



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

FIFTH SECTION

CASE OF IVAN KARPENKO v. UKRAINE

(Application no. 45397/13)

JUDGMENT

Art 3 (substantive) • Inhuman and degrading treatment • Life prisoner ban on communication with other prisoners during out-of-cell activities, further exacerbated by other factors, amounting to inhuman and degrading treatment • Ban applied solely on ground of life sentence without procedural safeguards or review • Applicant's situation amounting to systemic segregation • Failure to respect European Prison Rules requiring an adequate level of out-of-cell human and social interaction • Failure to duly examine applicant's complaints about resulting deterioration of his mental and physical health and his assistance requests in that regard

STRASBOURG

16 December 2021

FINAL

16/03/2022

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

In the case of Ivan Karpenko v. Ukraine,

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

Síofra O’Leary, *President*,
Mārtiņš Mits,
Ganna Yudkivska,
Stéphanie Mourou-Vikström,
Jovan Ilievski,
Lado Chanturia,
Ivana Jelić, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 45397/13) 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 Ivan Ivanovych Karpenko (“the applicant”), on 3 August 2013;

the decision to give notice to the Ukrainian Government (“the Government”) of the application;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the European Prison Litigation Network, which had been granted leave to intervene by the President of the Section;

Having deliberated in private on 23 November 2021,

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

INTRODUCTION

1. The case concerns the prohibition of life prisoners having any contact with inmates from other cells (Article 3 of the Convention) and the lack of an effective domestic remedy in that regard (Article 13 of the Convention).

THE FACTS

2. The applicant was born in 1973. He has been serving a life sentence since 2004. From May 2005 he has been imprisoned in Romny Prison no. 56.

3. Having been granted legal aid, the applicant was represented by Mr M. Tarakhkalo, Mr O. Levytskyy and Ms A. Kozmenko, lawyers practising in Kyiv, as well as Mr H. de Suremain, a lawyer practising in Paris.

4. The Government (“the Government”) were represented by their Agent, Mr I. Lishchyna.

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

I. INCIDENT ON 13 JUNE 2009

6. On 13 June 2009 the applicant greeted a fellow prisoner during a walk in the prison courtyard. The guard made a remark to them that that was prohibited and made a report to the prison administration. It was noted that the applicant “had tried to enter into verbal contact” with another prisoner in breach of section 23 of the Internal Regulations of Penal Institutions (see paragraph 30 below).

7. On the same day the applicant wrote an explanation to the prison administration. He admitted having talked to a fellow prisoner, whom he did not know.

8. Based on the guard’s report, on 16 June 2009 the prison administration disciplined the applicant. The sanction applied to him on that occasion was “a warning” (see paragraph 23 below).

II. ADMINISTRATIVE CLAIM BROUGHT BY THE APPLICANT

9. On 26 May 2010 the applicant lodged an administrative claim against the prison administration seeking that the disciplinary sanction in question be declared unlawful and that the relevant entry be removed from his records.

10. On 9 June 2010 the Sumy Circuit Administrative Court rejected his claim on account of its lack of jurisdiction to examine issues relating to the execution of sentences.

11. On 13 October 2010 the Kharkiv Administrative Court of Appeal upheld that ruling.

12. On 13 October 2011 the Higher Administrative Court dismissed the applicant’s appeal on points of law as having been lodged out of time, even though the applicant had claimed having received the appellate court’s ruling with a delay.

13. The Government submitted that they were unable to provide the Court with a copy of the above-mentioned case file because it had been destroyed on the expiry of the statutory storage period.

III. CIVIL CLAIM BROUGHT BY THE APPLICANT

14. On 13 June 2012 the applicant brought civil proceedings against the prison administration seeking that the disciplinary measure in question be declared unlawful, and claiming compensation in respect of non-pecuniary damage.

15. On 20 June 2012 the Romny Town Court rejected the applicant’s claim on the grounds that it fell to be examined by the administrative courts.

16. The applicant appealed, with reference to the administrative courts’ decisions declining jurisdiction over the matter.

17. On 31 July 2012 the Sumy Regional Court of Appeal rejected that appeal, reiterating the first-instance court's reasoning.

18. On 5 February 2013 the Higher Specialised Court for Civil and Criminal Matters rejected the applicant's request for leave to appeal on points of law.

IV. OTHER RELEVANT FACTS

19. As indicated in an information note issued by the governor of Romny Prison no. 56 on 15 February 2017, since 13 June 2009 the applicant had applied to the prison administration for medical and psychological assistance on thirteen occasions. He had consistently submitted that the permanent prohibition of any contact with other prisoners "in the same areas" amounted to torture. It was mentioned in the information note that "there was no information concerning the examination of those applications". As further noted therein, on 3 February 2011 the applicant had been diagnosed with "neurocirculatory asthenia of hypertonic type", for which he had received no medical treatment, but the following recommendation had been made: "to lead a healthy lifestyle and to avoid psychological and emotional strain". Lastly, it was observed that the applicant had periodically complained of a deterioration in his health on account of the prohibition of contact with other prisoners, and that he had been taking some items of medication supplied by his relatives and friends.

20. In April 2013 the applicant applied to the regional prison authorities for possible enrolment in vocational training. He was informed that, although there was indeed a vocational training programme for inmates in Romny Prison no. 56, life prisoners were not eligible for it.

21. On 23 October 2020 the governor of Romny Prison no. 56 issued a further information note stating as follows:

"During the period from 4 May 2005 to 27 August 2019 [the applicant] was held in a cell for life-sentenced prisoners together with another inmate, while during the period from 28 August 2019 to 23 October 2020 he shared his cell with two other inmates, spending twenty-two to twenty-four hours per day in his cell without any activities (work or training)..."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. Code of Enforcement of Criminal Sentences of 2003 (with further amendments)

22. Article 107 provides for the general rights and obligations of prisoners. It prohibits, in particular, "communication with fellow prisoners or

other persons in breach of the isolation rules or asking them to carry out unlawful actions” (§ 4).

23. Article 132 contains a list of disciplinary sanctions applicable to prisoners, with a warning being one of those sanctions. Its definition - “a written warning about applying a specific disciplinary sanction to [a prisoner] in case of a repeated violation” – was added to the Code in September 2016¹.

24. Article 135, as worded before the above-mentioned amendments, listed the prison officials empowered to apply sanctions and incentives in respect of prisoners. The amended version, in force since April 2017, provides that, in the case of breaches of prison rules by a prisoner, a permanent disciplinary commission, consisting of the prison governor, his deputies, and heads of the prison services whose staff are in direct contact with prisoners, must institute disciplinary proceedings in respect of that prisoner and deliver its decision after a hearing. The prisoner concerned must be notified of that hearing at least twenty-four hours in advance. He or she has the right to be represented by a lawyer of his or her choice or, if unable to hire a lawyer, to apply for legal aid with the prison administration’s assistance. The prisoner and/or his or her lawyer has the right: to receive access to all related information and documents at least twenty-four hours before the hearing; to attend that hearing; to study the case file and to make copies thereof; to give explanations, and lodge objections and applications both orally and in writing; to submit evidence; and to request, at least twenty-four hours before the hearing, the attendance of persons whose presence is deemed necessary to establish the factual circumstances or the correct disciplinary measures. The disciplinary commission’s decisions are taken by majority and must be duly reasoned.

25. Article 151 concerns imprisonment conditions for those serving a life sentence. They are usually accommodated in cells for two inmates (§ 1). The general provisions on prisoners’ rights and obligations under Article 107 are also applicable to this category of prisoners (§ 2). Life prisoners are entitled to a one-hour outdoor walk (§ 5). Subject to “diligent behaviour and attitude to work”, they may be entitled to group educational, cultural and sporting activities after serving five years in prison (§ 6). Before October 2016, they had to serve at least fifteen years to be eligible for the above-mentioned group activities².

26. Article 151-1, which was added to the Code in January 2010, concerns changes to the conditions of detention of life prisoners. It provides that male

¹ The Law “On amending the Code of Enforcement of Criminal Sentences with a view to improving the procedures in relation to incentives and sanctions in prisons”, which was adopted on 6 September 2016 and entered into force on 7 April 2017.

² The Law “On amending certain legal acts of Ukraine in relation to enforcement of criminal sentences and implementation of prisoners’ rights”, which was adopted on 7 September 2016 and entered into force on 8 October 2016.

life prisoners may be transferred from cell-type premises shared by two inmates to multi-occupancy cell-type premises of a maximum-security prison, with permission to participate in group educational, cultural and sporting activities, after having *de facto* served at least five years of their sentence in the premises of the first-mentioned type. Before the amendments of 8 April 2014 that period had been at least fifteen years³. In addition, life prisoners may be transferred from multi-occupancy cell-type premises to ordinary residential premises in a maximum-security prison after having *de facto* served at least five years of their sentence in the premises of the first-mentioned type.

B. Code of Administrative Justice of 2005

27. Article 17 § 2, in the wording of the Code prior to the amendments of 3 October 2017, provided that administrative courts had jurisdiction over claims by individuals or legal entities against public authorities regarding the authorities' decisions, actions or omissions. The amended version, which is presently in force (Article 19 § 1⁴), reproduces the above provision with the following supplemental wording: "unless a different judicial forum is legally prescribed for such disputes".

C. Code of Criminal Procedure of 1960 (repealed with effect from 20 November 2012)

28. Under Article 409 § 1, it was for the court that delivered a judgment to "resolve any issues concerning doubts or contradictions in respect of the enforcement of that judgment".

D. Code of Criminal Procedure of 2012 (in force since 20 November 2012)

29. Article 537 lists issues to be resolved by the courts during the enforcement of sentences, whereas Article 539 provides for procedures to be followed and specifies which courts have jurisdiction to deal with which issues. In September 2016 those provisions were amended⁵ as follows:

- paragraph (13-1) was added to Article 537 stating that the courts referred to in Article 539 had jurisdiction to examine complaints regarding the prison administration's decisions, actions or omissions; and

³ The Law "On amending the Code of Enforcement of Criminal Sentences with a view to adapting the legal status of prisoners to the European standards", which was adopted on 8 April 2014 and entered into force on 7 May 2014.

⁴ The numbering of articles was changed in the amended version of the Code.

⁵ The Law "On amending certain legal acts of Ukraine with a view to enhancing detainees' and prisoners' access to justice", which was adopted on 7 September 2016 and entered into force on 8 October 2016.

- Article 539 was amended accordingly: the amended version states that local courts in the vicinity of prisons are to deal with the above-mentioned issues.

E. Internal Regulations of Penal Institutions (*Правила внутрішнього розпорядку установ виконання покарань*)

30. The Internal Regulations of Penal Institutions of 2003 (repealed with effect from 23 January 2015) prohibited prisoners' "communication with fellow prisoners or other persons in breach of the isolation rules or asking them to carry out unlawful actions" (section 29). Life prisoners were also prohibited from "entering into contact with inmates detained in other cells" (section 23).

31. The subsequent versions of the Regulations of 2014 (in force from 23 January 2015 to 14 September 2018) and of 2018 (currently in force) retained only the first-mentioned restriction applicable to all prisoners.

F. Domestic case-law

32. The Government provided a copy of a decision of the Sumy Circuit Administrative Court of 8 August 2018, in which a life prisoner's claim against the prison administration had been granted. More specifically, on 29 November 2017 the disciplinary commission of Romny Prison no. 56, in which the claimant in that case had served his sentence⁶, had decided that he should be disciplined for trying to enter into contact with other prisoners in the prison courtyard in breach of the isolation rules and thus acting contrary to Article 107 § 4 of the Code of Enforcement of Criminal Sentences. The sanction applied was "a preventive conversation". The court noted that the disciplinary commission had not explained what the attempt of "entering into contact" had consisted of and why it had been in breach of the isolation rules. Furthermore, "a preventive conversation" was not among the applicable sanctions. The disciplinary commission's decision was therefore quashed as unlawful.

33. The applicant provided copies of numerous judicial decisions from 2010 to 2016, by which administrative courts had declined jurisdiction over matters relating to the imposition of disciplinary sanctions on prisoners.

⁶ The applicant in the present case is serving his sentence in the same prison. While the identity of the claimant in the administrative proceedings referred to by the Government is unknown (his name is redacted, given that the copy of the judicial decision was taken from the publicly available Unified State Register of Judicial Decisions), it is clear from some other details that it was not the applicant.

II. INTERNATIONAL MATERIAL

34. The relevant reports and recommendations of the Committee of Ministers of the Council of Europe and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) are quoted in *N.T. v. Russia* (no. 14727/11, §§ 25-28 and 30-31, 2 June 2020).

35. The CPT carried out a visit to Ukraine from 4 to 13 August 2020, during which it studied, in particular, the situation of life prisoners in one prison. The relevant extract from its report (CPT/Inf (2020) 40) reads as follows (footnotes omitted):

“49. The CPT was very concerned to note that, despite the Committee’s long-standing recommendations, for the great majority of life-sentenced prisoners at Colony No. 100 (i.e. those accommodated in the old unit) the regime had not improved. They continued to be locked up in their cells for 23 hours per day (many of them doing in-cell work), their only out-of-cell activity being one hour of outdoor exercise which was taken on a cell-by-cell basis in small (some 13 m²) cubicles. As in the past, these prisoners were not allowed to associate with life-sentenced prisoners from other cells.

The CPT once again calls upon the Ukrainian authorities to develop the regime for life-sentenced prisoners at Colony No. 100, in particular by providing a range of out-of-cell communal activities. The Committee also recommends that steps be taken at this establishment to enlarge exercise yards for life-sentenced prisoners (so as to allow real physical exertion) and to ensure that such prisoners are as a rule allowed to have contact with inmates from other cells (including during outdoor exercise).

50. According to Section 151-1 of the Criminal Executive Code, after having served at least five years of imprisonment and following an assessment of their individual behaviour and attitude to work, life-sentenced prisoners may be transferred from smaller cell-type premises to multiple-occupancy cells/dormitories in a maximum-security prison, allowing them to participate in group activities (educational, cultural and sports), and further progress to ordinary prisoner accommodation in a maximum-security prison after another five years of imprisonment. In other words, having served ten years of their sentence, life-sentenced prisoners can, in principle, be accommodated together with other prisoners.

Nevertheless, the general rule remains the segregation of life-sentenced prisoners. The CPT must therefore reiterate that the placement of persons sentenced to life imprisonment should be the result of a comprehensive and ongoing risk and needs assessment, and not merely a result of their sentence. In this context, it is difficult to justify all life-sentenced prisoners being required to serve at least the first ten years of their sentence segregated from the rest of inmate population. **The Committee recommends that the Ukrainian authorities review again the legislation with a view to completely abolishing the segregation of persons sentenced to life imprisonment.”**

36. The Ukrainian Government’s response to the above CPT report, which was published on 18 March 2021, included the following observations:

“143. According to the law, life-sentenced prisoners shall be kept in strict isolation. Communication with prisoners from other cells is not provided by the law. According

to Article 151 of the CEC, life-sentenced prisoners are placed in solitary confinement primarily with two persons in each. Its living space is at least 4 m² per one person.

144. According to the daily schedule, life-sentenced prisoners are permitted to have daily 1-hour walk, and ones with active tuberculosis are given 2-hour walk accordingly. The exercise yards are equipped with a crossbar and parallel bars for exercise.

145. In order to ensure the right of the prisoners convicted to life imprisonment to daily 1 hour outside walking on fresh air, the Temnivska Colony No. 100 has 9 walking yards. Area of each walking yard is not less than 12 m². Walking yards are located on the territory of the maximum-security sector and built taking into account 3m² per each person and no less than 25% of the general places for prisoners in that sector.

146. To ensure the right of life-sentenced prisoners to labour, they, where necessary, are engaged in work that does not require additional special equipment, directly in cells.

147. According to provisions of Articles 100, 151-1 of the CEC, depending on behaviour and attitude to labour, if he/she has such, and education, the life-sentenced prisoners after serving not less than 5 years of imprisonment in the solitary confinement cell (where 2 prisoners are held) may be transferred to the large-capacity confinement cell of the maximum security sector within the prison. After serving another 5 years there such category of prisoners may be transferred to ordinary living rooms of the maximum-security level prison.

148. Article 151 (2,6) of the CEC envisages that life-sentenced prisoners shall have the same rights and obligations of ordinary prisoners prescribed in Article 107 of the CEC. If the prisoner demonstrates excellent behaviour and attitude to labour, after serving 5 years of imprisonment he/she might be allowed to participate in group events of educational, cultural, physical and recreational character.”

THE LAW

I. THE GOVERNMENT’S OBJECTION REGARDING ALLEGED ABUSE OF THE RIGHT OF APPLICATION

37. The Government submitted that the applicant had knowingly misled the Court as regards the factual circumstances of his case. They made the following observations to support that argument. Firstly, in his application form the applicant had stated that he had greeted a fellow prisoner on 13 June 2009, whereas in his written explanation to the prison administration of that date he had noted that he did not know that prisoner. Secondly, the applicant had failed to provide the Court with the envelope proving that the ruling of the Kharkiv Administrative Court of Appeal of 13 October 2010 had indeed been sent to him with a delay.

38. The applicant submitted that he had had no intention of misleading the Court and that there were no gaps or contradictions in the summary of the facts provided by him. He also argued that he had enclosed the envelope referred to by the Government with his appeal on points of law and therefore had not been able to send it to the Court.

39. The relevant principles as regards the abuse of the right of application are set out, for example, in *Gross v. Switzerland* ([GC], no. 67810/10, § 28,

ECHR 2014). In particular, the submission of incomplete and therefore misleading information may amount to abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information. However, the applicant's intention to mislead the Court must always be established with sufficient certainty (*ibid.*).

40. In the present case the applicant complained about the prohibition of any communication among prisoners from different cells and referred, by way of example, to the incident of 13 June 2009. The Court considers it to be of no relevance for the substance of the applicant's complaint whether he knew the fellow prisoner in question or whether they saw each other for the first time in the prison courtyard on that date. The absence of the envelope mentioned by the Government is equally irrelevant.

41. Given that the issues invoked by the Government cannot be regarded as "concerning the very core of the case" and in the absence of any indication of the applicant's intention to mislead the Court, the Government's objection must be dismissed in its entirety (compare *Beg S.p.a. v. Italy*, no. 5312/11, §§ 74-81, 20 May 2021).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

42. The applicant complained that the permanent prohibition of life prisoners having any contact with inmates from other cells, whenever they happened to see each other during outdoor walks or on other rare occasions outside their cells, was in breach of Article 3 of the Convention, which reads as follows:

Article 3

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

A. Admissibility

43. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *Submissions by the parties*

(a) The applicant

44. The applicant submitted that, being a life prisoner, he had been prohibited from talking or having any interaction with other prisoners outside his cell for over fifteen years. He contended that the authorities had never

even tried to justify that measure by security-related or other considerations, and that it was automatically applicable to all life-sentenced prisoners. The situation did not change with the repeal, in January 2015, of section 23 of the Internal Regulations of Penal Institutions, which prohibited life prisoners from “entering into contact with inmates detained in other cells”.

45. The applicant further submitted that the ban in question had led to the deterioration of his mental health, making him feel utter helplessness and loneliness to an extent which he perceived as nothing other than a social death. He drew the Court’s attention to the fact that he had been confined to his cell for most of the time without any meaningful activity, sharing the cell with only one inmate until August 2019 and with two inmates thereafter. In his opinion, the conditions of his detention had *de facto* amounted to solitary confinement.

(b) The Government

46. The Government submitted that solitary confinement was not necessarily contrary to Article 3 of the Convention. They observed, with reference to *Ramirez Sanchez v. France* ([GC], no. 59450/00, § 123, ECHR 2006-IX), that the prohibition of contact with other prisoners for security, disciplinary or protective reasons did not in itself amount to inhuman treatment or punishment.

47. The Government further contended that the applicant in the present case was subject to supervision which was warranted by his status as a life prisoner. They observed that the prohibition of contact with other prisoners had been provided for by sections 23 and 29 of the Internal Prison Regulations. Having breached those provisions, the applicant had been disciplined in accordance with Article 132 of the Code of Enforcement of Criminal Sentences.

48. The Government next observed that the Code of Enforcement of Criminal Sentences and the Internal Regulations of Penal Institutions had been considerably amended with a view to their humanisation and that, as a result, life prisoners’ rights had been virtually equalised with those of convicts serving a fixed-term prison sentence. The Government further referred to Article 151-1 of the Code of Enforcement of Criminal Sentences which provided for the possibility of the conditions of imprisonment of life prisoners changing with the passage of time (see paragraph 26 above).

(c) The third party

49. The European Prison Litigation Network (EPLN) submitted that the negative impact of social isolation on prisoners’ health was confirmed by research in the field of psychiatry.

50. They further contended that the absolute ban on communication among prisoners from different cells was a feature of an even more drastic

segregation of life prisoners than the one criticised by the Court in *N.T. v. Russia* (no. 14727/11, 2 June 2020).

51. Lastly, the EPLN argued that, according to studies in the field of philosophy, depriving an individual of the right to speak, under penalty of punishment, was equal to the denial of his or her right to exist in the world.

2. The Court's assessment

(a) General principles established in the Court's case-law

52. The Court's approach to the assessment of whether alleged ill-treatment, which must attain a minimum level of severity, falls within Article 3 of the Convention is summarised, in particular, in *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 159-60, 15 December 2016).

53. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant. The length of the period during which a person is detained in the particular conditions also has to be considered (see *Georgia v. Russia (II)* [GC], no. 38263/08, § 240, 21 January 2021, and the case-law references therein).

54. The Court has often stressed that respect for human dignity is part of the very essence of the Convention (see, for example, *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, § 113, ECHR 2013 (extracts); *Bouyid v. Belgium* [GC], no. 23380/09, § 89, ECHR 2015; and *Khlaifia and Others*, cited above, § 158).

55. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his or her health and well-being are adequately secured (see *Muršić v. Croatia* [GC], no. 7334/13, § 99, 20 October 2016, with further case-law references).

56. The Court has also consistently emphasised in that context the importance of the principle of rehabilitation, that is, the reintegration into society of a convicted person, which is fully applicable to life prisoners, who must have a prospect of release and who should therefore be allowed to rehabilitate themselves (see *N.T.*, cited above, § 41, with further case-law references). As to the extent of any obligations incumbent on States in this regard, the Court has held that even though States are not responsible for achieving the rehabilitation of life prisoners, they nevertheless have a duty to make it possible for such prisoners to rehabilitate themselves. The obligation to offer that possibility is to be seen as an obligation of means, not one of result. However, it entails a positive obligation to secure prison regimes to life prisoners which are compatible with the aim of rehabilitation and enable such prisoners to make progress towards their rehabilitation. Such an

obligation exists in situations where it is the prison regime or the conditions of detention which obstruct rehabilitation (see *Murray v. the Netherlands* [GC], no. 10511/10, § 104, 26 April 2016, with further references).

57. Lastly, according to the Court's case-law, prisoners' isolation should be justified by particular security reasons obtaining throughout the duration of this measure. It can hardly be accepted that this is automatically necessary solely on account of a person's sentence to life imprisonment. The automatic segregation of life prisoners from the rest of the prison community and from each other, in particular where no comprehensive activities outside the cell or stimulus inside the cell are available, may in itself raise an issue under Article 3 of the Convention. Moreover, it runs counter to two instruments to which the Court attaches considerable importance despite their non-binding character: Rule 25.2 of the 2006 European Prison Rules⁷, which says that the prison regime should allow "all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction", and point 7 of Recommendation 2003(23) on the management by prison administrations of life sentence and other long-term prisoners, which says that "[c]onsideration should be given to not segregating life sentence and other long-term prisoners on the sole ground of their sentence" (see *Harakchiev and Tolumov v. Bulgaria*, nos. 15018/11 and 61199/12, § 204, ECHR 2014 (extracts), with further reference).

57bis. The Court refers as a preliminary to its extensive case-law in relation to life prisoners in Ukraine which demonstrates that they are subject to a very restrictive prison regime, are segregated from other prisoners and spend up to twenty-three hours per day in their cells, which are usually double or triple occupancy, with little in terms of organised activities and association (see *Petukhov v. Ukraine* (no. 2), no. 41216/13, § 182, 12 March 2019). They are also often detained in conditions of serious lack of personal space combined with poor sanitary conditions and lack of privacy (see, for example, *Sili v. Ukraine*, no. 42903/14, §§ 27, 48-51, 8 July 2021, *Guk v. Ukraine*, no. 16995/05 [Committee], §§ 83-86, 8 December 2016, and *Dolgikh v. Ukraine*, no. 34697/04 [Committee], §§ 48-50, 11 July 2019) and, until the legislative amendments of May 2014, were subject to blanket severe restrictions on family visits (see *Trosin v. Ukraine*, no. 39758/05, §§ 40-47, 23 February 2012, and, *Bigun v. Ukraine*, no. 30315/10, §§ 18 and 42-50, 21 March 2019). Moreover, the domestic law does not provide them with any possibility of release other than presidential clemency, which the Court found to be in breach of Article 3 of the Convention (*Petukhov* (no. 2), cited above, §§ 169-87).

⁷ They were revised and amended by the Committee of Ministers on 1 July 2020.

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

58. Turning to the present case, the Court notes at the outset the Government's reference to the legislative amendments aimed at the humanisation of life prisoners' conditions of detention (see paragraph 48 above). Indeed, section 23 of the Internal Regulations of Penal Institutions prohibiting prisoners from "entering into contact with inmates detailed in other cells" was repealed with effect from January 2015 (see paragraphs 30-31 above). Furthermore, three major legislative amendments, which were adopted in September 2016, improved the procedures in respect of incentives and sanctions in prisons, clarified the jurisdiction of administrative courts to examine complaints regarding the decisions, actions or omissions of prison administrations, and reduced from fifteen to five years the minimum period of imprisonment for life prisoners to become eligible for group educational, cultural and sporting activities (see paragraphs 23, 25-26 and 29 above). The Government did not submit, however, that the aforementioned amendments had had any impact on the rules which applied to a life prisoner like the applicant from 2004 until 2015 and, it seems, which applied to him in practice also beyond. The Court observes that the applicant's position according to which the ban on contacting prisoners from other cells continued to be the firm practice of the prison authorities after 2015 finds support in the text of the Government's response to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following the CPT's visit to Ukraine in August 2020, in which they stated that "life-sentenced prisoners [were to] be kept in strict isolation" and that "[c]ommunication with prisoners from other cells [was] not provided by the law" (see paragraph 36 above).

59. The Court therefore considers it established that the ban in question has been applicable to the applicant for at least ten years (until the repeal, with effect from January 2015, of section 23 of the Internal Regulations of Penal Institutions) and considers it very likely that it continued to apply after that.

60. Even though the applicant shared his cell with one inmate until August 2019 and with two inmates thereafter, his situation can only be described as systemic segregation (see, for comparison, *N.T.*, cited above, § 44, in which the applicant, a life-sentenced prisoner, was detained in a double cell; and *Matiošaitis and Others v. Lithuania*, nos. 22662/13 and 7 others, § 179, 23 May 2017, in which the applicants served their life sentences in "small isolation groups").

61. According to the information provided by the prison authorities, during all those years the applicant has remained confined to his cell twenty-two to twenty-four hours per day, without any activities (see paragraph 21 above). The daily one-hour outdoor walks presented the only possibility for him to have some social interaction with other inmates. However, he was denied human contact with prisoners from other cells

altogether during those walks. The Court observes that prohibiting prisoners from talking to each other during the scarce time spent outside their cells runs contrary to the requirement of the European Prisons Rules that “all prisoners [should] spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction”, to which the Court attaches considerable importance despite its non-binding character (see paragraph 57 above).

62. The Court next observes that, as admitted by the Government (see paragraph 47 above), the prohibition in question has been applied to the applicant automatically, on the sole ground of his having been sentenced to life imprisonment in 2004. The Government neither stated that that measure was subject to review nor relied on any procedural safeguards against arbitrariness. They have also failed to explain how a prisoner could progress towards rehabilitation in such circumstances (compare *Petukhov (no. 2)*, cited above, § 182).

63. As confirmed by documents in the case file, the applicant complained on at least thirteen occasions between 2009 and 2017 about the deterioration of his physical and mental health on account of the continued prohibition of any contact with other prisoners, and sought medical and psychological assistance in that regard (see paragraph 19 above). Having regard to the prison governor’s written statement that “there was no information concerning the examination of those applications” (*ibid.*) and noting the absence of any comments from the Government, the Court considers it sufficiently established that the applicant’s complaints and requests were not duly examined. Even after the deterioration of his health was confirmed by a medical report, he only received a “recommendation” “to lead a healthy lifestyle and to avoid psychological and emotional strain” (*ibid.*). Given that there was nothing the applicant could do to change the situation, to be heard or to at least obtain some psychological assistance, such a “recommendation” could hardly be considered as meaningful.

64. Accordingly, the Court considers that the ban on the applicant’s communication with prisoners from other cells during out-of-cell activities, which was further exacerbated by numerous other factors (notably: the applicant’s permanent confinement to his cell, with only a brief outdoor walk and without any purposeful activities; the automatic application of that ban on the sole ground of the applicant’s being sentenced to life imprisonment, without any possibility of review or safeguards against arbitrariness; the long duration of the measure in question; as well as the proven deterioration of the applicant’s health on that account and the absence of any adequate response to his related complaints and requests for assistance), amounted, without any doubt, to inhuman and degrading treatment prohibited by Article 3 of the Convention.

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

III. ALLEGED VIOLATION OF ARTICLE 13 READ IN CONJUNCTION WITH ARTICLE 3 OF THE CONVENTION

66. The applicant further complained under Article 13 of the Convention that there were no effective remedies in Ukraine at the relevant time in respect of his complaint under Article 3. The former 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.”

A. Admissibility

67. The Court notes that this complaint is closely linked to the one examined above and must therefore likewise be declared admissible.

B. Merits

1. Submissions by the parties

68. The applicant maintained his complaint. He referred to the lack of clarity among the domestic courts themselves as to which of them had jurisdiction to deal with his claim in respect of the disciplinary sanction imposed on him in June 2009. The applicant also provided some examples of domestic case-law to demonstrate that such a situation had been widespread (see paragraph 33 above).

69. The Government submitted that the applicant had not raised an arguable claim under Article 3 of the Convention for Article 13 to come into play. They also contended that the 2016 amendments to the applicable domestic legislation had made it clear that dealing with complaints relating to the imposition of disciplinary sanctions on prisoners was within the jurisdiction of the administrative courts. The Government referred to the decision of the Sumy Circuit Administrative Court of 8 August 2018 (see paragraph 32 above) as an example showing the effectiveness of proceedings before the administrative courts.

70. In reply to the Government’s last-mentioned argument, the applicant observed that the decision in question had been delivered more than nine years after he had started raising complaints in respect of the prohibition of out-of-cell contacts for life prisoners. Furthermore, even though that example showed that the administrative courts had jurisdiction to examine complaints in respect of the imposition of disciplinary sanctions on prisoners, the communication-related restriction remained outside review by the courts even after the 2016 amendments.

2. *The Court's assessment*

71. The general case-law principles of relevance can be found in, for example, *Sukachov v. Ukraine* (no. 14057/17, §§ 112-17, 30 January 2020, with numerous further references).

72. According to the Court's case-law, remedies may not be effective where there is doubt as to which courts – civil, criminal, administrative or others – have jurisdiction to examine a complaint, and there is no effective mechanism for the purpose of resolving such uncertainty (see, *mutatis mutandis*, *Mosendz v. Ukraine*, no. 52013/08, §§ 122-25, 17 January 2013).

73. Turning to the present case, the Court notes that the applicant, in relation to whom an individual sanction for breaching the ban on contacts with prisoners from other cells was imposed, tried, without success, to challenge that sanction before the domestic courts. However, two sets of courts declined jurisdiction over the matter (see paragraphs 9-18 above). Furthermore, the applicant provided to the Court extensive domestic case-law showing the administrative courts' regular refusals to examine similar matters during the period from 2010 to 2016 (see paragraph 33 above).

74. In such circumstances, the Court considers that the applicant had no effective domestic remedy available for him at the material time.

75. This consideration is sufficient for the Court to find a violation of Article 13 of the Convention, read in conjunction with Article 3.

76. That said, the Court takes note of the legislative amendments, including that as of 2016 the administrative courts were expressly entitled to examine complaints regarding decisions of the prison administration. The efficiency of this remedy is yet to be assessed in future cases.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

77. The applicant complained that the prohibition of life prisoners having contacts with inmates from other cells had also been in breach of Article 8 of the Convention. He further complained under Article 6 § 1 of the Convention that he had not had access to a court to challenge the disciplinary sanction imposed on him on 13 June 2009.

78. Having regard to the facts of the case, the submissions of the parties, and its findings under Articles 3 and 13 of the Convention (see paragraphs 65 and 75 above), the Court considers that it has examined the main legal questions raised in the present application, and that there is no need to give a separate ruling on the admissibility and merits of the above-mentioned complaints (compare *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, and *Roth v. Germany*, nos. 6780/18 and 30776/18, §§ 83-84 and 99-101, 22 October 2020).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. 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

80. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

81. The Government considered the claim to be excessive and invited the Court to reject it.

82. As regards the breach of Article 3 of the Convention found in the present case, the Court considers that the applicant must have sustained non-pecuniary damage as a result of the violation of his rights under that provision. Taking into account all the circumstances of the case and ruling on an equitable basis, the Court awards the applicant EUR 5,000 under this head. As regards the violation of Article 13 of the Convention, it considers that the finding of a violation constitutes sufficient just satisfaction (see *Sukachov*, cited above, § 165, with further references).

B. Costs and expenses

83. The applicant also claimed EUR 2,400 for his legal representation in the domestic proceedings and before the Court by Mr Levytskyy, and EUR 5,400 for his legal representation before the Court by Mr Tarakhkalo, to be paid directly into those lawyers' bank accounts. In support of his claim, he submitted two legal assistance contracts: the first with Mr Levytskyy dated 25 July 2013, and the second with Mr Tarakhkalo dated 10 January 2021, both indicating an hourly fee of EUR 150. According to those contracts, 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 reports of the work completed: the first report by Mr Levytskyy dated 18 May 2021, and the second report by Mr Tarakhkalo dated 20 May 2021. As indicated therein, Mr Levytskyy worked on the case for sixteen hours (EUR 2,400), whereas Mr Tarakhkalo worked on it for thirty-six hours (EUR 5,400).

84. The Government contested the above claims as excessive and unsubstantiated.

85. 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 3 above), the Court considers it reasonable to award the applicant the following amounts, plus any tax that may be chargeable to him, in respect of costs and expenses: EUR 2,000 to be paid directly into the bank account indicated by Mr Tarakhkalo, and EUR 1,000 to be paid directly into the bank account indicated by Mr Levytskyy (see, for example, *Belousov v. Ukraine*, no. 4494/07, §§ 116-17, 7 November 2013).

C. Default interest

86. 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 under Articles 3 and 13 admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention, read in conjunction with Article 3 of the Convention;
4. *Holds* that it is not necessary to examine the admissibility and merits of the applicant's remaining complaints;
5. *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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, EUR 2,000 (two thousand euros) of which to be paid directly into the bank account indicated by Mr Tarakhkalo, and EUR 1,000 (one thousand euros) of which to be paid directly into the bank account indicated by Mr Levytskyy;

(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;

6. *Dismisses*, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 December 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller
Deputy Registrar

Síofra O'Leary
President