Applications concerned:

36925/10 Neshkov v. Bulgaria
21487/72 Tsekov v. Bulgaria
72893/12 Simeonov v. Bulgaria
73796/12 Yordanov v. Bulgaria
77718/12 Zlatev v. Bulgaria
9717/13 Neshkov v. Bulgaria

SUBMISSIONS

On the availability in Bulgaria of effective domestic remedies with respect to poor prison conditions

On 2 July 2014 the President of Fourth Section granted leave for Bulgarian Lawyers for Human Rights Foundation to make written submissions on the availability, or otherwise, of effective domestic remedies with respect to poor prison conditions. Bulgarian Lawyers for Human Rights Foundation welcomes the pilot-judgment procedure in the present cases as an opportunity for a dialogue between the Court and the national authorities, and notably the national courts, in order to address the underlying systemic problems of the domestic legislation and practice relating to conditions of detention.

A. The duty of conform interpretation of the national law with the Convention

Article 5 of the Bulgarian Constitution recognizes a general precedence of international law (including the Convention) over national law. As to the duty of the national authorities to interpret national law in a manner which is consistent with the Convention (and the case law of the Court), in 1998 the Bulgarian Constitutional Court (ruling no. 29 in case no. 28/1998) ruled that:

> "… [the Convention] is part of the internal law of the State and the judgments of the European Court of Human Rights are mandatory for all State bodies, including as concerns its interpretation pursuant to Article 46 of the Convention".[1]

[1] See also ruling no. 2/1998 in case no. 15/1997: "22. … d. The court recognizes that the provisions of the ECHR relating to human rights are of common European and civilizational importance … and constitute provisions of the European legal order. Therefore, the interpretation of the respective provisions of the Constitution relating to human rights has to be made to the extent possible in accordance with the interpretation of the provisions of the ECHR. This principle of conform interpretation also corresponds to the mandatory jurisdiction of the European Court of Human Rights in interpreting and applying the ECHR, which was recognized by Bulgaria."

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This means that whenever Convention rights are being invoked the national authorities must read into the provisions of the Convention the whole *acquis* of the Court and interpret those rights in line with the Court's interpretation[2].
In *Scordino v. Italy (No. 1) (GC)*[3] the Court noted that it is required to verify whether the way in which the domestic law is interpreted and applied produces consequences that are consistent with the principles of the Convention, as interpreted in its case-law. It went on to note that this supervisory role should be easier in respect of States which have effectively incorporated the Convention into their legal system and consider the rules to be directly applicable, since the highest courts will normally assume responsibility for enforcing the principles determined by the Court.

B. The Court's questions

1. Are effective domestic remedies available in respect of conditions of detention, as required under Article 13?

Article 13 requires a domestic remedy in respect of arguable complaints of violations of Convention rights. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the complaint. The effectiveness of a remedy does not depend on the certainty of a favourable outcome for the applicant. At the same time, the remedy must be "effective" in practice as well as in law in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred. An applicant is normally required to have recourse only to those remedies that are available and sufficient to afford redress in respect of the breaches alleged. Even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see *Kudła v. Poland [GC]*[4]).
In the context of conditions of detention the Court has held that two types of relief are possible: an improvement in the material conditions of detention and compensation for the damage or loss sustained on account of such conditions. The preventive and compensatory remedies have to be complementary in order to be considered effective[5].

a) As to the availability of a compensatory remedy in respect of poor prison conditions

In so far as the prisoner has been released or placed in acceptable conditions, a compensatory remedy may constitute an effective domestic remedy so long as it is capable of providing an aggrieved individual with compensation for the detention that had already occurred in inhuman or degrading conditions (see *Sławomir Musiał v. Poland*[6]; *Orchowski v. Poland*[7]; and *Norbert Sikorski v. Poland*[8]).

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[2] It could be argued that this obligation was reinforced by Article 52 (3) of the EU Charter of Fundamental Rights: when applying EU law in cases involving Convention-protected rights the Bulgarian authorities are obliged to follow the ECtHR's jurisprudence. There is little doubt that they must do so also in purely internal situations involving such rights.
[3] no. 36813/97
[4] no. 30210/96, §§ 157-158, ECHR 2000-XI
[5] *Torreggiani and Others v. Italy*, no. 43517/09 et al.
[6] no. 28300/06, §§ 77 and 82
[7] no. 17885/04, §§ 108 and 109
[8] no. 17599/05, § 116

At present, the compensatory remedy provided for in the Bulgarian law is a claim for damages under section 1 of the SMLDA. While the assessment of the recent jurisprudence shows growing understanding and willingness of domestic courts, including the Supreme Administrative Court (SAC), to apply the Convention standards in respect of conditions of detention, some problems remain to be resolved before the remedy can be considered sufficiently certain and predictable.

i) The Court's case law

In order to establish whether the hardship of prison conditions exceeds the unavoidable level of suffering inherent in detention, the Court examines the cumulative effects of those conditions on the particular individual, having in mind all relevant factors such as the duration of the detention, the state of health of the prisoner, and the stringency of his regime[9]. This approach is well illustrated in *Karalevičius v. Lithuania*[10] where the Court held that although the ventilation, heating, lighting or sanitary facilities in the applicant's prison, albeit not flawless, were not in themselves inacceptable from the point of view of Article 3, they were "none the less relevant in addition to the focal factor of the severe overcrowding, to show that the impugned detention conditions of the applicant went beyond the threshold permitted by Article 3 of the Convention"[11]. In other words, even if it could be argued that certain aspects of the prison conditions, such the lack of ready access to sanitary facilities or the extreme lack of space, are likely to be considered humiliating without further analysis, the case law of the Court under Article 3 should not be seen as a list of specific conditions which should be provided to every prisoner at any time but rather as a requirement for individual assessment of the situation of each prisoner in the light of the prohibition of ill-treatment. Therefore, a reference to the national or international prison standards (e.g. about minimum living space) cannot replace the requisite assessment as to whether the distress and hardship endured by a prisoner exceeded the unavoidable level of suffering inherent in detention.

ii) Section 1 of the SMLDA

- **The notion of "lawfulness"**

Section 1 of the SMLDA (as well as Article 7 of the Constitution) refers to "unlawful" decisions, actions or omissions. The concept of "unlawfulness", however, is not defined by the law. While this wording is not incompatible with the aforementioned test, there are cases where the national courts examine the conditions of detention in the light of the national law only[12].

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[9] *Kostadinov v. Bulgaria*, no. 55712/00, §§ 56-57; and *Shahanov v. Bulgaria*, no. 16391/05, § 53

[10] no. 53254/99, § 40

[11] see also *Harakchiev and Tolumov v. Bulgaria*, nos. 15018/11 and 61199/12, §§ 203-214

[12] see, among many others, реш. № 92 от 11 март 2013 г. по адм. д. № 800/2012 г., АС-Велико Търново, cited in paragraph 49 of the Statement of Facts and Questions to the Parties, and реш. № 16086 от 4 декември 2013 г. по адм. д. № 2447/2013 г., ВАС, III о., concerning overcrowding; реш. № 97 от 16 декември 2013 г. на АС-Шумен по адм. д. № 241/2013 г.; and реш. № 569 от 16.01.2014 г. на ВАС по адм. д. № 7207/2013 г., III о., докладчик Жанета Петрова: „the living space and the other characteristics of the premises reflect the building standards applied during the construction. Therefore the court correctly held that the aforementioned conditions … are not due to any inaction on the part of the head of the Arrests Division".

Recently, however, a new line of jurisprudence has emerged showing increasing willingness on the part of the Bulgarian courts to apply the Convention, as interpreted by the Court[13].
It is to be noted, however, that section 3 of the Execution of Punishments and Pre-Trial Detention Act provides a definition of torture, cruel or inhuman treatment which differentiates between "intentional placing in unfavourable conditions" (para 2.2) and degrading treatment (para 2.3) which does not include a purposive element, while the Court has sometimes found poor prison conditions to amount to inhuman treatment and according to the Court's jurisprudence inhuman treatment is not necessarily intentional. In our opinion this definition could be misleading for Bulgarian courts.

- **The defendant**

According to Section 205 of the Code of Administrative Procedure the defendant in proceedings under the SMLDA is the respective legal entity, represented by the authority whose unlawful decisions, actions or omissions have caused the damage. In some cases the plaintiff has difficulties in defining the right defendant because the reasons for the poor conditions may be different (failures on the part of the staff or objective impossibility to ensure certain aspects of the conditions, for which different bodies may be responsible)[14].

- **Breaking up claims**

Domestic courts often instruct prisoners to split their claim into separate heads and consider each element of the conditions of detention as a separate issue needing a separate analysis as to its possible impact on the applicant's well-being (see the case of Mr Yordanov, paragraph 48 of the Statement of Facts and Questions to the Parties). Thus, in cases where the individual elements of the conditions, such as sanitary conditions, food, medical assistance, etc. comply with the legal provisions or appear acceptable, the national courts tend to consider the conditions "lawful" without examining whether their cumulative effect on the individual applicant is such as to constitute inhuman or degrading treatment in breach of Article 3 of the Convention. The Court has already had occasion to criticise as unduly formalistic this approach, holding that it had the effect of diminishing the relevance of each argument in assessing the overall conditions of detention and is therefore inacceptable (see *Shahanov*[15] and *Iliev and Others v. Bulgaria*[16]).
Indeed, in a number of recent judgments the SAC has instructed lower courts to apply the cumulative approach adopted in the Court's case-law[17]. This development is to be welcomed.

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[13] see реш. № 4580 от 8.07.2013 г. на АС - София по адм. д. № 7983/2010 г., upheld by the SAC - реш. № 4964 от 9.04.2014 г. на ВАС по адм. д. № 13169/2013 г., III о., докладчик Ваня Пунева; реш. № 4893 от 09.04.2014 г. на ВАС по адм. д. № 10683/2013 г., III о., докладчик Галина Христова; реш. № 2203 от 17.02.2014 г. на ВАС по адм. д. № 4745/2013 г., III о., докладчик Таня Куцарова; реш. № 7245 от 29.05.2014 г. на ВАС по адм. д. № 13900/2013 г., III о., докладчик Таня Куцарова; реш. № 6315 от 13.05.2014 г. на ВАС по адм. д. № 10857/2013 г., III о., докладчик Таня Куцарова; реш. № 6319 от 13.05.2014 г. на ВАС по адм. д. № 14477/2013 г., III о., докладчик Галина Христова; реш. № 13140 от 10.10.2013 г. на ВАС по адм. д. № 5881/2013 г.
[14] реш. № 569 от 16.01.2014 г. на ВАС по адм. д. № 7207/2013 г., III о.
[15] cited above, § 40
[16] nos. 4473/02 and 34138/04
[17] see, for example, the judgments cited in paragraph 48 of the Statement of Facts and Questions to the Parties and paragraphs 1 and 96 of its Appendix

While this jurisprudence does not appear sufficiently established and prevailing at a nationwide level, we do hope that the SAC will continue their efforts to that end.

- **Proof of non-pecuniary damage**

Pursuant to the Bulgarian legislation (Article 154 of the Code of Civil Procedure in conjunction with Article 144 of the Code of Administrative Procedure), the plaintiff who claims compensation for non-pecuniary damage must show that he has suffered such damage. Depending on the type of the damage, he may either call witnesses (e.g. in connection with feelings such as inconvenience, embarrassment, distress and sadness) or produce documentary evidence or an expert report (e.g. in connection with health problems). As the Bulgarian legislation does not provide for any exceptions to that rule, even the most disastrous and life-shaking events are not regarded as sufficient in themselves for an award of non-pecuniary damages. As a result, prisoners often face difficulties in proving that they have suffered as a result of the poor prison conditions. This is even more so where prisoners are isolated.
Indeed, national courts often apply an overly formalistic approach to the proof of non-pecuniary damage. For example, in *Shahanov*[18] the Court noted that the domestic courts, while establishing that the applicant had been held in a damp cell in a poor state of repair, that there had been rats in the toilets and the canteen and that the applicant had only been allowed to bathe once a fortnight, they nevertheless considered that the applicant had failed to prove that this had affected his well-being. What is even more striking is the recent holding of the SAC that discomfort and depression do not amount to damage at all[19]. The Court has criticised the approach of national courts in a number of judgments against Bulgaria (see *Iovchev*[20], *Iliev and Others*[21], and *Radkov (no. 2)*[22]), remarking that it was unduly formalistic and allowed a large number of cases involving complaints of emotional distress rather than physical injury or illness to be dismissed as unsubstantiated[23].
As to cases involving alleged medical malpractice and/or health problems resulting from the prison conditions, we would like to emphasize that at present such claims do not have any reasonable chances of success due to the systemic problem existing in Bulgaria in the field of medical malpractice law: a nearly insurmountable standard of proof established in the jurisprudence, coupled with the lack of procedural safeguards for independence and impartiality of medical experts. The national courts request strong medical proof and do not accept witnesses in respect of alleged medical problems[24]. Proof on the balance of probabilities, or "the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact", is not recognised by the Bulgarian courts, which causes considerable obstacles to plaintiffs in medical negligence cases which often involve controversial medical issues. It should be noted that the existing civil remedies in respect of

[18] cited above
[19] see § 7 of the Appendix to the Statement of Facts and Questions to the Parties
[20] no. 41211/98, § 147
[21] cited above, § 48
[22] cited above, 39
[23] реш. № 97 от 16.12.2013 г. на АС-Шумен по адм. д. № 241/2013 г.; реш. № 1127 от 25.06.2014 г. на АС-Бургас по адм. д. № 804/2013
[24] реш. № 1405 от 5 юли 2010 г. по адм. д. № 1093/2009 г., АС-Варна (paragraph 22 of the Statement of Facts and Questions to the Parties); реш. № 1560 от 5 октомври 2009 г. по адм. д. № 1195/2009 г., АС-Варна, and реш. № 4187 от 30 март 2010 г. по адм. д. № 15084/2009 г., ВАС, III о.; реш. № 1127 от 25.06.2014 г. на АС - Бургас по адм. д. № 804/2013; Решение № 3244 от 7.03.2014 г. на ВАС по адм. д. № 13173/2013 г., III о.

medical negligence complaints in Bulgaria form part of the subject matter of another case, currently pending before the Court[25].

In *Ananyev and Others v. Russia*[26] the Court made it clear that "the burden of proof imposed on the plaintiff 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 finding of an incompatibility of the conditions of detention with the requirements of Article 3 is of a factual nature and creates a strong legal presumption that such conditions have occasioned non-pecuniary damage to the aggrieved individual".

Unfortunately, the Bulgarian jurisprudence clearly falls short of this standard even if there are isolated examples of courts applying a more flexible approach to the proof of non-pecuniary damage caused by poor prison conditions[27].

- **The amount of damages**

As to the amount of damages awarded by the national courts, the Court has held that "compensation which is lower than that awarded by the Court may nevertheless be considered reasonable, provided that the relevant decision of the domestic courts is consonant with the legal tradition and standard of living in the country concerned and is speedy, reasoned and executed quickly"[28]. More recently it stressed that "the level of compensation awarded must not be unreasonable in comparison with the awards made by the Court in similar cases"[29]. While at present it cannot be argued that unreasonably low awards are a standard practice, the Court has already had the occasion to hold in Bulgarian cases that compensation that is too low will fail to provide the applicant adequate redress[30]. It should further be noted that in the event of dismissal of the claim the plaintiff is liable to pay costs and expenses, including lawyer's fees, even if the defendant State body was represented by its own in-house legal adviser[31]. While Article 143 of the Code of Administrative Procedure was found by the Constitutional Court to be compatible with the Constitution[32], it is still the case that in the event of partial granting of the claim the award of legal costs may render the compensation

[25] *Vasileva v. Bulgaria*, no. 23796/10, communicated to the government on 6 February 2014

[26] nos. 42525/07 and 60800/08, §§ 228-229

[27] see реш. № 1011 от 10.06.2014 г. на АС - Бургас по адм. д. № 3018/2013 г.: "Despite the lack of particular evidence about the negative emotions suffered, the lack of basic living conditions, entailing the need to urinate in buckets in the premises used for sleeping, without any screen and in front of everyone else in the cell, and the lack of running water in the relevant period, are in their very nature capable of causing in any normal, mentally healthy human being, the suffering claimed by the plaintiff, which proves the non-pecuniary damage suffered by him"; and реш. № 6319 от 13.05.2014 г. на ВАС по адм. д. № 14477/2013 г., III о., докладчик Галина Христова

[28] see *Scordino (no. 1)* [GC], cited above, §§ 189 and 206; *Dubjakova v. Slovakia* (dec.), no. 67299/01; and *Iliev and Others*, cited above, § 42

[29] *Ananyev and Others v. Russia*, cited above

[30] see *Radkov (No. 2)*, cited above, § 41; and *Sabev v. Bulgaria*, no. 27887/06

[31] BGN 2,480 were awarded to the defendant by the Burgas Administrative Court: реш. № 1127 от 25.06.2014 г. на АдмС - Бургас по адм. д. № 804/2013 г.; BGN 950 were awarded to the defendant by the SAC: реш. № 5890 от 29.04.2014 г. на ВАС по адм. д. № 11737/2013 г., III о.; BGN 320 were awarded by the Ruse Administrative Court: реш. от 28.03.2013 г. на АС - Русе по адм. д. № 173/2012 г.

[32] ruling no. 5/2007, constitutional case 11/2006

actually received unreasonably low. There is a clear risk that the rule on costs and expenses may operate as a hidden State fee and discourage prisoners from using the remedy.

- **"Special regime" prisoners**

In two recent cases[33] the Court found that a claim under section 1 of SMLDA cannot be regarded as an effective remedy if the conditions of detention complained of flow directly from the "special regime" applicable to life prisoners.

iii) The Obligations and Contracts Act

Finally, it should be noted that it is already well established Bulgarian jurisprudence that a claim under the SMLDA and not under Article 45 of the Obligations and Contracts Act is the appropriate remedy in respect of poor prison conditions.

b) As to the availability of preventive domestic remedies in respect of poor prison conditions

In the recent *Ananyev and Others* [34] judgment the Court emphasized that Article 3 requires "that the States parties establish, over and above a compensatory remedy, an effective mechanism in order to put an end to any such treatment rapidly. Had it been otherwise, the prospect of future compensation would have legitimised particularly severe suffering in breach of this core provision of the Convention and unacceptably weakened the legal obligation on the State to bring its standards of detention into line with the Convention requirements".

Preventive remedies must be capable of preventing the continuation of the alleged violation and of ensuring that the applicant's material conditions of detention will improve. If a person complains about lack of adequate (e.g. medical) care, the preventive remedy must ensure timely relief. The required speediness will be much more stringent where there is a risk of death or irreparable damage to health. The authority responsible need not be judicial. It should however be competent to verify the alleged violations, with the participation of the complainant, be independent, and issue binding and enforceable decisions.

The Bulgarian legislation provides for the following remedies:

i) Complaint to the prison authorities

In *Ananyev*[35] the Court held that the prison authorities do not have a sufficiently independent standpoint to satisfy the requirements of Article 13 seeing that "in deciding on a complaint concerning conditions of detention for which they are responsible, they would in reality be judges in their own cause". In our opinion, this finding is also applicable to the Bulgarian situation. While a complaint to the prison authorities may result in improvement of the conditions, this remedy is not sufficiently certain and reliable. Moreover, where the complaint

[33] *Sabev*, cited above, and *Chervenkov v. Bulgaria*, no. 45358/04
[34] cited above, § 98
[35] ibid., §§ 100-101

concerns structural problems such as overcrowding, the complaint could serve no practical purpose, because all prisons in the country are overcrowded[36].

ii) Complaint to a prosecutor

Even though the prosecutors' control undeniably plays an important part in securing appropriate conditions of detention, a complaint to the supervising prosecutor falls short of the requirements of an effective remedy because of procedural shortcomings. For example, there is no legal requirement on the prosecutor to hear the complainant or ensure his or her effective participation in the ensuing proceedings that would entirely be a matter between the supervising prosecutor and the supervised body. The complainant would not be a party to any proceedings and would only be entitled to obtain information about the way in which the supervisory body dealt with the complaint. Moreover, the Court has already seen cases in which an applicant did complain to a prosecutor but his complaint did not elicit any response[37]. Since the complaint to a prosecutor about unsatisfactory conditions of detention does not give the person using it a personal right to the exercise by the State of its supervisory powers, it cannot be regarded as an effective remedy[38].

iii) Complaint to the ombudsman

Even though the complainants do receive a personal reply, an application to the ombudsman cannot be regarded as an effective remedy as required by Article 35 of the Convention because the ombudsman has no power to render a binding decision granting redress. While his activities may usefully contribute to general improvement of conditions of detention, the ombudsman remains unable, in view of their specific remit, to provide redress in individual cases as required by the Convention[39].

iv) Judicial complaints about infringements of rights and freedoms (Articles 250 § 1, 256 and 257 of the Code of Administrative Procedure)

Article 250 provides that any person who has the requisite legal interest may request the cessation of actions carried out by an administrative authority or a public official that have *no basis in the law or in an administrative decision*. The competent administrative court has to deal with the request immediately, having made the necessary inquiries. The appeal against the court's decision does not have suspensive effect.
Articles 256 and 257 provide that a person may bring proceedings to enjoin an administrative authority to carry out an action that it has the duty to carry out *by virtue of the law*. If the court allows the claim, it must order the authority to carry out the action within a fixed time-limit.
The case law on these new remedies is scarce. Nevertheless, it appears that in applying these provisions the national courts interpret the notion of "law" as national legal provisions only, which limits their efficacy[40]. Furthermore, where an obligation is shared between different

[36] see the Statement of Facts and Questions to the Parties, § 61
[37] see *Marin Kostov v. Bulgaria*, no. 13801/07, § 22
[38] *Ananyev*, cited above, §§ 102-104
[39] ibid., §§ 105-106
[40] реш. № 16086 от 4.12.2013 г. на ВАС по адм. д. № 2447/2013 г., III о., докладчик Петър Стоянов опр. № 471 от 11.01.2013 г. на ВАС по адм. д. № 15167/2012 г., IV о., докладчик Галина Матейска; реш. № 8454 от 20.06.2014 г. на ВАС по адм. д. № 14001/2013 г., III о., докладчик Панайот Генков

bodies, this is considered as grounds for dismissing the request[41]. As the Court already noted in a recent case, the domestic courts have not "thus far interpreted those provisions in a way enabling an inmate to obtain a more general improvement of the conditions of his confinement"[42]. Nevertheless, we fully agree with the Court that there is nothing to prevent those remedies from being moulded to accommodate such requests, provided that all unclear issues are elucidated in an appropriate manner[43].

As to the other possible judicial measures, it should be noted that the conditions of pre-trial detention could be taken into account by the Bulgarian courts in the individualization of sentences and alternative forms of punishment may be considered. Furthermore, the release of pre-trial detainees or alternative measures for securing the accused's appearance at trial could be considered by the courts where the conditions of detention exceed the inevitable element of suffering inherent in detention.

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

a) In the recent years the case law of Bulgarian courts relating to conditions of detention improved considerably. Our study of the recent jurisprudence revealed increasing awareness and understanding of the Court's relevant case law and willingness of the courts to apply the Convention directly and assess the overall impact of the conditions in the light of the requirements of Article 3. Nevertheless, due to the high standard of proof established by the national courts in cases concerning non-pecuniary damage plaintiffs still face considerable difficulties in proving emotional distress. This is even more so if they claim that their health suffered from the poor conditions of detention or the lack of adequate medical services. Bearing in mind that the high standard of proof in such cases is well established, it is our opinion that it renders the compensatory remedy insufficiently certain and reliable and that the problem is a systemic one. Therefore we urge the Court to apply its approach in *Ananyev*[44] to the present cases and provide guidance to the authorities as to the requisite standard of proof in such cases. The authorities should also be reminded that the level of compensation should not be unreasonable in comparison with the awards made by the Court in similar cases.

b) The Committee of Ministers defined the overcrowding of Bulgarian detention facilities as a "structural" and "systemic" problem, and CPT, as a major problem in Bulgaria's penitentiary system which exacerbates the already problematic material conditions[45]. In view of its scale, no remedies exist in respect of overcrowding and any attempt by the applicants to seek an

[41] реш. № 5924 от 11.05.2009 г. на ВАС по адм. д. № 12132/2008 г., III о., докладчик съдията Кремена Хараланова
[42] *Harakchiev and Tolumov*, cited above, § 228
[43] ibid.
[44] cited above, §§ 227-231
[45] a detailed description of the situation is provided in §§ 54-115 of the Statement of Facts and Questions to the Parties

improvement of the conditions would be unproductive[46]. It must be observed that lack of resources cannot justify prison conditions which are so poor as to reach the threshold of treatment contrary to Article 3 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. 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[47].

Another systemic problem is medical aid in prisons, and in particular the serious understaffing in prison medical facilities and over-reliance on feldshers, which undermines the access to adequate medical treatment. While the legislative changes of December 2012 (with effect from 1 January 2014) granting to all prisoners the status of health-insured persons who have full coverage are to be welcomed, urgent measures are needed to ensure that prisoners have access to adequate medical care, including to qualified personnel.

As to the available system of administrative complaints and requests for improving the material conditions, we are of the opinion that it lacks the necessary safeguards for a prompt and diligent handling of the complaints and securing the effective participation of prisoners in the examination of their grievances[48]. Since the omissions result from the legislative framework, the problem is a systemic one and requires legislative amendments.

As to the system of judicial complaints introduced by the Code of Administrative Procedure, it has the potential of becoming an effective remedy if the national courts elucidate all unclear points concerning its interpretation and implementation. For the time being, however, this is not the case.

Finally, we welcome the application of Article 46 of the Convention in *Harakchiev and Tolumov*[49] and believe that the implementation of the measures recommended by the Court in respect of prison regimes would have a positive effect on conditions of detention because of the apparent close connection between highly restrictive regimes and poor prison conditions.

Appendix:

1. Jurisprudence on section 1 of the SMLDA:

Решение № 13140 от 10.10.2013 г. на ВАС по адм. д. № 5881/2013
Решение от 28.03.2013 г. на АдмС - Русе по адм. д. № 173/2012 г.
Решение № 3240 от 7.03.2014 г. на ВАС по адм. д. № 8333/2013 г., III о.
Решение от 4.07.2013 г. на АдмС - Враца по адм. д. № 465/2012 г.
Решение № 4660 от 4.04.2014 г. на ВАС по адм. д. № 11273/2013 г., III о.
Решение № 7245 от 29.05.2014 г. на ВАС по адм. д. № 13900/2013 г., III о.
Решение № 6319 от 13.05.2014 г. на ВАС по адм. д. № 14477/2013 г., III о.
Решение № 6315 от 13.05.2014 г. на ВАС по адм. д. № 10857/2013 г., III о.
Решение № 6082 от 8.08.2013 г. на СГС по в. гр. д. № 12509/2012 г.
Решение № 5720 от 28.04.2014 г. на ВАС по адм. д. № 13896/2013 г., III о.
Решение № 5697 от 24.07.2013 г. на СГС по в. гр. д. № 2144/2012 г.
Решение № 5258 от 15.04.2014 г. на ВАС по адм. д. № 14438/2013 г., III о.

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[46] in *Karalevičius*, § 39, the Court held that "[t]he fact of the applicant being obliged to live, sleep and use the toilet in the same cell with so many other inmates was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention"

[47] *Orshowski*, cited above, no. 17885/04

[48] See the Court's guidance in *Ananyev*, cited above, §§ 214-220

[49] cited above, § 280

Решение № 4964 от 9.04.2014 г. на ВАС по адм. д. № 13169/2013 г., III о.
Решение № 4893 от 9.04.2014 г. на ВАС по адм. д. № 10683/2013 г., III о.
Решение № 4580 от 8.07.2013 г. на АдмС - София по адм. д. № 7983/2010 г.
Решение № 4964 на ВАС по адм. дело № 13169/2013 г.
Решение № 3592 от 13.03.2014 г. на ВАС по адм. д. № 10152/2013 г., III о.
Решение № 3244 от 7.03.2014 г. на ВАС по адм. д. № 13173/2013 г., III о.
Решение № 2203 от 17.02.2014 г. на ВАС по адм. д. № 4745/2013 г., III о.
Решение № 1967 от 12.02.2014 г. на ВАС по адм. д. № 16554/2011 г., III о.
Решение № 1932 от 15.07.2013 г. на АдмС - Варна по адм. д. № 1244/2012 г.
Решение № 5258 на ВАС по адм. дело № 14438/2013 г.
Решение № 1127 от 25.06.2014 г. на АдмС - Бургас по адм. д. № 804/2013 г.
Решение № 1011 от 10.06.2014 г. на АдмС - Бургас по адм. д. № 3018/2013 г.
Решение № 245 от 20.05.2014 г. на АдмС - Враца по адм. д. № 165/2014 г.
Решение № 178 от 13.12.2013 г. на АдмС - Ямбол по адм. д. № 248/2013 г.
Решение № 97 от 16.12.2013 г. на АдмС - Шумен по адм. д. № 241/2013 г.
Решение № 72 от 12.02.2014 г. на АдмС - Плевен по адм. д. № 1115/2013 г.
Решение № 44 от 10.01.2013 г. на АдмС - Варна по адм. д. № 2782/2012 г.
Решение № 2265 от 18.02.2014 г. на ВАС по адм. д. № 7064/2013 г., III о.

II. Jurisprudence on Articles 250 § 1, 256 and 257 of the Code of Administrative Procedure

Определение № 11630 от 19.09.2011 г. на ВАС по адм. д. № 10959/2011 г., III о. Разпореждане № 2755 от 15.07.2011 г., постановено по адм. д. № 666/2011 г. по описа на Административен съд – Плевен
Определение № 11168 от 30.09.2009 г. на ВАС по адм. д. № 11523/2009 г., III о.
Определение № 471 от 11.01.2013 г. на ВАС по адм. д. № 15167/2012 г., IV о.
разпореждане № 221 от 12.11.2012 г. на Административен съд гр. Враца, IV състав, постановено по административно дело № 559/2012 г.
Определение № 11162 от 30.09.2009 г. на ВАС по адм. д. № 12156/2009 г., III о.
Определение № 8884 от 21.07.2008 г. на ВАС по адм. д. № 8879/2008 г., I о.
Решение № 8454 от 20.06.2014 г. на ВАС по адм. д. № 14001/2013 г., III о.
Решение № 5924 от 11.05.2009 г. на ВАС по адм. д. № 12132/2008 г., III о.
Определение № 1434 от 31.01.2011 г. на ВАС по адм. д. № 130/2011 г., I о.
Решение № 16086 от 4.12.2013 г. на ВАС по адм. д. № 2447/2013 г., III о.
Определение № 12574 от 11.10.2012 г. на ВАС по адм. д. № 10946/2012 г., III о.

III. Interview with Ilia Angelov, Deputy Minister of Justice: https://mjs.bg/117/5184/

For Bulgarian Lawyers for Human Rights Foundation:

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