



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

FIFTH SECTION

**CASE OF DVOYNYKH v. UKRAINE**

*(Application no. 72277/01)*

JUDGMENT

STRASBOURG

12 October 2006

**FINAL**

*12/02/2007*

*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 Dvoynikh v. Ukraine,**

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

Mr P. LORENZEN, *President*,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 18 September 2006,

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

**PROCEDURE**

1. The case originated in an application (no. 72277/01) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Nikolay Aleksandrovich Dvoynikh (“the applicant”), on 25 January 2001.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. On 3 May 2005 the Court declared the application partly inadmissible and decided to communicate the applicant's complaints under Articles 3 and 13 of the Convention to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1).

**THE FACTS**

5. The applicant was born in 1947 and lives in Simferopol.

## I. THE CIRCUMSTANCES OF THE CASE

### **A. The applicant's detention from 19 June 1999 until 9 February 2000**

6. On 19 June 1999 the applicant was arrested on suspicion of theft and abuse of power.

7. On 23 June 1999 the applicant was placed in the Simferopol Temporary Detention Centre No. 15 (the "Simferopol SIZO").

8. On 9 February 2000 the applicant was released on bail subject to an undertaking not to abscond. According to the applicant, he was released because of his poor state of health.

9. On 21 February 2000 the applicant was hospitalised. He was found to suffer from second degree hypertension, hyperpiesia, and other vascular diseases, and underwent medical treatment until 3 March 2000.

### **B. The applicant's detention from 23 March until 1 December 2000, his state of health and medical treatment**

10. On 23 March 2000 the prosecutors decided to arrest the applicant on the same charges of theft and abuse of power. On 24 March 2000 the applicant was placed in the Simferopol SIZO.

11. On the latter day the applicant was examined by a paramedic, a general practitioner and a dermatologist, who all noted in the medical records, submitted by the Government, that the applicant did not have complaints about his state of health. The paramedic noted that the applicant suffered from coronary heart disease and that he had to be further examined by a doctor. The general practitioner noted that the applicant suffered from coronary heart disease and angina of effort. The dermatologist noted that the applicant was healthy.

12. According to the same records, on 20 September 2000 the applicant was further examined by a general practitioner and a dermatologist. They both noted that the applicant did not have complaints about his state of health. On 24 March, 24 September, and 27 November 2000 the applicant underwent three X-ray examinations, none of which revealed any pathological changes in his heart or lungs.

13. In his letter of 29 March 2000, the applicant requested the President of the Zaliznodorozhnyy District Court of Simferopol to release him on bail, alleging unlawfulness of his detention. The applicant maintained that he suffered from vascular diseases, stomach ulcer, and adenoma of the prostate, and that he required urgent medical treatment, which he could not receive in the Simferopol SIZO. On 17 April, 15 May 2000 the applicant

made similar submissions to the General Prosecutor of Ukraine and the President of the Tsentralnyy District Court of Simferopol, respectively.

14. On 30 March 2000 the applicant's lawyer challenged before the Zalznodorozhnyy District Court the decision of 23 March 2000. On 28 April 2000 the court refused to consider the lawyer's complaint on the ground that the criminal case against the applicant had been submitted to the Tsentralnyy District Court for consideration. The Zalznodorozhnyy District Court further held that its decision was final and was not subject to appeal.

15. According to the Government, on 27 November 2000 the applicant requested medical aid and was immediately examined by a doctor, who found that the applicant suffered from a severe respiratory tract infection. The applicant received the necessary treatment, so that on 29 November 2000 the medical examination did not reveal any symptoms of such illness.

16. On 1 December 2000 the applicant was released from the Simferopol SIZO.

17. On 13 February 2002 the applicant was placed in a hospital, where he underwent an abdominal surgery. According to the medical records of 2003, submitted by the applicant, he suffered from several vascular and stomach diseases.

### **C. The conditions of the applicant's detention from 23 March until 1 December 2000**

#### *1. The applicant's submissions on the facts*

18. The applicant stated that he had been detained in the cells of around 14 square metres, which had been occupied by 16-17 inmates at the same time, some of whom had suffered from tuberculosis and AIDS. The applicant had had to take turns to sleep because there had been not enough beds. The natural light or fresh air virtually did not go through because of the shutters on the windows and the windows' size, while the electric light was very poor and it was on all the time. The cells were dirty and infested with pests, cockroaches and bedbugs. There was no access to hot water in the cells and cold water did not reach the cells higher than those on the forth floor. There was no heating in the cells.

19. The applicant maintained that he had had daily walks which were limited to 35-40 minutes outside in an area not larger than a cell. The area was not protected from direct sunlight. The applicant also stated that he had not been able to purchase medicines or enough food from outside of the SIZO, while the quality of food provided in the SIZO had been unsatisfactory.

20. The applicant further maintained that he had spent several hours in the special cells for detainees in transit, which measured 12 square meters,

together with around 54 other persons, the majority of whom had been smoking. These cells were deprived of natural light and fresh air.

*2. The Government's submissions on the facts*

21. The Government submitted that from 24 March until 6 April 2000 the applicant was detained together with 7-9 other detainees in the cell no. 78, which measured 12 square metres; from 6 April until 5 May 2000 – in the cell no. 159 of 18.1 square meters together with 8-12 other detainees; and from 10 July until 29 August 2000 – in the cell no. 79 of 44 square meters occupied by 20 persons. The Government acknowledged the problem of overcrowding in the Simferopol SIZO at the material time. They however maintained that the cells were equipped with the necessary number of beds, lavatories, tables, chairs, electric light, etc. There were windows which allowed access of daylight and fresh air. In general, the conditions of the applicant's detention corresponded to the relevant hygiene and sanitation standards. The Government submitted photographs of several cells in the Simferopol SIZO which had been taken in July 2004.

22. The Government further maintained that the applicant had had daily walks for one hour and an eight hours' non-stop sleep a day.

**D. The applicant's trial and conviction**

23. On 14 July 2000 the Tsentralnyy District Court of Simferopol found the applicant guilty of aggravated theft and abuse of power, and sentenced him to four years' imprisonment under a special high security regime (“*посиленого режиму*”). The court also ordered confiscation of the applicant's property and deprived him of the right to occupy positions involving administrative functions for three years.

24. On 29 August 2000 the Supreme Court of the Autonomous Republic Crimea upheld the decision of 14 July 2000.

25. On the same day the Governor of the Simferopol SIZO, upon the applicant's motion, allowed him to work as an employee at the maintenance department of the Simferopol SIZO, while serving his sentence. According to the records submitted by the Government, the applicant's entire remuneration for his work at the Simferopol SIZO had been used to cover his expenses for food and other everyday necessities.

26. On an unspecified date the President of the Supreme Court of the Autonomous Republic Crimea lodged a request with the Presidium of that court, seeking initiation of supervisory review of the case.

27. On 1 December 2000 the Presidium allowed the request and partly changed the decisions of 14 July and 29 August 2000. It found the applicant guilty of abuse of power and sentenced him to three years' imprisonment. The Presidium also deprived him of the right to occupy positions involving administrative functions for three years. It further released the applicant

from serving his prison sentence on the ground that he suffered from vascular diseases and that he was not dangerous to the society.

## II. RELEVANT DOMESTIC LAW

### A. Constitution of Ukraine

28. 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.

29. Under Article 55 §§ 2 and 4, everyone is guaranteed the right to challenge the decisions, actions or omissions of the 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.

30. 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.

### B. Pre-Trial Detention Act 1993 (“the Act”) (as worded at the material time (from 19 June 1999 until 1 December 2000))

31. According to Article 1 of the Act, 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 become final. Such detention shall be in compliance with the Constitution, Universal Declaration of Human Rights, other international norms and standards of treatment of detainees.

32. Under Article 4, convicted persons, upon their written motion, may be granted leave to stay in a temporary detention centre in order to carry out logistics related work.

33. Article 7 provides *inter alia* that persons placed in detention shall be searched, medically checked, and photographed. Their fingerprints must be taken. They shall be informed about their rights and obligations, as well as about the requirements of the detention regime. Detainees' personal belongings and correspondence must be checked. They are not allowed to keep money or valuables. The money shall be transferred to their bank accounts, while their valuables shall be deposited in the detention centre.

34. Pursuant to Article 9, detainees have the following rights:

- (a) to be defended in accordance with the rules of criminal procedure law;
- (b) to familiarize themselves 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;
- (f) to use their own clothing and footwear and to keep documents and notes related to their criminal cases;
- (g) to use TV sets received from relatives or other persons and board games, newspapers and books borrowed from the library of the detention centre and bought at shops;
- (h) to perform individually religious rituals and use religious literature and objects made of semi-precious materials pertaining to their beliefs, provided that this neither leads to a breach of the internal rules of the detention centre nor restricts the rights of other persons;
- (i) to sleep eight hours a night, during which they shall not be required to participate in proceedings or to do anything else, except in cases of extreme emergency;
- (j) to lodge complaints and petitions and send letters to the State authorities and officials in accordance with the procedure prescribed by section 13 of the Act.

35. Under Article 11, detainees shall 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, individual sleeping-places, bedclothes and other types of everyday provisions free of charge and according to the norms laid down by the Cabinet of Ministers of Ukraine. In case of need, detainees shall be supplied with clothes and footwear of a standard form. There shall be medical assistance and preventive treatment organised in accordance with the health care legislation and the rules developed by the State Department of Penitentiary, the Security Service, and the Ministry of Health.

36. Article 17 provides that detainees, upon their consent, may be engaged in work, which shall be remunerated in accordance with the wages existing in public economy. There may be contributions made in respect of writs of execution out of the detainees' earnings. Detainees may also be engaged, for no longer than two hours a day and when they do not take part in the investigative proceedings, in a non-remunerated work necessary for maintaining proper conditions of their detention.

37. Under Article 22, the prosecutors shall supervise observance of laws in detention facilities. The administration of the detention centres must comply with the resolutions and instructions issued by the prosecutors in respect of conditions of detention.

**C. Correctional Labour Code of 1970 (“the Code”)** (as worded at the material time (from 19 June 1999 until 1 December 2000))

38. According to Article 24, persons sentenced to up to five years' imprisonment may, in exceptional cases and upon their written motion, stay in a temporary detention centre in order to carry out logistics related work.

**III. 2000 REPORT OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN AND DEGRADING TREATMENT AND PUNISHMENT (“THE CPT”)**

39. The visit of the CPT delegation to Ukraine took place from 10 to 26 September 2000, in the course of which the delegation inspected *inter alia* the Temporary Detention Centre No. 15 in Simferopol. The CPT recorded “situations of grave concern in terms of conditions of detention” and those at the Simferopol SIZO were “particularly telling”. It was noted that substantial overcrowding was one of the major deficiencies at the SIZOs. The CPT stressed that the Ukrainian authorities should “increase the current standard of 2.5 m<sup>2</sup> of living space per prisoner to at least 4 m<sup>2</sup>” (paragraph 59).

40. The relevant parts of the CPT report read as follows (emphasis added by the CPT):

“86. Simferopol SIZO No. 15, located within the town, was built at the beginning of the 19<sup>th</sup> century, and had a capacity of 2,200 persons in 210 cells. At the time of the visit, it accommodated some 2,500 persons, of which 177 women and 155 minors. While the majority of the prison population was on remand, there were some 600 sentenced prisoners, including 30 sentenced to life imprisonment.

Prisoners were held in two blocks, one dating back to the early 19<sup>th</sup> century and the other of more recent design, built in 1973.

87. The detention areas reserved for women and juveniles (both male and female) offered the best material conditions, in terms of natural light, artificial lighting, cleanliness and furniture. In particular, the CPT welcomes the fact that the shutters covering the cell windows had been removed shortly before the visit, thereby providing not only adequate access to natural light, but also much better ventilation.

Major deficiencies nevertheless remained. In particular, the occupancy rate was excessive in many cells (for example, up to 9 women in an area of 16 m<sup>2</sup>, 24 in an area of about 35 m<sup>2</sup>) and, in addition, not all women had their own beds.

88. The remainder of the prison population (adult men, most of them on remand) were subjected to appalling material conditions. These inmates were crammed into severely overcrowded dormitories (for example, up to 22 prisoners in an area of 18 m<sup>2</sup> and up to 32 in an area of 26 m<sup>2</sup>), with virtually no natural light, often poor artificial lighting and inefficient ventilation. The air was so stifling that most of the inmates remained in their underclothes. Furthermore, the establishment was unable to provide each prisoner with a bed; consequently, in many dormitories, inmates had to take turns to sleep.

While some dormitories had been freshly painted, many others were dirty and infested with cockroaches and other vermin. In-cell toilets (as a rule only partially partitioned) were in an extremely poor state.

89. The adult men had also greater difficulty maintaining satisfactory personal hygiene, since basic products were severely rationed (for example, only 80 g of soap per month as against 200 g for women and 400 g for minors). Further, they were not issued with toilet paper, which was restricted to women and minors. In practice, they were largely dependent on their families in this respect.

In addition, as at Boutcha, arrangements for cleaning clothes were unsatisfactory: all prisoners were compelled to wash them in cold water in their cells.

90. As regards activities, efforts were made to offer minors some educational activities (secondary education), particularly with the aid of local authorities, which provided school textbooks and volunteer teachers who visited the SIZO in their free time. Further, the staff assigned to minors performed work of a social nature with them, which included teaching them behavioural norms and the rules of day-to-day living. Apart from this, minors had no other form of organised purposeful activities (such as sporting and cultural activities).

The rest of the prison population had no real form of organised activities. Apart from a hundred or so inmates assigned to prison chores, prisoners had no work or sporting or recreational activities. In practice, the only time they spent out of their cells was for an hour's open air exercise per day, taken under conditions which did not allow real exercise (the exercise areas ranged from 10 m<sup>2</sup> to a maximum of 25 m<sup>2</sup>).

91. To sum up, the majority of prisoners were locked up for almost the whole of the day in severely overcrowded and insalubrious cells, without being offered any activities worthy of the name. Under such conditions, to be incarcerated in Simferopol SIZO No. 15 could only be a stultifying experience.

92. Lasting improvements to the situation at SIZO No. 15 will inevitably take time. This will very largely depend on a substantial reduction of overcrowding. Once more, the delegation's findings demonstrate the importance and urgency of implementing the recommendation made in paragraph 59 above.

Nevertheless, measures can and must be taken without delay to palliate certain of the most serious deficiencies observed.

93. As regards material conditions, the CPT recommends that steps be taken:

- to provide all inmates (men and women) with adequate amounts of personal hygiene products and cleaning products for their dormitories, and adequate facilities for cleaning their clothes;
- to ensure that each inmate has a bed or sleeping place;
- to ensure that material conditions throughout both detention blocks reach the standards prevailing in the women's and minors' sections as soon as possible, in terms of natural light (by removing the shutters on the windows), artificial lighting, ventilation and cleanliness.

As regards activities, the CPT recommends that high priority be given to the development of activity programmes for minors to enable them to enjoy a full programme of educational, recreational and other purposeful activities designed to bring out their potential for social (re)integration; physical education should constitute an important part of that programme.

As regards adult inmates, the CPT recommends that ways of providing them with a minimum of recreational and sporting activities be explored as of now. It is axiomatic that as overcrowding is reduced, fuller programmes of activities must be introduced. In this regard, the CPT draws attention to the long-term objectives for activities set out in paragraphs 130 and 33 respectively of the reports on the 1998 and 1999 visits, which apply to all the SIZOs in the country.

Lastly, the CPT recommends that the design of the exercise yards be reviewed with a view to enlarging them.”

41. As regards medical assistance offered to detainees at the Simferopol SIZO, the CPT found as follows:

“104. The 2000 visit again highlighted the extreme inadequacy of the arrangements for the supply of appropriate medicines (for example, Colony No. 52 had no medicines in stock at the time of the visit, while SIZO No. 15 did not have a sufficient amount or variety of medicines and none for the treatment of tuberculosis). Despite the contributions made by the Department for the Execution of Sentences out of its own budget, prisons depended mainly on the humanitarian aid they could secure and on prisoners' families.

As the CPT has repeatedly emphasised, this solution is not satisfactory, and is intolerable where the treatment of certain diseases such as tuberculosis is concerned. The Committee must point out yet again that it is the responsibility of the State to ensure that, irrespective of the prevailing economic circumstances, persons in its custody have access to basic elements of health-care, including the medicines required by their state of health...

106. Simferopol SIZO No. 15 had provision for 10 full-time medical doctors (general practitioners and specialists in pneumology, psychiatry, gynaecology and dermatology, as well as a dentist). However, one general practitioner post was vacant. Moreover, the gynaecologist was an outside consultant and many women had no access to this specialist because they were unable to pay for the consultations. Such a situation is not acceptable. As regards feldshers, there were 12 posts, of which only 8 were filled.

Such a team can hardly be deemed sufficient to provide adequate health-care to 2500 prisoners, in particular as regards the number of feldshers. **The CPT recommends that the vacant doctor's and feldshers' posts be filled as soon as possible, and that the question of women's access to gynaecological care be immediately reviewed.**

The examination/consultation rooms were modestly equipped, but clean. As regards the supply of medicines, reference should be made to the recommendation in paragraph 104...

108. Medical screening of newly arrived prisoners was inadequate in several of the establishments visited. It was a perfunctory medical check confined, at best, to weighing the prisoner and measuring his blood pressure; moreover, at the Simferopol SIZO, this task was left to the feldsher alone, who consulted a doctor only if this was expressly requested by the prisoner.

Every newly-arrived prisoner should be properly interviewed and physically examined by a medical doctor as soon as possible after his/her arrival; save for in exceptional circumstances that interview/examination should be carried out on the day of admission, especially in so far as remand establishments are concerned. Such medical screening on admission could also be performed by a feldsher reporting to the doctor. **The CPT recommends that steps be taken to ensure that this is the case in all penitentiary establishments.**

109. As regards the recording of injuries observed on prisoners, reference should be made to the recommendations made in paragraph 26 above and in paragraph 151 of the report on its 1998 visit.

110. In at least two of the establishments visited (Simferopol SIZO and Colony No. 52), neither the medical examinations on arrival nor those performed during detention were confidential, since prison staff attended the consultations. **The CPT recommends that all medical examinations of prisoners (whether on arrival or at a later stage and irrespective of the category of prisoner) be conducted out of hearing and - unless the doctor concerned requests otherwise in a particular case - out of the sight of prison officers; the same rule should apply during treatment provided to prisoners.**

42. The 2000 Report also contains the findings of the CPT concerning the conditions in which detainees were being transferred from one place of detention to another:

“129. Concerning road transport of prisoners, the delegation inspected two Internal Affairs Ministry vans in Simferopol SIZO. Each vehicle had collective compartments and an individual compartment. The individual compartments were as small as 0.5 m<sup>2</sup>; in paragraph 189 of the report on its 1998 visit, the CPT has already recommended that the practice of placing prisoners in compartments of this size cease. Conditions in the vehicle were also similar in other respects to those described in the aforementioned paragraph of the report on the 1998 visit (poor artificial lighting, inadequate ventilation).

130. Concerning rail transport, the delegation examined the facilities in one of the special carriages used for transporting prisoners. It had compartments measuring 2 and 3.5 m<sup>2</sup>, with folding benches. The authorised capacity in the smaller

compartments was six persons for journeys lasting not more than four hours, and four persons for longer journeys. In the larger 3.5 m<sup>2</sup> compartments, up to sixteen persons could be accommodated for short distances and twelve for long distances. The compartments had some access to natural light; however, ventilation was poor. The toilets for prisoners were in a disgusting state, clogged with excrement, despite the fact that prisoners were due to board a few minutes later for a long journey.

There were no arrangements to provide prisoners with food, even over long distances; as for drinking water, only a small container was provided to supply the prisoners throughout the journey.

131. The manner in which prisoners are transported, particularly by train, is unacceptable, having regard inter alia to the material conditions and possible duration of travel.

**The CPT recommends that conditions of prisoners' transport in Ukraine be reviewed in the light of the foregoing remarks. As an immediate measure, it recommends that the Ukrainian authorities take steps to:**

- significantly reduce the maximum number of prisoners per compartment in a railway carriage: 3.5 m<sup>2</sup> compartments should never contain more than six persons, and 2 m<sup>2</sup> compartments never more than three persons;**
- ensure that during rail transport, prisoners are supplied with drinking water and that for long journeys, the necessary arrangements are made for them to be properly fed;**
- no longer use 0.5 m<sup>2</sup> compartments in vans for transporting prisoners.”**

## THE LAW

### I. ADMISSIBILITY

43. The applicant complained that he had been subjected to inhuman and degrading treatment while he had been detained. In particular, he alleged that the conditions of his detention in the Simferopol SIZO had been debasing with regard to the size of the cell in which he had been detained, the number of persons in the cell, the bedding and conditions of hygiene, sanitation and ventilation, nutrition, outdoor daily walks, and access to natural light and air. He further alleged that he had not received the necessary medical treatment and assistance for his diseases, and that he had been forced to work for more than 12 hours a day, for which he had not been paid. The applicant finally alleged that he did not have at his disposal an effective domestic remedy for his Convention complaint about his conditions of detention, as required by Article 13 of the Convention. He

invoked in substance Articles 3 and 13 of the Convention, which provide as follows:

**Article 3**

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

**Article 13**

“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.”

44. The Court notes that the above complaints concern two periods of time, during which the applicant was detained. The first period commenced on 19 June 1999 and ended on 9 February 2000, while the second took place from 23 March until 1 December 2000. Thus, the complaints concerning the above periods of detention should be examined separately.

**A. The applicant's detention from 19 June 1999 until 9 February 2000**

45. The Government submitted that the applicant's complaint about the first period of his detention had been introduced too late. They therefore proposed that this part of the application be declared inadmissible.

46. The Court recalls that, in cases where there is a continuing situation and it is clear from the outset that no effective remedy is available to the applicant, the six-month period runs from the cessation of the situation (see *Antonenkov and Others v. Ukraine*, no. 14183/02, § 32, 22 November 2005 and *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004). The Court observes that the first period of the applicant's detention ended on 9 February 2000 and thus more than six months before the date on which the application was submitted to the Court (25 January 2001). The Court further observes that the parties did not suggest that there was an effective remedy available to the applicant in respect of this part of the application. Accordingly, it has been submitted too late and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

**B. The applicant's detention from 23 March until 1 December 2000, his state of health and medical treatment**

47. The Court notes that there are three distinguishable aspects of this part of the application, the admissibility of which should be examined separately. The first part concerns the conditions of the applicant's detention and the alleged absence of effective domestic remedies, the second concerns

the allegations of inadequate medical care, while the third relates to the conditions of his labour in detention.

**(a) Conditions of the applicant's detention**

48. The Government considered that the applicant had failed to exhaust the domestic remedies available to him under Ukrainian law before lodging his application with the Court. In particular, they noted that the applicant had not applied to the domestic courts in order to challenge the conditions of his detention and to receive compensation for pecuniary or non-pecuniary damage.

49. The applicant disagreed.

50. The Court considers that, in the light of its findings in similar cases, the applicant's complaint under Article 3 of the Convention about the conditions of his detention cannot be rejected for failure to exhaust domestic remedies (see, for instance, *Melnik v. Ukraine*, no. 72286/01, §§ 70-71, 28 March 2006). No other ground for declaring this complaint inadmissible has been established. Therefore, it raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits.

51. In these circumstances, the applicant's complaints under Article 13 of the Convention about the absence of effective domestic remedies in this respect must likewise be examined on the merits.

**(b) Medical treatment and assistance to the applicant and conditions of his labour in detention**

52. As regards the applicant's complaint that he had not received adequate medical assistance in detention, the Government contended that this complaint was groundless. In particular, the Government submitted that the applicant's state of health had been satisfactory. He was examined by doctors on the day of his arrival at the SIZO, his original diagnose, coronary heart disease, was confirmed, and the applicant was recommended to undergo a preventive treatment course in case his health declined. The applicant requested medical assistance only once. He was immediately examined by a doctor and received appropriate medical treatment, following which he recovered (see paragraph 15 above). There was no other request or complaint from the applicant about his state of health during his detention.

53. The Government further maintained that the applicant had not been subjected to twelve hours' forced labour, as he had been allowed to work upon his own request.

54. The applicant contested the Government's submissions. In particular, he contended that the medical records provided by the Government had been forged. He also noted that he had not suffered from coronary heart disease when he had been admitted to the Simferopol SIZO.

55. The Court observes that the applicant does not contest that he was examined by two doctors and a paramedic on the day of his admission to the Simferopol SIZO. Six months later he was further examined by a general practitioner and a dermatologist. The applicant did not complain to the doctors, examining him, about his state of health, while the latter did not find that the applicant was required to undergo any medical treatment. The Court also observes that when the applicant contracted a respiratory tract infection he was successfully treated by a doctor.

56. Furthermore, the Court notes that the applicant did not request any medical assistance upon his release in December 2000. The fact that he underwent an abdominal surgery more than a year after his release cannot of itself lead to the conclusion that the applicant had suffered from stomach ulcer or that he had required medical treatment in this respect in detention. In the absence of proof to the contrary, the Court assumes that the applicant received adequate and timely medical treatment and assistance in the Simferopol SIZO, and that there is no appearance of a violation of Article 3.

57. The Court further notes that the applicant provided insufficient substantiation in respect of his allegations that he had been forced to work 12 hours a day in detention without remuneration.

58. The Court therefore concludes that the applicant's complaints concerning inadequate medical care and conditions of his labour in detention must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

## II. MERITS

### A. Alleged violation of Article 3 of the Convention

59. The Government noted that, after the applicant's conviction had become final (see paragraph 24 above), he had had to be transferred to a corrective labour colony with a special high security regime to serve his sentence there. However, the Governor of the Simferopol SIZO allowed the applicant's request to stay in the SIZO and to work as an employee at the maintenance department, while serving his sentence. The Government therefore suggested that the conditions of the applicant's detention in the Simferopol SIZO could not have been humiliating or degrading, as he had voluntarily agreed to stay there.

60. The applicant disagreed. In particular, he stated that he had requested the Governor of the Simferopol SIZO not to transfer him to the place where he had had to serve his sentence, as he had feared that he would have been subjected to the above conditions of transfer of detainees. Furthermore, the applicant preferred to remain detained in his native town where he was closer to his relatives.

61. The applicant complained that due to the conditions of his detention he suffered from stomach ulcer, adenoma of the prostate, haemorrhoid, vascular diseases, sight impairment, and insomnia. He maintained that he had had to undergo an abdominal surgery in 2002.

62. The Court recalls that, according to its 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. Even 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 and 74, ECHR 2001-III; and *Valašinas v. Lithuania*, no. 44558/98, § 101, ECHR 2001-VIII).

63. 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).

64. Turning to the facts of the present case, the Court notes that some of the applicant's allegations concerning the conditions of his detention, in particular, those about overcrowded cells, the bedding and conditions of hygiene, sanitation and ventilation, outdoor daily walks, access to natural light and air, are supported by the findings made by the CPT following its visit to the Simferopol SIZO in September 2000, when the applicant was serving his sentence there. The Court further notes that the Government's observations, apart from those which concern the size of cells and the applicant's daily walks, are expressed in general terms and are not supported by any evidence. In these circumstances, the Court considers that the findings of the CPT provide at least to some degree a reliable basis for the assessment of the conditions of the applicant's detention between March and

December 2000 (see *Iovchev v. Bulgaria*, no. 41211/98, § 130, 2 February 2006).

65. The Court further notes that the Government submitted photographs of some of the cells in the Simferopol SIZO, which had been taken some four years after the applicant's release. The Court therefore considers that these photographs have no relevance to the present case and that it is not necessary to examine them.

66. Although the Government contested the applicant's submissions with regard to the size of the cells, the figures provided by the Government suggest that at any given time there was 1.3-2.25 square meters of space per inmate in the applicant's cells. Thus, in the Court's view, the cells were continuously, severely overcrowded. This state of affairs in itself raises an issue under Article 3 of the Convention (see *Kalashnikov v. Russia*, no. 47095/99, § 97, ECHR 2002-VI).

67. This situation was aggravated by the fact that the applicant was confined to overcrowded cells for around 23 hours a day in the absence of adequate ventilation and natural light. The Court also notes that the applicant had to take turns to sleep and was not provided with adequate amounts of personal hygiene products and cleaning products. Taking the aforementioned factors into account, the Court considers that the applicant's conditions of detention for more than eight months must have caused him considerable mental and physical suffering, diminishing his human dignity and arousing in him such feelings as to cause humiliation and debasement.

68. The Court does not share the Government's view that the applicant's choice to remain in the Simferopol SIZO could witness that he was detained in satisfactory conditions. The Court considers that, having regard to the findings of the CPT concerning the conditions in which detainees were being transferred from one place of detention to another, the applicant's deliberate request to stay in the Simferopol SIZO may be reasonably explained by his fears that he could have been subjected to worse conditions of detention during his transfer to another detention facility. Furthermore, the SIZO was in the same city, in which the applicant's relatives resided.

69. Thus, in the light of the Court's findings as to overcrowding, unsatisfactory conditions of hygiene and sanitation, and lack of natural light and air (see paragraphs 66-67 above), the Court concludes that the conditions of the applicant's detention in the Simferopol SIZO amounted to degrading treatment. Accordingly, there has been a violation of Article 3 of the Convention.

## **B. Alleged violation of Article 13 of the Convention**

70. The Government contended that the applicant had had effective channels of complaint on the same basis that they had argued that the

applicant had not exhausted domestic remedies in respect of his complaints under Article 3 of the Convention.

71. The applicant objected to this view.

72. The Court refers to its findings (at paragraph 50 above) in the present case concerning the Government's argument regarding domestic remedies. For the same reasons, the Court concludes that the applicant did not have an effective domestic remedy, as required by Article 13 of the Convention, to redress the damage caused by the conditions of his detention. Accordingly, there has been a breach of this provision.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. Article 41 of the Convention provides:

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

##### **A. Damage**

74. The applicant claimed EUR 109,000 in respect of pecuniary damage, based on the cost of his medical expenses and loss of salary. He also claimed EUR 75,000 in compensation for non-pecuniary damage.

75. The Government disagreed, stating that the claims were unsubstantiated and exorbitant. The Government further requested the Court to determine the amount of compensation in respect of non-pecuniary damage on an equitable basis.

76. The Court, having regard to its findings concerning the applicant's complaints under Articles 3 and 13 of the Convention, considers that no causal link has been established between the damage alleged and the violations it has found (see *Kalashnikov*, cited above, § 139). It therefore rejects the applicant's claim for pecuniary damage.

77. As to non-pecuniary damage, having regard to its case-law in comparable cases and making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 under this head.

##### **B. Costs and expenses**

78. The applicant also claimed EUR 1,000, which included the cost of correspondence, translations, and legal advice.

79. The Government contested this claim.

80. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown

that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 100 for costs and expenses in the proceedings before the Court.

### **C. Default interest**

81. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

### **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Declares* the applicant's complaints about the conditions of his detention from 23 March until 1 December 2000 and the absence of effective domestic remedies admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *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, the following sums, to be converted into the national currency of the respondent State at the rate applicable on the date of payment:
    - (i) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
    - (ii) EUR 100 (one hundred euros) for costs and expenses;
    - (iii) plus any tax that may be chargeable on the above amounts;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK  
Registrar

Peer LORENZEN  
President