



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

FOURTH SECTION

CASE OF DANKEVICH v. UKRAINE

(Application no. 40679/98)

JUDGMENT

STRASBOURG

29 April 2003

FINAL

29/07/2003

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Dankevich v. Ukraine,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mrs E. PALM,

Mr J. MAKARCZYK,

Mrs V. STRÁŽNICKÁ,

Mr V. BUTKEVYCH,

Mr R. MARUSTE, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 25 March 2003,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 40679/98) against Ukraine lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Yuriy Oleksandr Dankevich ("the applicant"), on 20 February 1998.

2. The applicant was represented by his wife, Ms N.O. Dankevich. The Ukrainian Government ("the Government") were represented by their Agent, Mrs V. Lutkovska, from the Ministry of Justice.

3. The applicant complained, *inter alia*, that the conditions to which he was subjected on death row in Zaporozhie Prison no. 2 amounted to inhuman and degrading treatment.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. Having consulted the parties, the President of the Chamber decided that in the interests of the proper administration of justice, the proceedings in the present case should be conducted simultaneously with those in the cases of Nazarenko v. Ukraine, Aliev v. Ukraine, Khokhlich v. Ukraine, Poltoratskiy v. Ukraine and Kuznetsov v. Ukraine (applications nos. 39483/98, 41220/98, 41707/98, 38812/97 and 39042/97 (Rule 43 § 2)).

7. By a decision of 25 May 1999, the Chamber declared the application partly admissible. On 6 October 1999 the Court carried out a fact-finding visit to Zaporozhie Prisons nos. 1 and 2.

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section.

9. The Government, but not the applicant, filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Outline of events

10. On 3 April 1997 the Zaporozhie Regional Court (*Запорізький обласний суд*) convicted the applicant of the murder of three persons and the attempted murder of one person and sentenced him to death.

11. On the same day the Administration of the Zaporozhie Isolation Block of the Central Department of the Ministry of the Interior (*адміністрація слідчого ізолятору Головного Управління Міністерства внутрішніх справ України в Запорізькій області*) decided to move the applicant to a separate cell to await execution, in accordance with the Pre-trial Detention Act 1993 (hereinafter “the Act”).

12. On 24 July 1997 the Supreme Court (*Верховний суд*) upheld the judgment of the first-instance court.

13. On 15 August 1997 the Prosecutor General (*Генеральний Прокурор*), on an extraordinary appeal by the applicant's mother, found that the national courts had properly assessed all the evidence adduced before them and had reached sound legal conclusions. He held that the appeal was manifestly ill-founded.

14. On 27 August 1997 the applicant filed a plea for pardon with the President of Ukraine.

15. On 19 September and 15 December 1997 the Vice-President of the Supreme Court refused two further extraordinary appeals by the applicant's wife and mother.

16. A moratorium on executions was declared by the President of Ukraine on 11 March 1997. In a judgment no. 11пп/99 of 29 December 1999 the Constitutional Court held that the provisions of the Criminal Code concerning the death penalty were contrary to the

Constitution of Ukraine. The death penalty was abolished and replaced by life imprisonment by Act no. 1483-III of 22 February 2000.

17. On 14 June 2000 the Zaporozhie Regional Court commuted the applicant's death sentence to one of life imprisonment.

B. Oral evidence before the Court Delegates

18. The evidence of the applicant was taken by the Court Delegates in Zaporozhie Prison no. 1 on 6 October 1999. The Delegation was composed of Judges M. Pellonpää, J. Makarczyk and R. Maruste. The statements of certain witnesses were taken in Zaporozhie Prison no. 2. The evidence taken may be summarised as follows:

1. The applicant

(a) General conditions of the applicant's detention on death row

19. The applicant was admitted to Zaporozhie Prison no. 1 two weeks before the Court Delegates' visit. Previously, he had been detained in Zaporozhie Prison no. 2, where he had stayed for three years. On the day of the Court Delegates' visit, he confirmed that he had been informed about his rights and obligations. However, the practice in Zaporozhie Prison no. 2 had been different. He described it as follows: "Whenever a commission from Kiev came - they do not care much when the local commission from the supervising prosecutor's office comes - the prison authorities distributed a sheet of paper with rules, posted it on the walls and the next day took it off. Although the paper was not on the walls in the cells, we were informed about it."

20. In Zaporozhie Prison no. 2, the applicant changed cells every week and later every month, having generally been detained alone. This practice had still been in force six months ago. According to him, the windows in his cells had been covered and there was no water tap. The cells for two inmates were the same size as those in Zaporozhie Prison no. 1, but those for one inmate were much smaller, even twice as small, as the cell where he was detained on the day of the Delegates' visit. The applicant acknowledged that he had been detained alone at his own request. However, when the prison administration of Zaporozhie Prison no. 2 had insisted that he share the cell with somebody else, he had agreed.

21. The applicant had not been officially informed about the moratorium on execution of death sentences, learning about it from the radio and other inmates.

22. When he had been transferred to death row, two inmates had been taken out to be executed. The executions had been carried out in Dnipropetrovsk Prison. Although inmates had rarely been informed about

any execution taking place, they could observe that the inmates concerned had been handcuffed and taken away without their personal belongings, which had been recovered by the prison administration officials later.

23. According to the applicant, cells in Zaporozhie Prison no. 2 had been very cold in the wintertime until the heating was switched on and had been hot in the summertime.

24. The applicant had repeatedly complained of the conditions of detention in Zaporozhie Prison no. 2, but had always been told that there were no financial resources for improving them. He alleged that certain of his written complaints had not reached their addressees.

25. He had suffered from stomach aches and high acidity, but the prison medical staff had not given him medication because they did not have any, and had prescribed the wrong drugs, which had not helped him. A medical assistant had usually seen inmates once or twice a week, registering those wishing to see a doctor. However, a visit to the doctor had been permitted upon application to the prison governor. The applicant had visited the doctor outside his cell once or twice during his stay in Zaporozhie Prison no. 2. He said that he had probably applied to see a doctor only once because, on the first occasion, he had been examined not by a general practitioner but by a psychiatrist, and had been told that his stomach was fine, even though during the examination he had felt pain in his stomach. The applicant had then been allowed to have dietary food for one month.

26. The applicant said that some of his teeth had not been treated, but only extracted. His relatives had suggested bringing all the necessary medication for proper dental treatment, but the prison administration had refused. He said that, according to the regime, dental treatment had not been provided by Zaporozhie Prison no. 2.

27. The applicant had not been allowed to watch TV, but his relatives had brought him books and newspapers. He felt that in Zaporozhie Prison no. 1 there was a humane attitude among the prison staff, unlike Zaporozhie Prison no. 2, where he had been psychologically ill-treated. According to him, inmates' relatives had also been treated in a very improper manner.

28. The lamp in the applicant's cell in Zaporozhie Prison no. 1 where he was detained on the day of the Delegates' visit was permanently switched on and daylight was let in through the window. The lamp in his cells in Zaporozhie Prison no. 2 had been much stronger.

(b) Prison practice concerning daily outdoor walks and visits from the applicant's relatives

29. The applicant had started to have daily outdoor walks one and a half years before the Delegates' visit. He had been allowed to walk for 20-30 minutes, and sometimes for 50 minutes without handcuffs. The prison administration had not informed him how long walks had to last according to national law. His wife had brought a copy of the prison rules which

specified that walks had to last for between one and two hours. To the Delegates' question: "When you were informed by your wife about those rules, did you complain that you had not been allowed to have meetings with your wife for one hour or to have walks according to these rules?" the applicant answered: "We filed complaints. Regarding the meetings, we were told that there were too many inmates, especially those who were still under investigation, and that the prison did not have enough facilities to allow all inmates to have longer meetings." To the Delegates' next question: "Does that mean that this practice continued all the time?" the applicant answered: "Thanks to my wife, we found out that the prison rules adopted in 1993 allowed us to have one-hour meetings."

30. When the applicant learnt that walks should last one hour, the prison administration prevented him from taking them. In practice, when other inmates went for an outdoor walk, he was summoned to a meeting. As soon as the meeting was over, the exercise period was over too. This had lasted until the applicant's wife and mother said that they would complain to the Court, and had stopped about one or two months before the Delegates' visit.

(c) Prison practice concerning receipt of parcels and small packets [Note : Parcels to be forwarded to a prisoner may be sent by post (*носілка*) or brought in person to the prison (*передача*). Small items like books or periodicals can be sent by post as a small packet (*бандероль* - literally a "bundle").], and correspondence

31. After the applicant's death sentence had become final, he was allowed to receive one parcel every two months. Once he had been given permission to go for outdoor walks, his correspondence had been limited to one letter per month and one small packet weighing up to two kilograms every six months, including food, toiletries and clothes. According to him, these allowances were not sufficient, taking into account the poor quality of the food in prison and the fact that at that time he had not been able to buy goods in the prison shop. He said that six months prior to the Delegates' visit a new rule was introduced allowing him to purchase goods for an amount equal to 70-75% of the statutory minimum wage. The applicant confirmed that he always had sufficient money in his prison bank account to buy goods from the prison shop.

32. As far as correspondence with his relatives was concerned, the applicant confirmed that at the date of the Delegates' visit he could send and receive an unlimited number of letters. He further confirmed that he had the right to receive one parcel of 8 kilograms and three small packets every two months.

2. Mr Viktor Vladimirovich Lavrik

33. The witness was the governor of Zaporozhie Prison no. 1. He had a staff of 129 officers.

(a) General conditions of the applicant's detention on death row

34. The witness said that there were 836 detainees in the prison, of whom 176 were serving a prison sentence, including 18 on death row. He confirmed that the applicant had been transferred to Zaporozhie Prison no. 1 recently.

35. He confirmed that a document with prisoners' rights and obligations was posted in cells. Inmates could read it and familiarise themselves with the contents of the document. He said that several changes for death row prisoners had taken place since the moratorium on executions had been introduced: previously, they had not been allowed to go for daily outdoor walks and could receive only two small packages per year and one letter per month. He confirmed that the prison administration had informed the death row prisoners about the moratorium.

36. As to the number of prisoners in the cells, the prison administration complied with national law requiring that no more than two prisoners should be held in one cell. The administration respected inmates' wishes to be detained alone, as the applicant himself had requested. During winter, cells were heated to about 22-25° C.

37. Inmates could complain to him or to the public prosecutor, but the witness had not received any complaints. He said that every month an official from the Department for Execution of Sentences and the Deputy Public Prosecutor walked around the cells and collected complaints. Inmates complained of their sentences, but not of the detention conditions.

38. The witness visited death row inmates at least every week. On several occasions he had met the applicant, who had not complained of his detention conditions.

39. He confirmed that a member of the prison medical staff visited the cells on a daily basis. If need be, the inmate was transferred to the prison medical unit for appropriate treatment, or if necessary to a hospital.

(b) Prison practice concerning daily outdoor walks, receipt of parcels and small packets and correspondence, and visits from prisoners' relatives

40. The death row prisoners had started to take daily one-hour outdoor walks in March 1998. The changes concerning parcels and correspondence had been introduced on 25 June 1999. The prisoners were not handcuffed during their outdoor walks. Moreover, they had the right to have one two-hour meeting with their relatives per month and could receive six parcels and three small packets per year.

41. He said that outgoing letters were not censored, although they were opened and looked through. Incoming letters from the Court and the Prosecutor General were never opened, as provided for in the Pre-Trial Detention Act. Unlike letters to and from prisoners' relatives, parcels were registered in a special file. The witness said that no inmates had complained that letters had not been sent or received. As far as letters to inmates' legal representatives were concerned, prisoners usually applied for a visit by a lawyer. The witness confirmed that the procedure of not registering letters had been introduced on 25 June 1999.

3. Mrs Larisa Mikhaylovna Lacheynaya

42. The witness was the prison doctor and had been working in Zaporozhie Prison no. 1 for four years. She knew the applicant personally. She confirmed that the prison administration could provide all necessary dental treatment inside the prison. According to her, there was no difference in the medical regime between death row prisoners and other inmates.

4. Mr Sergey Arkadievich Oleynik

43. The witness was the governor of Zaporozhie Prison no. 2. He took up his duties on 4 September 1998.

General conditions of the applicant's detention on death row

44. He said that on the day of the Delegates' visit, 1,735 persons were detained in the prison, all of them in pre-trial detention. He confirmed that the applicant had recently been transferred to Zaporozhie Prison no. 1.

45. The witness personally knew the applicant, who had not complained about his detention conditions, although in early July 1999 he had criticised the duration of his meetings with his relatives, alleging that they should have lasted for two hours. The head of the department and the first deputy to the regional prosecutor had investigated the facts and found that the applicant's complaint was well-founded. However, the prison administration could not grant the applicant longer meetings, having regard to the large number of prisoners waiting for such meetings. In general, inmates' complaints were registered in a journal and, at the same time, in their personal files. A reply was delivered to the inmate concerned for information and signature.

46. The witness confirmed that, before their sentences became final, inmates on death row could not send or receive correspondence, but two parcels per month were allowed. After the sentence became effective the regime changed.

47. The witness said that the applicant had moved from one cell to another every ten days in accordance with the rules, having been confined alone in a double cell as he had requested. He confirmed that all four death

row cells in the prison facility were double cells of the same size. On the day of the Delegates' visit two of them were empty.

48. He confirmed that he had met the applicant's wife when she had asked for a meeting with her husband, but he had never heard any complaints from her regarding the applicant's conditions of detention.

5. Larisa Petrovna Ponomarchuk

49. The witness was the doctor in Zaporozhie Prison no. 2, where she had been working since June 1999. She had heard about the applicant, although he had never applied to her for any medical assistance.

50. She confirmed that every other day the feldscher (*фельдшер*) (medical assistant) walked around the cells and registered complaints and requests to see a doctor. She had not heard about the applicant's stomach problems, and denied that the applicant would have been refused dental care. According to her, the prison administration had a high-level professional dentist, and all inmates were entitled to his assistance.

51. The prison medical unit contained 15 persons including a radiologist, a dermatologist, a psychiatrist, a dentist, a physician and feldchers. The unit had all the necessary equipment and medication to provide qualified medical assistance. If inmates' relatives brought medicines or vitamins, the inmates received them through the medical unit. The witness confirmed that an inmate's consent was necessary for an HIV test. According to her, it was not possible that an inmate suffering from tuberculosis would be held together with another inmate: on arriving at the prison he underwent an X-ray examination, the results of which were ready on the same day. If he was diagnosed with tuberculosis, he was kept separately. If he came from preliminary detention, he had his medical record with him.

C. Inspection of Zaporozhie Prison no. 1

52. The Delegates visited the cell where the applicant was detained. The cell was about 10 square metres. It was renovated, in order and clean. There was an open toilet, a washbasin with a cold water tap, two beds and a table fixed to the floor, central heating and a window with bars. There were some books, a newspaper, and a stock of soap and toilet paper. The cell was sufficiently ventilated.

53. The Delegates saw the prison shower area, which seemed to be renovated and was clean. They also visited the exercise yard.

D. Inspection of Zaporozhie Prison no. 2

54. The Delegates visited two cells intended for inmates sentenced to death, which were empty on the day of their visit. The size of the cells was

about 12 square metres. There was an open toilet, a washbasin with a cold water tap, two beds fixed to the floor, central heating and a window with bars. The cells were properly ventilated.

55. The Delegates saw the prison shower area shortly after a group of female detainees had taken a bath. The area included two rooms without windows. They were very humid and dirty.

56. The Delegates were not allowed to visit cells which were occupied by death row inmates.

E. Documentary evidence

57. According to the prison records, the applicant's wife and mother applied to visit the applicant on 21 August, 23 September, 23 October, 21 November and 23 December 1997 and on 18 and 25 February, 25 March, 18 April and 21 May 1998. They visited the applicant on 23 September, 23 October, 21 November and 23 December 1997 and on 23 January, 25 February, 25 March, 24 April and 26 May, 25 September and 27 October 1998. His mother also visited him on 26 January 1999 and his wife, on 25 December 1998 and 26 February 1999.

58. On 26 August, 27 October and 26 December 1997 and on 27 February, 24 April and 27 October 1998, the applicant received packages from his wife and mother. They generally contained food and toiletries, but also clothes.

59. The applicant regularly purchased goods from the prison shop. According to the prison shop records, in October and December 1997 he spent 16.30 Ukrainian hryvnas (UAH) and UAH 10.40. In February and March 1998 he bought different articles for UAH 10.25 and UAH 17.50. On 23 June (UAH 45.20), 18 August (UAH 64.66), 10 September (UAH 16.40), 19 October (UAH 18) and 12 November 1998 (UAH 6.20), he purchased food and toiletries. In January and February 1999 he spent UAH 38.94 and UAH 8.70.

60. According to the prison records, the applicant received money in his prison bank account on 3 July (UAH 40), 26 June (UAH 100), 8 September (UAH 30) and 27 October 1998 (UAH 50).

61. According to the prison records, the applicant sent letters on 18 May, 15 June, 19 August, 28 September and 29 October 1998. However, the document submitted to the Court did not specify the addressees.

62. On 12 November 1998 the Zaporozhie Regional Prosecutor informed a certain Mrs Belova that the prosecutor, on a complaint by her, had inspected Zaporozhie Prison no. 2. He had found that none of the death row inmates had complained of any violation of the Convention. As far as the regime and conditions of detention were concerned, the prison administration followed the provisions of the Instruction of 20 April 1998 (see paragraph 73 below). He further said that Mrs Belova's suspicion about

tuberculosis being spread in the cells of the death row inmates had not been well-founded. He acknowledged that one inmate had died in March 1998 but his cell and those of his neighbours had been cleaned and disinfected. Moreover, inmates regularly underwent X-ray examinations and, so far, no inmates had had to be treated for tuberculosis.

II. RELEVANT DOMESTIC LAW

A. The Constitution of Ukraine

63. Under Article 8 §§ 2 and 3, the Constitution is directly applicable. There is a guaranteed right to lodge an action in defence of the constitutional rights and freedoms of the individual and of the citizen directly on the basis of the Constitution of Ukraine.

64. Article 9 § 1 provides that international treaties, which are in force and agreed on as binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine.

65. Article 15 § 3 prohibits censorship.

66. Under Article 19 the legal order in Ukraine is based on the principles according to which no one may be forced to do what is not envisaged by the legislation. State authorities and local self-government bodies and their officials are obliged to act only according to these principles, within the limits of their authority, and in the manner envisaged by the Constitution and the laws of Ukraine.

67. Article 22 provides that human and citizens' rights and freedoms are guaranteed and may not be diminished by the adoption of new laws or the amendment of laws that are in force.

68. Under Article 29 §§ 2 and 4 no one may be arrested or held in custody other than pursuant to a reasoned court decision and only on grounds and in accordance with procedures established by law. Everyone arrested or detained must be informed without delay of the reasons for his arrest or detention, apprised of his rights, and from the moment of detention must be given the opportunity to defend himself in person, or to have the assistance of a defence lawyer.

69. Under Article 55 §§ 2 and 4, everyone is guaranteed the right to challenge the decisions, actions or omissions of State authorities, local self-government bodies, officials and officers of a court of law. After exhausting all domestic legal remedies everyone has the right to appeal for the protection of his rights and freedoms to the relevant international judicial institutions or to the relevant authorities of international organisations of which Ukraine is a member or participant.

70. Under Article 59 everyone has the right to legal assistance. Such assistance is provided free of charge in cases envisaged by law. Everyone is free to choose the defender of his rights. In Ukraine the Bar (*адвокатура*)

ensures the right to a defence against charges and the provision of legal assistance in deciding cases in courts and before other State authorities.

71. Article 63 § 3 provides that a convicted person enjoys all human and citizens' rights, subject only to restrictions determined by law and established by a court ruling.

72. Under Article 64, human and citizens' rights and freedoms guaranteed by the Constitution may not be restricted, except in cases envisaged by the Constitution of Ukraine.

B. Statutory regulations governing the conditions on death row

73. Conditions on death row in the Ukrainian prison system were successively governed by an Instruction of 20 April 1998 on conditions of detention of persons sentenced to capital punishment (hereinafter “the Instruction”) and by Temporary Provisions of 25 June 1999 on the conditions of detention of persons sentenced to capital punishment in the isolation blocks (hereinafter “the Temporary Provisions”).

74. The Instruction provided that after the sentence had become final, persons sentenced to death had to be kept in isolation from other prisoners in specially designed cells. Save in exceptional cases, no more than two such prisoners were to be detained in one cell. The cell area allocated to one prisoner in a single cell had to be not less than 4 square metres and in a double cell not less than 3 square metres. The prisoners were provided with an individual sleeping-place and with bed linen. They wore a uniform designed for the category of especially dangerous recidivists. Reference was also made to their legal status and obligations. This determined the frequency of meetings with relatives and the number of letters inmates could send and receive: they were allowed one visit per month and could send one letter per month. There was no limitation on the correspondence they could receive. The inmates could receive two small packets a year. They were allowed to have a daily one-hour walk in the fresh air. Outside their cells, inmates were handcuffed. They were not allowed to work.

Prisoners were also allowed to read books, magazines and newspapers borrowed from the prison library and/or bought through the prison distribution network; they could receive money transfers; they could keep personal objects and food in their cells and buy food and toiletries in the prison shop twice a month (up to the value of the statutory minimum wage), and play board games. They could meet lawyers. Medical treatment was provided in accordance with national legislation.

The prisoners could lodge complaints with State authorities. Such complaints had to be dispatched within three days. Complaints to the Public Prosecutor were not censored.

75. The Temporary Provisions extended the rights of persons sentenced to capital punishment in comparison with the Instruction. In particular,

prisoners were allowed to have eight hours of sleep during the night; they could receive six parcels and three small packets per year, buy food and toiletries in the prison shop (up to the value of 70% of the statutory minimum wage), pray, read religious literature and have visits from a priest, and write complaints to State authorities. They were allowed to send and receive letters without any limits and to have monthly visits of up to two hours from their relatives. A prison official had to be present during visits.

C. Pre-Trial Detention Act 1993 (“the Act”)

76. According to the Code of Criminal Procedure, pre-trial detention is a preventive measure in respect of an accused, a defendant or a person suspected of having committed a crime punishable with imprisonment, or a convicted person whose sentence has not yet been enforced.

77. In accordance with section 8(4), persons sentenced to capital punishment whose sentence had not become final were held separately from all other detained persons.

78. Section 9(1) of the Act provides *inter alia* that detainees have the right (a) to be defended in accordance with the rules of criminal law, (b) to be acquainted with the rules of detention, (c) to take a one-hour daily walk, (d) to receive twice a month a parcel weighing up to eight kilograms and to receive unlimited money transfers and amounts of money by way of remittance or personal delivery, (e) to buy foodstuffs and toiletries to the value of one month's statutory minimum wage, paying by written order, as well as unlimited amounts of stationery, newspapers and books in prison shops, (f) to use their own clothing and footwear and to have with them documents and notes related to their criminal case, (g) to use TV sets received from relatives or other persons and board games, newspapers and books borrowed from the library in their previous place of imprisonment or bought at shops, (h) individually to perform religious rituals and use religious literature and objects made of semi-precious materials pertaining to their beliefs, provided that this does not lead to a breach of the rules applicable to places of pre-trial detention or restrict the rights of other persons, (i) to sleep eight hours a night, during which time they are not required to participate in proceedings or to do anything else except in cases of extreme emergency, and (j) to lodge complaints and petitions and send letters to State authorities and officials in accordance with the procedure prescribed by section 13 of the Act.

79. Under section 11, detainees are required to be provided with everyday conditions that meet sanitary and hygiene requirements. The cell area for one person may not be less than 2.5 square metres. Detainees are to be supplied with meals, an individual sleeping-place, bedclothes and other types of material and everyday provisions free of charge and according to

the norms laid down by the Government. In case of need, they are to be supplied with clothes and footwear of a standard form.

80. In accordance with section 12(1), permission for relatives or other persons to visit a detainee (in principle, once a month for one to two hours) can be given by the administrative authorities of the place of detention, but only with the written approval of an investigator, an investigative authority or a court dealing with the case. Under paragraph 4, detainees have the right to be visited by defence counsel, whom they may see alone with no restrictions on the number of visits or their length, from the moment the lawyer in question is authorised to act on their behalf, such authorisation being confirmed in writing by the person or body dealing with the case.

81. Under section 13(1), detainees can exchange letters with their relatives and other persons and enterprises, establishments and organisations with the written permission of an authority dealing with the case. Once a sentence starts to run, correspondence is no longer subject to any limitations.

D. Correctional Labour Code (“the Code”)

82. According to Article 28 of the Code (Main requirements of the regime in detention institutions), the main features of the regime in detention establishments are: the compulsory isolation and permanent supervision of sentenced persons, so as to exclude any possibility of the commission of new crimes or other acts against public order; strict and continuous observance of obligations by these persons; and various detention conditions dependent on the character and gravity of the offence and the personality and behaviour of the sentenced person.

Sentenced persons must wear a uniform. They must also be searched; body searches must be conducted by persons of the same sex as the person searched. Correspondence is subject to censorship, and parcels and packages subject to opening and checking. A strict internal routine and rules must be established in corrective labour establishments.

Sentenced persons are prohibited from keeping money and valuables, or other specified objects, in corrective labour establishments. Any money and valuables found are to be confiscated and, as a rule, transferred to the State in accordance with a reasoned decision of the governor of the institution, sanctioned by a prosecutor.

A list of objects which sentenced persons are allowed to possess, showing the number or quantity of each item, and the procedure for confiscating objects whose use is prohibited in corrective labour establishments, must be established by the internal regulations of such establishments.

Under the procedure established by the Code, sentenced persons are allowed to buy food and toiletries, paying by written order, to be visited, to

receive parcels, packages, postal packages and money by remittance, to correspond and to send money to relatives by remittance.

83. Article 37 § 1 (Purchase of food and toiletries by sentenced persons) provides that sentenced persons are allowed to buy food and toiletries, paying by written order, from the money received by remittance.

84. Article 40 provides *inter alia* that a lawyer may be given permission to meet his client on presentation of his licence and identity card. Visits are not limited as to their number and length and, at the lawyer's request, may be carried out without a prison warder being present.

85. Under Article 41 (Receipt of parcels and small packets by persons sentenced to imprisonment) sentenced persons held in corrective labour colonies (*виправно-трудова колонія*) are allowed to receive, per year: seven parcels in colonies subject to the general regime (*колонія загального режиму*), six parcels in colonies subject to the strengthened regime (*колонія посиленого режиму*) and five parcels in colonies subject to the strict and special regime (*колонія суворого режиму*). Sentenced persons held in educational labour colonies (*колонія виховно-трудова*) are allowed to receive per year: ten parcels in colonies subject to the general regime and nine parcels in colonies subject to the strengthened regime.

Convicted offenders serving their sentence in a prison are not allowed to receive parcels.

Irrespective of the type of regime under which they are held, sentenced persons are allowed to receive not more than two small packets per year, and to buy literature through the sales distribution network without any restrictions.

The quantity of parcels and small packets of all types is not restricted for sentenced persons held in corrective labour colony camps (*виправно-трудова колонія-поселення*).

A list of foodstuffs and toiletries which sentenced persons are allowed to receive in parcels and small packets, as well as the procedure for their receipt by and delivery to the sentenced persons, is to be established in the internal regulations of corrective labour establishments.

86. Under Article 42 (Receipt and sending of money by sentenced persons by remittance) sentenced persons are allowed to receive unlimited amounts of money by remittance, as well as to send money to their relatives and, if this is permitted by the authorities of the corrective labour establishments, to other persons. The money received by remittance is transferred to the personal account of the sentenced person.

87. Article 43 § 2 (Correspondence of persons sentenced to imprisonment) provides that sentenced persons held in prisons may receive unlimited mail and may send letters as follows: one letter per month for those held under the general regime and one letter every two months for those held under the strengthened regime.

E. Public Prosecutor's Office Act

88. According to section 12(1), the public prosecutor deals with petitions and complaints concerning breaches of the rights of citizens and legal entities, except complaints that are within the jurisdiction of the courts. Paragraph 4 provides that an appeal lies from the prosecutor's decision to the supervising prosecutor and, in certain cases, to the court. Paragraph 5 provides that the decision of the Prosecutor General is final.

89. Under section 38 the prosecutor or his deputy has the power to make a request to a court for any material in a case where a judgment or another decision has come into force. If there are any grounds for reopening the proceedings, the prosecutor challenges the court judgment or any other decision.

90. Under section 44(1) the matters subject to the public prosecutor's supervision are: adherence to the legal rules on pre-trial detention and corrective labour or other establishments for the execution of sentences or coercive measures ordered by a court, adherence to the procedures and conditions for holding or punishing persons in such establishments; the rights of such persons; and the manner of carrying out by the relevant authorities of their duties under the criminal law and legislation on the enforcement of sentences. The public prosecutor may at any time visit places of pre-trial detention, establishments where convicted persons are serving sentences or establishments for compulsory treatment or reform, in order to conduct interviews or peruse documents on the basis of which persons have been detained, arrested or sentenced or subjected to compulsory measures; he may also examine the legality of orders, resolutions and decrees issued by the administrative authorities of such establishments, terminate the implementation of such acts, appeal against them or cancel them where they do not comply with the law, and request officials to give explanations concerning breaches which have occurred.

III. RELEVANT DOCUMENTS OF THE COUNCIL OF EUROPE

Resolution 1097 (1996) of the Parliamentary Assembly on the abolition of the death penalty in Europe

91. In its Resolution, the Assembly deplored the executions which, reportedly, had been carried out recently in Latvia, Lithuania and Ukraine. In particular, it condemned Ukraine for apparently violating its commitments to introduce a moratorium on executions of the death penalty upon its accession to the Council of Europe. It called upon this country to honour its commitments regarding the introduction of a moratorium on executions and the immediate abolition of capital punishment, warning it

that further violation of its commitments, especially the carrying out of executions, would have consequences under Order No. 508 (1995).

Resolution 1112 (1997) on the honouring of the commitment entered into by Ukraine upon accession to the Council of Europe to put into place a moratorium on executions

92. The Assembly confirmed in this Resolution that it had received official information that, in the first half of 1996, eighty-nine executions had been carried out in Ukraine, and regretted that the Ukrainian authorities had failed to inform it of the number of executions carried out in the second half of the year. The Assembly was particularly shocked that executions in Ukraine had been shrouded in secrecy, with apparently not even the families of the prisoners having been informed, and that the executed prisoners had been reportedly buried in unmarked graves. It condemned Ukraine for having violated its commitment to put into place a moratorium on executions, deplored the executions that had taken place, and demanded that it immediately honour its commitments and halt any executions still pending.

Resolution 1179 (1999) and Recommendation 1395 (1999) on the honouring of obligations and commitments by Ukraine

93. In these texts, the Assembly noted that Ukraine had clearly failed to honour its commitments (212 persons had been executed between 9 November 1995 and 11 March 1997, according to official sources). At the same time, it noted that since 11 March 1997 a *de facto* moratorium on executions had been in effect in Ukraine. The Assembly insisted that the moratorium be reconfirmed *de jure* and that the Verkhovna Rada ratify Protocol No. 6 to the Convention. It stressed the importance of the *de facto* moratorium on executions and firmly declared that, if any further executions took place, the credentials of the Ukrainian parliamentary delegation would be annulled at the following part-session of the Assembly, in accordance with Rule 6 of its Rules of Procedure.

IV. REPORTS OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN AND DEGRADING TREATMENT AND PUNISHMENT (CPT)

94. Delegates of the CPT visited places of detention in Ukraine in the years 1998, 1999, and 2000. Reports on each of the visits were published on 9 October 2002, together with the Responses to the Reports of the Ukrainian Government.

1998 Report

95. The visit of the delegation, which took place from 8 to 24 February 1998, was the CPT's first periodic visit to Ukraine. In the course of the visit the delegation inspected, *inter alia*, the pre-trial prison (SIZO) ("investigation isolation" establishment) No. 313/203 in Kharkiv. On the ground floor of building No. 2 of SIZO No. 203 were housed at the time of the visit fifteen prisoners who had been sentenced to death, although as was recorded in a footnote to the Report, the delegation had received assurances that since 11 March 1997 a *de facto* moratorium on executions had been observed.

96. In its Report (paragraph 131), the CPT expressed at the outset its serious concern about the conditions under which these prisoners were being held and about the regime applied to them. It was noted that prisoners sentenced to death were usually accommodated two to a cell, the cell measuring 6.5-7m². The cells had no access to natural light, the windows being obscured by metal plates. The artificial lighting, which was permanently on, was not always sufficiently strong with the result that some cells were dim. To ventilate the cells, prisoners could pull a cord that opened a flap; despite this the cells were very humid and quite cold (paragraph 132).

The equipment in the cells was described in the Report as being rudimentary, consisting of a metal bed and/or sloping platform (equipped with a thin mattress, sheets of dubious cleanliness and a blanket which was manifestly insufficient to keep out the cold), a shelf and two narrow stools. Prisoners were supposed to be able to listen to radio programmes via a speaker built into the wall of the cell, but it had been reported to the delegation that the radio only functioned sporadically (*ibid.*).

All the cells had un-partitioned toilets which faced the living-area; as a result, a prisoner using the toilet had to do so in full view of his cellmate. As regards toiletries, prisoners sentenced to death were in a similarly difficult situation as many of the other inmates; items such as soap and toothpaste were rarities (*ibid.*).

It was further recorded that prisoners sentenced to death had no form of activity outside their cells, not even an hour of outdoor exercise. At best they could leave their cells once a week to use the shower in the cell-block, and for an hour a month, if they were authorised to receive family visits. In-cell activities consisted of reading and listening to the radio when it worked. Apart from the monthly visits which some inmates received, human contact was limited essentially to the occasional visit by an Orthodox priest or a member of the health-care staff, who spoke to the prisoners through a grille in the cell-door (paragraph 133).

97. The CPT summarised its findings in this regard as follows:

“In short, prisoners sentenced to death were locked up for 24 hours a day in cells which offered only a very restricted amount of living space and had no access to natural light and sometimes very meagre artificial lighting, with virtually no activities to occupy their time and very little opportunity for human contact. Most of them had been kept in such deleterious conditions for considerable periods of time (ranging from 10 months to over two years). Such a situation may be fully consistent with the legal provisions in force in Ukraine concerning the treatment of prisoners sentenced to death. However, this does not alter the fact that, in the CPT's opinion, it amounts to inhuman and degrading treatment.” (paragraph 134).

It was further recorded that the delegation had received numerous complaints from prisoners sentenced to death about the fact that they lacked information with regard to their legal situation the progress of their cases, follow-up to applications for cases to be reviewed, examination of their complaints etc. (paragraph 138).

98. In its Response to the 1998 Report, the Ukrainian Government recorded that a number of organisational and practical steps had been taken to resolve the problems identified by the CPT. In particular, the Temporary Regulations had been introduced to guarantee to prisoners sentenced to death the right to be visited once a month by relatives, to be visited by a lawyer to get legal assistance, to be visited by a priest and to receive and send correspondence without limitation. It was further noted

(i) that prisoners sentenced to death would have daily walks in the open air and that for this purpose 196 yards of the pre-trial prisons had been rebuilt or re-equipped;

(ii) that, in order to improve natural lighting and air of all cells, the blinds and metal peakes over cell windows had been removed; and

(iii) that, for the purposes of informing inmates sentenced to death of their rights and legal status, extracts from the Temporary Regulations had been placed on the walls of each cell.

1999 Report

99. A CPT delegation visited Ukraine from 15 to 23 July 1999 in the course of which they again inspected SIZO No. 313/203 in Kharkiv where, at the time of the visit, there were detained 23 prisoners who had been sentenced to death. The Report noted that certain changes had occurred since the previous visit. In particular, the cells had natural light and were better furnished and the prisoners had an hour of exercise per day in the open air, although it was observed that there was insufficient space for real physical exercise (paragraphs 34-35). The Report further recorded that important progress had been made in the right of prisoners to receive visits from relatives and to correspond (paragraph 36). However, the CPT noted

certain unacceptable conditions of detention including the fact that prisoners continued to spend 23 out of 24 hours a day in their cells and that opportunities for human contact remained very limited (paragraph 37).

2000 Report

100. A third visit to Ukraine took place from 10 to 21 September 2000, in the course of which the delegation inspected, *inter alia*, the pre-trial prison (SIZO No.15) in Simferopol. The CPT welcomed the decision of the Ukrainian authorities to abolish the death penalty and noted that most of the approximately 500 prisoners subject to the death sentence had had their sentences commuted to life imprisonment.

101. Despite these welcome steps, the CPT recorded that the treatment of this category of prisoner was a major source of concern to the Committee (paragraph 67). It was noted that, further to a provisional instruction issued in July 2000 and pending the establishment of two high-security units specifically intended for life prisoners, such prisoners were subjected to a strict confinement regime (paragraph 68). While living space in the cells was generally satisfactory and while work had started on refurbishing cells in all the establishments visited, there were major deficiencies in terms of access to natural light and the quality of artificial light and ventilation (paragraph 69). Moreover, life-sentence prisoners were confined in their cells for 23 ½ hours a day with no form of organized activities and, by way of activities outside their cells, were entitled to only half an hour outdoor exercise, which took place in unacceptable conditions. There was virtually no human contact: since the entry into force of the July 2000 instruction, visits from relatives had been forbidden and prisoners were only allowed to send one letter every two months, although there were no restrictions on receiving letters (paragraph 70).

102. In their Response to the Report the Ukrainian Government noted further legal amendments which ensured that life prisoners had one hour of exercise per day and two family visits of up to four hours per month. Further, to ensure adequate access to light, metal shutters had been removed from windows in all cells.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

103. The Government reiterated the objection they had made at the admissibility stage of the proceedings. They submitted that the applicant,

who had been held on death row for four years, had not once applied to the executive or the judicial authorities at any level regarding the alleged violations of his rights. Therefore, he had not granted the Government an opportunity to react properly to the alleged violations of his rights and to remedy them through the national machinery for the protection of the rights in question.

104. The Government underlined that the existing national legal system (primarily the Constitution and other legislative Acts) afforded a real possibility of effective judicial protection of human rights. They relied on Article 55 § 1 of the Constitution, according to which “everyone is guaranteed the right to challenge before a court decisions, actions or omissions of State authorities, local self-government bodies, officials and officers”. The Government referred in this regard to the Constitutional Court's decision of 25 December 1997, in which the court had stated: “Article 55 § 1 of the Constitution should be construed to mean that everyone is guaranteed the protection of his rights and freedoms before a court. The latter cannot refuse justice if the rights and freedoms of a citizen of Ukraine, a foreigner or a person without citizenship are violated or their realisation is obstructed or limited in any other way.”

105. The Government further reiterated that according to section 248(1) of the Code of Civil Procedure, “a citizen has a right of access to a court if he or she considers that his or her rights have been violated by actions or omissions of a State authority, a legal entity or officials acting in an official capacity. Among entities whose actions or omissions may be challenged before the competent court listed in the first paragraph of this provision are the bodies of State executive power and their officials”.

106. The applicant disputed the Government's submissions, alleging that he had exhausted all domestic remedies at his disposal. In particular, he contended that his wife and mother had successively filed complaints about the applicant's prison conditions to the Zaporozhie Regional Prosecutor (on 15 August 1997), to the President of Ukraine (on 15 December 1998 and 19 February 1999) and to the Ombudsman (on 9 October 1998). In addition, his wife had complained to the prison administration about aspects of his conditions of detention, including lack of visits and outdoor exercise.

107. The Court recalls that, according to its established case-law, the purpose of the domestic remedies rule in Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. However, the only remedies to be exhausted are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time.

Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact

exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement. One such reason may be the national authorities' remaining totally passive in the face of serious allegations of misconduct or infliction of harm by State agents, for example where they have failed to execute a court order. In such circumstances, the burden of proof shifts once again, so that it becomes incumbent on the respondent Government to show what they have done in response to the scale and seriousness of the matters complained of (see e.g. the Court's judgment of 28 July 1999 in the case *Selmouni v. France* (no. 25803/94, §§ 74-77, ECHR 1999-V).

108. The Court emphasises that the application of this rule must make due allowance for the context. Accordingly, it has recognised that Article 35 must be applied with some degree of flexibility and without excessive formalism. The Court has recognised that the rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically; in reviewing whether the rule has been observed, it is essential to have regard to the particular circumstances of the individual case. This means, amongst other things, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general legal and political context in which they operate, as well as the personal circumstances of the applicant (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1211, § 69).

109. In the present case, the Court finds on the evidence that the applicant complained to the prison administration about certain aspects of his detention, in particular visits from relatives and outdoor walks (see paragraphs 24, 29 and 45 above). However, he was always given the answer that the situation could not be improved, since it was directly dependent on the financial and logistical resources of the prison which were insufficient (see paragraphs 24 and 45 above). In this regard, the Court does not consider reliable the evidence of the governor of Zaporozhie Prison no. 2 that he had met the applicant's wife when she had requested a visit to her husband, but that he had never heard any complaints from her regarding the applicant's conditions of detention (see paragraph 48 above).

110. Insofar as it is suggested that the applicant failed to lodge a formal complaint to the prison authorities concerning his conditions of detention, the Court accepts the evidence of the applicant that, although he had a general knowledge of his rights and obligations as a prisoner, the document containing the prison rules was only occasionally posted in his cell in Zaporozhie Prison no. 2 (see paragraph 19 above). The Government have adduced no evidence to show that the applicant was otherwise made aware of his rights or of the appropriate means by which he might seek redress for his complaints. In these circumstances, it cannot be held against

the applicant that he did not lodge a formal complaint about his conditions of detention through the correct channels.

111. As to the possibility of lodging a civil action in the courts, the Court reiterates that Article 35 § 1 requires not only that a domestic remedy is available, but that it is effective to redress the alleged breach of an individual's Convention rights. While it is true that the present applicant did not bring civil proceedings to complain of his conditions of detention, the Court notes that the Government have not shown how recourse to such proceedings could have brought about an improvement in those conditions. Nor have they supplied any example from domestic case-law to show that such proceedings by a prisoner would have stood any prospect of success.

112. In these circumstances, the Court considers that it has not been sufficiently established that recourse to the remedies suggested by the Government would have been capable of affording redress to the applicant in relation to his complaints concerning his conditions of detention. Accordingly, the Court decides that the Government's objection on grounds of a failure to exhaust domestic remedies cannot be upheld.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

113. The applicant complained about the conditions of detention on death row in Zaporozhie Prison no. 2, alleging that these conditions subjected him to treatment falling within the scope of Article 3 of the Convention, which reads as follows:

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

He claimed that he was held in solitary confinement, that he was prevented from taking outdoor walks and that he was allowed to receive only one parcel of food and toiletries every two months. He further claimed that he was prevented from receiving parcels of warm clothes from his relatives, despite the fact that he had only light clothing to wear in temperatures of -20°C.

1. The submissions of the parties

114. The Government submitted that all the relevant detention rules applied in the case of the applicant, including those relating to cell facilities, medical treatment, visits and correspondence, were laid down in sections 1, 8, 9, 11, 12 and 13 of the Act, in certain provisions of the Code of Criminal Procedure, in Articles 28, 37, 40, 41, 42 and 43 of the Correctional Labour Code, in the Instruction of 20 April 1998 and in the Temporary Provisions of 25 June 1999. They pointed out that, according to section 8(4) of the Act, a person sentenced to capital punishment was kept in custody, separated from other prisoners. The applicant shared his cell with another

inmate. The cell facilities in his case had complied with the relevant sanitary and hygiene standards: it measured 7.1 square metres, it had a sleeping area, a radio, a bed, a chair, adequate natural and electric lighting, heating, running water and a toilet, as provided in section 11(2) of the Act. The applicant had been provided with three meals a day, and with clothing, footwear and bedclothes.

115. The Government further submitted that medical assistance and treatment and prophylactic and anti-epidemic measures for inmates sentenced to capital punishment were carried out pursuant to the national legislation on health protection. Moreover, the applicant had been able to buy food in the prison shop.

116. The Government noted that, after the Supreme Court had upheld the judgment of the court of first instance, the applicant's relatives had applied to visit him on 19 August, 23 September, 7 October, 6 November and 6 December 1997, and on 20 January, 18 February, 19 March, 14 April and 21 May 1998. They had visited the applicant on 23 September, 23 October, 21 November and 23 December 1997, on 23 January, 25 February, 25 March, 24 April, 26 May, 25 September, 27 October and 25 December 1998, and on 26 January and 26 February 1999. In November 1998 the applicant's relatives had not asked for a visit.

117. The Government further noted that between 11 April 1997 and 24 April 1998 the applicant had received fourteen parcels from his relatives and that on 28 November 1998 he had received a parcel from his mother. On 18 May, 15 June, 19 August, 28 September and 29 October 1998 the applicant had sent letters. The applicant had also been entitled to a daily one-hour outdoor walk, during which he had been able to have physical exercise in the fresh air.

118. In their additional observations, the Government stressed that in accordance with the Instruction, the applicant had been entitled to receive two small packets a year and money transfers. He had been able to read books, magazines and newspapers borrowed from the library of Zaporozhie Prison no. 2. He had had at his disposal personal belongings and foodstuffs, and had been able to buy foodstuffs and toiletries from the prison shop twice a month, the value of which could amount to one month's statutory minimum wage, to play board games, to have a daily one-hour outdoor walk, to send twelve letters a year and receive letters without limitation, and to have meetings with his defence lawyer without any restrictions.

119. The applicant disputed the Government's arguments. He said that the area of his cell was not 7.1 square metres as the Government had claimed but only 3 square metres and that the window was covered. Moreover, although between 1 April and 11 August 1997 he had received parcels weighing up to eight kilograms twice a month, since 26 August 1997 he had received only a small packet of two kilograms brought by his relatives once every two months, and since 24 April 1998 he

had received small packets of two kilograms once every six months. His daily walks were limited to 30 minutes. The prison administration had told him that it could not provide him with proper medical services, as they had no special facilities. He also submitted that visits from his relatives were limited to 20 minutes, during which time he was handcuffed. He could send twelve letters per year. He had not had an opportunity to use a TV set or simple board games. He confirmed that in October 1998 he had received a warm jacket and shoes from his relatives.

120. In his further observations of January 1999 the applicant stated that certain changes had taken place, but that his relatives' visits continued to last only 20 or 30 minutes at the most. He also submitted that between 3 April 1997 and 18 May 1998 he had not been entitled to have daily walks. In addition, on 1 March 1999 the governor of Zaporozhie Prison no. 2 had extended the length of his relatives' visits to one hour. He concluded that the conditions to which he was subjected at that time could be regarded as satisfactory and as complying with national legislation.

1. The Court's assessment

121. As the Court has held on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

122. According to the Court's case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162). Furthermore, in considering whether treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. However, the absence of such a purpose cannot conclusively rule out a finding of a violation of this provision (see *Peers v. Greece*, no. 28524/95, §§ 67-68, 74, ECHR 2001-III; *Valašinas v. Lithuania*, no. 22558/98, § 101, ECHR 2001-VIII).

123. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. In accordance with this provision the State must ensure that a person is detained under conditions which are compatible with

respect for his human dignity, that the manner and method of the execution of the measure do not subject him to such distress or hardship exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

124. In addition, as underlined by the Court in the *Soering v. the United Kingdom* judgment, present-day attitudes in the Contracting States to capital punishment are relevant for the assessment whether the acceptable threshold of suffering or degradation has been exceeded (see *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, p. 41, § 104). Where the death penalty is imposed, the personal circumstances of the condemned person, the conditions of detention awaiting execution and the length of detention prior to execution are examples of factors capable of bringing the treatment or punishment received by the condemned person within the proscription under Article 3 (*ibid.*). When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II; *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI).

125. The Court notes that the applicant complained of certain aspects of the conditions to which he had been subjected in Zaporozhie Prison no. 2 where he was detained until mid-September 1999. It reiterates in this regard that the Convention only governs, for each Contracting Party, facts subsequent to its entry into force in respect of that Party. The Court therefore has jurisdiction to examine the applicant's complaints in so far as they relate to the period after 11 September 1997, when the Convention came into force in respect of Ukraine. However, in assessing the effect on the applicant of the conditions of his detention, the Court may also have regard to the overall period during which he was detained as a prisoner, including the period prior to 11 September 1997, as well as to the conditions of detention to which he was subjected during that period (see *Kalashnikov*, cited above, § 96).

126. The Court further observes that the applicant was detained under a sentence of death until his sentence was commuted to one of life imprisonment in June 2000. As is noted above (see paragraphs 91-93 above), the use of capital punishment in Ukraine was the subject of strong and repeated criticism in Resolutions of the Parliamentary Assembly of the Council of Europe, in which it was recorded that between 9 November 1995 and 11 March 1997 a total of 212 executions had been carried out in the State. However, on the latter date a *de facto* moratorium on executions was declared by the President of Ukraine; on 29 December 1999 the Constitutional Court held the provisions of the Criminal Code governing the use of the death penalty to be unconstitutional; and on 22 February 2000 the

death penalty was abolished by law and replaced by a sentence of life imprisonment (see paragraph 16 above). The applicant was sentenced to death in April 1997, after the moratorium had come into effect. The Court accepts that, until the formal abolition of the death penalty and the commutation of his sentence, the applicant must have been in a state of some uncertainty, fear and anxiety as to his future. However, it considers that the risk that the sentence would be carried out, and the accompanying feelings of fear and anxiety on the part of those sentenced to death, must have diminished as time went on and as the *de facto* moratorium continued in force.

127. The applicant's original complaints, as submitted to the former Commission, concerned the conditions of detention in Zaporozhie Prison no. 2. The Court will therefore focus on examining the detention conditions in that prison, taking as a point of comparison the situation in Zaporozhie Prison no. 1 where, at the time of the Court Delegates' visit on 5 and 6 October 1999, the applicant had been imprisoned for a few days. It will take into account its Delegates' findings, the parties' written observations and documents submitted by them, as well as the Reports of the CPT covering the period in question, so far as relevant.

128. At the time of his conviction, the applicant was twenty-nine or thirty years old. He was taken to Zaporozhie Prison No. 2 on an unspecified date at the end of 1996 or at the beginning of 1997 (see paragraph 19 above). He remained in this prison until mid-September 1999, when he was transferred to Zaporozhie Prison no. 1 (see paragraph 44 above).

129. The Court notes the applicant's statement that he was informed about his rights and obligations in Zaporozhie Prison no. 1 by means of a documents in his cell which he had read. His evidence was corroborated by the prison governor of this establishment (see paragraph 35 above). It also considers reliable his statement that in Zaporozhie Prison no. 2, where he had previously been detained, the piece of paper with prisoners' rights and obligations was posted in his cell when a commission from Kiev visited the prison, and was removed after its departure. Nevertheless, the Court considers that the applicant had a general knowledge of his rights and obligations (see paragraph 19 above).

130. The Court notes that in Zaporozhie Prison no. 2 the applicant changed cells every week and later every month. His evidence in this regard was partly corroborated by the governor of this prison, who said that he had been moved from one cell to another every ten days (see paragraph 47 above). The window in the cells which he had successively occupied had been covered, the strong electric lamp being switched on all the time (see paragraph 28 above). The cell had had no water tap. The area of the cell in which he had been detained alone in Zaporozhie Prison no. 2 had been, according to the applicant, at least half of the size of the cell in Zaporozhie Prison no. 1 in which he was detained on the day of the Court Delegates'

visit (see paragraph 20 above). In his written observations, he said that his cell had been 3 square metres (see paragraph 114 above). The Court notes that the applicant's testimony was in contradiction with the Government who said in their written observations that the size of the cell was 7.1 square metres (see paragraph 114 above), but also with the governor of Zaporozhie Prison no. 2 who said that the prison had four death row double cells which were the same size (see paragraph 47 above). Taking into account that the Delegates were allowed to visit only two empty cells in this prison which were allegedly intended for death row inmates (see paragraphs 47, 54 and 56 above), the Court considers the applicant's evidence reliable and finds that the single cells in which he was held in Zaporozhie Prison no. 2 were much smaller than the cell he occupied in Zaporozhie Prison no. 1.

131. The Court observes that the applicant had originally complained that he had been held in a separate cell. During the interview with the Delegates' he said that he had generally been alone at his own request (see paragraph 20 above) and that he had agreed to share the cell with another inmate when the prison administration had asked him to do so (*ibid.*).

132. Concerning the equipment of the applicant's cells, the Court notes that its Delegates established during their visit that the applicant's cell in Zaporozhie Prison no. 1 was renovated, in order and clean. There was an open toilet, a wash basin with a cold water tap, two beds and a table fixed to the floor, central heating and a window with bars. There were some books, a newspaper, and a stock of soap and toilet paper. The cell was sufficiently ventilated.

The Delegates further established that two cells which they saw in Zaporozhie Prison no. 2 were equipped with an open toilet, a washbasin with a cold water tap, two beds fixed to the floor, central heating and a window with bars. They were properly ventilated.

133. The prison shower room in Zaporozhie Prison no. 2, consisting of two rooms without windows, was very humid and dirty, unlike the corresponding facilities in Zaporozhie Prison no. 1 (see paragraphs 55 above).

134. The Court accepts the applicant's evidence that he was not allowed to watch TV, but that his relatives brought him books and newspapers.

135. The Court notes that the applicant suffered from stomach aches and high acidity, but on the basis of the evidence given by the prison doctor it considers that the medical and dental care provided by the prison's medical unit was adequate, although certainly not of the same standard as the treatment provided outside the prison environment. The Court refers to the prison doctor's evidence given before its Delegates according to which after June 1999, when she started to work in Zaporozhie Prison no. 2, the applicant had not requested any medical assistance from her (see paragraphs 49-51 above). It cannot, on the other hand, establish with sufficient certainty what the situation had been prior to June 1999.

136. The applicant originally complained that he was allowed to receive only one parcel with food and toiletries every two months and that the parcels could not contain warm clothes, despite the fact that he had only light clothes to wear in temperatures of - 20°C. In his written observations he added that since 24 April 1998 he had received parcels weighing up to two kilograms once every six months. The Court notes that this generally corresponds to the details from the prison records (see paragraph 59 above) and the information given by the Government in their observations (see paragraph 118 above). It observes that the latter practice was carried out in accordance with the Instruction (see paragraph 75 above). The Court further notes that the applicant was provided with three meals a day, and that even assuming the quality of food provided by the prison kitchen was not satisfactory, the applicant could and did regularly purchase goods in the prison shop (see paragraphs 59 and 24 above). In addition, since 11 July 1999 when the Temporary Provisions come into force, the applicant was allowed to receive six parcels and three packages per year (see paragraph 75 above), the rule which was followed by Zaporozhie Prison no. 1 (see paragraph 40 above). According to the applicant, he could receive one parcel of 8 kilograms and three packages every two months (see paragraph 32 above).

137. The applicant originally complained that his relatives were not allowed to send him packages with warm clothes. The Court notes however, that from the applicant's written observations it appears that in October 1998 he received a warm jacket and shoes (see paragraph 119 above).

138. The Court next notes that the applicant did not complain of the number of letters which he could send or receive. The practice of Zaporozhie Prison no. 2 whereby he was allowed to send one letter per month complied with the requirements of the Instruction (see paragraph 74 above). Moreover, on the date of the Court Delegates' visit he confirmed that he had the right to receive an unlimited number of letters.

139. Concerning the visits from the applicant's relatives, the Court notes that the parties did not dispute the number but only the duration of the relatives' visits to the applicant (see paragraphs 116-119 above). The Court accepts the evidence of the applicant concerning the limitation on the duration of visits by his relatives (see paragraph 29 above). That statement was confirmed by the prison governor who confirmed that in July 1999 the applicant criticised the length of the visits by his relatives, alleging that they should have lasted between one and two hours, but that the prison administration had been unable to grant him longer meetings, having regard to the large number of prisoners held in the prison (see paragraph 45 above). In addition, on 1 March 1999 the governor of Zaporozhie Prison no. 2 granted the applicant the right to visits of one hour (see paragraph 120 above).

140. As far as the applicant's daily outdoor walks, the Court notes that he had started to go for daily outdoor walks without handcuffs on 18 May 1998; according to the applicant, the walks usually lasted for between 20 and 30 minutes, exceptionally for 50 minutes (see paragraphs 29, 119 and 120 above). While the Government did not dispute the date of introduction of the outdoor walks, they argued that they lasted one hour (see paragraphs 117-118 above). The Court nevertheless finds reliable the applicant's version of events, according to which the prison administration did not inform him how long the walks had to last according to national legislation, and when he learnt from the prison rules brought by his wife that the walks should have lasted one hour, the prison administration prevented him from having them, organising meetings at the same time as the daily walks (see paragraph 30 above). The Court accepts the applicant's testimony that this practice stopped in August or September 1999. It notes that the Government did not adduce any evidence proving that the applicant's walks lasted for one hour as provided for in the Instruction or in the Temporary Provisions.

In Zaporozhie Prison no. 1 inmates have been allowed to go for a daily outdoor walk without handcuffs since March 1998 (see paragraph 40 above).

141. The Court has examined as a whole the conditions to which the applicant was subject during his detention in Zaporozhie Prison no. 2. While it cannot establish with complete clarity the conditions of detention to which the applicant was subjected prior to the Court Delegates' visit, certain facts are beyond dispute and clearly established. The Court views with particular concern that, until at earliest May 1998, the applicant, in common with other prisoners detained in the prison under a death sentence, was locked up for 24 hours a day in cells which offered only a very restricted living space, that the windows of the cells were covered with the consequence that there was no access to natural light, that there was no provision for any outdoor exercise and that there was little or no opportunity for activities to occupy himself or for human contact. In common with the observations of the CPT concerning the subjection of death row prisoners in Ukraine to similar conditions, the Court considers that the detention of the applicant in deleterious conditions of this kind amounted to degrading treatment in breach of Article 3 of the Convention. The Court further finds that the applicant's situation was aggravated by the fact that he was throughout this period subject to a death sentence, although, as noted in paragraphs 16 and 126 above, a moratorium was already in effect at the time of the applicant's conviction and sentence.

142. The Court considers that in the present case there is no evidence that there was a positive intention of humiliating or debasing the applicant. However, although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the

absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 of the Convention (see *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX; and *Kalashnikov*, cited above, § 101). It considers that the conditions of detention, which the applicant had to endure in particular until May 1998, must have caused him considerable mental suffering, diminishing his human dignity.

143. The Court acknowledges that, between May 1998 and the date of the visit to Ukraine of the Court's Delegates in October 1999, substantial and progressive improvements had taken place, both in the general conditions of the applicant's detention and in the regime applied within the prison. In particular, the coverings over the windows of the cells were removed, daily outdoor walks were introduced and the rights of prisoners to receive visits and to correspond were enhanced. Nevertheless, the Court observes that, by the date of introduction of these improvements, the applicant had already been detained in these unacceptable conditions for a period of over 12 months, including a period of 8 months after the Convention had come into force in respect of Ukraine.

144. The Court has also borne in mind, when considering the material conditions in which the applicant was detained and the activities offered to him, that Ukraine encountered serious socio-economic problems in the course of its systemic transition and that prior to the summer of 1998 the prison authorities were both struggling under difficult economic conditions and occupied with the implementation of new national legislation and related regulations. However, the Court observes that lack of resources cannot in principle justify prison conditions which are so poor as to reach the threshold of treatment contrary to Article 3 of the Convention. Moreover, the economic problems faced by Ukraine cannot in any event explain or excuse the particular conditions of detention which it has found in paragraph 141 to be unacceptable.

145. There has, accordingly, been a breach of Article 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

146. The applicant complained that he was allowed to receive only one parcel with food and toiletries every two months.

147. The Court considers that the applicant's complaint falls to be examined under Article 8 of the Convention, which provides:

“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.”

148. The Court first reiterates that the Convention only governs, for each Contracting Party, facts subsequent to its entry into force in respect of that Party. The Court therefore has jurisdiction to examine the applicant's complaints in so far as they relate to the period after 11 September 1997, when the Convention entered into force in respect of Ukraine.

149. From the prison records it appears that the applicant received parcels from his wife and/or mother, generally containing food and toiletries, on 26 August, 27 October, 26 December 1997 and on 27 February, 24 April and 27 October 1998 (see paragraph 58 above). He did not make use of his right in June 1998. The applicant did not deny the contents of the prison records.

150. The Court considers that by limiting the number of parcels and packages which the applicant was allowed to receive, the public authority interfered with the applicant's right to respect for his correspondence guaranteed by Article 8 § 1 of the Convention and that such a restriction can only be justified if the conditions in the second paragraph of this provision are met.

151. In particular, if it is not to contravene Article 8, such interference must be “in accordance with the law”, pursue a legitimate aim and be necessary in a democratic society in order to achieve that aim (see *Silver and Others v. the United Kingdom*, judgment of 25 March 1993, Series A no. 61, p. 32, § 84; *Petra v. Romania*, judgment of 23 September 1998, Reports 1998-VII, p. 2853, § 36).

152. The Court must first consider whether the interference was “in accordance with the law”. This expression requires firstly that the impugned measure should have some basis in domestic law; it also refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences for him, and be compatible with the rule of law (see *Kruslin v. France* and *Huvig v. France*, judgments of 24 April 1990, Series A no. 176-A, p. 20, § 27, and Series A no. 176-B, p. 52, § 26, respectively).

153. The Government referred in their written observations to the Act. In their further observations, they added a reference to the Correctional Labour Code (“the Code”), the Instruction and the Temporary Provisions (see paragraph 114 above).

1. Period between 11 September 1997 and 11 July 1999

154. The Court observes that the Act governs the conditions of detention until a sentence becomes final. It appears from the statements of the witnesses heard by the Court Delegates during their fact-finding visit and the documents submitted by the Government that after a sentence became final, the detention conditions of persons sentenced to capital punishment

were mainly governed by the Instruction issued by the Ministry of Justice, the Prosecutor General and the Supreme Court (see paragraphs 73-75 above). However, the Code provides a general legal basis for the conditions of detention (see paragraphs 82-87 above).

(a) Correctional Labour Code

155. The Court notes that although the Code satisfies the second requirement resulting from the phrase “in accordance with the law”, namely that the law be accessible, this is not true of the third requirement, namely that the law be foreseeable as regards the meaning and nature of the applicable measures.

156. It observes that the Government refer to Article 41 § 3 of the Code according to which “irrespective of the type of regime under which they are held, sentenced persons are not allowed to receive more than two small packages per year” (see paragraph 85 above). However, this provision constitutes a part of Article 41, which establishes the rules concerning receipt of parcels and small packets by persons sentenced to imprisonment. The Court considers that it is not clear that persons sentenced to death are included among persons sentenced to imprisonment (*позбавлення волі*) within the meaning of the Code, a death sentence being imposed because the offender is deemed incapable of reform through imprisonment. The Court observes that the legal position is made more uncertain by the second paragraph of Article 41 of the Code which provides that “sentenced persons serving their sentence in a prison are not allowed to receive parcels”. In the present case, the applicant was consecutively detained in Zaporozhie Prison no. 2 and then in Zaporozhie Prison no. 1, and not in a corrective labour colony, an educational labour colony or a corrective labour colony-camp mentioned in the first and fourth paragraphs of the same Article (see paragraph 85 above).

157. In the light of these circumstances, the Court finds that the restrictions imposed by the Code referred to by the Government in the present case were not sufficiently foreseeable to comply with the requirements of the second paragraph of Article 8 of the Convention in that the applicant could not know with sufficient certainty whether the limits laid down in the Code as to the number of parcels and packages which prisoners were allowed to receive from his relatives applied to him.

(b) Instruction

158. The Court notes that the Instruction was an internal document which was not accessible to the public: the Government submitted only part of it to the Court.

159. The Court finds that in these circumstances it cannot be said that the interference with the applicant's right to respect for his correspondence was “in accordance with the law” as required by Article 8 § 2 of the

Convention. It is true that the Instruction was replaced by the Temporary Provisions, approved by the State Department on Execution of Sentences on 25 June 1999 as Order no. 72, and registered by the Ministry of Justice on 1 July 1999 as no. 426/3719, which entered into force on 11 July 1999 and which are accessible to the public. However, the Temporary Provisions have no application to the facts occurring before 11 July 1999.

160. There has consequently been a violation of Article 8 of the Convention as regards the period between 11 September 1997 and 11 July 1999.

2. Period after 11 July 1999

161. The Court observes that the applicant's original complaint concerned the period prior to 11 July 1999 when he had the right to receive two packages per year (see paragraph 74 above), and that he has made no complaint that his correspondence was controlled after this date.

162. However, it considers it appropriate to examine also the restrictions imposed by the Temporary Provisions, whereby the applicant was allowed to receive six parcels and three small packages a year.

It is accepted that such a limitation constitutes an interference with the right to respect for correspondence. Such an interference is “in accordance with the law”, namely the Temporary Provisions, and can be regarded as pursuing the legitimate aim of the “prevention of disorder or crime”, bearing in mind the interest of the prison authorities in ensuring that material harmful to prison security is not smuggled into prisons.

163. As regards the necessity of the interference, the Court must take into account the logistical problem involved in processing an unrestricted quantity of parcels arriving in a large penitentiary, in this case an establishment with 1,735 inmates (see paragraph 44 above). Granting permission to inmates to receive an unlimited number of parcels or packages would involve a substantial amount of work on the part of prison staff in checking each parcel with a view to safeguarding prison security. The security regime inside the prison is aimed at protecting the public at large from dangerous offenders and also at protecting the prison inmates themselves. The prison authorities thus have a legitimate interest in protecting security by means which seek to reduce or limit security risks. At the same time a proper balance must be struck between the interests of security and respect for the right of inmates to maintain contact with the outside world.

164. In the present case the Court considers that the possibility of receiving parcels or small packets every sixth week can be regarded as respecting such a balance bearing in mind that the prison authorities provide clothing, meals and medical care for all prisoners during their detention. In addition, the Court has heard evidence from the Government that there is no

restriction on relatives sending money to inmates to enable them to purchase goods in the prison shop.

165. Against this background and bearing in mind the margin of appreciation afforded to the Government in the regulation of prison life, the Court considers that the measures are proportionate to the aim of preventing disorder or crime.

166. There has accordingly been no violation of Article 8 of the Convention as regards the period after 11 July 1999.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

167. The applicant argued that he did not have any effective remedy within the meaning of Article 13 of the Convention in respect of the conditions in which he had been detained or the interference with his correspondence.

Article 13 of the Convention reads:

“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.”

168. The Court recalls that this provision guarantees remedies at the national level to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. Its effect is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be “effective” in practice as well as in law. In particular, its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Ilhan v. Turkey* [GC], no. 22277/93, ECHR 2000-VII, § 97).

169. The Court considers that the applicant did have an arguable complaint as regards his rights under Articles 3 and 8 of the Convention.

170. Recalling its finding in respect of the preliminary objection filed by the Government, the Court finds that the applicant did not have effective remedies for his Convention complaints.

171. There has, therefore, been a violation of Article 13 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

172. 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.”

173. The applicant did not submit any specific claim for pecuniary damage or costs. He did claim, however, 50,000 US dollars (USD) (50,778 euros (EUR)) by way of compensation for non-pecuniary damage.

174. The Government did not comment on this claim.

175. The Court, bearing in mind its finding above regarding the applicant's complaints under Articles 3, 8 and 13 of the Convention, considers that he suffered some moral damage in connection with the general conditions of detention and the restrictions by the public authorities on his right to respect for his correspondence. Making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 (two thousand euros) for non-pecuniary damage, plus any tax that may be chargeable.

Default interest

176. The Court considers it appropriate that the default interest should be based on an annual rate equal to the marginal lending rate of the European Central Bank to which should be added three percentage points (see *Christine Goodwin v. the United Kingdom*, no. 28957/95, 3 July 2002, § 124, to be published in ECHR 2002).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 3 of the Convention as regards the conditions of detention to which the applicant was subjected on death row;
3. *Holds* that there has been a violation of Article 8 of the Convention as far as the period between 11 September 1997 and 11 July 1999 is concerned;
4. *Holds* that there has been no violation of Article 8 of the Convention as far as the period after 11 July 1999 is concerned;

5. *Holds* that there has been a violation of Article 13 of the Convention in connection with Articles 3 and 8 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into Ukrainian hryvnas at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 April 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President