



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

FIFTH SECTION

CASE OF IGLIN v. UKRAINE

(Application no. 39908/05)

JUDGMENT

STRASBOURG

12 January 2012

FINAL

12/04/2012

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

In the case of Iglin v. Ukraine,

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

Dean Spielmann, *President*,

Elisabet Fura,

Karel Jungwiert,

Mark Villiger,

Ann Power-Forde,

André Potocki, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 6 December 2011,

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

PROCEDURE

1. The case originated in an application (no. 39908/05) 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 Ruslan Anatolyevich Iglin (“the applicant”), on 28 October 2005.

2. The applicant, who had been granted legal aid, was represented by Messrs M. Tarakhkalo and A. Kristenko, lawyers practising in Kharkiv. The Ukrainian Government (“the Government”) were represented by their Agents, Mr Y. Zaytsev and Mrs V. Lutkovska.

3. The applicant alleged, in particular, that he had been detained in degrading conditions and had had no effective remedies with respect to this complaint, that he had been deprived of the guarantees of a fair trial and that the State authorities had hindered his right of individual petition to the Court.

4. On 16 November 2009 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. Mrs G. Yudkivska, the judge elected in respect of Ukraine, was unable to sit in the case (Rule 28 of the Rules of Court). The President of the Chamber decided to appoint Mr Mykhaylo Buromenskiy to sit as an *ad hoc* judge (Rule 29 § 1(b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1981 and is currently serving a life sentence in Izyaslav.

A. Criminal proceedings against the applicant

7. On 21 February 2002 the applicant was convicted of robbery and other crimes, sentenced to 13 years' imprisonment and taken to the Kryvyy Rig correctional colony to serve his sentence.

8. While the applicant was serving his sentence, new criminal proceedings were instituted in which charges of criminal association membership, murder and other violent crimes were advanced against him. On an unspecified date N. N. was appointed as the applicant's legal-aid lawyer. Subsequently A. K., another legal-aid lawyer, replaced him.

9. On an unspecified date the applicant, along with several other individuals, was committed for trial to the Dnipropetrovsk Regional Court of Appeal (hereafter "the Regional Court"), acting as a first-instance court. The charges against him included belonging to a criminal association, as a member of which he had taken part in three murders with a view to personal gain; several robberies; unlawful handling of arms; and unlawful taking of a vehicle.

10. During the trial the applicant confessed to having participated in the robberies and the other crimes attributed to him. However, he argued that his personal role in the murders had been negligible, and that he had not had any intention of profiting personally from one of the three murders.

11. The applicant also complained to the court that he had been tortured by the investigative authorities during the pre-trial investigation. The court ordered the Dnipropetrovsk Prosecutors' Office to conduct an inquiry into the applicant's complaint, which found that there was no case of ill-treatment to answer.

12. On 6 January 2005 the applicant was convicted as charged and sentenced to life imprisonment.

13. The applicant and A. K. (his legal-aid lawyer) drafted separate cassation appeals. The applicant's lawyer challenged the assessment of the facts and application of the law in respect of several points and requested a milder sentence.

14. The applicant, for his own part, complained, primarily, about the severity of his sentence, of ill-treatment by the investigative authorities, and of the court's failure to question Z., another alleged criminal association member, who had been on a wanted list. In his appeal, the applicant also

stated that he wanted to further substantiate his arguments once he had had a chance to study the case file.

15. On 23 and 24 March and 4 and 5 April 2005 the applicant was brought into the Regional Court's offices to study the case file in order to prepare his cassation appeal. He signed affidavits asserting that he had read the entire case file.

16. On 14 June 2005 the Supreme Court of Ukraine adjourned consideration of the case until 13 September 2005 in order to ensure the applicant's and his co-defendants' presence at the proceedings.

17. On 28 June 2005 the applicant complained to the Supreme Court that he had not been properly familiarised with the case-file materials. He mentioned, in particular, that he had only been brought to the court's records office to study the file on four occasions. He further noted that he had remained in handcuffs at all times and that this had not only been physically painful, but also detrimental to his ability to take notes. Lastly, the applicant noted that he had been coerced into signing the affidavits that stated that he had properly studied the file. The applicant asked the Supreme Court to ensure that he be provided with an opportunity to study the case file in his lawyer's presence.

18. On 13 September 2005 the applicant asked the Supreme Court to adjourn the case, regard being had to the failure of his legal-aid lawyer to appear. He further asked the Supreme Court to oblige A.K. to perform her professional duties, to admit L.L., his mother, as his lay defence representative, and to provide him with an opportunity to familiarise himself with the case file in order to prepare his defence.

19. On the same date the Supreme Court adjourned the hearing. It noted that the applicant's request for additional familiarisation with the case file was ill-founded, as he had signed affidavits stating that he had properly studied it. On the other hand, the Supreme Court found the applicant's concern about his lawyer's absence substantiated and ruled as follows:

"to give [the applicant] the opportunity to appoint a lawyer or a defence representative to participate in the cassation proceedings in order to represent his interests.

The administration of the SIZO should assist [the applicant] in establishing a connection with his defence representative or persons who can appoint a defence representative".

20. On 15 September 2005 the applicant further complained to the Supreme Court that he had not been familiarised with the appeals brought by other parties to the proceedings.

21. On 4 October 2005 the Supreme Court held a hearing in the applicant's case in the absence of his lawyer. At the beginning of the hearing, the applicant requested that the Supreme Court act on his previous requests. The prosecutor opined that the applicant had had sufficient

opportunity to familiarise himself with the case file. The court rejected the applicant's requests as unfounded and upheld the judgment of the first-instance court.

22. On 12 June 2006 the Court's Registry asked the applicant to provide certified copies of his appeals and his procedural requests addressed to the Regional and the Supreme Courts.

23. On 29 June 2006 the applicant asked the Regional Court's records office to provide him with the documents at issue in connection with the Registry's request.

24. On 6 July 2006 the Regional Court rejected this request, referring to the lack of any obligation under national law to make copies of case file documents.

25. On 31 January 2007 L.L., the applicant's mother, who was also acting as his representative in the Convention proceedings at the material time, lodged a new request with the Regional Court on his behalf. In particular, referring to Article 34 of the Convention, she requested that the Regional Court either mail certified copies of the documents requested by the Court's Registry to her home address or inform her in writing where they could be delivered to her.

26. On 9 February 2007 the Regional Court returned her request without providing the copies sought, noting that "*the Code of Criminal Procedure in force does not oblige the court to prepare copies of materials from a criminal case file*".

B. Conditions of the applicant's detention

27. From 27 January 2004 until 4 August 2006, with short interruptions, the applicant was detained in Dnipropetrovsk pre-trial detention facility no. 3 ("SIZO no. 3").

1. The applicant's account

28. According to the applicant, he had been detained with another individual in a cell measuring 1.90 by 3.70 square metres for most of the day. The applicant's bunk, which had measured 1.70 metres by 50 centimetres, had had raised bars at its ends. Given that the applicant was 1.84 m tall, he had been unable to stretch out fully and get adequate sleep. The cell had been located in the basement, scarcely letting in daylight or fresh air, while the electric light had been dim and there had not been any artificial ventilation. The windows had had grates on them, which had further blocked natural light from coming in through the window. Moreover, they had been blocked by the upper bunk of the bed. The air had been damp and ventilation had been insufficient. The toilet had not been separated from the living quarters. It had smelled of excrement and had frequently been flooded. The applicant had made a cover for the toilet (a

“grusha”) to prevent unpleasant smells. However, it had been confiscated by the prison authorities. They had likewise routinely confiscated a number of his other belongings and appliances for no apparent reason, including food, a TV antenna and a string, without which it had not been possible to open the window. Consequently, the applicant’s access to information from the outside world had been severely limited and he had been unable to open the window to disperse the smell from the toilet. The food had been meagre and had mostly consisted of wheat cereal and bread. The detainees had only been able to wash themselves, cut their nails and shave once a week in a special bathing facility. All of the detainees had shared the same pair of scissors. They had remained handcuffed by the hand to the wall while they had been cutting their nails and shaving, which had felt degrading.

29. On 11 November 2005 the applicant’s cellmate had hit him on the head with a metal mug while he was asleep, causing an open wound. Notwithstanding the applicant’s numerous requests for medical assistance on account of this incident, he had only been provided with oxygenated water and a bandage. The injury had resulted in the applicant having frequent headaches, vertigo, vomiting, and pus and blood dripping from one ear, which he had treated himself with his own urine.

30. On 28 February 2006 the applicant had been severely beaten by SIZO guards for allegedly organising inter-cell communication. In spite of his repeated requests for medical assistance on account of the injuries sustained as a result of the beating, the applicant had merely been given painkillers.

31. The applicant had presented several copies of his complaints to different authorities covering various aspects of the physical conditions of his detention, including one dated 4 February 2006 addressed to the General Prosecutor’s Office. In this complaint, he had described the conditions of his detention, with particular regard to poor ventilation, and had complained of arbitrary seizure of various personal belongings, including the self-made toilet cover and the string for opening and closing the window. At the end of this complaint, there had been the signature of his cellmate, A.Z., attesting that the applicant had despatched the complaint on 4 February 2006. It appears from the case file that the applicant never received an answer to this complaint.

32. The applicant also alleged that in some cases the SIZO administration had refused to despatch his complaints and had torn them in front of the applicant, advising him to “stop this nonsense business of complaining” for his own benefit.

2. The Government’s account

33. The Government submitted that the conditions of the applicant’s detention in SIZO no. 3 had been adequate. They presented a certificate issued by the SIZO administration dated February 2010 attesting that,

according to their inspection on that date, there had been at least 3.5 square metres of available space per detainee in each cell. The dimensions of bunks used in the SIZO had been 185 centimetres by 70 centimetres. The basement floor cells, where the life prisoners had been held, had had windows measuring 110 centimetres by 100 centimetres, which size had afforded sufficient access to daylight. In the evenings the cells had been lit by 100 watt lamps, which had enabled the detainees to read and write without hurting their eyes. Each window had had a special ventilation pane, which had been able to be opened to air the cells. In addition, an electric ventilator in the corridor had ensured artificial ventilation of the cells. The cells had been fitted with radiators to ensure a stable temperature of between 18 and 20 degrees Celsius. Each cell had been equipped with two metal bunks, a chair, a shelf for personal belongings, a table, two small cupboards which could also be used as stools for sitting, a clothes hanger, a tap with a sink, a mirror, and a toilet. The toilets had had bent pipes to prevent unpleasant odours and had been separated from the living area by fixed partitions.

34. The Government further submitted (without providing any supporting documents) that, as regards sanitary arrangements, the SIZO's detainees had had weekly access to bathing facilities, where they had also been provided with razors and scissors. Disinfectant had been used on a regular basis to clean the cells and other premises. Twice a year (in the spring and the autumn) comprehensive measures against rats had been implemented and the entire SIZO facility had been disinfected. The detainees had been provided with meals three times a day, freshly cooked by the SIZO's cooks. Food had been varied and in conformity with applicable nutrition regulations.

35. No instances of seizure of or damage to the applicant's belongings by the SIZO administration had been recorded.

36. As regards medical assistance, on 5 December 2005 the applicant had been diagnosed as suffering from an acute ear infection. On 6 February 2006 he had consulted an otolaryngologist and had been diagnosed with a fistula in one of his ear canals. Between 29 January and 7 February 2007 the applicant had received in-patient treatment for pulled leg muscles. In February 2007, having been transferred to a correctional colony to serve his sentence, the applicant had undergone an operation to extract a foreign body from his left ear canal.

37. As regards the incident of 28 February 2006, the applicant had never complained about it before to the domestic authorities. There was no evidence that this incident had ever taken place.

II. RELEVANT DOMESTIC LAW AND OTHER MATERIALS

A. Code of Criminal Procedure 1960

38. Relevant provisions of the Code of Criminal Procedure as worded at the material time read as follows:

Article 47. Procedure for the engagement and appointment of a defence representative

...

A defence representative shall be appointed in the event:

...

(2) that ... the defendant wishes to engage a defence representative, but lacking funds or in view of other objective circumstances is unable to do so.

...

... if it is impossible to obtain the presence of the defence representative selected by the ... defendant within seventy-two hours ... the court may propose that the ... defendant appoint another defence representative. If this defence representative is unable to appear in the case within twenty-four hours and also in the event that ... the defendant has not engaged another defence representative within this timeframe ... the ... judge by a ruling or the court by a decision shall appoint a defence representative.”

Article 393. Admission of new materials by the cassation court

“To support or disprove arguments presented in an appeal, the persons who advanced them may submit documents to the cassation court which were not in the case file...”

Article 395. Scope of review of the case by the cassation court

“The cassation court shall review the lawfulness and reasonableness of the court judgment... or part [thereof] which was appealed. The cassation court may exceed the scope of a cassation claim, if doing so would not prejudice the situation of the convicted or acquitted person...”

Article 398. Grounds for annulment or modification of a judgment, decision or ruling

“Grounds for annulment or modification of the judgment, decision or ruling shall be:

- (1) substantial breach of the law of criminal procedure;

(2) incorrect application of the criminal law;

(3) the selected penalty being disproportionate to the gravity of the offence and the personality of the convicted person.

A judgment of the court of appeal taken by it as a first-instance court may be annulled or modified [on the basis of] bias, incompleteness of any inquiry, pre-trial or trial investigation or inconsistency in the court's reasoning cited in the judgment with the factual circumstances of the case..."

B. Materials with respect to conditions of detention

39. Relevant Council of Europe and other materials establishing standards for conditions of detention and international reports concerning the conditions of detention in Ukraine can be found in the judgment in the case of *Davydov and Others v. Ukraine*, nos. 17674/02 and 39081/02, §§ 101-108, 1 July 2010.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF THE APPLICANT'S DETENTION AND THE APPLICANT'S BEATING BY SIZO GUARDS

40. The applicant complained that the conditions of his detention in Dnipropetrovsk SIZO no. 3, including physical, sanitary and health-care arrangements, had been inhuman and degrading, that he had been beaten by guards on 28 February 2006 and that there had been no effective investigation into his complaint of ill-treatment. The applicant referred to Article 3 of the Convention in respect of these complaints, which reads as follows:

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

A. Admissibility

1. Conditions of detention

41. The Government submitted that the applicant had failed to exhaust domestic remedies in respect of his complaint about the conditions of his detention. In particular, he could have brought such a complaint before three

levels of domestic jurisdiction (in this respect, they referred to Article 55 of the Constitution, Article 248-1 of the Code of Civil Procedure and Article 2 of the Code of Administrative Justice) or addressed it to the Prosecutors' Office.

42. The applicant disagreed. He alleged that the remedies referred to by the Government were ineffective.

43. The Court observes that it has rejected non-exhaustion arguments similar to those raised by the Government in the present case in a number of other cases where the complaints concerned problems of a structural nature in the domestic prison system in question (see, for example, *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001; *Melnik v. Ukraine*, no. 72286/01, §§ 69-71, 28 March 2006; *Yakovenko v. Ukraine*, no. 15825/06, §§ 75-76, 25 October 2007; *Koktysh v. Ukraine*, no. 43707/07, § 86, 10 December 2009; and *Logvinenko v. Ukraine*, no. 13448/07, § 57, 14 October 2010). It does not see any reason to depart from its previous approach in the present case. In addition, the Court notes that, as appears from the case-file materials, the applicant voiced complaints about the conditions of his detention (see paragraph 31 above). In the light of the above, the Court rejects the Government's objection.

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

2. Ill-treatment by SIZO guards on 28 February 2006

45. The Government suggested that the applicant should have complained to the Prosecutors' Office of his alleged ill-treatment. Absent such a complaint, it was not possible to establish the relevant facts and the applicant could not be considered as having exhausted domestic remedies in respect of this aspect of his application.

46. The applicant did not comment on this point, but noted in general terms that he maintained his complaint concerning the incident on 28 February 2006.

47. The Court notes that the applicant presented no evidence whatsoever that he had been beaten up on 28 February 2006. Likewise, he presented no evidence that he had raised a relevant complaint before the competent authorities, although a number of his letters addressing other aspects of his life in detention have been included in the case-file. The Court considers that the particular incident complained about can not be approached as a structural problem. It therefore agrees with the Government that the applicant should have made the competent authorities aware of his alleged suffering in this respect. Absent any evidence that he made any attempt to do so, the Court has no basis to dismiss the Government's objection (see

Aliev v. Ukraine (no. 2) (dec.), no. 33617/02, 14 October 2008, and *Logvinenko*, cited above, §§ 62-64).

48. This part of the application should therefore be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Merits

49. The applicant alleged that the conditions of his detention in SIZO no. 3 had been very poor. He contested the Government's account of the events, alleging that it had only referred to the situation pertaining in 2010, while the period complained of had ended in 2006. He further submitted that the Government's account had been too general and had not concerned the specifics of his situation, including enumeration of the cells in which he had been held. The applicant also referred to international and domestic reports by various authorities, according to which the conditions of detention in Ukrainian remand facilities were overall very poor.

50. The Government contested this view. They noted that the conditions of the applicant's detention had been adequate and sufficient to meet his basic needs.

51. The Court notes that as regards various aspects of the conditions of the applicant's detention, including the dimensions of his bunk, lighting, ventilation, sanitary arrangements and seizure of his belongings, the parties' accounts differ and neither is supported by sufficient evidence. The relevant facts therefore cannot be proved "beyond reasonable doubt", which is the standard of proof usually applied by the Court (see *Starokadomskiy v. Russia*, no. 42239/02, § 39, 31 July 2008). However, in the present case the Court does not consider it necessary to establish the truthfulness of each and every allegation made by the applicant. Instead, the Court will concentrate primarily on the allegations that have not been disputed by the respondent Government, or those in respect of which the Government insufficiently commented, where they had been clearly and consistently formulated before the domestic authorities and later before the Court (see *Trepashkin v. Russia*, no. 36898/03, § 85, 19 July 2007).

52. The Court notes, first of all, that it is not in dispute between the parties that the applicant, who was held in SIZO no. 3 for some two and a half years, spent most of his time detained in a basement cell, shared with another inmate, which measured some 7 square metres. Each inmate therefore had some 3.5 square metres of personal space available to him, which is less than the minimum standard recommended by the CPT for Ukraine (see *Davydov and others*, cited above, § 107)). In the light of its jurisprudence (see e.g. *Trepashkin v. Russia*, cited above, § 92; *Melnik v. Ukraine*, cited above, § 103; and *Visloguzov v. Ukraine*, no. 32362/02, § 46, 20 May 2010), the Court finds that the lack of personal space afforded to the applicant in detention in and of itself raises an issue under Article 3 of

the Convention, regard being had, particularly, to the heavy restrictions on freedom of movement and outside exercise.

53. The Court next notes that the Government's affirmations that ventilation, lighting and sanitary arrangements in the SIZO had been adequate and that no personal belongings had ever been seized from the applicant are not supported by sufficient evidence and are couched in general terms. They do not contain responses to the applicant's concrete and consistent allegations to the contrary.

54. Likewise, the Government's comments concerning the medical assistance provided to the applicant are general in nature. The applicant specifically alleged that he had suffered a long-lasting inflammation of one of his ears following an incident on 11 November 2005, when his cellmate had allegedly hit him on the head, and that he had had to treat this inflammation with his own urine. In the meantime, as appears from the Government's submissions, the applicant was seen by doctors concerning problems with his ear on three occasions, the first such occasion being in December 2005 and the last one (in February 2007) being a surgical procedure. It appears from these records that the applicant's ear inflammation was indeed either repetitive or prolonged and that it was aggravating over time. It is not clear, on the other hand, what measures, if any, were taken by the SIZO administration to ensure timely treatment and prevention of the aggravation.

55. Regard being had to the Government's failure to rebut, using detailed and rigorous data, the applicant's allegations concerning poor lighting, ventilation, food, sanitary arrangements and medical assistance available to him in SIZO no. 3, the Court is prepared to conclude that his suffering on account of lack of personal space was, at least to a certain extent, aggravated by the factors at issue.

56. Consequently, the conditions of the applicant's detention were inhuman and degrading. There has therefore been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND § 3 (B) AND (C) OF THE CONVENTION

57. The applicant complained that the Supreme Court had unfairly denied his requests for additional time to familiarise himself with the case file and to ensure the participation of a lawyer in the cassation hearing. He relied on Article 6 §§ 1 and 3 (b) and (c) of the Convention in respect of these complaints. The provisions at issue read as follows:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing...”

A. Admissibility

58. The Government did not present any comments on the admissibility of these complaints.

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

B. Merits

1. Submissions by the parties

60. The applicant asserted that the thirty-two hours (four days) allocated to him for familiarising himself with the case file had been insufficient to allow the preparation of his cassation appeal, regard particularly being had to the fact that the case file had contained twenty-eight volumes (some 7,000 pages). His situation had been further prejudiced by the fact that he had remained handcuffed on the occasions that he was allowed to familiarise himself with the materials, which had impeded his ability to take notes and had caused him severe physical suffering. In addition, there had been a six-month interval between the dates on which the applicant had studied the case file and the date on which he had participated in the cassation hearing, at which he had eventually found himself without legal representation. In the light of these factors, the Supreme Court’s refusal to provide him with additional time to study the case-file materials had breached the guarantees of Article 6 of the Convention.

61. The applicant further alleged that the Supreme Court had unfairly denied his request to ensure his legal representation in the cassation proceedings. In the applicant’s opinion, the Supreme Court had been obliged to do so under applicable law. Even if there had been no such obligation, the failure of the Supreme Court to do so had, in his opinion, been contrary to the requirement of fairness in the proceedings, regard being

had to the severity of the charges faced by the applicant and the complexity of the case.

62. The Government disagreed. They submitted that the applicant had twice been provided with an opportunity to study the case file. Firstly, he had done so in presence of two defence representatives following the completion of the pre-trial investigation in March 2004. Secondly, he had studied the case file on his own on 23 and 24 March, and on 4 and 5 April 2005, while preparing his cassation appeal. Keeping him in handcuffs on these occasions would have been unlawful, and, absent any evidence in support of the applicant's allegations, this complaint was ill-founded. There was likewise no evidence that at the time of the familiarisation the applicant had requested more time to study the case file. On the contrary, he had signed affidavits recording that he had read all the volumes of the case file and there was no evidence whatsoever that he had been coerced in any way to do so.

63. As regards the applicant's complaint of the Supreme Court's failure to ensure his legal representation during the cassation hearing, the Government pointed out that the Supreme Court had had no obligation under the law to do so. In spite of this, the Supreme Court had adjourned the hearing of 13 September 2005 specifically to allow the applicant time to contact his lawyer or to hire a new one. The Supreme Court should not be held responsible for the applicant's failure to take any action in this respect. Moreover, although the applicant's lawyer had not been present at the hearing, she had submitted a cassation appeal which had been considered by the Supreme Court, and the applicant himself had been present at the hearing to provide any further explanation required. In the light of all the above, there had been no unfairness in holding a cassation hearing in the absence of the applicant's lawyer.

2. The Court's assessment

a. General principles

64. The Court reiterates that the requirements of Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1 of the Convention. The Court will therefore examine the complaints under those two provisions taken together (see, among many other authorities, *Van Mechelen and Others v. the Netherlands*, 23 April 1997, § 49, *Reports of Judgments and Decisions* 1997-III).

65. The Court notes that Article 6 § 3 (b) guarantees the accused "adequate time and facilities for the preparation of his defence" and therefore implies that the substantive defence activity on his behalf may comprise everything which is "necessary" to prepare the main trial. The accused must have the opportunity to organise his defence in an appropriate way and without restriction as to the opportunity to put all relevant defence

arguments before the trial court and thus to influence the outcome of the proceedings (see *Can v. Austria*, no. 9300/81, Commission's report of 12 July 1984, Series A no. 96, § 53; *Connolly v. the United Kingdom* (dec.), no. 27245/95, 26 June 1996; and *Mayzit v. Russia*, no. 63378/00, § 78, 20 January 2005). Furthermore, the facilities available to everyone charged with a criminal offence should include the opportunity to acquaint himself with the results of investigations carried out throughout the proceedings for the purpose of preparing his defence (see *C.G.P. v. the Netherlands*, (dec.), no. 29835/96, 15 January 1997, and *Foucher v. France*, 18 March 1997, §§ 26-38, *Reports* 1997-II). The issue of adequacy of time and facilities afforded to an accused must be assessed in the light of the circumstances of each particular case (see *Kornev and Karpenko v. Ukraine*, no. 17444/04, § 67, 21 October 2010).

66. As regards Article 6 § 3 (c), the Court reiterates that, while it confers on everyone charged with a criminal offence the right to “defend himself ... through legal assistance ...”, it does not specify the manner of exercising this right. It thus leaves to the Contracting States the choice of the means of ensuring that it is secured in their judicial systems, the Court's task being only to ascertain whether the method they have chosen is consistent with the requirements of a fair trial (see *Quaranta v. Switzerland*, 24 May 1991, § 30, Series A no. 205).

67. The Court has previously held that the appointment of defence counsel does not in itself necessarily settle the issue of compliance with the requirements of Article 6 § 3 (c). Mere nomination does not ensure effective assistance, as a lawyer appointed for legal-aid purposes may be prevented from performing or may shirk his or her duties. If they are notified of the situation, the authorities must either replace the lawyer or oblige him or her to fulfil those duties (see, for example, *Kahraman v. Turkey*, no. 42104/02, § 35 *in fine*, 26 April 2007).

68. Nevertheless, a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal-aid purposes or chosen by the accused. It follows from the independence of the legal profession from the State that the conduct of the defence is essentially a matter between the defendant and his counsel, whether counsel be appointed under a legal-aid scheme or be privately financed (see *Cuscani v. the United Kingdom*, no. 32771/96, § 39, 24 September 2002). The competent national authorities are required under Article 6 § 3 (c) to intervene only if a failure by legal-aid counsel to provide effective representation is manifest or sufficiently brought to their attention in some other way (see *Kamasinski v. Austria*, 19 December 1989, § 65, Series A no. 168, and *Daud v. Portugal*, 21 April 1998, § 38, *Reports* 1998-II).

69. In a number of cases, the Court has already ruled that the State authorities may be responsible for ensuring that defendants in criminal proceedings are legally represented in appeal proceedings. The factors

relevant to the determination of the scope of this obligation include: (a) the scope of the jurisdiction of the appeal court in question (whether it extended to both legal and factual issues, whether the court was empowered to fully review the case and to consider additional arguments which had not been examined in the first-instance proceedings); (b) the seriousness of the charges against the applicant; and (c) the severity of the sentence which the applicant faced (see *Maxwell v. the United Kingdom*, 28 October 1994, § 40, Series A no. 300-C; *Shilbergs v. Russia*, no. 20075/03, § 123, 17 December 2009; *Potapov v. Russia*, no. 14934/03, § 24, 16 July 2009; *Shulepov v. Russia*, no. 15435/03, §§ 34-39, 26 June 2008; and *Shugayev v. Russia*, no. 11020/03, §§ 53-60, 14 January 2010).

b. Application of these principles in the present case

70. The Court notes that, insofar as the applicant in the present case complained of having been held in handcuffs during his familiarisation with the case file, the Government disputed these allegations as unsubstantiated. Lacking any evidence, the Court is unable to establish the veracity of either position. It, however, finds the applicant's account disturbing, particularly in light of the fact that the Supreme Court offered no response to his complaint in this regard. As regards the applicant's complaint of only having four days to familiarise himself with the twenty-eight-volume case file, the Court considers that in the circumstances of the present case this complaint should be viewed in the light of the fact that the applicant was unrepresented in the cassation hearing.

71. According to the rules of criminal procedure (see paragraph 38 above), where a court of appeal acted as a first-instance court in criminal proceedings, the jurisdiction of the Supreme Court reviewing the case in cassation proceedings extended both to legal and factual issues. The Supreme Court of Ukraine also had the power to consider additional arguments which had not been examined in the first-instance proceedings. Given the seriousness of the charges against the applicant and the severity of the sentence imposed on him by the trial court, the Court considers that the assistance of a lawyer at this stage was essential for the applicant – all the more so, regard being had to the limited time (thirty-two hours) afforded for his examination of the case file some half a year before the hearing took place.

72. In the light of the above, the Court finds that the Supreme Court's rejections of the applicant's requests for additional time to familiarise himself with the case file and to ensure his representation by a lawyer in the cassation proceedings were not in conformity with Article 6 §§ 1 and 3 (b) and (c) of the Convention.

73. There were, accordingly, violations of the provisions at issue.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

74. The applicant further complained under Article 13 of the Convention of a lack of effective remedies for his complaints under Article 3 about the conditions of his detention and of his being beaten by SIZO guards. The relevant provision reads as follows:

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

75. The Government contested this argument.

A. Lack of remedies for a complaint concerning the conditions of detention

76. The Court finds that this complaint is not manifestly ill-founded or indeed inadmissible on any other ground cited in Article 35 of the Convention. It must therefore be declared admissible.

77. With reference to its earlier case-law (see, among other authorities, *Melnik v. Ukraine*, cited above, §§ 113-116, and *Ukhan v. Ukraine*, no. 30628/02, §§ 91-92, 18 December 2008) and the circumstances of the present case, the Court finds that the Government have not proved that, in practice, the applicant had an opportunity to obtain an effective remedy for his complaints – that is to say, a remedy which could have prevented the violations from occurring or continuing, or which could have afforded the applicant appropriate redress.

78. The Court concludes, therefore, 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 the conditions of his detention.

B. Lack of remedies for a complaint concerning the alleged beating of the applicant by SIZO guards

79. The Court recalls that it has found that the applicant has not made out an arguable claim under Article 3 of the Convention of having been beaten by SIZO guards. The guarantees of Article 13 do not, therefore, apply to this complaint. This part of the application is therefore inadmissible and must be rejected in accordance with the requirements of Article 35 §§ 3 (a) and 4 of the Convention.

IV. ALLEGED VIOLATION OF THE RIGHT OF INDIVIDUAL PETITION

80. The applicant further complained under Article 34 of the Convention that the Regional Court had refused to provide him with copies of documents from the case file requested by the Court's Registry. The provision at issue reads as follows:

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

81. The Government contested this argument. They alleged, in particular, that the Regional Court's refusal to allocate its own resources for copying of documents had not hindered the applicant's mother or any other representative of his choice from making copies themselves and, if necessary, asking the court's clerks to certify them.

82. The applicant contested these allegations. He alleged, in particular, that the Regional Court had been the only body that could have provided certified copies of the documents requested by the Court's Registry. He further submitted that his mother, not being a party to the criminal proceedings, had not had standing to copy the documents and that, being in detention and lacking funding for legal aid, he could not have hired a lawyer to perform this request.

83. The Court has established that Article 34 of the Convention may impose an obligation on the State authorities to provide copies of documents to applicants who find themselves in situations of particular vulnerability and dependence and who are unable to obtain documents needed for their files without the State's support (see, for recent authority, *Naydyon v. Ukraine*, no. 16474/03, § 63, 14 October 2010). On the other hand, it has also found that the obligation not to hinder the right of individual petition does not automatically mean that the State has a duty to provide applicants with copies of all or any desired documents or to furnish them with technical means of their choice in order to make their own copies (see *Kornakovs v. Latvia*, no. 61005/00, §§ 171-174, 15 June 2006, and *Chaykovskiy v. Ukraine*, no. 2295/06, § 96, 15 October 2009).

84. The Court notes that in the present case, unlike in the *Chaykovskiy* case mentioned above, the applicant's request was limited to the provision of copies of documents specifically requested by the Court's Registry. On the other hand, unlike in the *Naydyon* case, where the detained applicant, in addition to lacking the necessary funds, also had no family support and very limited contact with the outside world (see *Naydyon*, cited above, § 64), in the present case the applicant was officially represented by L.L., his mother.

85. It appears that L.L. asked the Regional Court to prepare copies of the documents at its own expense, which request was refused on 9 February 2007. At the same time, she never approached that court with a view to preparing her own copies to be certified by the court's officials. Thus the Court cannot speculate as to whether or not this request would have been granted.

86. In the light of the foregoing, the Court finds that the refusal of the Regional Court to prepare certified copies of the requested documents did not as such put the applicant in a situation, in which he became unable to submit necessary documents in support of his application.

87. The Regional Court's conduct did therefore not amount to a hindrance of the exercise of the applicant's right of individual petition. Accordingly, Ukraine has not failed to comply with its obligations under Article 34 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

88. The applicant also complained under Article 3 of the Convention that he had been ill-treated by the investigative authorities during the pre-trial investigation; under Article 5 of the Convention that his detention in SIZO no. 3 pending his trial had been unlawful; and under Article 6 § 3 (d) that the trial court had failed to summon Z., another purported criminal association member, as a witness. Finally, the applicant cited Articles 1, 2, 7, 8, 10, 12, 14 and 17 in respect of the facts of the present case.

89. In the light of all the material before it, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the provisions relied upon by the applicant.

90. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. Article 41 of the Convention provides:

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

A. Damage

92. The applicant sought trial *de novo* and claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

93. The Government submitted that these claims should be dismissed.

94. The Court notes that in the present case it has found a violation of Article 6 § 1 of the Convention. Inasmuch as the applicant's claim relates to the finding of that violation, the Court reiterates that when an applicant has been convicted despite a potential infringement of his rights as guaranteed by Article 6 of the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be trial *de novo*, if requested (see *Öcalan v. Turkey* [GC], no. 46221/99, § 210 *in fine*, ECHR 2005-IV, and *Popov v. Russia*, no. 26853/04, § 263, 13 July 2006). The Court notes, in this connection, that Ukrainian legislation (Article 400-12 of the Code of Criminal Procedure, section 38 of the Judiciary and Judges' Status Act, and section 10 of the Enforcement of the Judgments and Application of the Jurisprudence of the European Court of Human Rights Act) provides that court proceedings may be reopened if the Court finds a violation of the Convention.

95. As regards monetary compensation, regard being had to the circumstances of the present case and ruling on an equitable basis, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage.

B. Costs and expenses

96. The applicant, who had also been granted legal aid, claimed EUR 2,000 in legal fees for his representation before the Court.

97. The Government noted that the applicant had not provided any documents in support of his claim.

98. 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 are reasonable as to quantum. In the present case, regard being had to the fact that the applicant had been granted legal aid and to the fact that he did not provide any evidence in support of his claim, the Court makes no award.

C. Default interest

99. The Court considers it appropriate that the default interest rate 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 concerning the conditions of the applicant's detention in SIZO no. 3, insufficient time and facilities for the preparation of the applicant's cassation appeal, lack of legal representation at the cassation hearing and lack of effective remedies for the complaint about the conditions of detention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 6 § 1 in conjunction with § 3 (b) and (c) of the Convention;
4. *Holds* that there has been a violation of Article 13 of the Convention;
5. *Holds* that Ukraine has not failed to comply with its obligations under Article 34 of the Convention with respect to the refusal of the judicial authorities to provide the applicant with certified copies of documents for his application to the Court;
6. *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 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of Ukraine at the rate applicable at 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;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President