in the ceiling allowed rain to enter. In addition, the fact that the cell was directly under the roof exposed the applicant to the tropical heat. Lastly, since he had difficulty going up or down stairs, he was frequently prevented from going to the exercise yard or even outside (see Mathew v. the Netherlands, no. 24919/03, ECHR 2005-IX).

130. In the present case, the Court finds that the physical conditions in which the applicant was detained were proper and complied with the European Prison Rules adopted by the Committee of Ministers on 11 January 2006. These conditions were also considered to be "globally acceptable" by the CPT (see its report on the visit from 14 to 26 May 2000, cited at paragraph 83 above). Accordingly, no violation of Article 3 can be found on this account.

(ii) Nature of the applicant's solitary confinement

131. In the present case, the applicant received twice-weekly visits from a doctor, a once-monthly visit from a priest and very frequent visits from one or more of his 58 lawyers, including more than 640 visits over a period of four years and ten months from his representative in the proceedings before the Court, now his wife under Islamic law, and more than 860 visits in seven years and eight months from his other lawyers (see paragraphs 14 and 92 above).

Furthermore, the applicant's family, who are not subject to any restrictions on visiting rights, have never requested permission to visit and the only two requests which have been refused came from journalists. Nor has the applicant provided any evidence in support of his allegations that members of his family risk arrest if they set foot in France. As to the allegation that the family has never been officially informed of the applicant's imprisonment or place of detention, the Court notes that it is not certain that the French authorities had the names and addresses of his family members and it considers that the consular authorities, the applicant himself and his lawyers were in any event perfectly capable of informing them themselves.

132. The Court notes that the conditions of solitary confinement in which the applicant was held were not as harsh as those it has had occasion to examine in connection with other applications, such as in the cases of Messina (no. 2) and Argenti, in which the applicants, who had been in solitary confinement for four and a half years and twelve years respectively, were subject to a ban on communicating with third parties, a restriction on receiving visits – behind a glass screen – from members of their families (with a maximum of a one-hour visit per month), and bans on receiving or sending money over a certain amount, on receiving parcels from outside containing anything other than linen, on buying groceries that required cooking and on spending more than two hours outdoors (see Messina (no. 2), cited above, and Argenti v. Italy, no. 56317/00, § 7, 10 November 2005).

133. Likewise, in the case of Öcalan, in which the isolation was stricter, the Court noted that the applicant, who had been the sole inmate of an island prison for six years when the judgment was adopted, had no access to a television and that his lawyers, who were only allowed to visit him once a week, had often been prevented from doing so by adverse weather conditions that meant that the boat was unable to make the crossing. It found that in the circumstances of the case the conditions of detention were not incompatible with Article 3 of the Convention (see Öcalan, cited above, in particular §§ 190-96).

134. The Court considers that the applicant's conditions are closer to those it examined in Rohde in which it held that there had been no violation of Article 3 of the Convention. The applicant in that case was held in solitary confinement for eleven and a half months. He had access to television and newspapers, was excluded from activities with other prisoners, had language lessons, was able to meet the prison chaplain and received a visit once a week from his lawyer and some members of his family (Rohde, cited above, § 97).

135. The Court accordingly concludes that the applicant cannot be considered to have been in complete sensory isolation or

total social isolation. His isolation was partial and relative.

(b) Duration of the solitary confinement

136. It is true that the applicant's situation was far removed from that of the applicants in the aforementioned case of Ilaşcu and Others and that he was not subjected to complete sensory isolation or to total social isolation, but to relative social isolation (see also on this point, Messina (no. 2), cited above).

However, the Court cannot but note with concern that in the present case he was held in solitary confinement from 15 August 1994 to 17 October 2002, a period of eight years and two months.

In view of the length of that period, a rigorous examination is called for by the Court to determine whether it was justified, whether the measures taken were necessary and proportionate compared to the available alternatives, what safeguards were afforded the applicant and what measures were taken by the authorities to ensure that the applicant's physical and mental condition was compatible with his continued solitary confinement.

137. Reasons for keeping a prisoner in solitary confinement are required by the circular of 8 December 1998 which refers to "genuine grounds" and "objective concordant evidence of a risk of the prisoner causing ... serious harm". In the instant case, the reasons given for renewing the measure every three months were his dangerousness, the need to preserve order and security in the prison and the risk of his escaping from a prison in which general security measures were less extensive than in a high-security prison.

The circular also provides that solitary confinement should only continue for more than a year in exceptional circumstances. However, regrettably there is no upper limit on the duration of solitary confinement.

138. It is true that a prisoner's segregation from the prison community does not in itself amount to inhuman treatment. In many States Parties to the Convention more stringent security measures exist for dangerous prisoners. These arrangements, which are intended to prevent the risk of escape, attack or disturbance of the prison community, are based on separation of the prison community together with tighter controls (see Kröcher and Möller, cited above).

139. However, in order to avoid any risk of arbitrariness, substantive reasons must be given when a protracted period of solitary confinement is extended. The decision should thus make it possible to establish that the authorities have carried out a reassessment that takes into account any changes in the prisoner's circumstances, situation or behaviour. The statement of reasons will need to be increasingly detailed and compelling the more time goes by.

Furthermore, such measures, which are a form of "imprisonment within the prison", should be resorted to only exceptionally and after every precaution has been taken, as specified in paragraph 53.1 of the Prison Rules adopted by the Committee of Ministers on 11 January 2006. A system of regular monitoring of the prisoner's physical and mental condition should also be set up in order to ensure its compatibility with continued solitary confinement.

140. The Court notes that the applicant has received very regular visits from doctors, in accordance with the instructions set out in the circular of 8 December 1998.

141. While it is true that, after 13 July 2000 the doctors no longer sanctioned his solitary confinement, none of the medical certificates issued on the renewals of the applicant's solitary confinement up to October 2002 expressly stated that his physical or mental health had been affected, or expressly requested a psychiatric report.

142. In addition, on 29 July 2002 the doctor in charge of the OCTU at La Santé Prison noted in his report on the treatment the applicant had been receiving that the applicant had refused "any psychological help from the RMPS".

143. Likewise, in his findings following an examination of the applicant on 17 October 2002 on his arrival at Saint-Maur Prison, the Indre Health Inspector said that, from the psychiatric standpoint, the applicant had been seen by a psychiatrist from the RMPS as part of the standard induction procedure. No follow-up treatment had been prescribed at the time and the applicant had not asked to see a psychiatrist since. The applicant had been examined on 26 August 2003, but no follow-up to that appointment had been recommended.

144. The Court notes in this connection that the applicant refused the psychological counselling he was offered (see paragraph 70 above) and has not alleged that the treatment he received for his diabetes was inappropriate. Nor has he shown that his prolonged solitary confinement has led to any deterioration in his health, whether physical or mental.

Furthermore, the applicant himself stated in his observations in reply that he was in excellent mental and physical health (see paragraph 95 above).

145. The Court nevertheless wishes to emphasise that solitary confinement, even in cases entailing only relative isolation, cannot be imposed on a prisoner indefinitely. Moreover, it is essential that the prisoner should be able to have an independent judicial authority review the merits of and reasons for a prolonged measure of solitary confinement. In the instant case, that only became possible in July 2003. The Court will return to this point when it examines the complaint made under Article 13. It also refers in this connection to the conclusions of the CPT and of the Human Rights Commissioner of the Council of Europe (see paragraphs 83 and 85 above).

146. It would also be desirable for alternative solutions to solitary confinement to be sought for persons considered dangerous and for whom detention in an ordinary prison under the ordinary regime is considered inappropriate.

147. The Court notes with interest on this point that the authorities twice transferred the applicant to prisons in which he was held in normal conditions. It emerges from what the Government have said that it was as a result of an interview which the applicant gave over the telephone to a television programme in which he refused among other things to express any remorse to the victims of his crimes (he put the number of dead at between 1,500 and 2,000), that he was returned to solitary confinement in a different prison. The authorities do not, therefore, appear to have sought to humiliate or debase him by systematically prolonging his solitary confinement, but to have been looking for a solution adapted to his character and the danger he posed.

148. The Court notes that when the applicant was being held in normal conditions in Saint-Maur Prison, his lawyer sent a letter to the Registry of the Court in which she complained of "dangerous company, particularly in the form of drug addicts, alcoholics, and sexual offenders who are unable to control their behaviour" and alleged a violation of human rights.

Furthermore, the applicant complained during that period of being too far away from Paris, which, he said, made visits from his lawyers more difficult, less frequent and more costly and inevitably caused another form of isolation.

149. Lastly, the Government's concerns that the applicant might use communications either inside the prison or on the outside to re-establish contact with members of his terrorist cell, to seek to proselytise other prisoners or to prepare an escape also have to be taken into account. These concerns cannot be said to have been without basis or unreasonable (see on this point, Messina (no. 2), in which the Court noted, before declaring the complaints about the conditions of detention inadmissible, "the applicant was placed under the special regime because of the very serious offences of which he [was] convicted", a statement that is equally applicable to the applicant in the present case; see also Gallico v. Italy, no. 53723/00, 28 June 2005).

150. The Court shares the CPT's concerns about the possible long-term effects of the applicant's isolation. It nevertheless considers that, having regard to the physical conditions of the applicant's detention, the fact that his isolation is "relative", the authorities' willingness to hold him under the ordinary regime, his character and the danger he poses, the conditions in which the applicant was being held during the period under consideration have not reached the minimum level of severity necessary to constitute inhuman treatment within the meaning of Article 3 of the Convention. Despite the very special circumstances obtaining in the present case, the Court is concerned by the particularly lengthy period the applicant has spent in solitary confinement and has duly noted that since 5 January 2006 he has been held under the ordinary prison regime (see paragraph 76 above), a situation which, in the Court's view, should not in principle be changed in the future. Overall, having regard to all the foregoing considerations, it finds that there has been no violation of Article 3 of the Convention.

In the 2005 case of Mathew v. the Netherlands, the applicant complained that his treatment in prison was in various ways inhuman or degrading:

(Case 96)

1. Applicable principles

175. The Court has stated the applicable principles as follows (see, for example, Kalashnikov v. Russia, no. 47095/99, § 95, ECHR 2002-VI, case-law references omitted):

The Court reiterates that 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 ...

The Court further reiterates that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum 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 ...

The Court has considered treatment to be ‚inhuman' because, inter alia, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be ‚degrading' because it was such as to arouse in the victims feeling of fear, anguish and inferiority capable of humiliating and debasing them ... In considering whether a particular form of 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 any such purpose cannot conclusively rule out a finding of a violation of Article 3 ... 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. Yet it cannot be said that detention on remand in itself raises an issue under Article 3 of the Convention. Nor can that Article be interpreted as laying down a general obligation to release a detainee on health grounds or to place him in a civil hospital to enable him to obtain specific medical treatment.

Nevertheless, under this provision the State must ensure that a person is detained in 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 of an intensity 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 ..."

2. Use of physical force and instruments of restraint against the applicant

(a) Physical force

176. The Court considers it established that external violence was used against the applicant on more than one occasion.

177. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see Ribitsch v. Austria, judgment of 4 December 1995, Series A no. 336, p. 26, § 38, and Keenan v. the United Kingdom, no. 27229/95, § 113, ECHR 2001-III).

178. As noted above, the applicant has not been able to satisfy the Court that the large number of official documents recording his obstreperous and even violent behaviour during his detention misstate essential facts.

179. The Court cannot therefore find that the force used against the applicant in preventing or terminating violent episodes went beyond what was strictly necessary in the circumstances.

(b) Injuries allegedly caused by fetters

180. 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, among other authorities and mutatis mutandis, Raninen v. Finland, judgment of 16 December 1997, Reports of Judgments and Decisions 1997VIII, p. 2822, § 56, and Hénaf v. France, no. 65436/01, § 48, ECHR 2003XI).

181. The applicant did not direct a complaint against the use of instruments of restraint as such. Instead, his grievances related to the injuries caused, as he alleged, by his fetters.

182. For their part, the Government stated that the injuries to the applicant's ankles had been self-inflicted.

183. The applicant has not satisfied the Court that the wounding of his ankles was the inevitable consequence of the use of fetters. The Court further accepts that the use of fetters was eventually discontinued in view of those injuries. In the circumstances, the Court is not prepared to draw any inferences capable of leading to a finding of a violation of Article 3.

(c) Conclusion

184. No violation of Article 3 of the Convention has been established as regards the use of physical force against the applicant and the injuries allegedly resulting from the use of fetters.

3. Alleged withholding of necessary medical assistance

(a) Second opinion regarding the need for surgery

185. On 4 July 2003 Aruba's neurosurgeon, Dr Vallejo Lopez, suggested surgery but called for a second opinion by another surgeon before such an intervention was resorted to (see paragraph 40 above). The prison authorities made it clear that the applicant could consult "any specialist of his choice in Aruba, as long as the specialist in question [was] registered in Aruba according [to] the current law" (see paragraph 44 above). There was no other neurosurgeon resident on Aruba. The applicant was not seen by a second neurosurgeon while he remained in detention.

186. As noted above (see paragraph 175), the health and well-being of a prisoner must be adequately secured. However, Article 3 cannot be interpreted as requiring a prisoner's every wish and preference regarding medical treatment to be accommodated. In this as in other matters, the practical demands of legitimate detention may impose restrictions a prisoner will have to accept.

187. Examination by a medical expert who has no links to the detaining authority is an important safeguard against the physical or mental abuse of prisoners. The Court therefore considers that a prisoner's choice of physician should as a rule be respected, subject if need be to the condition that responsibility for any additional expense not justified by genuine medical reasons be assumed by the prisoner. Even so, there is no objection to requiring a medical practitioner to hold a valid licence to practise issued or recognised by the competent domestic authority as a condition for being granted access to a prisoner, provided that such a requirement does not result in the withholding from the prisoner of timely and adequate medical examination, treatment and advice.

188. The prescription issued by Dr Vallejo Lopez suggested that a second opinion be given by "the Neurosurgeon that periodically [visited] the Island". It would seem that this other neurosurgeon never examined the applicant. The reasons for this have not been made clear to the Court.

189. The Court observes, however, that the applicant's wife, acting to all appearances on the applicant's behalf, asked for the applicant to be examined by a medical practitioner of his choice from abroad (see paragraph 45 above). In the light of the information available, much of which suggests that the applicant was apt to set preconditions for accepting medical treatment, the Court is unable to impute the absence of a second opinion to the respondent party.

(b) Wheelchair

190. The applicant was provided with a wheelchair on 14 August 2002. According to an official report which must be accepted as genuine (see paragraph 168 above), he damaged it on 13 February 2003 in an incident in which he used part of it as a weapon against prison staff (see paragraph 66 above). It was taken from him, apparently, at some point after that incident. It appears that the applicant's wife offered a replacement but that the interim governor of the KIA refused to allow it to be supplied to the applicant.

191. The Court finds, on the evidence available, that in the hands of the applicant a wheelchair was perceived on reasonable grounds as a threat to the safety of others. In these circumstances the Court holds, without prejudice to the position taken in paragraphs 204 and 215 below, that the domestic authorities were entitled to consider it necessary, in the conditions existing at that time, to deny him the continued use of a wheelchair.

(c) Physiotherapy

192. The applicant received physiotherapy in hospital from 23 May until 13 June 2003, after which he was returned to the KIA. It was intended that he should continue to receive physiotherapy as an outpatient. The applicant stated that his physical condition had prevented him from walking from his cell to the vehicle which was to take him to hospital and from sitting up straight in the vehicle.

193. The treatment of prisoners in ordinary hospitals rather than in prison ensures that medical facilities and staff remain available to provide health care outside prison; it also offers prisoners access to medical assistance of the same standard as that provided to the general public. While, as noted (see paragraph 175 above), it is not a requirement under the Convention, the Court cannot find it objectionable. The question before the Court in the present case, therefore, is whether treatment in prison was made necessary by the applicant's state of health.

194. The Court accepts that transport to hospital caused the applicant discomfort of such a level that he might well have preferred to be visited by a physiotherapist in prison. It cannot, however, find it established that the applicant's condition dictated the latter course.

195. In so finding the Court has had regard to various official reports which indicate that the applicant could apparently display enormous physical strength, including the report of the incident of 13 February 2003 (see paragraph 66 above), which describes the applicant ripping a piece of metal off his wheelchair. It has also considered the written statement dated 6 March 2004 by Mr Carti, the physiotherapist engaged by the Aruban authorities to visit the applicant in prison (see paragraph 100 above). This describes the applicant as being able, despite going nine months without treatment, to walk a distance of at least 90 metres and carry out complex physical actions such as twisting his body and walking up and down stairs.

(d) Conclusion

196. No violation of Article 3 of the Convention can be established on the ground that the applicant was denied the medical care he needed.

4. Conditions of detention

(a) The detention regime

197. The detention regime ordered by the interim prison governor on 4 January 2002 (see paragraph 15 above) required the applicant to spend the remainder of his detention in a situation amounting to solitary confinement. This involved far greater hardship than ordinary detention on remand.

198. It is apparent that the applicant was stubbornly uncooperative and much inclined to acts of violence against property and individuals. On the information available, the Court accepts that the KIA authorities found him impossible to control except in conditions of strict confinement.

199. The Court reiterates that conditions of detention may sometimes amount to inhuman or degrading treatment (see Dougoz v. Greece, no. 40907/98, § 46, ECHR 2001-II). It agrees with the CPT that even for difficult and dangerous prisoners, periods of solitary confinement should be as short as possible (see paragraph 128 above). It has found in the past that complete sensory isolation coupled with total social isolation can destroy the personality and constitute a form of inhuman treatment which cannot be justified by the requirements of security or any other reason. However, the prohibition of contact with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment (see, among other authorities, Öcalan v. Turkey [GC], no. 46221/99, § 191, ECHR 2005-IV).

200. The Government compared the case with Messina, cited above. It is true that, like the applicant in Messina, the present applicant was not subjected to sensory or total social isolation but rather to relative social isolation, and that the period to be considered here was rather shorter.

201. The present case is, however, distinguishable from Messina. In that case the applicant was charged with, or had already been convicted of, very serious offences linked to organised crime, and the impugned measure was ordered to prevent the applicant from re-establishing contact with criminal organisations. The Court accepted that such a reason could justify the decision complained about; indeed, it is difficult to see what alternative course of action would have been practicable. The Court also took into consideration the state of health of the applicant in Messina, who did not claim to have suffered any physically or psychologically damaging effects, and the effective action taken by the authorities to lessen the impact of the regime.

202. The present applicant, by contrast, was subjected to the impugned regime not because he might involve himself with organised crime outside the prison but because he could not adapt to an ordinary prison setting. Attempts by the authorities to remove its harmful effects were not effective.

203. Plainly the Aruban authorities were aware that the applicant was not a person fit to be detained in the KIA in normal conditions and that the special regime designed for him was causing him unusual distress. The letter of the supervisory board of 26 March 2002, the decisions of the Joint Court of Justice of 15 July and 2 September 2003 and the Joint Court's judgment of 14 April 2003 demonstrate that. While some attempts were made, most conspicuously by the Joint Court of Justice, to alleviate the applicant's situation to some extent, the Court considers that the respondent party could and should have done more.

204. The Court accepts that accommodation suitable for prisoners of the applicant's unfortunate disposition did not exist on Aruba at the relevant time; it is only now being built. However, it is not Aruba but the Kingdom of the Netherlands which is the Party responsible under the Convention for ensuring compliance with its standards. Judicial orders given in one of the three countries of the Kingdom – the Realm in Europe, the Netherlands Antilles and Aruba – can be executed throughout the Kingdom (Article 40 of the Charter for the Kingdom of the Netherlands – see paragraph 125 above). The Court is concerned to find that, despite a request to that effect from the applicant, no attempt appears to have been made to find a place of detention appropriate to the applicant in one of the other two countries of the Kingdom (see paragraph 115 above).

205. The Court accordingly finds that the applicant was subjected to distress and hardship of an intensity considerably exceeding the unavoidable level of suffering inherent in detention and amounting to "inhuman treatment".

(b) The committal cell

(i) Cleanliness

206. The applicant submitted that, during the time he had been detained there, the committal cell had been allowed to become filthy and unsanitary; he had been unable to clean it himself and the measures taken by the Government in that regard had been insufficient.

207. The Government expressed doubts as to the applicant's inability to keep the cell clean himself and argued that in any case the prison authorities had provided him with assistance.

208. The Court has already considered the information available on the applicant's physical condition and cannot find it established that the applicant was unable throughout the nearly two and a half years of his detention to do any cleaning himself. It notes in addition that the applicant did not deny that another prisoner had in fact been appointed, at the prison's expense, to clean the committal cell periodically. In these circumstances the Court declines to impute responsibility for the uncleanliness of the committal cell to the respondent party.

(ii) Situation and state of repair of the committal cell

209. As the Government stated and the applicant did not deny, the committal cell was relatively spacious. Its furnishings were basic but adequate.

210. From the time when the applicant was first detained there until some time between August and October 2002, there was a large opening in the roof of the cell through which the rain penetrated.

211. The committal cell was located on the second and top floor of the KIA prison building. Its situation exposed its occupant to the heat of the sun. Iced water was provided; there was, however, no air conditioning or other cooling system.

212. There were no lifts; access and egress were via two flights of stairs.

213. The Court has had occasion to find Article 3 violated by the poor state of repair of a cell in which a prisoner was held for long periods and by the lack of opportunity for outdoor exercise (see Poltoratskiy v. Ukraine, no. 38812/97, § 146, ECHR 2003-V).

214. The Court finds it unacceptable that anyone should be detained in conditions involving a lack of adequate protection against precipitation and extreme temperatures.

215. On the evidence available, the Court finds it established that it was painful for the applicant to negotiate the two flights of stairs in order to go to the exercise area for outdoor exercise and fresh air. It is understandable in these circumstances that the applicant often preferred to forgo outdoor exercise rather than suffer the pain. Some arrangement should have been made whereby this could have been avoided. It must be accepted that accommodation suitable for the applicant situated on the same level as the exercise area or accessible by a lift did not exist in the KIA at the relevant time. However, in the Court's opinion the competent authorities ought to have considered the possibility of detaining the applicant in a place more appropriate to his physical condition, in one of the other two countries of the Kingdom if necessary.

216. The Court cannot find it established that there was a positive intention of humiliating or debasing the applicant. However, as already noted (see paragraph 175 above), the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3. In the present case the Court considers that the conditions of detention the applicant had to endure must have caused him both mental and physical suffering, diminishing his human dignity and amounting to "inhuman treatment".

(c) Conclusion

217. There has been a violation of Article 3 of the Convention in that the applicant was kept in solitary confinement for an excessive and unnecessarily protracted period, that he was kept for at least seven months in a cell that failed to

offer adequate protection against the elements, and that he was kept in a location from which he could not gain access to outdoor exercise and fresh air without unnecessary and avoidable physical suffering. No violation of Article 3 has been established as regards the state of cleanliness of the cell in which the applicant was detained.

III. Life prisoners and prisoners on death row

1. Life sentences

In the 2008 case of Kafkaris v. Cyprus, the Court considered in which circumstances a life sentence may amount to inhuman or degrading punishment:

(Case 97)

3. The applicant alleged that Articles 3, 5, 7 and 14 of the Convention had been violated as a result of his life sentence and continuing detention. (…)

77. The applicant submitted that his continuous detention for life was in breach of Article 3 of the Convention, which provides as follows:

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

78. The applicant's complaint under this provision was twofold. First of all he complained that the whole or a significant part of the period of his detention for life was a period of punitive detention that exceeded the reasonable and acceptable standards for the length of a period of punitive detention as required by the Convention. Secondly, he complained that the unexpected reversal of his legitimate expectations for release and his continuous detention beyond the date which had been set for his release by the prison authorities had left him in a state of distress and uncertainty over his future for a significant period of time. In his opinion, this amounted to inhuman and degrading treatment.

1. General principles

95. 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, for example, Labita v. Italy [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see Ireland v. the United Kingdom, 18 January 1978, § 162, Series A no. 25).

96. 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 Article 3 of the Convention, the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity and 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 (see Kudła v. Poland [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

97. The imposition of a sentence of life imprisonment on an adult offender is not in itself prohibited by or incompatible with Article 3 or any other Article of the Convention (see, inter alia, among many authorities, Kotälla v. the Netherlands, no. 7994/77, Commission decision of 6 May 1978, Decisions and Reports (DR) 14, p. 238; Bamber v. the United Kingdom, no. 13183/87, Commission decision of 14 December 1988, DR 59, p. 235; and Sawoniuk v. the United Kingdom (dec.), no. 63716/00, ECHR 2001-VI). At the same time, however, the Court has also held that the imposition of an irreducible life sentence on an adult may raise an issue under Article 3 (see, inter alia, Nivette v. France (dec.), no. 44190/98, ECHR 2001VII; Einhorn, cited above; Stanford v. the United Kingdom (dec.), no. 73299/01, 12 December 2002; and Wynne v. the United Kingdom (dec.), no. 67385/01, 22 May 2003).

98. In determining whether a life sentence in a given case can be regarded as irreducible, the Court has sought to ascertain whether a life prisoner can be said to have any prospect of release. An analysis of the Court's case-law on the subject discloses that where national law affords the possibility of review of a life sentence with a view to its commutation, remission, termination or the conditional release of the prisoner, this will be sufficient to satisfy Article 3. The Court has held, for instance, in a number of cases that, where detention was subject to review for the purposes of parole after the expiry of the minimum term for serving the life sentence, it could not be said that the life prisoners in question had been deprived of any hope of release (see, for example, Stanford, cited above; Hill v. the United Kingdom (dec.), no. 19365/02, 18 March 2003; and Wynne, cited above). The Court has found that this is the case even in the absence of a minimum term of unconditional imprisonment and even when the possibility of parole for prisoners serving a life sentence is limited (see, for example, Einhorn, cited above, §§ 27-28). It follows that a life sentence does not become "irreducible" by the mere fact that in practice it may be served in full. It is enough for the purposes of Article 3 that a life sentence is de jure and de facto reducible.

99. Consequently, although the Convention does not confer, in general, a right to release on licence or a right to have a sentence reconsidered by a national authority, judicial or administrative, with a view to its remission or termination (see, inter alia, Kotälla, and Bamber, both cited above; and Treholt v. Norway, no. 14610/89, Commission decision of 9 July 1991, DR 71, p. 168), it is clear from the relevant case-law that the existence of a system providing for consideration of the possibility of release is a factor to be taken into account when assessing the compatibility of a particular life sentence with Article 3. In this context, however, it should be observed that a State's choice of a specific criminal-justice system, including sentence review and release arrangements, is in principle

outside the scope of the supervision the Court carries out at European level, provided that the system chosen does not contravene the principles set forth in the Convention (see, mutatis mutandis, Achour v. France [GC], no. 67335/01, § 51, ECHR 2006IV).

2. Application of the above principles to the instant case

100. In the instant case, the Court must determine whether the sentence of life imprisonment imposed on the applicant in the particular circumstances has removed any prospect of his release.

101. In reaching its decision the Court has had regard to the standards prevailing amongst the member States of the Council of Europe in the field of penal policy, in particular concerning sentence review and release arrangements (see Soering v. the United Kingdom, 7 July 1989, § 102, Series A no. 161; and V. v. the United Kingdom [GC], no. 24888/94, § 72, ECHR 1999-IX). It has also taken into account the increasing concern regarding the treatment of persons serving long-term prison sentences, particularly life sentences, reflected in a number of Council of Europe texts (see paragraphs 68-73 above).

102. At the outset the Court notes that in Cyprus the offence of premeditated murder carries a mandatory sentence of life imprisonment (see paragraphs 31-33 above), which under the Criminal Code, as confirmed by the domestic courts, is tantamount to imprisonment for the rest of the convicted person's life. Furthermore, it observes that Cypriot law does not provide for a minimum term for serving a life sentence or for the possibility of its remission on the basis of good conduct and industry. However, the adjustment of such a sentence is possible at any stage irrespective of the time served in prison. In particular, under Article 53 § 4 of the Constitution as it has been applied since 1963, the President of the Republic, on the recommendation of the Attorney-General, may suspend, remit or commute any sentence passed by a court (see paragraphs 36-37 above). The President can therefore at any point in time commute a life sentence to another one of a shorter duration and then remit it, affording the possibility of immediate release. Moreover, section 14 of the Prison Law of 1996 provides for the conditional release of prisoners, including life prisoners (see paragraph 59 above). In line with this provision, subject to the provisions of the Constitution, the President, with the agreement of the Attorney-General, can order by decree the conditional release of a prisoner at any time.

103. Admittedly, it follows from the above provisions that the prospect of release for prisoners serving life sentences in Cyprus is limited, any adjustment of a life sentence being only within the President's discretion, subject to the agreement of the Attorney-General. Furthermore, as acknowledged by the Government, there are certain shortcomings in the current procedure (see paragraph 91 above). Notwithstanding, the Court does not find that life sentences in Cyprus are irreducible with no possibility of release; on the contrary, it is clear that in Cyprus such sentences are both de jure and de facto reducible. In this connection, the Court notes that from the parties' submissions it transpires that life prisoners have been released under Article 53 § 4 of the Constitution. In particular, nine life prisoners were released in 1993 and another two in 1997 and 2005 respectively (see paragraphs 52 and 90 above and paragraph 158 below). All of these prisoners, apart from one, had been serving mandatory life sentences. In addition, a life prisoner can benefit from the relevant provisions at any time without having to serve a minimum period of imprisonment. Consequently, it cannot be inferred that the applicant has no possibility of release and he has not adduced evidence to warrant such an inference.

104. In his submissions, the applicant has placed great emphasis on the lack of a parole board system in Cyprus. However, the Court reiterates that matters relating to early release policies including the manner of their implementation fall within the power member States have in the sphere of criminal justice and penal policy (see, mutatis mutandis, Achour, cited above, § 44). In this connection, the Court observes that at the present time there is not yet a clear and commonly accepted standard amongst the member States of the Council of Europe concerning life sentences and, in particular, their review and method of adjustment. Moreover, no clear tendency can be ascertained with regard to the system and procedures implemented in respect of early release.

105. In view of the above, the Court considers that the applicant cannot claim that he has been deprived of any prospect of release and that his continued detention as such, even though long, constitutes inhuman or degrading treatment. However, the Court is conscious of the shortcomings in the procedure currently in place (see paragraph 91 above) and notes the recent steps taken for the introduction of reforms.

106. Furthermore, with regard to the applicant's second complaint, although the change in the applicable legislation and consequent frustration of his expectations of release must have caused him a certain amount of anxiety, the Court does not consider that in the circumstances this attained the level of severity required to fall within the scope of Article 3. Bearing in mind the chronology of events and, in particular, the lapse of time between them, it cannot be said that the applicant could justifiably harbour genuine expectations that he would be released in November 2002. In this connection, the Court notes that apart from the clear sentence passed by the Assize Court in 1989 the relevant changes in the domestic law happened within a period of approximately four years, that is, between 1992 and 1996, thus about six years before the release date given by the prison authorities to the applicant came around. Therefore, any feelings of hope on the part of the applicant linked to the prospect of early release must have diminished as it became clear with the changes in domestic law that he would be serving the life sentence passed on him by the Assize Court.

107. It is true that a life sentence such as the one imposed on and served by the applicant without a minimum term necessarily entails anxiety and uncertainty related to prison life but these are inherent in the nature of the sentence imposed and, considering the prospects for release under the current system, do not warrant a conclusion of inhuman and degrading treatment under Article 3.
108. Accordingly, the Court finds that there has been no violation of that provision.

In the 2013 case of Vinter and others v. United Kingdom, the applicants, who had been convicted to a life sentence with a "whole life order" complained that such a sentence amounted to inhuman or degrading treatment or punishment:

(Case 98)
C. The Grand Chamber's assessment
1. "Gross disproportionality"
102. The Chamber found that a grossly disproportionate sentence would violate Article 3 of the Convention. The parties accepted that proposition in their submissions before the Chamber and have continued to do so in their submissions to the Grand Chamber. The Grand Chamber agrees with and endorses the Chamber's finding. It also agrees with the Chamber that it will only be on rare and unique occasions that this test will be met (see paragraph 83 above and paragraphs 88 and 89 of the Chamber's judgment).

2. Life sentences
103. Since, however, the applicants have not sought to argue that their whole life orders are grossly disproportionate, it is necessary to examine, as the Chamber did, whether those whole life orders are in violation of Article 3 of the Convention on other grounds. The general principles which guide that examination are as follows.

104. It is well-established in the Court's case-law that a State's choice of a specific criminal justice system, including sentence review and release arrangements, is in principle outside the scope of the supervision the Court carries out at the European level, provided that the system does not contravene the principles set forth in the Convention (see Kafkaris, cited above, § 99).

105. In addition, as the Court of Appeal observed in R v. Oakes (see paragraph 50 above), issues relating to just and proportionate punishment are the subject of rational debate and civilised disagreement. Accordingly, Contracting States must be allowed a margin of appreciation in deciding on the appropriate length of prison sentences for particular crimes. As the Court has stated, it is not its role to decide what is the appropriate term of detention applicable to a particular offence or to pronounce on the appropriate length of detention or other sentence which should be served by a person after conviction by a competent court (see T. v. the United Kingdom [GC], no. 24724/94, § 117, 16 December 1999; V. v. the United Kingdom [GC], no. 24888/94, § 118, ECHR 1999IX; and Sawoniuk v. the United Kingdom (dec.), no. 63716/00, ECHR 2001VI).

106. For the same reasons, Contracting States must also remain free to impose life sentences on adult offenders for especially serious crimes such as murder: the imposition of such a sentence on an adult offender is not in itself prohibited by or incompatible with Article 3 or any other Article of the Convention (see Kafkaris, cited above, § 97). This is particularly so when such a sentence is not mandatory but is imposed by an independent judge after he or she has considered all of the mitigating and aggravating factors which are present in any given case.

107. However, as the Court also found in Kafkaris, the imposition of an irreducible life sentence on an adult may raise an issue under Article 3 (ibid.). There are two particular but related aspects of this principle that the Court considers necessary to emphasise and to reaffirm.

108. First, a life sentence does not become irreducible by the mere fact that in practice it may be served in full. No issue arises under Article 3 if a life sentence is de jure and de facto reducible (see Kafkaris, cited above, § 98).

In this respect, the Court would emphasise that no Article 3 issue could arise if, for instance, a life prisoner had the right under domestic law to be considered for release but was refused on the ground that he or she continued to pose a danger to society. This is because States have a duty under the Convention to take measures for the protection of the public from violent crime and the Convention does not prohibit States from subjecting a person convicted of a serious crime to an indeterminate sentence allowing for the offender's continued detention where necessary for the protection of the public (see, mutatis mutandis, T. v. the United Kingdom, § 97, and V. v. the United Kingdom, § 98, both cited above). Indeed, preventing a criminal from re-offending is one of the "essential functions" of a prison sentence (see Mastromatteo v. Italy [GC], no. 37703/97, § 72, ECHR 2002VIII; Maiorano and Others v. Italy, no. 28634/06, § 108, 15 December 2009; and, mutatis mutandis, Choreftakis and Choreftaki v. Greece, no. 46846/08, § 45, 17 January 2012). This is particularly so for those convicted of murder or other serious offences against the person. The mere fact that such prisoners may have already served a long period of imprisonment does not weaken the State's positive obligation to protect the public; States may fulfil that obligation by continuing to detain such life sentenced prisoners for as long as they remain dangerous (see, for instance, Maiorano and Others, cited above).

109. Second, in determining whether a life sentence in a given case can be regarded as irreducible, the Court has sought to ascertain whether a life prisoner can be said to have any prospect of release. Where national law affords the possibility of review of a life sentence with a view to its commutation, remission, termination or the conditional release of the prisoner, this will be sufficient to satisfy Article 3 (see Kafkaris, cited above, § 98).

110. There are a number of reasons why, for a life sentence to remain compatible with Article 3, there must be both a prospect of release and a possibility of review.

111. It is axiomatic that a prisoner cannot be detained unless there are legitimate penological grounds for that detention. As was recognised by the Court of Appeal in Bieber and the Chamber in its judgment in the present case, these grounds will include punishment, deterrence, public protection and rehabilitation. Many of these grounds will be present at the time when a life sentence is imposed. However, the balance between these justifications for detention is not necessarily static and may shift in the course of the sentence. What may be the primary justification for detention at the start of the sentence may not be so after a lengthy period into the service of the sentence. It is only by carrying out a review of the justification for continued detention at an appropriate point in the sentence that these factors or shifts can be properly evaluated.

112. Moreover, if such a prisoner is incarcerated without any prospect of release and without the possibility of having his life sentence reviewed, there is the risk that he can never atone for his offence: whatever the prisoner does in prison, however exceptional his progress towards rehabilitation, his punishment remains fixed and unreviewable. If anything, the punishment becomes greater with time: the longer the prisoner lives, the longer his sentence. Thus, even when a whole life sentence is condign punishment at the time of its imposition, with the passage of time it becomes – to paraphrase Lord Justice Laws in Wellington – a poor guarantee of just and proportionate punishment (see paragraph 54 above).

113. Furthermore, as the German Federal Constitutional Court recognised in the Life Imprisonment case (see paragraph 69 above), it would be incompatible with the provision on human dignity in the Basic Law for the State forcefully to deprive a person of his freedom without at least providing him with the chance to someday regain that freedom. It was that conclusion which led the Constitutional Court to find that the prison authorities had the duty to strive towards a life sentenced prisoner's rehabilitation and that rehabilitation was constitutionally required in any community that established human dignity as its centrepiece. Indeed, the Constitutional Court went on to make clear in the subsequent War Criminal case that this applied to all life prisoners, whatever the nature of their crimes, and that release only for those who were infirm or close to death was not sufficient (see paragraph 70 above).

Similar considerations must apply under the Convention system, the very essence of which, as the Court has often stated, is respect for human dignity (see, inter alia, Pretty v. the United Kingdom, no. 2346/02, § 65, ECHR 2002III; and V.C. v. Slovakia, no. 18968/07, § 105, ECHR 2011 (extracts)).

114. Indeed, there is also now clear support in European and international law for the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved.

115. The Court has already had occasion to note that, while punishment remains one of the aims of imprisonment, the emphasis in European penal policy is now on the rehabilitative aim of imprisonment, particularly towards the end of a long prison sentence (see, for instance, Dickson v. the United Kingdom [GC], no. 44362/04, § 75, ECHR 2007V; and Boulois v. Luxembourg [GC], no. 37575/04, § 83, ECHR 2012, with further references therein). In the Council of Europe's legal instruments, this is most clearly expressed in Rule 6 of the European Prison Rules, which provides that all detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty, and Rule 102.1, which provides that the prison regime for sentenced prisoners shall be designed to enable them to lead a responsible and crimefree life (see paragraph 77 above).

116. The relevant Council of Europe instruments set out in paragraphs 60–64 and 76 above also demonstrate, first, that commitment to rehabilitation is equally applicable to life sentence prisoners; and second, that, in the event of their rehabilitation, life sentence prisoners should also enjoy the prospect of conditional release.

Rule 103 of the European Prison Rules provides that, in the implementation of the regime for sentenced prisoners, individual sentence plans should be drawn up and should include, inter alia, preparation for release. Such sentence plans are specifically extended to life sentenced prisoners by virtue of Rule 103.8 (see paragraph 77 above).

Committee of Ministers Resolution 76(2) recommends that the cases of all prisoners – including life sentence prisoners – be examined as early as possible to determine whether or not conditional release could be granted. That resolution also recommends that review of life sentences should take place after eight to fourteen years of detention and be repeated at regular intervals (see paragraph 60 above).

Recommendation 2003(23) (on the management by prison administrations of life sentence and other long-term prisoners) emphasises that life sentence prisoners should benefit from constructive preparation for release, including, to this end, being able to progress through the prison system. The recommendation also expressly states that life sentence prisoners should enjoy the possibility of conditional release (see, in particular, paragraphs 2, 8 and 34 of the recommendation and paragraph 131 of the report accompanying the recommendation, all set out in paragraph 61 above).

Recommendation 2003(22) (on conditional release) also makes clear that conditional release should be available to all prisoners and that life sentence prisoners should not be deprived of the hope of release (see paragraph 4(a) of the recommendation and paragraph 131 of the explanatory memorandum, both set out paragraph 62 above).

The Committee for the Prevention of Torture has expressed similar views, most recently in its report on Switzerland (see paragraph 64 above).

117. This commitment to both the rehabilitation of life sentence prisoners and to the prospect of their eventual release is further reflected in the practice of the Contracting States. This is shown in the judgments of the German and Italian Constitutional Courts on rehabilitation and life sentences (set out in paragraphs 69–71 and 72 above) and in the other comparative law materials before the Court. These show that a large majority of Contracting States either do not impose life sentences at all or, if they do impose life sentences, provide some dedicated mechanism, integrated within the sentencing legislation, guaranteeing a review of those life sentences after a set period, usually after twenty-five years' imprisonment (see paragraph 68 above).

118. The same commitment to the rehabilitation of life sentence prisoners and to the prospect of their eventual release can be found in international law.

The United Nations Standard Minimum Rules for the Treatment of Prisoners direct prison authorities to use all available resources to ensure the return of offenders to society (see Rules 58–61, 65 and 66, quoted at paragraph 78 above) Additional, express references to rehabilitation run through the Rules (see paragraph 79 above).

Equally, Article 10 § 3 of the International Covenant on Civil and Political Rights specifically provides that the essential aim of the penitentiary system shall be the reformation and social rehabilitation of prisoners. This is emphasised in the Human Rights Committee's General Comment on Article 10, which stresses that no penitentiary system should be only retributory (see paragraphs 80 and 81 above).

Finally, the Court notes the relevant provisions of the Rome Statute of the International Criminal Court, to which 121 States, including the vast majority of Council of Europe member States, are parties. Article 110(3) of the Statute provides for review of a life sentence after twenty-five years, followed by periodic reviews thereafter. The significance of Article 110(3) is underscored by the fact that Article 110(4) and (5) of the Statute and Rules 223 and 224 of the ICC's Rules of Procedure and Evidence set out detailed procedural and substantives guarantees which should govern that review. The criteria for reduction include, inter alia, whether the sentenced person's conduct in detention shows a genuine dissociation from his or her crime and his or her prospect of resocialisation (see Rule 223(a) and (b), set out at paragraph 65 above).

3. General conclusion in respect of life sentences

119. For the foregoing reasons, the Court considers that, in the context of a life sentence, Article 3 must be interpreted as requiring reducibility of the sentence, in the sense of a review which allows the domestic authorities to consider whether any changes in the life prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds.

120. However, the Court would emphasise that, having regard to the margin of appreciation which must be accorded to Contracting States in the matters of criminal justice and sentencing (see paragraphs 104 and 105 above), it is not its task to prescribe the form (executive or judicial) which that review should take. For the same reason, it is not for the Court to determine when that review should take place. This being said, the Court would also observe that the comparative and international law materials before it show clear support for the institution of a dedicated mechanism guaranteeing a review no later than twenty-five years after the imposition of a life sentence, with further periodic reviews thereafter (see paragraphs 117 and 118 above).

121. It follows from this conclusion that, where domestic law does not provide for the possibility of such a review, a whole life sentence will not measure up to the standards of Article 3 of the Convention.

122. Although the requisite review is a prospective event necessarily subsequent to the passing of the sentence, a whole life prisoner should not be obliged to wait and serve an indeterminate number of years of his sentence before he can raise the complaint that the legal conditions attaching to his sentence fail to comply with the requirements of Article 3 in this regard. This would be contrary both to legal certainty and to the general principles on victim status within the meaning of that term in Article 34 of the Convention. Furthermore, in cases where the sentence, on imposition, is irreducible under domestic law, it would be capricious to expect the prisoner to work towards his own rehabilitation without knowing whether, at an unspecified, future date, a mechanism might be introduced which would allow him, on the basis of that rehabilitation, to be considered for release. A whole life prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought. Consequently, where domestic law does not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with Article 3 on this ground already arises at the moment of the imposition of the whole life sentence and not at a later stage of incarceration.

4. The present case

123. It remains to be considered whether, in the light of the foregoing observations, the present applicants' whole life orders meet the requirements of Article 3 of the Convention.

124. The Court would begin by observing that, as the Chamber found in its judgment (at paragraph 94), it is not persuaded by the reasons adduced by the Government for the decision not to include a twenty-five year review in the current legislation on life sentences in England and Wales, the 2003 Act (see paragraph 95 above) . It recalls that such a review, albeit vested in the executive, existed in the previous statutory system (see paragraph 46 above).

The Government have submitted that the twenty-five year review was not included in the 2003 Act because one of the intentions of the Act was to judicialise decisions concerning the appropriate terms of imprisonment for the purposes of punishment and deterrence (see paragraph 95 above). However, the need for independent judges to determine whether a whole life order may be imposed is quite separate from the need for such whole life orders to be reviewed at a later stage so as to ensure that they remain justified on legitimate penological grounds. Furthermore, given that the stated intention of the legislative amendment was to remove the executive entirely from the decision-making process concerning life sentences, it would have been more consistent to provide that, henceforth, the twentyfive year review, instead of being eliminated completely, would be conducted within a wholly judicial framework rather than, as before, by the executive subject to judicial control.

125. Moreover, there is a lack of clarity as to the current law concerning the prospect of release of life prisoners. It is true that section 30 of the 1997 Act provides the Secretary of State with the power to release any prisoner, including one serving a whole life order (see paragraph 42 above). It is also true that, in exercising that power – as with all statutory powers – the Secretary of State is legally bound to act compatibly with the Convention (see section 6(1) of the Human Rights Act, set out at paragraph 33 above). As the Government suggested in their pleadings before the Court, it would therefore be possible to read section 30 as not just giving a power of release to the Secretary of State, but as imposing a duty on him to exercise that power and to release a prisoner if it can be shown that his or her continued detention has become incompatible with Article 3, for example, when it can no longer be justified on legitimate penological grounds.

This was, in effect, the reading given to section 30 by the Court of Appeal in Bieber and re-affirmed by it in Oakes (see, in particular, paragraph 49 above, setting out paragraphs 48 and 49 of Bieber and the Court of Appeal's observation that while the section 30 power had been used sparingly, there was no reason why it should not be used by the Secretary of State to effect the necessary compliance with Article 3 of the Convention).

This reading of section 30 ensuring some prospects under the law for release of whole life prisoners would, in principle, be consistent with this Court's judgment in Kafkaris, cited above. If it could be established that, in the applicants' cases, a sufficient degree of certainty existed as to the state of the applicable domestic law to this effect, it could not be said that their sentences were irreducible and thus no violation of Article 3 would be disclosed.

126. However, the Court must be concerned with the law as it presently stands on the published policies as well as in judicial dicta and as it is applied in practice to whole life prisoners. The fact remains that, despite the Court of Appeal's judgment in Bieber, the Secretary of State has not altered the terms of his explicitly stated and restrictive policy on when he will exercise his section 30 power. Notwithstanding the reading given to section 30 by the Court of Appeal, the Prison Service Order remains in force and provides that release will only be ordered in certain exhaustively listed, and not merely illustrative, circumstances, namely if a prisoner is terminally ill or physically incapacitated and other additional criteria can be met (namely that the risk of re-offending is minimal, further imprisonment would reduce the prisoner's life expectancy, there are adequate arrangements for the prisoner's care and treatment outside prison, and early release will bring some significant benefit to the prisoner or his or her family).

127. These are highly restrictive conditions. Even assuming that they could be met by a prisoner serving a whole life order, the Court considers that the Chamber was correct to doubt whether compassionate release for the terminally ill or physically incapacitated could really be considered release at all, if all it meant was that a prisoner died at home or in a hospice rather behind prison walls. Indeed, in the Court's view, compassionate release of this kind was not what was meant by a "prospect of release" in Kafkaris, cited above. As such, the terms of the Order in themselves would be inconsistent with Kafkaris and would not therefore be sufficient for the purposes of Article 3.

128. Moreover, the Prison Service Order must be taken to be addressed to prisoners as well as to prison authorities. It does not, however, include the qualifying explanations, deriving from the Court of Appeal's reasoning in Bieber and relied on by the Government in their pleadings before this Court, as to the effect of the Human Rights Act and of Article 3 of the Convention on the exercise of the Secretary of State's power to release under section 30 of the 1997 Act. In particular, the Order does not reflect the possibility – made available by the Human Rights Act – for even whole life prisoners to seek release on legitimate penological grounds some time into the service of their sentence. To that extent, on the basis of the Government's own submissions as to the state of the applicable domestic law, the Prison Service Order is liable to give to whole life prisoners – those directly affected by it – only a partial picture of the exceptional conditions capable of leading to the exercise of the Secretary of State's power under section 30.

129. As a result, given the present lack of clarity as to the state of the applicable domestic law as far as whole life prisoners are concerned, the Court is unable to accept the Government's submission that section 30 of the 1997 Act can be taken as providing the applicants with an appropriate and adequate avenue of redress, should they ever seek to demonstrate that their continued imprisonment was no longer justified on legitimate penological grounds and thus contrary to Article 3 of the Convention. At the present time, it is unclear whether, in considering such an application for release under section 30 by a whole life prisoner, the Secretary of State would apply his existing, restrictive policy, as set out in the Prison Service Order, or would go beyond the apparently exhaustive terms of that Order by applying the Article 3 test set out in Bieber. Of course, any ministerial refusal to release would be

amenable to judicial review and it could well be that, in the course of such proceedings, the legal position would come to be clarified, for example by the withdrawal and replacement of the Prison Service Order by the Secretary of State or its quashing by the courts. However, such possibilities are not sufficient to remedy the lack of clarity that exists at present as to the state of the applicable domestic law governing possible exceptional release of whole life prisoners.

130. In light, therefore, of this contrast between the broad wording of section 30 (as interpreted by the Court of Appeal in a Convention-compliant manner, as it is required to be as a matter of United Kingdom law in accordance with the Human Rights Act) and the exhaustive conditions announced in the Prison Service Order, as well as the absence of any dedicated review mechanism for the whole life orders, the Court is not persuaded that, at the present time, the applicants' life sentences can be regarded as reducible for the purposes of Article 3 of the Convention. It accordingly finds that the requirements of Article 3 in this respect have not been met in relation to any of the three applicants.

131. In reaching this conclusion the Court would note that, in the course of the present proceedings, the applicants have not sought to argue that, in their individual cases, there are no longer any legitimate penological grounds for their continued detention. The applicants have also accepted that, even if the requirements of punishment and deterrence were to be fulfilled, it would still be possible that they could continue to be detained on grounds of dangerousness. The finding of a violation in their cases cannot therefore be understood as giving them the prospect of imminent release.

In the 2014 case of Harakchiev and Tolumov v. Bulgaria, the Court considered the situation of a person convicted to a whole life sentence in Bulgaria:

(Case 99)

(a) General principles laid down in the Court's case-law

243. In Kafkaris v. Cyprus ([GC], no. 21906/04, § 97, ECHR 2008), the Grand Chamber of the Court held that, while a State's choice of criminal-justice system, including sentence review and release arrangements, was in principle outside the scope of the supervision carried out by the Court, and while the imposition of a sentence of life imprisonment on an adult offender was not in itself prohibited by or incompatible with Article 3 or any other Article of the Convention, the imposition of an irreducible life sentence could raise an issue under Article 3. The Grand Chamber was at the same time at pains to emphasise that a life sentence did not become "irreducible" by the mere fact that in practice it could be served in full, and that it was enough for the purposes of Article 3 of the Convention that such a sentence be de jure and de facto reducible (ibid., § 98 in fine).

244. In that case, the Grand Chamber found no breach of Article 3 of the Convention because under the Constitution of Cyprus the President could at any point in time, subject to the agreement of the Attorney-General, commute a life sentence to one of a shorter duration and then remit it. It was true that there were certain shortcomings in the procedure: there were no published criteria indicating how the President exercised his or her discretion, no obligation to disclose to a prisoner the opinion of the Attorney-General on his or her application, no requirement for the President to give reasons and no such practice, and no possibility of judicial review. It was also true that the prospect of release for life prisoners was limited, since any adjustment of a life sentence fell within the President's discretion. However, there were a number of concrete examples in which the President had exercised that discretion and ordered the release of life prisoners. It could not therefore be said that Mr Kafkaris had been deprived of any prospect of release (ibid., §§ 102-05).

245. The question of the compatibility of irreducible life sentences with Article 3 of the Convention was taken up once again by the Grand Chamber of the Court in the more recent case of Vinter and Others (cited above). The Grand Chamber reviewed in detail the relevant considerations flowing from the Court's case-law and from recent comparative and international-law trends in respect of life sentences (ibid., §§ 104-18). On that basis, it held that a life sentence could remain compatible with Article 3 of the Convention only if there was both a prospect of release and a possibility of review (ibid., §§ 109-10), because a prisoner could not be detained unless there were legitimate penological grounds for incarceration. Those grounds included punishment, deterrence, public protection and rehabilitation. The Grand Chamber noted in particular that the balance between those justifications for incarceration was not necessarily static and could shift in the course of the sentence. What could be the primary justification for incarceration at the start of a sentence could cease to be so after a lengthy period into the service of that sentence. Therefore, it was only by carrying out a review of the justification for continued detention at an appropriate point in the sentence that those factors or shifts could be properly evaluated. If a prisoner was incarcerated without any prospect of release and without the possibility of having his life sentence reviewed, there was the risk that he could never atone for his offence: whatever he did in prison, however exceptional his progress towards rehabilitation, his punishment remained fixed and unreviewable (ibid., §§ 111-12). The Grand Chamber therefore held that it would be incompatible with human dignity – which lay at the very essence of the Convention system – forcefully to deprive a person of his freedom without striving towards his rehabilitation and providing him with the chance to someday regain that freedom (ibid., § 113). It went on to note that there was now clear support in European and international law for the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation was achieved (ibid., § 114). While punishment remained one of the aims of imprisonment, the emphasis in European penal policy, as expressed in Rules 6, 102.1 and 103.8 of the European Prison Rules, Resolution 76(2) and Recommendations Rec(2003)23 and Rec(2003)22 of the Committee of Ministers, statements by the CPT, and the practice of a number of Contracting States,

and in international law, as expressed, inter alia, in Article 10 § 3 of the International Covenant on Civil and Political Rights and the General Comment on that Article, was now on the rehabilitative aim of imprisonment, even in the case of life prisoners (ibid., §§ 115-18).

246. Based on that analysis, the Grand Chamber decided to overrule the Chamber's judgment and to establish the following propositions in relation to life sentences:

(a) In the context of a life sentence, Article 3 of the Convention must be interpreted as requiring reducibility of the sentence, in the sense of a review which allows the domestic authorities to consider whether any changes in the life prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds (ibid., § 119);

(b) Having regard to the margin of appreciation which must be accorded to Contracting States in the matters of criminal justice and sentencing, it is not the Court's task to prescribe the form – executive or judicial – which that review should take, or to determine when that review should take place. However, the comparative and international-law materials show clear support for the institution of a dedicated mechanism guaranteeing a review no later than twenty-five years after the imposition of a life sentence, with further periodic reviews thereafter (ibid., § 120);

(c) Where domestic law does not provide for the possibility of such a review, a whole life sentence will not measure up to the standards of Article 3 of the Convention (ibid., § 121);

(d) Although the requisite review is a prospective event necessarily subsequent to the passing of the sentence, a whole life prisoner should not be obliged to wait and serve an indeterminate number of years of his sentence before he can raise the complaint that the legal conditions attaching to his sentence fail to comply with the requirements of Article 3 of the Convention in this regard. This would be contrary both to legal certainty and to the general principles on victim status within the meaning of that term in Article 34 of the Convention. Furthermore, in cases where the sentence, on imposition, is irreducible under domestic law, it would be capricious to expect the prisoner to work towards his own rehabilitation without knowing whether, at an unspecified future date, a mechanism might be introduced which would allow him, on the basis of that rehabilitation, to be considered for release. A whole life prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought. Consequently, where domestic law does not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with Article 3 of the Convention on this ground already arises at the moment of the imposition of the whole life sentence and not at a later stage of incarceration (ibid., § 122).

(b) Application of these principles in the present case

247. The Court notes at the outset that Mr Harakchiev did not seek to argue that his sentence was, as such, grossly disproportionate to the gravity of his offences, or that there were no longer any legitimate penological grounds for his continued incarceration (see Vinter and Others, cited above, § 102). His grievance was rather directed against the effects of that sentence.

248. In Bulgaria, the penalty of whole life imprisonment – which had never previously existed in Bulgarian criminal law – was introduced in December 1998, when Parliament formally abolished the death penalty (see paragraphs 51, 52 and 58 above). That penalty is – as also confirmed by the Government's observations in the present case – regarded as "provisional" and "exceptional", and is reserved for offences that (a) "threaten the foundations of the Republic" or are particularly serious and intentional and (b) in respect of which "the aims [of the punishment] ... cannot be attained by means of a lesser penalty" (see paragraphs 59 and 60 above). It exists alongside the penalty of "simple" life imprisonment, put in place in 1995, which is commutable (see paragraphs 56, 65 and 71 above).

249. The Court further notes that the penalty of whole life imprisonment was regarded as "provisional" and "exceptional", and that the new draft Criminal Code, laid by the Government before Parliament very recently, at the end of January 2014, only envisages the penalty of "simple", that is, commutable, life imprisonment (see paragraph 67 above) because, according to the explanatory note to that draft Code, whole life imprisonment "is at present perceived as too inhuman on account of the lack of any hope for the persons sentenced to it" (see paragraph 68 above). It appears that, when adopted, this Code will provide the same prospects of hope for review of sentence to those currently serving whole life imprisonment as those serving life imprisonment.

250. A State's choice of criminal-justice system, including sentence review and release arrangements, is, as already noted, in principle outside the scope of the supervision carried out by the Court, and the mere imposition of a sentence of life imprisonment on an adult offender is not in itself prohibited by Article 3 or any other Article of the Convention.

251. In the light of its case-law, the question for the Court is whether the penalty imposed on Mr Harakchiev could be classified as irreducible, that is, whether there was a prospect of release and a possibility of review. The Court notes in this connection that, while Bulgarian law does not permit Mr Harakchiev to be released on licence – a measure that only applies to prisoners serving fixed-term sentences (see paragraph 70 above) – and while Mr Harakchiev cannot hope for a court decision to convert his whole life sentence into a lesser penalty, the law envisages two measures of presidential clemency: either a full pardon or a commutation of his sentence (see paragraphs 72-74 above). In the event of a full pardon Mr Harakchiev would be released immediately and unconditionally. In the event of a commutation of his

sentence, even if it were only replaced with a life sentence, as happened in the case of another life prisoner in January 2013 (see paragraphs 99-101 above), it will be open to Mr Harakchiev to seek judicial commutation and then perhaps even release on licence.

252. In Iorgov [v. Bulgaria] (no. 2) ([no. 36295/02], §§ 48-60[, 2 September 2010]), decided after Kafkaris (cited above) but before Vinter and Others (cited above), a Chamber of the Fifth Section of the Court reviewed those constitutional and legislative arrangements and their application up to 2009. It noted that, even though between 2002 and 2009 the presidential power of clemency had been exercised in the cases of 477 prisoners, no one serving a whole life sentence had yet been granted such clemency. The Chamber nonetheless concluded that, as matters stood, it could not be said that Mr Iorgov, who had been sentenced to whole life imprisonment, had been deprived of all hope of being released from prison one day. Even though, by November 2009, no life prisoner had been granted presidential clemency, that was not enough to show that whole life imprisonment in Bulgaria was irreducible de facto. That penalty had been introduced into Bulgarian law fairly recently, in December 1998, following the formal abolition of the death penalty. That meant that it was unlikely that a large number of persons serving such a sentence, including Mr Iorgov, had spent a sufficiently lengthy period of time in prison to qualify for presidential clemency. There was nothing to suggest that if Mr Iorgov applied in due course for such clemency his application would not be properly considered by reference to a wide range of criteria. He could not therefore be regarded as having no hope of release, and there had therefore been no breach of Article 3 of the Convention (see Iorgov (no. 2), cited above, §§ 52-60).

253. However, in the light of the Grand Chamber's later ruling, in paragraph 122 of Vinter and Others (cited in paragraph 246(d) above), the Court cannot adopt the same approach in the present case. That approach is based on the assumption that the lack of a genuine possibility of obtaining commutation of a life sentence is only capable of infringing Article 3 of the Convention when a point is reached when the life prisoner has already served a sufficiently long period of time and has made sufficient progress to stand a realistic chance of persuading the competent authority to commute his sentence. That assumption underpinned the rulings of the domestic courts and the majority of the Chamber in Vinter and Others, who were essentially of the view that an irreducible life sentence did not entail a breach of Article 3 of the Convention unless and until the time came when the life prisoner's further incarceration would no longer be justified (see Vinter and Others, cited above, §§ 48-49, 56, 87 and 91). That line of reasoning was explicitly rejected by the Grand Chamber in that case (ibid., § 122).

254. It follows that in the present case, in addition to scrutinising the present arrangements governing the possibility for those, such as Mr Harakchiev, serving a whole life sentence to seek an adjustment of that sentence, the Court must verify whether Bulgarian law provided an adequate possibility for a review of Mr Harakchiev's sentence at the time when it became final – November 2004 – and since then.

255. It is clear that the sentence is, at least since the amendment of Article 74 of the 1968 Criminal Code which came into force on 13 October 2006 (see paragraph 74 above), de jure reducible. However, it is not clear that this was the case before that amendment. As worded before 13 October 2006, Article 74, although it did not expressly exclude the possibility, did not state in clear terms that the presidential power of clemency was also applicable to whole life and life imprisonment (see paragraph 73 above). Since before October 2006 there were no instances in which the President or the VicePresident had exercised the power of clemency in relation to a prisoner serving a whole life sentence (see paragraph 87 above), and since there did not exist an authoritative contemporaneous interpretation of the law relating to presidential clemency, it is difficult to say whether that Article was capable of being construed – alone or in conjunction with Article 98, point 11, of the 1991 Constitution – to mean that that penalty came within the ambit of the presidential power of clemency even though it was not specifically mentioned in the text of the Article. That uncertainty transpires from statements made by members of parliament in the course of the debate accompanying the introduction of whole life imprisonment (see paragraphs 63 and 64 above), the very fact that the legislature subsequently found it necessary to clarify the point by way of a statutory amendment, and also from the fact that in 2012 a group of members of parliament sought a binding interpretation of Article 98, point 11, of the 1991 Constitution by the Constitutional Court, in particular on the point whether the presidential power of clemency embraced all types of criminal penalties (see paragraph 76 above). In those circumstances, the Court is not persuaded that it was clear at the time when Mr Harakchiev's sentence became final that it was de jure reducible.

256. Whatever the conclusion in relation to the de jure reducibility of the sentence, the Court is also not persuaded that throughout the relevant period Mr Harakchiev's sentence was de facto reducible, and that throughout his incarceration he could be regarded as knowing that a mechanism existed that would actually permit him to be considered for release.

257. Under the current system, which is based on decisions made by the President who took office in January 2012 and on the practice of the Clemency Commission set up by him at that time (see paragraphs 90-107 above) and, more importantly, on the binding interpretation of Article 98, point 11, of the 1991 Constitution given by the Constitutional Court in April 2012 (see paragraphs 76-83 above), there is considerable clarity regarding the manner of exercise of the presidential power of clemency.

258. In particular, the Constitutional Court defined the scope of that power, and held that it should be exercised in a non-arbitrary way, taking into account equity, humanity, compassion, mercy, and the health and family situation of the convicted offender, and any positive changes in his or

her personality. That court went on to say that, while the President or the Vice-President could not be required to give reasons in individual cases, they were expected to make known the general criteria guiding them in the exercise of the power of clemency. Lastly, the court held that a clemency decree was open to legal challenge before it, albeit subject to some restrictive conditions, in particular relating to standing (see paragraphs 7683 above). That ruling provides weighty guarantees that the presidential power of clemency will be exercised in a consistent and broadly predictable way.

259. In addition, the rules governing the work of the Clemency Commission attached to the Vice-President provide that in its work the Commission must take into account, inter alia, the relevant case-law of international courts and other bodies on the interpretation and application of international human rights instruments in force in respect of Bulgaria (see paragraph 91 above). The practices adopted by the Commission since the start of its work in early 2012 – especially those relating to the publication of the criteria that guide it in the examination of clemency requests, the reasons for its recommendations to the Vice-President to exercise the power of clemency in individual cases, and relevant statistical information (see paragraphs 94-107 above) – have also increased the transparency of the clemency procedure and constitute an additional guarantee of the consistent and transparent exercise of presidential powers in that respect.

260. Lastly, consideration should be given to the fact that, albeit only in December 2012, the Clemency Commission proposed that the Vice-President replace a prisoner's whole life sentence with a life sentence, based on the reformation of that prisoner, and that in January 2013 the Vice-President acceded to that proposal (see paragraphs 99-101 above). As noted by that Commission, and indeed by the Government in their observations, that case demonstrates to all other persons, such as Mr Harakchiev, sentenced to whole life imprisonment that they can improve their situation (see paragraph 100 above).

261. It therefore appears that if the current and future Presidents and Vice-Presidents continue to exercise the power of clemency in line with the precepts laid down by the Constitutional Court in 2012 and with the practices adopted in the same year, Mr Harakchiev's whole life sentence can be regarded as de facto reducible, and that since that time he can be regarded as knowing that there exists a mechanism which allows him to be considered for release or commutation of sentence. It is true that some of the applicable rules are not laid down in the Constitution or in a statute, but in a presidential decree. However, as already noted, it is not the Court's task to prescribe the form which the requisite review should take.

262. However, the same cannot be said in respect of the period of time between the date when that sentence became final – November 2004 – and at least the early months of 2012. Under the previous presidential administration, which was in office for two terms, the first between 22 January 2002 and 22 January 2007 and the second between 22 January 2007 and 22 January 2012, the way in which the presidential power of clemency was being exercised was quite opaque, with no policy statements made publicly available and no reasons whatsoever provided for individual clemency decisions (see paragraph 87 above). Indeed, the Court cannot overlook the fact that during their debate in 1998 members of parliament sought reassurance that the President's discretion would not be exercised with regard to persons sentenced to whole life imprisonment, and that in 2012 Parliament found it necessary to set up an ad hoc committee to conduct an inquiry into the matter (see paragraph 89 above). Nor were there any concrete examples showing that persons in Mr Harakchiev's situation could hope to benefit from the exercise of that power (contrast Kafkaris, cited above, § 103). It is true that the lack of such examples could be explained by the fact that the penalty of whole life imprisonment had been introduced into Bulgarian law not long before that, in December 1998, and that it was therefore unlikely that a large number of persons serving such a sentence had spent a sufficiently long period of time in prison by then to qualify for clemency (see Iorgov (no. 2), cited above, §§ 56-57). However, the combination of a complete lack of formal or even informal safeguards surrounding the exercise of the presidential power of clemency, coupled with the absence of any examples tending to suggest that a person serving a whole life sentence would be able to obtain an adjustment of that sentence and under what circumstances, leads the Court to conclude that between November 2004 and the beginning of 2012 Mr Harakchiev's sentence could not be regarded as de facto reducible. It necessarily follows from paragraph 122 of the Grand Chamber's judgment in Vinter and Others (cited in paragraph 246(d) above) that in this type of case the breach of Article 3 of the Convention consists of depriving the prisoner, for any period of time, of any hope of release, however tenuous that hope may be.

263. That said, in the present case, in which the applicants have also made serious complaints concerning the regime and conditions of their detention (see paragraph 179 above), there is a further aspect to the Court's examination: whether, in view of the regime and conditions of Mr Harakchiev's incarceration, he could be regarded as having a genuine opportunity of reforming himself and thus trying to persuade the President or the VicePresident to exercise the power of clemency in his regard. It should also be noted in that connection that in Vinter and Others (cited above, § 122) the Grand Chamber held that a "life prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions" (see paragraph 246(d) above).

264. While the Convention does not guarantee, as such, a right to rehabilitation, and while Article 3 cannot be construed as imposing on the authorities an absolute duty to provide prisoners with rehabilitation or reintegration programmes and activities, such as courses or counselling, it does require the authorities to give life prisoners a chance, however remote, to someday regain their freedom. For that chance to be genuine and tangible, the authorities must also give life prisoners a real

opportunity to rehabilitate themselves. Indeed, the Court has already had occasion to note that in recent years there has been a trend towards placing more emphasis on rehabilitation, which constitutes the idea of resocialisation through the fostering of personal responsibility (see Dickson v. the United Kingdom [GC], no. 44362/04, § 28, ECHR 2007-V, and Vinter and Others, cited above, §§ 113-18). That appears fully consonant with the first aim of criminal punishment, as set out in Article 36 of the Bulgarian Criminal Code (see paragraph 53 above), as well as with Article 10 § 3 of the International Covenant on Civil and Political Rights, in force with respect to Bulgaria since 1970, which provides that the essential aim of the treatment of prisoners is their reformation and social rehabilitation (see paragraphs 157-58 above). It is also inherent in several instruments to which, as already mentioned, the Court attaches considerable importance despite their non-binding character (see, mutatis mutandis, Rivière [v. France, no. 33834/03], § 72[, 11 July 2006], and Dybeku [v. Albania, no. 41153/06], § 48[, 18 December 2007]): Rules 6, 33.3, 102.1 and 107.1 of the 2006 European Prison Rules; points 6 and 11 of Resolution 76(2) of the Committee of Ministers; and paragraphs 2 in fine, 5 and 33 of Recommendation Rec(2003)23 on the management by prison administrations of life sentence and other long-term prisoners. All of these instruments emphasise that efforts need to be made by the prison authorities to promote the reintegration and rehabilitation of all prisoners, including those serving life sentences (see paragraphs 159, 161 and 162 above).

265. That is, of course, an area in which the Contracting States enjoy a wide margin of appreciation. However, the regime and conditions of a life prisoner's incarceration cannot be regarded as a matter of indifference in that context. Those conditions and regime need to be such as to make it possible for the life prisoner to endeavour to reform himself or herself, with a view to being able one day to seek an adjustment of his or her sentence.

266. Even if a Bulgarian life prisoner now knows "what he must do to be considered for release and under what conditions" (see paragraph 246(d) above), prisoners such as Mr Harakchiev are as a rule – unlike the situation of Mr Iorgov, whose regime was gradually relaxed by way of an "experiment" in Pleven Prison (see paragraph 209 above) – subjected to a particularly severe prison regime, which entails almost complete isolation and very limited possibilities for social contact, work or education (see paragraphs 118 and 124-26 above). In the present case, in spite of some variations in his prison regime, in practice Mr Harakchiev remained in permanently locked cells and isolated from the rest of the prison community, with very limited possibilities to engage in social contact or work, throughout the entire period of his incarceration (see paragraphs 12, 23, 32 and 177 above). In the Court's view, the deleterious effects of that impoverished regime, coupled with the unsatisfactory material conditions in which Mr Harakchiev was kept, must have seriously damaged his chances of reforming himself and thus entertaining a real hope that he might one day achieve and demonstrate his progress and obtain a reduction of his sentence. To that should be added the lack of consistent periodical assessment of his progress towards rehabilitation. It is true that Mr Harakchiev was the subject of annual psychological assessments (see paragraph 48 above). However, it is noteworthy that the "National standards for the treatment of life prisoners", issued in 2007, appear to be geared towards helping life prisoners adapt to their sentence rather than working towards their rehabilitation (see paragraph 135 above). Nor do those standards make it clear whether any positive changes in life prisoners should be the result of their own efforts or of a proactive approach on the part of the prison authorities, as recommended by the CPT (see paragraph 165 above).

267. In view of the foregoing considerations, the Court concludes that there has been a breach of Article 3 of the Convention.

268. In reaching this conclusion, the Court would note that the nature of Mr Harakchiev's complaint (see paragraph 247 above) and the finding of a violation with respect to that complaint cannot be understood as giving him the prospect of imminent release.

In the 2017 case of Hutchinson v. United Kingdom, the Court considered again whether a life sentence in the United Kingdom was de facto irreducible:

(Case 100)

3. The applicant alleged in particular that his whole life sentence gave rise to a violation of Article 3 of the Convention.

9. The applicant was born in 1941 and is detained in Her Majesty's Prison Durham.

10. In October 1983, the applicant broke into a family home, where he stabbed to death a man, his wife and their adult son. He then repeatedly raped their 18 yearold daughter, having first dragged her past her father's body. He was arrested several weeks later and charged with these offences. At trial he pleaded not guilty, denying the killings and claiming that the sexual intercourse had been consensual. On 14 September 1984, he was convicted of three counts of murder, rape, and aggravated burglary.

11. The trial judge sentenced the applicant to a term of life imprisonment and, in accordance with the rules on sentencing then in force, recommended a minimum period (tariff) of 18 years to the Secretary of State for the Home Office. When asked to give his opinion again on 12 January 1988, the judge wrote that "for the requirements of retribution and general deterrence this is genuinely a life case". On 15 January 1988 the Lord Chief Justice recommended that the period should be set at a whole life term stating that "I do not think that this man should ever be released, quite apart from the risk which would be involved". On 16 December 1994, the Secretary of State informed the applicant that he had decided to impose a whole life term.

C. The Court's assessment

37. The parties' submissions were confined to the issue whether, in light of the McLoughlin ruling, the applicant's situation in relation to his whole life sentence is in keeping with the requirements of Article 3 as these were laid down in the Vinter judgment (Vinter and Others, cited above §§ 123131). In this connection, the Court will examine, first, whether the unclarity in the domestic law has now been dispelled, and, if so, whether the relevant requirements are now met in the applicant's case. No separate examination will be made as to a possible violation of Article 3 in the period of the applicant's imprisonment prior to the McLoughlin ruling.

1. Whether the domestic law has been clarified

38. In Vinter, the Court considered that section 30 of the 1997 Act could, by virtue of section 6 of the Human Rights Act (see paragraphs 14 and 15 above), be read as imposing a duty on the Secretary of State to release a whole life prisoner where it could be shown that continued detention was no longer compatible with Article 3, for example where it could no longer be justified on legitimate penological grounds. It noted that this was the reading given to section 30 by the Court of Appeal in the Bieber and Oakes cases, which would be consistent with the requirements of Article 3 as these were set down in Kafkaris v. Cyprus [GC], no. 21906/04, ECHR 2008. However, in addition to the relevant judicial dicta the Court also had regard to the published official policy and to the application of the law in practice to whole life prisoners. It found that the policy set out by the Secretary of State in the Lifer Manual (see paragraph 16 above) was too restrictive to comply with the Kafkaris principles. It further pointed out that the Lifer Manual gave whole life prisoners only a partial picture of the conditions in which the power of release might be exercised. It concluded that the contrast between section 30, interpreted by the domestic courts in a Conventioncompliant manner, and the narrow terms of the Lifer Manual meant such a lack of clarity in the law that the whole life sentence could not be regarded as reducible for the purposes of Article 3.

39. In the McLoughlin decision the Court of Appeal responded explicitly to the Vinter critique. It affirmed the statutory duty of the Secretary of State to exercise the power of release compatibly with Article 3 of the Convention. As for the published policy, which it too regarded as highly restrictive (at paragraphs 11 and 32 of McLoughlin, see paragraph 19 above), the Court of Appeal clarified that the Lifer Manual cannot restrict the duty of the Secretary of State to consider all circumstances relevant to release under section 30. Nor can the published policy fetter the Secretary of State's discretion by taking account only of the matters stipulated in the Lifer Manual. The failure to revise official policy so as to align it with the relevant statutory provisions and case law is, the Court of Appeal explained, of no consequence as a matter of domestic law.

40. The Court considers that the Court of Appeal has brought clarity as to the content of the relevant domestic law, resolving the discrepancy identified in the Vinter judgment. Although Vinter contemplated that the policy might be replaced or quashed in the course of judicial review proceedings (Vinter and Others, cited above, § 129), the Court notes the Government's submission that the Lifer Manual retains its validity in relation to release on compassionate (in the narrow sense of humanitarian) grounds. What is important is that, as confirmed in McLoughlin, this is just one of the circumstances in which the release of a prisoner may, or indeed must, be ordered (see paragraphs 32-33 of McLoughlin at paragraph 19 above).

41. Having satisfied itself that the applicable domestic law has been clarified, the Court will now pursue its analysis of it.

2. Whether the domestic law meets the requirements of Article 3

a. General principles established in the Court's case law on life sentences

42. The relevant principles, and the conclusions to be drawn from them, are set out at length in the Vinter judgment (cited above, §§ 103-122; recently summarised in Murray v. the Netherlands [GC], no. 10511/10, §§ 99-100, ECHR 2016). The Convention does not prohibit the imposition of a life sentence on those convicted of especially serious crimes, such as murder. Yet to be compatible with Article 3 such a sentence must be reducible de jure and de facto, meaning that there must be both a prospect of release for the prisoner and a possibility of review. The basis of such review must extend to assessing whether there are legitimate penological grounds for the continuing incarceration of the prisoner. These grounds include punishment, deterrence, public protection and rehabilitation. The balance between them is not necessarily static and may shift in the course of a sentence, so that the primary justification for detention at the outset may not be so after a lengthy period of service of sentence. The importance of the ground of rehabilitation is underlined, since it is here that the emphasis of European penal policy now lies, as reflected in the practice of the Contracting States, in the relevant standards adopted by the Council of Europe, and in the relevant international materials (Vinter and Others, cited above, §§ 59-81).

43. As recently stated by the Court, in the context of Article 8 of the Convention, "emphasis on rehabilitation and reintegration has become a mandatory factor that the member States need to take into account in designing their penal policies" (Khoroshenko v. Russia [GC], no. 41418/04, § 121, ECHR 2015; see also the cases referred to in Murray, cited above, § 102). Similar considerations apply under Article 3, given that respect for human dignity requires prison authorities to strive towards a life sentenced prisoner's rehabilitation (see Murray, cited above, §§ 103-104). It follows that the requisite review must take account of the progress that the prisoner has made towards rehabilitation, assessing whether such progress has been so significant that continued detention can no longer be justified on legitimate penological grounds (Vinter and Others, cited above, §§ 113116). A review limited to compassionate grounds is therefore insufficient (ibid., § 127).

44. The criteria and conditions laid down in domestic law that pertain to the review must have a sufficient degree of clarity and certainty, and also reflect the relevant case-law of the Court. Certainty in this area is not only a general requirement of the rule of law but also underpins the process of rehabilitation which risks being impeded if the procedure of sentence review and the prospects of release are unclear or uncertain. Therefore prisoners who receive a whole life sentence are entitled to know from the outset what they must do in order to be considered for release and under what conditions. This includes when a review of sentence will take place or may be sought (Vinter and Others, cited above, § 122). In this respect the Court has noted clear support in the relevant comparative and international materials for a review taking place no later than twenty-five years after the imposition of sentence, with periodic reviews thereafter (ibid., §§ 68, 118, 119 and 120). It has however also indicated that this is an issue coming within the margin of appreciation that must be accorded to Contracting States in the matters of criminal justice and sentencing (ibid., §§ 104, 105 and 120).

45. As for the nature of the review, the Court has emphasised that it is not its task to prescribe whether it should be judicial or executive, having regard to the margin of appreciation that must be accorded to Contracting States (Vinter and Others, cited above, § 120). It is therefore for each State to determine whether the review of sentence is conducted by the executive or the judiciary.

b. Application of these principles

i. Nature of review

46. In England and Wales the review of sentence is entrusted to the Secretary of State. The applicant submitted that this was wrong in principle, arguing that the review ought to be judicial in nature. He further argued that systems of presidential clemency should be distinguished from the domestic system on the ground that State Presidents can be regarded, by the nature of their office, as non-partisan figures who are above the political fray and thus less susceptible to the pressures of public opinion. Entrusting sentence review to a Government minister left little hope for fair, thorough and consistent assessment of the grounds for releasing a whole life prisoner.

47. The Court observes that a judicial procedure brings with it a series of important guarantees: the independence and impartiality of the decider, procedural safeguards and protection against arbitrariness. In two cases, the Court found that due to the existence of a judicial procedure of sentence review the domestic law was in keeping with Article 3 of the Convention (see Čačko v. Slovakia, no. 49905/08, 22 July 2014, and Bodein v. France, no. 40014/10, 13 November 2014).

48. In the Bodein case, the Court discounted the power of presidential clemency (cited above, at § 59). Similar systems in Hungary and Bulgaria were likewise found not to meet the requisite standard: László Magyar v. Hungary, no. 73593/10, 20 May 2014, and Harakchiev and Tolumov v. Bulgaria, nos. 15018/11 and 61199/12, ECHR 2014 (extracts) (referring to the system of presidential clemency in the period up to January 2012). However, it was because of various shortcomings in the procedures and not the executive nature of the review as such that the States in question were found to be in violation of Article 3. Moreover, in the László Magyar case the Court made some suggestions regarding the measures to be taken to execute the judgment but without suggesting that a judicial mechanism was required (at § 71 of that judgment; see in the same sense Öcalan v. Turkey (no. 2), nos. 24069/03, 197/04, 6201/06 and 10464/07, § 207, 18 March 2014).

49. That an executive review can satisfy the requirements of Article 3 is shown by the Court's assessment of the systems in Cyprus and Bulgaria. Regarding the former, the power of the President of Cyprus, in light of the practice followed, was found to be sufficient (Kafkaris, cited above, §§ 102103). Regarding the latter, the power vested in the President of Bulgaria was likewise found to be in compliance with Article 3, following reform in 2012 (Harakchiev and Tolumov, cited above, §§ 257261). The Court notes here that the relevant European standard does not exclude executive review but refers to decisions on conditional release being taken by the "authorities established by law" (paragraph 32 of Recommendation Rec(2003)22, see paragraph 20 above).

50. It is therefore clear from the case-law that the executive nature of a review is not in itself contrary to the requirements of Article 3. The Court sees no reason to depart from this.

51. As for the applicant's criticisms of the domestic system, the Court considers that these are countered by the effect of the Human Rights Act. As recalled in McLoughlin (see paragraph 29 of that decision, set out at paragraph 19 above), the Secretary of State is bound by section 6 of that Act to exercise the power of release in a manner compatible with Convention rights. He or she is required to have regard to the relevant case-law of this Court and to provide reasons for each decision. The power or, depending on the circumstances, the duty of the Secretary of State to release a prisoner on compassionate grounds cannot therefore be regarded as akin to the broad discretion conferred on the Head of State in certain other jurisdictions and found to be insufficient for the purposes of Article 3 in the cases referred to above.

52. Furthermore, the Secretary of State's decisions on possible release are subject to review by the domestic courts, themselves bound by the same duty to act compatibly with Convention rights. The Court notes here the Government's statement that judicial review of a refusal by the Secretary of State to release a prisoner would not be confined to formal or procedural grounds, but would also involve an examination of the merits. Thus the High Court would have the power to directly order the release of the prisoner, if it considered this to be necessary in order to comply with Article 3 (see paragraph 26 above).

53. Although the Court has not been provided with any examples of judicial review of a refusal by the Secretary of State to release a life prisoner, it is nonetheless satisfied

that a significant judicial safeguard is now in place (see E. v. Norway, 29 August 1990, § 60, Series A no. 181A). The absence of any practice to date, which is unsurprising given the relatively brief period since the McLoughlin decision, does not necessarily count against the domestic system, just as it did not count against the Slovak and French systems, both found to be in conformity with Article 3 without reference to any judicial practice (see in particular § 60 of Bodein).

ii. Scope of review

54. In the McLoughlin decision, the Court of Appeal took the view, as did this Court in Vinter, that the policy set down in the Lifer Manual was a highly restrictive one. It reiterated the position stated in Bieber that the Secretary of State must exercise his power of release in a manner compatible with principles of domestic administrative law and with Article 3 of the Convention (see, respectively, paragraphs 32 and 29 of McLoughlin, set out at paragraph 19 above).

55. In addition, and crucially, it specified, having regard to the Court's judgment in Vinter, that the "exceptional circumstances" referred to in section 30 cannot legally be limited to end-of-life situations as announced in the Lifer Manual (see paragraph 16 above), but must include all exceptional circumstances that are relevant to release on compassionate grounds. Although the Court of Appeal refrained from specifying further the meaning of the words "exceptional circumstances" in this context, or to elaborate criteria, it recalled earlier domestic case-law to the effect that exceptional progress by the prisoner whilst in prison is to be taken into account (per Lord Bingham CJ in the 1998 judgment R v Home Secretary ex parte Hindley, and also Lord Steyn when that same case was decided by the House of Lords in 2001 – see paragraph 19 above). The Court further notes that in Bieber, when explaining the time at which an Article 3 challenge could be brought by a whole life prisoner, the Court of Appeal referred to "all the material circumstances, including the time that he has served and the progress made in prison" (reproduced in Vinter and Others, cited above, at § 49). Having regard to all of these dicta, it is evidently part of the established law of England and Wales that exceptional progress towards rehabilitation comes within the meaning of the statutory language and is thus a ground for review.

56. As for the other term used in section 30, "compassionate grounds", here too the narrow emphasis put upon it in the Lifer Manual has been corrected by the judgment of the Court of Appeal, which affirmed that the term is not limited to humanitarian grounds but has a wide meaning, so as to be compatible with Article 3 of the Convention (see paragraph 33 of McLoughlin, set out at paragraph 19 above). In this respect too, the role of the Human Rights Act is of importance, section 3 of the Act requiring that legislation be interpreted and applied by all public bodies in a Conventioncompliant way.

57. These clarifications are sufficient to satisfy the Court as to the existence of a review that not only can but also must consider whether, in light of significant change in a whole life prisoner and progress towards rehabilitation, continued detention can still be justified on legitimate penological grounds (Vinter and Others, cited above, § 125).

iii. Criteria and conditions for review

58. The Court must next examine the criteria and conditions for review of whole life sentences. McLoughlin did not elaborate further on the meaning of "exceptional circumstances", the Court of Appeal deeming it sufficiently certain in itself. The applicant was critical of this, arguing that it left him in a state of uncertainty. The Government considered that matters were sufficiently clear, no greater degree of specificity being possible or feasible. As the Court has already noted above, the term "exceptional circumstances" encompasses the progress by the prisoner during the service of sentence (see paragraph 55 above). The relevant question is whether those serving life sentences in the domestic system can know what they must do to be considered for release, and under what conditions the review takes place (Vinter and Others, cited above, § 122; see also paragraph 18 of Recommendation Rec(2003)22 and Rule 30.3 of the European Prison Rules, at paragraphs 20 and 21 above).

59. Both parties referred to cases decided by Chambers of this Court after the Vinter ruling. These judgments are indeed relevant here, in that they illustrate the application by the Court of the Vinter case-law. In the László Magyar case, it was the lack of specific guidance as to the criteria and conditions for gathering the prisoner's "personal particulars" and for assessing them that was criticised. As there was no duty on the executive to give reasons for a decision, it meant that prisoners did not know what was required of them in order to be considered for release (László Magyar, cited above, §§ 57-58). Under Article 46, the Chamber called for a reform that would ensure the relevant review, and that life prisoners would know "with some degree of precision" what they must do (at § 71). In the Harakchiev and Tolumov case, the Court faulted the system as it was pre-2012 for its opacity, for the lack of publicly-available policy statements, for the absence of reasons on individual requests for clemency, and also for the complete lack of formal and informal safeguards (Harakchiev and Tolumov, cited above, § 262). In another case, Trabelsi v. Belgium, no. 140/10, ECHR 2014 (extracts), the Chamber based its finding of a violation of Article 3 on the absence of a sentence review mechanism operating on the basis of "objective, pre-established criteria of which the prisoner had precise cognisance at the time of imposition of the life sentence" (§ 137). The applicant relied on this statement in particular. The Court observes that while there is some variation in the formulations employed in these judgments, the essential point is the same in each of them, namely that there needs to be a degree of specificity or precision as to the criteria and conditions attaching to sentence review, in keeping with the general requirement of legal certainty.

60. Consideration must equally be given to the post-Vinter cases in which the Court concluded that the domestic system was in conformity with the requirements of Article 3 as regards the reducibility of life sentences. There are three such judgments, and they demonstrate that a high degree

of precision is not required in order to satisfy the Convention.

61. The first is the Harakchiev and Tolumov case, in which the Court considered that as from 2012 there was adequate clarity surrounding the presidential power of clemency. Although, by its nature, the procedure was not subject to statutory criteria, the Constitutional Court derived guiding principles from constitutional values, namely "equity, humanity, compassion, mercy, and the health and family situation of the convicted offender, and any positive changes in his or her personality" (Harakchiev and Tolumov, cited above, see § 258). It is only the last of these that concerns progress by the prisoner. Although the procedure did not provide for the giving of reasons in individual cases, transparency was nonetheless ensured by other means. The Clemency Commission, created to advise on requests for clemency, functioned in accordance with published Rules of Procedure. These required it to take account of the relevant case-law of international courts on the interpretation and application of the relevant international human rights instruments. The rules also required the Clemency Commission to publish activity reports, which it did monthly and yearly, detailing its examination of requests for clemency, its advice to the Vice-President and the latter's decision on such requests (ibid., §§ 90-107). The Court found that these measures increased the transparency of the clemency procedure and constituted an additional guarantee of the consistent and transparent exercise of the presidential power (ibid., § 259).

62. In the Čačko case, the Court noted that the criteria for early release were that the prisoner "has demonstrated improvement by fulfilling his or her obligations and by good behaviour" and that "it can be expected that the person concerned will behave in an appropriate manner in the future" (Čačko, cited above, § 43). In the Bodein case, the Chamber noted that the review in French law was based on the dangerousness of the prisoner as well as any changes in his personality during the service of sentence (Bodein, cited above, § 60).

63. The Court does not regard the domestic system as deficient in this particular respect for two closely-related reasons. First, the exercise of the section 30 power will, as is clear from McLoughlin and by virtue of the Human Rights Act, be guided by all of the relevant case-law of this Court as it stands at present and as it may be further developed or clarified in future. By setting out its relevant case-law in the preceding paragraphs, the Court's purpose is to aid the Secretary of State and the domestic courts to fulfil their statutory duty to act compatibly with the Convention in this area.

64. The second reason is that, as the Court of Appeal stated and the Chamber accepted, it can be expected that the concrete meaning of the terms used in section 30 will continue to be further fleshed out in practice. The duty on the Secretary of State to give the reasons for each such decision, subject to judicial review, is of significance here, being a guarantee of the consistent and transparent exercise of the power of release.

65. The Court sees fit to add, however, that a revision of the Lifer Manual (and other official sources of information) so as to reflect the law as it has been clarified by the Court of Appeal, and to reflect also the relevant Article 3 case-law, would be desirable so that the applicable law is readily accessible. The Court refers once again to the relevant standard defined by the Council of Europe (see paragraph 18 of Recommendation Rec(2003)22, at paragraph 20 above).

iv. Timeframe for review

66. One particular aspect of legal certainty is the timeframe for sentence review, the Court having stated in Vinter that a prisoner should not be obliged to wait and serve an indeterminate number of years before being permitted to mount an Article 3 challenge (see paragraph 44 above).

67. In general, providing for an automatic review of sentence after a specified minimum term represents an important safeguard for the prisoner against the risk of detention in violation of Article 3. The Court refers in this respect to the Öcalan (no. 2) case. It found there that domestic law clearly prohibited the applicant from applying at any point in his sentence of aggravated life imprisonment for release on legitimate penological grounds. The Turkish authorities were therefore required to establish a procedure to review whether the applicant's incarceration remained justified after a minimum term of detention (Öcalan (no. 2), cited above, § 204 and § 207). The domestic system in this case differs in that the process of review can be initiated by the prisoner at any time. The Court recalls that it took note of a similar arrangement in Cyprus, where life prisoners could benefit from the relevant provisions at any time without having to serve a minimum period of imprisonment (Kafkaris, cited above, § 103). It is possible to regard this as being in the interest of prisoners, since they are not required to wait for a set number of years for a first or subsequent review. In light of the very serious nature of the crimes committed by persons in this category though, it has to be expected that their period of detention will be lengthy.

68. In two of the post-Vinter cases decided by this Court, the domestic system included a review of sentence after a set period – 25 years in Čačko and 30 years in Bodein (effectively 26 years in that applicant's case). In the Harakchiev and Tolumov case though, the domestic system subsequent to the 2012 reforms did not include a fixed timeframe for review of sentence. Furthermore, the Court found a violation of Article 3 in the László Magyar case and gave indications under Article 46 as to the necessary measures without referring to the question of the timing of the review in either context.

69. Turning to the facts of the present case, the Court does not consider that the concern expressed in Vinter regarding indeterminacy, and the repercussions of this for a whole life prisoner (Vinter and Others, cited above, § 122) can be said to arise for the applicant at present. As is stated in section 30 of the 1997 Act, the Secretary of State may order release "at any time". It follows, as the Government have confirmed, that it is open to the applicant to trigger, at any time, a review of his detention by

the Secretary of State. It is not for the Court to speculate as to how efficiently such a system, which has minimum regulation, might generally operate in practice. It is the individual situation of the applicant that is the focus of these proceedings, and he has not suggested that he is prevented or deterred from applying to the Secretary of State at any time to be considered for release. Before concluding, though, the Court refers once again as it did in the Vinter case to the relevant comparative and international materials that show "clear support for the institution of a dedicated mechanism guaranteeing a review no later than twenty-five years after the imposition of a life sentence, with further periodic reviews thereafter" (Vinter and Others, cited above, § 120; see more recently and in the same sense Murray, cited above, § 99).

v. Conclusion

70. The Court considers that the McLoughlin decision has dispelled the lack of clarity identified in Vinter arising out of the discrepancy within the domestic system between the applicable law and the published official policy. In addition, the Court of Appeal has brought clarification as regards the scope and grounds of the review by the Secretary of State, the manner in which it should be conducted, as well as the duty of the Secretary of State to release a whole life prisoner where continued detention can no longer be justified on legitimate penological grounds. In this way, the domestic system, based on statute (the 1997 Act and the Human Rights Act), caselaw (of the domestic courts and this Court) and published official policy (the Lifer Manual) no longer displays the contrast that the Court identified in Vinter (cited above, § 130). Further specification of the circumstances in which a whole life prisoner may seek release, with reference to the legitimate penological grounds for detention, may come through domestic practice. The statutory obligation on national courts to take into account the Article 3 case-law as it may develop in future provides an additional important safeguard.

71. As the Court has often stated, the primary responsibility for protecting the rights set out in the Convention lies with the domestic authorities (see for example O.H. v. Germany, no. 4646/08, § 118, 24 November 2011). It considers that the Court of Appeal drew the necessary conclusions from the Vinter judgment and, by clarifying domestic law, addressed the cause of the Convention violation (see also Kronfeldner v. Germany, no. 21906/09, § 59, 19 January 2012).

72. The Court concludes that the whole life sentence can now be regarded as reducible, in keeping with Article 3 of the Convention.

In the 2016 case of Murray v. Netherlands, the Court had to consider the special situation of a life prisoner who could only be released, in the view of the state authorities, after undergoing psychiatric treatment, and where at the same time such treatment was not offered by the authorities:

(Case 101)

3. The applicant initially alleged that, in violation of Article 3 of the Convention, his life sentence was de jure and de facto irreducible. Relying on the same provision, he also complained of the conditions of his detention in prisons in Curaçao and Aruba, namely of the condition of prison buildings and the absence of a separate regime for life prisoners. He also claimed that he had not been placed in a regime befitting his mental condition and that this constituted a further violation of Article 3. On 2 November 2012, following the conclusion of the review of the applicant's life sentence (see paragraphs 4 and 31-32 below), he expanded on the complaint under Article 3 the alleged irreducibility of his life sentence, claiming that even if a de jure possibility of release had been created, de facto he had no prospect of release as he had never been provided with psychiatric treatment and the risk of recidivism would therefore continue to be considered too high.

8. The applicant was born in 1953 on the island of Aruba. In 2013, while serving a sentence of life imprisonment in a prison in Aruba, he was diagnosed with terminal cancer. In September 2013 he was transferred from the prison to a nursing home in Curaçao. On 31 March 2014 he was granted a pardon (gratie) entailing his immediate release. He returned to Aruba, where he passed away on 26 November 2014. (…)

91. The applicant initially complained that his life sentence was de jure and de facto irreducible and that there was no separate regime for life prisoners or a special regime for detainees with psychiatric problems in the prisons where he had been held. In his letter of 2 November 2012 (see paragraph 3 above), following the conclusion of the periodic review of his life sentence, he further complained that even if a de jure possibility of conditional release had been created, de facto he had no hope of release as he had never been provided with any psychiatric treatment, and for that reason the risk of recidivism was deemed to be too high for him to be eligible for such release. 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 Chamber judgment

92. In its judgment of 10 December 2013, the Chamber examined separately the applicant's complaints under Article 3 of the Convention of the alleged irreducibility of his life sentence and the conditions of his detention. As regards the former complaint it found that there had been no violation of Article 3. It noted the introduction in November 2011 – some twenty months after the application had been lodged – in national (that is, Curaçao) law of a periodic-review mechanism for such sentences and considered that this mechanism met the criteria set out in the Court's judgment in Vinter and Others v. the United Kingdom ([GC], nos. 66069/09 and 2 others, §§ 119-22, ECHR 2013). It further observed that a review of the applicant's life sentence had indeed been carried out, in the course of which a number of expert reports had been drawn

up. Taking into account the fact that the applicant had only lodged his application with the Court almost thirty years after his conviction, the Chamber saw no reason to examine whether or not the life sentence imposed on him had de facto and de jure been reducible prior to the introduction of the periodic review in 2011.

93. The Chamber further found that the conditions of the applicant's detention had not been incompatible with Article 3. As regards, in particular, the complaint that he had never been treated for his mental disorder, the Chamber noted that the applicant had been placed under psychiatric observation and had been offered help for his personality disorder in the prison in Curaçao, but that help had ended when he had been transferred, at his own request, to Aruba, where psychiatric treatment was not available to the same extent, even though psychiatric help had become available by the time of the Chamber's judgment. The Chamber observed, moreover, that the applicant had not submitted any information about whether or not he had availed himself of the assistance available, nor had he argued that such assistance had been inadequate for his needs.

B. The parties' submissions before the Grand Chamber

1. The applicant

94. The applicant argued that it was clear from the judgment of the Joint Court of Justice of 11 March 1980 that that court had chosen to impose a life sentence rather than a determinate prison sentence on him in view of his mental condition and dangerousness to society and of the absence, at that time, of a suitable institution where he could undergo the treatment recommended by the psychiatrist who had examined him and whose findings had been accepted by that court. He had subsequently spent more than thirty years in prison without ever receiving treatment – any psychiatric help he may have been offered was no more than the basic kind of assistance available in all prisons and could not be equated to treatment. Neither had the possibility of a transfer to the Netherlands, in order to receive treatment there, ever been envisaged. According to the applicant, it was unrealistic to expect him to have been able to recognise that he was in need of treatment and to raise this issue, as the Chamber had considered in its judgment; the necessity of treatment had, in any event, already been established and the authorities were aware of it.

95. The applicant maintained that the possibility of seeking a pardon did not qualify as a review as, inter alia, the procedure was not regulated by law and the Governor was under no obligation to provide reasons for a decision refusing a pardon. None of the pardon requests lodged by him had led to a psychological or psychiatric examination with a view to determining whether he continued to constitute a danger to society; nor had the prison authorities been asked to issue a report about him pursuant to any of his petitions for pardon. The introduction of the periodic-review procedure, while offering a theoretical possibility of release, was ineffective in the circumstances of the applicant's case, since as long as he had not been provided with treatment, it could not lead to any conclusion other than that he was still too dangerous to be considered for a reprieve. In the applicant's view it was clear that without treatment he could never foster any hope of one day being released.

2. The Government

96. The Government maintained that the life sentence imposed on the applicant had been de jure and de facto reducible from the moment of its imposition, since he had had the option of seeking a pardon, which might be granted if it was demonstrated that the enforcement or continuation of a sentence did not reasonably serve any of the aims pursued through the application of the criminal law. Moreover, seven of the nine persons on whom a life sentence had been imposed in the Netherlands Antilles since 1980 had sought a pardon and in two instances, including the applicant's case, a pardon request had been granted. According to the Government, this showed that, even if pardons were granted only rarely, there was nevertheless a genuine de facto possibility that a life sentence could be reduced by means of a pardon. In addition, the obligatory periodic review of life sentences – which, the Government conceded, had only come into force after the application was lodged with the Court – provided for the release on parole of a life prisoner if the Joint Court of Justice was of the opinion that a continuation of the custodial sentence would no longer serve any reasonable purpose.

97. The Government were further of the view that the conditions of the applicant's detention in no way justified a conclusion that he had been subjected to inhuman or degrading treatment or punishment in breach of Article 3. As regards the applicant's complaints that he had never been placed under a regime befitting his mental condition and that his life sentence was de facto irreducible because he had not been offered adequate treatment for his personality disorder or transferred to a custodial institution in the Netherlands, the Government submitted that in 1980, when the applicant was sentenced, it had not been possible to impose a TBS order for confinement in a custodial clinic in the Netherlands Antilles. There had been no custodial clinic in either Curaçao or Aruba and the applicant's transfer to such an institution in the Netherlands had been considered impossible in view of his limited intelligence and insufficient ability to express himself verbally. Mental-health treatment thus specifically not being part of the Joint Court of Justice's judgment, no blame could be attached to the national authorities for not executing a measure that had not been imposed. It did not appear from either the applicant's contacts with the prisons' social workers or the numerous letters he had addressed to various authorities that a lack of mental-health assistance had been his main concern. In any event, the applicant had been offered psychiatric help for his personality disorder during the time he was incarcerated in Curaçao. In this connection the Government referred to the letter of Dr M. de O., according to which the applicant had, upon his arrival in the prison in Curaçao, been placed under psychiatric observation and good contact of a therapeutic nature had been established with a view to his rehabilitation (see paragraph 34 above). This therapeutic contact had ended when the applicant had

been moved to Aruba, a transfer he had specifically requested despite being aware that the prison complex there did not comprise a Forensic Observation and Counselling Unit and that the availability of psychiatric help would be limited. The Government had not been informed of any contact between the applicant and psychiatrists or psychologists in Aruba until 2011, when the first periodic review of his life sentence had been carried out. Psychiatric help had been available to him in Aruba since the adoption of the judgment of the Joint Court of Justice of 21 September 2012.

98. While the Government acknowledged that long-term imprisonment could have a number of desocialising effects on inmates, they submitted that in practice the applicant had been able to engage in a relevant daily programme in the prison in Aruba. He had been a talented upholsterer and had worked eight hours a day in the prison's upholstery department. He had also occasionally attended Bible studies.

C. The Court's assessment

1. Relevant principles

(a) Life sentences

99. It is well established in the Court's case-law that the imposition of a sentence of life imprisonment on an adult offender is not in itself prohibited by or incompatible with Article 3 or any other Article of the Convention (see Kafkaris, cited above, § 97, and references cited therein), provided that it is not grossly disproportionate (see Vinter and Others, cited above, § 102). The Court has, however, held that the imposition of an irreducible life sentence on an adult may raise an issue under Article 3 (see Kafkaris, cited above, § 97). A life sentence does not become irreducible by the mere fact that in practice it may be served in full. No issue arises under Article 3 if a life sentence is de jure and de facto reducible (see Kafkaris, cited above, § 98, and Vinter and Others, cited above, § 108). On the basis of a detailed review of the relevant considerations emerging from its case-law and from recent comparative and international-law trends in respect of life sentences, the Court found in Vinter and Others that a life sentence can remain compatible with Article 3 of the Convention only if there is both a prospect of release and a possibility of review, both of which must exist from the imposition of the sentence (see Vinter and Others, cited above, §§ 10418 and 122). It further observed in that case that the comparative and international-law materials before it showed clear support for the institution of a dedicated mechanism guaranteeing a review no later than twenty-five years after the imposition of a life sentence, with further periodic reviews thereafter (ibid., § 120, see also Bodein v. France, no. 40014/10, § 61, 13 November 2014). It is for the States to decide – and not for the Court to prescribe – what form (executive or judicial) that review should take (see Kafkaris, cited above, § 99, and Vinter and Others, cited above, §§ 104 and 120). The Court has held that presidential clemency may thus be compatible with the requirements flowing from its case-law (see Kafkaris, cited above, § 102).

100. The Court has further found that a prisoner cannot be detained unless there are legitimate penological grounds for incarceration, which include punishment, deterrence, public protection and rehabilitation. While many of these grounds will be present at the time a life sentence is imposed, the balance between these justifications for detention is not necessarily static and might shift in the course of the execution of the sentence. It is only by carrying out a review of the justification for continued detention at an appropriate point in the sentence, that these factors or shifts can be properly evaluated (see Vinter and Others, cited above, § 111). The review required in order for a life sentence to be reducible should therefore allow the domestic authorities to consider whether, in the course of the sentence, any changes in the life prisoner and progress towards his or her rehabilitation are of such significance that continued detention is no longer justified on legitimate penological grounds (ibid., § 119). This assessment must be based on rules having a sufficient degree of clarity and certainty (ibid., §§ 125 and 129; see also László Magyar v. Hungary, no. 73593/10, § 57, 20 May 2014, and Harakchiev and Tolumov v. Bulgaria, nos. 15018/11 and 61199/12, §§ 255, 257 and 262, ECHR 2014) and the conditions laid down in domestic legislation must reflect the conditions set out in the Court's case-law (see Vinter and Others, cited above, § 128). Thus, a possibility of being granted a pardon or release on compassionate grounds for reasons related to ill-health, physical incapacity or old age does not correspond to the notion of "prospect of release" as formulated in Kafkaris (see Vinter and Others, cited above, § 127, and Öcalan v. Turkey (no. 2), nos. 24069/03 and 3 others, § 203, 18 March 2014). The Court held in a recent case that the assessment must be based on objective, preestablished criteria (see Trabelsi v. Belgium, no. 140/10, § 137, ECHR 2014). The prisoner's right to a review entails an actual assessment of the relevant information (see László Magyar, cited above, § 57), and the review must also be surrounded by sufficient procedural guarantees (see Kafkaris, cited above, § 105, and Harakchiev and Tolumov, cited above, § 262). To the extent necessary for the prisoner to know what he or she must do to be considered for release and under what conditions, it may be required that reasons be provided, and this should be safeguarded by access to judicial review (see László Magyar, cited above, § 57, and Harakchiev and Tolumov, cited above, §§ 258 and 262). Finally, in assessing whether the life sentence is reducible de facto it may be of relevance to take account of statistical information on prior use of the review mechanism in question, including the number of persons having been granted a pardon (see Kafkaris, cited above, § 103; Harakchiev and Tolumov, cited above, §§ 252 and 262; and Bodein, cited above, § 59).

(b) Rehabilitation and the prospect of release for life prisoners

101. As set out in the preceding paragraph, the review required in order for a life sentence to be reducible should permit the authorities to assess any changes in the life prisoner and any progress towards rehabilitation made by him or her. In Vinter and Others (cited above) the Grand Chamber thus addressed the problem of how to determine whether, in a given case, a life sentence could be regarded as reducible specifically in the light of the rehabilitation function of incarceration. In this context, it held that it would be incompatible with human dignity – which lay at the very essence of the Convention system – forcefully to

deprive a person of his freedom without striving towards his rehabilitation and providing him with the chance to regain that freedom at some future date (ibid., § 113). It went on to note that there was now clear support in European and international law for the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation was achieved (ibid., § 114). While punishment remained one of the aims of imprisonment, the emphasis in European penal policy was now on the rehabilitative aim of imprisonment, even in the case of life prisoners; this was expressed in Rules 6, 102.1 and 103.8 of the 2006 European Prison Rules, Resolution (76) 2 and Recommendations Rec(2003)23 and Rec(2003)22 of the Committee of Ministers, statements by the CP|T, and the practice of a number of Contracting States. The same commitment to rehabilitation was to be found in international law, as expressed, inter alia, in Article 10 § 3 of the ICCPR and the General Comment on that Article (ibid., §§ 115-18).

102. The Court observes that the principle of rehabilitation, that is, the reintegration into society of a convicted person, is reflected in international norms (see paragraphs 70-76 above) and has not only been recognised but has over time also gained increasing importance in the Court's case-law under various provisions of the Convention (see, apart from Vinter and Others, cited above, for instance Mastromatteo v. Italy [GC], no. 37703/97, § 72, ECHR 2002VIII; Dickson v. the United Kingdom [GC], no. 44362/04, § 28, ECHR 2007V; James, Wells and Lee v. the United Kingdom, nos. 25119/09 and 2 others, § 209, 18 September 2012; and Khoroshenko v. Russia [GC], no. 41418/04, §§ 121 and 14445, ECHR 2015). In a slightly different context the Court has, moreover, held that, in circumstances where a Government seek to rely solely on the risk posed by offenders to the public in order to justify their continued detention, regard must be had to the need to encourage the rehabilitation of those offenders (see James, Wells and Lee, cited above, § 218). One of the aims of rehabilitation is to prevent reoffending and thus to ensure the protection of society.

103. Notwithstanding the fact that the Convention does not guarantee, as such, a right to rehabilitation, the Court's case-law thus presupposes that convicted persons, including life prisoners, should be allowed to rehabilitate themselves. Indeed, the Court has held that " ... a whole life prisoner is entitled to know ... what he must do to be considered for release and under what conditions" (see Vinter and Others, cited above, § 122). It has also held, with reference to Vinter and Others, that national authorities must give life prisoners a real opportunity to rehabilitate themselves (see Harakchiev and Tolumov, cited above, § 264). It follows from this that a life prisoner must be realistically enabled, to the extent possible within the constraints of the prison context, to make such progress towards rehabilitation that it offers him or her the hope of one day being eligible for parole or conditional release. This could be achieved, for example, by setting up and periodically reviewing an individualised programme that will encourage the sentenced prisoner to develop himself or herself to be able to lead a responsible and crime-free life.

104. Life prisoners are thus to be provided with an opportunity to rehabilitate themselves. As to the extent of any obligations incumbent on States in this regard, the Court considers that even though States are not responsible for achieving the rehabilitation of life prisoners (ibid.), they nevertheless have a duty to make it possible for such prisoners to rehabilitate themselves. Were it otherwise, a life prisoner could in effect be denied the possibility of rehabilitation, with the consequence that the review required for a life sentence to be reducible, in which a life prisoner's progress towards rehabilitation is to be assessed, might never be genuinely capable of leading to the commutation, remission or termination of the life sentence or to the conditional release of the prisoner. In this connection the Court reiterates the principle – well established in its case-law – that the Convention is intended to guarantee rights that are not theoretical or illusory, but practical and effective (see, among many other authorities, Gäfgen v. Germany [GC], no. 22978/05, § 123, ECHR 2010). The obligation to offer a possibility of rehabilitation is to be seen as an obligation of means, not one of result. However, it entails a positive obligation to secure prison regimes to life prisoners which are compatible with the aim of rehabilitation and enable such prisoners to make progress towards their rehabilitation. In this context the Court has previously held that such an obligation exists in situations where it is the prison regime or the conditions of detention which obstruct rehabilitation (see Harakchiev and Tolumov, cited above, § 266).

(c) Health care provided to prisoners with mental-health problems

105. As regards the treatment of prisoners with mental-health problems, the Court has consistently held that Article 3 of the Convention requires States to ensure that the health and well-being of prisoners are adequately secured by, among other things, providing them with the requisite medical assistance (see, among many other authorities, Kudła v. Poland [GC], no. 30210/96, § 94, ECHR 2000XI; Sławomir Musiał v. Poland, no. 28300/06, § 87, 20 January 2009; and A. and Others v. the United Kingdom [GC], no. 3455/05, § 128, ECHR 2009). A lack of appropriate medical care for persons in custody is therefore capable of engaging a State's responsibility under Article 3 (see Naumenko v. Ukraine, no. 42023/98, § 112, 10 February 2004). Obligations under Article 3 may go so far as to impose an obligation on the State to transfer prisoners (including mentally ill ones) to special facilities in order to receive adequate treatment (see Raffray Taddei v. France, no. 36435/07, § 63, 21 December 2010).

106. In the case of mentally ill prisoners, the Court has held that the assessment of whether particular conditions of detention are incompatible with the standards of Article 3 has to take into consideration the vulnerability of those persons and, in some cases, their inability to complain coherently or at all about how they are being affected by any particular treatment (see, for example, Herczegfalvy v. Austria, 24 September 1992, § 82, Series A no. 244, and Aerts v. Belgium, 30 July 1998, § 66, Reports of Judgments and Decisions 1998-V). In addition, it is not enough for such detainees to be examined and a diagnosis made; instead, it is essential that

proper treatment for the problem diagnosed and suitable medical supervision should also be provided (see Raffray Taddei, cited above, § 59).

(d) Life prisoners with mental disabilities and/or mental-health problems

107. Life prisoners who have been held to be criminally responsible for the offences of which they have been found guilty – and who are therefore not considered "persons of unsound mind" within the meaning of Article 5 § 1 (e) of the Convention – may nevertheless have certain mental-health problems; they may for instance have behavioural or social problems or suffer from various kinds of personality disorders, all of which may impact on the risk of their reoffending. The Court has not previously dealt with the specific issue of the reducibility of life sentences imposed on persons who have been diagnosed as suffering from a mental disability and/or a mental-health condition. Against the background of the case-law set out above (paragraphs 99-106), the Court finds the following approach to be appropriate in this regard.

108. For a State to comply with its obligations under Article 3 of the Convention in respect of life prisoners belonging to this category, the Court considers that it is firstly required that an assessment be made of those prisoners' needs as regards treatment with a view to facilitating their rehabilitation and reducing the risk of their reoffending. This assessment should also address the likely chances of success of any identified forms of treatment, given that Article 3 cannot entail an obligation for a State to enable a life prisoner to receive treatment that is not realistically expected to have any significant impact in helping the life prisoner to rehabilitate himself or herself. For this reason, account is to be taken of the life prisoner's individual situation and personality. The Court, moreover, recognises that certain mental-health conditions are not, or not easily, amenable to treatment. Given that, owing to their mental-health situation, such life prisoners may not themselves be sufficiently aware of a need for treatment, the aforementioned assessment should be conducted regardless of whether any request for treatment has been expressed by them (see paragraph 106 above). Where the assessment leads to the conclusion that a particular treatment or therapy may indeed help the life prisoner to rehabilitate himself or herself, he or she is to be enabled to receive that treatment to the extent possible within the constraints of the prison context (see the relevant Council of Europe instruments set out in paragraphs 66-69 above; see also paragraph 103 above). This is of particular importance where treatment in effect constitutes a precondition for the life prisoner's possible future eligibility for release and is thus a crucial aspect of de facto reducibility of the life sentence.

109. Providing life prisoners with a real opportunity of rehabilitation may therefore require that, depending on their individual situation, they be enabled to undergo treatments or therapies – be they medical, psychological or psychiatric – adapted to their situation with a view to facilitating their rehabilitation. This entails that they should also be allowed to take part in occupational or other activities where these may be considered to benefit rehabilitation.

110. In general it will be for the State to decide, and not for the Court to prescribe, which facilities, measures or treatments are required in order to enable a life prisoner to rehabilitate himself or herself in such a way as to become eligible for release. In choosing the means for that purpose, States accordingly have a wide margin of appreciation and this obligation under Article 3 is to be interpreted in such a way as not to impose an excessive burden on national authorities.

111. Consequently, a State will have complied with its obligations under Article 3 when it has provided for conditions of detention and facilities, measures or treatments capable of enabling a life prisoner to rehabilitate himself or herself, even when that prisoner has not succeeded in making sufficient progress to allow the conclusion that the danger he or she poses to society has been alleviated to such an extent that he or she has become eligible for release. In this connection the Court reiterates that States also have a duty under the Convention to take measures to protect the public from violent crime and that the Convention does not prohibit States from subjecting a person convicted of a serious crime to an indeterminate sentence allowing for the offender's continued detention where necessary for the protection of the public (see Vinter and Others, cited above, § 108, with further references). States may fulfil that positive obligation to protect the public by continuing to detain life prisoners for as long as they remain dangerous (see, for instance, Maiorano and Others v. Italy, no. 28634/06, §§ 11522, 15 December 2009).

112. In conclusion, life prisoners should thus be detained under such conditions, and be provided with such treatment, that they are given a realistic opportunity to rehabilitate themselves in order to have a hope of release. A failure to provide a life prisoner with such opportunity may accordingly render the life sentence de facto irreducible.

2. Application of the above relevant principles to the present case

113. The Court will now turn to the question whether the life sentence imposed on the applicant was reducible. It reiterates that in order for a life sentence to be reducible, and thus compatible with Article 3 of the Convention, there must be both a prospect of release and a possibility of review (see Vinter and Others, cited above, §§ 109-10).

114. As set out above (see paragraph 92), the Chamber examined the question whether the applicant's life sentence was compatible with Article 3 separately from the applicant's other complaints under that provision concerning the conditions of his detention. However, the Grand Chamber finds on the basis of the Court's case-law and the relevant principles set out in paragraphs 107 to 112 above, that the different aspects of these complaints under Article 3 are closely interrelated in the present case. Indeed, these aspects were also presented together by the applicant already in his letter of 2 November 2012 (see paragraph 91 above) and he based his main submissions to the Grand Chamber

on the contention that he had no prospect of release as he was not provided with any treatment for his mental disorder which might have reduced the risk of recidivism that he was considered to pose. This being so, the Court finds it appropriate to assess the different aspects of the Article 3 complaints jointly.

115. Accordingly, in its examination of the question whether the life sentence imposed on the applicant was reducible, the Court will consider whether the alleged lack of psychiatric or psychological treatment in effect deprived the applicant of any prospect of release.

116. In its assessment the Court will focus on the applicant's situation from the time he lodged his application in 2010. It cannot, however, lose sight of the fact that at that time he had already been imprisoned for about thirty years. In this context the Court observes that the rejections of the applicant's various requests for pardon were based, inter alia, on the assessment that the risk of recidivism he was considered to pose continued to exist. In the later years of his incarceration this in fact became the sole reason for the refusal to grant him release of any kind. While the risk of reoffending and the need to protect society are relevant penological grounds capable of justifying continued detention of a life prisoner (see paragraph 100 above), the Court will nevertheless have to assess whether the applicant in the specific circumstances of the present case was offered possibilities of rehabilitating himself also during the period of his imprisonment preceding the lodging by him of the present application, as the existence of such possibilities, in particular of any that addressed his mental-health problems, may have affected his prospects of release.

117. The Court observes in this connection that in the context of the criminal proceedings against him on charges of murder, the applicant was examined in 1979 by a psychiatrist, who diagnosed him as a retarded, infantile and narcissistic young man whose character structure had a serious disturbance of a psychopathiform nature and recommended that he receive institutional treatment for a lengthy period or that attempts be made in the prison setting to attain a stronger personality structure in order to avoid recidivism (see paragraph 33 above). Owing to the fact that no order for placement in a custodial clinic could be imposed in the Netherlands Antilles at that time – as the applicable law did not provide for such a measure – and considering that placement in such a clinic in the European part of the Kingdom was not feasible, the Joint Court of Justice imposed a sentence of life imprisonment on the applicant on 11 March 1980 (see paragraphs 1516 above). However, the Court considers that the applicant's detention in a prison rather than in a custodial clinic could not have obviated the need for the recommended treatment. Nor can the Court accept that by dint of the mere fact that the punishment imposed on the applicant did not comprise a measure stipulating that he undergo treatment, the Government were under no further obligation in this regard for the duration of the applicant's incarceration. It reiterates that States are under an obligation to provide detainees suffering from health problems – including mental-health problems – with appropriate medical care (see paragraph 105 above), inter alia, with a view to allowing them, if possible, to rehabilitate themselves, regardless of whether a detainee has made a request to that effect (see paragraphs 106 and 108 above).

118. The applicant's contention that he was never provided with any treatment for his mental condition during the time he was imprisoned finds some support in CPT reports on visits by that body to the prisons in Curaçao and Aruba where the applicant was, or had been, detained, and according to which mental-health care in those two institutions was insufficient (see paragraph 57 above). It is furthermore clearly supported by the case file, notably, the email from the senior social worker at the prison in Aruba of 29 July 2014 (see paragraph 46 above) and a report of 1 September 2014 drawn up by the psychologist at the same prison, both of which state that there is no mention in the applicant's medical file of his having undergone any psychiatric or psychological treatment (see paragraph 45 above).

119. Indeed, the Government did not dispute that the applicant had not received treatment as such but they stressed that he had been provided with some form of psychiatric help when he was detained in Curaçao, which he chose to forego when he requested and obtained a transfer to Aruba where, certainly during the first years of his incarceration there, very limited possibilities of such help existed. However, even if it is accepted that some basic mental-health care was available to the applicant, it remains to be examined whether this was sufficient to comply with the Government's obligation to provide the applicant with the possibility of rehabilitating himself.

120. In this context the Court would firstly observe that the principle of the rehabilitation of prisoners has, at least from 1999 onwards, been explicitly recognised in the applicable national law, in which it is stipulated that a custodial sentence should also serve to prepare detainees for their return to society (see paragraph 48 above). The Court further notes that certain measures were taken and facilities offered which, even if their main purpose was not the applicant's rehabilitation, may be considered conducive to that purpose. Thus, the applicant was transferred from Curaçao to Aruba in 1999. The applicant had requested this transfer in order to be closer to members of his family, and it was considered to be beneficial for his rehabilitation and psychologically favourable for him (see paragraphs 3435 above). The applicant was able to work and benefited from the structured life in prison (see paragraph 42 above). He was reported to have changed over the years: while he may be described as having been a troublesome inmate in the early years of his incarceration in Curaçao, he significantly improved his behaviour during his detention in Aruba (see paragraphs 19, 40 and 42 above).

121. Nevertheless, throughout his imprisonment the risk of the applicant's reoffending was deemed too great for him to be considered eligible for a pardon or, after the periodic review of his life sentence, for conditional release. In this

connection the Court notes that one of the judges of the Joint Court of Justice wrote in 1997, when consulted on a request for a pardon lodged by the applicant, that he considered it would be irresponsible to grant a pardon to the applicant, whose risk of reoffending had been established to be high and who had not received the treatment in prison that had been recommended (see paragraph 24 above). The Joint Court of Justice also noted in its advice to the Governor of Curaçao, relating to that same request for a pardon, that the applicant had not undergone any (psychiatric) treatment aimed at strengthening his personality structure in order to prevent recidivism (ibid.). Finally, and most markedly, the Joint Court of Justice observed in its decision of 21 September 2012 pursuant to the periodic review of the applicant's life sentence that important aspects of the applicant's disturbed personality, on the basis of which it had originally been concluded that the risk of recidivism was high, were still present and that no treatment had taken place during the years of detention. Although the Joint Court of Justice found that after thirty-three years the applicant's imprisonment no longer served the aim of retribution, it concluded that his continued detention was necessary in order to protect the public as the risk of his reoffending remained too great to allow his release (see paragraphs 8.4, 8.6., 8.7 and 8.12 of the Joint Court of Justice's decision set out in paragraph 32 above).

122. It transpires clearly from the decisions of the Joint Court of Justice mentioned in the preceding paragraph that there was a close link in the present case between the persistence of the risk of the applicant's reoffending, on the one hand, and the lack of treatment, on the other. Moreover, the Court observes that the authorities were aware that treatment had been recommended in order to prevent recidivism and that they were also aware that the applicant had not received any.

123. The applicant therefore found himself in a situation where he was not deemed eligible for parole or release owing to the risk of reoffending, whereas the persistence of that risk was linked to the fact that no assessment of treatment needs and possibilities had been conducted and no identified forms of treatment with a view to rehabilitation had been provided. Consequently, treatment constituted, in practice, a precondition for the applicant to have the possibility of progressing towards rehabilitation, reducing the risk of his reoffending. An issue of the de facto reducibility of his life sentence was, accordingly, at stake.

124. As already stated above (see paragraph 110), States have a wide margin of appreciation in the determination of what facilities or measures are required in order to give a life prisoner the possibility of rehabilitating himself or herself to such an extent that he or she may one day become eligible for release. It is accordingly not for the Court to prescribe what treatment was required in the specific circumstances. However, although the applicant in the present case was indeed initially, prior to being sentenced to life imprisonment, assessed as requiring treatment, it does not appear that any further assessments were carried out – either when he started serving his sentence or thereafter – of the kind of treatment that might be required and could be made available or of the applicant's aptitude and willingness to receive such treatment. In the Court's view, very little, if any, relevance falls to be attached to the fact that the applicant himself had not apparently been concerned about procuring treatment and had preferred to be transferred from Curaçao to Aruba where the availability of psychiatric help was even more limited. It must be borne in mind that persons with mental-health problems may have difficulties in assessing their own situation or needs, and may be unable to indicate coherently, or even at all, that they require treatment (see paragraph 106 above).

125. Having regard to the foregoing, the Court finds that the lack of any kind of treatment or even of any assessment of treatment needs and possibilities meant that, at the time the applicant lodged his application with the Court, any request by him for a pardon was in practice incapable of leading to the conclusion that he had made such significant progress towards rehabilitation that his continued detention would no longer serve any penological purpose. This finding likewise applies to the first, and in fact only, periodic review that was carried out of the applicant's life sentence. This leads the Court to the conclusion that the applicant's life sentence was not de facto reducible as required by Article 3.

126. This being the case, the Court does not consider it necessary to conduct any further or more detailed analysis of either the pardon system or the periodic-review mechanism with a view to assessing whether the life sentence was de jure reducible, or of the regime under which the applicant was detained.

127. Accordingly, there has been a violation of Article 3 of the Convention.

2. Conditions of detention for life prisoners

In the 2014 case of Harakchiev and Tolumov v. Bulgaria, the Court criticised the very harsh conditions of detention of life prisoners in Bulgaria:

(Case 102)

2. The Court's assessment

(a) General principles laid down in the Court's case-law

199. The general principles governing the application of Article 3 of the Convention to the regime and conditions of detention of life prisoners – with special reference to solitary confinement, recreation and outdoor exercise – were recently set out in detail in the Court's judgment in Babar Ahmad and Others v. the United Kingdom (nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09, §§ 200-14, 10 April 2012). The Court has in particular held that an impoverished regime which isolates a life prisoner for an extended period of time is likely, in the long term, to have damaging effects, resulting in deterioration of mental faculties and social abilities (see also Iorgov, cited above, §§ 83-84), and that such a regime cannot be regarded as warranted unless based on proper risk considerations, and should not be maintained after such risk has subsided (see Babar Ahmad and Others, cited above, §§ 207-11).

200. Another recent restatement of those principles, with reference to the regime and conditions of detention of a person serving a whole life sentence in Bulgaria, may be found in the Court's judgment in the case of Chervenkov v. Bulgaria (no. 45358/04, §§ 60-66, 27 November 2012).

201. A very detailed recent restatement of the general principles governing the examination of material conditions of detention under Article 3 of the Convention may be found in the Court's judgment in the case of Ananyev and Others (cited above, §§ 139-59).

202. It should also be noted that in cases arising from individual applications, the Court must focus its attention not on the domestic law itself but on the manner in which it has been applied to the applicant (see Savičs v. Latvia, no. 17892/03, § 134, 27 November 2012, with reference specifically to the prison regime of a life prisoner). It must moreover – in contrast with the approach of some Bulgarian courts in the examination of claims under section 1 of the 1988 Act (see paragraphs 30-36 above, and Shahanov, cited above, § 40) – take into account the cumulative effects of the conditions of detention of which the applicant complains (see Dougoz v. Greece, no. 40907/98, § 46, ECHR 2001-II, and, more recently, Idalov v. Russia [GC], no. 5826/03, § 94, 22 May 2012).

(b) Application of those principles in the present case

203. In the present case, it is not disputed that – despite the statutory differences between the "special regime" normally applicable to life prisoners and the "strict regime", which is slightly more lenient but at present likewise entails, as a rule, keeping those prisoners in permanently locked cells (see paragraphs 118, 124 and 125 above) – both applicants remained in permanently locked cells and isolated from the rest of the prison community throughout the entire period of their incarceration (see paragraphs 12 and 38 above). In spite of some minor differences between the parties' versions on that point (see paragraphs 18 and 44 above), it has not been disputed that throughout that period the applicants had to remain confined to their cells for the vast majority of the time, twenty-one to twenty-two hours a day, and that during that time they could not interact with other inmates, even those housed in the same units as them (the period of five years between 2002 and 2007, when Mr Harakchiev had a cellmate, was obviously a limited exception to that). The fact that in Mr Harakchiev's case the effects of that regime were to some extent, especially in 2010-12, mitigated by his numerous transfers to other prisons in connection with his participation in hearings in cases brought by him against the authorities (see paragraph 20 in fine above) cannot be regarded as decisive in that respect. It should be noted in that connection that under the "special regime" – applied to Mr Harakchiev at that time – life prisoners have to be kept isolated from other inmates during prison transfers as well (see paragraph 125 above).

204. The Court has held that all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long term, to have damaging effects, resulting in the deterioration of mental faculties and social abilities (see Iorgov, cited above, §§ 83-84). It is true that the applicants in the present case were not subjected to complete isolation and that an inmate's segregation from the prison community does not in itself amount to inhuman or degrading treatment. However, it cannot be overlooked that in the present case both applicants were kept under such an impoverished regime for extended periods of time – twelve and fourteen years respectively. In such circumstances, isolation should be justified by particular security reasons obtaining throughout the duration of this measure. It can hardly be accepted that this was automatically necessary solely on account of the applicants' sentences to whole life and life imprisonment respectively as an inherent part of the relevant punishment for at least the initial five years of the sentence. The automatic segregation of life prisoners from the rest of the prison community and from each other, in particular where no comprehensive activities outside the cell or stimulus inside the cell are available, may in itself raise an issue under Article 3 of the Convention (see Savičs, cited above, § 139). Moreover, it runs counter to two instruments to which the Court attaches considerable importance despite their non-binding character (see, mutatis mutandis, Rivière v. France, no. 33834/03, § 72, 11 July 2006, and Dybeku v. Albania, no. 41153/06, § 48, 18 December 2007): Rule 25.2 of the 2006 European Prison Rules, which says that the prison regime should allow "all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction" (see paragraph 159 above), and point 7 of Recommendation 2003(23) on the management by prison administrations of life sentence and other long-term prisoners, which says that "[c]onsideration should be given to not segregating life sentence and other long-term prisoners on the sole ground of their sentence" (see paragraph 162 above). In that connection, it should also be noted that in its reports on its visits to Bulgaria, the CPT has repeatedly emphasised that life prisoners should not be regarded, solely on the basis of their sentence, as more dangerous than other prisoners, and that the assessment of the risk that they pose needs to be made on a case-by-case basis (see paragraphs 167-171 above). In that context, reference also needs to be made to the CPT's eleventh general report, which said that there was "no justification for indiscriminately applying restrictions to all prisoners subject to a specific type of sentence, without giving due consideration to the individual risk they may (or may not) present" (see paragraph 165 above), and to its twenty-first general report, which made the same point as the abovementioned reports on the CPT's visits to Bulgaria (see paragraph 166 above).

205. The Court notes that the authorities were required to carry out, and did carry out, specific initial and periodic risk assessments of prisoners sentenced to life imprisonment. However, the Court cannot agree that the number of claims against the prison authorities, even if frivolous, and the fact of vigorously seeking to vindicate his or her personal rights (see paragraph 24 above) can be regarded as reliable criteria showing that a prisoner presents a higher security risk and that his very restrictive prison regime is therefore justified. The

Court has already had occasion to find, albeit in the context of Article 10 of the Convention, that it is impermissible to impose a disciplinary punishment on a prisoner for complaining of the conditions of his detention (see Marin Kostov v. Bulgaria, no. 13801/07, §§ 45-51, 24 July 2012). It should also be noted in that connection that section 90(6) of the Execution of Punishments and Pre-Trial Detention Act of 2009, in force since 1 June 2009, specifically prohibits the imposition of disciplinary punishments in retaliation for applications or complaints made by prisoners (see paragraph 112 above).

206. In that connection the Government cited one incident involving a scuffle with another inmate for the whole period of Mr Harakchiev's incarceration (see paragraph 13 above), and no incidents involving violence towards prison staff. It should be noted in this regard that point 6 of the above-mentioned Recommendation 2003(23) states that it is important to distinguish clearly between risks posed by life prisoners to the external community, to themselves, to other prisoners and to those working in or visiting the prison (see paragraph 162 above). The Court is not persuaded that, apart from the above-mentioned facts, there exist other circumstances showing that Mr Harakchiev could, throughout his incarceration, be regarded as dangerous to the point of requiring such stringent measures as those applicable under his prison regime.

207. The stringent regime appears even less justified in the case of Mr Tolumov, who, by the Government's own admission, has shown very good conduct ever since his arrival in prison in 2000 and, according to his annual assessments, has consistently avoided getting drawn into conflicts and treats prison staff with respect (see paragraph 48 above). In this regard, the Government have failed to explain the relevance of the risk assessment exercises and their impact on the actual situation of the applicant, which remained unchanged despite the good conduct observed.

208. Another element that needs to be noted is the apparently limited possibility for outdoor exercise and reasonable activities. The Court has often observed that a short duration of outdoor exercise limited to one hour a day is a factor that further exacerbates the situation of a prisoner confined to his cell for the rest of the time (see Ananyev and Others, cited above, § 151, with further references). It should also be noted in this connection that apparently the exercise yards for life prisoners are separate and quite small, and that the yard in Plovdiv Prison does not allow a proper work out (see paragraph 176 in fine above, and compare with the case cited in Ananyev and Others, cited above, § 152). In this connection, it appears that the prison authorities were to ensure such occupation to the extent possible "within the constraints flowing from the applicable security arrangements" (see paragraph 135 above). However, the Government have not referred to any participation of the two applicants in reasonable activities or correctional courses, with the exception of a week's yoga course intended to overcome stress in the case of Mr Harakchiev, have not sought to invoke convincing security reasons requiring the applicants' isolation, and have not said why it was not possible to revise the regime of prisoners in the applicants' situation so as to provide them with adequate possibilities for human contact and sensible occupation in practice (compare and contrast Iorgov (no. 2), cited above, §§ 21-23 and 65). It appears that this situation is to a great extent a result of the automatic application of the legal provisions regulating the applicants' prison regime.

209. This situation can be contrasted with that of Mr Iorgov, whose regime was gradually relaxed by way of an "experiment" in Pleven Prison – highly commended by the CPT – that began in 2003-04 initially as regards access to the common areas and the lavatories and then as regards isolation from other prisoners (see Iorgov v. Bulgaria (no. 2), no. 36295/02, §§ 21-23 and 42, 2 September 2010, and paragraph 169 above). Indeed, the CPT noted that that "had not caused any particular dissatisfaction or problems" (ibid.).

210. To that should be added the material conditions of the applicants' detention. The Court notes in that connection that, after an on-the-spot inspection in 2010, the Stara Zagora Administrative Court found – albeit in a judgment that is currently under appeal – that the conditions of Mr Harakchiev's detention were in breach of Article 3 of the Convention (see paragraphs 31, 35 and 36 above). That court's findings, although not final, tend to confirm Mr Harakchiev's allegations concerning ventilation, heating, access to the toilets and hygiene.

211. The Court is particularly struck by the lack of ready access to toilet facilities. The Government did not dispute that the applicants' cells are not equipped with such facilities or running water. The Court can therefore hardly accept that it was the applicants' choice to use buckets to relieve their sanitary needs outside the three daily visits to the toilet, and that the need to resort to the use of buckets could be obviated by calling on the guards to open their cells at any time. The impracticability of that possibility is amply demonstrated by the explanations given in the Bulgarian Helsinki Committee report of April 2010, which said that prisoners' calling on the guards often gave rise to conflicts and thus drove the prisoners to prefer to use buckets in their cells for their sanitary needs (see paragraph 176 above). It appears that in Mr Harakchiev's case the guards never opened his cell to let him visit the toilet outside the three regular daily visits (see paragraphs 17 in fine and 35 above). The use of buckets in the absence of toilet facilities in the cells was, and still is, widespread in prisons in Bulgaria, has been well documented by the CPT (see the report cited in paragraph 171 above in relation specifically to the unit housing life prisoners in Plovdiv Prison, and the report cited in paragraph 173 above), has been acknowledged as a problem by the Government (see paragraph 172 above), and has been consistently criticised by this Court since 2005 (see Kehayov v. Bulgaria, no. 41035/98, § 71, 18 January 2005; I.I. v. Bulgaria, no. 44082/98, § 75, 9 June 2005; Iovchev v. Bulgaria, no. 41211/98, § 134, 2 February 2006; Yordanov v. Bulgaria, no. 56856/00, § 94, 10 August 2006; Dobrev v. Bulgaria, no. 55389/00, § 129, 10 August 2006; Malechkov v. Bulgaria, no. 57830/00, § 140, 28 June 2007; Kostadinov v. Bulgaria, no.

55712/00, § 61, 7 February 2008; Gavazov v. Bulgaria, no. 54659/00, § 108, 6 March 2008; Radkov (no. 2), cited above, §§ 48-49; Shahanov, cited above, § 53; and Sabev v. Bulgaria, no. 27887/06, § 99, 28 May 2013).

212. Taking into account the cumulative effect of the above-mentioned conditions, regardless of whether they flowed from the applicable regulatory framework or from its practical implementation, and the period of the applicants' detention – twelve and fourteen years, respectively, so far –, the Court considers that the distress and hardship endured by them exceeded the unavoidable level of suffering inherent in detention and went beyond the minimum threshold of severity required by Article 3 of the Convention (see Sabev, cited above, § 99).

213. In those circumstances, even accepting that the applicants' allegations of inadequate ventilation, lighting, heating, hygiene, access to the shower, food and medical care in prison have not been made out beyond reasonable doubt, the Court considers that the other aspects of the conditions of their detention and prison regime were, taken together, serious enough to be qualified as inhuman and degrading treatment (see Shahanov, cited above, § 53 in fine).

214. There has therefore been a breach of Article 3 of the Convention in respect of both applicants.

V. Application of article 46 of the convention

278. The relevant parts of Article 46 of the Convention provide:

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution. ..."

279. By virtue of this Article, the Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, execution being supervised by the Committee of Ministers. It follows, inter alia, that a judgment in which the Court finds a breach of the Convention or the Protocols thereto imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded under Article 41 of the Convention by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the breach found by the Court and to redress as far as possible its effects. It is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order to discharge that obligation. However, with a view to helping the respondent State to fulfil it, the Court may seek to indicate the type of individual and/or general measures that might be taken to put an end to the situation it has found to exist (see, as a recent authority, Stanev v. Bulgaria [GC], no. 36760/06, §§ 254-55, ECHR 2012).

280. The breach of Article 3 of the Convention found in the present case in relation to the regime and conditions of the applicants' detention flows in large part from the relevant provisions of the 2009 Execution of Punishments and Pre-Trial Detention Act and its implementing regulations (see paragraphs 203-214 above). It discloses a systemic problem that has already given rise to similar applications (see Chervenkov [v. Bulgaria, no. 45358/04], §§ 50 and 69-70[, 27 November 2012], and Sabev [v. Bulgaria, no. 27887/06], §§ 72 and 9899[, 28 May 2013]), and may give rise to more such applications. The nature of the breach suggests that to execute this judgment properly, the respondent State would be required to reform, preferably by means of legislation, the legal framework governing the prison regime applicable to persons sentenced to life imprisonment with or without parole. That reform, invariably recommended by the CPT since 1999 (see paragraphs 167-171 and 173 above), should entail (a) removing the automatic application of the highly restrictive prison regime currently applicable to all life prisoners for an initial period of at least five years, and (b) putting in place provisions envisaging that a special security regime can only be imposed – and maintained – on the basis of an individual risk assessment of each life prisoner, and applied for no longer than strictly necessary.

In the 2017 case of Simeonovi v. Bulgaria, the Court came to a similar conclusion:

(Case 103)

B. The Court's assessment

88. The Court notes that the Chamber found that there had been a violation of Article 3 of the Convention (see paragraphs 88-95 of the Chamber judgment). The Chamber stated in particular:

"89. The applicant has been incarcerated since October 1999. Since that date he has been held in three different establishments: the Burgas Investigation Detention Facility, Burgas Prison and Sofia Prison.

90. The Court notes that the parties agree on the inadequacy of the material conditions which prevailed in the Burgas Investigation Detention Facility between October 1999 and April 2000, when the applicant was held there ... The report on the 1999 CPT visit corroborates this finding ...

91. The applicant was subsequently transferred to Burgas Prison, where he remained from 2000 to 2004 ... In the report on its 2002 visit the CPT delegation stated that the wing for life prisoners in Burgas Prison where the applicant's cell was located had recently been refurbished, that the individual cells had an area of 6 m2 each and had adequate ventilation and lighting. The main problem noted by the CPT delegation had been the restricted access to the shared sanitary facilities and the use of buckets as toilets by the prisoners ...

92. On 25 February 2004 the applicant was transferred to Sofia Prison, where he continued to serve his sentence. According to the reports of the 2006, 2008 and 2014 CPT

visits to that prison, all the cells in the prison's high-security wing had in-cell sanitary facilities ... According to information presented by the Government, this section of the prison was renovated in 2005 and 2006, and the applicant benefited from a decent-sized individual cell ... However, the report of the CPT's visit in 2014 once again singles out the general dilapidation of the area of Sofia Prison reserved for prisoners serving life sentences, and the lack of daylight and insufficient hygiene in the premises ...

93. The Court notes that throughout his years in prison the manner and method of executing the applicant's life sentence, as determined by the prison regime assigned to him, were highly restrictive. The applicant had initially been assigned a so-called special prison regime: he had spent twenty-three hours a day locked up in his cell, mostly on his bed; his access to the prison library had been limited to the few minutes it took to choose and borrow a book; he had been allowed to attend the prison chapel twice a year, with a ban on meeting other prisoners ... In 2008 his prison regime was relaxed ... However, like all prisoners in his category, he was still kept separate from the rest of the prison population and his cell was kept locked during the day (ibid.). The successive CPT reports show that the prisoners in the high-security wing of Sofia Prison have very few out-of-cell activities and are kept separated from the other prisoners ...

94. In the light of the foregoing facts and as it noted in the recent judgment in the case of Harakchiev and Tolumov, cited above, §§ 203-214, the Court considers that the applicant's poor conditions of detention taken in conjunction with the restrictive regime under which he is serving his life sentence and the length of the prison term in question, subjected the applicant to an ordeal far exceeding the suffering inherent in the execution of a prison sentence. The Court therefore finds that the severity threshold required for the application of Article 3 of the Convention was exceeded in the present case. The applicant was placed in an ongoing situation of infringement of his right not to be subjected to inhuman and degrading treatment.

95. There has therefore been a violation of Article 3 of the Convention."

89. The Court sees no reason to depart from the Chamber's conclusions. Moreover, it observes that the report of the CPT's last visit to Bulgaria and its public statement of 2015 mention that the poor conditions of detention noted in Sofia Prison persist (see paragraphs 79 and 80 above).

90. Like the Chamber, the Court considers that the applicant's conditions of detention taken in conjunction with the restrictive regime under which he is serving his life sentence and the length of the prison term (since 1999), have subjected him to an ordeal exceeding the suffering inherent in the execution of a prison sentence and amount to inhuman and degrading treatment.

3. Prisoners on death row

In the 2004 case of Ilascu and others v. Moldova and Russia, one of the applicants had been sentenced to death in 1993 and then detained for eight years before being released:

(Case 104)

434. The applicant was sentenced to death on 9 December 1993 and detained until his release on 5 May 2001 (see paragraphs 215 and 234 above).

The Court reiterates that the Convention is not binding on Contracting States save in respect of events that have occurred since its entry into force, the relevant dates being 12 September 1997 for Moldova and 5 May 1998 for the Russian Federation. However, in order to assess the effect on the applicant of his conditions of detention, which remained more or less identical throughout the time he spent in prison, the Court may also take into consideration the whole of the period in question, including that part of it which preceded the Convention's entry into force with regard to each of the respondent States.

435. During the very long period he spent on death row, the applicant lived in the constant shadow of death, in fear of execution. Unable to exercise any remedy, he lived for many years, including the time after the Convention's entry into force, in conditions of detention likely to remind him of the prospect of his sentence being enforced (see paragraphs 196-210 and 240-53 above).

In particular, the Court notes that after sending a letter to the Moldovan parliament in March 1999 Mr Ilaşcu was savagely beaten by the warders at Tiraspol Prison, who threatened to kill him (see paragraphs 249, 250, 269 and 270 above). After that incident, he was denied food for two days and light for three (see paragraph 271 above).

As to the mock executions which took place before the Convention's entry into force (see paragraph 198 above), there is no doubt that the effect of such barbaric acts was to increase the anxiety felt by the applicant throughout his detention about the prospect of his execution.

436. The anguish and suffering he felt were aggravated by the fact that the sentence had no legal basis or legitimacy for Convention purposes. The "Supreme Court of the MRT" which passed sentence on Mr Ilaşcu was set up by an entity which is illegal under international law and has not been recognised by the international community. That "court" belongs to a system which can hardly be said to function on a constitutional and legal basis reflecting a judicial tradition compatible with the Convention. That is evidenced by the patently arbitrary nature of the circumstances in which the applicants were tried and convicted, as they described them in an account which has not been disputed by the other parties (see paragraphs 212-16 above), and as described and analysed by the institutions of the OSCE (see paragraph 286 above).

437. The judgment of the Supreme Court of Moldova setting aside the applicant's conviction (see paragraph 222 above) confirmed the unlawful and arbitrary nature of the judgment of 9 December 1993.

438. As regards the applicant's conditions of detention while on death row, the Court notes that Mr Ilaşcu was detained for eight years, from 1993 until his release in May 2001, in very strict isolation: he had no contact with other prisoners, no news from the outside – since he was not permitted to send or receive mail – and no right to contact his lawyer or receive regular visits from his family. His cell was unheated, even in severe winter conditions, and had no natural light source or ventilation. The evidence shows that Mr Ilaşcu was also deprived of food as a punishment and that in any event, given the restrictions on receiving parcels, even the food he received from outside was often unfit for consumption. The applicant could take showers only very rarely, often having to wait several months between one and the next. On this subject the Court refers to the conclusions in the report produced by the CPT following its visit to Transdniestria in 2000 (see paragraph 289 above), in which it described isolation for so many years as indefensible.

The applicant's conditions of detention had deleterious effects on his health, which deteriorated in the course of the many years he spent in prison. Thus, he did not receive proper care, having been deprived of regular medical examinations and treatment (see paragraphs 253, 258-60, 262-63 and 265 above) and dietetically appropriate meals. In addition, owing to the restrictions on receiving parcels, he could not be sent medicines and food to improve his health.

439. The Court notes with concern the existence of rules granting a discretionary power in relation to correspondence and prison visits, exercisable by both prison warders and other authorities, and emphasises that such rules are arbitrary and incompatible with the appropriate and effective safeguards against abuses which any prison system in a democratic society must put in place. Moreover, in the present case, such rules made the applicant's conditions of detention even harsher.

440. The Court concludes that the death sentence imposed on the applicant coupled with the conditions he was living in and the treatment he suffered during his detention after ratification, account being taken of the state he was in after spending several years in those conditions before ratification, were particularly serious and cruel and must accordingly be considered acts of torture within the meaning of Article 3 of the Convention.

There has therefore been a failure to observe the requirements of Article 3.

441. As Mr Ilaşcu was detained at the time when the Convention came into force with regard to the Russian Federation, on 5 May 1998, the latter is responsible, for the reasons set out above (see paragraph 393 above) on account of his conditions of detention, the treatment inflicted on him and the suffering caused to him in prison.

Mr Ilaşcu was released in May 2001 and it is only from that date onwards that Moldova's responsibility is engaged on account of the acts complained of for failure to discharge its positive obligations (see paragraph 352 above). Consequently, there has been no violation of Article 3 of the Convention by Moldova with regard to Mr Ilaşcu.

IV. Prisoners of war and detained persons during armed conflict

In the 2021 case of Georgia v. Russia (II) the Court examined the treatment of Georgian civilian detainees and of prisoners of war in the context of the 2008 conflict between these states:

(Case 105)

92. The Court observes that it has examined the complex question of the relationship between Convention law and international humanitarian law in a certain number of cases brought before it.

93. Reference should be made to, among others, the Hassan judgment (…), which was inspired by the case-law of the ICJ in this regard. The relevant passages read as follows:

"100. The starting-point for the Court's examination must be its constant practice of interpreting the Convention in the light of the rules set out in the Vienna Convention on the Law of Treaties of 23 May 1969 (see Golder v. the United Kingdom, 21 February 1975, Series A no. 18, § 29, and many subsequent cases). Article 31 of the Vienna Convention, which contains the 'general rule of interpretation' ..., provides in paragraph 3 that there shall be taken into account, together with the context, (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; and (c) any relevant rules of international law applicable in the relations between the parties. (…)

102. Turning to the criterion contained in Article 31 § 3 (c) of the Vienna Convention ..., the Court has made it clear on many occasions that the Convention must be interpreted in harmony with other rules of international law of which it forms part ... This applies no less to international humanitarian law. The four Geneva Conventions of 1949, intended to mitigate the horrors of war, were drafted in parallel to the European Convention on Human Rights and enjoy universal ratification. The provisions in the Third and Fourth Geneva Conventions relating to internment, at issue in the present application, were designed to protect captured combatants and civilians who pose a security threat. The Court has already held that Article 2 of the Convention should 'be interpreted in so far as possible in light of the general principles of international law, including the rules of international humanitarian law which play an indispensable and universally accepted role in mitigating the savagery and inhumanity of armed conflict'

(see Varnava and Others, cited above, § 185) (…). Moreover, the International Court of Justice has held that the protection offered by human rights conventions and that offered by international humanitarian law co-exist in situations of armed conflict (…) The Court must endeavour to interpret and apply the Convention in a manner which is consistent with the framework under international law delineated by the International Court of Justice. (…)

104. Nonetheless, and consistently with the case-law of the International Court of Justice, the Court considers that, even in situations of international armed conflict, the safeguards under the Convention continue to apply, albeit interpreted against the background of the provisions of international humanitarian law. (…)"

(b) Methodology followed in the present case

94. As indicated in Hassan (cited above, § 102), "the Court has made it clear on many occasions that the Convention must be interpreted in harmony with other rules of international law of which it forms part ... This applies no less to international humanitarian law."

95. In the present case the Court will thus examine the interrelation between the two legal regimes with regard to each aspect of the case and each Convention Article alleged to have been breached. In doing so, it will ascertain each time whether there is a conflict between the provisions of the Convention and the rules of international humanitarian law. (…)

VI. Treatment of civilian detainees and lawfulness of their detention (…)

D. Relevant provisions of international humanitarian law

234. The relevant provisions in this connection are Articles 27, 32, 33 § 1, 34, 42 § 1, 43, 78 §§ 1 and 2, 85, 89, 95, 146 and 147 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, and Article 75 of Additional Protocol (I) relating to the Protection of Victims of International Armed Conflicts.

235. Having regard to the complaints raised in the present case, there is no conflict between Article 3 of the Convention and the above-mentioned provisions of international humanitarian law, which provide in a general way that detainees are to be treated humanely and detained in decent conditions. (…)

(i) Allegations of a violation of Article 3 of the Convention

242. The Court notes that the testimonies of Georgian civilians concerning their difficult conditions of detention are consistent with the information in the Human Rights Watch, Amnesty International and OSCE reports. The statement at the witness hearing by W25, head of the "detention centre" is also revealing in this regard, such as when he explained that there were seven cells of different sizes, two toilets and some common premises for more than 160 detainees, and that there had been enough beds for half of the detainees only. He also acknowledged that the basement of the "Ministry of Internal Affairs of South Ossetia" had not been designed to accommodate so many detainees. The respondent Government's argument that there were no other premises available cannot be accepted.

243. The extreme lack of space in a prison cell weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were "degrading" from the point of view of Article 3 of the Convention (see Ananyev and Others, cited above, § 143, and Georgia v. Russia (I), cited above, § 200). Furthermore, men and women were detained together for a certain period of time and there were not enough beds, a situation posing particular difficulties for old people. Lastly, the Court cannot but observe that basic health and sanitary conditions were not met.

244. It transpires from those reports, and from the statements by the Georgian civilians at the witness hearing, that some of the detainees were subjected to vexatious and humiliating measures by their South Ossetian guards: they were frequently insulted and sometimes received blows, such as on their arrival at the detention centre, and were also forced to clean the streets and collect corpses.

245. The Russian officials confirmed at the witness hearing that some of the male detainees had been obliged to clean the streets of Tskhinvali, and that they had even "volunteered" to do so in order to escape their poor conditions of detention.

246. The Court reiterates that Article 3 does not refer exclusively to the infliction of physical pain but also of mental suffering, which is caused by creating a state of anguish and stress by means other than bodily assault (see Iljina and Sarulienė v. Lithuania, no. 32293/05, § 47, 15 March 2011, and El-Masri, cited above, § 202), which was undeniably the case here regarding the treatment suffered by the Georgian detainees.

247. Moreover, it appears from the above-mentioned reports and the statements by the Georgian witnesses that the Russian forces were present in the building, that they delivered food and water supplies and that they questioned some detainees in other parts of the building.

248. Even if the direct participation of the Russian forces has not been clearly demonstrated, since it has been established that the Georgian civilians fell within the jurisdiction of the Russian Federation, the latter was also responsible for the actions of the South Ossetian authorities, without it being necessary to provide proof of "detailed control" in respect of each of their actions (see paragraph 214 above).

249. Lastly, although they were present at the scene, the Russian forces did not intervene to prevent the impugned treatment (see, mutatis mutandis, Z and Others v. the United Kingdom [GC], no. 29392/95, §§ 73-75, ECHR 2001V; M.C. v. Bulgaria, no. 39272/98, § 149, ECHR 2003XII; Members of the Gldani Congregation of Jehovah's Witnesses and Others

v. Georgia, no. 71156/01, §§ 124-25, 3 May 2007; and ElMasri, cited above, § 211).

250. Having regard to all those factors, the Court concludes that there was an administrative practice contrary to Article 3 of the Convention as regards the conditions of detention of some 160 Georgian civilians and the humiliating acts to which they were exposed, which caused them undeniable suffering and must be regarded as inhuman and degrading treatment.

251. Furthermore, in accordance with the Court's case-law (see paragraph 98 above), the rule of exhaustion of domestic remedies does not apply where the existence of an administrative practice is established. The preliminary objection of non-exhaustion of domestic remedies raised by the respondent Government in this regard must therefore be dismissed.

252. There has therefore been a violation of Article 3 of the Convention, and the Russian Federation is responsible for that violation. (…)

VII. Treatment of prisoners of war

257. The applicant Government submitted that more than thirty Georgian prisoners of war had been ill-treated and tortured by Russian and South Ossetian forces in August 2008. They alleged that this amounted to a violation of Article 3 of the Convention, which provides:

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

2. Hearing of witnesses

262. W7, W8 and W9 were members of the Georgian forces and were detained as prisoners of war in August 2008.

263. W7, born in 1972, stated that in August 2008 he had been a corporal in the Georgian armed forces. On 8 August 2008 he was deployed in the Shanghai settlement, Tskhinvali. The witness said that he had been wounded in the shoulder during a Russian bombardment of the Shanghai settlement on 8 August 2008. Shortly thereafter, he was captured by South Ossetian forces. He described his treatment as follows. He was first held in the basement of one of the residential buildings at the Shanghai settlement. He was beaten there by, among others, Russian peacekeepers (they had the sign "MC"[31] on their uniforms, they spoke Russian and looked Russian). On 10 August he was moved to School no. 6 in Tskhinvali, where he was again beaten by, among others, "Russians" (the witness was not certain as to whether they were Russian soldiers or simply fighters from the Russian Federation). On the way to the school, he was first made to walk and then taken by a vehicle from one location to another and beaten by local people. During his stay in the school, two prisoners of war were killed – Sopromadze, because he had been a tank driver, and Khubuluri, because he was an ethnic Ossetian. The witness did not see the actual killing of Sopromadze, but he heard a shot and was made to remove his body. As to Khubuluri, he was taken out one day and never came back. On 12 August 2008, the witness was taken to Tskhinvali police station. There, he was not only beaten as before, but also interrogated and tortured by, among others, the Federal Security Service of the Russian Federation (they tied his hands behind his back with wire for a period of time without giving him water and then untied his hands and poured very cold water into his throat; they also used bayonets and hammers and burnt his hands with lighted cigarettes). On 17 August 2008 he was transferred to a Russian military base. He was finally released on 19 August 2008. He received medical treatment for the first time after his release.

264. W8, born in 1972, stated that in August 2008 he had been a corporal in the Georgian armed forces. On 9 August 2008 he was deployed in the Shanghai settlement, Tskhinvali. The witness said that he had been shot in the knee and captured by South Ossetian forces in the Shanghai settlement on 9 August. He described his treatment as follows. He was first held in the basement of one of the residential buildings in the Shanghai settlement. He was beaten there by South Ossetians. While Russian soldiers were present at the premises, they did not beat him. On 10 August he was moved to School no. 6 in Tskhinvali. As he could not walk (because of his wounded knee), he was carried by other Georgian prisoners of war. On the way to the school as well as in the school, he was beaten by, among others, Russian soldiers. In the school, he was also beaten by officials of the Federal Security Service of the Russian Federation in order to force him to declare that he had seen many dead civilians in Tskhinvali and that US soldiers had been fighting on the Georgian side. During his stay in the school, a Georgian prisoner of war called Sopromadze had been taken out of the room and killed because he was a tank driver. The witness did not see the actual killing, but he heard a shot. On 13 August he was moved first to a Russian military hospital in Tskhinvali and then to a hospital in Vladikavkaz, the Russian Federation, for medical treatment. While in the Russian military hospital in Tskhinvali, he was again beaten by officials of the Federal Security Service of the Russian Federation. He was finally released on 19 August 2008.

265. W9, born in 1983, stated that in August 2008 he had been a lieutenant in the Georgian armed forces. He was deployed in the Georgian port of Poti on 18 August 2008. On 18 August he and twenty-one other soldiers were captured by Russian forces in Poti and taken to Senaki. Ten of them were released the next day. After four days in Senaki, he and the remaining eleven soldiers were relocated to a Russian peacekeepers' base in Chuburkhindji, in the Gali region of Abkhazia. Upon their arrival, they were interrogated and subjected to various forms of ill-treatment by Russian soldiers, including punching, kicking, beating of the soles of the feet and electric shocks. All twelve of them were then placed in a small toilet for four days. There was no light, they could not move, they had to take turns to sit down and, for the first two days, they were given neither food nor water. In addition, during the night, drunken Russian soldiers kicked the door of the toilet, threatening to kill them and verbally assaulting them, but their guards did not let those soldiers enter the toilet. During his crossexamination, the witness stated that he did not know

why this story did not feature in any of the NGOs' reports on the conflict. (…)

(b) Application of the above-mentioned principles to the facts of the case

272. The Court observes that cases of ill-treatment and torture of prisoners of war by South Ossetian forces were mentioned in, among others, the Human Rights Watch, Amnesty International and "August Ruins" reports.

273. At the witness hearing W7 and W8, who had already been heard by Human Rights Watch, described in detail the treatment that had been inflicted on them by the South Ossetian and also the Russian forces (see paragraphs 263-64 above).

274. In the Court's view, their statements are credible, seeing that they are very precise and are consistent with the information appearing in the above-mentioned reports.

275. Having regard to the foregoing, it considers that it has sufficient evidence in its possession to enable it to conclude beyond reasonable doubt that Georgian prisoners of war were victims of treatment contrary to Article 3 of the Convention inflicted by the South Ossetian forces.

276. Even if the direct participation of the Russian forces has not been clearly demonstrated in all cases, since it has been established that the prisoners of war fell within the jurisdiction of the Russian Federation, the latter was also responsible for the actions of the South Ossetian forces[32], without it being necessary to provide proof of "detailed control" of each of those actions (see paragraph 214 above).

277. Furthermore, it can be seen from the above-mentioned reports and the statements of the Georgian witnesses that Russian forces were present on site and that they did not intervene to prevent the impugned treatment (see, mutatis mutandis, Z and Others, cited above, §§ 73-75; M.C. v. Bulgaria, cited above, § 149; Members of the Gldani Congregation of Jehovah's Witnesses and Others, cited above, §§ 124-25; and El-Masri, cited above, § 211).

278. Lastly, the Court considers that the ill-treatment inflicted on the Georgian prisoners of war caused "severe" pain and suffering and must be regarded as acts of torture within the meaning of Article 3 of the Convention. Those acts are particularly serious given that they were perpetrated against prisoners of war, who have a special protected status under international humanitarian law.

279. Having regard to all those factors, the Court concludes that there was an administrative practice contrary to Article 3 of the Convention as regards the acts of torture of which the Georgian prisoners of war were victims.

280. As explained above (see paragraph 251), the preliminary objection of non-exhaustion of domestic remedies raised by the respondent Government in this regard must also be dismissed.

281. There has therefore been a violation of Article 3 of the Convention, and the Russian Federation is responsible for that violation.

V. Persons held in psychiatric establishments

In the 2019 case of Rooman v. Belgium, the applicant, who spoke only German, complained about a lack of therapeutical treatment in a psychiatric hospital:

(Case 106)

C. The Grand Chamber's assessment

1. Recapitulation of the relevant principles

141. As the Court has repeatedly stated, Article 3 of the Convention enshrines one of the most fundamental values of democratic society (see Bouyid v. Belgium [GC], no 23380/09, § 81, ECHR 2015). It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour. In order for treatment to fall within the scope of that provision it must attain a minimum level of severity. The assessment of this minimum 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. Treatment is considered to be "degrading" when it arouses in the victim feelings of fear, anguish or inferiority capable of breaking his or her moral and physical resistance, or when it is such as to drive the victim to act against his or her will or conscience. Although the question whether the purpose of the treatment is to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see Stanev v. Bulgaria [GC], no. 36760/06, §§ 201-03, ECHR 2012, with further references).

142. Measures depriving persons of their liberty inevitably involve an element of suffering and humiliation.

143. That being stated, Article 3 requires the State to ensure that all prisoners are detained in conditions which are compatible with respect for their human dignity, that the manner of their detention does not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in such a measure and that, given the practical demands of imprisonment, their health and well-being are adequately secured by, among other things, providing them with the requisite medical assistance (see Stanev, cited above, § 204). The Court has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them (see Enache v. Romania, no. 10662/06, § 49, 1 April 2014; M.C. v. Poland, no. 23692/09, § 88, 3 March 2015; and A.Ş. v. Turkey, no. 58271/10, § 66, 13 September 2016).

144. The Convention does not contain any provision relating specifically to the situation of persons deprived of their liberty, let alone where they are ill, but it cannot be ruled out that the detention of a person who is ill may raise issues under Article 3 (see Matencio v. France, no. 58749/00, § 76, 15 January 2004).

In particular, the Court has held that the suffering which flows from naturally occurring illness, whether physical or mental, may in itself be covered by Article 3, where it is, or risks being, exacerbated by conditions of detention for which the authorities can be held responsible (see, in particular, Hüseyin Yıldırım v. Turkey, no. 2778/02, § 73, 3 May 2007, and Gülay Çetin v. Turkey, no. 44084/10, § 101, 5 March 2013). Hence, the detention of a person who is ill in inappropriate physical and medical conditions may in principle amount to treatment contrary to Article 3 (see Kudła v. Poland [GC], no. 30210/96, § 94, ECHR 2000XI; Rivière v. France, no. 33834/03, § 74, 11 July 2006; and Claes, cited above, §§ 9497).

145. In determining whether the detention of an ill person is compatible with Article 3 of the Convention, the Court takes into consideration the individual's health and the effect of the manner of execution of his or her detention on it (see, among other authorities, Matencio, cited above, §§ 7677, and Gülay Çetin, cited above, §§ 102 and 105). It has held that the conditions of detention must under no circumstances arouse in the person deprived of his liberty feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance (see Selmouni v. France [GC], no. 25803/94, § 99, ECHR 1999V). On this point, it has recognised that detainees with mental disorders are more vulnerable than ordinary detainees, and that certain requirements of prison life pose a greater risk that their health will suffer, exacerbating the risk that they suffer from a feeling of inferiority, and are necessarily a source of stress and anxiety. It considers that such a situation calls for an increased vigilance in reviewing whether the Convention has been complied with (see Sławomir Musiał v. Poland, no. 28300/06, § 96, 20 January 2009; see also Claes, cited above, § 101). In addition to their vulnerability, the assessment of the situation of these particular individuals has to take into consideration, in certain cases, the vulnerability of those persons and, in some cases, their inability to complain coherently or at all about how they are being affected by any particular treatment (see, for example, Herczegfalvy v. Austria, 24 September 1992, § 82, Series A no. 244; Aerts v. Belgium, 30 July 1998, § 66, Reports of Judgments and Decisions 1998-V; and Murray v. the Netherlands [GC], no. 10511/10, § 106, 26 April 2016).

146. The Court also takes account of the adequacy of the medical assistance and care provided in detention (see Stanev, cited above, § 204; Rivière, cited above, § 63; and Sławomir Musiał, cited above, §§ 8588). A lack of appropriate medical care for persons in custody is therefore capable of engaging a State's responsibility under Article 3 (see Naoumenko v. Ukraine, no. 42023/98, § 112, 10 February 2004, and Murray, cited above, § 105). In addition, it is not enough for such detainees to be examined and a diagnosis made; instead, it is essential that proper treatment for the problem diagnosed should also be provided (see Claes, cited above, §§ 94-97, and Murray, cited above, § 106), by qualified staff (see Keenan v. the United Kingdom, no. 27229/95, §§ 11516, ECHR 2001III, and Gülay Çetin, cited above, § 112).

147. In this connection, the "adequacy" of medical assistance remains the most difficult element to determine. The Court reiterates that the mere fact that a detainee has been seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate. The authorities must also ensure that a comprehensive record is kept concerning the detainee's state of health and his or her treatment while in detention, that diagnosis and care are prompt and accurate, and that where necessitated by the nature of a medical condition supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation, rather than addressing them on a symptomatic basis. The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through. Furthermore, medical treatment provided within prison facilities must be appropriate, that is, at a level comparable to that which the State authorities have committed themselves to provide to the population as a whole. Nevertheless, this does not mean that every detainee must be guaranteed the same level of medical treatment that is available in the best health establishments outside prison facilities (see Blokhin v. Russia [GC], no. 47152/06, § 137, 23 March 2016, with further references).

148. Where the treatment cannot be provided in the place of detention, it must be possible to transfer the detainee to hospital or to a specialised unit (see Raffray Taddei v. France, no. 36435/07, §§ 58-59, 21 December 2010; see also, conversely, Kudła, cited above, §§ 82-100, and Cocaign v. France, no. 32010/07, 3 November 2011).

2. Application of these principles to the present case

149. The Court observes, firstly, that the existence of the mental-health problems at the origin of the applicant's compulsory confinement has not been disputed. He was placed in compulsory confinement on the basis of several medical reports certifying that he had a narcissistic and paranoid personality and that he suffered from a severe mental disorder making him incapable of controlling his actions. It is for this reason that the applicant has been detained on a continuous basis in the Paifve EDS since 21 January 2004.

150. Further, in contrast to other applicants who raised similar complaints in previous cases against Belgium (see, for example, Claes, cited above, and Lankester v. Belgium, no. 22283/10, 9 January 2014), the applicant does not complain that the Paifve facility is inappropriate for persons placed in compulsory confinement, but alleges that, as a result of a language problem, he was not receiving the treatment that ought to have been provided to him (see paragraph 137 above).

151. The Court notes at the outset that the possibility for a patient to be treated by staff who speak his or her language, even where it is an official language of the State, is not an established ingredient of the right enshrined in Article 3, or

in any other Convention provision, particularly with regard to the provision of appropriate care to individuals who have been deprived of their liberty. Taking into account the language difficulties encountered by the medical authorities, the Court must examine whether, in parallel with other factors, necessary and reasonable steps were taken to guarantee communication that would facilitate the effective administration of appropriate treatment. In the area of psychiatric treatment in relation to Article 3, the purely linguistic element could prove to be decisive as to the availability or the administration of appropriate treatment, but only where other factors do not make it possible to offset the lack of communication and, in particular, subject to cooperation by the individual concerned (see, mutatis mutandis, Dhoest v. Belgium, no. 10448/83, Commission report of 14 May 1987, Decisions and Reports (DR), § 124, a case in which the applicant spoke Dutch, one of the official languages of the State, and was placed in a social-protection facility in the French-speaking region of Belgium).

152. The Court will now examine the applicant's complaint in two stages, taking account of the therapeutic package which, according to the Government, has been in place since August 2017.

(a) The treatment situation from the beginning of 2004 to August 2017

153. The Court notes that the Government's argument to the effect that the applicant received care corresponding to his needs is not factually correct. On the contrary, all the evidence in the case file would indicate a failure to provide therapeutic treatment resulting from the fact that it was impossible for the medical staff and the applicant to communicate. Thus, contrary to the Government's affirmations in their observations before the Grand Chamber, namely that the applicant had been provided with sufficient psychiatric treatment (see paragraphs 68 and 138 above), it appears clearly from the case file that both the psychiatrists who were in contact with the applicant and the judicial authorities acknowledged the lack of treatment. They made it sufficiently clear from September 2005 onwards that the applicant was in particular need of long-term psychopharmacological and psycho-therapeutic treatment, to be administered in German, the only language that he spoke and understood (see paragraph 14 above). The language barrier was the sole factor limiting the applicant's effective access to the treatment that was normally available (see paragraphs 18, 23, 25, 29, 40, 51 and 55 above). The Court further notes that attempts were made from 2006 onwards to find therapeutic support, in German, outside the Paifve facility (see paragraphs 16, 2122 and 25-26 above). On several occasions the applicant's applications for discharge were postponed by the CDS on account of the difficulty in beginning therapy as a result of the language problem (see paragraphs 16, 19, 22 and 26 above). The report of 27 March 2015 stated that the applicant's neuropsychological condition was practically identical to what it had been in 2009 (see paragraph 44 above). In its report of 12 January 2017, the Paifve EDS's psychosocial team stated that this language barrier had prevented clinical observation aimed at assessing the applicant's dangerousness (see paragraph 60 above). Lastly, the CPS acknowledged that there had been a violation of Article 3 during those periods when he was not being treated by German-speaking medical staff (see paragraph 64 above).

154. The Court notes that the applicant was admittedly able to meet qualified German-speaking staff during the period in question. However, as emphasised by the CDS itself, that contact, whether with the experts at Verviers Prison or with the German-speaking nurse and welfare officer in Paifve, was not in a therapeutic context (see paragraphs 20, 21 and 2529 above). Only the contact with an external German-speaking psychologist between May and November 2010 (see paragraph 51 above) corresponds to the treatment referred to by the Government; however, viewed in relation to the overall duration of the applicant's deprivation of liberty, these consultations cannot be regarded as a real provision of treatment, especially since they came to an end as a result of the State's failure to pay the relevant fees and expenses. In addition, there is nothing in the case file to suggest that psychiatric treatment or individualised care was provided during this period, particularly in the light of the indefinite duration of the applicant's placement.

155. Moreover, with regard to the Government's statement that the applicant had failed to produce any real evidence to substantiate his allegations or to indicate what treatment had not been provided or offered to him (see paragraph 138 above), the Court notes that the applicant complained to the social-protection bodies about the failure to provide treatment and about the impact on his health of the lack of any prospect of a change in his situation (see paragraph 27 above). The Court has already repeatedly rejected such a formalistic approach and emphasised that the assessment of whether the treatment or punishment concerned is incompatible with the standards of Article 3 has, in the case of mentally ill persons, to take into consideration their vulnerability and their inability, in some cases, to complain coherently or at all about how they are being affected by any particular treatment (see Claes, cited above, § 93; Murray, cited above, § 106; and W.D., cited above, § 105).

156. The Court notes that the social protection bodies took measures to find a solution to the problem raised in the applicant's particular case (see paragraphs 24 and 26 above). However, those sporadic efforts were thwarted by the authorities' failure to take appropriate measures to bring about a change in the situation with regard to communication. It was not until the CSDS's decision and the order by the president of the Frenchlanguage Brussels Court of First Instance in 2014 that practical measures, which had nonetheless been recommended for years, were taken, such as the provision of a German-speaking psychologist (see paragraphs 43 and 51 above). However, it appears that this arrangement ceased towards the end of 2015 (see paragraph 53 above), and only resumed in August 2017 (see paragraph 64 above). It is clear that the delay in putting in place measures that would facilitate communication with the

applicant had the effect of depriving him of the treatment required by his health condition. Moreover, the Government have not argued that other elements in the applicant's medical care compensated for the absence of communication in German, and the Court is unable to identify any measure to that effect in the case file. In particular, it considers that the contact with the welfare assistant and the meetings with the nurse cannot be considered as a compensatory measure for that purpose: the role played by these individuals, while important in terms of providing support to the applicant, did not take place in the context of psychotherapeutic treatment. In the Court's view, the only methods envisaged by the authorities to remedy the problem of communication with the applicant consisted in seeking out either care staff who themselves spoke German, or another facility, and both of these approaches were unsuccessful (see paragraph 40 above). Indeed, the authorities themselves noted that neither of these two solutions was achievable, since, on the one hand, they considered that no Germanspeaking staff were available, and, on the other, the applicant's dangerousness ruled out his placement in a less secure German-speaking facility. Thus, it seems that throughout this entire period the authorities responsible for the applicant were content with the excuse that there were no German-speaking specialists in the Paifve facility to justify the fact that he was not receiving appropriate treatment.

157. The Court considers that these elements are sufficient to demonstrate that the national authorities failed to provide treatment for the applicant's health condition. His continued detention in the Paifve EDS without a realistic hope of change and without appropriate medical support for a period of about thirteen years must accordingly – in spite of the few consultations organised over a few short periods throughout this entire period – be viewed as particularly acute hardship, causing him distress of an intensity exceeding the unavoidable level of suffering inherent in detention.

158. Whatever the obstacles, mentioned by the Government, which the applicant might himself have created through his behaviour, the Court considers that these did not dispense the State from its obligations towards the applicant over such a lengthy period of deprivation of liberty. Furthermore, the Court cannot overlook the worrying findings reached more generally by the Paifve Supervisory Board and the CPT, both of which found profound shortcomings in the care system in the Paifve EDS (see paragraphs 115 and 120 above).

159. The Court therefore concludes that there was a violation of Article 3 of the Convention in respect of the period from the beginning of 2004 to August 2017.

VI. Foreign nationals and asylum-seekers

In the 2001 case of Dougoz v. Greece, the applicant complained about the conditions of his detention pending expulsion, in particular because of overcrowding and a lack of sleeping facilities:

(Case 107)

43. The Government argued that the conditions of detention of the applicant did not amount to inhuman or degrading treatment contrary to Article 3 because the required level of severity was not reached. The seventeenmonth detention was due to the applicant's various efforts to stop his expulsion.

44. The Court recalls that, according to the Convention organs' caselaw, illtreatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (see Ireland v. the United Kingdom, judgment of 18 January 1978, Series A no. 25, p. 65, § 162). The same holds true in so far as degrading treatment is concerned (see Costello-Roberts v. the United Kingdom, judgment of 25 March 1993, Series A no. 247C, p. 59, § 30). 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 (see Ireland v. the United Kingdom and CostelloRoberts, both cited above, loc. cit.).

45. In the present case the Court notes that the applicant was first held for several months at the Drapetsona police station, which is a detention centre for persons held under aliens legislation. He alleges, inter alia, that he was confined in an overcrowded and dirty cell with insufficient sanitary and sleeping facilities, scarce hot water, no fresh air or natural daylight and no yard in which to exercise. It was even impossible for him to read a book because his cell was so overcrowded. In April 1998 he was transferred to the police headquarters in Alexandras Avenue, where conditions were similar to those at Drapetsona and where he was detained until 3 December 1998, the date of his expulsion to Syria.

The Court observes that the Government did not deny the applicant's allegations concerning overcrowding and a lack of beds or bedding.

46. The Court considers that conditions of detention may sometimes amount to inhuman or degrading treatment. In the "Greek case" (applications nos. 3321/67, 3322/67, 3323/67 and 3344/67, Commission's report of 5 November 1969, Yearbook 12) the Commission reached this conclusion regarding overcrowding and inadequate facilities for heating, sanitation, sleeping arrangements, food, recreation and contact with the outside world. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant. In the present case, although the Court has not conducted an onsite visit, it notes that the applicant's allegations are corroborated by the conclusions of the CPT report of 29 November 1994 regarding the police

headquarters in Alexandras Avenue. In its report the CPT stressed that the cellular accommodation and detention regime in that place were quite unsuitable for a period in excess of a few days, the occupancy levels being grossly excessive and the sanitary facilities appalling. Although the CPT had not visited the Drapetsona detention centre at that time, the Court notes that the Government had described the conditions in Alexandras as being the same as at Drapetsona, and the applicant himself conceded that the former were slightly better with natural light, air in the cells and adequate hot water.

47. Furthermore, the Court does not lose sight of the fact that in 1997 the CPT visited both the Alexandras police headquarters and the Drapetsona detention centre and felt it necessary to renew its visit to both places in 1999. The applicant was detained in the interim, from July 1997 to December 1998.

48. In the light of the above, the Court considers that the conditions of detention of the applicant at the Alexandras police headquarters and the Drapetsona detention centre, in particular the serious overcrowding and absence of sleeping facilities, combined with the inordinate length of the period during which he was detained in such conditions, amounted to degrading treatment contrary to Article 3.

49. Accordingly, there has been a violation of Article 3 of the Convention.

In the 2011 case of M.S.S. v. Belgium and Greece, the Court examined the conditions of detention and reception of asylum-seekers in Greece:

(Case 108)

218. The States must have particular regard to Article 3 of the Convention, which enshrines one of the most fundamental values of democratic societies and prohibits in absolute terms torture and inhuman or degrading treatment or punishment irrespective of the circumstances and of the victim's conduct (see, among other authorities, Labita v. Italy [GC], no. 26772/95, § 119, ECHR 2000-IV).

219. The Court has held on numerous occasions that to fall within the scope of Article 3 the ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see, for example, Kudła v. Poland [GC], no. 30210/96, § 91, ECHR 2000-XI).

220. The Court considers treatment to be "inhuman" when it was "premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering" (ibid., § 92).

Treatment is considered to be "degrading" when it humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance (ibid., § 92, and Pretty v. the United Kingdom, no. 2346/02, § 52, ECHR 2002III). It may suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others (see, among other authorities, Tyrer v. the United Kingdom, 25 April 1978, § 32, Series A no. 26). Lastly, although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see Peers v. Greece, no. 28524/95, § 74, ECHR 2001-III).

221. Article 3 of the Convention requires the State to ensure that detention conditions are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the detainees to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured (see, for example, Kudła, cited above, § 94).

222. The Court has held that confining an asylum-seeker to a prefabricated cabin for two months without allowing him outdoors or to make a telephone call, and with no clean sheets and insufficient hygiene products, amounted to degrading treatment within the meaning of Article 3 of the Convention (see S.D. v. Greece, no. 53541/07, §§ 49-54, 11 June 2009). Similarly, a period of detention of six days, in a confined space, with no possibility of taking a walk, no leisure area, sleeping on dirty mattresses and with no free access to a toilet is unacceptable with respect to Article 3 (ibid., § 51). The detention of an asylum-seeker for three months on police premises pending the application of an administrative measure, with no access to any recreational activities and without proper meals has also been considered as degrading treatment (see Tabesh v. Greece, no. 8256/07, §§ 38-44, 26 November 2009). Lastly, the Court has found that the detention of an applicant, who was also an asylum-seeker, for three months in an overcrowded place in appalling conditions of hygiene and cleanliness, with no leisure or catering facilities, where the dilapidated state of repair of the sanitary facilities rendered them virtually unusable and where the detainees slept in extremely filthy and crowded conditions amounted to degrading treatment prohibited by Article 3 (see A.A. v. Greece, no. 12186/08, §§ 57-65, 22 July 2010).

(b) Application in the present case

223. The Court notes first of all that the States which form the external borders of the European Union are currently experiencing considerable difficulties in coping with the increasing influx of migrants and asylum-seekers. The situation is exacerbated by the transfers of asylum-seekers by other member States in application of the Dublin Regulation (see paragraphs 65-82 above). The Court does not underestimate the burden and pressure this situation places on the States concerned, which are all the greater in

the present context of economic crisis. It is particularly aware of the difficulties involved in the reception of migrants and asylum-seekers on their arrival at major international airports and of the disproportionate number of asylum-seekers when compared to the capacities of some of those States. However, having regard to the absolute character of Article 3, that cannot absolve a State of its obligations under that provision.

224. That being so, the Court does not accept the argument of the Greek Government that it should take these difficult circumstances into account when examining the applicant's complaints under Article 3.

225. The Court deems it necessary to take into account the circumstances of the applicant's placement in detention and the fact that in spite of what the Greek Government suggest, the applicant did not, on the face of it, have the profile of an "illegal immigrant". On the contrary, following the agreement on 4 June 2009 to take charge of the applicant, the Greek authorities were aware of the applicant's identity and of the fact that he was a potential asylum-seeker. In spite of that, he was immediately placed in detention, without any explanation being given.

226. The Court notes that according to various reports by international bodies and non-governmental organisations (see paragraph 160 above), the systematic placement of asylum-seekers in detention without informing them of the reasons for their detention is a widespread practice of the Greek authorities.

227. The Court also takes into consideration the applicant's allegations that he was subjected to brutality and insults by the police during his second period of detention. It observes that these allegations are not supported by any documentation such as a medical certificate and that it is not possible to establish with certainty exactly what happened to the applicant. However, the Court is once again obliged to note that the applicant's allegations are consistent with numerous accounts collected from witnesses by international organisations (see paragraph 160 above). It notes, in particular, that following its visit to the holding centre next to Athens International Airport in 2007, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) reported cases of ill-treatment at the hands of police officers (see paragraph 163 above).

228. The Court notes that the parties disagree about the sectors in which the applicant was held. The Government submit that he was held in two different sectors and that the difference between the facilities in the two sectors should be taken into account. The applicant, on the other hand, claims that he was held in exactly the same conditions during both periods of detention. The Court notes that the assignment of detainees to one sector or another does not follow any strict pattern in practice but may vary depending on the number of detainees in each sector (see paragraph 165 above). It is possible, therefore, that the applicant was detained twice in the same sector. The Court concludes that there is no need for it to take into account the distinction made by the Government on this point.

229. It is important to note that the applicant's allegations concerning living conditions in the holding centre are supported by similar findings by the CPT, the UNHCR, Amnesty International and Médecins sans Frontières – Greece (see paragraphs 163, 213, 165 and 166 respectively) and are not explicitly disputed by the Government.

230. The Court notes that, according to the findings made by organisations that visited the holding centre next to the airport, the sector for asylum-seekers was rarely unlocked and the detainees had no access to the water fountain outside and were obliged to drink water from the toilets. In the sector for arrested persons, there were 145 detainees in a 110 sq. m space. In a number of cells there was only 1 bed for 14 to 17 people. There were not enough mattresses and a number of detainees were sleeping on the bare floor. There was insufficient room for all the detainees to lie down and sleep at the same time. Because of the overcrowding, there was a lack of sufficient ventilation and the cells were unbearably hot. Detainees' access to the toilets was severely restricted and they complained that the police would not let them out into the corridors. The police admitted that the detainees had to urinate in plastic bottles which they emptied when they were allowed to use the toilets. It was observed in all sectors that there was no soap or toilet paper, that sanitary and other facilities were dirty, that the sanitary facilities had no doors and that the detainees were deprived of outdoor exercise.

231. The Court reiterates that it has already considered that such conditions, which are found in other detention centres in Greece, amounted to degrading treatment within the meaning of Article 3 of the Convention (see paragraph 222 above). In reaching that conclusion, it took into account the fact that the applicants were asylum-seekers.

232. The Court sees no reason to depart from that conclusion on the basis of the Greek Government's argument that the periods when the applicant was kept in detention were brief. It does not regard the duration of the two periods of detention imposed on the applicant – four days in June 2009 and a week in August 2009 – as being insignificant. In the present case, the Court must take into account that the applicant, being an asylum-seeker, was particularly vulnerable because of everything he had been through during his migration and the traumatic experiences he was likely to have endured previously.

233. On the contrary, in the light of the available information on the conditions at the holding centre next to Athens International Airport, the Court considers that the conditions of detention experienced by the applicant were unacceptable. It considers that, taken together, the feeling of arbitrariness and the feeling of inferiority and anxiety often associated with it, as well as the profound effect such conditions of detention indubitably have on a person's dignity, constitute degrading treatment contrary to Article 3 of the Convention. In addition, the applicant's distress was accentuated by the vulnerability

inherent in his situation as an asylum-seeker.

234. There has therefore been a violation of Article 3 of the Convention.

In the case of Georgia v. Russia (1), decided in 2014, the Russian government had ordered a considerable number of Georgian nationals to leave the country. The Court reviewed their conditions of detention:

(Case 109)

193. The Court notes that the Georgian nationals were first detained in police stations (for periods ranging from a few hours to one or two days, according to the witness statements) and then in detention centres for foreigners (for a period ranging from two to fourteen days according to the witness statements), and then taken by bus to various airports in Moscow and expelled to Georgia by aeroplane (see paragraph 45 above). Some of the Georgian nationals against whom expulsion orders were issued left the Russian Federation by their own means.

194. The parties disagreed on most aspects of the conditions of detention of the Georgian nationals. However, where conditions of detention are in dispute, there is no need for the Court to establish the veracity of each and every disputed or contentious point. It can conclude that there has been a violation of Article 3 on the basis of any serious allegation which the respondent Government do not dispute (see, mutatis mutandis, Idalov, cited above, § 96).

195. In that connection the Court will also examine the evidence before it.

196. It notes firstly that, even if during the witness hearing some of the Georgian witnesses made contradictory statements regarding certain points (particularly regarding the size of the cells), their description of the conditions of detention in the police stations and the detention centres for foreigners and the conditions of expulsion to Georgia are generally consistent and correspond to those of the international governmental and non-governmental organisations (see paragraphs 52 to 55 and 72 to 74 above). These organisations indicated indeed that many Georgian nationals were subjected to inhuman and degrading treatment on account of the poor conditions of detention and expulsion (for example, overcrowded cells, lack of food and water, lack of hygiene and transport of more than a hundred Georgian nationals by cargo plane).

197. Furthermore, Mr Pataridze, Consul of Georgia in the Russian Federation at the material time, said that he and his team had visited more than a dozen detention centres in different regions of the Russian Federation, including those in St Petersburg and Moscow. He confirmed that it was mainly Georgian nationals who had been held in all these centres, that the cells had been overcrowded, the conditions of detention very difficult, the hygiene appalling and that there had been too few beds and mattresses.

198. The Court does not doubt that the conditions of detention were extremely difficult given the large number of Georgian nationals detained with a view to their expulsion in such a short time. In that connection it finds the statements of the Georgian witnesses at the witness hearing more credible than those of the Russian officials, who described very good conditions of detention.

199. Having regard to all the material submitted to the Court, it appears first and foremost undeniable that the Georgian nationals were detained in cells in police centres or severely overcrowded detention centres for foreigners. In any event the personal space available to them did not meet the minimum standard as laid down in the Court's case-law (see, among many other authorities, Idalov, cited above, § 101). Moreover, the Georgian nationals had to take it in turns to sleep because of the lack of individual sleeping places.

200. The extreme lack of space in a prison cell weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were "degrading" within the meaning of Article 3 of the Convention (see Ananyev and Others, cited above, § 143).

201. Generally speaking, the Court has indicated on several occasions that overcrowding in Russian prisons was a matter of particular concern to it. In a large number of cases, it has consistently found a violation of the applicants' rights on account of a lack of sufficient personal space during their detention (see, inter alia, Idalov, cited above, § 97, and Solovyevy v. Russia, no. 918/02, § 123, 24 April 2012). The present case, which concerns detention centres for foreigners, is no exception in this respect.

202. The Court also refers to the report of the European Committee for the Prevention of Torture (CPT) on the Russian Federation of December 2001 in which it stated that it was very concerned about the conditions of detention of foreign nationals in these centres, stressing overcrowding in cells (report to the Russian Government on the CPT's visit to the Russian Federation from 2 to 7 December 2001, § 32, CPT/Inf (2003) 30).

203. Furthermore, the Court cannot but note in the present case that the evidence submitted to it also shows that basic health and sanitary conditions were not met and that the detainees suffered from a lack of privacy owing to the fact that the toilets were not separated from the rest of the cells.

204. In that connection the Court reiterates that the inadequacy of the conditions of detention constitutes a recurring structural problem in the Russian Federation which results from a dysfunctioning of the Russian prison system and has led the Court to conclude that there has been a violation of Article 3 in a large number of judgments since the first finding of a violation in 2002 in the case of Kalashnikov v. Russia (no. 47095/99, ECHR 2002VI) and to adopt a pilot judgment in the above-cited case of Ananyev and Others. The Court therefore sees no reason to depart from that conclusion in the present case.

205. Having regard to all the foregoing factors, the Court concludes that the conditions of detention caused undeniable suffering to the Georgian nationals and should be regarded as both inhuman and degrading treatment which amounted to an administrative practice in breach of Article 3 of the Convention.

In the 2016 case of Khlaifia and others v. Italy, the Court examined the conditions of detention and living of asylum-seekers in Italy and summarized the principles applicable to such cases:

(Case 110)

D. The Court's assessment

1. Principles established in the Court's case-law

158. The Court would reiterate at the outset that the prohibition of inhuman or degrading treatment is a fundamental value in democratic societies (see, among many other authorities, Selmouni v. France [GC], no. 25803/94, § 95, ECHR 1999-V; Labita, cited above, § 119; Gäfgen v. Germany [GC], no. 22978/05, § 87, ECHR 2010; El-Masri v. the former Yugoslav Republic of Macedonia [GC], no. 39630/09, § 195, ECHR 2012; and Mocanu and Others v. Romania [GC], nos. 10865/09, 45886/07 and 32431/08, § 315, ECHR 2014 (extracts)). It is also a value of civilisation closely bound up with respect for human dignity, part of the very essence of the Convention (see Bouyid v. Belgium [GC], no. 23380/09, §§ 81 and 8990, ECHR 2015). The prohibition in question is absolute, for no derogation from it is permissible even in the event of a public emergency threatening the life of the nation or in the most difficult circumstances, such as the fight against terrorism and organised crime, irrespective of the conduct of the person concerned (see, inter alia, Chahal, cited above, § 79; Georgia v. Russia (I) [GC], no. 13255/07, § 192, ECHR 2014 (extracts); Svinarenko and Slyadnev v. Russia [GC], nos. 32541/08 and 43441/08, § 113, ECHR 2014 (extracts); and Bouyid, cited above, § 81).

(a) Whether the treatment falls within Article 3 of the Convention

159. Nevertheless, according to the Court's well-established case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of that level is relative and depends on all the circumstances of the case, principally the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, Ireland v. the United Kingdom, cited above, § 162; Price v. the United Kingdom, no. 33394/96, § 24, ECHR 2001VII; Mouisel v. France, no. 67263/01, § 37, ECHR 2002IX; Jalloh v. Germany [GC], no. 54810/00, § 67, ECHR 2006IX; Gäfgen, cited above, § 88; El-Masri, cited above, § 196; Naumenko v. Ukraine, no. 42023/98, § 108, 10 February 2004; and Svinarenko and Slyadnev, cited above, § 114).

160. In order to determine whether the threshold of severity has been reached, the Court also takes other factors into consideration, in particular:

(a) The purpose for which the ill-treatment was inflicted, together with the intention or motivation behind it (see Bouyid, cited above, § 86), although the absence of an intention to humiliate or debase the victim cannot conclusively rule out its characterisation as "degrading" and therefore prohibited by Article 3 (see, among other authorities, V. v. the United Kingdom [GC], no. 24888/94, § 71, ECHR 1999IX; Peers v. Greece, no. 28524/95, §§ 68 and 74, ECHR 2001III; Price, cited above, § 24; and Svinarenko and Slyadnev, cited above, § 114).

(b) The context in which the ill-treatment was inflicted, such as an atmosphere of heightened tension and emotions (see Bouyid, cited above, § 86).

(c) Whether the victim is in a vulnerable situation, which is normally the case for persons deprived of their liberty (see, in respect of police custody, Salman v. Turkey [GC], no. 21986/93, § 99, ECHR 2000VII, and Bouyid, cited above, § 83 in fine), but there is an inevitable element of suffering and humiliation involved in custodial measures and this as such, in itself, will not entail a violation of Article 3. Nevertheless, under this provision the State must ensure that a person is detained in 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 of an intensity 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 2000XI, and Rahimi v. Greece, no. 8687/08, § 60, 5 April 2011).

(b) Protection of vulnerable persons and detention of potential immigrants

161. The Court would emphasise that Article 3 taken in conjunction with Article 1 of the Convention must enable effective protection to be provided, particularly to vulnerable members of society, and should include reasonable measures to prevent ill-treatment of which the authorities have or ought to have knowledge (see Z. and Others v. the United Kingdom [GC], no. 29392/95, § 73, ECHR 2001-V, and Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, no. 13178/03, § 53, ECHR 2006-XI). In this connection, the Court must examine whether or not the impugned regulations and practices, and in particular the manner in which they were implemented in the instant case, were defective to the point of constituting a violation of the respondent State's positive obligations under Article 3 of the Convention (see Mubilanzila Mayeka et Kaniki Mitunga, cited above, § 54, and Rahimi, cited above, § 62).

162. While States are entitled to detain potential immigrants under their "undeniable ... right to control aliens' entry into and residence in their territory" (see Amuur, cited above, § 41), this right must be exercised in accordance with the provisions of the Convention (see Mahdid and Haddar v. Austria (dec.), no. 74762/01, 8 December 2005; Kanagaratnam and Others v. Belgium, no. 15297/09, § 80, 13 December 2011; and Sharifi and Others v. Italy and Greece, no. 16643/09, § 188, 21

October 2014). The Court must have regard to the particular situation of these persons when reviewing the manner in which the detention order was implemented against the yardstick of the Convention provisions (see Riad and Idiab v. Belgium, nos. 29787/03 and 29810/03, § 100, 24 January 2008; M.S.S. v. Belgium and Greece, cited above, § 217; and Rahimi, cited above, § 61).

(c) Conditions of detention in general and prison overcrowding in particular

163. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see Dougoz v. Greece, no. 40907/98, § 46, ECHR 2001-II). In particular, the length of the period during which the applicant was detained in the impugned conditions will be a major factor (see Kalashnikov v. Russia no. 47095/99, § 102, ECHR 2002-VI; Kehayov v. Bulgaria, no. 41035/98, § 64, 18 January 2005; Alver v. Estonia, no. 64812/01, § 50, 8 November 2005; and Ananyev and Others v. Russia, nos. 42525/07 and 60800/08, § 142, 10 January 2012).

164. Where overcrowding reaches a certain level, the lack of space in an institution may constitute the key factor to be taken into account in assessing the conformity of a given situation with Article 3 (see, in respect of prisons, Karalevičius v. Lithuania, no. 53254/99, § 39, 7 April 2005). Extreme lack of space in prison cells weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were "degrading" within the meaning of Article 3 of the Convention (see Mursič v. Croatia [GC], no. 7334/13, § 104, 20 October 2016).

165. Thus, in examining cases of severe overcrowding, the Court has found that this aspect sufficed in itself to entail a violation of Article 3 of the Convention. As a general rule, although the space considered desirable by the CPT for collective cells is 4 sq. m, the personal space available to the applicants in the relevant cases was less than 3 sq. m (see Kadikis v. Latvia, no. 62393/00, § 55, 4 May 2006; Andrey Frolov v. Russia, no. 205/02, §§ 47-49, 29 March 2007; Kantyrev v. Russia, no. 37213/02, §§ 50-51, 21 June 2007; Sulejmanovic v. Italy, no. 22635/03, § 43, 16 July 2009; Ananyev and Others, cited above, §§ 144-45; and Torreggiani and Others v. Italy, nos. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10, § 68, 8 January 2013).

166. The Court has recently confirmed that the requirement of 3 sq. m of floor surface per detainee (including space occupied by furniture but not counting the in-cell sanitary facility) in multi-occupancy accommodation should be maintained as the relevant minimum standard for its assessment under Article 3 of the Convention (see Mursič, cited above, §§ 110 and 114). It also stated that a weighty but not irrebuttable presumption of a violation of Article 3 arose when the personal space available to a detainee fell below 3 sq. m in multi-occupancy accommodation. The presumption could be rebutted in particular by demonstrating that the cumulative effects of the other aspects of the conditions of detention compensated for the scarce allocation of personal space. In that connection the Court takes into account such factors as the length and extent of the restriction, the degree of freedom of movement and the adequacy of out-of-cell activities, as well as whether or not the conditions of detention in the particular facility are generally decent (ibid., §§ 122-38).

167. However, in cases where the overcrowding was not significant enough to raise, in itself, an issue under Article 3, the Court has noted that other aspects of detention conditions had to be taken into account in examining compliance with that provision. Those aspects include the possibility of using toilets with respect for privacy, ventilation, access to natural air and light, quality of heating and compliance with basic hygiene requirements (see also the points set out in the European Prison Rules adopted by the Committee of Ministers, as cited in paragraph 32 of the judgment in Torreggiani and Others, cited above). As the Court found in Mursič (cited above, § 139), in cases where a prison cell measuring in the range of 3 to 4 sq. m of personal space per inmate is at issue, the space factor remains a weighty consideration in the Court's assessment of the adequacy of the conditions of detention. Thus, in such cases, the Court has found a violation of Article 3 where the lack of space went together with other poor material conditions of detention such as: a lack of ventilation and light (see Torreggiani and Others, cited above, § 69; see also Babushkin v. Russia, no. 67253/01, § 44, 18 October 2007; Vlasov v. Russia, no. 78146/01, § 84, 12 June 2008; and Moiseyev v. Russia, no. 62936/00, §§ 124-27, 9 October 2008); limited access to outdoor exercise (see István Gábor Kovács v. Hungary, no. 15707/10, § 26, 17 January 2012) or a total lack of privacy in the cell (see Novoselov v. Russia, no. 66460/01, §§ 32 and 40-43, 2 June 2005; Khudoyorov v. Russia, no. 6847/02, §§ 106-07, ECHR 2005-X (extracts); and Belevitskiy v. Russia, no. 72967/01, §§ 73-79, 1 March 2007).

(d) Evidence of ill-treatment

168. Allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" and such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see Ireland v. the United Kingdom, cited above, § 161 in fine; Labita, cited above, § 121; Jalloh, cited above, § 67; Ramirez Sanchez v. France [GC], no. 59450/00, § 117, ECHR 2006IX; Gäfgen, cited above, § 92; and Bouyid, cited above, § 82).

169. Even if there is no evidence of actual bodily injury or intense physical or mental suffering, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and thus fall within Article 3 (see, among other authorities, Gäfgen, cited above, § 89; Vasyukov v. Russia, no. 2974/05, § 59, 5 April 2011; Georgia v. Russia (I), cited above, § 192; and Svinarenko and Slyadnev, cited above, § 114). It may well suffice for the victim to be humiliated in his

own eyes, even if not in the eyes of others (see, among other authorities, Tyrer v. the United Kingdom, 25 April 1978, § 32, Series A no. 26; M.S.S. v. Belgium and Greece, cited above, § 220; and Bouyid, cited above, § 87).

2. Application of the above-mentioned principles in cases comparable to that of the applicants

170. The Court has already had occasion to apply the abovementioned principles to cases that are comparable to that of the applicants, concerning in particular the conditions in which would-be immigrants and asylum-seekers were held in reception or detention centres. Two of those cases have been examined by the Grand Chamber.

171. In its judgment in M.S.S. v. Belgium and Greece (cited above, §§ 223-34), the Grand Chamber examined the detention of an Afghan asylum-seeker at Athens international airport for four days in June 2009 and for one week in August 2009. It found that there had been a violation of Article 3 of the Convention, referring to cases of ill-treatment by police officers reported by the CPT and to the conditions of detention as described by a number of international organisations and regarded as "unacceptable". In particular, the detainees had been obliged to drink water from the toilets; there were 145 detainees in a 110 sq. m space; there was only one bed for fourteen to seventeen people; there was a lack of sufficient ventilation and the cells were unbearably hot; detainees' access to the toilets was severely restricted and they had to urinate in plastic bottles; there was no soap or toilet paper in any sector; sanitary facilities were dirty and had no doors; and detainees were deprived of outdoor exercise.

172. The case of Tarakhel v. Switzerland ([GC], no. 29217/12, §§ 93122, ECHR 2014) concerned eight Afghan migrants who alleged that in the event of their removal to Italy they would have been victims of inhuman or degrading treatment relating to the existence of "systemic deficiencies" in the reception facilities for asylum-seekers in that country. The Grand Chamber examined the general reception system for asylum-seekers in Italy and noted deficiencies in terms of the insufficient size of reception centres and the poor living conditions in the facilities available. In particular, there were long waiting lists for access to the centres, and the capacity of the facilities did not seem capable of absorbing the greater part of the demand for accommodation. While taking the view that the situation in Italy could "in no way be compared to the situation in Greece at the time of the M.S.S. judgment" and that it did not in itself act as a bar to all removals of asylum-seekers to that country, the Court nevertheless took the view that "the possibility that a significant number of asylum seekers [might] be left without accommodation or accommodated in overcrowded facilities without any privacy, or even in insalubrious or violent conditions, [could] not be dismissed as unfounded". Having regard to the fact that the applicants were two adults accompanied by their six minor children, the Court found that "were the applicants to be returned to Italy without the Swiss authorities having first obtained individual guarantees from the Italian authorities that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together, there would be a violation of Article 3 of the Convention".

173. The conditions of detention of migrants or travellers have also given rise to a number of Chamber judgments.

In S.D. v. Greece (no. 53541/07, §§ 49-54, 11 June 2009) the Court found that to confine an asylum-seeker for two months in a prefabricated unit, without any possibility of going outside or using the telephone, and without having clean sheets or sufficient toiletries, constituted degrading treatment for the purposes of Article 3 of the Convention. Similarly, a detention period of six days, in a confined space, without any possibility of exercise or any leisure area, and where the detainees slept on dirty mattresses and had no free access to toilets, was unacceptable under Article 3.

174. Tabesh v. Greece (no. 8256/07, §§ 38-44, 26 November 2009) concerned the detention of an asylum-seeker for three months, pending the application of an administrative measure, on police premises without any possibility of leisure activity or appropriate meals. The Court held that this constituted degrading treatment. It reached a similar conclusion in A.A. v. Greece (no. 12186/08, §§ 57-65, 22 July 2010), which concerned the three-month detention of an asylum-seeker in an overcrowded facility where the cleanliness and conditions of hygiene were atrocious, where no facility was available for leisure or meals, where the poor state of repair of the bathrooms made them virtually unusable and where the detainees had to sleep in dirty and cramped conditions (see, to the same effect, C.D. and Others v. Greece, nos. 33441/10, 33468/10 and 33476/10, §§ 49-54, 19 December 2013, concerning the detention of twelve migrants for periods of between forty-five days and two months and twenty-five days; F.H. v. Greece, no. 78456/11, §§ 98-103, 31 July 2014, concerning the detention pending removal of an Iranian migrant in four detention centres for a total duration of six months; and Ha.A. v. Greece, no. 58387/11, §§ 26-31, 21 April 2016, where the Court noted that reliable sources had reported on the severe lack of space, 100 detainees having been "crammed" into an area of 35 sq. m.; see also Efremidze v. Greece, no. 33225/08, §§ 3642, 21 June 2011; R.U. v. Greece, no. 2237/08, §§ 62-64, 7 June 2011; A.F. v. Greece, no. 53709/11, §§ 71-80, 13 June 2013; and B.M. v. Greece, no. 53608/11, §§ 67-70, 19 December 2013).

175. The case of Rahimi (cited above, §§ 63-86) concerned the detention pending deportation of an Afghan migrant, who at the time was 15 years old, in a centre for illegal immigrants at Pagani, on the island of Lesbos. The Court found a violation of Article 3 of the Convention, observing as follows: that the applicant was an unaccompanied minor; that his allegations about serious problems of overcrowding (number of detainees four times higher than capacity), poor hygiene and lack of contact with the outside world had been corroborated by the reports of the Greek Ombudsman, the CPT and a number of international organisations; that even though the applicant had only been detained for a very limited period of

two days, on account of his age and personal situation he was extremely vulnerable; and that the detention conditions were so severe that they undermined the very essence of human dignity.

176. It should also be pointed out that in the case of T. and A. v. Turkey (cited above, §§ 91-99) the Court found that the detention of a British national at Istanbul airport for three days was incompatible with Article 3 of the Convention. The Court observed that the first applicant had been confined in personal space of at most 2.3 sq. m and as little as 1.23 sq. m, and that there was only one sofa-bed on which the inmates took turns to sleep.

177. The Court, however, found no violation of Article 3 of the Convention in Aarabi v. Greece (no. 39766/09, §§ 42-51, 2 April 2015), concerning the detention pending removal of a Lebanese migrant aged 17 and ten months at the relevant time, which had taken place: from 11 to 13 July 2009 on coastguard premises on the island of Chios; from 14 to 26 July 2009 at the Mersinidi detention centre; from 27 to 30 July 2009 at the Tychero detention centre; and on 30 and 31 July 2009 on police premises in Thessaloniki. The Court noted in particular that the Greek authorities could not reasonably have known that the applicant was a minor at the time of his arrest and therefore his complaints had necessarily been examined as if they had been raised by an adult; that the periods of detention in the Tychero centre and on the coastguard and police premises had lasted only two or three days, and that no other aggravating factor had been put forward by the applicant (there were no CPT findings about the Tychero detention centre); that the applicant had spent thirteen days in the Mersinidi detention centre, in respect of which there were no reports from national or international bodies for the relevant period; that this centre had been mentioned in an Amnesty International report covering a subsequent period, referring to a lack of toiletries and the fact that some inmates slept on mattresses placed on the bare floor, without however reporting any general hygiene problems; that even though the Government had acknowledged that Mersinidi had exceeded its accommodation capacity, there was no evidence that the applicant had had less than 3 sq. m of personal space in his cell; that on 26 July 2009 the authorities had decided to transfer a certain number of individuals, including the applicant, to another detention centre, thus showing that they had sought in a timely manner to improve the detention conditions endure by the applicant; and that following his visit to Greece in October 2010, the UN Special Rapporteur on torture and other cruel, inhuman or degrading punishment or treatment had described the detention conditions in Mersinidi as adequate.

3. Application of those principles in the present case
(a) The existence of a humanitarian emergency and its consequences

178. The Court finds it necessary to begin by addressing the Government's argument that it should take due account of the context of humanitarian emergency in which the events in question had taken place (see paragraph 151 above).

179. In this connection the Court, like the Chamber, cannot but take note of the major migration crisis that unfolded in 2011 following events related to the "Arab Spring". As the PACE Ad Hoc Sub-Committee noted on 30 September 2011 (see, in particular, §§ 9-13 of its report, cited in paragraph 49 above), following uprisings in Tunisia and Libya there was a fresh wave of arrivals by boat, as a result of which Italy declared a state of humanitarian emergency on the island of Lampedusa and appealed for solidarity from the member States of the European Union. By 21 September 2011, when the applicants were on the island, 55,298 persons had arrived there by sea. As indicated by the Government (see paragraph 150 above), between 12 February and 31 December 2011, 51,573 nationals of third States (of whom about 46,000 were men and 26,000 were Tunisian nationals) landed on the islands of Lampedusa and Linosa. The arrival en masse of North African migrants undoubtedly created organisational, logistical and structural difficulties for the Italian authorities in view of the combination of requirements to be met, as they had to rescue certain vessels at sea, to receive and accommodate individuals arriving on Italian soil, and to take care of those in particularly vulnerable situations. The Court would observe in this connection that according to the data supplied by the Government (ibid.) and not disputed by the applicants, there were some 3,000 women and 3,000 children among the migrants who arrived during the period in question.

180. In view of the significant number of factors, whether political, economic or social, which gave rise to such a major migration crisis and taking account of the challenges facing the Italian authorities, the Court cannot agree with the applicants' view (see paragraph 140 above) that the situation in 2011 was not exceptional. An excessive burden might be imposed on the national authorities if they were required to interpret those numerous factors precisely and to foresee the scale and timeframe of an influx of migrants. In that connection it should be observed that the significant increase of arrivals by sea in 2011 compared to previous years was confirmed by the report of the PACE Ad Hoc Sub-Committee. According to that report, 15,527, 18,047, 11,749 and 31,252 migrants had arrived on Lampedusa in 2005, 2006, 2007 and 2008 respectively. The number of arrivals had diminished in 2009 and 2010, with, respectively, 2,947 and 459 individuals (see, in particular, §§ 9 and 10 of the report, cited in paragraph 49 above). That reduction had been significant enough for the authorities to close the reception centres on Lampedusa (see, in particular, ibid., §§ 10 and 51). When those data are compared with the figures for the period from 12 February to 31 December 2011 (see paragraphs 150 and 179 above), which saw 51,573 nationals from third countries arriving on Lampedusa and Linosa, it can be appreciated that the year 2011 was marked by a very significant increase in the number of migrants arriving by sea from North African countries on the Italian islands to the south of Sicily.

181. Neither can the Court criticise, in itself, the decision to concentrate the initial reception of the migrants on Lampedusa. As a result of its geographical situation, that was where most rudimentary vessels would arrive and it was

often necessary to carry out rescues at sea around the island in order to protect the life and health of the migrants. It was therefore not unreasonable, at the initial stage, to transfer the survivors from the Mediterranean crossing to the closest reception facility, namely the CSPA at Contrada Imbriacola.

182. Admittedly, as noted by the Chamber, the accommodation capacity available in Lampedusa was both insufficient to receive such a large number of new arrivals and ill-suited to stays of several days. It is also true that in addition to that general situation there were some specific problems just after the applicants' arrival. On 20 September a revolt broke out among the migrants being held at the Contrada Imbriacola CSPA and the premises were gutted by an arson attack (see paragraphs 14 and 26 above). On the next day, about 1,800 migrants started protest marches through the island's streets (see paragraph 14 above) and clashes occurred in the port of Lampedusa between the local community and a group of aliens threatening to explode gas canisters. Acts of self-harm and vandalism were also perpetrated (see paragraphs 26 and 28 above). Those incidents contributed to exacerbating the existing difficulties and creating a climate of heightened tension.

183. The foregoing details show that the State was confronted with many problems as a result of the arrival of exceptionally high numbers of migrants and that during this period the Italian authorities were burdened with a large variety of tasks, as they had to ensure the welfare of both the migrants and the local people and to maintain law and order.

184. That being said, the Court can only reiterate its well-established case-law to the effect that, having regard to the absolute character of Article 3, an increasing influx of migrants cannot absolve a State of its obligations under that provision (see M.S.S. v. Belgium and Greece, cited above, § 223; see also Hirsi Jamaa and Others v. Italy [GC], no. 27765/09, §§ 122 and 176, ECHR 2012), which requires that persons deprived of their liberty must be guaranteed conditions that are compatible with respect for their human dignity. In this connection the Court would also point out that in accordance with its case-law as cited in paragraph 160 above, even treatment which is inflicted without the intention of humiliating or degrading the victim, and which stems, for example, from objective difficulties related to a migrant crisis, may entail a violation of Article 3 of the Convention.

185. While the constraints inherent in such a crisis cannot, in themselves, be used to justify a breach of Article 3, the Court is of the view that it would certainly be artificial to examine the facts of the case without considering the general context in which those facts arose. In its assessment, the Court will thus bear in mind, together with other factors, that the undeniable difficulties and inconveniences endured by the applicants stemmed to a significant extent from the situation of extreme difficulty confronting the Italian authorities at the relevant time.

186. Like the Chamber, the Court is of the view that, under Article 3 of the Convention, it is appropriate to examine separately the two situations at issue, namely the reception conditions in the Contrada Imbriacola CSPA, on the one hand, and those on the ships Vincent and Audace, on the other.

(b) Conditions in the Contrada Imbriacola CSPA

187. The Court would begin by observing that it is called upon to determine whether the conditions of the applicants' detention in the Lampedusa CSPA can be regarded as "inhuman or degrading treatment" within the meaning of Article 3 of the Convention. For that purpose a number of factors must be taken into consideration.

188. First, at the time of the applicants' arrival, the conditions in the CSPA were far from ideal. The applicants' allegations about the general state of the centre, and in particular the problems of overcrowding, poor hygiene and lack of contact with the outside world, are confirmed by the reports of the Senate's Special Commission and Amnesty International (see paragraphs 35 and 50 above). The Special Commission, an institution of the respondent State itself, reported that rooms accommodating up to twenty-five persons contained four-tier bunk beds placed side by side, that foam-rubber mattresses, many of them torn, were placed along corridors and outside landings, and that in many rooms there were no light bulbs. In toilets and showers privacy was ensured only by cloth or plastic curtains placed in an improvised manner, water pipes were sometimes blocked or leaking, the smell from the toilets pervaded the whole area, and rainwater carried dampness and dirt into the living quarters. Amnesty International also reported on severe overcrowding, a general lack of hygiene and toilets which were smelly and unusable.

189. The Chamber rightly emphasised these problems. It cannot, however, be overlooked that the Senate's Special Commission visited the Contrada Imbriacola CSPA on 11 February 2009 (see paragraph 35 above), about two years and seven months before the applicants' arrival. The Court does not find it established, therefore, that the conditions described by the Special Commission still obtained in September 2011 at the time of the applicants' arrival.

190. Information from a later date is available in a report by the PACE Ad Hoc Sub-Committee, which carried out a fact-finding mission on Lampedusa on 23 and 24 May 2011, less than four months before the applicants' arrival (see paragraph 49 above). It is true that the Ad Hoc SubCommittee expressed its concerns about the conditions of hygiene as a result of overcrowding in the CSPA, observing that the facility was illsuited to stays of several days (see, in particular, §§ 30 and 48 of the report). That report nevertheless indicates the following points in particular (ibid., §§ 28, 29, 32 and 47):

(a) The associations participating in the "Praesidium Project" (UNHCR, the IOM, the Red Cross and Save the Children) were authorised to maintain a permanent presence inside the reception centre, making interpreters and cultural mediators available.

(b) All those participants were working together on good terms, endeavouring to coordinate their efforts, with the shared priority of saving lives in sea rescue operations, doing everything possible to receive new arrivals in decent conditions and then assisting in rapidly transferring them to centres elsewhere in Italy.

(c) Reception conditions were decent although very basic (while rooms were full of mattresses placed side by side directly on the ground, the buildings – prefabricated units – were well ventilated because the rooms had windows; and the sanitary facilities appeared sufficient when the centre was operating at its normal capacity).

(d) Anyone wishing to be examined by a doctor could be, and no request to that effect was refused.

(e) A regular inspection of the sanitary facilities and food at the centres was carried out by the Head of the Palermo Health Unit.

191. In the light of that information the Court takes the view that the conditions in the Lampedusa CSPA cannot be compared to those which, in the judgments cited in paragraphs 171 and 173-75 above, justified finding a violation of Article 3 of the Convention.

192. As to the alleged overcrowding in the CSPA, the Court observes that, according to the applicants, the maximum capacity in the Contrada Imbriacola facility was 804 (see paragraph 142 above), whereas the Government submitted that it could accommodate up to about 1,000 (see paragraph 153 above). The applicants added that on 16, 17, 18, 19 and 20 September, the centre housed 1,357, 1,325, 1,399, 1,265 and 1,017 migrants respectively. Those figures do not quite correspond to the indications provided by the Government, which at the hearing before the Court stated that at the time of the applicants' stay there had been 917 migrants in the Contrada Imbriacola CSPA.

193. In those circumstances, the Court is not in a position to determine the precise number of persons being held there at the material time (see, mutatis mutandis, Sharifi and Others, cited above, § 189). It would merely observe that if the applicants are correct in their indication of the number of persons held and the capacity of the CSPA, the centre must have exceeded its limit (804 persons) by a percentage of between 15% and 75%. This means that the applicants must clearly have had to cope with the problems resulting from a degree of overcrowding. However, their situation cannot be compared to that of individuals detained in a prison, a cell or a confined space (see, in particular, the case-law cited in paragraphs 163-67, 173 and 176 above). The applicants did not dispute the Government's assertions that the migrants held in the Contrada Imbriacola CSPA could move around freely within the confines of the facility, communicate by telephone with the outside world, make purchases and contact representatives of humanitarian organisations and lawyers (see paragraph 153 above). Even though the number of square metres per person in the centre's rooms has not been established, the Court finds that the freedom of movement enjoyed by the applicants in the CSPA must have alleviated in part, or even to a significant extent, the constraints caused by the fact that the centre's maximum capacity was exceeded.

194. As the Chamber rightly pointed out, when they were held at the Lampedusa CSPA, the applicants were weakened physically and psychologically because they had just made a dangerous crossing of the Mediterranean. Nevertheless, the applicants, who were not asylumseekers, did not have the specific vulnerability inherent in that status, and did not claim to have endured traumatic experiences in their country of origin (contrast M.S.S. v. Belgium and Greece, cited above, § 232). In addition, they belonged neither to the category of elderly persons nor to that of minors (on the subject of which, see, among other authorities, Popov v. France, nos. 39472/07 and 39474/07, §§ 90-103, 19 January 2012). At the time of the events they were aged between 23 and 28 and did not claim to be suffering from any particular medical condition. Nor did they complain of any lack of medical care in the centre.

195. The Court further notes that the applicants were placed in the Contrada Imbriacola CSPA on 17 and 18 September 2011 respectively (see paragraphs 11 and 12 above), and that they were held there until 20 September, when, following a fire, they were transferred to a sports complex on Lampedusa (see paragraph 14 above). Their stay in that facility thus lasted three and four days respectively. As the Chamber pointed out, the applicants thus stayed in the CSPA for only a short period. Their limited contact with the outside world could not therefore have had serious consequences for their personal situations (see, mutatis mutandis, Rahimi, cited above, § 84).

196. In certain cases the Court has found violations of Article 3 in spite of the short duration of the deprivation of liberty in question (see, in particular, the three judgments cited by the applicants as referred to in paragraph 143 above). However, the present case can be distinguished in various respects from those judgments. In particular, in the Brega judgment (cited above, §§ 39-43), a forty-eight-hour period of detention had been combined with wrongful arrest, a renal colic attack subsequently suffered by the applicant, a delay in medical assistance, a lack of bedding, and a low temperature in the cell. In the case of T. and A. v. Turkey (cited above, §§ 91-99), the personal space available to the first applicant for the three days of her detention had been limited (between 2.3 and 1.23 sq. m) and there had been only one sofa-bed on which the inmates took turns to sleep. Lastly, the Gavrilovici judgment (cited above, §§ 41-44) concerned a longer period of detention than that endured by the present applicants (five days), with the aggravating factors that the four inmates were obliged to sleep on a wooden platform about 1.8 m wide, that there was no heating or toilet in the cell and that the cells in the Ştefan-Vodă police station had subsequently been closed because they were held to be incompatible with any form of detention. The Court also has regard to the cases of Koktysh v. Ukraine (no. 43707/07, §§ 22 and 91-95, 10 December 2009), concerning detention periods of ten and four days in a

very overcrowded cell, where prisoners had to take it in turns to sleep, in a prison where the conditions had been described as "atrocious", and Căşuneanu v. Romania (no. 22018/10, §§ 6062, 16 April 2013), concerning a five-day period of detention in circumstances of overcrowding, poor hygiene, dirtiness, and a lack of privacy and outdoor exercise.

197. That being said, the Court cannot overlook the fact, pointed out both by the PACE Ad Hoc Sub-Committee and by Amnesty International (see paragraphs 49-50 above), that the Lampedusa CSPA was not suited to stays of more than a few days. As that facility was designed more as a transit centre than a detention centre, the authorities were under an obligation to take steps to find other satisfactory reception facilities with enough space and to transfer a sufficient number of migrants to those facilities. However, in the present case the Court cannot address the question whether that obligation was fulfilled, because only two days after the arrival of the last two applicants, on 20 September 2011, a violent revolt broke out among the migrants and the Lampedusa CSPA was gutted by fire (see paragraph 14 above). It cannot be presumed that the Italian authorities remained inactive and negligent, nor can it be maintained that the transfer of the migrants should have been organised and carried out in less than two or three days. In this connection it is noteworthy that in the Aarabi case (cited above, § 50) the Court found that the decision of the domestic authorities to transfer a certain number of individuals, including the applicant, to another detention centre had demonstrated their willingness to improve the applicant's conditions of detention in a timely manner. The relevant decision in Aarabi, however, had been taken thirteen days after the applicant's placement in the Mersinidi centre.

198. The Court further observes that the applicants did not claim that they had been deliberately ill-treated by the authorities in the centre, that the food or water had been insufficient or that the climate at the time had affected them negatively when they had had to sleep outside.

199. Having regard to all the factors set out above, taken as a whole, and in the light of the specific circumstances of the applicants' case, the Court finds that the treatment they complained of does not exceed the level of severity required for it to fall within Article 3 of the Convention.

200. It follows, in the present case, that the conditions in which the applicants were held at the Contrada Imbriacola CSPA did not constitute inhuman or degrading treatment and that there has therefore been no violation of Article 3 of the Convention.

201. Finally, the Court has also taken note of the Government's statements (see paragraph 149 above) that significant amounts have been invested in order to set up new reception facilities, and that during his visit on 23 and 24 June 2013 the UNHCR representative for Southern Europe noted with satisfaction the steps taken by the national and local authorities in order to improve the general situation on the island of Lampedusa (see, mutatis mutandis, Aarabi, § 50 in fine).

(c) The conditions on the ships Vincent and Audace

202. As regards the conditions on the two ships, the Court notes that the first applicant was placed on the Vincent, with some 190 others, while the second and third applicants were transferred to the Audace, which held about 150 persons (see paragraph 15 above). Their confinement on the ships began on 22 September 2011 and ended on 29 or 27 September 2011, depending on the applicant; it thus lasted about seven days for the first applicant and about five days for the second and third applicants (see paragraph 17 above).

203. The Court has examined the applicants' allegations that, on board the ships, they were grouped together in an overcrowded lounge area, that they could only go outside onto small decks for a few minutes every day, and that they had to sleep on the floor and wait several hours to use the toilets; also that they were not allowed access to the cabins, that food was distributed by being thrown on the floor, that they were occasionally insulted and ill-treated by the police and that they did not receive any information from the authorities (see paragraphs 16, 145 and 146 above).

204. The Court notes that those allegations are not based on any objective reports, merely their own testimony. The applicants argued that the absence of any corroborating material could be explained by the nature of the ships, which they described as isolated and inaccessible places, and that in those circumstances it was for the Government to provide evidence that the requirements of Article 3 had been met (see paragraph 147 above).

205. On the latter point, the Court has held that where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see Gäfgen, cited above, § 92; compare also Tomasi v. France, 27 August 1992, § 110, Series A no. 241A; Ribitsch v. Austria, 4 December 1995, § 34, Series A no. 336; Aksoy v. Turkey, 18 December 1996, § 61, Reports 1996-VI; and Selmouni, cited above, § 87). In addition, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, strong presumptions of fact will arise in respect of injuries occurring during such detention. The burden of proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim (see Salman, cited above, § 100; Rivas v. France, no. 59584/00, § 38, 1 April 2004; Turan Çakır v. Belgium, no. 44256/06, § 54, 10 March 2009; and Mete and Others v. Turkey, no. 294/08, § 112, 4 October 2012). In the absence of any such explanation, the Court can draw inferences which may be unfavourable for the Government (see, among other authorities, ElMasri, cited above, § 152). This is justified by the fact that persons in the hands of the police or a comparable authority are in a vulnerable position and the authorities are under a duty to protect them (see, Bouyid, cited above, §§ 83-84; see also, in respect of persons in police custody, Salman, cited above, § 99).

206. In the light of that case-law, the burden of proof in this area may be reversed where allegations of ill-treatment at the hands of the police or other similar agents of the State are arguable and based on corroborating factors, such as the existence of injuries of unknown and unexplained origin. The Court observes, however, that such factors are totally absent in the present case, as the applicants have failed to produce any documents certifying any signs or after-effects of the alleged ill-treatment or any third-party testimony confirming their version of the facts.

207. In any event, the Court cannot but attach decisive weight to the fact that the Government adduced before it a judicial decision contradicting the applicants' account, namely that of the Palermo preliminary investigations judge dated 1 June 2012. That decision indicates (see paragraph 27 above) that the migrants were provided with medical assistance, hot water, electricity, meals and hot drinks. In addition, according to a press agency note dated 25 September 2011 and cited in the decision, a member of parliament, T.R., accompanied by the deputy chief of police and by police officers, boarded the vessels in Palermo harbour and spoke to some of the migrants. The MP reported that the migrants were in good health, that they had assistance and that they were sleeping in cabins with bedding or on reclining seats. They had access to prayer rooms, the Civil Protection Authority had made clothing available to them and the food was satisfactory (pasta, chicken, vegetables, fruit and water).

208. The Court takes the view that there is no reason for it to question the impartiality of an independent judge such as the Palermo preliminary investigations judge. To the extent that the applicants criticised the judge's decision on the ground that it was based on the statements of an MP to the press and not reiterated at the hearing, and that the police had been present during the MP's visit (see paragraph 147 above), the Court reiterates that where allegations are made under Article 3 of the Convention it is prepared to conduct a thorough examination of the findings of the national courts, and that in doing so it may take account of the quality of the domestic proceedings and any possible flaws in the decision-making process (see Denisenko and Bogdanchikov v. Russia, no. 3811/02, § 83, 12 February 2009, and Bouyid, cited above, § 85). Nevertheless, sound evidence alone, not mere hypothetical speculation, is necessary to call into question the assessment of the facts by an independent domestic court. The applicants have not, however, produced any evidence capable of showing that the press inaccurately reported the MP's statements. In addition, the police presence in the detention centre cannot be regarded as unusual and cannot, in itself, give rise to objectively justified doubts as to the reliability of the results of a visit to or inspection of such a facility. The Court would indicate its agreement with the Chamber's findings that the fact that the MP was accompanied by the deputy chief of police and police officers did not in itself mean that the MP's independence or the veracity of his account had to be called into question.

209. As to the applicants' allegations about the appeal made to the Italian Government by Médecins sans Frontières on 28 September 2011 (see paragraph 147 above), the Court notes that on that date the return of the migrants who had been held on the ships was already in progress. The second and third applicants had already boarded planes for Tunis, while the first applicant was to do so the following day (29 September 2011 – see paragraph 17 above). Even if the Government had responded to the appeal from Médecins sans Frontières as soon as possible, the inspection would have taken place when the ships were already being vacated. It could not therefore have realistically provided any useful evidence by which to assess the conditions of accommodation and, in particular, the existence of a serious overcrowding problem as described by the applicants.

210. Having regard to the foregoing, it cannot be established that the accommodation conditions on the ships reached the minimum level of severity required for treatment to fall within Article 3 of the Convention. The applicants' allegations as to the lack of relevant information or explanations from the authorities and the point that their confinement on the ships followed on from their negative experience in the Contrada Imbriacola CSPA (see paragraph 146 above) cannot alter that finding.

211. It follows that the conditions in which the applicants were held on the ships Vincent and Audace did not constitute inhuman or degrading treatment. There has accordingly been no violation of Article 3 of the Convention under this head.

In the 2019 case of Z.A. and others v. Russia, the applicants were held for a prolonged period in the transit zone of Sheremetyevo airport in Moscow pending examination of their asylum applications:

(Case 111)

3. The applicants complained under Article 5 § 1 of the Convention that they had been unlawfully detained in the transit zone of Sheremetyevo Airport pending examination of their asylum applications. Relying on Article 3 of the Convention, they further complained that the conditions of their detention had been inadequate.

C. Third-party intervener

178. The UNHCR described the material conditions of the stay of asylumseekers in Russian airport transit zones as follows.

179. The conditions of stay in airport transit zones were not regulated by Russian law. Nor had they been improved over the previous several years. Asylum-seekers stranded in transit zones were deprived of access to fresh air, privacy, food, and access to medical and social care. They had no choice but to stay in the open area of the transit zone in question without access to any hygienic facilities and to sleep on the floor. The UNHCR distributed basic food items and bed linen, clothing, and hygienic products on a weekly basis.

180. Russian law did not place responsibility on any State authority for ensuring minimum basic care for asylum-seekers in transit zones. The period during which an asylum-seeker had to undergo such a dire lack of basic facilities could be prolonged as on average the complete asylum procedure, including appeals, could last between one and two years.

D. The Court's assessment

I. General principles

181. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of that level is relative and depends on all the circumstances of the case, principally the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim. In the context of confinement and living conditions of asylum seekers, the Court has summarised the relevant general principles in the case of Khlaifia and Others (cited above, §§ 158-69).

182. Article 3 of the Convention requires the State to ensure that detention conditions are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the detainees to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured (see, for example, Kudła v. Poland [GC], no. 30210/96, § 94, ECHR 2000XI).

183. In so far as the confinement of aliens and asylum-seekers is concerned, the Court reiterates the standard under Article 3 of the Convention, as recapitulated in M.S.S. v. Belgium and Greece ([GC], no. 30696/09, §§ 216-18, ECHR 2011 (see also Dougoz v. Greece, no. 40907/98, § 44, ECHR 2001II; Kaja v. Greece, no. 32927/03, §§ 45-46, 27 July 2006; S.D. v. Greece, no. 53541/07, §§ 45-48, 11 June 2009; Mahamed Jama v. Malta, no. 10290/13, §§ 86-89, 26 November 2015; Khlaifia and Others, cited above, §§ 163-67; Boudraa v. Turkey, no. 1009/16, §§ 28-29, 28 November 2017; and S.F. and Others v. Bulgaria, no. 8138/16, §§ 78-83, 7 December 2017), according to which it must be accompanied by suitable safeguards for the persons concerned and is acceptable only in order to enable States to prevent unlawful immigration while complying with their international obligations and without depriving asylum-seekers of the protection afforded by the 1951 Geneva Convention relating to the Status of Refugees and the European Convention on Human Rights (see also Rahimi v. Greece, no. 8687/08, § 62, 5 April 2011, Khlaifia and Others, cited above, § 162, in the context of positive obligations visàvis foreign nationals pending issuance of a transit visa; and Shioshvili and Others v. Russia, no. 19356/07, §§ 83-86, 20 December 2016).

184. The States' legitimate concern to foil the increasingly frequent attempts to circumvent immigration restrictions must not deprive asylumseekers of the protection afforded by these conventions (see Amuur, cited above, § 43).

185. Where the Court is called upon to examine the conformity of the manner and method of the execution of the measure with the provisions of the Convention, it must look at the particular situations of the persons concerned (see Riad and Idiab, cited above, § 100). The States must have particular regard to Article 3 of the Convention, which enshrines one of the most fundamental values of democratic societies and prohibits in absolute terms torture and inhuman or degrading treatment or punishment irrespective of the circumstances and of the victim's conduct (see, among other authorities, Labita v. Italy [GC], no. 26772/95, § 119, ECHR 2000IV).

186. The Court further reiterates that, quite apart from the necessity of having sufficient personal space, other aspects of physical conditions of detention are relevant for the assessment of compliance with Article 3 in such cases. Relevant elements include access to outdoor exercise, natural light or air, availability of ventilation, and compliance with basic sanitary and hygiene requirements (see, for example, S.D. v. Greece, cited above, §§ 49-54; Tabesh v. Greece, no. 8256/07, §§ 38-44, 26 November 2009; A.A. v. Greece, no. 12186/08, §§ 57-65, 22 July 2010; E.A. v. Greece, no. 74308/10, §§ 50-51, 30 July 2015; Abdi Mahamud v. Malta, no. 56796/13, §§ 89-90, 3 May 2016; Alimov v. Turkey, no. 14344/13, §§ 84-85, 6 September 2016; Abdullahi Elmi and Aweys Abubakar v. Malta, nos. 25794/13 and 28151/13, §§ 113-14, 22 November 2016; and Khlaifia and Others, cited above, § 167).

2. Application of those principles

187. The Court notes first of all that many of the Contracting Parties to the Convention are experiencing considerable difficulties in coping with the influx of migrants and asylum-seekers. The Court does not underestimate the burden and pressure this situation places on the States concerned and it is particularly aware of the difficulties involved in the reception of migrants and asylumseekers on their arrival at major international airports.

188. However, the Court would reiterate in this connection that the prohibition of inhuman or degrading treatment is a fundamental value in democratic societies. It is also a value of civilisation closely bound up with respect for human dignity, part of the very essence of the Convention. The prohibition in question is absolute, for no derogation from it is permissible even in the event of a public emergency threatening the life of the nation or in the most difficult circumstances, such as the fight against terrorism and organised crime, irrespective of the conduct of the person concerned (see Khlaifia and Others, cited above, § 158 with further references). The difficulties mentioned in the above paragraph cannot therefore absolve a State of its obligations under Article 3.

189. Having regard to its earlier finding that the applicants' stay in the airport transit zone amounted to a deprivation of liberty (see paragraph 156 above), the Court's task in the present case is to review the applicants' detention against the yardstick of the Convention provisions and to examine, in particular, whether the applicants were detained in conditions compatible with respect for human dignity (see Riad and Idiab, cited above, § 100, and Khlaifia and Others, cited above, § 162).

190. It is important to note that the applicants gave a credible and reasonably detailed description of their living conditions in the airport transit zone, which are supported by similar findings by the UNHCR (see paragraphs 122, 179 and 180 above), and are not explicitly disputed by the Government. This being so, referring to its well-established standard of proof in conditions-of-detention cases (see Muršić v. Croatia [GC], no. 7334/13, § 128, 20 October 2016; see also Ananyev and Others v. Russia, nos. 42525/07 and 60800/08, §§ 121-23, 10 January 2012), the Court accepts that description as accurate.

191. On the basis of the available material, the Court can clearly see that the conditions of the applicants' stay in the transit zone of Sheremetyevo Airport were unsuitable for an enforced long-term stay. In its view, a situation where a person not only has to sleep for months at a stretch on the floor in a constantly lit, crowded and noisy airport transit zone without unimpeded access to shower or cooking facilities and without outdoor exercise, but also has no access to medical or social assistance (see paragraphs 41 and 42 above) falls short of the minimum standards of respect for human dignity.

192. This situation was aggravated in the circumstances of the case by the fact that the applicants were left to their own devices in the transit zone, in disregard of the Russian domestic rules granting every asylum-seeker the right to be issued with an examination certificate and to be placed in temporary accommodation facilities pending examination of the asylum application (see paragraphs 99 and 100 above; compare Riad and Idiab, cited above, § 101).

193. The Court would also note that three of the applicants were eventually recognised by the UNHCR as being in need of international protection (see paragraphs 54, 77 and 94 above), which suggests that their distress was accentuated on account of the events that they had been through during their migration (see M.S.S. v. Belgium and Greece, cited above, § 232).

194. Lastly, the Court notes the extremely long duration of the detention for each of the applicants. The applicants' detention lasted for many months in a row: seven months and nineteen days in the case of Mr Z.A.; five months and one day in the case of Mr M.B.; one year, nine months and at least twenty-eight days in the case of Mr A. M.; and seven months and twenty-two days in the case of Mr Yasien (see paragraph 148 above).

195. The Court considers that, taken together, the appalling material conditions which the applicants had to endure for such long periods of time and the complete failure of the authorities to take care of the applicants constitute degrading treatment contrary to Article 3 of the Convention.

196. Nothing in the Government's submissions warrants concluding otherwise. The Court has also ruled that the applicants were under the respondent State's control and in their custody throughout the relevant period of time (see paragraph 151 above).

197. The Court concludes that there has therefore been a violation of Article 3 of the Convention in respect of each applicant.

Summary of Part 4. Special measures and special categories of detained persons

High security and safety measures

The prohibition of torture and inhuman or degrading treatment or punishment is applicable in all cases, without exception, including where, for any reason, high security and safety measures are considered to be necessary. Even if it is considered necessary to adopt a disciplinary measure against certain prisoners, their dignity must always be respected (Hellig case).

Solitary confinement

According to the European Court of Human Rights, the solitary confinement of a dangerous prisoner may, in certain circumstances, constitute inhuman or degrading treatment, or even torture in certain instances. The Court considers that complete sensory isolation, coupled with total social isolation, can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason. On the other hand, in the Court's opinion, the prohibition of contacts with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment.

Stringent security measures existing for dangerous prisoners may prevent the risk of escape, attack or disturbance of the prison community. Such measures are often based on separation of the prison community together with tighter controls. However, in order to avoid any risk of arbitrariness, substantive reasons must be given when a protracted period of solitary confinement is order or extended. The decision should thus make it possible to establish that the authorities have carried out a reassessment that takes into account any changes in the prisoner's circumstances, situation or behaviour. The statement of reasons will need to be increasingly detailed and compelling the more time goes by.

Furthermore, such measures, which are a form of "imprisonment within the prison", should be resorted to only exceptionally and after every precaution has been taken. A system of regular monitoring of the prisoner's physical and mental condition should also be set up in order to ensure its compatibility with continued solitary confinement.

In the cases of two high-profile detainees convicted for terrorist offences, the Court found the isolation to be justified and not involving sensory deprivation (Öcalan and Ramirez Sanchez cases). In contrast, in a case of a prisoner put in solitary confinement not because of his general dangerousness, but his inability to adapt to prison conditions, the Court considered that another solution should have been found (Mathew case).

According to the case law of the Inter-American Court of Human Rights, prolonged isolation and deprivation of communication are in themselves considered to be cruel and inhuman punishment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being.

Life sentences

The European Court of Human Rights considers that imposition of a sentence of life imprisonment on an adult offender is not in itself incompatible with Article 3 or any other Article of the European Convention. States must remain free to impose life sentences on adult offenders for especially serious crimes such as murder. This is particularly so when such a sentence is not mandatory but is imposed by an independent judge after he or she has considered all of the mitigating and aggravating factors which are present in any given case.

If a life prisoner has the right under domestic law to be considered for release but is refused on the ground that he or she continues to pose a danger to society, this does not contravene his human rights. This is because States have a duty – which may also be derived from human rights law – to take measures for the protection of the public from violent crime. Indeed, preventing a criminal from re-offending is one of the essential functions of a prison sentence. This is particularly so for those convicted of murder or other serious offences against the person. The mere fact that such prisoners may have already served a long period of imprisonment does not weaken the State's positive obligation to protect the public; States may fulfil that obligation by continuing to detain such life sentenced prisoners for as long as they remain dangerous.

At the same time, however, the Court has also held that the imposition of an irreducible life sentence on an adult may raise an issue under the prohibition of inhuman and degrading treatment. In determining whether a life sentence in a given case can be regarded as irreducible, the Court has sought to ascertain whether a life prisoner can be said to have any prospect of release. Where national law affords the possibility of review of a life sentence with a view to its commutation, remission, termination or the conditional release of the prisoner, this will be sufficient. For instance, where detention was subject to review for the purposes of parole after the expiry of a minimum term for serving the life sentence, it could not be said that the life prisoners in question had been deprived of any hope of release. A life sentence does not become "irreducible" by the mere fact that in practice it may be served in full. It is enough that a life sentence is de jure and de facto reducible.

Consequently, the existence of a system providing for consideration of the possibility of release is a factor to be taken into account when assessing the compatibility of a particular life sentence with the prohibition of inhuman or degrading treatment or punishment. In this context, however, it should be observed that a State's choice of a specific criminal-justice system, including sentence review and release arrangements, is in principle outside the scope of the supervision of the Court, provided that the system chosen does not contravene the principles set forth in the Convention.

While punishment remains one of the aims of imprisonment, the emphasis in European penal policy is now on the rehabilitative aim of imprisonment, particularly towards the end of a long prison sentence. There are a number of reasons why, for a life sentence to remain compatible with the prohibition of inhuman or degrading treatment or punishment, there must be both a prospect of release and a possibility of review.

A person must not be detained, or kept in detention, unless there are legitimate penological grounds for that detention, as, for example, punishment, deterrence, public protection and rehabilitation. Many of these grounds will be present at the time when a life sentence is imposed. However, the balance between these justifications for detention is not necessarily static and may shift in the course of the sentence. What may be the primary justification for detention at the start of the sentence may not be so after a lengthy period into the service of the sentence. It is only by carrying out a review of the justification for continued detention at an appropriate point in the sentence that these factors or shifts can be properly evaluated.

Moreover, if such a prisoner is incarcerated without any prospect of release and without the possibility of having his life sentence reviewed, there is the risk that he can never atone for his offence: whatever the prisoner does in prison, however exceptional his progress towards rehabilitation, his punishment remains fixed and unreviewable. If anything, the punishment becomes greater with time: the longer the prisoner lives, the longer his sentence.

Furthermore, it would be incompatible with human dignity for the State forcefully to deprive a person of his freedom without at least providing him with the chance to someday regain that freedom.

Indeed, there is now clear support in European and international law for the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved.

Respect for human dignity requires prison authorities to strive towards a life sentenced prisoner's rehabilitation. It follows that the requisite review must take account of the progress that the prisoner has made towards rehabilitation, assessing whether such progress has been so significant that continued detention can no longer be justified on legitimate penological grounds. A review limited to compassionate grounds is insufficient.

The criteria and conditions laid down in domestic law that pertain to the review must have a sufficient degree of clarity and certainty, and also reflect the relevant case-law of the Court. Therefore, prisoners who receive a whole life sentence are entitled to know from the outset what they must do in order to be considered for release and under what conditions. This includes when a review of sentence will take place or may be sought. In this respect the Court has noted clear support in the relevant comparative and international materials for a review taking place no later than twenty-five years after the imposition of sentence, with periodic reviews thereafter. It has however also indicated that this is an issue coming within the margin of appreciation that must be accorded to Contracting States in the matters of criminal justice and sentencing.

As for the nature of the review, the Court has emphasised that it is not its task to prescribe whether it should be judicial or executive, having regard to the margin of appreciation that must be accorded to Contracting States. It is therefore for each State to determine whether the review of sentence is conducted by the executive or the judiciary.

In a number of cases the European Court of Human Rights considered that the applicants, serving a life sentence, had not been deprived of any prospect of release and that their continued detention as such, even though long, did not constitute inhuman or degrading treatment (e.g., Kafkaris case). While there was, for a certain period, an unclear legal situation in the United Kingdom as to the reducibility of certain life sentences (Vinter case); this was later clarified by new case-law of the English courts (Hutchinson case).

In a case concerning Bulgaria, where the applicant was subjected to a particularly severe prison regime entailing almost complete isolation and very limited possibilities for social contact, work or education, the European Court of Human Rights found he was detained in (at least) degrading conditions. In addition, the Court considered that this detention regime must have seriously damaged his chances of reforming himself and thus entertaining a real hope that he might one day achieve and demonstrate his progress and obtain a reduction of his sentence. Therefore, the Court found a separate, additional violation of the prohibition of inhuman and degrading treatment in this respect (Harakchiev and Tolumov case, and, similarly, Simeonovi case).

In a case concerning the Netherlands, the Court found a violation of the prohibition of inhuman and degrading treatment because the applicant, detained in Aruba, could only be released, in the view of the state authorities, after undergoing psychiatric treatment, and at the same time such treatment was not offered by the authorities (Murray case).

Prisoners of war and detained persons during armed conflict

The European Court of Human Rights considers, in line with the case-law of the International Court of Justice, that the protection offered by human rights conventions and that offered by international humanitarian law co-exist in situations of armed conflict. Still, the relationship between international human rights law and humanitarian law may at times get complex, if a conflict between the rules of these two fields of law should arise.

As far as the prohibition of torture and ill-treatment is concerned, however, the applicable rules of international humanitarian law state that civilian detainees as well as prisoners of war have to be treated humanely at all times. Accordingly, there is obviously no conflict between these rules, on one side, and the general prohibition of torture and inhuman or degrading treatment in human rights law, on the other. This means that the prohibition of torture and ill-treatment continues to apply fully in armed conflict. The Court found various violations of this prohibition with respect to civilian detainees and prisoners of war in the Georgia v. Russia (II) case.

Persons held in psychiatric establishments

The European Court of Human Rights recognizes that detainees with mental disorders are more vulnerable than ordinary detainees, and certain requirements of prison life pose a greater risk that their health will suffer, exacerbating the risk that they suffer from a feeling of inferiority, and are necessarily a source of stress and anxiety. The Court considers that such a situation calls for an increased vigilance. When assessing the situation of these particular individuals, account has to be taken of their vulnerability as well as, in certain cases, their inability to complain coherently or at all about how they are being affected by any particular treatment. Where the treatment cannot be provided in a prison or other place of detention, it must be possible to transfer the detainee to hospital or to a specialised unit.

The Court found a violation of the prohibition of inhuman and degrading treatment in a case where the government did not manage to find a psychologist able to communicate with an inmate of a psychiatric hospital in his language which was one of the official languages of the State, namely, German in Belgium (Rooman case).

Foreign nationals and asylum-seekers

Detention conditions must be compatible with respect for human dignity, and the manner and method of the execution of the measure must not subject detainees to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. This is true for everyone, including asylum-seekers and other persons detained in the context of immigration or with a view to expulsion.

As the European Court of Human Rights recognizes, States have the undeniable right to control aliens' entry into and residence in their territory. At the same time, the Court emphasises that States must provide effective protection against torture and ill-treatment to everyone, and particularly to vulnerable members of society. Asylum-seekers may be particularly vulnerable because of their experiences during their migration and the possible traumatic experiences they may have endured previously.

The Court has found detention conditions to be degrading in a case where detained asylum seekers had been obliged to drink water from the toilets; there were 145 detainees in a 110 sq. m space; there was only one bed for fourteen to seventeen people; there was a lack of sufficient ventilation and the cells were unbearably hot; detainees' access to the toilets was severely restricted and they had to urinate in plastic bottles; there was no soap or toilet paper in any sector; sanitary facilities were dirty and had no doors; and detainees were deprived of outdoor exercise. In another case the Court considered degrading the situation of an asylum-seeker who was confined for two months in a prefabricated unit, without any possibility of going outside or using the telephone, and without having clean sheets or sufficient toiletries. Similarly, a detention period of six days, in a confined space, without any possibility of exercise or any leisure area, and where the detainees slept on dirty mattresses and had no free access to toilets, was considered unacceptable and degrading.

On this basis, the European Court of Human Rights has found to be degrading, inter alia,

- detention conditions of asylum seekers in various cases against Greece (Dougoz, M.S.S. cases and others),

- detention conditions of a great number of Georgian nationals to be expelled from Russia (Georgia v. Russia (I) case),

- the holding of asylum seekers for a prolonged period in an airport transit zone pending examination of their asylum applications (Z.A. and others v. Russia case).

In contrast, the detention of various asylum-seekers in the context of migration to Italy was found to be acceptable (Khlaifia case).

CONCLUSION

I. Limitations of this Compendium

The focus of this Compendium was on the protection of persons deprived of their liberty; accordingly, it could not cover the full legal scope of the prohibition of torture and ill-treatment.

Cases before the European Court of Human Rights and other international tribunals have dealt with numerous cases of inhuman or degrading treatment outside a detention situation. Unfortunately, a very practical and relevant problem is ill-treatment within families, i.e., domestic violence, against which government authorities must take appropriate measures of protection and prevention. The situation of relatives of "disappeared" persons is considered to be inhuman by human rights courts. Expulsion to a country where a person might be ill-treated can be, in itself, a violation of the prohibition of inhuman and degrading treatment. Ill-treatment may occur in the context of military service. The death penalty may be considered today inhuman or degrading punishment. In general, discrimination may be so severe that it must be considered degrading treatment within the meaning of international human rights law.

And finally, a very important development is that international courts have discovered a procedural side of the prohibition of torture and ill-treatment: Whenever persons have an arguable claim that they have been ill-treated by a state organ or even a private individual, human rights law is interpreted today to the effect that the government has to conduct an effective investigation in order to determine the facts and to draw the appropriate legal conclusions, including criminal prosecution of perpetrators where feasible.

More details as to these legal issues and developments may be found, for example, in the Guide to the Case-Law on Article 3 of the European Convention on Human Rights, mentioned in the reading list below.

II. Preventing torture and ill-treatment: more than applying the law

This Compendium will be of use, I hope, for all government authorities, including courts of law, and for everyone striving to obtain a clear understanding of the concepts of torture and cruel, inhuman or degrading treatment and punishment. In particular, it might be of assistance in identifying the borderline which may never be crossed by government action, namely, the border between acceptable and degrading treatment of persons deprived of their liberty.

In this sense, it is likely to be useful also for National Preventive Mechanisms; they may indicate, with reference to the case-law of the international courts, to detention establishments, again and again, that certain acts and situations are unacceptable and must be stopped or changed. This is, together with the task of fact-finding, a very important responsibility of NPMs.

Still, their role goes much further. As indicated in the introduction, NPMs may recommend safeguards going far beyond what is necessary in a legal sense. Such recommendations may cover all aspects of detention, and they may include proposals not at all connected to a particular act of ill-treatment. This is true, in particular, for the so-called fundamental safeguards in police custody, namely, the right of any detained person, from the first moment of deprivation of liberty, to have immediate access to a lawyer, to a doctor, and that a relative be notified of custody. If such safeguards are introduced in the law and implemented in reality, typically the situation in police stations in a given country changes for the better. In addition, NPMs may recommend that modern, non-coercive methods of questioning suspects and witnesses be introduced, for example along the Principles on Effective Interviewing for Investigations and Information Gathering (Méndez Principles), adopted by a large group of experts in 2021 and already welcomed by numerous governments and international organisations. Non-coercive interviewing methods have proven to be effective for the investigation and at the same time, they respect the dignity and the human rights of the interviewee.

Typical recommendations for the prevention of ill-treatment for all kinds of persons deprived of their liberty and for all sorts of detention establishments may be found, for example, in the Standards of the European Committee for the Prevention of Torture (CPT).

III. Recommended Reading

For deepening and expanding the insights gained from this Compendium, the following sources might be used:

Association for the Prevention of Torture/ Center for Justice and International Law: Torture in International Law – a guide to jurisprudence. 2008.

European Court of Human Rights: Guide to Article 3 of the European Convention on Human Rights – Prohibition of Torture. February 2023.

European Court of Human Rights: Guide on the case-law of the European Convention on Human Rights – Prisoners' Rights. February 2023.

Giffard, Camille/ Tepina, Polona/ University of Essex, Human Rights Centre: The Torture Reporting Handbook – How to document and to respond to allegations of torture within the international system for the protection of human rights. 2nd ed. 2015.

Joseph, Sara et al./World Organisation against Torture (OMCT): Seeking Remedies for Torture Victims – A Handbook

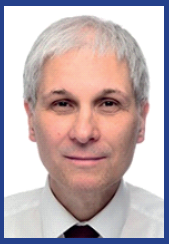
on the Individual Complaints Procedures of the UN Treaty Bodies. 2nd ed. 2014.

Martin, Claudia/ Rodriguez Pinzón, Diego/ Solá Martin, Helena/ World Organisation against Torture (OMCT): The Prohibition of Torture and Ill-Treatment in the Inter-American Human Rights System – A Handbook for Victims and their Advocates. 2nd ed. 2014.

Weissbrodt, David/Heilman, Cheryl: Defining Torture and Cruel, Inhuman or Degrading Treatment. Law and Inequality 29 (2011), pp. 343-394.

Torture and cruel, inhuman or degrading treatment or punishment are absolutely prohibited under international human rights law. In recent decades, international courts have interpreted these concepts and applied them to a multitude of situations, resulting in a voluminous body of case-law. This Compendium provides an overview of this case-law; it covers acts which may constitute deliberate ill-treatment as well as problematic conditions of detention, health care in prisons and a number of special situations and special categories of prisoners. It may help to demarcate the borderline between acceptable and inacceptable treatment of persons deprived of their liberty, a line which must never be crossed.

The Compendium may be of assistance to courts of law, public prosecution services, prison authorities, practising lawyers, human rights organisations and also national preventive mechanisms (NPMs) under the Optional Protocol to the Convention against Torture (OPCAT).



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