



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

FIFTH SECTION

CASE OF PETUKHOV v. UKRAINE

(Application no. 43374/02)

JUDGMENT

STRASBOURG

21 October 2010

FINAL

21/01/2011

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

In the case of Petukhov v. Ukraine,

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

Peer Lorenzen, *President*,
Renate Jaeger,
Rait Maruste,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva,
Ganna Yudkivska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 28 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 43374/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Vladimir Sergeyevich Petukhov (“the applicant”), on 12 November 2002.

2. The applicant, who had been granted legal aid, was represented by Mrs Iryna Boykova and Mrs Lyudmyla Pankratova, lawyers practising in Kyiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev, of the Ministry of Justice of Ukraine.

3. The applicant alleged, in particular, under Articles 3 and 13 of the Convention that his medical treatment in detention had not been adequate and that there was no effective remedy in respect of this complaint. He further alleged under Article 5 §§ 1 and 3 and Article 6 § 1 of the Convention that his detention on remand had been unlawful and lengthy and that the proceedings whereby his detention was extended had not been fair. The applicant finally complained under Articles 6 § 1 and 13 of the Convention about the length of the criminal proceedings and of a lack of an effective remedy in respect of this complaint.

4. On 6 November 2008 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1973 and is currently serving a life sentence in Sokalska Correctional Colony no. 47 (*Сокальська виправна колонія № 47*).

A. Criminal proceedings against the applicant

6. On 6 June 2001 policemen attached to the Kominternovsky District Police Department of Kharkiv (*Комінтернівський РВ ХМУ УМВС України в Харківській обл.*), acting on information from an unknown source, arrested and detained the applicant on suspicion of murder and robbery. The applicant stated that he had been arrested the day before, on 5 June 2001.

7. On 8 June 2001 the applicant was questioned. He indicated that he did not need a lawyer.

8. On 9 June 2001 the applicant was transported to Kyiv, where he was placed in the Minsky District Temporary Detention Centre (*Мінський районний ізолятор тимчасового тримання*).

9. On 12 June 2001 the Prosecutor's Office of the Minsky District of Kyiv (*Прокуратура Мінського району м. Києва*) remanded the applicant in custody on the grounds that the applicant could escape and obstruct justice.

10. On 21 June 2001 formal charges were brought against the applicant on several counts of murder and attempted murder, attempted murder of police officers on duty, robbery and participation in an organised gang. When questioned on the same day in the presence of his lawyer, the applicant confessed to these charges.

11. On 2 August 2001 the Minsky District Court of Kyiv extended the applicant's pre-trial detention to a maximum of four months since "it was necessary to carry out a large scale investigation".

12. On 5 October 2001 the Kyiv City Court of Appeal (hereinafter - "the Court of Appeal") decided to extend the term of his pre-trial detention until 8 December 2001 given "the information on the applicant's personality" and the gravity of charges.

13. On 29 November 2001 the investigator declared the pre-trial investigation complete and granted the applicant and his lawyer access to the case file, which they finished studying on 30 October 2002.

14. On 9 December 2002, in the course of a preparatory hearing attended by the applicant and his lawyer, the Court of Appeal found that the case was not ready for consideration on the merits and decided to remit it to the

prosecution for further investigation. It also held that the applicant should remain in pre-trial detention as he could obstruct justice if released.

15. On 24 April 2003, after a hearing attended by the applicant's lawyer, the Supreme Court of Ukraine upheld the decision of 9 December 2002 on the main points and decided that the applicant should remain in pre-trial detention as he could obstruct justice if released.

16. On 19 June 2003 the applicant's case file arrived from the Supreme Court at the Prosecutor's Office of the Obolonsky District of Kyiv (*Прокуратура Оболонського району м. Києва*).

17. On 18 July 2003 the Court of Appeal examined the prosecution's application to extend the applicant's pre-trial detention. The applicant's lawyer was present at this hearing and lodged an unsuccessful request for the release of her client. The Court of Appeal decided to extend the applicant's pre-trial detention for up to a maximum of nine months (according to the relevant legal provisions, at the material time, the terms of pre-trial detention applied only to the periods when the case was being investigated. The time when the case was in the court, when the accused was studying the case-file etc. were not taken into consideration). In doing so, the court referred to the complexity of the case, the seriousness of the crimes of which the applicant was accused, his personality and the fact that he could obstruct justice if released.

18. On 26 August 2003 the additional investigations were completed and on the following day the applicant and his lawyer were given access to the case file.

19. On 17 September 2003 the Supreme Court of Ukraine, at the request of the Prosecutor's Office of the Obolonsky District of Kyiv, extended the applicant's pre-trial detention to a maximum of twelve months. It based this decision on the seriousness of the charges.

20. On 18 December 2003 the Supreme Court of Ukraine granted the prosecution's request to extend the applicant's pre-trial detention until 19 March 2004.

21. On 16 March 2004 the applicant's pre-trial detention was extended by the Supreme Court of Ukraine until 19 May 2004. It took this decision on the basis of the seriousness of the charges brought against him. In this decision, the Supreme Court did not deal with the request of the applicant's lawyer to release her client on medical grounds.

22. On 18 May 2004 the Supreme Court of Ukraine dismissed the prosecution's application for a further extension of the applicant's pre-trial detention. The Supreme Court held that although the accused had been studying the twelve volumes of case materials since 27 August 2003 and he still had around ten volumes to study, there was no indication that the accused had deliberately delayed a trial. According to the court, the case materials had not been properly filed (in two volumes there were no lists of documents and pages were numbered in pencil). Therefore, the Supreme

Court concluded that the investigation authorities had failed to properly present case-file materials and there were no grounds for an extension of the applicant's detention on remand.

23. On 19 May 2004 the Prosecutor General's Office (*Генеральна Прокуратура України*) asked the Supreme Court to lodge an application for an extraordinary review of this decision, considering, *inter alia*, that such decision would allow “persons who have committed serious offences to avoid isolation from society”.

24. On the same day the applicant's case file was sent to the Court of Appeal for consideration on the merits.

25. On 20 May 2004 five judges of the Supreme Court lodged an application for extraordinary review (*подання в порядку виключного провадження*) of the decision of 18 May 2004.

26. In the course of a joint session held on 21 May 2004 which was attended by the prosecutor but not by the applicant or his lawyer, with judge P. acting as judge-rapporteur, the Criminal and Military Boards (*Судова палата з кримінальних справ і Військова колегія*) of the Supreme Court set aside the decision of 18 May 2004 on the ground that the reasons given for the dismissal of the prosecution's request to extend the applicant's detention were insufficient and irrelevant, and ordered a rehearing. In particular, the court held that the investigating officer could not limit the time for studying the case file.

27. On 24 May 2004 the Supreme Court granted the prosecution's application for an extension of the applicant's pre-trial detention until 19 June 2004, as the applicant still needed time to study the case file. The court found no reason to release the applicant.

28. On an unidentified date the case was transferred to the court for consideration of the charges against the applicant.

29. On 3 December 2004 the Court of Appeal found the applicant guilty as charged and sentenced him to life imprisonment. The applicant's conviction was based on his initial confession statements, an extensive amount of different evidence and statements from eleven witnesses and ten victims. Three of his accomplices were also sentenced to different terms of imprisonment. The applicant appealed.

30. On 24 May 2005 the three Supreme Court judges, including judge P., upheld this judgment.

31. On 30 May 2007 the Supreme Court rejected the applicant's request for review of his case under the extraordinary review procedure.

32. Between 2005 and 2007 the applicant instituted proceedings against the judges of the Court of Appeal complaining of different procedural shortcomings in the course of consideration of his criminal case. All of his complaints and subsequent appeals were rejected since the applicant should have raised these complaints during the examination of his case and not in a separate set of proceedings.

B. Conditions of the applicant's detention

33. Before his arrest the applicant suffered from limited mobility caused by a multiple fracture of his left thigh which was the result of a gunshot wound. He had a metallic plate fitted, but this became dislodged and caused a deformation of the bone. As a consequence the applicant's left leg was 3 cm shorter than his right and he suffered from pains in his left leg. According to a certificate issued by Yalta Town Hospital (*Ялтинська міська лікарня*) on 10 January 2002, the applicant received in-patient treatment there between 27 November and 12 December 2000 for a left thigh fracture which, according to this certificate, required further surgery and in-patient treatment.

34. On 8 August 2001 the applicant was transferred from the police detention facility, where he had been held since June 2001, to Kyiv Pre-Trial Detention Centre no. 13 (*Київський слідчий ізолятор № 13*, ("SIZO no. 13")).

35. Upon his arrival, the applicant was examined by a doctor. The chest X-ray taken on 7 August 2001 revealed no abnormalities in the applicant's lungs.

36. According to the applicant, from the date of his admission and until 1 April 2003 he was subjected to a high security regime. In particular, he was only allowed outside his cell when handcuffed and accompanied by two guards with a prison dog in attendance. He was also held in a metal cage during his lawyer's visits and interviews by the investigator.

37. On 16 January 2002 the applicant was punished for an unspecified offence with five days' confinement in a punishment cell (*карцер*). After this punishment he caught a cold, for which, according to the applicant, he received no treatment.

38. On 31 January 2002 the applicant's lawyer requested a surgeon from Polyclinic no. 3 of the Solomyansky District of Kyiv (*Поліклініка № 3 Солом'янського району м. Києва*) to give his opinion on the applicant's orthopaedic problems. The surgeon, having examined the applicant and his medical case file, found that he had sustained a multiple fracture of the left thigh and was suffering pain related to this fracture. He needed further examination by an orthopaedist and in-patient treatment in a specialist hospital. The applicant also required a crutch, orthopaedic shoes and strong painkillers.

39. In March 2002 the applicant allegedly started to cough.

40. On 21 and 22 August 2002 the applicant was examined by prison doctors and diagnosed as suffering from infiltrative tuberculosis, pleurisy and a compound fracture of the left thigh. On the latter date he was moved to the medical wing of SIZO no. 13.

41. According to the Government, between 28 August and 15 October 2002 the applicant refused to take medication but did not sign any such refusal.

42. In a letter of 26 September 2002 the Head of the State Department for Enforcement of Sentences (*Державний департамент виконання покарань*) stated that the applicant had been placed to a punishment cell for 5 days and subjected to a high security regime; he was able to walk without a crutch and had refused medical assistance for his health problems.

43. According to a report of 10 October 2002 signed by the medical officer of the State Department for Enforcement of Sentences and by the SIZO doctor, the applicant had not complained about coughing between February and April 2002. The applicant had special orthopaedic shoes but, according to the surgeon's conclusion, needed a crutch and surgery. The applicant's condition had been satisfactory. He had been prescribed various medications but had only taken one of them as he had wanted to receive medications from home.

44. In November 2002 the Kyiv Traumatology Institute (*Київський науково-дослідний інститут травматології та ортопедії*) issued a certificate according to which the applicant did not need surgery. The certificate was signed by a senior scientist (*старший науковий співробітник*).

45. According to the applicant, on 10 December 2002 he was again punished with five days' detention in a punishment cell. Since the temperature there was lower and humidity higher than in the medical cell, the applicant's health deteriorated significantly.

46. The Government submitted that between 12 March and 28 April 2003 the applicant again refused to take medication.

47. In October 2003 the applicant was examined by the Head of the Orthopaedic Department of the Kyiv Medical Academy of Postgraduate Studies (*Кафедра ортопедії Київської медичної академії післядипломної освіти*) who, in his opinion of 10 October 2003, stated that the applicant's compound fracture of the left thigh required in-patient treatment in a specialist hospital.

48. In 18 November 2003 the applicant's state of health declined. He had two X-rays, and medication was administered directly into the pleural cavity. On 18 December 2003 the applicant was examined by P., a professor of phthisiology, who prescribed him further treatment.

49. In January 2004 the applicant's tuberculosis was aggravated by a pyopneumothorax (accumulation of pus in the pleural cavity) on account of which he was transferred to the Institute of Phthisiology and Pulmonology (*Інститут фтізіатрії та пульмонології* (hereinafter - "the Institute")) on 4 February 2004.

50. On 5 February 2004 the administration of SIZO no. 13 asked the investigator in charge of the applicant's case to consider the possibility of

the releasing the applicant, referring, *inter alia*, to the fact that his condition required a lengthy period of treatment in a specialist hospital.

51. On 21 February 2004 the Prosecutor of the Obolonskiy District of Kyiv replied that the applicant's detention had been extended by the Supreme Court and that there were no reasons to change this decision.

52. On 9 March 2004 the applicant was transferred from the Institute to SIZO no. 13. According to the applicant, because his treatment at the Institute had not been finished, he had still had tubes in his lungs for draining pus and further antibiotic treatment when he was transferred. He had received no such treatment in the SIZO and since the place where the tubes were inserted had become infected, the applicant had removed them himself.

53. According to a letter, written in reply to a request for information made by the applicant's lawyer on 11 March 2004 and signed by the Institute's head doctor, the head of the relevant department and the treating doctor at the Institute, the applicant's treatment had consisted of pleural drainage and the administration of antibiotics, carried out in parallel with intensive anti-tuberculosis treatment. It was necessary to continue this treatment in future. The doctors were aware of the applicant's orthopaedic problems, which aggravated his general condition, but this had not affected his treatment for tuberculosis.

54. On 24 March 2004 the applicant's lawyer requested that medical evidence be obtained in order to assess the applicant's fitness for detention in SIZO no. 13.

55. In a report of 19 April 2004 a panel of five experts from the Bureau of Forensic Medical Examinations of the Kyiv City State Administration (*Бюро судово-медичної експертизи Головного Управління охорони здоров'я та медичного забезпечення Київської міської державної адміністрації*) established that the applicant had sustained a compound fracture of the left thigh which had resulted in a substantial deformation of his left leg, causing limited mobility and considerable pain. The continued failure of the prison authorities to address this condition and his consequent reduced immunity may have been the reason why the applicant had contracted tuberculosis. The experts found that the applicant required specialist in-patient treatment, which could not be provided in the medical unit of SIZO no. 13.

56. On 27 July 2004 the doctor of the Traumatology and Orthopaedics Institute of the Academy of Medicine (*Інститут травматології та ортопедії Академії медичних наук України*) concluded that the applicant "could not have surgery on his left thigh".

57. Between July 2004 and January 2005 the applicant had two chest X-rays and was twice examined by professor of phthisiology P.

58. On 8 October 2004, following an enquiry from the court, the SIZO administration issued a certificate stating that the applicant was suffering

from chronic tuberculosis and other diseases but that his state of health was satisfactory and he could take part in court hearings.

59. On 2 December 2004 the applicant instituted proceedings in the Shevchenkivskyi District Court of Kyiv against the head of SIZO no. 13 and the head of its medical ward seeking his transfer to a specialised hospital and complaining that the information provided in the certificate of 8 October 2004 had not been true.

60. On 11 February 2005 the court rejected the applicant's complaints. In particular, the court found that the certificate in question had been accepted by the Court of Appeal and included in the applicant's criminal case file, therefore, there were no reasons to question its veracity. The court further found that the applicant had received the necessary medical treatment in the SIZO. This decision was not appealed against by the applicant.

61. According to the Government, the applicant refused to undergo medical tests on four occasions between January and July 2005. The relevant refusals were signed by the SIZO doctors but not by the applicant.

62. On 4 July 2005 the applicant was diagnosed with pleuropneumonia cirrhosis of the right lung, having been cured of cirrhotic tuberculosis.

63. On 1 November 2005, after the applicant's conviction had been upheld on appeal by the Supreme Court, he was transferred from SIZO no. 13 to Zamkova Correctional Colony no. 58 (*Замкова БК-58*) to serve his prison sentence.

64. On an unspecified date the applicant was further transferred to Sokalska Correctional Colony no. 47 (*Сокальська БК-47*).

65. On 9 February 2006 the applicant underwent surgery on his left leg.

66. According to the documents further submitted by the applicant's lawyers (letters from the Ukrainian-American Bureau for the Protection of Human Rights and from Sokalska Correctional Colony no. 47), he is still suffering from fibrocaceous tuberculosis of the right lung.

II. RELEVANT DOMESTIC LAW

A. Constitution of Ukraine, 1996

67. The relevant provisions of the Constitution of Ukraine read as follows:

Article 55

“Human and citizens' rights and freedoms are protected by the courts.

Everyone is guaranteed the right to challenge in court the decisions, actions or omissions of State authorities, local authorities, officials and officers. ...

Everyone has the right to protect his or her rights and freedoms from violations and illegal encroachments by any means not prohibited by law.”

B. Code of Criminal Procedure

68. In accordance with Article 165-3 of the Code of Criminal Procedure, decisions of the judge of the Supreme Court of Ukraine on detention on remand are not subject to appeal.

69. Other relevant provisions of the Code are summarised in the judgments of *Nevmerzhitsky v. Ukraine* (no. 54825/00, § 54, ECHR 2005-II (extracts)), and *Solovey and Zozulya v. Ukraine* (nos. 40774/02 and 4048/03, § 43, 27 November 2008)).

70. On 3 April 2003 changes were introduced to Articles 156 and 218 of the Code. According to these new rules, access to the case file should be provided to the detained defendant at least a month before the expiry of the authorised term of detention. If one month proves insufficient for the defendant to familiarise him or herself with the case file, the investigator can lodge an application with the relevant court of appeal, pre-approved by the Prosecutor General, for an extension of the term of the defendant's detention. The time in which the defendant and his or her lawyer familiarise themselves with the case file cannot be limited.

C. Relevant international materials concerning medical assistance in detention

1. European Committee for the Prevention of Torture and Inhuman and Degrading Treatment and Punishment (“the CPT”)

71. In so far as tuberculosis is concerned, the Committee for the Prevention of Torture's report on its visit to Ukraine in 2005 (CPT/Inf (2007) 22) reads as follows:

“58. The delegation's observations in relation to tuberculosis are a source of great concern. There were often considerable delays in screening for tuberculosis. [...]

Further, it recommends that the Ukrainian authorities ensure:

- the early and effective screening for tuberculosis of all persons detained by the Militia;

- the provision of uninterrupted treatment for persons already receiving anti-tuberculosis drugs at the time of apprehension.”

72. Other relevant international reports and other materials concerning the treatment of tuberculosis in Ukrainian penitentiary establishments can be found in the judgment of 28 March 2006 in the case of *Melnik*

v. Ukraine, (no. 72286/01, §§ 47-53) and in the judgment of 19 February 2009 in the case of *Malenko v. Ukraine* (no. 18660/03, § 28-30).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

73. The applicant complained under Article 3 of the Convention that he had been subjected to inhuman treatment on account of the inadequate medical care with which he had been provided during his detention in SIZO no. 13. He further complained of a lack of an effective remedy in this respect. The invoked Articles provide as follows:

Article 3

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

Article 13

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

A. Admissibility

74. The Government maintained that the applicant had failed to exhaust effective domestic remedies in respect of his complaints of a lack of adequate medical assistance while in detention. Referring to Article 55 of the Constitution of Ukraine, the Government indicated that all decisions, actions or omissions of State bodies could be challenged in court. Although the applicant had instituted proceedings against the SIZO administration, he had failed to appeal against the court's decision of 11 February 2005. The Government further argued that a claim for compensation was an effective remedy which the applicant should have exhausted. In support, the Government submitted a copy of the court's decision of 4 February 2009 in the case of K. and B. against SIZO no. 13. The plaintiffs' daughter and mother had died in the above SIZO because of a lack of medical assistance. The court awarded the plaintiffs 25,000¹ Ukrainian hryvnias (UAH) each in compensation for non-pecuniary damage.

¹ At the material time around 2,411 euros

75. The applicant submitted that he had exhausted all available remedies which had turned out to be ineffective. The applicant contended that the laws of Ukraine and existing domestic case-law did not guarantee any compensation or effective protection in the event of a lack of adequate medical assistance in detention.

76. The Court notes that it has already examined similar objections by the Government in a number of cases (see *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004, and *Mikhaniv v. Ukraine* (dec.), no. 75522/01, 20 May 2008). In particular, in the case of *Mikhaniv v. Ukraine*, the Court found that in the absence of any example from domestic case-law to show that civil and/or administrative proceedings instituted by a prisoner would have stood any prospect of success, it had not been sufficiently established that recourse to the remedies suggested by the Government would have been capable of affording redress to the applicant in relation to his complaints.

77. The Court notes that in the present case the Government submitted an example of a decision by which the domestic court awarded compensation for the death in detention of the plaintiffs' daughter and mother which had been caused by a lack of appropriate medical treatment. However, this decision was adopted by the national court after this Court had examined the case and had found a violation of Article 2 of the Convention in respect of the authorities' failure to protect the plaintiffs' daughter and mother's right to life (see *Kats and Others v. Ukraine*, no. 29971/04, 18 December 2008). Therefore, the Court is not convinced that a single example of successful litigation, in a case in which a violation had previously been found by this Court, could serve as proof of the effectiveness of the remedy proposed by the Government.

78. Moreover, the Court has already found that the problems arising from the conditions of detention and the lack of proper medical treatment in Ukrainian places of detention were of a structural nature (see *Koval v. Ukraine*, cited above, § 96) and no effective remedy was available in this respect (see *Melnik v. Ukraine*, cited above, §§ 113-116). The Court sees no reason to depart from that finding in the present case and therefore considers that this complaint cannot be rejected for failure to exhaust domestic remedies.

79. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 3 of the Convention

(a) The Government's submissions

80. The Government submitted that the burden of proof in cases of treatment or punishment allegedly incompatible with Article 3 of the Convention rested on the applicant; however, in the present case the applicant had failed to provide sufficient substantiation of his allegations. Upon his arrival at the SIZO in August 2001 the applicant had been examined by a doctor and found to be healthy. He had been diagnosed with tuberculosis only one year later and prior to August 2002 he had not complained of coughing or of any pain in his chest. After the applicant had been diagnosed with tuberculosis, he had been immediately transferred to the special tuberculosis ward of the SIZO where he had stayed until 13 November 2004.

81. The applicant was systematically X-rayed (on 23 November and 11 December 2003, 17 September 2004 and 18 January 2005), was seen by the SIZO phthisiologist, and on seven occasions (between November 2002 and August 2005) he was examined by specialists of the Phthisiology Institute. The applicant had received the necessary treatment prescribed by the phthisiologist. Between 4 February and 9 March 2004 the applicant had stayed in a specialist institute and upon discharge his state of health had been satisfactory.

82. The Government further indicated that on some occasions the applicant had refused to undergo the required treatment. Between 28 August and 15 October 2002, and between 12 March and 28 April 2003, the applicant had refused to take the prescribed treatment. On four occasions in 2005 the applicant had refused to undergo medical tests. Therefore, the applicant himself had prevented the medical personnel from providing him with adequate treatment.

83. As for the injury to the applicant's left leg, the Government submitted that, according to the conclusion of the Kyiv Traumatology Institute in November 2002, the applicant had not needed surgery. He had been given the necessary painkillers, had special shoes and since August 2003 the applicant had been walking with a stick. According to the medical conclusion of the same institute, given in July 2004, it had been

impossible to operate on him because he had been suffering from tuberculosis. By August 2005 the applicant's tuberculosis was cured and in February 2006 he underwent surgery on his left leg.

84. Therefore, the Government concluded that the applicant had received all necessary treatment while in detention.

(b) The applicant's submissions

85. The applicant stated that parts of the medical documents submitted by the Government were forged. The parts in question concerned his alleged refusals of treatment and other documents issued between 8 August 2001 and 20 August 2002. He had never worn any special shoes, as the Government had stated, and had been able to walk with a crutch only since July 2003.

86. The applicant refused to take medication between September and October 2002 since the SIZO had provided only medicines whose "use-by" date had expired. However, he had not been permitted to receive medicine from his lawyer since detainees were allowed to receive packages from relatives only.

87. The applicant further referred to the Court's findings in the case of *Koval v. Ukraine* that the problems arising from the applicant's conditions of detention and his alleged lack of proper medical treatment were apparently of a structural nature. The conditions of the applicant's detention were similar to those described in a number of cases against Ukraine (see among others, *Nevmerzhitsky v. Ukraine*, cited above, and *Melnik v. Ukraine*, cited above) and in the findings of the CPT and of the Ukrainian Parliament Commissioner for Human Rights. Moreover, in July 2003 one person (a co-accused in the applicant's case) had died of tuberculosis in SIZO no.13.

88. The applicant finally indicated that the Government had not submitted any evidence in support of their statement that the applicant's tuberculosis had been cured.

(c) The Court's assessment

89. The Court has emphasised on a number of occasions that the health of prisoners has to be adequately secured (see *Kudla v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI). However, the Court has also held that Article 3 of the Convention cannot be interpreted as securing to every detained person medical assistance of the same level as "in the best civilian clinics" (see *Mirilashvili v. Russia* (dec.), no. 6293/04, 10 July 2007). It further held that it was "prepared to accept that in principle the resources of medical facilities within the penitentiary system are limited compared to those of civil[ian] clinics" (see *Grishin v. Russia*, no. 30983/02, § 76, 15 November 2007). 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).

90. Other relevant principles determined by the Court in its case-law as regards Article 3 of the Convention in respect of medical treatment in detention are summarised in the case of *Ukhan v. Ukraine* (no. 30628/02, §§ 73-74, 18 December 2008).

91. Turning to the facts of the present case, the Court notes that while in detention the applicant suffered from two separate medical conditions – tuberculosis and a deformation of the left femur. In order to establish whether the applicant received the requisite medical assistance while in detention, it is crucial to determine whether the State authorities provided him with sufficient medical supervision for a timely diagnosis and treatment of his illnesses (see *Popov v. Russia*, no. 26853/04, § 211, 13 July 2006, and *Mechenkov v. Russia*, no. 35421/05, § 102, 7 February 2008).

92. The applicant was first diagnosed with tuberculosis in August 2002, a year after he was transferred to SIZO no. 13. It is true that as soon as the applicant was diagnosed, he was placed into the medical ward of the SIZO and received some treatment, including consultations with specialists from the civil hospital. Although the mere fact that a detainee was 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*, *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 116, 29 November 2007), the Court reiterates that it is not well-placed to decide whether the choice of treatment methods appropriately reflected the applicant's needs (see *Ukhan v. Ukraine*, cited above, § 76, and *Okhrimenko v. Ukraine*, no. 53896/07, § 71, 15 October 2009).

93. As for the Government's statement that the applicant refused treatment and tests, the Court cannot establish on the basis of the available evidence whether this was the case. No such refusals were signed by the applicant and the reasons for treatment refusal in September and October 2002 acknowledged by him (namely, medicine whose use-by date had expired) were not commented on by the Government.

94. The Court, however, observes that, according to the applicant, he had become infected with tuberculosis in early 2002. The Court notes that the Government did not provide any medical documents covering the period between the applicant's admission to the SIZO in August 2001 and the date of the applicant's diagnosis with tuberculosis in August 2002, including the medical check-up upon the applicant's arrival to the SIZO. Moreover, the copies of the medical documents, which were provided by the Government, are often of a poor quality and partly unreadable.

95. In this connection, the Court reiterates that Convention proceedings, such as the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), as in certain instances the respondent Government alone have access to information capable of corroborating or refuting allegations. A failure on a Government's part to submit such information without a satisfactory explanation 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).

96. Given the CPT's conclusions about considerable delays in screening for tuberculosis in detention (see paragraph 71 above), the applicant's statements that his health started to deteriorate in March 2002 and the Government's failure to provide medical documents covering the initial period of the applicant's detention, the Court has doubts as to the availability of the adequate medical assistance to the applicant before August 2002.

97. As for the applicant's suffering from the consequences of the multiple fracture of his left thigh, the Court notes that several consistent medical conclusions in 2002 - 2004 were issued stating that the applicant had needed surgery and special treatment. On one occasion only, in November 2002, an opposite conclusion was given (see paragraph 44) but it was followed by expert opinions in October 2003 and April 2004 that the applicant required surgery and/or specialised in-patient treatment (see paragraphs 47 and 55). Later on, in July 2004 it was concluded that the surgery was not possible allegedly until the applicant would be cured of tuberculosis. The Court notes, however, that despite numerous medical prescriptions no such surgery was performed at the initial stage of the applicant's detention and it does not follow from the available materials that the applicant has ever received any particular treatment in respect of his thigh injury prior to 2006 although the deformed metal plate in his leg caused him pain and significant difficulties in walking, which aggravated his general health condition.

98. Taking the applicant's situation as a whole, the Court considers that there has been a violation of Article 3 of the Convention in respect of the lack of appropriate medical treatment in the present case.

2. Article 13 of the Convention

99. The Government reiterated their observations on the admissibility of the applicant's complaint under Article 3 of the Convention and stated that the applicant had had an effective remedy which he had failed to exhaust.

100. The applicant disagreed.

101. Referring to its above findings on the admissibility of the applicant's complaint under Article 3 of the Convention, the Court concludes that there has been a violation of Article 13 of the Convention on

account of the lack of an effective and accessible remedy under domestic law for the applicant's complaints in respect of his treatment in detention.

II. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 AND 3 OF THE CONVENTION

102. The applicant complained that his detention had been unreasonably long. Furthermore, his detention during specific periods, namely, between 29 November 2001 and 30 October 2002; 1 November 2002 and 19 June 2003; and between 19 and 24 May 2004 had not been lawful as it had not been duly authorised.

103. He relied on Article 5 §§ 1 and 3 of the Convention, which reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

A. Admissibility

104. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 5 § 1 of the Convention

105. The Government indicated that until 3 April 2003 no domestic decision was required to validate a period of detention during which a person was being given access to the case file. Therefore, the applicant's detention between 29 November 2001 and 30 October 2002, when he was studying the case file, had been in compliance with the national law and had not breached the requirements of Article 5 § 1 of the Convention.

106. The Government further noted that the applicant's detention between 1 November 2002 and 19 June 2003 had also been in accordance with the national law.

107. As for the lawfulness of the applicant's detention between 19 and 24 May 2004, the Government noted that on 11 May 2004 the investigating

officer had asked the Supreme Court to extend the term of the applicant's detention to 19 June 2004 since it would have expired on 19 May 2004. However, on 19 May 2004 the investigation into the applicant's case was completed and the case file was transferred to the court. Since that moment it had been, according to the national law, for the court to decide on the applicant's further detention. On 24 May 2004 the Supreme Court had extended the term of the applicant's detention to 19 June 2004.

108. Therefore, the Government believed that the applicant's detention between 29 November 2001 and 30 October 2002, 1 November 2002 and 19 June 2003, and 19 and 24 May 2004 had been in accordance with national law and lawful within the meaning of Article 5 § 1 of the Convention.

109. The applicant disagreed and referred to the cases of *Yeloyev v. Ukraine* (no. 17283/02, 6 November 2008) and *Doronin v. Ukraine* (no. 16505/02, 19 February 2009) where, in similar circumstances, the Court found a violation of Article 5 § 1 of the Convention.

110. The Court reiterates that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and lay down an obligation to comply with the substantive and procedural rules thereof. While it is for the national authorities, notably the courts, to interpret and apply domestic law, the Court may review whether national law has been observed for the purposes of this Convention provision (see, among other authorities, *Assanidze v. Georgia* [GC], no. 71503/01, § 171, ECHR 2004-II).

111. However, the “lawfulness” of detention under domestic law is the primary, but not always the decisive element. The Court must, in addition, be satisfied that the detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary manner. Moreover, the Court must ascertain whether the domestic law itself is in compliance with the Convention, including the general principles expressed or implied therein (see *Winterwerp v. the Netherlands*, 24 October 1979, § 45, Series A no. 33).

(a) Periods between 29 November 2001 – 30 October 2002 and 1 November 2002 – 19 June 2003

112. The Court notes that the applicant's detention during the above-mentioned periods was not covered by any decisions. In particular, under Ukrainian law in force at the material time, the periods when the applicant was given access to the case file (between 29 November 2001 and 30 October 2002) and when his case was referred to the court for trial and until it was returned to the prosecutor's office (between 1 November 2002 and 19 June 2003) were not included in the term foreseen by the law for detention on remand. The Court has previously found a violation in similar

cases against Ukraine (see *Yeloyev v. Ukraine*, cited above, §§ 48-51, and *Doronin v. Ukraine*, cited above, § 58). The Court does not see any reason to depart from its findings in the present case. Accordingly, there has also been a violation of Article 5 § 1 as regards these periods of the applicant's detention.

(b) Period of 19 – 24 May 2004

113. The Court further notes that on 18 May 2004 the Supreme Court of Ukraine rejected the request to extend the time-limit for the applicant's detention. This time-limit expired the next day, but the applicant remained in detention. After the decision of 18 May 2004 was set aside, the applicant's pre-trial detention was further authorised on 24 May 2004. Therefore, between 19 and 24 May 2004 there was no formal decision authorising the applicant's detention. Even assuming that no such decision was required by the domestic law because, according to the Government, the investigation authorities had transferred the applicant's case file to the court on 19 May 2004 for consideration on the merits, the Court notes, referring to its above findings, that the period of the applicant's detention between 19 and 24 May 2004 was still not in accordance with Article 5 § 1 of the Convention.

114. Therefore, there has been a violation of Article 5 § 1 of the Convention in the present case.

2. Article 5 § 3 of the Convention

(a) Parties' observations

115. The Government submitted that the applicant's pre-trial detention had lasted from 9 June 2001 until 3 December 2004 and that, therefore, “the length of the applicant's detention on remand to be taken into consideration in this case amounted to nearly two years and six months” and could not be considered unreasonable. The Government further submitted that the applicant's case had been quite complicated and involved the investigation of twelve different crimes committed by the applicant together with four other persons. When extending the applicant's pre-trial detention, the national authorities had taken into consideration the gravity of crimes, the applicant's personality, and the risk of his escaping and hindering the investigation, as the applicant had already been convicted of committing serious crimes. Therefore, the Government stated that there had been no breach of the “reasonable time” requirement under Article 5 § 3 of the Convention in the present case.

116. The applicant submitted that he had remained in detention on remand for more than three years and that there had accordingly been a breach of Article 5 § 3 of the Convention.

(b) General principles

117. The Court reiterates that the persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of continued detention. However, after a certain lapse of time, it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152-153, ECHR 2000-IV).

118. It is incumbent on the domestic authorities to establish the existence of specific facts relevant to the grounds for continued detention. Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005, and *Ilijkov v. Bulgaria*, no. 33977/96, §§ 84-85, 26 July 2001). The national judicial authorities must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty, and must set them out in their decisions dismissing the applications for release. It is not the Court's task to establish such facts and take the place of the national authorities which ruled on the applicant's detention. It is essentially on the basis of the reasons given in the domestic courts' decisions and of the facts mentioned by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Korchuganova v. Russia*, no. 75039/01, § 72, 8 June 2006; *Ilijkov*, cited above, § 86; and *Labita*, cited above, § 152).

(c) Period to be taken into consideration

119. The Court notes that the period under consideration began on 5 or 6 June 2001, when the applicant was arrested, and ended on 3 December 2004 when he was convicted and sentenced by the Court of Appeal (see *B. v. Austria*, 28 March 1990, § 39, Series A no. 175). The applicant's pre-trial detention thus lasted for around three years and six months. The length of the applicant's detention is not short in absolute terms (see and compare *Ilowiecki v. Poland*, no. 27504/95, § 52, 4 October 2001).

120. The Court reiterates that the question of whether or not a period of detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement

of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, §§ 110-111, ECHR 2000-X).

(d) The Court's analysis

121. The Court notes that the authorities' decisions on the applicant's detention were always limited to a simple enumeration of grounds for such detention without any further clarification. The grounds relied on by the authorities varied significantly and in the absence of any extended reasoning it is impossible to tell whether they were relevant.

122. Later on, in its decisions of 18 December 2003 and 16 March 2004, namely, two years and six months, and two years and nine months after the applicant's arrest, the Supreme Court referred only to the gravity of the charges against the applicant to justify his further detention. However, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention on remand (*Olstowski v. Poland*, no. 34052/96, § 78, 15 November 2001, and *Ilijkov v. Bulgaria*, cited above, § 81).

123. The Court also observes that the courts failed to consider the request of the applicant's lawyer to release the applicant on medical grounds and at no stage did the domestic authorities consider any alternative preventive measures to detention.

124. The Court lastly notes that the problem of lengthy pre-trial detention without any relevant reasons and with the domestic authorities simply referring to the gravity of charges has already been found to be incompatible with the requirements of Article 5 § 3 of the Convention in a number of cases against Ukraine (see, among recent authorities, *Shalimov v. Ukraine*, no. 20808/02, 4 March 2010, and *Feldman v. Ukraine*, nos. 76556/01 and 38779/04, 8 April 2010).

125. Consequently, there has been a violation of Article 5 § 3 of the Convention in the present case.

III. ALLEGED VIOLATION OF THE CONVENTION IN RESPECT OF QUASHING OF DECISION ON THE APPLICANT'S DETENTION

126. The applicant complained under Article 6 § 1 of the Convention that the extraordinary review procedure under which the prosecutor had challenged the decision of the Supreme Court of 18 May 2004 not to extend the applicant's detention on remand was contrary to the principle of legal certainty as no ordinary appeal lay against this decision. In this respect, the applicant also emphasised that the prosecutor's extraordinary review submissions had not been communicated to him or his lawyer and that they had not been allowed to attend the session before the Supreme Court during

which the extraordinary review request as initiated by the prosecutor was examined. He also complained that the Supreme Court's extraordinary review of the decision of 18 May 2004 had showed a lack of impartiality.

127. The Court notes that by its decision of 21 May 2004 the Supreme Court of Ukraine set aside its previous decision by which it had refused to extend the applicant's detention on remand. The Court finds that this decision was taken within the proceedings by which the lawfulness of the applicant's detention was decided. Therefore, this complaint should be considered under Article 5 § 1 of the Convention.

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

129. The question of the effect of the quashing of the decision of 19 May 2004 is one which could affect the lawfulness of the continuing detention from that date since it removed any legal basis there may have been for the detention from 19 to 24 May 2004.

130. However, as the Court has already found that there was no basis for the detention during that period, (see paragraphs 115-116), the Court considers that it is not necessary to examine whether, in this case, there has been a separate, or further, violation of Article 5 § 1 in respect of quashing under the extraordinary review procedure of the decision on the applicant's detention on remand.

IV. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION IN RESPECT OF THE LENGTH OF PROCEEDINGS

131. The applicant further complained that the criminal proceedings against him had exceeded a reasonable length of time within the meaning of Article 6 § 1 of the Convention and that, in respect of this complaint, he had not had an effective remedy as required by Article 13 of the Convention.

132. Article 6 § 1 of the Convention, in so far as relevant, reads as follows:

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

A. Admissibility

133. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

134. In the Government's view the length of criminal proceedings in the applicant's case, which lasted less than four years, could not be considered unreasonable within the meaning of Article 6 § 1 of the Convention.

135. The Government indicated that the applicant's case had been complicated, that it had involved twelve different crimes requiring investigation, including numerous forensic examinations. There had been four co-accused in the case and ten victims. More than forty witnesses had been questioned. The Government further underlined that the length of the proceedings had also been caused by the fact that the applicant had not confessed. In the Government's view, particular diligence had been required of the court in establishing the truth and thus justified the length of proceedings.

136. The Government submitted that some delays in the proceedings could not be attributable to the State. In particular, some delays were caused by the applicant studying the case file. On two occasions the court hearings were postponed because the witnesses and victims had failed to appear, and on five occasions the accused's lawyers had not appeared at the court hearings. In particular, on 11 October 2004 the court removed one of the applicant's lawyers from the case because of "improper behaviour".

137. Therefore, in the Government's view the length of proceedings in the present case had been reasonable and some delays had been caused by the complexity of the case and by the behaviour of the parties.

138. The applicant considered that four years was not a reasonable delay in absolute terms. His case had not been complicated and nearly half of the overall length of proceedings had been caused by remitting the case for additional investigation on 9 December 2002. Moreover, he had studied eight volumes of his criminal case file over eleven months since the materials in the case file had been very poorly filed and the new investigating officer had also been studying the case file at the same time.

139. The Court notes that the relevant period commenced on 5 or 6 June 2001 and lasted until 24 May 2005, that is, a total of three years and eleven months.

140. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and that of the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). What is at stake for the applicant must also be taken into consideration. In this respect, the Court observes that the applicant was kept in custody from June 2001 until 3 December 2004 – a fact which required particular diligence on the part of the authorities and courts dealing

with the case as regards the prompt administering of justice (see *Abdoella v. the Netherlands*, 25 November 1992, § 24, Series A no. 248-A).

141. However, the Court notes that the applicant's case was a complicated one. It included five accused and concerned eight different counts of burglary, murders and attempted murders and some other crimes committed between 1998 and 2001. The proceedings took place at three levels of jurisdiction, including the pre-trial investigation. In the absence of any significant periods of inactivity on the part of the State authorities, the Court considers that the length of proceedings in the applicant's case cannot be considered as unreasonable. Consequently, there has been no breach of Articles 6 § 1 and 13 of the Convention in respect of the length of proceedings in the applicant's criminal case.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

142. Lastly, the applicant submitted numerous other complaints under Articles 2, 3, 6, 13 and 14 of the Convention and Article 2 of Protocol No. 7.

143. The Court has examined these complaints and considers that, in the light of all the materials in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

144. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

145. Article 41 of the Convention provides:

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

A. Damage

146. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

147. The Government maintained that there had been no violations of the applicant's rights; therefore, the applicant's claims should be rejected.

148. The Court awards the applicant EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

149. The applicant also claimed EUR 4,079 for costs and expenses incurred before the domestic courts and the Court.

150. The Government indicated that some of the expenses claimed had not been incurred in order to prevent or redress the alleged violations of the Convention (namely, expenses for the representation of the applicant in the criminal proceedings). The Government further submitted that some of the expenses claimed were not supported by any documents or bills and that since the applicant had been granted legal aid, his claims for costs and expenses should be rejected.

151. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court makes no award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 3 (adequacy of medical assistance in detention), Article 5 §§ 1 and 3, Article 6 § 1 (length of proceedings), Article 13 (lack of effective remedy in respect of alleged inadequacy of medical assistance in detention and length of proceedings) of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of a lack of adequate medical assistance in detention;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
4. *Holds* that it is not necessary to examine whether there has been a separate, or further, violation of Article 5 § 1 in respect of the quashing under the extraordinary review procedure of the decision on the applicant's detention on remand;

5. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
6. *Holds* that there has been no violation of Article 6 § 1 of the Convention on account of the length of proceedings;
7. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of effective remedies in respect of the lack of medical assistance complained of;
8. *Holds* that there has been no violation of Article 13 of the Convention on account of the lack of effective remedies in respect of the length of proceedings complained of;
9. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Ukrainian hryvnias at the rate applicable on the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
10. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President