CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF KOVAL v. UKRAINE

(Application no. 65550/01)

JUDGMENT

STRASBOURG

19 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 Koval v. Ukraine,

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

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mr V. BUTKEVYCH,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER, *judges*,
and Mr S. NIELSEN, *Section Registrar,*

Having deliberated in private on 28 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 65550/01) 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 Vasyl Gavrylovych Koval ("the applicant"), on 12 October 2000.

2. The applicant was represented by Mr S. Dunikowski and Ms A. Vakulenko, lawyers practising in Nanterre and Ukraine respectively. The Ukrainian Government ("the Government") were represented by their Agents, Ms Z. Bortnovska and her successor, Ms V. Lutkovska, the Deputy Minister of Justice.

3. The applicant alleged that the conditions of his detention and his lack of proper medical treatment and assistance from 30 November 1998 until 8 June 2000 had been degrading contrary to Article 3 of the Convention. He also alleged that he had no effective remedies in respect of his complaint under Article 3 contrary to Article 13 of the Convention. He further alleged that Article 6 § 1 of the Convention had been infringed as the proceedings, in which the forfeiture of the bail paid by his wife for his release was examined, had been unfair.

4. The application was allocated to the Second 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.

5. By a decision of 30 March 2004 the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born on 28 April 1951 and currently resides in Kyiv.

A. The relevant period of the applicant's detention

9. On 29 November 1997 the General Prosecution Service ("the GPS") detained the applicant on suspicion of forgery committed by a public official (*державним службовцем*).

10. On 30 November 1997 the head of a department of the GPS ("the Head of Department") ordered that the applicant should be placed in custody since there was a risk that he might abscond and obstruct the investigation of the case.

11. On 2 December 1997 the Head of Department ordered the applicant's detention pending trial and his transfer to the Zhytomyr Regional Investigative Isolation Unit (SIZO – *Слідчий Ізолятор Житомирської області*).

12. On 29 June 1998 the GPS decided to release the applicant on bail as it was impossible to provide him with the necessary medical treatment in detention. The applicant was released.

13. On 20 October 1998 the GPS, having allegedly found new evidence of the applicant's involvement in unlawful currency transactions and abuses of power, initiated a criminal investigation into the allegations.

14. Furthermore, the GPS decided on that date that the applicant should be taken into custody on the ground that he was obstructing the investigation of criminal acts. New charges concerning other serious offences were brought against him. The GPS also ordered his transfer to the Security Service Investigative Isolation Unit ("the SIZO SBU" – *Слідчий Ізолятор Служби Безпеки України*). On the same date the applicant was placed in the SIZO.

15. On 27 November 1998 the Pechersky District Court of Kyiv quashed the GPS's decision of 20 October 1998 and changed the preventive measure to an undertaking by the applicant not to abscond. The applicant was released.

16. On 30 November 1998 the Deputy Prosecutor General lodged an application for supervisory review (*npomecm*) of the decision of the Pechersky District Court, seeking to have it quashed on the grounds that it was not justified by the evidence in the case file and contravened the relevant legislation.

17. The Kyiv City Court allowed the Deputy Prosecutor General's application and quashed on 30 November 1998 the decision of 27 November 1998. On the same date the GPS ordered the applicant's detention pending trial. As a result, the applicant was immediately arrested and transferred to the SIZO SBU.

18. On 3 August 1999 the Kyiv City Court decided not to release the applicant from detention, but to transfer him from the SIZO SBU to the Kyiv Regional Investigative Isolation Unit no. 13 ("SIZO no. 13") owing to the need to provide him with specific medical assistance which could not be provided in the SIZO SBU. The applicant was detained in SIZO no. 13 from 3 August 1999 to 6 June 2000.

19. On 6 June 2000 the applicant was transferred to Mensk Penitentiary. Apparently, he started serving his sentence on 8 June 2000, the date of his arrival at Mensk Penitentiary, where he started receiving inpatient treatment in the medical unit.

B. The decision to forfeit bail and its review

1. Initial decision to forfeit bail

20. On 23 and 26 June 1998 the applicant's wife, Ms Larysa M. Koval, deposited the sum of 500,000 Ukrainian hryvnyas (UAH) in a GPS deposit account as bail with a view to the applicant's subsequent release.[1]

21. On 29 June 1998 the Deputy Head of the GPS Department for Investigation of Serious Offences decided to release the applicant on bail as it was impossible to provide him with the necessary medical treatment in detention. That decision was approved by the Deputy Prosecutor General. As a result of the decision the applicant was prohibited from leaving the territory of Ukraine. On the same date Ms Koval signed a declaration attesting that she had been informed about the bail conditions and the possibility of the sum being confiscated. The same document was signed by the applicant.

1. The applicant claimed that at the time of the deposit, UAH 500,000 amounted to approximately 250,000 United States dollars (USD – about 196,900 euros (EUR)).

22. On 9 September 1998 the applicant, allegedly by chance, met one of the witnesses, Mr O. Bogomolov, at Kyiv Central Railway Station. During the meeting he apparently asked Mr O. Bogomolov to tell the investigation that the payment for the flat which the applicant had acquired from him had been made not in foreign currency, but in Ukrainian hryvnyas.

23. On 12 October 1998 an investigator from the GPS received information from Mr O. Bogomolov to the effect that the applicant had met him on 9 September 1998 and had tried to influence his statement. This was later confirmed by the witness's wife (Ms Tyshchenko), who informed the prosecution that the applicant had threatened to initiate criminal proceedings against her and Mr Bogomolov for unlawful currency transactions. The investigator made a tape recording of the interview and produced a verbatim record of it and the witness statements by Ms Tyshchenko.

24. On 20 October 1998 the GPS initiated a criminal investigation into the alleged unlawful currency transactions and abuses of power. On the same date the Deputy Prosecutor General ordered that the applicant should be taken into custody on the grounds that he was obstructing the investigation of criminal acts, had breached the obligations entered into at the time of his release from detention and was charged with serious offences. He also stated that new charges concerning other serious offences had been brought against the applicant.

25. On 4 November 1998 the applicant's lawyers appealed to the Pechersky District Court against the decision to detain the applicant, alleging that it was unlawful and referring to the substantial deterioration of his state of health. They stated that the findings of his previous medical examination had been confirmed on 2 November 1998.

26. On 27 November 1998 the Pechersky District Court quashed the GPS's order of 20 October 1998 following the applicant's appeal. On the same date the GPS changed the preventive measure to an undertaking by the applicant not to abscond. In particular, the court held:

> "... On 20 October 1998 criminal proceedings were instituted against Mr V.G. Koval on suspicion of his involvement in offences referred to in Article 165 § 2 and Article 80 § 2 of the Criminal Code and on the same date the applicant was charged with offences under Article 80 § 2, Article 165 § 1 and Article 172 of the Criminal Code and questioned as an accused on the basis of the aforementioned provisions.
>
> On 20 October the investigator decided that Mr V.G. Koval should be held in detention.
>
> As can be seen from the investigator's decision, the grounds for detaining V.G. Koval were that he was charged with serious offences and that the preventive measure chosen took into account the gravity of these offences, and also that while at liberty he interfered with the establishment of the truth in a criminal case and seriously breached his obligations as to appropriate conduct.

> ... The representative of the General Prosecution Service, in the court's view, has not provided any corroborating evidence that Mr V.G. Koval has evaded requests to appear before an investigator or has tried to interfere with the investigation in the case. There is no evidence of the aforementioned facts in the case file...
>
> The General Prosecution Service's reference to the fact that Mr V.G. Koval encouraged the witnesses Ms L.D. Tyshchenko and Mr O.I. Bogomolov to change their witness statements in the part that related to the sale of a flat in foreign currency ... cannot be considered by the court to have had any influence on the investigation, as Mr V.G. Koval had met the aforementioned persons by chance and did not insist on their changing their statements; his recommendations that they tell the investigator in the case that the payments had been made in national currency, as can be seen from the verbatim records of the interviews of the aforementioned persons, were of a consultative nature.
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> The court has not obtained any other corroborating evidence that Mr V.G. Koval influenced the course of the investigation or interfered with the establishment of the truth in the case, or that he violated other obligations he had entered into with regard to appropriate conduct...
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> Also, the court considers that Mr V.G. Koval's state of health was not taken into account when the issue of the applicable preventive measure was being decided upon...
>
> ... on the basis of the foregoing, and in accordance with Article 236-4 of the Code of Criminal Procedure of Ukraine, the court
>
> DECIDES
>
> ... to quash the detention order issued by the Deputy Prosecutor General on 30 October 1998 ..."

27. On 30 November 1998 the Deputy Prosecutor General lodged an application for supervisory review (*npomecm*) of the decision of the Pechersky District Court, seeking to have it quashed on the grounds that it was not justified by the evidence in the file and contravened the relevant legislation.

28. On the same date the Presidium of the Kyiv City Court allowed the Deputy Prosecutor General's application and quashed the decision. On the same date the GPS ordered the applicant's detention pending trial. As a result, the applicant was immediately arrested and transferred to the SIZO SBU. In particular, the Kyiv City Court held:

> "... it can be seen from the witness statement by Mr O.I. Bogomolov that in the period when Mr Koval was released on bail (September 1998) Mr Koval met Mr Bogomolov and asked him to change his witness statements about the currency which he had used to pay for the flat he had acquired, a fact which could have influenced considerations as to the elements of the offence provided for in Article 80 § 2 of the Criminal Code of Ukraine.

Taking into account the foregoing, and Mr Koval's attempt to influence the course of the investigation in the case and the fact that he was charged with serious offences, on 20 October 1998 the measure applied to Mr Koval was changed to detention.

[The court accordingly] DECIDES...

To quash the decision of 27 November 1998 by the judge of the Pechersky District Court of Kyiv to declare null and void the warrant issued by the Deputy Prosecutor General for the arrest of Mr V.G. Koval."

29. Further complaints by the applicant lodged with the President of the Supreme Court with a view to initiating supervisory-review proceedings against the Kyiv City Court's decision were dismissed on 13 January 1999 as being unsubstantiated.

30. On 19 January 1999 the GPS investigator refused to institute criminal proceedings against the applicant for attempting to influence witnesses as his actions did not correspond to the *corpus delicti* envisaged in Article 180 of the Criminal Code. The tape recording of Mr Bogomolov's witness statements was destroyed on 3 March 1999 on the ground that it was no longer necessary because the criminal proceedings against Mr Bogomolov had ended. That decision was based on Articles 81 and 131 of the Code of Criminal Procedure.

31. On 27 May, 1 June and 4 June 1999 the applicant, his wife and his lawyers lodged unsuccessful complaints with the Kyiv City Court, seeking to have the preventive measure changed to an undertaking by the applicant not to abscond, and also to have him medically examined. Hearings took place on 14 June, 15, 20, 27 and 29 July and 3 August 1999.

2. Examination of the merits of the charges against the applicant

32. On 27 December 1999 the Kyiv City Court sentenced the applicant to five years and six months' imprisonment and ordered the confiscation of his personal property. The court also deprived the applicant of the right to occupy official positions for three years and stripped him of the rank of Ambassador Extraordinary and Plenipotentiary, second class, following his conviction for unlawful currency transactions (Article 80-2 of the 1960 Criminal Code of Ukraine[1] – "the CCU"), abuse of power (Article 165-1 of the CCU), and forgery committed by a public official (Article 172 of the CCU). In the course of the proceedings the applicant requested leave to question particular witnesses who, he maintained, could prove his innocence. This request was refused by the Kyiv City Court, which based its findings of guilt on other corroborating evidence.

33. The Kyiv City Court also ordered the forfeiture of the applicant's bail, a sum of UAH 500,000[2]. In particular, it held:

1. The new Criminal Code of Ukraine of 5 April 2001 entered into force on 1 September 2001.

"... when questioned as an accused Mr O.I. Bogomolov explained that he had changed his witness statement after his conversation with Mr V.G. Koval, who had recommended that, if he did not wish to be held criminally liable, he should say that the agreement had been concluded in hryvnyas and not in United States dollars.

... A witness, Ms Tyshchenko, has explained that Mr O.I. Bogomolov changed his witness statements after a meeting with Mr V.G. Koval, who said that his lawyers would seek to institute criminal proceedings against Mr O.I. Bogomolov under Article 80 § 2 of the Criminal Code.

... As can be seen from the case file, on 29 June 1998 it was decided that V.G. Koval should be released on payment of UAH 500,000 bail.

The sum mentioned above was deposited by ... Ms L.M. Koval in the account of the General Prosecution Service.

Mr V.G. Koval had been informed about his obligations and the consequences of his possible failure to comply with them, and Ms L.M. Koval as surety had been informed about the offences that Mr V.G. Koval was charged with and also that in the event of failure to comply with his obligations bail would be forfeited in favour of the State. One of the obligations of Mr V.G. Koval related to appropriate conduct.

In a decision of 20 October 1998 the preventive measure of release on bail applied to Mr V.G. Koval was amended to detention. This was because he had seriously breached his obligations relating to appropriate conduct, had coerced witness into making false statements with regard to offences committed by him, and had interfered with the establishment of the truth in the case.

In accordance with Article 154-1 of the Code of Criminal Procedure, if a suspect, accused and/or defendant breaches his or her obligations, bail shall be forfeited in favour of the State.

The fact that Mr V.G. Koval infringed his obligations with regard to appropriate conduct by coercing the witness Mr O.I. Bogomolov into making false statements is proved by the aforementioned witness statements of Mr O.I. Bogomolov and Ms L.D. Tyshchenko, as the Presidium of the Kyiv City Court found in its decision of 30 November 1998.

In such circumstances the court considers it necessary for the bail deposited by Ms L.M. Koval in the amount of UAH 500,000 to be forfeited in favour of the State.

On the basis of the foregoing, and having regard to Articles 323 and 324 of the Code of Criminal Procedure, the court

ORDERS

... the forfeiture in favour of the State of the sum of bail in the amount of UAH 500,000 currently being held in the deposit account of the General Prosecution Service of Ukraine."

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2. The applicant claimed that UAH 500,000 amounted to USD 250,000.

34. On 4 January 2000 the applicant appealed to the Supreme Court, seeking to have the Kyiv City Court's judgment of 27 December 1999 quashed and the proceedings in the case terminated. He and his lawyers claimed that the Kyiv City Court had unfairly assessed the evidence in the case, having based its finding on evidence that did not prove his guilt and having failed to establish the objective truth in the case.

35. On 27 April 2000 the Supreme Court partly allowed the applicant's appeal and varied the judgment of 27 December 1999. In particular, it reclassified the offence of unlawful currency transactions and sentenced him to five years' and six months' imprisonment for aiding and abetting unlawful currency transactions. It also held that the applicant should be regarded as having been sentenced for forgery committed by a public official, as provided in the Criminal Code of 12 January 1983. It upheld the remainder of the judgment. The Supreme Court held in particular:

> "... As can be seen from the case file, Mr Koval was released on bail on 29 June 1998 for a sum of UAH 500,000.
>
> The aforementioned sum was deposited by Mr Koval's wife Ms L.M. Koval on 23 and 26 June 1998 in the account of the General Prosecution Service.
>
> Mr Koval was informed about his bail obligations and the consequences of his failure to comply with them, and Ms L.M. Koval was informed about the offences that Mr Koval had been charged with, and about the possible forfeiture of the bail in the event of his failure to comply with these obligations. One of the obligations imposed on Mr Koval related to appropriate conduct.
>
> In accordance with the decision of 20 October 1998 by the investigator from the General Prosecution Service, the preventive measure of bail chosen in respect of Mr Koval was changed to detention. One of the reasons for this [change] was that he had seriously breached his obligations regarding appropriate conduct, and in particular that he had coerced witness into making false statements, thus interfering with the establishment of the truth in the case.
>
> In accordance with Article 154-1 of the Code of Criminal Procedure, if a suspect, accused or defendant infringes his obligations, bail is forfeited in favour of the State.
>
> The fact that Mr Koval breached his bail obligations concerning appropriate conduct by coercing Mr Bogomolov into giving false evidence has been proved by the witness statements of Mr Bogomolov and Ms Tyshchenko, as the Presidium of the Kyiv City Court found in its decision of 30 November 1998.
>
> Accordingly, the investigative bodies changed the preventive measure applied to the applicant on lawful grounds.
>
> The submissions to the effect that that decision was unlawful and that the decision of the Presidium of the City Court was unsubstantiated are invalid as it can be seen from the case file that Mr Koval had tried to influence witnesses to give false evidence.

The reference to the investigator's decision to refuse, on the basis of paragraph 2 of Article 6 and Article 130 of the Code of Criminal Procedure, to institute criminal proceedings against Mr Koval under Article 180 of the Criminal Code of Ukraine is not substantiated as the refusal to institute criminal proceedings was based on allegations of coercing Mr Bogomolov and Ms Tyshchenko into giving false witness statements. At the same time, the decision in question mentions that Mr Koval attempted to coerce witnesses into giving false statements.

The submissions in the appeal to the effect that Ms L.M. Koval was not examined by the court as a surety, in breach of the law, is unsubstantiated, since in accordance with Article 154-1, paragraph 6, of the Code of Criminal Procedure, the non-appearance of a surety in court without good reasons does not constitute an obstacle to reviewing the issue of the forfeiture of bail ...

As can been seen from the case file, neither the defendant nor his lawyers requested Ms L.M. Koval, as surety, to produce witness statements before the court.

Under these circumstances there are no grounds for holding that there has been a violation of the law on account of the decision to confiscate bail [in favour of the State].

[The court accordingly] RULES

[that] ... Mr Koval shall be regarded as having been sentenced for the offences provided for in paragraph 6 of Article 19, Article 80 § 2, Article 165 § 1, Article 165 § 2, Article 172 § 1 and Article 172 of the Criminal Code of 12 January 1983 to five years and six months' imprisonment ... in addition, all of his personal property shall be confiscated, he shall be disqualified from occupying posts relating to managerial functions in government bodies for a period of three years and shall be stripped of the rank of Ambassador Extraordinary and Plenipotentiary, second class."

3. The applicant's requests for supervisory review of the forfeiture of bail

36. On 6 and 18 July 2000 the applicant and his lawyers lodged complaints with the President of the Supreme Court, seeking to institute supervisory proceedings in the case and to have the above-mentioned decisions quashed. On 6 December 2000 the Deputy President of the Supreme Court of Ukraine dismissed these complaints as being unsubstantiated.

37. The applicant and his lawyers lodged further complaints against the above-mentioned decisions with the President of the Supreme Court. On the basis of these complaints, on 5 February 2001 the Deputy President of the Supreme Court applied to the Plenary Supreme Court for supervisory review, seeking to have the decisions quashed, the applicant's offence reclassified and the case remitted for fresh consideration as regards the forfeiture of his bail.

38. On 6 April 2001 the Plenary Supreme Court, with 85 judges sitting, partly allowed its Deputy President's application. It decided to vary the

judgment of the Kyiv City Court of 27 December 1999 and the ruling of the Supreme Court of 27 April 2000. It also held that one of the offences committed by the applicant should be reclassified from abuse of power with serious consequences to abuse of power with no serious consequences. It further decided to sentence the applicant to four years' imprisonment and to prohibit him from occupying government positions for two years. It ruled that the penalty stripping him of the rank of Ambassador Extraordinary and Plenipotentiary, second class, should be expunged from the decisions. It also upheld the decision on the forfeiture of his bail, finding that the applicant's complaints were unsubstantiated and seeing no procedural infringements of the law on criminal procedure in this matter.

C. The applicant's medical treatment and assistance

1. The state of the applicant's health before his detention on 30 November 1998

39. The applicant underwent a medical examination on 11 March 1998 at the Forensic Medical Examination Bureau of the Zhytomyr Regional Council's Department of Health Protection ("the Zhytomyr Forensic Bureau"). The expert opinion that assessed the applicant's health between 18 February and 3 March 1998 found that his diseases included first-degree myocardial cardiosclerosis (*міокардичний кардіосклероз першого ступеню*), extensive spinal osteochondrosis (*поширений спинний остеохондроз*), chronic duodenitis (*хронічний дуоденіт*), chronic parenchymatitis of the prostate (*хронічний паренхіматозний простатіт*), internal and external haemorrhoids (*внутрішньо-зовнішній геморрой*) and the residual effects of a small cerebral haemorrhage in the basin of the right middle cerebral artery with left-hand side pyramidal deficiency and general vasomotor neurosis (*залишкові явища малого інсульту в басейні правої середньо-мозкової артерії з лівосторонньою пірамідальною недостатністю на фоні вегето-судинної дистонії*). It concluded that the applicant could be held in custody in the Zhytomyr SIZO and was fit to take part in the investigation. He could be provided with urgent medical assistance if necessary.

40. On 19 May 1998 the Kyiv City Forensic Medical Examination Bureau ("the Kyiv Forensic Bureau") conducted a second examination of the applicant. The examination revealed that the applicant was suffering from second-degree hypertension, the residual effects of a stroke, a benign tumour of the occipital part of the head and extensive spinal osteochondrosis.

41. On 24 and 27 October 1998 the applicant was examined by a doctor from the SIZO SBU. The SIZO SBU medical unit examined blood samples taken from him.

42. On 11, 19 and 22 November 1998 and 12 and 19 November 1998 the applicant was examined by the Ambulance Service and doctors from the SIZO SBU respectively, as he complained about heartache. The Ambulance Service confirmed that the applicant was suffering from critical second-degree idiopathic hypertension (*гіпертонічна хвороба другого ступеню*), second-degree cardiosclerosis (*міокардичний кардіосклероз першого ступеню*) and ischaemic heart disease (*ішемічна хвороба серця*).

2. The applicant's medical examinations and treatment from 30 November 1998 to 8 June 2000

43. On 30 November 1998 the applicant was hospitalised with acute hypertension.

44. From December 1998 until June 1999 the applicant unsuccessfully lodged a number of complaints with the GPS, the Supreme Court and the SIZO SBU seeking his release from custody on account of his poor state of health.

45. The Government provided no evidence of the applicant's treatment or the medical assistance provided to him from 22 November 1998 to 13 March 1999. Between 10 October 1998 and 19 July 1999 the applicant was visited ten times by doctors from the SIZO SBU. These included two visits by a dentist and a surgeon. On 5 and 12 March 1998 the applicant refused to take cognisance of an indictment and the case file because of his poor health. On 13 (twice), 15, 17 and 18 March, 5 and 22 April, 27 May, 1, 2, 4, 5, 9 and 16 June and 8, 9, 11, 13, 16 (twice) and 18 July 1999 the applicant was examined by doctors from the Ambulance Service and from the SIZO SBU.

3. Third forensic medical examination of the applicant's state of health

46. On 27 May, 1 June and 4 June 1999 the applicant, his wife and his lawyers lodged complaints with the Kyiv City Court, seeking to have the applicant medically examined. Hearings took place on 14 June, 15, 20, 27 and 29 July and 3 August 1999.

47. During the hearing on the merits of the criminal charges brought against the applicant on 14 June 1999 the Kyiv City Court decided to order his medical examination.

48. Between 30 June and 1 July 1999 the applicant's state of health was examined in the SIZO SBU and the outpatient department of Kyiv Central Hospital.

49. On 7 July 1999 the court requested the SIZO SBU to inform it whether it was possible to provide the applicant with the necessary inpatient medical treatment for the diseases from which he was suffering.

50. On 14 July 1999 the Deputy Chairman of the State Security Service replied that it was impossible to provide such treatment. In particular, he

mentioned that the only medical staff of the SIZO SBU were a physician and a paramedic, who provided medical assistance in urgent cases.

51. From 16 June to 2 July 1999 a medical examination by a commission of the Kyiv Forensic Bureau composed of six doctors, set up on the basis of a decision of 14 June 1999 by the Kyiv City Court, concluded that the applicant was not suffering from any life-threatening disease, and that he should be given in-hospital medical treatment should it transpire that he could not be treated adequately during his detention. In particular, the medical examination revealed that the applicant was suffering from critical second-degree idiopathic hypertension (*гіпертонічна хвороба другого ступеню*), a second-degree circulatory brain disorder (*дисциркуляторна енцефалопатія другого ступеню*), the residual effects of a small cerebral haemorrhage, asthenovegetative syndrome (*астено-вегетативний синдром*), a duodenal papillary ulcer (*виразкова хвороба дванадцятиперстної кишки*), gastritis (*гастрит*), erosive bulbitis (*ерозивний бульбит*), hypokinetic dyskinesia of the large bowel (*гіпокінетична дискінезія товстої кишки*), spastic colitis (*спастичний коліт*), internal and external haemorrhoids (*зовнішньо-внутрішній геморой*), fibrolipoma of the tenth left rib (*фіброліпома десятого міжреб'я зліва*), seborrhoeic dermatitis (*себорейний дерматит*) and retinal angiopathy with impairment of visual acuity (*ангіопатія сітчатки із зниженням гостроти зору*).

52. On 22 July 1999 the governor of SIZO no. 13 informed the Kyiv City Court that the applicant could not be provided with the necessary medical treatment at the SIZO's medical unit owing to the lack of necessary medical staff and equipment.

53. On 3 August 1999 the Kyiv City Court, having examined the results of the medical examination conducted between 16 June and 2 July 1999 and the evidence produced before it by the parties, decided to transfer the applicant from the SIZO SBU to SIZO no. 13 on account of his need for medical assistance. In the course of the hearing, the prosecution submitted a different document issued by SIZO no. 13, signed by its deputy governor on 29 July 1999, stating that the applicant could be provided with the necessary medical treatment and that it would be possible to use an external doctor's assistance for that purpose. It also took into account a similar response of 2 August 1999 from the Head of the Department for Enforcement of Sentences. The court also ordered SIZO no. 13 to inform it about the applicant's state of health and about his ability to participate in hearings. In a separate decision the court refused to change the applicable preventive measure.

54. From 8 June 2000, when he was transferred from pre-trial detention to serve his sentence in Mensk Penitentiary, the applicant received inpatient treatment in the penitentiary's medical unit.

4. Conditions of the applicant's detention

55. The applicant claimed that the cells of SIZO no. 13 had been infested with pests. An elevated, open toilet had been situated not far from the table, opposite the door of the 12-square-metre cell inhabited by eight inmates. There had been no privacy in the cell and everybody had smoked. The conditions in the medical unit, where the applicant had stayed from 3 August 1999 until 6 June 2000, had been practically the same as in the other cells. The cells had been overcrowded, with 10-12 persons in a space of 14 square metres. Sick detainees who were transferred under guard from other penitentiary institutions or detention facilities, some of them suffering from tuberculosis and venereal diseases, had been held with other detainees in the same detention facilities, thus creating a risk of infection.

56. As to the detention conditions in the SIZO SBU, the applicant stated that they were much better, but that the cell had been equipped in such a way that a detainee constantly felt humiliated. The toilet had been situated in the middle of the cell, on an elevated concrete base, absolutely open. It had been placed so as to be seen not only by the cellmates, but also by the prison guards. Almost half of the prison guards were women. There was no water in the cell. Cold water was supplied only upon the request of a detainee for a short period of time.

57. The applicant maintained, referring to the 1999 Report of the State Accounting Chamber "on the results of inspecting the budgetary allocations for the maintenance of the State Department for the Enforcement of Sentences and its facilities and institutions", that the detention conditions were of a poor standard because the State budget had allocated only UAH 2.9 million to the penitentiary system, which amounted to an average of UAH 13 per detainee a year[1], or UAH 1 per month. In 2000 that sum had been reduced to UAH 11 a year[2], that is, UAH 0.90 a month. In 1999 the State budget had provided only 25.4% of the sum requested for prisoners' nutrition requirements, and in 2000 this sum had been reduced to 14.5%, which had resulted in the allocation of UAH 0.38 a day per person for food[3]. The applicant alleged that, at the time of his incarceration, the Kyiv Regional Investigative Isolation Unit no. 1 (SIZO no. 13) had received only UAH 0.08 per day per detainee[4] for expenditure from the State budget and that it accordingly had not been possible to treat the applicant for a disease such as his ulcer whilst in detention.

58. The Government contended the applicant's factual submissions as to the conditions in which he had been detained, however, provided no

1. About EUR 2.
2. About EUR 0.15.
3. About EUR 0.06.
4. About EUR 0.01.

particularities to support their comments on the actual detention conditions in SIZO SBU and SIZO no. 13.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Criminal Code of Ukraine, 1960 (in force at the material time)

59. The relevant provisions of the Criminal Code read as follows:

Article 180

Interference with a witness

"It shall be an offence punishable by up to 4 years' imprisonment or by compulsory labour in a penitentiary for a term of up to 2 years to interfere with the appearance of a witness... before a court or the bodies responsible for the preliminary investigation or inquiry; to exert unlawful pressure on a witness in order to force him or her to refuse to testify or produce evidence, or to give false evidence under threat of murder, violence, destruction of the witness's property or that of his or her close relatives, or disclosure of information defaming the witness; to bribe a witness, ... with the same purpose; or to threaten to carry out the above-mentioned actions in revenge for evidence produced previously."

B. The Code of Criminal Procedure of Ukraine, 1960

60. The relevant provisions of the Code of Criminal Procedure read as follows:

Article 148

Purpose and grounds for the application of preventive measures

"Preventive measures shall be imposed on a suspect, accused, defendant or convicted person in order to prevent him or her from attempting to abscond from an inquiry, investigation or the court, to obstruct the establishment of the truth in a criminal case or to pursue criminal activities, and in order to ensure the enforcement of procedural decisions.

Preventive measures shall be imposed where there are sufficient grounds to believe that the suspect, accused, defendant or convicted person will attempt to abscond from investigation and the court, or if he or she fails to comply with procedural decisions, or obstructs the establishment of the truth in the case or pursues criminal activities.

If there are insufficient grounds for the imposition of preventive measures, the suspect, accused or convicted person shall sign a written statement undertaking to

appear upon notification by the inquirer, investigator, prosecutor or the court, and shall also undertake to notify them of any change in his place of residence.

If a preventive measure is applicable to a suspect, he or she shall be charged within ten days from the time of imposition of the measure. In the event that the indictment is not issued within that time, the preventive measure shall be annulled."

Article 149

Preventive measures

"The preventive measures are as follows:

(1) a written undertaking not to abscond;

(2) a personal surety;

(3) a surety provided by a public organisation or labour collective;

(3-1) bail;

(4) remand in custody;

(5) supervision by the command of a military unit.

As a temporary preventive measure, a suspect may be detained on the grounds and pursuant to the procedure provided for by Articles 106, 115 and 165-2 of this Code."

Article 150

Circumstances to be taken into account in choosing a preventive measure

"In resolving the issue of imposing a preventive measure, in addition to the circumstances specified in Article 148 of this Code, such circumstances as the gravity of the alleged offence, the person's age, state of health, family and financial status, type of employment, place of residence and any other circumstances relating to the person shall be taken into consideration."

Article 154-1

Bail

"Bail consists in the deposit, by the suspect, accused, defendant or any other natural or legal persons, of money or other assets with the body responsible for the preliminary investigation or with a court for the purpose of ensuring the proper conduct of the person with respect to whom the preventive measure has been applied, his or her fulfilment of the undertaking not to leave his or her place of permanent or temporary residence without the permission of the investigator or the court, and his or her appearance upon a summons before the investigative body or the court.

The amount of bail shall be determined taking into account the circumstances of the case by the body that applies the preventive measure. It cannot be less than: one thousand times the citizen's tax-exempt minimum income with regard to a person who is accused of committing a serious crime punishable by deprivation of liberty for a term of more than 10 years; 500 times the citizen's tax-exempt minimum income with regard to a person accused of committing another serious crime or a person with a previous conviction; and 50 times the citizen's tax-exempt minimum income with regard to any other persons. In all cases the amount of bail shall not be less than the amount of the civil claim, substantiated by sufficient evidence.

On the payment of bail, the suspect, accused or defendant shall be apprised of his or her obligations and the consequences of their non-fulfilment, and the person who stands surety shall be apprised of the offence of which the person in respect of whom bail is applied is suspected or accused, and informed that, in the event that this person fails to fulfil these obligations, the bail will be forfeited in favour of the State.

Before the case has been referred to the court, a preventive measure in the form of bail may be imposed on a person who is held in custody only with the permission of the prosecutor who authorised the detention and, after the case has been referred to the court, such a measure may be imposed only by the court.

The person who stands surety may refuse to perform the obligations entered into prior to the emergence of the circumstances requiring the forfeiture of the bail in favour of the State. In this case he or she shall ensure the appearance of the suspect, accused or defendant before the investigative body or the court with a view to having the preventive measure imposed on him or her replaced by a different one. Bail shall be returned only after a new preventive measure has been chosen.

In the event that a suspect, accused or defendant breaches his or her obligations, bail shall be forfeited in favour of the State. The issue of forfeiture of bail to the State shall be determined by the court at a hearing during the consideration of the case or in separate proceedings. The surety shall be summoned to the court in order to give explanations. Failure of that person to appear before the court for a hearing without good reason shall not obstruct the examination of the issue of the forfeiture of bail in favour of the State.

The issue of returning the bail to the surety shall be resolved by the court during the trial of the case. Bail deposited by the suspect, accused or defendant may be withheld by the court for the purpose of executing the judgment in the form of compensation for damage." (As amended by Article 154-1, in accordance with the Law of 20 November 1996, p. N 530/96-BP)

Article 165-1

Order (ruling) on the application, annulment or modification of a preventive measure

"With regard to the application, annulment or modification of a preventive measure, the investigative body, investigator, prosecutor or judge shall make an order, and the court shall give a ruling."

Article 165-2

Procedure for the selection of a preventive measure

"At the stage of the pre-trial investigation, a non-custodial preventive measure shall be selected by the investigative body, investigator or prosecutor.

In the event that the investigative body or investigator considers that there are grounds for selecting a custodial preventive measure, with the prosecutor's consent he shall lodge an application with the court. The prosecutor is entitled to lodge an application to the same effect. In determining this issue, the prosecutor shall be obliged to familiarise himself with all the material evidence in the case that would justify placing the person in custody, and to verify that the evidence was received in a lawful manner and is sufficient for charging the person.

The application shall be considered within seventy-two hours of the time at which the suspect or accused is detained.

In the event that the application concerns the detention of a person who is currently not deprived of his liberty, the judge shall be entitled, by means of an order, to give permission for the suspect to be detained and brought before the court under guard. Detention in such cases may not exceed seventy-two hours; and in the event that the person is outside the locality where the court is situated, it may not exceed forty-eight hours from the moment at which the detainee is brought within the locality.

Upon receiving the application, the judge shall examine the material in the criminal case file submitted by the investigative bodies or investigator. A prosecutor shall question the suspect or accused and, if necessary, shall hear evidence from the person who is the subject of the proceedings, shall obtain the opinion of the previous prosecutor or defence counsel, if the latter appeared before the court, and shall make an order:

(1) refusing to select the preventive measure if there are no grounds for doing so;

(2) selecting a preventive measure in the form of taking of a suspect or accused into custody.

The court shall be entitled to select for the suspect or accused a non-custodial preventive measure if the investigator or prosecutor refuses to select a custodial preventive measure for him or her.

The judge's order may be appealed against to the court of appeal by the prosecutor, suspect, accused or his or her defence counsel or legal representative, within three days from the date on which it was made. The lodging of an appeal shall not suspend the execution of the judge's order."

C. Resolution No. 6 of the Plenary Supreme Court of 26 March 1999 "on the practice of applying bail as a preventive measure"

61. The relevant extracts from the Resolution of the Plenary Supreme Court read as follows:

> "... 2. Judging from the content of Article 154-1 of the Code of Criminal Procedure, a decision concerning bail, or a refusal to apply such a measure, falls entirely within the jurisdiction of the person or body responsible for the proceedings in the case at the relevant time. The court shall consider the application for bail, taking into consideration the relevant reasoning [of the parties] in each individual case, and taking into account the nature and the gravity of the crime committed, information about the accused person and the other circumstances of the case; it [the court] can apply bail instead of detention only if there are reasonable grounds for considering that bail would ensure the appropriate conduct of the person concerned and his or her compliance with procedural obligations, as well as the enforcement of a judgment...
>
> 9. ...In determining the amount of bail, the courts shall take into account the specific circumstances of the case and the personality of the accused/suspect (in particular, his or her family and financial status).
>
> 12. In accordance with paragraph 6 of Article 154-1 of the Code of Criminal Procedure, a breach by the suspect, accused or convicted person of his or her bail obligations shall lead to the forfeiture of the bail. [Forfeiture] shall be decided upon at the trial stage of the proceedings (substantiated by the judgment, and, before its delivery, by an order or ruling of the court), or in the course of separate judicial proceedings."

D. International law reports on the conditions of detention in pre-trial detention facilities in Ukraine

62. The relevant extracts from the reports are cited in the judgment of *Nevmerzhitsky v. Ukraine* (no. 54825/00, §§ 60-61 and 66, ECHR 2005-II).

THE LAW

I. PRELIMINARY CONSIDERATIONS

63. Following the Court's admissibility decision, the applicant made submissions on the merits in which he again contended that the trial in his case had been unfair and that the principle of presumption of innocence had been violated, and complained about the conditions of his detention from the initial decision to detain him as a suspect until the point at which he was released from serving his sentence.

64. The Court observes that in its final decision on admissibility of 6 April 2004 it declared admissible the applicant's complaints about the conditions of his detention and lack of proper medical treatment and assistance from 30 November 1998 until 8 June 2000 (Article 3 of the Convention), his complaints as regards the lack of effective remedies in respect of the complaint under Article 3 (Articles 3 and 13 of the Convention) and his complaints with regard to the forfeiture of bail (Article 6 § 1 of the Convention). Thus, the scope of the case before the Court is limited to the complaints already declared admissible (see *Sokur v. Ukraine*, no. 29439/02, § 25, 26 April 2005).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

65. The applicant complained about his ill-treatment while remanded in custody. In particular, he complained that the authorities had failed to provide proper and necessary medical treatment and assistance to him between 30 November 1998 and 8 June 2000. He alleged that the poor conditions of his detention had caused him severe suffering and resulted in the deterioration of his health. He relied in that connection on Article 3 of the Convention, which in so far as relevant provides:

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

A. The parties' submissions as to the conditions of detention

1. The applicant's submissions

66. The applicant alleged that he had been subjected to horrendous treatment in detention, which had been meted out deliberately and had been aimed at breaking his moral resistance and forcing him to testify against third persons, and to confess to crimes he had not committed. He also maintained that the atrocious manner, in which certain investigative procedures had been applied to him, and the cumulative effects of the ill-treatment on his physical and moral integrity, supported a finding that there had been an extremely serious violation of Article 3 of the Convention. The applicant claimed that his being taken into custody on 30 November 1998 had contravened the principles enshrined in Article 3 of the Convention, as his state of health and the diseases from which he was suffering showed that the prosecution had deliberately acted in violation of the Convention.

67. The applicant stressed again that the conditions of his detention in both detention centres had been degrading. He referred to the fact that the cells of SIZO no. 13 had been infested with pests. An elevated, open toilet had been situated not far from the table, opposite the door of the 12-square-

metre cell inhabited by eight inmates. There had been no privacy in the cell and everybody had smoked. The conditions in the medical unit, where the applicant had stayed from 3 August 1999 until 6 June 2000, had been practically the same as in the other cells. The cells had been overcrowded, with 10-12 persons in a space of 14 square metres. Sick detainees who were transferred under guard from other penitentiary institutions or detention facilities, some of them suffering from tuberculosis and venereal diseases, had been held with other detainees in the same detention facilities, thus creating a risk of infection.

68. As to the detention conditions in the SIZO SBU, the applicant stated that they were much better, but that the cell had been equipped in such a way that a detainee constantly felt humiliated. The toilet had been situated in the middle of the cell, on an elevated concrete base, absolutely open. It had been placed so as to be seen not only by the cellmates, but also by the prison guards. Almost half of the prison guards were women. There was no water in the cell. Cold water was supplied only upon the request of a detainee for a short period of time.

69. The applicant maintained, referring to the 1999 Report of the State Accounting Chamber "on the results of inspecting the budgetary allocations for the maintenance of the State Department for the Enforcement of Sentences and its facilities and institutions", that the detention conditions were of a poor standard because the State budget had allocated only UAH 2.9 million to the penitentiary system, which amounted to an average of UAH 13 per detainee a year[1], or UAH 1 per month. In 2000 that sum had been reduced to UAH 11 a year[2], that is, UAH 0.90 a month. In 1999 the State budget had provided only 25.4% of the sum requested for prisoners' nutrition requirements, and in 2000 this sum had been reduced to 14.5%, which had resulted in the allocation of UAH 0.38 a day per person for food[3]. The applicant alleged that, at the time of his incarceration, the Kyiv Regional Investigative Isolation Unit no. 1 (SIZO no. 13) had received only UAH 0.08 per day per detainee[4] for expenditure from the State budget and that it accordingly had not been possible to treat the applicant for a disease such as his ulcer whilst in detention. The applicant also stressed that he had been subjected to some seventy humiliating searches during the six months of his trial.

2. The Government's submissions

70. The Government did not comment on all of the applicant's complaints under Article 3 of the Convention. Instead, they commented

1. About EUR 2.
2. About EUR 0.15.
3. About EUR 0.06.
4. About EUR 0.01.

only on a few issues he raised. In particular, they submitted that as the applicant had mainly complained about the failure of the authorities to provide him with proper medical treatment and nutrition, they would address only those complaints. They denied the applicant's allegations and contended that he had not been subjected to inhuman and degrading treatment during his stay in the SIZO SBU and SIZO no. 13. They further contended that the conditions in which the applicant had been detained were in compliance with the provisions of Article 3 of the Convention and that there had therefore been no violation of that provision.

B. The parties' submissions as to the lack of medical treatment and assistance

1. The applicant's submissions

71. The applicant disputed the Government's submissions. He maintained that his state of health in detention had progressively deteriorated, which meant that he had not received proper medical treatment or nutrition. The applicant claimed that medical treatment had been denied to him with malicious intent. He further submitted that the effects of such treatment amounted to torture. In October 1998 the applicant's heart problems had worsened. In March 1999 he had again suffered from an open duodenal ulcer, a tumour in his back and skin diseases. The same health problems had recurred when his detention had been renewed by the judge of the Kyiv City Court hearing his case from June to August 1999.

72. The applicant stressed that the Government in their observations had incorrectly stated that he had received proper and timely medical treatment in the course of his detention in the SIZO SBU and SIZO no. 13. In particular, he mentioned that the medical treatment provided to him had not led to his recovery but to the deterioration of his health. Moreover, he submitted that some of the information submitted by the Government in the medical records was untrue or had been intentionally omitted.

73. The applicant submitted in conclusion that, in the light of the Court's judgments of 29 April 2003 against Ukraine (see *Dankevich*, no. 40679/98, § 112; *Khokhlich*, no. 41707/98, § 154; *Nazarenko*, no. 39483/98, § 114; and *Aliev*, no. 41220/98, § 110), the conditions of detention in all the facilities he referred to were inhuman and degrading. The applicant stressed that he had been deliberately subjected to torture and ill-treatment with a view to humiliating him and compelling him to plead guilty, so as to facilitate the criminal investigation against him, and to testify against another person.

2. The Government's submissions

74. The Government stressed that their position was based, in the first place, on a comparison between the examinations of the applicant's state of health when he was dismissed from the State Security Service – that is, before he had become an employee of the Ministry of Foreign Affairs – and the three medical examinations conducted during his detention on remand. The analysis showed that, taking into consideration the applicant's occupation of an executive position involving travel and changes of climate over a long period, as well as the stress caused by the criminal investigation against him, the applicant's diseases could have developed in the normal course of events, even if he had not been detained in a remand facility. Moreover, the Government drew attention to the fact that the applicant had been provided with the relevant medical treatment while in detention. They further referred to the fact that the medical file contained references to medicines with which the applicant had been provided and which had been made freely available to him. The Government concluded that the applicant had received adequate treatment during his detention in the SIZO SBU and SIZO no. 13. They stressed that the applicant's submissions on this issue were unsubstantiated.

C. The Court's assessment

1. Applicable case-law

75. The Court's case-law in relation to Article 3 of the Convention, as applicable to the instant case, is briefly summarised in the *Nevmerzhitsky* judgment (cited above, §§ 79-81).

2. Complaints about the conditions of the applicant's detention

76. As to the conditions of the applicant's detention – overcrowding in the cell and lack of proper hygiene, ventilation, sunlight, daily walks, appropriate clean bedding or clothes – the Court has examined them as a whole on the basis of the applicant's submissions. It notes that it cannot establish with certainty the conditions of the applicant's detention, which occurred some time ago. Nevertheless, it notes at the outset that the Government did not contest the applicant's submissions, so that they can be accepted by the Court as undisputed (see paragraphs 66-69 above). Furthermore, taking into account that the applicant's submissions are consistent, thorough and correspond in general to the inspections of the pre-trial detention centres in Ukraine conducted by the Committee for the Prevention of Torture of the Council of Europe and the Commissioner of Human Rights of the Ukrainian Parliament (see *Nevmerzhitsky*, cited above, §§ 60-61 and 66) and the 1999 Report of the State Accounting Chamber “on

the results of inspecting the budgetary allocations for the maintenance of the State Department for the Execution of Sentences and its facilities and institutions" (see paragraph 69 above), the Court concludes that the applicant was detained in unacceptable conditions, the State failing, *inter alia*, to provide required nutrition and subsistence expenses for detainees, as envisaged by law (see paragraph 69 above).

77. Moreover, the Court notes that the medical reports submitted by the parties show that in the course of his detention the applicant suffered from various illnesses (see paragraphs 39 - 45 above). A comparison between his first and third forensic medical examinations, of 11 March 1998 and 16 June to 2 July 1999 respectively, clearly shows that his health significantly deteriorated (see paragraphs 39 and 51 above).

78. As to the seborrhoeic dermatitis and heart-related diseases which the applicant contracted, the Court considers that while it is true that he received some medical treatment for these diseases, their initial contraction, recurrence, aggravation and his further hospitalisation on 30 November 1998 (see paragraph 43 above) demonstrate that he was detained in an unsanitary environment, with no respect for basic hygiene.

3. Complaints about the lack of medical treatment and assistance

79. The Court notes at the outset that the applicant's complaints are related to those under Article 3 of the Convention with regard to the conditions of detention. It further reiterates that, although Article 3 of the Convention cannot be construed as laying down a general obligation to release detainees on health grounds, it nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance (see *Hurtado v. Switzerland*, judgment of 28 January 1994, Series A no. 280-A, opinion of the Commission, pp. 15-16, § 79). Moreover, the Court has emphasised on a number of occasions that the health of prisoners has to be adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

80. The Court notes that the applicant was first examined by a doctor almost four months after he had been taken into detention for the second time, that is, on 30 November 1998, when he was hospitalised with hypertension (see paragraph 43 above). Furthermore, it transpires from the facts of the case that on 14 July 1999 the SIZO SBU informed the applicant and the authorities that it was impossible to provide him with the necessary medical treatment in view of the lack of relevant facilities (see paragraphs 50 and 52 above).

81. In addition, the domestic authorities disregarded the medical conclusions of the forensic examination of 16 June to 2 July 1999 that he should be given in-hospital medical treatment should it transpire that he could not be treated adequately during his detention (see paragraph 51

above). It was only on 22 July 1999 that the Head of the Kyiv Regional Investigative Isolation Unit no. 1 (SIZO no. 13) informed the court, which was examining the applicant's requests to be released from custody in view of his state of health and the need to undergo medical treatment, that he could not be provided with the necessary medical treatment at its medical unit (see paragraph 52 above). Eventually, it was almost three weeks later, on 3 August 1999, that the Kyiv City Court decided to transfer the applicant from the SIZO SBU to SIZO no. 13 owing to the need to provide him with the necessary medical assistance (see paragraph 53 above).

4. Conclusions of the Court

82. Taking into account its above findings in respect of the conditions of the applicant's detention (see paragraph 76 above), which clearly had a detrimental effect on the applicant's health and well-being (see *Kalashnikov v. Russia*, no. 47095/99, § 98, ECHR 2002-VI, and *Nevmerzhitsky*, cited above, § 88) and the Court's findings as to the lack of medical treatment and assistance in respect of the applicant (see paragraphs 79-81 above), the Court considers that there has been a violation of Article 3 of the Convention. In the light of the above, the Court considers that the nature, duration, severity of ill-treatment to which the applicant was subjected and the cumulative negative effects on his health can qualify the treatment to which he was subjected as inhuman and degrading (see *Egmez v. Cyprus*, no. 30873/96, § 77, ECHR 2000-XII; *Labzov v. Russia*, no. 62208/00, § 45, 16 June 2005; *Mayzit v. Russia*, no. 63378/00, § 42, 20 January 2005).

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

83. The applicant also alleged that he had had no effective remedies in respect of his complaints under Article 3 of the Convention. He alleged an infringement of Article 13 of the Convention, which in so far as relevant provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

1. The Government's submissions

84. The Government reiterated that, in accordance with the Court's case-law concerning Article 13, where an individual had an arguable claim to have been the victim of a violation of the right set forth in the Convention, he or she should have a remedy before a national authority in order to have

the claim decided and, if appropriate, to obtain redress (they cited *Gustafsson v. Sweden*, judgment of 25 April 1996, *Reports of Judgments and Decisions* 1996-III, p. 660, § 70). The Government averred that the applicant had had effective domestic remedies at his disposal, but had failed to use them.

85. In particular, the Government maintained that in accordance with the Prosecution Act and the Pre-trial Detention Act, every detainee had the right to complain about the actions of an official to a public prosecutor responsible for supervising the detention conditions in remand facilities. The public prosecutor had to carry out an investigation into such complaints and take measures to eliminate the violation. The results of the investigation were communicated to the complainant. If dissatisfied, the complainant could appeal to a senior prosecutor or a court, in accordance with the provisions of domestic law. This meant that a person who wished to challenge actions or omissions by the management of a detention facility where he or she was being held had the right to apply directly to a court. In that event, the court had to examine the complaints and deliver a judgment in accordance with Ukrainian legislation.

86. The Government reiterated that Article 28 of the Constitution of Ukraine prohibited torture and inhuman or degrading treatment or punishment. The Constitution contained directly applicable provisions and could be relied on by a claimant as a legal basis for his or her claim. Moreover, in accordance with the Constitution, the Convention formed an integral part of Ukrainian legislation. The applicant faced no obstacles in bringing a complaint before the domestic courts in order to seek redress for alleged violations of Article 3 of the Convention.

87. The Government maintained that the investigating officer of the General Prosecution Service, acting in good faith, had inquired more than once of the governor of the SIZO SBU about the applicant's state of health and his treatment. The Government drew the Court's attention to the fact that the trial court which convicted the applicant had taken into account his state of health and his ability to participate in the proceedings when examining the issue of his possible release from detention. If the applicant had thought that the prosecution service's supervision of the compliance with the law (*дотримання законності при наданні медичної допомоги*) of his medical treatment in detention had been defective, he should have complained to the court about it. In any event the Government reiterated that a simple doubt as to the effectiveness of a remedy did not exempt the applicant from the obligation to use it before lodging an application with the European Court of Human Rights.

88. The Government therefore concluded that Ukrainian legislation provided an effective remedy within the meaning of Article 13 of the Convention, which would have allowed the applicant to complain about the alleged violation of Article 3.

2. The applicant's submissions

89. The applicant submitted that the repeated dismissals of his applications to the prosecution service and the courts for release, as well as their failure to investigate his complaints, amounted to an infringement of Article 3, as the authorities had acted in bad faith.

90. The applicant noted that the Government's reference to the possibility of applying to a court in order to complain about the actions or inactivity of the prosecutor and the investigator was unsubstantiated, as this remedy had only come into effect on 23 May 2001, the date of the ruling of the Constitutional Court allowing such complaints under Articles 234-236 of the Code of Criminal Procedure and Article 248-3 of the Code of Civil Procedure. The applicant contended that an application to the GPS could not be considered to have been an effective remedy for the purpose of Article 13, given the prosecution's investigative functions in his case and the lack of intention to review these complaints. No investigation whatsoever had been conducted into his complaints about the conditions of his detention or his allegations of improper medical treatment or assistance.

91. The applicant contended that he could not have effectively complained in court of the inadequate conditions of his detention and his ill-treatment. He could not have claimed compensation for the harm caused to him during the pre-trial investigation and trial, that being a matter outside the jurisdiction of the courts. The applicant submitted that he had availed himself of all judicial and non-judicial remedies that were at his disposal. However, the authorities had failed to carry out an effective investigation or to adequately pursue his complaints. He concluded that he had had no effective remedies in respect of his complaints under Article 3, in breach of Article 13 of the Convention.

B. The Court's assessment

92. The Court points out that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 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 (see, among many other authorities, *Kudła*, cited above, § 157).

93. 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.

94. The Court points out that the decisive question in assessing the effectiveness of a remedy concerning a complaint of ill-treatment is whether

the applicant can raise this complaint before the domestic courts in order to prevent further incidents of that kind and to obtain direct and timely redress, and not merely indirect protection of the rights guaranteed in Article 3 of the Convention. The remedy may be both preventive and compensatory in instances where persons complain about their ill-treatment in detention or the conditions thereof.

95. As to the Government's first suggestion, namely that a complaint should have been lodged with the public prosecutor responsible for supervising the general lawfulness of detention, the Court finds that this cannot be considered an effective and accessible remedy, given that the prosecution's status under domestic law and its particular "accusatorial" role in the investigation of criminal cases do not offer adequate safeguards for an independent and impartial review of the applicant's complaints (see *Merit*, cited above, § 63, and, *mutatis mutandis*, *Nevmerzhitsky*, cited above, § 116, and *Salov v. Ukraine*, no. 65518/01, § 58, ECHR 2005-). Moreover, the Government have not shown that a complaint to the prosecutor could have offered the aforementioned preventive or compensatory redress for allegations of ill-treatment or conditions of detention contrary to Article 3 of the Convention.

96. As to the other complaints that the applicant could have lodged, including complaints to the domestic courts, the Court notes that it is not disputed that the applicant complained to the doctor at the detention facility about his illness and that the prison authorities were aware of his poor state of health. The authorities were thereby made sufficiently aware of the applicant's situation and had an opportunity to examine the conditions of his detention and, if appropriate, to offer redress. While it is true that the applicant did not use the channels suggested by the Government, the Court notes that the problems arising from the conditions of his detention and his alleged lack of proper medical treatment were apparently of a structural nature and did not only concern his personal situation (see *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001). Moreover, the Government have not demonstrated what kind of reasonable redress the domestic courts or other State authorities could have afforded the applicant, given the accepted and undisputed economic difficulties faced by the prison authorities (see paragraph 65 above).

97. The Court finds that the Government have not shown that it was possible under Ukrainian law for the applicant to complain about the conditions of his detention or that the remedies available to him were effective – in other words, that they could have prevented violations from occurring or continuing or that they could have afforded him appropriate redress.

98. The Court therefore concludes that there has been a violation of Article 13 of the Convention on account of the lack of an effective and accessible remedy under domestic law in respect of the applicant's

complaints concerning his treatment in detention and the conditions in which he was detained.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

99. The applicant also alleged that he had been denied a fair hearing, in that his wife had not been invited to take part in the proceedings concerning the forfeiture of his bail. He alleged a violation of Article 6 § 1 of the Convention, which in so far as relevant provides:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

A. The Government's preliminary objections

100. The Government considered that this complaint was incompatible *ratione materiae* with the provisions of Article 6 § 1 of the Convention as the proceedings had not entailed the determination of either a criminal charge or "civil rights and obligations". In the Government's view, the forfeiture of bail could only be examined under Article 5 of the Convention. The Government drew an analogy with tax disputes, maintaining that the forfeiture of bail required a similar assessment of a failure to perform certain legal obligations. The Government also referred to the Court's case-law of the Court under Article 5 § 4 of the Convention, arguing that Article 6 was not applicable to proceedings for the review of an application for release from detention. They cited the Commission's decision in *Moudefo v. France* (decision of 21 January 1987, no. 10868/84, Decisions and Reports 51, p. 62).

101. The Government also submitted that this part of the case should be declared incompatible *ratione personae* with the provisions of the Convention since the applicant's wife was not a party to the proceedings before the Court. They relied in that connection on the Court's partial inadmissibility decision in the case of *Nevmerzhitsky v. Ukraine* (no. 54825/00, 28 January 2003).

102. The Court observes that in its admissibility decision of 30 March 2004 in the instant case it found that Article 6 § 1 of the Convention, under its criminal head, was applicable in the instant case in view of the general character of the legal provision infringed by the applicant (Article 154-1 of the Code of Criminal Procedure), together with the deterrent and punitive purpose of the penalty imposed on him and the considerable value of the sum of money confiscated (around EUR 196,900), which sufficed to show that the proceedings were indeed criminal in nature.

103. However, it further notes that it did not examine the Government's objections as to the admissibility *ratione personae* and *ratione materiae* of the application in its final admissibility decision but joined them to the merits. It therefore considers it necessary to examine them at this stage.

104. In so far as the Government argued that the application should be struck out of the list as being incompatible *ratione personae,* the Court considers that this objection should be dismissed. The Court considers, firstly, that the proceedings at issue concerned the forfeiture of the applicant's and his wife's joint property. Secondly, the Court is of the opinion that the forfeiture in fact entailed the imposition of an additional punishment on the applicant for his failure to comply with the conditions imposed on him in connection with his release on bail.

105. Moreover, the Court takes into account the fact that the bail was forfeited as an alternative measure to bringing additional charges against the applicant under Article 180 of the Criminal Code of Ukraine. It therefore holds that the applicant can claim to be the victim of an alleged violation of Article 6 § 1 of the Convention and that the forfeiture of bail concerned the "determination of a criminal charge" against him, so that the complaint cannot be dismissed as being incompatible *ratione personae* with the provisions of the Convention (compare and contrast, *Nevmerzhitsky* (dec.), cited above).

106. In so far as the Government submitted that this complaint was incompatible *ratione materiae* as the forfeiture of bail could only be examined from the point of view of Article 5 of the Convention, such a matter being similar to tax disputes, where the assessment of failure to perform certain obligations was under examination, the Court reiterates that the complaint at issue concerns the imposition of an additional penalty on the applicant for his failure to comply with his bail conditions and thus entails the determination of criminal charges against him in accordance with Article 6 § 1 of the Convention. The Government's objection should therefore be dismissed.

B. The parties' submissions as to the merits

1. The Government's submissions

107. The Government referred to the fact that, before the delivery of the judgment in his case by the court of first instance, the applicant had had the right, and had used it, to contest the decision of the prosecution to renew the order for his detention on remand. His claims had been dismissed. The court's decision to confiscate the bail had been the result of the applicant's breach of the relevant obligations, as had been established by the prosecution's investigation into the facts.

108. The Government submitted that the former Criminal Code of 1960, as in force at the material time, had contained the offence of "interfering with witnesses in order to influence their statements". However, the elements of such an offence related to threats of murder, the destruction of property or the dissemination of false information about a witness, among other things. No such threats had been made during the applicant's meeting with the witness Mr O. Bogomolov. The only threat to which the applicant had resorted concerned the institution of criminal proceedings. No such offence was provided for in the Criminal Code, and the prosecutor had therefore decided not to charge the applicant. However, the latter had breached the bail conditions. Therefore, the prosecutor had decided to change the preventive measure and to order the forfeiture of bail.

109. The Government further maintained that that decision had been based on the prosecution's verbatim record and the statement by Mr O. Bogomolov. Given that the prosecution's decision to change the preventive measure had been contested by the applicant in court and had been found to be lawful and well-founded, the domestic courts had upheld the finding that he had breached the conditions for his release on bail by attempting to persuade witnesses to change their statements. The Government therefore concluded that, even assuming that the guarantees of Article 6 § 1 were applicable to the forfeiture of bail, they had been fully complied with.

110. The Government again contended that the failure to hear evidence from the applicant's wife did not concern the applicant's right to a fair trial. It could not be assumed that the funds deposited by his wife as bail were jointly owned by the couple, because the applicant had not submitted any evidence of this either to the domestic courts or in his application to the Court. On the contrary, he had claimed that his wife had personally borrowed the money.

2. The applicant's submissions

111. The applicant maintained that the forfeiture of bail had been a punishment for his alleged attempt to interfere with witnesses. However, he had never been formally charged making such an attempt, even though Article 180 of the former Criminal Code envisaged such a *corpus delicti* as an "attempt to influence witnesses". The applicant submitted that he had not been able to challenge the allegation made to that effect by the witness Mr O. Bogomolov in the course of the trial or to cross-examine him, as Mr Bogomolov had died shortly after being questioned for the first time. The Kyiv City Court had examined a verbatim record based on a tape recording of Mr Bogomolov's evidence which should not have been adduced in evidence without a declaration from the witness that this recording was true and that he had made it himself. The applicant maintained that the judges hearing his case were not independent or

impartial. The Ukrainian judiciary, he argued, was not in general impartial and independent as the courts depended heavily on the executive and were controlled by the Government. The applicant alleged numerous procedural violations by the judges in the course of the proceedings. Furthermore, he maintained that his prosecution had been politically motivated, having been linked to the cases of the former Prime Minister Mr P. Lazarenko and his alleged accomplice Mr V. Kirichernko, who had been detained in the United States on charges of money laundering.

112. He also complained that his wife, Ms Larysa M. Koval, who had stood bail for him and was co-owner of the sum involved, had not been summoned to take part in the trial or to give evidence on the question of forfeiture, as required by Article 154-1 of the Code of Criminal Procedure, even though she had been present in court throughout the trial. The applicant maintained that he had never been informed that the issue of the confiscation of bail was on the agenda of the Kyiv City Court on 27 December 1999 and that he had therefore not had adequate time and facilities to prepare his defence. Moreover, he had not known of his forfeiture of bail until the judgment had been delivered. He alleged that the Supreme Court had failed to review these issues properly. The applicant concluded that the failure of the domestic courts to hear evidence from his wife concerning the forfeiture of bail had led to a serious breach of his defence rights as laid down in Article 6 § 1 of the Convention.

C. The Court's assessment

113. The Court notes that it is a primary purpose of Article 6, as far as criminal matters are concerned, to ensure a fair trial by a "tribunal" competent to determine "any criminal charge". Article 6 of the Convention, read as a whole, guarantees the right of an accused to participate effectively in a criminal trial. It is the fundamental aspect of the right to a fair trial that criminal proceedings, including the elements of such proceedings which relate to procedure, should be adversarial and that there should be equality of arms between the prosecution and defence (see *Rowe and Davis v. the United Kingdom* [GC], no. 28901/95, § 60, ECHR 2000-II). In deciding whether there has been a violation of Article 6, the Court must consider whether the proceedings in their entirety, including the appeal proceedings, as well as the way in which evidence was taken, were fair (see *Edwards v. the United Kingdom,* judgment of 16 December 1992, Series A no. 247-B, pp. 34-35, § 34).

114. The Court notes that the applicant's complaints under Article 6 § 1 of the Convention mainly concern two issues which are specific aspects covered by Article 6 § 3 of the Convention, namely that witness statements by the applicant's wife, as the surety, were not examined by the domestic court when the issue of the forfeiture of bail was being

determined, and that the principle of equality of arms was not respected since the applicant was unable to prepare his defence as regards the issue of forfeiture of bail, which was resolved by the domestic courts automatically.

115. The Court recalls that these guarantees under Article 6 § 3 are specific aspects of the right to a fair trial set forth in paragraph 1. It will therefore consider the complaint under the two provisions taken together (see, among other authorities, *Asch v. Austria*, judgment of 26 April 1991, Series A no. 203, § 25). The Court reiterates that the admissibility of evidence is primarily a matter for regulation by national law and, as a rule, it is for the national courts to assess the evidence before them. The Court's task is to ascertain whether the proceedings considered as a whole, including the way in which the evidence was taken, were fair. All the evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument. The Court notes in particular that Article 6 § 3 (d) of the Convention does not grant the accused an unlimited right to secure the appearance of all or any witnesses in court. It is normally for the national courts to decide whether it is necessary or advisable to hear a particular witness, such as the bail surety in this case.

116. Applying these principles to the instant case, the Court first notes that the applicant's wife was not examined by the domestic courts in connection with the issue of forfeiture of bail, despite being present throughout the court proceedings. However, the applicant initially did not request to have evidence taken from her in court (see paragraph 35 above). Furthermore, he has failed to explain what he intended to prove with the witness evidence that would have been produced and how this evidence could have been relevant to the determination of the charge of interfering with a witness.

117. In these circumstances the Court cannot conclude that the adversarial nature of the proceedings was not respected or that the national courts exceeded the margin of appreciation they have in the admission and assessment of evidence. The Court also notes that the decision to forfeit bail was based on the testimonies of witnesses (Mr O. Bogomolov and Ms Tyshchenko) and was later examined by the Kyiv City Court on the basis of the verbatim record of the witness statement of 12 October 1998, in the presence of the applicant and his lawyers, who had the opportunity to argue before the court that this evidence was inadmissible or untrue or to request the examination of other witnesses, including the applicant's wife, in order to prove their case. The initial decision to confiscate bail, given by the investigator of the General Prosecution Service on 19 January 1999, was reviewed on five successive occasions: by the Pechersky District Court on 27 November 1998; the Presidium of the Kyiv City Court on 30 November 1998; the Kyiv City Court, when it examined the charges against the applicant on their merits and convicted him on 27 December 1999; the Supreme Court, which heard the applicant's appeal on 27 April 2000; and

the Plenary Supreme Court of Ukraine, which on 6 April 2001 found no grounds for changing the initial decision of the court, finding it to have been lawful and substantiated. Furthermore, taking into account the proceedings as a whole, the Court considers that the applicant had adequate time and facilities to prepare his defence in the course of examination of the bail confiscation issue by the domestic courts.

118. The Court, having regard to its subsidiary role in relation to the domestic authorities, which are better placed and equipped as fact-finding tribunals (see *McShane v. the United Kingdom*, no. 43290/98, § 103, 28 May 2002), finds that there has accordingly been no violation of Article 6 § 1 of the Convention in respect of the failure of the domestic authorities to conduct a thorough and adversarial review of the applicant's submissions as to the allegedly unlawful forfeiture of his bail.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

119. 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. Alleged pecuniary damage in relation to the alleged violation of Article 6 § 1 of the Convention (in respect of the forfeiture of bail)

120. The applicant claimed that he had sustained pecuniary losses amounting to USD 250,000 on account of the alleged violation of Article 6 § 1 of the Convention resulting from the forfeiture of bail. Taking into account the interest rates that would be set by the Court in its final judgment in the case, according to the applicant's calculations that amount had increased to USD 344,819 by the end of 2003. However, in his view that was not the final amount as it should also have included the official interest rates, according to the National Bank of Ukraine, for the period from the end of 2003 until the date of the Court's judgment. He did not submit any claim for non-pecuniary damage in respect of the alleged infringement of Article 6 § 1 of the Convention.

121. The Government contested the applicant's claims.

122. The Court notes that no violation was found in respect of Article 6 § 1 of the Convention. It accordingly dismisses the applicant's claims and makes no award under this head (see *Melnik v. Ukraine*, no. 72286/01, § 120, 28 March 2006).

B. Damage sustained as a result of violations of Articles 3 and 13 of the Convention

1. Pecuniary damage

123. The applicant claimed:

(a) a total sum of USD 2,269 (EUR 1,857.10) in respect of expenses incurred in supplying him with additional food, as his wife had allegedly supplied him with 32 food parcels;

(b) UAH 1,750 (EUR 1,432.31) for the additional sums of money given to him by his wife to buy additional food and personal-hygiene items, which were not available at the penitentiary for free;

(c) USD 1,482 (EUR 1,212.96) for the costs incurred by his wife in acquiring the necessary medicines;

(d) an approximate amount of USD 16,200 (EUR 13,259.10) in loss of earnings, as he was now unable to carry out work requiring concentration or entailing nervous tension. The applicant alleged that he could have earned between UAH 2,500 and UAH 5,000 (about EUR 500 to EUR 1,000) a month, having regard to his experience and education.

124. The Government challenged these claims, stating that they were unsubstantiated and artificial. They considered it unnecessary to make an award for the applicant's food and medication expenses as there was no confirmation that the medication and nutrition available in the detention facilities of the SIZO SBU and SIZO no. 13 had been insufficient to provide him with proper living conditions and treatment. Besides, the Government noted that the applicant had not proved that his wife had brought 32 parcels of food and 16 parcels of medication to the detention facility and that the content of each parcel corresponded to that described in his calculations.

125. The Court notes that the violation found in respect of Article 3 of the Convention relates to the inadequate conditions of the applicant's detention and the lack of medical treatment and assistance provided to him. It will accordingly examine the link between this and the pecuniary damage alleged (see *Melnik*, cited above, § 120).

126. As to the additional sums of money and food parcels supplied by the applicant's wife and his alleged loss of income, the Court considers that the applicant has failed to substantiate any causal link between the violation it has found and the pecuniary damage alleged. It accordingly dismisses the applicant's claims under this head.

127. The Court accepts, however, that the applicant incurred certain medical expenses in his attempt to mitigate the unacceptable conditions of his detention and their negative consequences for his health, in respect of which the Court has found a violation of Article 3 of the Convention. Deciding on an equitable basis, and taking into account its previous practice

on the matter, it awards the applicant EUR 1,000 under this head (see *Nevmerzhitsky*, cited above, § 142).

2. Non-pecuniary damage

128. The applicant claimed USD 50,000 (EUR 40,923.20) in compensation for non-pecuniary damage. He maintained that he had been subjected to physical and mental suffering as a result of deliberately cruel and inhuman treatment. He also submitted that his normal way of life had been disrupted and his career opportunities had been affected by his sentence and that it was not possible for him to support his elderly parents. The applicant mentioned that the failure to provide him with the necessary medical treatment during his detention had led to a deterioration in his health. He also alleged that his suffering while in detention had had negative effects on his parents, wife and son.

129. The Government noted that the amount claimed was inordinate and bore no relation to the present case. They asked the Court to award a sum on an equitable basis, taking into account its case-law on the issue and the principle that applications to the Court could not serve as a basis for unjustified enrichment.

130. The Court refers to its above findings of violations of Articles 3 and 13 of the Convention in the present case. Having regard to comparable applications in its case-law, and deciding on an equitable basis, it awards the applicant EUR 4,000 for non-pecuniary damage (see *Peers v. Greece*, no. 28524/95, § 88, ECHR 2001-III; *Khokhlich*, cited above, § 228; and *Melnik*, cited above, § 121), plus any tax that may be chargeable on that amount.

C. Costs and expenses

131. The applicant submitted a legal costs claim for his representation in Ukraine and before the Court amounting to USD 59,200 (EUR 44,410), substantiated as follows:

(a) sums of USD 6,672 (EUR 5,460.80) and USD 20,000 (EUR 16,369.30) for fees accumulated by Mr Portyanik during 16 months of acting on behalf of the applicant (from 30 November 1998 to 8 June 2000), substantiated by a "record of services rendered" of 30 April 2001;

(b) a sum of USD 1,100 (EUR 900.31) for the fees charged by Mr Yatsyuk during a period of 11 months from 30 November 1998 to June 1999, substantiated by five bills issued on behalf of the Presidium of the Kyiv City Council of Advocates on 5 March, 6 and 9 September and 7 and 30 October 1999 for a total amount of UAH 2,500 (EUR 523.33);

(c) a sum of USD 900 (EUR 736.62) for the fees charged by Mr Grytsyak, who had acted on behalf of the applicant for a period of nine

months, substantiated by an agreement between the applicant's wife and Mr Grytsyak on the applicant's legal representation and a certificate signed by Mr Grytsyak, stating that he had received USD 2,000 (EUR 1,636.93) in fees from the applicant in the period from 9 September 1999 to April 2001;

(d) a sum of EUR 18,000 for the fees of Mr Dunikowski, a French lawyer who had represented the applicant in the proceedings before the Court (this fee included EUR 15,000 payable after the Court's final judgment in the case);

(e) a sum of GBP 13,000 (EUR 19,502.00) allegedly charged by Ms Vakulenko, who had provided advice to the applicant since February 2003 (this fee was payable in full after the Court's final judgment in the case), substantiated by an agreement signed by the applicant with Ms Vakulenko;

(f) a sum of USD 528 (EUR 432.15) in translation expenses allegedly paid by the applicant to Mr Shevchenko, substantiated by an agreement of 3 April 2004 and a certificate of 20 May 2004.

132. The Government noted that the costs and expenses claimed had not been actually and necessarily incurred by the applicant since, in particular, he had not demonstrated the need to have five lawyers in the case. They further mentioned that the applicant had provided no evidence that the amounts indicated on the contract with his lawyer Mr Portyanik had actually been paid. As to the payment of legal fees to Mr Grytsyak, the Government submitted that there was no proof of the transfer and receipt of those fees. The same could be said about the work of the translator. Moreover, the Government stated that the applicant had provided no information about the volume of work performed by his lawyers, the hours worked and the fees per hour.

133. The Court reiterates that, in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see *Merit v. Ukraine*, no. 66561/01, § 88, 30 March 2004). The Court considers that these requirements have not been fully met in the instant case.

134. As to the applicant's claims for reimbursement of the fees of Mr Grytsyak, Mr Portyanik and Mr Dunikowski, the Court notes that the applicant, when applying to it for legal aid on 3 January 2003, submitted that he was represented by only three lawyers – Mr Grytsyak, Mr Portyanik and Mr Dunikowski – who were representing him free of charge. He also submitted that he received a monthly pension of UAH 578.50 (EUR 98.15) and was unable to pay his lawyers' fees. The Court further recalls that the applicant was refused a grant of legal aid on 21 May 2003 as he was being represented by three lawyers free of charge and had sufficient means to cover any further costs of legal representation if necessary. The Court,

having regard to the aforementioned discrepancies in the applicant's submissions, considers that no costs and expenses should be awarded in respect of fees allegedly paid by him to Mr Grytsyak, Mr Portyanik and Mr Dunikowski, who represented him *pro bono*.

135. As to the remainder of the fees, the Court notes that the fees allegedly due to Ms Vakulenko under the legal-aid agreement of 30 January 2003 and the translation costs of USD 528 (EUR 432.15) were not paid. In addition, the Court finds that the legal-aid agreement is couched in very general terms from which it is impossible to determine the nature and volume of the work performed by the representative, the time it took and the applicant's financial obligations towards his lawyer. The same applies to the applicant's agreement with Mr Shevchenko in relation to translation fees.

136. Taking into account the foregoing, the Court dismisses all of the applicant's claims for costs and expenses, except those confirmed in relation to legal services provided by Mr Yatsyuk in connection with the criminal proceedings instituted against the applicant and the examination of the case before the domestic courts. Regard being had to the information in its possession, the Court considers it reasonable to award him EUR 1,000 for costs and expenses, plus any tax that may be chargeable on that amount.

D. Default interest

137. 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. *Dismisses* the Government's preliminary objections;

2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the inadequate conditions of the applicant's detention and the medical treatment and assistance provided to him in the period from 30 November 1998 to 8 June 2000;

3. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of effective remedies in respect of the ill-treatment complained of;

4. *Holds* that there has been no violation of Article 6 § 1 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency at the rate applicable at the date of settlement:

(i) EUR 1,000 (one thousand euros) in respect of pecuniary damage;

(ii) EUR 4,000 (four thousand euros) in respect of non-pecuniary damage;

(iii) EUR 1,000 (one thousand euros) in respect of costs and expenses;

(iv) 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;

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

Done in English, and notified in writing on 19 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President