



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

FIFTH SECTION

CASE OF SILI v. UKRAINE

(Application no.42903/14)

JUDGMENT

Art 3 (substantive) • Degrading treatment • Inadequate material conditions
of detention in prison

*This version was rectified on 19 August 2021 under Rule 81 of the Rules of
Court.*

STRASBOURG

8 July 2021

FINAL

08/10/2021

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

In the case of Sili v. Ukraine,

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

Síofra O’Leary, *President*,

Mārtiņš Mits,

Ganna Yudkivska,

Lətif Hüseynov,

Jovan Ilievski,

Lado Chanturia,

Arnfinn Bårdsen, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 42903/14) 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 Nikolay Yevdokimovich Sili (“the applicant”), on 20 May 2014;

the decision to give notice to the Ukrainian Government (“the Government”) of the complaints concerning the conditions of the applicant’s detention in Romny Prison no. 56 and his inability to get a disability pension in detention and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 8 June 2021,

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

INTRODUCTION

1. The case concerns the material conditions of the applicant’s detention in Romny Prison no. 56 (Article 3 of the Convention) and his unsuccessful attempts to obtain a disability pension in detention (Article 1 of Protocol No. 1).

THE FACTS

2. The applicant was born in 1958 and is serving a life sentence. Having been granted legal aid, he was represented by Mr M. Tarakhkalo and Ms A. Kozmenko, lawyers practising in Kyiv.

3. The Government were represented by their Agent, Mr I. Lishchyna.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. CONDITIONS OF DETENTION IN ROMNY PRISON No. 56

5. The applicant was serving his sentence of life imprisonment in Romny Prison no. 56: from 14 March 2009 to 2 September 2011, from 22 December 2011 to 4 May 2014, from 24 July 2014 to 14 March 2016, from 4 June to 14 September 2016, from 4 July to 4 August 2018, from 14 September to 4 October 2018 and from 24 December 2018 to 14 September 2019. In the intervening periods, the applicant was detained in other detention facilities, apparently to facilitate his participation in ongoing criminal investigations.

A. The applicant's account

6. The applicant was transferred to a different cell every week. During the entire period of his detention in Romny Prison no. 56, he was held in almost every cell of the maximum-security sector (namely, in cells nos. 1-7 and 11-20 of unit no. 1 and cells nos. 4-10 and 19-25 of unit no. 2). The cells were overcrowded and often accommodated four inmates instead of the initially previewed capacity of two. They were equipped with two-tier bunk beds, which were utterly uncomfortable. The applicant noted, in particular, that he had been sharing his cell with three other inmates: from 17 June to 2 September 2011, from 20 August 2013 to 4 May 2014 and from 24 December 2018 to 8 January 2019. He provided the names of those inmates and specified the cells' numbers.

7. The cells lacked any artificial or natural ventilation and the applicant was exposed to passive smoking from cellmates. It was very humid and the walls were covered with mould. It was also extremely cold during the winter period and the heat was unbearable in the summer. The toilet was separated from the living area only by a low partition. It was not equipped with bent pipes preventing unpleasant odours and the foul smell permanently lingered in the air. No hygiene items of primary necessity were provided to prisoners, apart from 200 g of soap per month, which was manifestly insufficient. The applicant had access to shower facilities every fortnight. The prison was infested with rats. The food was meagre and tasteless. No fresh fruit was ever served.

8. Following the applicant's complaints to the prosecution authorities of poor conditions of detention, in January 2019 he was transferred from a smoking cell accommodating four inmates to a non-smoking cell shared by two inmates. He stayed in that cell until 14 September 2019 (see paragraph 5 above).

9. In October 2019 one of the inmates, with whom the applicant had shared his cell on several occasions, complained to the prosecution authorities and the courts, in particular, about the permanent foul smell in the cells because of inadequate plumbing. The applicant provided to the

Court a copy of the local prosecutor's report of 7 February 2020 issued following an inspection of nine different cells in unit no. 2 of the maximum-security sector, which had been carried out in response to the above-mentioned complaint. The prosecutor found it impossible to establish, by way of a visual inspection, whether the toilets were equipped with bent pipes to prevent unpleasant smells. As it can be seen on the photos enclosed to that report, the toilet was separated from the living area by a partition appearing to be about one meter high.

10. The applicant also submitted a copy of the ruling of the Romny City Court of 3 March 2020, by which the complaint in question had been allowed in part. The judge held that the prison administration had not refuted the claimant's allegation of foul smell and obliged the former to install proper piping preventing emanation of sewage odours in the cells.

B. The Government's account

11. The applicant was detained in cell no. 1 of unit no. 2. It measured 8.2 sq. m and was designated for two inmates. The toilet was separated from the living area by a solid partition. The nutrition complied with the applicable legal standards. Notably, inmates received three meals daily and the food quality was checked before each meal. Furthermore, prisoners had access to shower and laundry facilities, had their bed linen changed and were provided with soap and detergent on a weekly basis.

12. The applicant did not raise any complaints before the prison administration. Although he did complain about the conditions of detention to the prosecution authorities on one occasion, he later withdrew that complaint.

II. ENTITLEMENT TO A DISABILITY PENSION

A. Background

13. In 1987 the applicant lost sight in his right eye as a result of an injury. Shortly thereafter a medical certificate was issued stating that his condition amounted to a third-degree disability (the mildest). That certificate was valid for a limited period of time and the applicant did not seek its renewal. Nor did he apply for a disability pension while not in detention (until 2004).

B. The applicant's attempts to get a disability pension in prison

14. According to the applicant, starting from 2004, he regularly requested the detention facilities' administration to organise his examination by a medico-social expert commission (an authority competent to issue disability certificates) and to help him with the formalities for his

entitlement to a disability pension to be recognised. While the examination in question was finally carried out in 2016, no assistance was allegedly ever provided to the applicant to the effect of formalising his entitlement to a disability pension.

15. According to the Government, the applicant never sought to apply for a disability pension and requested an expert examination only in 2016.

16. The Government submitted to the Court a copy of an information note issued by Romny Prison no. 56 in respect of all the requests and applications made by the applicant to the administration during the entire period of his detention in that prison. As indicated therein, on 28 November 2012 he had requested and received explanations concerning the procedure to follow for getting a disability pension under Article 122 of the Code on the Execution of Sentences.

17. On 13 June 2016 the applicant was examined, for the first time in detention, by the local medico-social expert commission. He was declared as having a third-degree disability on account of his eye condition. The disability certificate was valid until 1 July 2018, after which a repeated examination was required.

18. On 24 June 2016 the commission transmitted its report to the local office of the Pension Fund.

19. According to the applicant, every month since then he submitted applications to the administration of Romny Prison no. 56 and later to the administration of the Sumy pre-trial detention centre (SIZO) for assistance in getting a disability pension. He also allegedly sent letters to the Pension Fund, which remained without reply.

20. The applicant's next regular examination by the medico-social expert commission was scheduled for 13 June 2018 in Romny Prison no. 56. It was not carried out as planned, however, given that the applicant was detained in the Sumy SIZO at that time. According to the Government, the applicant did not request such examination until early 2019. According to the applicant, he did so whenever possible.

21. On 5 May 2018 the applicant applied to the Sumy regional free secondary legal aid centre for assistance in preparing the procedural documents required for getting a disability pension. On 29 May 2018 a lawyer was appointed for him. On 21 September 2018 that lawyer was replaced by a different one. According to the applicant, he did not get any assistance from those lawyers.

22. On 4 January 2019 the applicant was examined by the medico-social expert commission, which decided that his third-degree disability was permanent and that no future reassessments were required.

23. On 16 January 2019 the commission informed the local office of the Pension Fund about its conclusion.

24. On 26 February 2019 the Sumy regional department of the Pension Fund wrote to the governor of Romny Prison no. 56 that it had received the

commission's report of 4 January 2019 on the applicant's disability and that "the issue of the pension of the prisoner [was] under consideration".

25. On 12 May 2020 the applicant again applied to the Sumy regional free secondary legal aid centre. On 20 May 2020 its director replied to him that the application could not be allowed given that it concerned several different issues (including the applicant's legal representation in several sets of criminal proceedings, entitlement to a disability pension and a transfer to a different prison). The applicant was invited to submit a separate application in respect of each issue. It is not known whether he did so.

C. Other information

26. According to the information provided by the Government, six inmates of Romny Prison no. 56, four of whom are serving a life sentence, are in receipt of pensions of various types.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CONDITIONS OF DETENTION

27. The Code on the Execution of Sentences (2003) provides that prisoners sentenced to life imprisonment are to serve their sentences in prisons of the highest level of security (Article 150). They are placed, as a rule, in two-person cells. They are allowed to have one hour's exercise daily.

28. The applicant submitted to the Court a copy of the reports issued by the office of the Parliamentary Commissioner for Human Rights (Ombudsman) following its monitoring visits to Romny Prison no. 56 on 25 May 2016, 18 July 2017, 15 August 2018 and 16 April 2019. It was noted therein, with reference to information provided by the prison administration, that there were two types of cells in the maximum-security sector: of 6 sq. m for two inmates and of 12 sq. m for four inmates. The Ombudsman criticised the conditions in disciplinary cells (poor light and ventilation, high humidity, malfunctioning toilets with no privacy, dirty bedding), the medical unit (cockroaches in the dining area, poor sanitary conditions in wards and toilets), the dormitory and the workshop. There were no specific findings regarding cells for life prisoners. As regards nutrition, it was observed in the report of 16 April 2019 that the bread was handled in unhygienic conditions and the tableware was worn out.

II. ENTITLEMENT TO A DISABILITY PENSION

A. Code on the Execution of Sentences (2003)

29. Articles 60-1 and 122 concern “general obligatory state ... pension insurance for prisoners”. Both Articles contain the following identical provisions:

“2. Prisoners are entitled to ... a disability pension ... under the same conditions as other citizens (*на загальних підставах*).

3. The territorial authorities of the Pension Fund located near the prison shall award a [disability] pension to eligible prisoners. ...

4. The territorial authorities of the Pension Fund shall transfer the pensions awarded to prisoners at the prison’s bank account.

A maintenance contribution shall be deducted from prisoners’ pensions in accordance with the rules established by the Cabinet of Ministers of Ukraine.

At the same time, at least fifty per cent of the pension amount shall be placed at the prisoner’s personal account.”

30. Paragraph 3 of Article 122 additionally states:

“... A person, who becomes entitled to a [disability] pension while serving a prison sentence, shall submit a request to the prison administration for providing all the required conditions for [the] pension to be fixed (*клопотання про забезпечення необхідних умов для призначення .. пенсії*). In such a request [he/she] may ask for organising a meeting [in prison] with a representative of the Pension Fund so that the prisoner could file the required documents in person. [This can also be done] by the prisoner’s representative acting on the basis of a notarised authority.

The prison administration shall organise [the requested meeting] within thirty days of the application date and shall facilitate, in every possible way, the prisoner’s [or his/her representative’s] efforts in preparing and filing the required documents.”

B. Law of Ukraine “On general obligatory state pension insurance” (2003)

31. As stipulated in Article 30 § 1, disabled people, who have the required length of pensionable service (*страховий стаж*) under Article 32, are entitled to a disability pension.

32. Article 31 provides that there are three degrees of disability (*зруну інвалідності*) depending on the working capacity loss.

33. Article 32 specifies the length of pensionable service required for entitlement to a disability pension. It states, in particular, that persons with a third-degree disability shall be entitled to a disability pension subject to having the following length of pensionable service on the date when they become disabled or when they apply for a disability pension:

- at the age of 46 to 48 years inclusive – eleven years;
- at the age of 49 to 51 years inclusive – twelve years;

- at the age of 52 to 55 years inclusive – thirteen years; and
- at the age of 56 to 59 years inclusive – fourteen years.

34. As further stated in Article 32, persons who have been declared disabled after having reached the retirement age under Article 26 (60 years), are entitled to a disability pension subject to having the length of pensionable service stipulated by Article 26 § 1(1) (at least fifteen years).

C. Resolution of the Pension Fund’s Board no. 22-1 of 25 November 2005 (with further amendments)

35. The relevant provisions of this Resolution, which sets out the procedure for preparation and submission of documents for a pension (recalculation) under the Law of Ukraine “On general obligatory state pension insurance”, read as follows:

I. Applications for a pension ...

“1.4. Prisoners shall submit applications for a pension through their representatives acting on the basis of a notarised authority, to the pension authority located near the prison.

Prisoners may submit the relevant documents for a pension in person, if they wish so, in compliance with Articles 60-1 and 122¹ of the Code on the Execution of Sentences.”

II. Documents required for a [pension]

“2.1. The application for an old-age pension shall enclose the following documents:

- (1) the document on the attribution of an individual taxpayer identification number ... or a general obligatory state social insurance;
- (2) documents on the length of pensionable service ...;
- (3) documents on [the salary amount];
- (4) documents on the place of residence (domicile registration).

2.2. The application for a disability pension shall enclose the documents listed in points 1-4 of paragraph 2.1 of this Section.

The pension authority in charge shall enclose to the file the report transmitted to it by the medical-social expert commission following [the applicant’s] examination.”

36. The application form to be filled by those applying for a pension is provided in Annex 1 to the above-mentioned document.

¹ Rectified on 19 August 2021: the text was “and 121”.

THE LAW

I. SCOPE OF THE CASE

37. In his submissions of 12 November 2020 made in reply to the Government's observations, the applicant complained for the first time about the conditions of his detention in Stryzhavska Prison no. 81 and the Sumy SIZO.

38. The Court notes that these new, belated complaints do not constitute an elaboration or elucidation of the applicant's original complaints, on which the parties have commented. The Court considers, therefore, that it is not appropriate now to take up these matters in the context of the present case (see *Korneykova and Korneykov v. Ukraine*, no. 56660/12, §§ 95-96, 24 March 2016, and contrast *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 122 and 129, 20 March 2018).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

39. The applicant complained that he had been detained in appalling conditions in Romny Prison no. 56, in particular owing to overcrowding. He relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

40. The Government did not invoke any admissibility objection. The Court notes that this complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

41. The parties relied on their accounts regarding the conditions of the applicant's detention in Romny Prison no. 56 (see paragraphs 6-12 above).

42. The Court refers to the general principles governing the application of Article 3 of the Convention to conditions of detention, which were summarised in *Muršić v. Croatia* ([GC], no. 7334/13, §§ 96-141, 20 October 2016). As the Court has emphasised in the cited case, a serious lack of space in a prison cell weighs heavily as a factor to be taken into account for the purpose of establishing whether the detention conditions described are “degrading” from the point of view of Article 3 and could disclose a violation, either on its own or when taken together with other shortcomings.

43. Other elements of relevance for assessing compliance of conditions of detention with Article 3 include access to outdoor exercise, natural light or air, the availability of ventilation, the adequacy of heating arrangements, the possibility of using the toilet in private, and compliance with basic sanitary and hygiene requirements (see *Story and Others v. Malta*, nos. 56854/13 and 2 others, §§ 106 and 112, 29 October 2015, and *Muršić*, cited above, § 140).

44. Turning to the present case, the Court notes that, although the applicant complained that he had been detained in overcrowded conditions and provided detailed information as regards the numbers of the cells in which he had been detained and the names of his cellmates (see paragraph 6 above), he failed to specify the most important detail – how many square metres of floor space each inmate had at his disposal.

45. Nor did the Government provide any information to clarify that matter. Their reference to the applicant's detention in a cell measuring 8.2 sq. m and being designated for two inmates is of little help, given that they neither specified the period during which the applicant had been detained in that cell, nor provided any information as to whether its actual occupancy corresponded to the designated one.

46. The Court takes note of the information in the Ombudsman's reports published following the monitoring visits to Romny Prison no. 56: that cells of 6 sq. m were shared by two inmates whereas those measuring 12 sq. m accommodated four inmates (see paragraph 28 above). Given that the parties did not contest the accuracy of that information and failed to provide any alternative data, the Court proceeds on the assumption that that was the applicant's situation in the present case. In other words, it appears that he had only 3 sq. m of personal space during his detention in Romny Prison no. 56.

47. The Court has held that, in cases where a prison cell measuring in the range of 3 to 4 sq. m of personal space per inmate is at issue, this remains a weighty factor in the Court's assessment of the adequacy of conditions of detention. In such instances, a violation of Article 3 will be found if the space factor is coupled with other aspects of inappropriate physical conditions of detention (see *Muršić*, cited above, § 139).

48. The Court observes that in the present case the applicant provided a detailed description of the conditions of his detention and that many of his allegations are supported by solid evidence. This concerns, in particular, the allegations of lack of privacy in using the toilet, the presence of foul odours and poor hygienic conditions (see paragraphs 6-10 and 28 above). As regards the Government's submissions, they were couched in general terms and did not address the applicant's major arguments (see paragraphs 11-12 above).

49. The Court also takes note of the fact that, being assigned to the maximum-security sector, the applicant remained confined to his cell most of the time (see paragraph 27 above).

50. Regard being had, firstly, to the applicant's credible allegations of the very limited space available to him in a multi-occupancy cell, poor sanitary conditions and lack of privacy, as well as inadequate ventilation, heating and lighting, none of which has been rebutted by the Government, and, secondly, to the heavy restrictions of the applicant's prison regime which allowed for very limited time spent outside the cell (see paragraphs 6-10 and 27 above), the Court concludes that the material conditions of his detention in Romny Prison no. 56 amounted to degrading treatment, in breach of Article 3 of the Convention (compare *Aleksandr Vladimirovich Smirnov v. Ukraine*, no. 69250/11, §§ 60-61, 13 March 2014, and *Guk v. Ukraine* [Committee], no. 16995/05, §§ 83-86, 8 December 2016).

51. There has therefore been a violation of that provision.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

52. The applicant complained that there had been a violation of his rights under Article 1 of Protocol No. 1 on account of his continued inability to obtain a disability pension. The provision relied on reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

53. The applicant submitted that he had the right to a disability pension under domestic law, which had been denied to him in practice for many years. He emphasised that, being a prisoner, he was particularly vulnerable and fully dependant on the authorities. While being legally obliged to help him in every possible way with all the formalities to facilitate his receipt of a disability pension, the prison administration allegedly ignored his requests to that effect.

54. The Government contested the applicant's arguments. They submitted that, as soon as he expressed his wish to be examined by a commission competent to issue a disability certificate, in 2016, such an examination was carried out.

55. The Government insisted that the applicant had neither requested the prison administration to arrange for his meeting with a representative of the Pension Fund nor asked for any other measures to be taken. They drew the Court's attention to the fact that certain inmates of Romny Prison no. 56 were receiving pensions without any problems being reported (see paragraph 26 above).

56. In sum, the Government argued that the applicant had failed to follow an overall simple procedure and that there were no reasons to blame the authorities for that.

57. The applicant contested that last-mentioned argument as "absurd" and claimed to have made all possible efforts to get his entitlement to a disability pension recognised.

58. The Court notes that Article 1 of Protocol No. 1 imposes no restriction on the Contracting States' freedom to decide whether or not to have in place any form of social-security scheme, or to choose the type or amount of benefits to provide under any such scheme. If, however, a Contracting State has in force legislation providing for the payment as of right of a welfare benefit – whether conditional or not on the prior payment of contributions – that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements (see *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 82, 13 December 2016, with further references).

59. The Court has also held that, where the person concerned does not satisfy the legal conditions laid down in domestic law for the grant of any particular form of benefits or pension, there is no interference with the rights under Article 1 of Protocol No. 1 (see, for example, *Richardson v. the United Kingdom* (dec.), no. 26252/08, § 17, 10 April 2012, and the case-law references therein).

60. Turning to the present case, the Court notes that the Ukrainian system of disability pensions, which is applicable to prisoners in the same vein as to the general population, operates on the basis of two cumulative eligibility criteria: firstly, a "health condition", under which the benefit is due only to persons officially recognised as disabled, and, secondly, a "pensionable service condition", under which a person must have performed a pensionable service of a certain minimum duration (see paragraphs 29-34 above).

61. It is noteworthy that the applicant's argumentation is confined to the issue of his compliance with the first-mentioned condition and that he did not claim having fulfilled the second-mentioned one. Moreover, the applicant did not even summarily mention having any employment record that might be qualified as pensionable service. It cannot be ruled out that he was simply unaware of that legal requirement. In the light of the applicant's allegations that he was denied any assistance from the prison administration and taking into account his unsuccessful attempts to solicit the local free

secondary legal aid centre's services (see, in particular, paragraphs 21 and 25 above), the Court cannot reproach the applicant for having failed to comment on that issue at the early stages of the proceedings before the Court, when he was not legally represented. However, even after the applicant became represented by two lawyers of his choice once the notice of the case was given to the Government (see paragraph 2 above), this issue, even though constituting an essential element of the subject-matter of the applicant's grievance, still remained uncommented.

62. The Court also takes note of the absence of any comments from the applicant concerning the information note issued by the administration of Romny Prison no. 56, according to which on 28 November 2012 he received explanations on the procedure to follow for getting a disability pension under Article 122 of the Code on the Execution of Sentences (see paragraph 16 above). The applicant neither alleged that such explanations had not been provided to him nor criticised them as being insufficient or inadequate.

63. Having regard to all the foregoing considerations, the Court concludes that it has no evidence before it showing the existence of the applicant's proprietary interest under the Ukrainian law for Article 1 of Protocol No. 1 to come into play. In any event, even assuming its applicability, the applicant has failed to substantiate his allegation of a lack of assistance regarding the procedure to apply.

64. This complaint must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicant claimed 1,100,000 euros (EUR) in respect of non-pecuniary damage.

67. The Government contested that claim as unsubstantiated and exorbitant.

68. The Court has no doubt that the applicant suffered distress and frustration on account of the conditions of his detention in breach of Article 3 of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

69. The applicant also claimed EUR 3,450 for the costs and expenses incurred before the Court, to be paid directly into Mr Tarakhkalo's bank account. In support of his claim, he submitted a legal assistance contract signed by him and Mr Tarakhkalo on 11 May 2020, indicating an hourly fee of EUR 150. According to the contract, payment was due after completion of the proceedings in Strasbourg and within the limits of the sum awarded by the Court in respect of costs and expenses. The applicant also submitted a report of 12 November 2020 on the work completed under the aforementioned contract. It specified that Mr Tarakhkalo had worked on the case for twenty-three hours (EUR 3,450).

70. The Government considered the amount claimed excessive.

71. 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 documents in its possession and the above criteria, as well as taking into account the legal aid already granted (see paragraph 2 above), the Court considers it reasonable to award the applicant EUR 1,450 for legal fees incurred before the Court, plus any tax that may be chargeable to the applicant. The award is to be paid into Mr Tarakhkalo's bank account, as indicated by the applicant (see, for example, *Belousov v. Ukraine*, no. 4494/07, §§ 116-17, 7 November 2013).

C. Default interest

72. 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

1. *Declares*, by a majority, the complaint concerning the conditions of the applicant's detention in Romny Prison no. 56 admissible and the remainder of the application inadmissible;
2. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention;
3. *Holds*, unanimously,
 - (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, the following amounts, plus

any tax that may be chargeable to the applicant, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

- (i) EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage;
- (ii) EUR 1,450 (one thousand four hundred fifty euros) in respect of legal costs before the Court (to be paid into the bank account of the applicant's lawyer, Mr Tarakhkalo);
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

4. *Dismisses*, by five votes to two, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court. 

Victor Soloveytschik
Registrar

Síofra O'Leary
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Yudkivska and Hüseyinov is annexed to this judgment.

S.O.L.
V.S.

JOINT PARTLY DISSENTING OPINION OF JUDGES
YUDKIVSKA AND HÜSEYNOV

1. The present case raises an important issue about the scope of the State's positive obligations towards a prisoner in a socio-economic sphere. Unlike the majority, we are of the opinion that in the present case the Ukrainian authorities violated not only Article 3, but also Article 1 of Protocol No. 1.

2. The applicant's complaint under Article 1 of Protocol No. 1 concerned his unsuccessful attempts to obtain a disability pension while serving a sentence of life imprisonment. In the majority's view, the applicant had "failed to substantiate his allegation of a lack of assistance regarding the procedure" to be followed for that purpose (paragraph 63), and on that basis the complaint was found to be manifestly ill-founded. We respectfully disagree.

3. To start with, according to the Court's well-established case-law, Article 1 of Protocol No. 1 entails both negative and positive obligations for the States Parties. Positive obligations deriving from this provision may require the State Party to take the measures necessary to protect the right of property (see, among many other authorities, *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 100, ECHR 2014). This is particularly true where there is a direct link between the measures that an applicant may legitimately expect from the authorities and his effective enjoyment of his possessions (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 134, ECHR 2004-XII).

4. In assessing compliance with Article 1 of Protocol No. 1, the Court must carry out an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. That assessment may involve the conduct of the parties, including the means employed by the State and their implementation. In that context, it should be stressed that uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State's conduct (see *Romeva v. North Macedonia*, no. 32141/10, § 72, 12 December 2019).

5. In the present case, the applicant, who claimed that he was entitled to a disability pension, has never been awarded that pension. That said, there has been no rejection of a request by him to that effect either. The particularity of the applicant's situation is that he has apparently not even lodged a formal application for a disability pension. While under the normal circumstances such a situation would be held against the applicant, suggesting a lack of diligence on his part, in the present case it lies at the

core of his grievance before the Court. Thus, the applicant blamed the authorities for a failure to facilitate his access to relevant services and information in order to comply with all the required formalities with a view to formalising his entitlement to a disability pension.

6. It is noteworthy that the Government did not question the applicant's eligibility for a disability pension as such, or at least did not dispute that he had grounds for claiming it. However, regardless of whether the applicant could legitimately expect to receive that pension, he was entitled under the relevant law to apply for a pension and have his application examined, and, moreover, under Article 122 § 3 of the Code on the Execution of Sentences, to expect that the prison administration "facilitate, in every possible way, his efforts in preparing and filing the required documents". In other words, the State, acting in line with its margin of appreciation in determining the steps to be taken to ensure compliance with the Convention, imposed the aforementioned positive obligation on prison authorities, with a view to securing the effective exercise by prisoners of their property rights related to receipt of a disability pension. The alleged failure of the prison administration to comply with that obligation in the applicant's case is, as noted above, the crux of his grievances before the Court.

7. It appears from the case file that the said positive obligation has not been complied with. We stress that, in view of his vulnerability at the hands of the authorities, who exercised complete control over him throughout his detention (see, *mutatis mutandis*, *Y.F. v. Turkey*, no. 24209/94, § 34, ECHR 2003-IX), the applicant was not able to exercise his rights under Article 1 of Protocol No. 1 without their aid.

8. The parties are in disagreement as to whether the applicant requested any particular assistance from the prison administration other than an examination by a medico-social expert commission (an authority competent to issue disability certificates). In respect of this last-mentioned point, they are also in disagreement as to the date of the first such request.

9. In this regard, it must be noted that, as confirmed by the case-file materials, the applicant enquired about the procedure to be followed for the purpose of obtaining a disability pension for the first time in November 2012 at the latest. Although it was mentioned in the records that some explanations had been provided to him, neither the form nor the content of those explanations are clear. It is not known, in particular, whether the applicant was made aware of the legally prescribed application form to be filled in, in his case, or whether he was able to ask any questions and receive satisfactory answers in that regard. In other words, the applicant's interest in securing an award of a disability pension did not receive any follow-up from the authorities apart from "explanations", the adequacy of which has not been established.

10. Furthermore, we must take note of the undisputed fact that a medico-social expert commission examined the applicant for the first time on

13 June 2016, with a view to deciding whether his condition was to be considered as a disability and, if so, of what gravity. It must have been obvious for the authorities that the applicant had sought that examination with the aim of eventually obtaining a disability pension. This is also confirmed by the fact that the commission's report was transmitted to the local pension authority. However, the prison administration took no steps to help the applicant complete all the procedures and furnish all the required documents to that authority.

11. Another undisputed fact of relevance is that the applicant repeatedly sought help from a legal aid centre in his efforts to obtain a disability pension and that his applications were either not acted upon or refused on what appeared to be formalistic grounds (see paragraphs 21 and 25 of the judgment).

12. We consider the foregoing considerations sufficient to conclude that the State authorities have fallen short of their positive obligation, as arising by virtue of domestic law, to assist the applicant in his efforts related to his claimed disability pension entitlement. This in turn affected adversely the possibility for the applicant to have his claim about a pension entitlement filed and duly examined. Therefore we believe that this complaint was admissible and that there has been a violation of Article 1 of Protocol No. 1.