



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

FIFTH SECTION

CASE OF STANISLAV LUTSENKO v. UKRAINE (No. 2)

(Application no. 483/10)

JUDGMENT

Art 8 • Private life • No legal basis for disciplinary sanctions leading to imposition of stricter prison regime and repeated prison transfers

STRASBOURG

15 September 2022

FINAL

15/12/2022

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

In the case of Stanislav Lutsenko v. Ukraine (no. 2),

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

Síofra O’Leary, *President*,
Ganna Yudkivska,
Stéphanie Mourou-Vikström,
Lətif Hüseyinov,
Lado Chanturia,
Ivana Jelić,
Arnfinn Bårdsen, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application 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 Stanislav Nikolayevich Lutsenko (“the applicant”), on 11 August 2009;

the decision to give notice to the Ukrainian Government (“the Government”) of the complaints concerning the manner in which the applicant was treated in prison after the delivery of the Court’s judgment in his case no. 30663/04 and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 25 May 2021 and 21 June 2022,

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

INTRODUCTION

1. The present application concerns alleged reprisals against the applicant and the manner in which he was treated by the prison authorities after the delivery of the Court’s judgment in respect of a previous application lodged by him (no. 30663/04). It raises issues under Article 8 of the Convention, taken alone and in conjunction with its Article 18, as well as under Article 34.

THE FACTS

2. The applicant was born in 1977 and lives in Makiyivka. He was represented by Mr A.P. Bushchenko and Ms O.Y. Sapozhnikova, lawyers practising in Kyiv.

3. The Government were represented by their then acting Agent, Ms O. Davydchuk.

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

I. BACKGROUND TO THE CASE

5. On 5 August 2004 the applicant lodged an application with the Court, complaining, in particular, that on 3 October 2003 the Donetsk Regional Court of Appeal issued a verdict upheld by the Supreme Court on 11 March 2004, convicting him of murder in violation of Article 6 § 1 of the Convention, on the basis of statements given by his absentee co-accused during the pre-trial investigation, later retracted as having been made under duress.

6. On 18 December 2008 the Court delivered a judgment in that case (see *Lutsenko v. Ukraine*, no. 30663/04), finding a violation of Article 6 § 1. On the same date the parties were notified of the delivery of the judgment, which was published on the Court's website.

7. The Court held in the judgment that the applicant's defence rights had been restricted to an extent which had compromised the fairness of the proceedings as a whole, finding that the statements of the applicant's co-accused, whom the applicant had been unable to confront in open court, had been given in the absence of procedural safeguards against self-incrimination and had been used to a decisive degree for the establishment of facts that were material to the characterisation of the applicant's actions as a criminal offence (*ibid.*, § 52).

8. When considering the applicant's claim for just satisfaction, the Court established in particular as follows (*ibid.*, § 60):

"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 Article 10 of Ukraine's "Law on Enforcement of Judgments and Application of the Jurisprudence of the European Court of Human Rights" provides that court proceedings may be reopened if the Court finds a violation of the Convention."

9. The above judgment became final on 18 March 2009.

II. EVENTS RELATED TO THE APPLICANT'S DETENTION AFTER PUBLICATION OF THE COURT'S JUDGMENT OF 18 DECEMBER 2008

A. The applicant's reprimands

10. When the Court published its judgment in the applicant's case, he was serving the seventh year of his thirteen-year prison sentence at Makiyivka Correctional Colony no. 32 ("Prison no. 1"), which was 18 km from his home.

The applicant was working as the prison's head cook and was continuing his university studies. He had been praised by the prison administration on eleven occasions for good behaviour, and from January 2008 he had been detained under the least strict regime (social rehabilitation), which meant that he was allowed out on temporary release from the prison and to have meetings with his family. The applicant was allowed to wear civilian clothes, and to keep money and other valuable items. The application of this regime normally preceded release.

11. On 25 December 2008 police officers allegedly took him to a police station where they demanded he confess to a crime and threatened, *inter alia*, to make his conditions of detention unbearable for him. On the same day the applicant was put in a disciplinary cell (*ДІЗО*) for fifteen days for having left his workplace without authorisation and for not being present on prison premises.

12. On 18 January 2009 the applicant was placed in the disciplinary cell for another ten days for being in possession of a mobile phone.

13. On 26 January 2009 the head of Prison no.1 issued a resolution, approved by the supervisory commission of the Makiyivka prison administration, replacing the applicant's detention regime at the time (social rehabilitation) with one which was stricter (resocialisation), which meant that the applicant was no longer granted temporary release, or allowed to wear civilian clothes or keep money. The Government did not provide a copy of this resolution. According to the internal note of 9 March 2017, issued by the deputy head of a department of the State Prison Service, provided by the Government, the legal basis for the change in the applicant's prison regime had been Articles 100 and 101 of the Ukrainian Code on the Enforcement of Sentences. No information on the factual basis of the resolution was provided. It appears that the disciplinary sanctions of 25 December 2008 and 18 January 2009 served as a basis for the change in the applicant's detention regime.

14. According to the applicant, in March 2009 he was allegedly beaten by prison staff and forced to sign papers stating that all unfavourable decisions taken by the prison administration in his regard had had nothing to do with the Court's judgment in his case. According to the Government, on 4 February 2009 the applicant fell down some stairs in the prison and consequently sustained a fracture in his right hand. An internal investigation of the incident and a forensic report confirmed that the applicant's injury could have been caused by his falling down the stairs. In addition, the Government submitted that there was nothing in the applicant's personal file to suggest that the unfavourable decisions taken by the prison administration in his regard had anything to do with the Court's judgment in his case.

15. On 19 May 2009 the applicant was incarcerated for nine days in Donetsk SIZO – where he waited to be transferred to Prison no. 2 (see paragraph 20 below) – for having been in possession of 20 Ukrainian hryvnias (UAH) (approximately 2 euros).

16. On 21 May 2009 the applicant was reprimanded for being in possession of a blade measuring 15 cm.

17. On 2 June 2009 the applicant was put in the disciplinary cell of Prison no. 2 for ten days for being in possession of UAH 20.

18. On 27 May 2010 the applicant was warned for being out of position when he was supposed to be standing in line and for not complying with uniform-related rules.

19. On 19 August 2010 the applicant was reprimanded for being in possession of a mobile phone.

B. The applicant's transfer to other prisons

20. On 24 May 2009 the applicant was transferred to Kryvyi Rig Correctional Colony no. 80 ("Prison no. 2"), which was situated approximately 450 km from his home.

21. On 7 May 2010 the applicant was transferred to Dzerzhynsk Correctional Colony of Donetsk Region no. 2 ("Prison no. 3"), which was situated approximately 72 km from his home.

22. On 23 March 2011 the applicant was transferred to Drohobych Correctional Colony of Lviv Region no. 40 ("Prison no. 4"), which was situated approximately 1,390 km from his home.

23. During the proceedings before the Court in the present case, the applicant's representative informed it on a number of occasions that he had experienced difficulties in reaching the applicant for various reasons, none of which had been attributable to the applicant himself.

C. The applicant's complaints at the national level

24. According to the applicant, following the above-mentioned resolution of 26 January 2009 (see paragraph 13 above), his legal representative complained to the prosecutor's office and to the State Department of Execution of Sentences, asking for the cancellation of the decision to transfer him from the social rehabilitation sector to the resocialisation sector, as the transfer was to be implemented on the grounds of disciplinary sanctions that had been imposed unlawfully. The applicant did not provide copies of those complaints.

25. On 2 March 2009 the Donetsk prosecutor's office quashed the disciplinary sanctions imposed on the applicant on 25 December 2008 and 18 January 2009 (see paragraphs 11 and 12 above), finding them to be unreasonable. The applicant did not provide a copy of that decision. It was mentioned in the judgment of the Drohobych Court of Lviv Region ("the Drohobych Court") of 16 May 2011 (see paragraph 35 below).

26. In June 2009 the applicant's representative brought proceedings in the Dnipropetrovsk Circuit Administrative Court against the administration of

Prisons nos. 2 and 1. She stated, *inter alia*, that the applicant's formal reprimands in those prisons had been unlawful, as had been the statement that he had been a suicide risk. She also complained that preventing him from meeting his lawyer and receiving the necessary legal aid was unlawful and that there had been no reason to change his detention regime to a stricter one. She also demanded that the applicant be transferred back to Prison no. 1, which was the closest prison to his home.

27. On 11 August 2009 the applicant lodged the present application with the Court.

28. On 30 March 2010 the Dnipropetrovsk Circuit Administrative Court declined jurisdiction in respect of the applicant's complaint, having noted that it should be examined under the rules of criminal procedure.

29. On 14 May 2010 the applicant's representative lodged with the Dzerzhynskyy District Court of Kryvyi Rig the same application against the boards of Prisons nos. 2 and 1 that she had lodged with the Dnipropetrovsk Circuit Administrative Court in June 2009.

30. On 25 May 2010 the District Court sent the applicant's representative's complaint to the prosecutor's office, having found that it could not be examined by the courts.

31. The Government submitted a letter from the Prosecutor of Donetsk Region of 6 March 2017, which explained that it was not possible to produce copies of the complaints by the applicant or his representative, or the relevant decisions of the prosecutor's office, owing to the fact that they were possibly being held in Donetsk, a territory not controlled by Ukraine.

32. In August 2021 the Government submitted a letter from the Deputy Head of the Department on Execution of Criminal Sentences stating that the applicant's prisoner record had been destroyed due to lapse of the five-year limitation period for its storage.

III. THE APPLICANT'S APPLICATIONS FOR EARLY RELEASE

33. According to the applicant, on 13 April 2011 the head of Prison no. 4 approved his individual sentence report, which advised against any early release of the applicant, concluding that he had failed to prove his rehabilitation as he had complied with the prison regime only because he was subject to control.

34. On an unspecified date in 2011, the administration of Prison no. 4 and the executive committee of Drohobych City Council forwarded the applicant's application for his early release to the Drohobych Court. The applicant complained of the unlawfulness of the measures imposed on him and stated, with reference to a number of other actions taken by the various prison administrations in his respect, that the reprisals on the part of the authorities were linked to the delivery of the Court's judgment in his favour. He further stated that the administration of Prison no. 4 had not been able to

decide whether the applicant could have been released because of his recent transfer to that prison and the short period of his stay there, alleging that that situation had been deliberate.

35. On 16 May 2011 the Drogobych Court granted the applicant early release, referring to the applicant's exemplary behaviour during his imprisonment, and ordering that he be immediately released. The court noted, *inter alia*, that:

“in relation to disciplinary sanctions, it was necessary to state categorically and unequivocally that those [sanctions] had come about only once the judgment in his case ‘Lutsenko v. Ukraine’ had been delivered by the European Court of Human Rights on 18.12.2008, in which it made categorical and unequivocal conclusions about [un]lawfulness and [un]fairness of [the applicant's] conviction. On account of the groundless and incomprehensible imposition of disciplinary sanctions, Lutsenko had twice started a hunger strike ..., [on account of] the two most severe [sanctions], which he linked to the said judgment (in December-January 2009, in Prison no. 82 [Prison no. 1], sanctions of ten and fifteen days' placement in [disciplinary cells] for incomprehensible, ambiguous, questionable infringements – in view of [the applicant's] previous exemplary behaviour), the majority of the imposed disciplinary sanctions – five – had been cancelled by the decisions of the relevant prosecutor as being biased and baseless, whereas these decisions had been cancelled by the senior prosecutor not for lack of reasons or foundation but for a breach of the principle of territoriality... These disciplinary sanctions had [later] been cancelled by the decision of the head of Prison no. 2 [Prison no. 3]... as unlawful and that decision had been taken on the basis of a duly reasoned and warranted conclusion of an internal inquiry, which cast doubt on the lawfulness of the imposed sanctions ... What is noteworthy is the fact that Lutsenko S.M. is serving his sentence in a fourth prison, whereas, as a rule, even the worst offenders of prison rules serve their sentence in one prison, transfers being possible only in exceptional circumstances ...”

36. The prosecutor appealed against that decision.

37. On an unspecified date the Lviv Regional Court of Appeal quashed the above-mentioned decisions and remitted the case for a new trial. The parties did not provide a copy of that decision.

38. On 9 August 2011 the Drogobych Court once again ordered the applicant's early release, having referred to the applicant's eleven commendations issued by various prison administrations, his positive attitude towards work and studies, and his participation in various programmes in previous prisons and in Prison no. 4. The Drogobych Court further observed that the administration of Prison no. 4 had had no unfavourable comments regarding the applicant's behaviour and his adherence to the prison rules. The prosecutor appealed against that decision. He referred to the sentence report of 13 April 2011 (see paragraph 33 above), which did not recommend the applicant's early release. However, he withdrew his appeal during the appeal proceedings.

39. On 2 December 2011 the Lviv Regional Court of Appeal closed the proceedings.

40. On 6 December 2011 the applicant was released.

IV. THE APPLICANT'S APPLICATIONS FOR REVIEW OF HIS SENTENCE, FOLLOWING THE COURT'S JUDGMENT OF 18 DECEMBER 2008

41. On 8 April 2009 the applicant lodged with the Supreme Court of Ukraine an application for an extraordinary review, seeking, with reference to the Court's judgment of 18 December 2008, to have the judgment of the Donetsk Court of Appeal of 3 October 2003 and the decision of the Supreme Court of Ukraine of 11 March 2004 quashed and to have him released on an undertaking that he would not abscond while his criminal case was being re-examined.

42. On 20 November 2009 the Supreme Court of Ukraine informed the applicant that after examination of the case file, it had not found any grounds for an extraordinary review of his case.

43. On 5 December 2011, upon the applicant's new application for an extraordinary review, the Supreme Court of Ukraine quashed the sentence of 3 October 2003 and the decision of the Supreme Court of 11 March 2004, remitting the applicant's case for new consideration. The outcome of those proceedings is unknown.

RELEVANT LEGAL FRAMEWORK

44. The relevant provisions of the Code of Ukraine on the Enforcement of Sentences (*Кримінально-виконавчий кодекс України*) of 2003 read as follows:

Article 93. Service of the entire prison sentence in one correctional or educational colony

"1. A [person] sentenced to deprivation of liberty shall serve the entire term of the sentence in one and the same correctional or educational colony, as a rule, within the boundaries of an administrative territorial unit corresponding to the place of his ['permanent' – deleted as of 16 April 2009] residence before conviction.

2. The transfer of a sentenced [person] from one correctional or educational colony to another for further service of the sentence shall be permitted under exceptional circumstances that prevent the continued stay of the sentenced [person] in that correctional or educational colony. The procedure for transferring the sentenced person shall be determined by the normative legal acts of the Ministry of Justice of Ukraine [before the amendments of 16 April 2009: 'the Prison Department']."

Article 100. Changing the conditions of detention of convicted prisoners

"1. Depending on the conduct of a prisoner and his attitude towards work and studies, his conditions of detention may be changed within the same colony or by his transfer to a colony of a different type ..."

Article 101. Transfer of persons sentenced to imprisonment

“...

3. Convicted prisoners who flagrantly breach the prison rules may be transferred from a social rehabilitation unit to another unit, or from a medium-security prison or ordinary residential premises in a maximum security prison to cell-type premises [*приміщення камерного типу*] of a maximum security prison.”

Article 133. Perpetrators of flagrant breaches of prison rules

“A convicted prisoner shall be deemed to have perpetrated a flagrant breach of prison rules if he: does not comply with lawful requests made by the administration; unjustifiably refuses to work (on no fewer than three occasions per year); interrupts his work with the aim of resolving labour and other disputes; consumes alcoholic beverages, narcotic drugs and psychotropic substances or similar or other intoxicants; produces, keeps, buys or distributes illicit items; takes part in board games and other games with the aim of acquiring material or other gains; commits petty offences; systematically neglects to treat a disease which puts the health of others in danger; and also commits more than three other breaches of the prison rules over the course of a year, where such breaches were punished by the head of a prison or a person acting in that role, and the sanction had not been lifted or reversed by way of a procedure established by law.”

45. The provisions of the Internal Regulations of Penal Institutions of 2003, repealed with effect from 23 January 2015 (“the Internal Regulations”), read, at the material time, as follows:

“84. ...Convicted prisoners who flagrantly breach the prison rules may be transferred from a social rehabilitation unit to a resocialisation unit...

88. ...The grounds for placement of a convicted prisoner in [a disciplinary unit] ... [shall be given in] a reasoned ruling [issued] by the head of an institution ... based on verified explanations by the prisoner and a medical report on the prisoner’s suitability for being held in such a cell ...

A convicted prisoner may appeal against a decision imposing a sanction on him ... A higher civil servant may annul the sanction if the person who imposed it exceeded his or her authority or the sanction was imposed despite the lack of any breach on the part of the convicted prisoner ...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

46. The applicant complained that his life in prison had been affected adversely by reprisals in the form of disciplinary sanctions and transfers to other prisons, imposed by the prison authorities following the delivery of the Court’s judgment in application no. 30663/04. The Court considers that this complaint falls to be examined under Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

47. The Government submitted in their observations in reply to the Court’s additional questions that the present application should be dismissed for abuse of the right of individual application, as the applicant had allegedly not informed the Court of his release.

48. The applicant disagreed, arguing that he had informed the Court in his application form of the decision of the Drohobych Court of 9 August 2011 and of the corresponding court proceedings.

49. The Court reiterates that in accordance with Rule 55 of the Rules of Court, any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 199, 22 December 2020).

50. In the present case, the Government raised an objection alleging an abuse of the right of individual application, on 7 July 2021, in their observations in reply to the additional questions asked by the Court, whereas they had submitted their initial observations on 31 March 2017. The Court does not have to determine whether in these circumstances the Government might be estopped from raising that objection as, in any event, the applicant had informed it on 8 November 2011 of his release.

51. The Court notes that the present complaint 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. The parties’ submissions

52. The applicant complained that the change of his prison regime had been the prison authorities’ way of punishing him for having secured a favourable outcome of his case before the Court. He asserted that his transfer from the social rehabilitation unit to the resocialisation unit had been unlawful, as it had been based on the decisions of 25 December 2008 and 18 January 2009, ordering his placement in the disciplinary cell, which had later been declared unlawful by the prosecutor’s office. Moreover, his four transfers to different prisons had been devoid of legal justification. His family and his lawyer had not been informed of his transfers and, when they had

travelled from another town to visit him, they had been denied the opportunity of meeting him on account of his placement in a disciplinary cell, even though those measures had later been declared unlawful by the prosecutor's office. Lastly, his transfers had created a situation in which the submission of the application for his early release had been delayed for a year and a half.

53. The Government submitted that the prison records relating to the applicant's complaints had been destroyed owing to the expiry of the retention period and that they had no access to the documents held in Prison no. 1. They further submitted that the applicant had lodged the present application with the Court without any hindrance and that his detention in the prison's disciplinary unit had been lawful and foreseeable and had been applied without arbitrariness under Regulation 88 of the Internal Regulations (see paragraph 45 above). They did not elucidate further the grounds for the sanctions, or comment on their legitimate aim or proportionality. They argued that there was no link between the sanctions imposed and the delivery of the Court's judgment in application no. 30663/04 and that the timing of those sanctions had been a coincidence. As to the prison transfers, the Government maintained that they had been carried out in accordance with the applicable instruction and two regulations governing transfers of convicted prisoners, all three of which had been approved by the State Department for the Execution of Sentences in 2003, and repealed in February 2012. The Government did not, however, refer to any specific provision in the above three instruments. They submitted that they were not in a position to comment further on the applicant's transfers from one prison to another. Lastly, the applicant had been granted early release.

2. *The Court's assessment*

(a) **General principles**

54. It is well established in the Court's case-law that during their imprisonment prisoners continue to enjoy all fundamental rights and freedoms, save for the right to liberty (see *Khoroshenko v. Russia* [GC], no. 41418/04, § 116-17, ECHR 2015, with further references). Detention, like any other measure depriving a person of his or her liberty, entails inherent limitations on his or her private and family life (*ibid.*, § 106).

55. The notion of "private life" is a broad one and is not susceptible to exhaustive definition; it may, depending on the circumstances, cover the moral and physical integrity of the person, which in turn may extend to situations covering deprivations of liberty (see *Raninen v. Finland*, 16 December 1997, § 63, *Reports of Judgments and Decisions* 1997-VIII). Moreover, there might be circumstances in which Article 8 could be regarded as affording protection in relation to conditions during detention which do not attain the level of severity necessary for a violation of Article 3 (*ibid.*, § 63). While the authorities enjoy a wide discretion in matters related to the

execution of sentences, a number of aspects of prisoners' situation concern their Article 8 rights (see *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, §§ 835-838, 25 July 2013, with further references).

56. Any interference with an individual's right to respect for his or her private and family life will constitute a breach of Article 8, unless it was "in accordance with the law", pursued a legitimate aim or aims under paragraph 2, and was "necessary in a democratic society" in the sense that it was proportionate to the aims sought to be achieved (see *Slivenko v. Latvia* [GC], no. 48321/99, § 99, ECHR 2003-X).

(b) Application of those principles to the instant case

57. The Court observes that the impugned measures, which consisted of a number of detrimental measures imposed on the applicant while in detention, affected his daily life in prison in a very significant manner. For instance, the applicant was no longer allowed to benefit from temporary release or to visit his family, keep money or wear civilian clothes (see paragraph 13 above). Therefore, his right to respect for his private life was at issue and Article 8 was applicable. Furthermore, the impugned measures constituted an interference with the applicant's private life, which involved, *inter alia*, imposition of a stricter regime of detention and transfers to different prisons located in remote places (see *Maslák v. Slovakia (no. 2)*, no. 38321/17, § 140, 31 March 2022, and *Khodorkovskiy and Lebedev v. Russia*, cited above §§ 837-838).

58. The parties disagree as to whether the impugned measures were lawful and justified.

59. The Court notes, in relation to the disciplinary sanctions and the imposition of a strict prison regime, that at the time immediately prior to publication of the Court's judgment in application no. 30663/04 on 18 December 2008, the applicant had been commended by the prison authority on eleven occasions for his good behaviour and had been placed under a less severe regime of detention, which allowed his temporary release from prison and meetings with his family (see paragraph 10 above). However, in December 2008 and January 2009 he was placed in a disciplinary cell for periods of fifteen and ten days for breaches of the prison rules (see paragraphs 11 and 12 above) and subsequently faced an adverse change in his conditions of detention when he was transferred from the unit with the least strict regime to a stricter one (see paragraph 13 above). The applicable law, i.e. Articles 100 and 101 of the Ukrainian Code on the Enforcement of Sentences provided that the change of prison regime was only possible in the event of a flagrant breach of the prison rules (see paragraph 44 above). The Court observes that the Government have not claimed that the misconduct for which the prison authorities imposed the two sanctions that led to the applicant being placed under stricter regime – absence from the working

place and possession of a mobile phone (see paragraphs 11-13 above), constituted flagrant breaches with the meaning of the applicable law.

60. As to the transfers between the prisons, the Court observes that initially the applicant had served his sentence in Prison no. 1, which was located 18 km from his home (see paragraph 10 above). However, after the Court's judgment of 18 December 2008, between 2009 and 2011 he was transferred to different prisons three times: on 24 May 2009 to Prison no. 2, which was located 450 km from his home (see paragraph 20 above); on 7 May 2010 to Prison no. 3, which was located 72 km from his home (see paragraph 21 above); and on 23 March 2011 to Prison no. 4, which was located 1,390 km from his home (see paragraph 22 above).

61. The Court notes that the parties did not provide copies of the relevant documents ordering the applicant's placement in the disciplinary cells and under a stricter regime or his transfers to three other prisons between 2009 and 2011. At the same time, the Government admitted that "some sanctions" imposed on the applicant had been subsequently declared unlawful by the prosecutor.

62. The only available document addressing the applicant's sanctions and his transfers is the decision of the Drogobych Court of 16 May 2011. That court described the sanctions as "groundless and incomprehensible" and as having been imposed for "incomprehensible, ambiguous, questionable infringements – in view of his exemplary behaviour" – and stated that the prosecutor had annulled them as biased and baseless. Later, the head of Prison no. 2 [Prison no. 3] cancelled those sanctions following the internal review, which proved them to be unlawful (see paragraph 35 above). In relation to the applicant's transfers, it stated that "even the worst offenders against prison rules serve[d] their sentence in one prison, transfers being possible only in exceptional circumstances" (*ibid.*). Indeed, in accordance with Article 93 of the Code of Execution of Sentences, the transfers were permitted only in exceptional circumstances (see paragraph 44 above).

63. It is true that the above-mentioned court decision was quashed for reasons that are unknown (see paragraph 37 above), and the case was remitted to the Drogobych Court for fresh examination. However, this did not affect the validity of the decisions of the prosecutor and of the head of Prison no. 2 [3] to annul the sanctions as being unreasonable and unlawful. Moreover, after the remittal, the domestic court again ordered the applicant's release on the basis of its analysis of his eleven commendations, his positive attitude towards work and studies, and the lack of any unfavourable comments from the administration of Prison no. 4 regarding his behaviour or his adherence to the prison rules (see paragraph 38 above). The latter decision, which did not repeat the language used in the decision of 16 May 2011 but did not state that its findings had been incorrect, became final (see paragraph 39 above).

64. In the Court's view, the above is sufficient to conclude that the impugned disciplinary sanctions that led to the imposition of a stricter prison regime on the applicant as well as the impugned decisions to transfer the applicant repeatedly to other prisons had no legal basis.

65. The Court thus finds that the interference complained of by the applicant was unlawful and, therefore, there is no need to determine whether the interference pursued a legitimate aim and, if so, whether it was proportionate to the aim pursued.

66. There has accordingly been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 18 TAKEN IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

67. The applicant complained in a cursory manner and without providing any further details that he was subjected to reprisals while in prison, in retaliation for the successful outcome of his application to the Court. The applicant invoked Article 18 taken in conjunction with Article 8 of the Convention

68. The Government submitted that there was no "arguable claim" of a violation of Article 18 taken in conjunction with Article 8 of the Convention, as the applicant's complaint under Article 8 should be declared inadmissible.

69. The general principles concerning the interpretation and application of Article 18 of the Convention have been set out by the Grand Chamber in its judgment in *Merabishvili v. Georgia* ([GC], no. 72508/13, §§ 287-317, 28 November 2017).

70. It follows from the relevant case-law that the Court must, to the extent possible, be put in a position to allow it to engage with the relevant documentation. Both the applicant's and the Government's submissions lack sufficient details on this matter, preventing the Court from examining and deciding on the purpose of the disputed treatment.

71. In these circumstances, the Court cannot but find that this complaint is manifestly ill-founded and should be rejected as inadmissible under Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

72. The applicant complained that he had been subjected to reprisals by the prison authorities following the delivery of the Court's judgment in application no. 30663/04.

73. Having regard to the facts of the case, the submissions of the parties and its findings under Article 8 of the Convention (see paragraphs 65 and 66 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 Article 34 complaint (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).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage. He asked the Court to take into account the period of three years during which he had endured transfers to new prisons located far away from his home, unjust punishment and a severe regime imposed on him without any reasonable grounds. The possibility of his early release had been called into question.

76. The Government considered the sum of EUR 50,000 to be vastly exorbitant. They argued that a claim for compensation should not serve as a basis for unjust enrichment and asked the Court to dismiss the applicant’s claim for just satisfaction.

77. The Court awards the applicant EUR 4,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

78. The applicant claimed EUR 1,250 for legal representation in the proceedings before the Court by Ms O.Y. Sapozhnikova.

79. The Government submitted that this sum was unreasonable.

80. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 850, plus any tax that may be chargeable to the applicant. The amount is to be paid directly into the representative’s bank account, as indicated by the applicant.

C. Default interest

81. 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 complaint under Article 8 of the Convention admissible;
2. *Declares* the complaint under Article 18 taken in conjunction with Article 8 of the Convention inadmissible;
3. *Holds* that there has been a violation of Article 8 of the Convention;
4. *Holds* that it is not necessary to examine the admissibility and merits of the applicant's complaint under Article 34 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay, 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 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, to the applicant, in respect of non-pecuniary damage;
 - (ii) EUR 850 (eight hundred and fifty euros), in respect of costs and expenses, to be paid directly into the bank account of the applicant's representative, Ms O.Y. Sapozhnikova, plus any tax that may be chargeable to the applicant;
 - (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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Síofra O'Leary
President