



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

FIFTH SECTION

CASE OF DAVYDOV AND OTHERS v. UKRAINE

(Applications nos. 17674/02 and 39081/02)

*This version was rectified on 31 August 2010
under Rule 81 of the Rules of the Court*

JUDGMENT

STRASBOURG

1 July 2010

FINAL

01/10/2010

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

In the case of Davydov and Others v. Ukraine,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Volodymyr Butkevych,

Rait Maruste,

Mark Villiger,

Isabelle Berro-Lefèvre, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 18 May 2010,

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

PROCEDURE

1. The case originated in two applications (nos. 17674/02 and 39081/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”)¹ by 13 Ukrainian nationals, who were serving their sentences at Zamkova Correctional Colony no. 58 (hereafter “Zamkova Prison”; *Замкова виправна колонія № 58*), situated in Iziaslav of the Khmelnytsky Region, at the time of the events. The applicants are:

– Mr Sergiy Viktorovych Davydov, the first applicant, born in 1963, previously convicted on four occasions and currently serving his sentence in Lychakivska Prison no. 30;

– Mr Vitaliy² Volodymyrovych Ilchenko, the second applicant, born in 1975, convicted on two occasions for murder and hooliganism and serving a fifteen year sentence in Yenakiyevo Prison no. 52;

– Mr Sergiy Yakovych Gomenyuk, the third applicant, born in 1967 and released from serving a twelve year sentence that was imposed on him for committing various criminal acts;

– Mr Gennadiy Yuriyovych Druzenko, the fourth applicant, born in 1962 and released from serving his sentence in Zamkova Prison in November 2003;

– Mr N.N. Martov, the fifth applicant, born in 1949, released from serving his sentence in 2004;

– Mr Salov, the sixth applicant, born in 1940, released from serving his sentence in December 2001 and deceased in 2004;

1. The case was initially known as *Druzenko and Others v. Ukraine* ((dec.), nos. 17674/02 and 39081/02, 15 January 2007). However, its name was changed as the first applicant, Mr Druzenko, failed to pursue his application.

2. Rectified on 31 August 2010: the former text referred to “Vasyl.”

- Mr Litvinov, the seventh applicant, born in 1962, serving a twenty year sentence in Zamkova Prison;
- Mr A.I. Mironov, the eighth applicant, born in 1962, serving a seven year sentence in Zamkova Prison;
- Mr V.V. Kulik, the ninth applicant, born in 1968, serving a ten year sentence in Zamkova Prison;
- Mr V.N. Kuzmenko, the tenth applicant, detained pending pre-trial investigation at the SIZO of Lugansk;
- Mr O.A. Kiselev, the eleventh applicant, serving his sentence in Berdychiv Prison no. 70;
- Mr Oleg Didenko, the twelfth applicant, serving his sentence in Zamkova Prison;
- Mr Leonid Shvets, the thirteenth applicant, serving his sentence in Zamkova Prison.

The first and the second applicants lodged their applications on 27 June 2001. The third and the fourth applicants lodged their applications on 24 March 2002. The remaining nine applicants lodged their applications on various dates from 27 June 2001 to 24 March 2002.

2. All of the applicants were initially represented before the Court by Mr Gennadiy Zherdev, a human rights activist from Kyiv. By their letters of authority of 17 January 2006 the first, the second and third applicants, who were granted legal aid, authorised Mr Arkadiy Bushchenko, a lawyer practising in Kharkiv, to represent them before the Court.

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

4. The applicants alleged, under Articles 3 and 13 of the Convention, that they had been ill-treated by the “Berkut” special police force while they were serving their respective sentences and that no effective investigation had been conducted into these allegations. They further complained that, throughout their detention, they had not been allowed to receive food parcels from their relatives or necessary medical treatment and assistance. Their cells had no heating, as coal was not supplied to Zamkova Prison. The food provided to the applicants and sold in the prison shops was of the lowest quality and was not suitable for consumption because it had been produced in the 1980s and 1990s. The penitentiary officers enjoyed considerable discretion in applying disciplinary sanctions to the prisoners, in particular with regard to placing them in solitary confinement or punishment cells. The applicants further complained that some of them were placed in punishment cells in order to prevent them from complaining to various national and international bodies about their torture and ill-treatment by the “Berkut” special police forces. They also alleged that they had no effective and accessible recourse against decisions to place them in solitary punishment cells. The applicants also complained of an interference with their correspondence and an unlawful infringement of their right of

individual application. In this connection they referred to Articles 8 and 34 of the Convention respectively.

5. On 15 January 2007 the Court adopted a final admissibility decision in the case and declared the applicants' complaints under Articles 3, 8, 13 and 34 admissible, under the name of *Druzenko and Others v. Ukraine* ((dec.), nos. 17674/02 and 39081/02, 15 January 2007). It also ordered the joinder of the applications nos. 17674/02 and 39081/02 (Rule 42 § 1). The Court also decided to join to the merits the Government's request to strike the complaints lodged by ten of the applicants out of the Court's list of cases and their objection as to the exhaustion of domestic remedies.

6. Given the factual dispute between the parties over the circumstances surrounding the training of special police forces in Zamkova Prison and complaints about the ill-treatment of prisoners during that training, the Court conducted an investigation pursuant to Article 38 § 1 (a) of the Convention. The Court appointed three of its Judges as Delegates, Mr Rait Maruste, Ms Renate Jaeger and Mr Volodymyr Butkevych, to take evidence from witnesses at hearings conducted in the premises of the Khmelnytsky Regional Court of Appeal, Khmelnytsky, between 25 and 27 June 2007 and to visit Zamkova Prison situated in Iziaslav on 27 June 2007.

7. The Delegates took evidence from three applicants and fifteen witnesses called by the parties and the Court. A verbatim record of the witnesses' statements to the Delegates was produced by the Registry and is included in the case file. The Delegates also visited Zamkova Prison and inspected the site and relevant documentary evidence.

8. In the course of taking of evidence at the Khmelnytsky Regional Court of Appeal, Mr Zaytsev was assisted by Mr Oleksiy Gotsul, Mr Nazar Kulchytsky and Ms Lyudmyla Shevchuk of the Secretariat of the Agent, all from the Ministry of Justice, Mr Oleksandr Kyslov and Mr Oleksiy Dvoynos from the State Department for the Enforcement of Sentences (hereafter - the "Prison Department") and Mr Ruslan Pysarenko from the Khmelnytsky Regional Prosecutor's Office.

9. The applicant's representative Mr Bushchenko, in the course of the taking of evidence, was assisted by Mrs Aigul Mukanova, a lawyer practising in Kharkiv.

10. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber 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 and made comments on the verbatim record produced by the Registry. The applicants lodged claims for just satisfaction and the respondent Government commented on them (Rule 60 §§ 1 and 4).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASES

11. The majority of the applicants were detained in Zamkova Prison, during the events the applicants complained of (see paragraph 4 above).

A. General information as to the facts of the cases

12. The facts surrounding the applicants' alleged ill-treatment by the special forces in the course of training exercises conducted by the latter on two occasions, namely 30 May 2001 and 29 January 2002, while the applicants were held in Zamkova Prison in Iziaslav of the Khmelnytsky region, the manner in which these training exercises were conducted and the investigation into the circumstances of these events are disputed by the parties.

13. The developments in the presentation of facts of the present case may be summarised as follows.

14. The applicants' allegations of the conduct of the special forces' training were denied by the Government, who in their submissions as to admissibility of applications lodged on 28 March 2006 relied on the summary presentation of the facts made by the Registry of the Court. Simultaneously they stated that special tactical trainings in Zamkova Prison on 30 May 2001 and 29 January 2002 were organised without involvement of the prisoners and did not involve the applicants (see paragraph 17 below). They further stated that there was no evidence of the applicants' ill-treatment. Presentation of facts, based on the applicants' allegations and Government's reliance on these alleged facts, appeared in the admissibility decision of 15 January 2007.

15. Before the hearing of witnesses in the case, the Government witnesses made written statements in which most of them admitted that regular searches and training were organised in Zamkova Prison on 30 May 2001 and 29 January 2002. However, they categorically denied participation of special forces in searches of the residential premises of Zamkova Prison, which were conducted with involvement of Zamkova Prison staff only. The Government witnesses mainly underlined that tactical training sessions in Zamkova Prison did not involve the prisoners and were organised as strictly internal training exercises for the Prison Department staff and involved staff only.

16. Additional facts were established by the Delegates in the course of the oral hearing before them, in the light of the oral statements made by the applicants and witnesses who appeared at the hearing. In particular, it was established that several rapid reaction units, among them Zhytomyr special rapid reaction unit of the Prison Department (hereafter – Zhytomyr special unit), were involved in the trainings organised on 30 May 2001 and

29 January 2002. Complementary factual and legal elements to the cases also came into view after the visit to Zamkova Prison on 27 June 2007 and from the post-hearing submissions made by the parties.

17. Following the oral hearing, the Government again maintained that, based on the evidence heard, special forces did not participate in the training exercise as it was prohibited for police forces to participate in such exercises involving Prison Department and for Prison Department to use such police forces. They further maintained that no special forces ever entered the residential zone of Zamkova Prison. The applicants maintained their position as to the facts.

18. Based on the above, the Court is confronted with several different versions of the facts. In particular, additional factual elements were discovered in the course of examination of the present applications and the fact-finding mission organised in the instant case. The Court will therefore describe these factual statements briefly, assess evidence gathered at each stage of the proceedings and reach its own final conclusion as to the factual circumstances of the cases.

19. The facts, as initially presented by the applicants and not contested by the Government and thus described in the admissibility decision in the case, are referred to in Section B, subsection 1 below (see paragraphs 21-25 below).

A short summary of the facts as presented by the Government is contained in Section B, subsection 2 (see paragraphs 26-31 below).

20. The witness oral evidence taken by the Court's Delegates at hearings conducted in Khmelnytsky is summarised in Annex to the judgment (see attached below), which is also referred to in Section C, subsection 1 (see paragraphs 32-33 below). Parties' comments as to the absence of particular witnesses and on the oral evidence are summarised in Section C, subsections 2 and 3 (see paragraphs 34-37 and 38-42, respectively, below), respectively.

A description of Zamkova Prison and summary of the parties' submissions as to the conditions of detention can be found in Section D, subsections 1 and 2-3, respectively (see paragraphs 43-50 below).

A summary of the documents submitted by the parties before the oral hearing (see paragraphs 52-64 below), the list of documents requested by the Court as a follow up to the oral hearing (see paragraph 65 below) and material and documentary evidence provided as a follow-up to the hearing of oral evidence (see paragraphs 66-80 and 81-83 below) are to be found in Section E, subsections 1, 2 and 3-4, respectively.

The summaries of investigations carried out by the General Prosecutor's Office (paragraphs 84-97 below), of the documentary evidence concerning the investigation by the Prison Department (see paragraph 98 below) and of the review of the complaints lodged by Mr Zherdev (see paragraphs 99-100 below) are contained in Section E, subsections 5, 6 and 7, respectively.

B. Facts as presented by the parties

1. Summary of the facts as established in the admissibility decision

21. The relevant extracts from the facts of the case as alleged by the applicants and as set out in the admissibility decision (see *Druzenko and Others v. Ukraine*, nos. 17674/02 and 39081/02, 15 January 2007) are as follows.

22. The first training exercise began at about 10 a.m. on 30 May 2001. The cells of Zamkova Prison were attacked by the “Berkut” special police force that ill-treated the applicants. These forces were supervised by the Governor of Zamkova Prison Mr Snegir and prison officers Mr Mazurenko and Mr Mazepa. They attacked about 120 prisoners and searched them. At the end of this procedure the prisoners were asked whether they had any particular complaints about the police training. In the presence of the special forces nobody was willing to complain about these actions to the Governor of Zamkova Prison.

23. Following the training exercise of 30 May 2001 several applicants sent unsuccessful complaints to the Supreme Court, the General Prosecutor's Office (the “GPO”), the Khmelnytsky Regional Prosecutor's Offices and the Prison Department about the aforementioned actions of the special forces and their alleged ill-treatment. They also raised various complaints about the conditions of their detention.

24. As to the second training exercise, the admissibility decision mentioned that it began at 11 p.m. on 28 January 2002, when fourteen cells of Zamkova Prison (cells 1-12, 19 and 29), with approximately 100 prisoners, had been attacked by the “Berkut” special police force.

25. Following this training, some of the applicants sent several unsuccessful complaints to various State authorities. In their further complaints to various authorities the applicants mentioned that heavy bodily injuries had been inflicted on them. They also complained that medical assistance had never been given to those injured, including the applicants, and that as a result of this attack the applicants Mr Litvinov, Mr Mironov, Mr Salov and Mr Kuzmenko had received injuries. The attack was supervised by a local prosecutor Mr Volkov, his assistant Mr Stasiuk and an unidentified person. In one of the replies sent to the applicants they were informed by the GPO that the Prison Department conducted a training on 29 January 2002, which was aimed at further training of staff and search for and seizure of prohibited items, such as weapons, drugs, finding escape routes, checking water, electricity and other engineering communications. The GPO stated that the applicants' complaints about their ill-treatment by “Berkut” were wholly unfounded.

2. The Government's submissions as to the facts

(a) The first and second training exercises in Zamkova Prison and the applicants' injuries

26. In their observations of 28 March 2006 on the admissibility of the case and before the decision as to the admissibility of the case (see paragraph 14 above), the Government stated that they had relied on the facts as summarised by the Registry of the Court. However, they disputed a number of factual points referred to by the applicants. In particular, they contested the description of the manner in which the training exercise was organised and submitted that none of the training sessions involved the participation of prisoners and that both training exercises were conducted outside the residential zone of Zamkova Prison.

27. The Government maintained that force had never been used against prisoners and specifically against the applicants. Moreover, they insisted that none of the applicants detained in Zamkova Prison during the training exercises and the subsequent searches on 30 May 2001 and 29 January 2002 had been injured, and that none of them had requested medical assistance or treatment.

28. The Government stated that the applicants Mr Davydov, Mr Ilchenko and Mr Gomenyuk had received relevant and timely medical treatment for their medical conditions.

29. The Government further maintained that the training exercises had been organised as part of the State's action plan to secure the effective operation of the penitentiary system, to prevent escapes from prisons, riots, the commission of criminal acts against the administration or other prisoners, etc. Such training exercises were lawful and the plans for them were approved in advance by the prosecution authorities responsible for supervising the lawfulness of the enforcement of sentences. They further upheld that a prosecutor had attended both training exercises in order to prevent possible violations of the law and to review possible complaints on the spot. He had found no violations of the law in the course of the training exercises organised on 30 May 2001 and 29 January 2002.

(b) Investigation into the events surrounding both training exercises

30. The Government stated that the applicants' complaints about inhuman conditions of detention and the use of force by a special police force, allegedly the "Berkut" unit, were duly examined by the prosecutor supervising the lawfulness of the enforcement of sentences. In particular, they stated that in 2001 there were 27 inspections conducted in Zamkova Prison, as a result of which 29 officials were subjected to different sanctions, in 2002 there were 29 inspections and 44 officials subjected to various sanctions. For instance on 13 March 2001 the Shepetivka prosecutor ordered the Governor of Zamkova Prison to review the nutritional, hygienic and other arrangements in prison as they did not comply with the domestic

law. Thus, lodging a complaint with the prosecutor's office, notwithstanding the refusals to institute criminal proceedings upon the applicants' allegations of ill-treatment, had been an effective remedy. As to the complaints raised, the Government stated that the second applicant unsuccessfully raised his complaints before the General Prosecutor's Service only on two occasions – on 10 July and 14 October 2001. As to the third applicant, he complained only to the regional prosecutor's office, but not the General Prosecutor's office. Moreover, the results of these investigations and examination of the applicants' complaints led to a finding that they were unsubstantiated. The Government further maintained that all their complaints had been adequately examined by the domestic authorities, who sent the applicants and their representative Mr Zherdev prompt and relevant replies.

31. The Government insisted that, of the first three applicants, only Mr Davydov had been placed in disciplinary detention. He was placed in disciplinary detention on 14 July 2001, and the form of punishment was solitary confinement in a SHIZO punishment cell for 15 days. They maintained that the disciplinary measures (change of severity in his regime of serving sentence to a more severe one) were imposed on the applicant twice on 29 July 2001 and 30 January 2002 on account of his refusal to reside with other prisoners and his threats to commit criminal offences.

C. Oral evidence

1. Summary of oral evidence

32. Since the facts of the case were disputed by the parties, the Court conducted an on-the-spot investigation with the assistance of the parties. In this respect, three Delegates from the Court took oral evidence between 25 and 27 June 2007 from twenty-two witnesses on the following issues:

(a) the circumstances of the applicants' ill-treatment by the special forces of the Prison Department and operation of the special forces - the applicants, witnesses proposed by the applicants (Mr V. Didenko, Mr Mikhaylenko, Mr Tishalkov, Mr Getmansky), the witness proposed by the Government (Mr Shedko)¹, Mr Leventsov² (former First Deputy Head of the Regional Prison Department), Mr Snegir³ (former Governor of Zamkova Prison) and Mr Iltiyay⁴ (First Deputy Head of the Prison Department);

(b) the investigation into the applicants' allegations of ill-treatment and disciplinary sanctions applied to them - the applicants, Mr Bukher⁵ (regional prosecutor), Mr Volkov⁶ (local prosecutor) and Mr V. Didenko⁷;

¹ See paragraphs 24-49 of the Annex to the judgment for each of the summaries of oral evidence given by these witnesses.

² See paragraphs 88-94 of the Annex.

³ See paragraphs 95-101 of the Annex.

⁴ See paragraphs 102-108 of the Annex.

(c) medical treatment and assistance provided to the applicants - the applicants, Mr V. Didenko, Mr Mikhaylenko, Mr Tishalkov, Mr Shedko, Mr Getmansky¹ and Mr Bondar² (a head of Zamkova's Prison medical unit);

(d) the conditions of detention in Zamkova Prison – Mr Klipatsky, Mr Shatskiy, Mr Zlotenko, Mr Zaremskiy³ (employees of Zamkova Prison at the time of the events), the applicants, Mr V. Didenko, Mr Mikhaylenko, Mr Tishalkov, Mr Shedko and Mr Getmansky⁴.

33. A further six witnesses had been summoned but did not appear (see paragraphs 34-37 below). Four of these witnesses had previously been employed by the Prison Department. In respect of their absence the Government submitted, in the course of the hearing, that since these absent witnesses had retired and were no longer employed by the State, the Government were unable to identify their whereabouts. All of the witnesses questioned by the Delegates gave preliminary written witness statements, either personally or through their representatives, and these statements were admitted to the case file. A summary of evidence given by the witnesses can be found in the Annex to the judgment.

2. Absent witnesses

(a) Absence of Mr Druzenko (the fourth applicant)

34. The Government stated that they had sent the summons to the address mentioned, which had been the address of the applicants' representative, Mr Bushchenko. According to the information initially supplied by Mr Bushchenko this applicant was under Government control as he was held in SIZO no. 21 of Odessa. Mr Bushchenko stated that he had the last contacts with the applicant via the address of that detention facility. He had had no further contacts with the applicant and stated that he did not know the exact address of the applicant and had unsuccessfully tried to contact him by phone and by mail. The Government provided no information as to where the applicant was after his last contacts with Mr Bushchenko via SIZO no. 21, neither did they indicate any measures undertaken by them in order to establish his whereabouts.

⁵ See paragraphs 59-63 of the Annex.

⁶ See paragraphs 64-70 of the Annex.

⁷ See paragraphs 24-30 of the Annex.

¹ See paragraphs 24-49 of the Annex.

² See paragraphs 50-58 of the Annex.

³ See paragraphs 71-87 for each of the summaries.

⁴ See paragraphs 24-49 of the Annex to the judgment for each of the summaries of oral evidence given by these witnesses.

(b) Absence of Mr Gaydamaka, Mr Mazepa, Mr Mazurenko, Mr Pylypenko and Mr Zakharov

35. Mr Kyslov, Major from the Prison Department, assisting to the Government's Agent in the course of the hearing, stated that Mr Gaydamaka's and Mr Mazurenko's whereabouts were unknown. Mr Kyslov also mentioned that these witnesses were former employees of the Prison Department and had all retired. He mentioned that he had spoken to Mr Gaydamaka and Mr Mazurenko in person before the hearing. They had received the summons to appear and had signed these summons. One of them was somewhere in the Crimea. Mr Pylypenko's and Mr Mazepa's whereabouts were not known to the Government; they were both resident somewhere in Kyiv. Mr Pylypenko was privately employed somewhere in Kyiv. They also sent the summons to him. As to Mr Zakharov, Mr Kyslov mentioned that he could not be found.

(c) The initial absence of Mr Getmansky

36. Major Kyslov initially stated that the authorities could not find one of the former prisoners of Zamkova Prison, Mr Getmansky, as his whereabouts were unknown to the Government. Mr Getmansky, after additional information had been provided by Mr Bushchenko to the Government, subsequently appeared before the Delegates.

(d) Absence of Mr Kostenko

37. Mr Bushchenko, the applicants' representative, stated that a copy of the summons had been sent to this witness, who was a former prisoner of Zamkova Prison, but the lawyer could not contact him, although he had previously confirmed that he would appear before the Delegates.

3. Parties' comments on the oral evidence

(a) The Government

38. The Government considered that due to a number of contradictions and inconsistencies (both in principle and in detail) in the testimonies, given during the interrogation by five former Zamkova Prison prisoners and by three applicants, the applicants failed to establish that they had been beaten in the Prison on 30 May 2001 and 29 January 2002. Accordingly, the applicants could not claim to be victims in respect of any ill-treatment.

39. In particular, in relation to the events of 30 May 2001, the Government maintained that:

- the first applicant's statements were inconsistent and false;
- the statements concerning the description of the uniform of the so-called special forces that conducted the search given by the first and second applicant, Mr Didenko, Mr Mikhaylenko, Mr Tishalkov and Mr Getmansky were also false and had numerous discrepancies;

- the first and the second applicants' statements that the so-called “special forces” that held the search in the residential premises of Zamkova Prison had automatic guns, contradicted the statements given by Mr Mikhaylenko and Mr Tishalkov, who remembered that the soldiers were unarmed;

- Mr Getmansky's statements as to blank shots fired from automatic gun were also untrue as well as to other details of the trainings held;

- Mr Getmansky's statements as to the third applicant's injuries were untrue and self-contradictory;

- Mr Mikhaylenko statements about ill-treatment of prisoners in the course of the training were untrue as he could not physically see anything as well as the corridor from behind the closed door to the cell;

- the contradictions in statements given by the second applicant, Mr V. Didenko and Mr Getmansky in that they knew about the training in advance against the statements given by the first applicant and Mr Tishalkov that they knew nothing about the training.

40. In relation to the witness statements given as to the events of the training held on 29 January 2002, the Government insisted that:

- the first applicant's statements as to the blank shots from automatic guns were false;

- the investigation into the applicants' complaints was conducted in compliance with the requirements of Article 3 of the Convention;

- the statements of Mr Didenko, Mr Getmansky, the first and the second applicants as to whether there were any prisoners who received injuries and their number as well as to whether medical aid was provided were also false, especially in view of the lack of medical evidence, including registers containing medical records, and witness statements given by Mr Bondar.

41. The Government concluded that the inconsistent statements as to the presence of the special forces within the residential area, ill-treatment of the prisoners by these so-called special forces and their beatings by these forces and lack of medical treatment and assistance provided to the applicants and other prisoners, clearly showed that all of these statements were false. In their view the only statements that were true, consistent and logical and therefore credible were those given by Mr Shedko, a witness proposed by the Government and a former prisoner of Zamkova Prison. They concluded that there was no evidence established in the case that would prove that there had been any violation of the provisions of the Convention.

(b) The applicants

42. The applicants disagreed with the Government's comments and noted that the discrepancies, if there were any, in the statements given by the applicants and the witnesses-prisoners related only to minor details of the events and did not undermine the overall credibility of the applicants' and their witnesses' statements during the fact-finding mission of the Court in June 2007.

D. Description and conditions of detention in Zamkova Prison

1. Description of Zamkova Prison no. 58

43. Zamkova Prison, where the applicants were held, is a high security prison (*максимального рівня безпеки*) mainly holding male prisoners sentenced to life imprisonment or long term sentences for grave criminal acts. It comprised two main separated from one another guarded areas – residential area and the industrial area. Residential area included *inter alia* the following main buildings:

- administrative area, including headquarters, medical and security units and laundry;
- high security sector, containing prison for prisoners sentenced to life and walking yards for those prisoners;
- prison shop, canteen, boiler, mini-bakery and the recreation club for the prisoners;
- historical building of former Bernardine monastery built in 1610 (former church of the Roman Catholic order), called by the prisoners the Monastyr (*Монастир*) or the Cloister, comprising high level security wing and security, re-socialisation, quarantine, diagnosis and allocation cells;
- disciplinary premises building, containing isolation wards of different regimes of detention (which included isolation ward cells (*карцери*), DIZO (ДІЗО) or disciplinary cells and punishment cells or SHIZO (ШІЗО)), and solitary confinement cells (ОК (*одиначні камери*) or PKT (*приміщення камерного типу*) cells, so-called separated solitary confinement cells or cell-type premises).

Industrial area included *inter alia* the following main sites:

- checkpoint (КПП; *КПП або контрольно-пропускний пункт*) and auto transport gates;
- four construction areas, carbon-dioxide station and industrial departments nos. 1 and 2;
- local household department and greenhouse;
- wood and joinery workshops in workshop no. 1.

2. The Government's submissions

44. According to the Government's submissions, in 2001-2002 there were 600 prisoners in Zamkova Prison, for a total area of 1,845.7 m² of cell space (residential space, excluding prisoners' communal areas). Thus, the normal cell space per prisoner was 3.07 m², which was not less than the 2.5 m² per prisoner provided for by law at the material time.

45. In particular, there were 230 prisoners held in the severe prison detention regime (TU unit of the Prison; *режим тюремного ув'язнення*), which had 684.5 m² of cell space, thus 2.97 m² per prisoner.

46. About 130 prisoners were held in cell-type unit of the Prison (KU unit or cell-type prison premises for multiple prisoners; *режим камерного утримання*), having 434.1 m² of cell space, thus 3.3 m² per person.

47. There were also 240 persons held in prison dormitories, with a total space of 727.1 m² and thus 3.02 m² per prisoner.

48. As to disciplinary and punishment cells, Zamkova Prison also had 12 SHIZO or punishment cells (having 55.2 m² of cell space for 12 prisoners), OK cells or separated single occupancy cells and PKT (having 285.7 m² of cell space for a total of 58 prisoners).

3. The applicants' submissions

49. The applicants maintained that they were held in overcrowded cells, with approximately 3 m² of space per prisoner. According to the applicants, their places of detention had no heating on account of shortage of coal, which was allegedly not delivered to Zamkova Prison. The food provided to the applicants and sold in the shops was of the lowest quality and was no longer consumable, as it had been produced in the 1980s and 1990s.

50. The applicants complained that throughout their detention they were not allowed to receive food parcels from their relatives or obtain medical treatment. The penitentiary officers enjoyed wide discretion in applying disciplinary sanctions to prisoners, in particular with regard to placing them in solitary confinement.

E. Documents submitted by the parties

51. The parties submitted various documents concerning the training exercises conducted on 30 May 2001 and 29 January 2002. The documents, regulations and extracts from them, submitted by the parties before and after the hearing, which are relevant to the case, are briefly summarised below.

1. The Training Plans Approved by the Regional Prison Department and by the Governor of Zamkova Prison

(a) The training plan adopted by the Regional Prison Department on 25 May 2001 (Plan no. 1)

52. The Training Plan “On the actions of Penitentiaries' administrations, in cooperation with the special forces of the Prison Department and rapid reaction units from the regional penitentiary institutions, for the purpose of neutralising a situation in which criminals had taken hostages and conducting a general search of the premises occupied by the prisoners in the residential zone” (hereafter – “Plan no. 1”), related to the first training exercise held on 30 May 2001 in Zamkova Prison, had been approved on 25 May 2001 by the Head of the Khmelnytsky Regional Prison Department and the Prosecutor in Khmelnytsky Regional Prosecutor's Office responsible for supervising the lawfulness of the enforcement of sentences.

53. The following units were included in the general training exercise: personnel from Zamkova Prison, the Zhytomyr special unit and the rapid reaction units of Penitentiaries nos. 31, 58 and 98. One of the aims of the training exercise, as set out in the plan, was to train the personnel of Zamkova Prison and the rapid reaction units to conduct searches in the premises occupied by the prisoners and to search the prisoners.

54. The special equipment to be used included: weapons (*зброя*), special restraining equipment (*спеціальні засоби*), personal protection equipment (*засоби індивідуального захисту*), service dogs (*службові собаки*), motor transport, action plans for extraordinary circumstances and layout diagrams.

55. Plan no. 1 contained information on the operative circumstances (*оперативна обстановка*) in the Ukrainian penitentiary system as a whole and in the region's penitentiaries; these were considered to be problematic. The information indicated that the penitentiaries in the region were generally overcrowded, which impeded the effective enforcement of sentences. Additionally, it was stated that searches for prohibited items in these penitentiaries had become less effective.

The training was to be conducted in four stages:

- from 5 a.m. to 8 a.m., a general meeting of the training exercise participants in the Prison staff and prisoners' club;
- from 8 a.m. to 10 a.m., entry of the joint detachment into the Prison (*зона охоронюваного об'єкту*), blocking of isolated sections within the Prison and conduct of a selective general search in the isolated departments of the Prison;
- from 10 a.m. to 11.30 a.m., conduct of an operation to free “hostages”, by the special forces and rapid reaction groups;
- from 11.30 a.m. to 12.30 a.m., a general meeting of all participants in the Prison staff and prisoners' club, discussion of the training exercise and general conclusions as to its conduct.

(b) The Training Plan (Plan no. 2) adopted by the First Deputy Head of the Regional Prison Department (in relation to the first training exercise)

56. According to the Scenario “On the conduct of the practical exercise in Iziaslav Prison no. 31 and Zamkova Prison no. 58” (hereafter “Plan no. 2”), which was adopted on 30 May 2001, the main purpose of the search was to provide the special unit with a practical opportunity to manage the personnel of the penitentiary and the rapid reaction groups in extraordinary circumstances. The training exercise involved participation of groups responsible for blocking, documentation, medical assistance, convoy and searches, and special and reserve groups. The total number of staff involved was 231, including 18 officers from the special unit. There were also officers from the rapid reaction units of Zamkova Prison, Iziaslav Prison no. 31 and Shepetivka Prison no. 98. The special unit used 4 automatic guns, 4 handguns, firecrackers. Their equipment included helmets, flak jackets, rubber truncheons, teargas (*черемуха*) and handcuffs.

The officers from the other units wore helmets (*каска з забраном*) or motor helmets, flak jackets, and carried shields, rubber truncheons, teargas and handcuffs. The units also had 3 special vehicles, 10 guard dogs and 2 video cameras. After the training exercise on liberating hostages, the special unit was to leave for its usual base.

(c) The Training Plan (Plan no. 3) adopted by the Governor of Zamkova Prison (in relation to the first training exercise)

57. According to the Plan for the conduct of the general search in Zamkova Prison (hereinafter – “Plan no. 3”), to be held on 30 May 2001, the search was to start at 8 a.m. and finish at 12 noon. A total of 76 members of staff from Zamkova Prison were to be involved in the general search. The personnel involved in the search were divided into nine mixed groups, with different head officers who were conducting a general search in both the residential and industrial zones of Zamkova Prison. The majority of the staff in these groups participated in searching both the residential and industrial zones.

58. The premises subject to search were the following: workshop no. 1 (group no. 1); departments nos. 1 and 2 (groups nos. 2 and 3); sections nos. 1, 4, 7, Monastyr cells nos. 1, 2, 3, 4 (group no. 4); canteen, medical unit, boiler-house, sanitary section, building premises (group no. 5); cells belonging to the severe regime of detention - SHIZO (punishment cells), OK (separated solitary confinement cells), TU (severe regime of prison detention); prison detention in general detention regime area (group no. 7); departments nos. 2 and 3 (group no. 8) and departments nos. 5, 6 and 8 (group no. 9). The equipment mentioned in Plan no. 3 included 30 immobilising rods, 10 wooden hammers and 2 “Gamma” metal detectors.

(d) The Training Plan (Plan no. 4), adopted by the Regional Prison Department on 26 January 2002 in relation to the second training exercise

59. The Training Plan “On the conduct of tactical and specialised training with the personnel of Penitentiaries nos. 31 and 58 and rapid reaction groups from the penitentiaries in the region for the simulated purpose of combating group disobedience and mass disturbance” (hereinafter – “Plan no. 4”), relating to the second training exercise in Zamkova Prison on 29 January 2002, was approved on 26 January 2002 by the Head of the Khmelnytsky Regional Prison Department and the prosecutor in Khmelnytsky Regional Prosecutor's Office supervising the lawfulness of enforcement of sentences.

60. The following units were involved in this training simulating mass disobedience: personnel from Penitentiaries nos. 31 and 58, rapid reaction units from Penitentiaries nos. 31, 58, 78, 98 and SIZO-29 (all in the Khmelnytsky Region). One of the aims of the training was to train Zamkova Prison's personnel and the rapid reaction units to conduct searches of the

premises occupied by prisoners and searching the prisoners themselves. In particular, the search of prisoners and of the residential area was mentioned as one of the major training objectives.

61. The special equipment to be used included: weapons, special restraining equipment, personal protection equipment and active protection equipment (*засоби активної оборони*), security dogs, vehicles, plans of action in extraordinary circumstances and layout diagrams. The training plans contained information on the operative circumstances in Zamkova Prison. This information indicated a substantial deterioration in the criminal propensities and socio-demographic composition of the prisoners in Zamkova Prison, which necessitated adequate measures. In particular, the following information on the composition of the prisoners was given to the training participants: many prisoners were convicted for serious crimes, including 65 prisoners who committed crimes while serving their sentences; 15 prisoners were sentenced for banditry; 4 for premeditated murder; 2 persons were likely to attack penitentiary staff; 18 persons were likely to attempt to escape; 12 had been sentenced for drug use, 60 persons were likely to engage in single-sex intercourse and equivalent activities and there were 22 persons with psychological disorders.

The training was to be conducted in four stages:

- from 6 a.m. to 8.30 a.m., general meeting of the training participants in the Penitentiary club;
- from 9 a.m. to 11 a.m., training of the joint detachment within the territory of the Prison, for the purpose of terminating group disobedience and mass riots;
- from 11 a.m. to 3 p.m., entry of the joint detachment into the Prison, blocking of isolated sections within the Penitentiary, a general selective search in the isolated sections and cells of Zamkova Prison;
- from 3 p.m. to 4 p.m., general meeting of the training participants at the Prison staff and prisoners' club, discussion of the training and general conclusions as to its conduct; instructions on further movement of the rapid reaction groups.

(e) The Training Plan (Plan no. 5) adopted by the Head of the Regional Prison Department (in relation to the second training exercise)

62. According to this Plan (hereinafter, “Plan no. 5”) the training exercise to be held on 29 January 2002 had the general purpose of providing for a general search of the residential and industrial zones and of the prisoners, and applying measures to strengthen law and order in the penitentiary. The training exercise involved participation of groups responsible for blocking, documenting, medical assistance, convoy, search, and the special and reserve groups. The total number of staff involved was 151. There were also officers from the rapid reaction units of Zamkova Prison, Iziaslav Prison no. 31, Shepetivka Prison no. 98, Prison no. 78 and SIZO (pre-trial detention centre) no. 29 of Khmelnytsky Region. The

special taskforce unit was to use 3 automatic guns (AK-74), firecrackers, signal rockets. The equipment was to include helmets or motor helmets and shields, flak jackets, teargas (*мерен-4*), rubber truncheons, handcuffs, etc. The units also had 1 special vehicle, 6 guard dogs and 2 photo cameras. The blocking group was equipped with steel helmets and weapons with blank ammunition; the breaking-up group had shields, “Sphere” helmets, rubber truncheons and flak jackets; the protection group had “Sphere” helmets, shields and rubber truncheons; the patrol groups were equipped with weapons without ammunition; the special measures group had rubber truncheons, gas masks and teargas; the extraction group had rubber truncheons, flak jackets and helmets; the convoy group had flak jackets, “Sphere” helmets and rubber truncheons; the documenting group was equipped with photo and video equipment and the reserve group had weapons, gas masks and steel helmets. Each group had specific tasks. All of the groups would participate in the general search in the Prison, and the blocking group was to block the isolated areas of the Prison before the search began.

(f) The Training Plan (Plan no. 6) adopted by the Governor of Zamkova Prison (in relation to the second training exercise)

63. According to the Plan of conduct of the general search in Zamkova Prison (hereafter – “Plan no. 6”), to be held on 29 January 2002, the search had to start at 9 a.m. and finish at 12 noon. A total of 29 members of staff of Zamkova Prison were to be involved in the general search. The aim of the search was to find prohibited items and to identify preparations for escape, preparatory actions for the commission of criminal offences, etc. The personnel involved in the search were divided into three mixed groups, with different commanding officers who were to conduct a general search in the residential zone of Zamkova Prison.

64. The premises involved were: the SHIZO, PKT, OK, TU in the severe detention regime area (group no. 1); cells nos. 19 and 29 in departments nos. 5 and 8 (group no. 2); departments nos. 9 and 10 (group no. 3) in the prison section of the general detention regime area. The equipment mentioned in Plan no. 6 included 10 wooden hammers and 2 “Gamma” metal detectors.

2. The Court's request for additional documentary evidence

65. On 14 August 2007 the Court requested the Government to provide the following additional documentary evidence:

“... – copies of the relevant legal regulations (regardless of the issuing authority) governing searches at prison, including rules of conduct for prison staff and documents setting out the rights and duties of the prisoners during searches;

– regulations concerning the establishment, training and operation of the special forces or so-called “rapid reaction units” of the State Department for Enforcement of

Sentences (decree of 27 April 2000), referred to by Mr V.S. Leventsov and Mr M.P. Iltiy in their statements given on 26 and 27 June 2007, respectively;

- a copy of the decree no. 193дкк of the State Department for Enforcement of Sentences dated 30 August 2002 (registered in the Ministry of Justice on 20 September 2002 no. 771/7059) concerning processing of prisoners' correspondence;

- regulations dealing with the storage, archiving and destruction of registers of medical records, registers of complaints lodged by the prisoners and registers of correspondence;

- a copy of the report of the internal investigation undertaken by the State Department for Enforcement of Sentences prepared by MM V.S. Leventsov and M.P. Iltiy for examination by the First Deputy Head of the State Department for Enforcement of Sentences Mr O.B. Ptashynsky, referred to on 27 June 2007 by Mr M.P. Iltiy;

- a copy of the reports as to the “operative situation” in Iziaslav Zamkova Prison from January 2001 to December 2002 (mentioned in their statements on 26 and 27 June 2007, respectively, by MM Leventsov and Snegir) and those reports that were provided to staff of the State Department for Enforcement of Sentences before the searches on 30 May 2001 and 29 January 2002;

- a list of the equipment and ammunition provided for use of the staff of the State Department for Enforcement of Sentences in the course of the training exercises on 30 May 2001 and 29 January 2002, together with copies of any internal decisions relating thereto;

- the 2003 report of the Human Rights Ombudsman of the Parliament of Ukraine so far as it deals with special training units in prisons;

- a video-recording of the trainings by the special forces held on 30 May 2001 and 29 January 2002, mentioned by witnesses Mr O. Tishalkov, Mr V.S. Leventsov and Mr M.P. Iltiy, respectively on 25, 26 and 27 June 2007;

- copies of Mr Volkov's work records from December 2001 to February 2002, showing dates of and reasons for absence.

Further to the on-site inspection of the prison, your Government are invited to provide written information as to the size of cells visited by the delegation (including a plan), together with copies of the registers showing the prisoners in those cells on 30 May 2001, 29 January 2002 and on 27 June 2007. ...”

3. *Material evidence submitted by the Government*

66. On 28 September 2007 the Government replied that it could provide the Court only with the following documents and further evidence, which may be summarised as follows.

(a) **Instruction “On organising supervision of prisoners serving their sentences in correctional labour colonies”, approved by the Prison Department Order no. 70 on 27 April 2000 (as submitted by the Government)**

67. The Instruction establishes, *inter alia*, the procedure for searching prisoners and premises and the territories of residential and industrial zones inside Correctional Labour Colonies (hereafter “CLC”).

68. According to paragraph 74 of the Instruction, searches of prisoners and premises are to be conducted on the basis of a schedule approved by the Prison Governor. The search is to be conducted with the participation of the personnel of the CLC and, where necessary, the special units for action in extraordinary circumstances, additional forces from other penitentiaries and bodies in the system for the enforcement of sentences. Searches and inspections are to involve technical equipment and, if necessary, specially trained dogs. It is prohibited to damage clothes, property, prison equipment and other objects in the course of the searches or inspections (paragraph 75).

69. Personal searches of the prisoners may be “full” (that is, with the removal of all clothing) or “partial” (without the removal of clothing). Personal searches are to be conducted by a person of the same sex as the prisoner. The staff members who conduct a search must act conscientiously and reasonably, comply with the security measures and prevent any kind of inhuman treatment of the searched prisoner (paragraph 76 of the Instruction).

70. According to paragraph 77 of the Instruction, a full search of a prisoner is to be carried out when he or she arrives at the CLC and on his or her departure from it; on placement in a SHIZO, DIZO or PKT/OK, and on leaving these premises. It is also to be conducted after the apprehension of a prisoner for attempted escape or other offences, before a long-term meeting with third parties from outside the penitentiary or after the latter's completion, if necessary. Inmates who are subjected to a full search are asked to hand in any prohibited items for storage, and must then gradually remove their hat, clothes, shoes and undergarments. After these demands are complied with, the separate parts of the prisoner's body and his clothes and shoes are inspected according to the standard procedure. Full searches are to be carried out in specialised premises or rooms near the Prison entry checkpoint (KPP), and also in the SHIZO and PKT/OK separated cells for multiple and single occupancy.

71. According to paragraph 78, partial searches are to be conducted when prisoners leave for work and return from it, or in other specially designated places.

72. Under paragraph 79, a prisoner who violates the regime or commits an offence is to raise his hands above his head and stretch out his legs. The person searching him is to stay behind him. In certain instances, where the prisoner is likely to possess weapons, he is to be invited to lean against the wall in front and stretch out his legs. The search is to be conducted by at least two staff members for security reasons.

73. Paragraph 80 of the Instruction provides that a search of the premises and inspection of the territory of the residential and industrial zones is to be conducted in isolated sectors and workshops, according to the timetable envisaged by the calendar of searches. Every section shall be searched as required, but not less than at least once a month. Searches are to be supervised by the first deputy head of the CLC with responsibility for

supervision and security, or by the head of the supervision and security division, on the instructions of the first deputy.

74. According to paragraph 81 of the Instruction, a general search shall be conducted on the basis of a decision by the Prison Governor and under the latter's supervision, no less than once a month, and also in the event of complications in the "operative situation" in the CLC. During a general search all prisoners and the territory of the residential and industrial zone, and all premises and installations on their territory, are to be inspected. A search is conducted on the basis of the plan prepared jointly by the first deputy Governor with responsibility for supervision and security and the head of the supervision and security division.

75. In the course of a general search prisoners must be gathered in special separate premises and subjected to an individual search. The residential premises must also be searched, in the usual manner; they are searched with the participation of the head of the social and psychological department. Furniture and items contained in it, sleeping places, including linen, pillows and mattresses, and various personal objects shall also be inspected. The walls, floor, windows and ceiling are to be inspected for secret storage places and manhole hatches. The residential and administrative buildings, their interior and exterior, the cellars and garrets, different communication channels, barriers, toilets, sports grounds, underground tunnels and other places where there could be possible secret storage areas are also to be inspected. Every cell in the premises where the SHIZO and cell-type premises are situated (i.e. PKT, (OK)) shall be inspected meticulously. All walls, ceilings and floors are to be knocked on for the purpose of finding secret storage areas and passages. The grating shall be inspected too, with special attention paid to cuts, score marks and other evidence of deterioration. The operational capacity of the doors, bolts and locks, and the reliability of the fixings of beds, tables and other furniture shall also be checked. Inmates held in those cells shall be subjected to a full personal search and their clothing shall also be inspected. The heads of the search groups are to report to the officer supervising the search, and general statements are to be drawn upon the basis of the search, signed by the supervising officer and the heads of the search groups. This statement is to be forwarded to the supervision and security division.

76. Addendum no. 9 to the Instruction sets out the Action Plan for the personnel of a penitentiary institution in the event of extraordinary circumstances. In particular, it describes the actions to be taken by the special forces in the event of extraordinary circumstances, such as the taking of hostages or mass disobedience. It further establishes the procedure for acting in such circumstances and provides for the division of the special forces into groups for reinforced supervision and security, blocking groups, extraction groups, documenting groups, a group for the use of the special restraining equipment and a reserve team (in the event of mass disobedience, provision is also made for the participation of a medical

assistance group and a patrol group). The addendum also envisaged the procedure for use of the special restraining equipment (for instance, it is prohibited to strike the head or face with a truncheon) and weapons (to be used only in exceptional circumstances, where it is impossible to fulfil the task by other means).

(b) Order no. 75 of the Prison Department of 27 April 2000 “On the establishment of special units within the system for the enforcement of sentences, for action in extraordinary circumstances, approval of personnel and the Regulations on these units”

77. The Order established the special units within the Prison Department. It remained in force until 8 September 2003, when a new Prison Department Order, no. 163, “On the establishment of special units within the system for the enforcement of criminal sentences, approval of their composition and regulations on them” was adopted (it was subsequently annulled on 10 October 2005 by Order no. 167). It envisaged the creation of an inter-regional special unit for action in extraordinary circumstances within the Zhytomyr Regional Department for the Enforcement of Sentences. This unit's scope of territorial jurisdiction extended to Khmelnytsky region and the penitentiaries in this region (paragraph 6 of the Order). The Order also provided for the creation of rapid reaction units, consisting of 10-15 most qualified officers in the penitentiary institutions (paragraph 9 of the Order). The heads of the special units were ordered to cooperate with the rapid reaction units of the penitentiaries within their territorial jurisdiction.

78. According to the Regulation “On the special units of the system for the enforcement of sentences for action in extraordinary circumstances in the regional departments of the State Department for the Enforcement of Sentences” (Addendum no. 1), the purpose of these units was to react to extraordinary situations in penitentiaries, such as riots and mass disobediences, and to react appropriately to changes in the “operative circumstances” in the jurisdiction to which such units belonged (paragraph 1.1). The personnel of these units were to be selected from persons who possessed the required physical and psychological qualities and were able to act in extreme situations (paragraph 1.9). The special unit had a special uniform and shoes, special restraining equipment and other equipment (paragraph 1.14) for the exercise of their tasks and duties. One of the group's objectives was to take preventive measures in order to counteract mass disobedience and offences in prisons (paragraph 2.5).

79. According to paragraphs 3.1-3.5 of the Regulation, the heads of the Regional Prison Departments were allowed to make proposals as to the use of these units in the penitentiary institutions (*планове відпрацювання установ*). In particular, the department head in the region responsible for the unit was to establish the unit's calendar of activities on a six-monthly basis. The unit acts on the basis of specially developed plans approved by

the head of the regional department and the respective prosecutor. The Regulation stipulated that the unit officers' actions should comply with the law and should be based on humane treatment of prisoners.

80. By virtue of Addendum no. 2 to the Order, Zhytomyr special unit was composed as follows: the commander of the unit (a major), four officers (two captains and a senior lieutenant), two heads of detachments (senior warrant officers) and eighteen warrant officers. The total number of unit officers was twenty five.

4. Documentary evidence on the training exercises, submitted by the Prison Department

81. According to the report by Mr S.O. Zlotenko, head of the guarding, supervision and security division, submitted to the Head of the State Prison Department on 6 September 2007, there was no video recording of the training exercises conducted on 30 May 2001 and 29 January 2002.

82. According to the information note produced by the deputy Governor of Zamkova Prison, dated 27 June 2007, cells nos. 2, 8 and 29 in the Monastyr measured 30.8 m², 22.8 m² and 35 m², respectively.

83. According to the information note prepared by the acting head of the documentation service in Khmelnytsky Regional Prison Department, the documents relating to the “operative situation” in Zamkova Prison and files relating to these issues have been destroyed, according to Order no. 21 of the State Prison Department of 4 February 2004 “On approval of the list of documents created in the course of the operation of penitentiary bodies and institutions of the State service for the enforcement of sentences, designating the terms of storage”.

5. The investigation carried out by the General Prosecutor's Office

84. The documentary evidence provided by the Government concerning the investigation into the applicants' complaints may be summarised as follows.

85. On 17 August 2001 Prosecutor Volkov, in response to the complaints lodged by the applicants, replied that no violations of the law had been found on the basis of the allegations of ill-treatment.

86. On 14, 20 and 26 September 2001 the head of the division within the General Prosecutor's Office responsible for supervising the enforcement of sentences in criminal cases, after examining the complaints lodged by Mr G. Zherdev alleging ill-treatment of the applicants by the “Berkut” special police force, requested the First Deputy Prosecutor of the Khmelnytsky Region to conduct an investigation into them.

87. On 24 September and 1 October 2001 an assistant to Khmelnytsky Regional Prosecutor supervising the enforcement of sentences in criminal cases, requested Mr Volkov, the Shepetivka Deputy Prosecutor supervising

compliance with the law in the enforcement of criminal sentences, to conduct an investigation into the complaints lodged by Mr Zherdev.

88. On 9 November 2001 Mr Volkov replied to Mr Ilchenko's complaints about the conditions of detention and stated that the conditions in question complied with the law.

89. On 12 April and 13 May 2002 respectively the head of the division in the General Prosecutor's Office supervising the enforcement of sentences in criminal cases and the Deputy Prosecutor General requested the Khmelnytsky Regional Prosecutor's Office to conduct an investigation into the complaints lodged by Mr Zherdev. These complaints were transferred to Mr Bukher, the senior assistant prosecutor of Khmelnytsky Regional Prosecutor's Office, who was responsible for supervising the enforcement of sentences in criminal cases and had been ordered to investigate the matter.

90. On 7 May 2002 Mr Stasiuk, assistant to the Shepetivka Prosecutor, acting on orders from Mr Bukher, questioned the prisoners detained in cells nos. 8 and 29 (Mr Ilchenko, Mr Kulik and Mr Litvinov), who stated that they had been beaten by members of the special forces in the course of the search conducted at the Prison on 29 January 2002. The other prisoners who were questioned stated that no physical force had ever been applied to any prisoner in the course of the search and that nobody from cell no. 29 had ever been beaten. Mr Stasiuk also questioned Zamkova Prison personnel, including Mr Zakharov, Mr Mazurenko, Mr Chudyuk, Mr Gaydamaka, Mr Volkov and Mr Bondar. They all confirmed that no force had ever been used against the prisoners. Mr Bondar stated that no medical assistance had been requested by the prisoners after the second training exercise and that no one had received any injuries. Mr Bondar's statement mentioned that Mr Kulik suffered from miositis of the spine muscles (*міозит м'язів спини*) and osteochondrosis (*остеохондроз*).

91. On 10 May 2002 Mr Volkov, the Shepetivka Prosecutor, ordered the Governor of Zamkova Prison to apply disciplinary measures to the prisoners Mr Kulyk, Mr Lytvynov and Mr Ilchenko for their failure to comply with the lawful procedure for submitting complaints. In particular, he alleged that they had violated Article 44 of the Code for the Enforcement of Sentences, and Rules 17.2 and 33.1 of the Penitentiary Internal Rules.

92. On 29 May 2002 Mr Bukher, the senior assistant prosecutor of the Khmelnytsky Regional Prosecutor's Office, questioned Mr Ilchenko in person. In his explanations, Mr Ilchenko again asserted that he had been beaten by the special forces. He also alleged that his complaints had not been forwarded by the staff of Zamkova Prison and that Mr Gaydamaka and Mr Boyko had tried to force him to withdraw his complaints. Mr Ilchenko also stated that prosecutor Volkov and his assistant wanted him to withdraw the complaints lodged. Additionally, he thought that they were in fact covering up for violations of the law in Zamkova Prison.

93. On 11 June 2002 Mr Bukher issued a resolution, by which the Khmelnytsky Regional Prosecutor's Office refused to institute criminal

proceedings, finding no unlawfulness on the basis of the applicants' complaints. In particular, it found that the applicants Mr Ilchenko and Mr Davydov had not been ill-treated by the "Berkut" special police forces, which had allegedly trained in Zamkova Prison and conducted a search of the premises and prisoners. According to the text of this resolution:

"... Mr Zherdev, repeatedly, without verifying truthfulness of information, had sent complaints [on behalf of prisoners Mr Ilchenko, Mr Kulyk, Mr Druzenko, Mr Lytvynov and Mr Myronov] to various State and non-governmental organisations about violation of the prisoners' rights, ... including unlawful use of force by the prison's employees, the officers of the special forces, poor conditions of detention ... He received this information from these prisoners, contrary to the procedure established by law.

The following had been established in the course of investigation, based on the personal files of the prisoners, materials of the previous inspections by the special prosecutor's office and other information.

... On 29 January 2002 the employees of Zamkova Prison, and not "Berkut" effectuated previously planned ... measures aimed at finding underground tunnels, prohibited items, means for escape, [they] inspected technical and engineering security means, in presence of the Shepetivka prosecutor ... and no complaints were made.

Inmates, who at the same period of time stayed in the same cell with Mr Davydov and Mr Ilchenko have not confirmed infliction of physical injuries in their explanations, other unlawful acts on the part of [Prison] officials.

... the prisoners were provided with residential space of 2,5 square metres, everyone having an individual sleeping place and linen, clothes and shoes according to season.

... there were no complaints about poor medical treatment ...

... there were no postal envelopes and pens available in the Prison shop ..."

94. On 15 June 2002 the Khmelnytsky Regional Prosecutor informed the Deputy Prosecutor General, who was reviewing the complaints by Mr Zherdev, that an investigation into these complaints revealed no evidence of ill-treatment of the applicants. Mr Bukher sent letters to Mr Zherdev and prisoners Mr Ilchenko, Mr Druzenko, Mr Mironov, Mr Lytvynov and Mr Kulyk, informing them of his resolution refusing to initiate criminal proceedings.

95. On 11 July 2002 the Deputy Prosecutor General again instructed the Khmelnytsky Regional Prosecutor to conduct an investigation into these complaints. In particular, the instruction referred to a joint investigation into the complaints by the regional prosecution service, Prison Department officials, and medical staff from the region and representatives of the Ombudsperson. The instruction also stated that it was necessary to investigate other matters, such as whether the applicants had applied for medical assistance and whether they received it, and whether they had complained to the prosecution service.

96. On 24 July 2002 Mr Yantselovsky, a senior assistant to the Khmelnytsky Regional Prosecutor, questioned sixteen persons, including

prisoners and personnel of Zamkova Prison, who all stated that no physical force had been applied to the prisoners in the course of the search conducted on 29 January 2002. Mr Ilchenko and a prisoner Mr Pavlysyk refused to give evidence concerning the complaints.

97. On 6 August 2002 the Acting Prosecutor of the Khmelnytsky Region informed the Deputy Prosecutor General that Mr Zherdev's complaints were unsubstantiated. The investigation file had been transferred to the General Prosecutor's Office for examination.

6. Documentary evidence concerning the investigation by the Prison Department

98. On 15 October 2001 Mr S.I. Skokov, the head of the department for educational, social and psychological work with prisoners, informed the First Deputy Head of the State Prison Department that the applicants' complaints were ungrounded. This information was provided in reply to request from the First Deputy Head of the State Prison Department and on the basis of the investigation report produced by Lieutenant Danovsky, an inspector from the department for educational, social and psychological work with prisoners, who inspected Zamkova Prison in person from 3 to 4 October 2001. The report contained no review of medical evidence and was largely based on the fact that training of 30 May 2001 was conducted lawfully as it was based on a lawful decision to conduct this training and was supervised by the special prosecutor Volkov. The report also referred to the first and second applicants' personal files. It mentioned that the first and second applicants, were dangerous criminals and the first applicant (Mr Davydov) was complaining frequently to the authorities.

7. Review of the complaints lodged by Mr Zherdev with the Governor of Zamkova Prison

99. From August 2002 to 4 May 2006 the applicants' then representative Mr Zherdev unsuccessfully complained to various authorities, including the General Prosecutor's Office, about various interferences with the applicants' correspondence. He also raised various issues concerning the applicants' poor conditions of detention, ill-treatment in 2002-2005 and violations of their rights.

100. On 14 April 2003 the Governor of Zamkova Prison Mr Snegir, in reply to the letter of Mr Zherdev, stated that none of the prisoners concerned (including Mr Druzenko, Mr Gomenyuk and Mr Ilchenko) had ever requested an application form from him to institute proceedings before the European Court of Human Rights. Furthermore, he stated that the prisoners were serving their sentence according to the relevant law provisions and no violations were found on the basis of his complaints. He attached to his letter standard letters with statements from Mr Ilchenko, Mr Druzenko, Mr Kulyk, Mr Myronov, Mr Martov and Mr Kuzmenko, all dated 1-5 April

2003, in which they mentioned that they no longer wished to correspond with Mr Zherdev and that they had no complaints about the two training events, Zamkova Prison and its officers. He further mentioned that the prisoners Mr Ilchenko, Mr Druzenko and Mr Gomenyuk were held in single occupancy cells.

II. RELEVANT DOCUMENTS ADOPTED BY THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE

A. Recommendation No. R (82) 17 of the Committee of Ministers to the Member States concerning Custody and Treatment of Dangerous Prisoners

101. The relevant extracts from the above Recommendation, adopted by the Committee of Ministers on 24 September 1982, provide as follows:

“... Recommends the governments of member states:

1. to apply, as far as possible, ordinary prison regulations to dangerous prisoners;
2. to apply security measures only to the extent to which they are necessarily required;
3. to apply security measures in a way respectful of human dignity and rights;
4. to ensure that security measures take into account the varying requirements of different kinds of dangerousness;
5. to counteract, to the extent feasible, the possible adverse effects of reinforced security conditions;
6. to devote all necessary attention to the health problems which might result from reinforced security;
- ...
8. to have a system for regular review to ensure that time spent in reinforced security custody and level of security applied do not exceed what is required;
9. to ensure, when they exist, that reinforced security units have the appropriate number of places, staff and all necessary facilities;
10. to provide suitable training and information for all staff concerned with the custody and treatment of dangerous prisoners.”

B. The European Prison Rules (approved by Recommendation no. R(87)3 of the Committee of Ministers to the Member States)

102. The relevant extracts from Recommendation no. R (87) 3, adopted by the Committee of Ministers on 12 February 1987, provide:

“The basic principles

... 1. The deprivation of liberty shall be effected in material and moral conditions which ensure respect for human dignity and are in conformity with these rules.

... 3. The purposes of the treatment of persons in custody shall be such as to sustain their health and self-respect and, so far as the length of sentence permits, to develop their sense of responsibility and encourage those attitudes and skills that will assist them to return to society with the best chance of leading law-abiding and self-supporting lives after their release.

... 5. The protection of the individual rights of prisoners with special regard to the legality of the execution of detention measures shall be secured by means of a control carried out, according to national rules, by a judicial authority or other duly constituted body authorised to visit the prisoners and not belonging to the prison administration.

Accommodation

... 14.1. Prisoners shall normally be lodged during the night in individual cells except in cases where it is considered that there are advantages in sharing accommodation with other prisoners.

2. Where accommodation is shared it shall be occupied by prisoners suitable to associate with others in those conditions. There shall be supervision by night, in keeping with the nature of the institution.

15. The accommodation provided for prisoners, and in particular all sleeping accommodation, shall meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially the cubic content of air, a reasonable amount of space, lighting, heating and ventilation...

Medical services

26.1. At every institution there shall be available the services of at least one qualified general practitioner. The medical services should be organised in close relation with the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

2. Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be suitable for the medical care and treatment of sick prisoners, and there shall be a staff of suitably trained officers.

... 29. The medical officer shall see and examine every prisoner as soon as possible after admission and thereafter as necessary, with a particular view to the discovery of physical or mental illness and the taking of all measures necessary for medical treatment; the segregation of prisoners suspected of infectious or contagious conditions, the noting of physical or mental defects which might impede resettlement after release; and the determination of the fitness of every prisoner to work.

30.1. The medical officer shall have the care of the physical and mental health of the prisoners and shall see, under the conditions and with a frequency consistent with hospital standards, all sick prisoners, all who report illness or injury and any prisoner to whom attention is specially directed.

2. The medical officer shall report to the director whenever it is considered that a prisoner's physical or mental health has been or will be adversely affected by continued imprisonment or by any condition of imprisonment.

Discipline and punishment

33. Discipline and order shall be maintained in the interests of safe custody, ordered community life and the treatment objectives of the institution.

... 35. The following shall be provided for and determined by the law or by the regulation of the competent authority:

- a. conduct constituting a disciplinary offence;
- b. the types and duration of punishment which may be imposed;
- c. the authority competent to impose such punishment;
- d. access to and the authority of the appellate process.

36.1. No prisoner shall be punished except according to the terms of such law or regulation, and never twice for the same act.

2. Reports of misconduct shall be presented promptly to the competent authority who shall decide on them without undue delay.

3. No prisoner shall be punished unless informed of the alleged offence and given a proper opportunity of presenting a defence.

... 37. Collective punishments, corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishment shall be completely prohibited as punishments for disciplinary offences.

38.1. Punishment by disciplinary confinement and any other punishment which might have an adverse effect on the physical or mental health of the prisoner shall only be imposed if the medical officer after examination certifies in writing that the prisoner is fit to sustain it.

2. In no case may such punishment be contrary to, or depart from, the principles stated in Rule 37.

3. The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if the termination or alteration of the punishment is considered necessary on grounds of physical or mental health.

Information to, and complaints by, prisoners

41.1. Every prisoner shall on admission be provided with written information about the regulations governing the treatment of prisoners of the relevant category, the disciplinary requirements of the institution, the authorised methods of seeking information and making complaints, and all such other matters as are necessary to understand the rights and obligations of prisoners and to adapt to the life of the institution.

2. If a prisoner cannot understand the written information provided, this information shall be explained orally.

42.1. Every prisoner shall have the opportunity every day of making requests or complaints to the director of the institution or the officer authorised to act in that capacity.

2. A prisoner shall have the opportunity to talk to, or to make requests or complaints to, an inspector of prisons or to any other duly constituted authority

entitled to visit the prison without the director or other members of the staff being present. However, appeals against formal decisions may be restricted to the authorised procedures.

3. Every prisoner shall be allowed to make a request or complaint, under confidential cover, to the central prison administration, the judicial authority or other proper authorities.

4. Every request or complaint addressed or referred to a prison authority shall be promptly dealt with and replied to by this authority without undue delay.

Personnel

... 63.1. Staff of the institutions shall not use force against prisoners except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.

2. Staff shall as appropriate be given special technical training to enable them to restrain aggressive prisoners.

3. Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been fully trained in their use.

... Treatment objectives and regimes

64. Imprisonment is by the deprivation of liberty a punishment in itself. The conditions of imprisonment and the prison regimes shall not, therefore, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in this.

65. Every effort shall be made to ensure that the regimes of the institutions are designed and managed so as:

a. to ensure that the conditions of life are compatible with human dignity and acceptable standards in the community;

b. to minimise the detrimental effects of imprisonment and the differences between prison life and life at liberty which tend to diminish the self-respect or sense of personal responsibility of prisoners; ...

... 71.1. Prison work should be seen as a positive element in treatment, training and institutional management.

2. Prisoners under sentence may be required to work, subject to their physical and mental fitness as determined by the medical officer.

... Additional rules for special categories

90. Prison administrations should be guided by the provisions of the rules as a whole so far as they can appropriately and in practice be applied for the benefit of those special categories of prisoners for which additional rules are provided hereafter.”

C. Committee of Ministers Recommendation “Concerning Prison Overcrowding and Prison Population Inflation” (Appendix to Recommendation no. R (99) 22)

103. The relevant extracts from the Appendix to Recommendation no. R (99) 22 of the Committee of Ministers, adopted by the Committee of Ministers on 30 September 1999, provide:

“... II. Coping with a shortage of prison places

... 7. Where conditions of overcrowding occur, special emphasis should be placed on the precepts of human dignity, the commitment of prison administrations to apply humane and positive treatment, the full recognition of staff roles and effective modern management approaches. In conformity with the European Prison Rules, particular attention should be paid to the amount of space available to prisoners, to hygiene and sanitation, to the provision of sufficient and suitably prepared and presented food, to prisoners' health care and to the opportunity for outdoor exercise. ...”

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

A. CPT Report concerning the 1999 visit to Ukraine

104. The Report to the Government of Ukraine concerning the visit undertaken from 15 to 23 July 1999 by the CPT states that the prisoners of the Kharkiv SIZO and Prison no. 85 complained to the members of the CPT about physical violence and the destruction of personal objects by hooded officers from a special detachment (the report referred to “Spetsnaz” or special forces) which regularly intervened in Prison no. 85 (§§ 25-26, with regard to “Ill-treatment”). Physical violence had been applied to the prisoners held in disciplinary detention. The report mentioned that the Ukrainian authorities recognised the existence of a special forces operating under the auspices of the Regional Prison Department. They claimed that this unit was involved in supervisory searches in the cells. The aim had been to prevent acts contrary to the law.

B. CPT Report concerning the 2000 visit to Ukraine

105. The relevant extracts from the Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 26 September 2000 read as follows:

“... 2. Ill-treatment

62. In Vinnytsia Prison No. 176 ... Allegations were also heard concerning interventions of teams from the Regime and Protection Department; prisoners stated that they have been stripped to their underpants by members of such teams and,

sometimes, dragged out of their cell and beaten. On examination by a medical member of the delegation, one prisoner was found to have a healed whitened 6 cm long by 1 cm wide scar on his back, consistent with his allegation of having been beaten with rubber batons during the previous New Year period. Further, it was alleged that during the weekly searches, the cells were turned upside down and that, occasionally, especially at night, teams would use a Rottweiler dog to ensure that cells were rapidly cleared of their occupants.

63. The CPT recommends that the authorities at all levels (central, regional and local) deliver the clear message that all forms of ill-treatment of prisoners are not acceptable and will, if they occur, be severely punished.

Further, the CPT recommends that the Ukrainian authorities carry out a thorough enquiry into the methods used at Vinnytsia Prison No. 176 by teams from the Regime and Protection Department, during their interventions in the establishment. It would also like to be informed of the results of the enquiries initiated by the Director of Simferopol SIZO No. 15 referred to in paragraph 62, as well as of any measures subsequently taken.”

C. CPT Report concerning the 2002 visit to Ukraine

106. The relevant extracts from the Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 November to 6 December 2002 read as follows:

“... 2. Ill-treatment

89. During the 2002 visit, the delegation received no allegations of physical ill-treatment by prison staff working in Prison No. 8 and SIZO No. 21.

90. However, in early April 2003, the CPT received allegations that, following its delegation's visit to SIZO No. 21, prisoners interviewed by the delegation had been intimidated by prison staff. It was also alleged that, between 5 February and 15 March 2003, hooded prison staff members had carried out searches in the prison, during which prisoners had been beaten because they had protested at the way in which the searches were being carried out (numerous objects, including documents concerning proceedings underway, were seized).

The CPT recommends that the Ukrainian authorities carry out an independent and thorough investigation into these allegations, and that they inform the Committee, in due course, of the results of the investigation.

91. At Colony No. 14, the delegation received allegations according to which, in April/May 2002, after an evening roll call, several hooded prison staff members, said to be drunk, had entered Sector No. 3 and had beaten prisoners from wards 11, 13 and 20 with truncheons, assisted by prisoners who were also hooded. By letter of 15 April 2003, the Ukrainian authorities submitted the conclusions of an official inquiry into these allegations, carried out by the local and regional prison administration. It emerged from the conclusions that the allegations had not been confirmed. The conclusions were based on: written declarations by prisoners in Sector No. 3 that there had been no such incidents and that they had no complaints about the prison administration; an interview with the officer responsible for Sector No. 3, a report by the head of the operational section and an examination of various registers kept in the prison, none of which made any mention of incidents during the period in question;

and the absence of requests from the prosecutor's office for an inquiry into such incidents.

The CPT is far from convinced by this inquiry and the conclusions drawn from it. It is a wholly internal non-independent prison administration inquiry.

The CPT recommends that the Ukrainian authorities deliver to the staff of Colony No. 14 the clear message that all forms of ill-treatment are unacceptable and will, if they occur, be the subject of severe sanctions.”

D. CPT Report concerning the 2005 visit to Ukraine

107. The relevant extracts from the Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 21 October 2005 read as follows:

“... The CPT also recommends that the Ukrainian authorities review as soon as possible the norms fixed by legislation for living space per prisoner, ensuring that these are at least 4 m² in all the establishments under the authority of the Department for the Enforcement of Sentences. ...”

IV. REPORT BY THE COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE

108. The relevant extracts from the Report by the Commission for Human Rights, Mr T. Hammarberg, on his Visit to Ukraine (10-17 December 2006), for the attention of the Committee of Ministers and the Parliamentary Assembly (Strasbourg, 26 September 2007, CommDH (2007) 15) read:

“... 43. Acts of torture constitute a criminal offence in Ukraine. In 2005 the Ukrainian Parliament (Verkhovna Rada), adopted laws which strengthened the prosecution of perpetrators of torture, the respect of rights of prisoners and arrested persons as well as a Law which ensured the right of prisoners to correspond with the ECtHR. This legislative improvement is welcomed by the Commissioner but it has to be matched by proper and systematic implementation. Ukraine has ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CETS 126) in 1997 and its two additional protocols in 2002. The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entered into force for Ukraine in 1987.

44. Despite these achievements practically all the Commissioner's interlocutors, including heads of parliamentary political groups, representatives of law enforcement and civil society confirmed that torture was widespread in Ukraine. ...

... 46. The penitentiary system has been removed from the competence of the Ministry of the Interior, but has never been transferred to the Ministry of Justice as required by the commitments of Ukraine taken during accession to the Council of Europe. The State Department for the execution of sentences was created in 1998 as the central body of the penitentiary system, with a special status subordinated to the Cabinet of Ministers. ... The penitentiary system is chronically under-funded. While

appreciating that the State financing has been increasing steadily, the Commissioner urges the State to continue improving conditions of detention...

... 48. Overcrowding in the penitentiary institutions is one of the most troublesome issues. (...) The Commissioner, however, did take into account and welcomed the fact that despite an important degree of overcrowding of prisons, the number of prisoners has considerably decreased. The leadership of the Department for the execution of sentences said that the number of prisoners was 209,000 in 1999 compared to 161,900 today. At the same time, the number of penitentiary institutions remained the same. ... The detention rate remains one of the highest in the world and further effort is needed to cope with the serious level of overcrowding...

... 49. The Commissioner noticed that many penitentiary institutions buildings were dilapidated and in a poor state of repair. Thus, they do not offer sanitary and other special international requirements. The prisoners the Commissioner met mostly complained about the lack of light, bad ventilation systems, undernourishment, poor sanitary conditions, lack of beds and failure to separate prisoners with infectious contagious diseases. When visiting detention centres in L'viv, Odessa and Kyiv, the Commissioner was concerned that not a single cell met European standards. One could see the traces of humidity on the walls. The latrines were in an appalling state of repair spreading a stench throughout the whole cell. This environment is not only unhealthy for the prisoners, but also undermines their right to a certain degree of dignity. The disciplinary cells were even worse..."

IV. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of Ukraine (28 June 1996)

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

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

111. Article 63 § 3 provides that incarcerated persons enjoy all human and civil rights, subject only to those restrictions determined by law and established by a court ruling.

B. Code of Criminal Procedure

112. The relevant extracts of Articles 25 and 99 of the Code of Criminal Procedure of 28 December 1960, in force at the material time, provide:

Article 4**The obligation to institute criminal proceedings and investigate a crime**

“The court, prosecutor or investigator must, to the extent that it is within their power to do so, institute criminal proceedings in every case where evidence of a crime has been discovered, take all necessary measures provided by law to establish whether a crime has been committed and the identity of the perpetrators and punish them.”

Article 25**Supervision by the prosecutor in criminal proceedings**

“... The prosecutor shall carry out his or her functions in criminal proceedings in compliance with the laws and regulations ... and independently of any state bodies and officials...”

Article 94**Grounds for instituting criminal proceedings**

“Criminal proceedings shall be instituted on the following grounds:

- (1) applications or communications from enterprises, institutions, organisations, officials, representatives of official bodies, public and individuals;
- (2) communications from the representatives of authorities, public or individual citizens, who have apprehended the suspect in the place where the crime was committed or caught red handed;
- (3) acknowledgement of guilt;
- (4) information published in the media;
- (5) direct detection of signs of a crime by a body of inquiry or investigation, a prosecutor or a court.

A case may be instituted only when there is sufficient evidence that a crime has been committed.”

Article 97**Obligation to accept applications or communications with regard to crimes and the procedure of their examination**

“A prosecutor, investigator, body of inquiry or a judge shall be obliged to accept applications or communications as to the committed or prepared crimes, including in cases that are outside their competence.

Following an application or communication about a crime the prosecutor, investigator, body of inquiry or a judge shall be obliged, within the three-day time limit, adopt one of the following decisions:

- (1) to institute criminal proceedings;
- (2) to refuse to institute criminal proceedings;
- (3) to remit the application or communication for further examination according to jurisdiction.

Simultaneously, all possible measures shall be applied to prevent further crime or to discontinue pending crime. ... Measures of protection shall be applied to ensure security of the person who informed about a crime ... against real danger to life...

In the event there is necessity to examine the information or communication about crime, before initiating criminal proceedings, such an examination shall be conducted by a prosecutor, investigator or body of inquiry, within the time-limit of ten days, by means of gathering explanations from separate citizens or officials or by means of withholding necessary documents.

Application or communication with regard to crime, before the criminal proceeding shall be initiated, shall be reviewed by means of search and seizure measures. Conduct of specific search and seizure acts, determined by legislative acts of Ukraine, effectuated upon agreement with the court, on the basis of approved by a prosecutor request of the head of the respective operative department or his deputy. Resolution of the court authorising [such acts] shall be adopted and can be appealed against according to a procedure and in circumstances, specified in Articles 177 [search in premises for documents or objects], 178 [seizure of documents or objects] and 190 [examination of locality, premises, objects and documents.] of this Code.”

Article 99-1

Challenging decisions on refusal to initiate criminal proceedings

“... A resolution by investigator or body of inquiry refusing to initiate criminal proceedings can be appealed to the relevant prosecutor and if that ruling was issued by the prosecutor to the higher prosecutor. An appeal shall be lodged by the person whose interests are infringed or by his/her representative within seven days from the date of receipt of the ruling.

A resolution by investigator or body of inquire refusing to initiate criminal proceedings can be appealed by a person whose interests are infringed or by his/her representative to court under procedure prescribed by Article 236-1 of this Code.

A resolution by a court on refusal to initiate criminal proceedings can be appealed by person whose interests are infringed or by his/her representative to the higher court within seven days from the date of its receipt...”

Article 236-1

Challenging resolution on refusal to initiate criminal proceedings in the court

“Complaints against the resolution of the body of enquiry, investigator, prosecutor refusing to initiate criminal proceedings shall be lodged with the district (city) court ... by the person whose interests are touched upon, or a representative of that person, ... within seven days from its receipt or information given by the prosecutor that he refused to quash the resolution.”

Article 236-2

Judicial examination of the challenge against the resolution refusing to institute criminal proceedings

“Complaints against the resolution of the prosecutor, investigator or body of inquiry refusing to institute criminal proceedings shall be examined by a sole judge within a period of ten days from the moment the case-file arrives at the court.

The judge shall request relevant materials on which the refusal to initiate criminal proceedings was based, examine them and inform the prosecutor and the complainant about the date it will be examined. If necessary a judge shall hear explanations of a person who lodged the complaint. A verbatim record of a hearing shall be concluded.

... a judge shall take one of the following decisions:

- 1) to quash the resolution refusing to initiate criminal proceedings and return the case-file materials for additional examination;
- 2) to reject the complaint.

The resolution of a judge shall be appealed against to the court of appeal within seven days from the moment it was adopted by a prosecutor or a complainant.

A copy of the judge's resolution shall be sent to a person, who adopted the contested resolution, prosecutor and a person, who lodged the complaint.”

113. According to the practice of the domestic courts, a review of a prosecutor's resolution to refuse to institute criminal proceedings was limited to a review of compliance with procedural and substantive grounds for such a refusal (*приводи та підстави для порушення кримінальної справи*). In particular, the procedural grounds which would be reviewed were those enumerated in Article 94 of the Code of Criminal Procedure. The substantive grounds were those set out in Article 4 of the Code (see, among other sources, judgment 30 January 2003 given by the Constitutional Court in case no. N 1-12/2003; Plenary Supreme Court Resolution of 11 February 2005, in force until 21 December 2007). Inactivity of the body of enquiry, investigator or prosecutor resulting in a decision not being taken under Article 97 § 2 of the Code of Criminal Procedure could be appealed according to the procedure established in Chapter 31-A of the Code of Civil Procedure (Plenary Supreme Court Resolution of 11 February 2005, cited above).

C. Correctional Labour Code of Ukraine (*Виправно-трудоий кодекс України*), in force until 1 January 2004

114. According to Article 10 of the Code, the officials of penitentiary institutions and the prisoners held therein shall comply with the law.

115. The correctional labour institutions enforcing prison sentences were correctional labour colonies, prisons and educational labour colonies. Adults were to serve their sentences in a correctional labour colony or a prison (Article 12 of the Code). The types of correctional labour colony, classified according to the degree of security of the regime, included: colony-settlements for persons who committed reckless criminal acts, and general regime, reinforced regime, strict regime and special regime colonies (Article 13 of the Code). The type of penitentiary institution and the particular detention regime were to be determined by the Prison Department (Article 19 of the Code). A convict was to be transferred to the relevant correctional labour institution within ten days of the date on which the

judgment in a criminal case became final (Article 20 of the Code). This provision indicated that every convicted person was to have a personal file.

116. Under Article 28 of the Code, the principal characteristics of the regime in penal institutions were: compulsory isolation and permanent supervision, so as to avert any possibility of crimes or other acts against public order being committed by the prisoners; strict and continuous observance of obligations by these persons; and various detention conditions dependent on the character and gravity of the offence and the personality and behaviour of the prisoner. In particular, those serving their sentences were obliged to wear a uniform. They were subjected to searches; body searches were to be conducted by persons of the same sex as the person searched. Correspondence was subjected to censorship, and parcels and packages were subjected to opening and verification. A strict internal routine and rules were to be observed in correctional labour institutions.

117. By Article 29 of the Code, in the event of malicious infringement of disciplinary rules by a prisoner serving his sentence under the strict regime, the Governor of the Prison had the right to impose a new period, which could not exceed six months, for serving of the sentence under the strict regime.

118. According to Article 44 of the Code, prisoners had the right to submit proposals, make statements and lodge complaints with State bodies, non-governmental organisations and officials. These had to be sent in accordance with the penitentiaries' Internal Rules and were to be examined according to the procedure established by law. Complaints addressed to the Ombudsperson and the prosecutor's office were to be dispatched within one day of their receipt. The prisoners were to be duly informed of the results of examination of their proposals, complaints and statements. (Following introduction of a new Code on 11 July 2003, which replaced Correctional Labour Code as from 1 January 2004, and further changes introduced to Article 113 of the Code on the Enforcement of Sentences on 1 December 2005 and Order no. 275, adopted by the State Department for the Enforcement of Sentences on 25 December 2003, correspondence sent to the European Court of Human Rights can no longer be reviewed. However, Article 113 § 3 of the Code establishes that as a general rule all correspondence shall be subject to review).

119. In Article 47 of the Code, "malicious violation of the regime" was defined as a prisoner's failure to comply with the lawful demands of the administration; unsubstantiated refusal to work (more than three times during the year), bearing in mind that work was mandatory for all prisoners as stipulated by Article 49 of the Code; the consumption of alcohol, drugs or other substances; the production, storage, purchase and distribution of prohibited items; gambling; minor hooliganism; systematic avoidance of treatment for contagious diseases (active tuberculosis, venereal disease, etc.). The finding that an prisoner was a "malicious violator of the regime" led to sanctions for infringements of the detention regime, provided that

such sanctions were imposed on the basis of a resolution or order of the respective superior and were not declared null and void by a court decision. Also, the work performed by the prisoners was to comply with the task of their rehabilitation and re-education (Article 49 of the Code).

120. By virtue of Article 71 of the Code, the Governor of the Prison, his deputy, the head of the department for social-psychological work, the senior instructor and instructors in the correctional labour colony had the right to impose disciplinary sanctions on prisoners. Such sanctions were to correspond to the factual circumstances and gravity of the offence. Previous disciplinary sanctions and the prisoner's explanations were to be taken into account. Sanctions were to be enforced immediately after being imposed and the prisoner had the right to appeal against them to the hierarchical superior, which did not prevent enforcement of the sanction (Article 68 of the Code). Disciplinary sanctions included: prohibition on receiving parcels and, for the course of one month, on buying food in the prison shop; annulment of improved conditions of detention; placement in the SHIZO, with or without participation in work; or placement of the prisoner in solitary confinement isolation ward (*карцер*). A change of the regime for serving one's sentence was to be carried out on the basis of a substantiated decision of the Prison Governor, approved by the penitentiary's supervisory board. Other disciplinary sanctions were imposed on the basis of a written or verbal order by the Governor.

121. Under Article 74 of the Code, prisoners had to be held in conditions that corresponded to basic sanitary and hygiene standards. Inmates in correctional labour colonies had to be allowed at least 2 m² floor space per person. Penitentiary institutions had to ensure that legal aid and necessary medical treatment were provided to prisoners (Article 76 of the Code).

122. According to Article 81 of the Code, in the event of physical resistance to officers of correctional labour institutions, rampage or other violent acts, prisoners were to be subjected to means of restraint such as handcuffs, a restraint jacket (*замівна сорочка*), rubber truncheons, tear gas and other special means of restraint, as provided for by Article 14 of the Police Act, in order to prevent injuries to themselves or others. Physical measures were to be applied only where it was impossible to use other means of restraint, could not exceed the measures necessary for execution of tasks by the administration and were to be imposed in such a way as to minimise the damage to the offender's health. The administration of the penitentiary was to provide victims with any necessary medical assistance without undue delay.

123. Article 82 of the Code allowed the use of weapons in exceptional circumstances and if other means did not facilitate attainment of the desired result, if a prisoner attacked or inflicted another intentional life-threatening act on a penitentiary employee or other persons. Every instance of the use of weapons had to be communicated to the prosecutor.

124. According to Article 128 of the Code, employees of the penitentiary institutions who acted brutally towards the prisoners or whose acts infringed prisoners' human dignity were to be subjected to disciplinary or criminal liability. A penitentiary employee who committed a disciplinary offence for a second time was to be dismissed.

D. The Prosecution Service Act, 5 November 1991 (in force at the material time)

125. Under section 12(1) of the Prosecution Service Act, the public prosecutor was to deal with petitions and complaints concerning breaches of the rights of citizens and legal entities, with the exception of complaints that fell within the jurisdiction of the courts. Subsection 4 provided that an appeal against a prosecutor's decision was to be lodged with the hierarchically superior prosecutor or a court. Subsection 5 provided that the Prosecutor-General's decision was final.

126. Under section 44(1), the matters subject to the public prosecutor's supervision were to extend to the following areas: adherence to the legal rules on correctional labour or supervision of those establishments responsible for the enforcement of sentences or coercive measures ordered by a court; adherence to the procedures and conditions for holding or sanctioning persons in such establishments; the rights of such persons; the manner in which the relevant authorities carried out their duties under the criminal law; and compliance with the legislation on the enforcement of sentences. The public prosecutor could at any time visit establishments where prisoners were serving their sentences, in order to conduct interviews or consult documents; he or she could also examine the legality of orders, resolutions and decrees issued by the administrative authorities of such institutions, terminate the implementation of sanctions or measures imposed on prisoners, appeal against such sanctions or measures or annul them if they did not comply with the law, and request officials to give explanations concerning breaches.

E. Orders of the State Prison Department

1. Internal Prison Rules for the Correctional Labour Colonies (in force at the material time)

127. The Internal Prison Rules (*Правила внутрішнього розпорядку виправно-трудоустанов*) were approved by Order no. 110 of the State Prison Department on 5 June 2000. The "Rules" were subsequently modified and remained in force until 25 December 2003. They may be summarised as follows.

128. By Rule 1.1 of the Rules, they were to provide guidance for the enforcement and serving of sentences, According to the legislation in force.

The rules were to be binding on all correctional labour institutions or medical institutions attached to them (Rule 1.2).

129. According to Rule 12.3, single occupancy cells in the special-regime correctional labour colonies and solitary confinement cells were not to measure less than 3 m². Windows in prisons and in PKT or cell-type premises in correctional labour colonies were to be 1.3-1.4 m in width and 1.15–1.2 m in height, and those in SHIZO, DIZO and solitary confinement cells were to be 0.5 m by 0.9 m. Windows were to be equipped with external steel grating or metal shutters and protected by internal gratings. Floors were to be constructed from concrete and covered with wooden planking. Walls were also to be made out of concrete and covered with white paint (Rule 12.4). The doors to the cells were to be 6 cm thick, covered by sheet steel and reinforced by metal angles around the entire perimeter. The centre of the doors was to have an opening for supervision of the prisoners. The middle of the door was to have an opening measuring 18 x 22 cm and 95 cm from the floor, for the transfer of food, books, etc. Doors were to open into the corridor and be kept locked (Rule 12.5). Cells in correctional labour colonies with general, reinforced, strict and special regimes, and in the SHIZO and DIZO were to be equipped with additional internal doors made from round metal rods and transversal metal bars.

130. Under Rule 12.10, cells in SHIZO, DIZO, solitary confinement cells and single occupancy cells in special regime colonies were to be equipped with folding beds, which were to be lifted and locked in place from the wake-up bell until lights out, and other necessary furniture.

131. According to Rule 16.1 the relationship between prisoners and employees of penitentiary institutions was to be based on strict compliance with the law. Under Rule 16.3, prisoners were to fully comply fully with the demands of the penitentiary staff.

132. According to Rule 17.3, prisoners were prohibited from sending and receiving correspondence in any manner contrary to the procedure established by these Rules.

133. By Rule 20.1, the staff were to remain in the penitentiary in the event of complications in the operative circumstances in the correctional labour colony; a duty roster was to be organised for the staff.

134. Under Rules 31.1-31.5, prisoners were entitled to send letters according to the norms established by the Correctional Labour Code. Letters and complaints were to be sent only through the correctional labour institution's administration. Special mailboxes were to be installed on the territory of the penitentiary and were to be opened on a daily basis by specially designated persons. Prisoners incarcerated in prison regime and in cell-type premises were to forward their letters through the representatives of the prison. Letters were to be dropped into the mailboxes or transferred to representatives of the administration unsealed. Inmates' letters which used a secret language or script or other conventions, or those that were cynical in

nature or contained information that was not to be disseminated were not to be sent to the addressee, and the prisoner was to be duly informed.

135. According to Rules 33.1.-33.9, prisoners were to submit their complaints orally or in writing. Written complaints were to be addressed to the administration of the correctional labour colony. Inmates were to be provided with paper and a pen in order to set out their complaints in writing. Complaints which could be examined by the prison administration immediately, without being sent to other institutions or organisations, were to be examined without delay. Complaints addressed to state institutions and NGOs and their officials were to be sent with an accompanying letter, setting out the penitentiary's assessment of them. Complaints sent to the Ombudsperson or prosecutors were not subject to review and were to be sent to the addressees within a day of their receipt. In the event of the repeated submission of a complaint, the administration was to state in its cover letter which body had examined the previous complaint and to provide the results of their examination. Complaints which were referred to a body that was not competent to examine them were not to be sent, and the prisoner was to be given a recommendation to send his or her complaints to a competent body. If the prisoner insisted, however, the complaints were to be sent to the designated institution. Complaints containing obscene or prohibited expressions were not to be sent to the addressees and the persons who submitted them were to be disciplined. Complaints submitted in writing were to be registered with the colony's secretariat sent to the addressees within three days. Oral complaints were also to be registered in a special register. Replies to the complaints were to be announced to prisoners within three days and attached to the prisoners' personal files. The prisoners were to bear the costs of sending complaints. If the prisoner was unable to pay, however, the expenditure for sending complaints was to be borne by the penitentiary.

136. By virtue of Rules 44.1-44.4, the examination and search of the prisoners and of the premises and territories of residential and industrial zones of correctional labour colonies were to be conducted according to the procedure established by the State Prison Department. It was prohibited to damage linen, clothes, belongings and other objects without unless it was necessary. Searches in the residential and industrial zones were to be conducted according to the scheduled plan. A document was to be drawn up on the basis of the search results. The time frame for searches was to be established by the penitentiary's administration.

137. According to the Rule 49, the Prison duty officer was to record every instance of use of the measures of special restraint, such as handcuffs, restraint jacket, special gear and firearms in a special register.

138. Under Rule 69, the placement of a prisoner in the SHIZO, DIZO or solitary confinement cell of isolation ward ("single occupancy cells") was to be effectuated on the basis of a resolution of the Governor (in certain instances a duty officer), based on explanations by the prisoner and a

medical report on the prisoner's ability to be held in such a cell. Inmates placed in the SHIZO, DIZO or solitary confinement cells were to be fully searched. They were allowed certain essential sanitary and personal hygiene items and a change of clothes. Inmates held in these cells were prohibited from meeting relatives, could not receive parcels and were not allowed to buy food and essential items. They were not allowed to play table games, send letters or smoke. They were fully responsible for maintaining order in the cells in which they were detained. The prisoners could not leave the SHIZO, DIZO or solitary confinement cells before expiry of the term of disciplinary punishment, except for medical reasons. After serving the disciplinary punishment the prisoner was to be immediately released from the disciplinary cell by the duty officer or his deputy, in the presence of the head of the department.

139. According to Rule 70, prisoners who were held in disciplinary cells were not entitled to wear warm outer clothing, but could have them only when they left the premises. The bed linen was to be provided only at bedtime. Inmates held in DIZO cells were to be allowed a one-hour daily walk, while those held in SHIZO and single occupancy cells were to have only a thirty-minute walk.

140. Under Rule 74, Governors of penitentiary institutions, their deputies, heads of departments and services were periodically to visit the SHIZO, DIZO, and solitary confinement cells and the cell-type premises in the general, enforced and strict regime colonies, and single occupancy cells in the special regime colonies. They were to examine the conditions of detention in them and take measures to eliminate any shortcomings found.

141. According to Rule 77, correctional labour facilities were to provide two types of medical assistance: clinical medical examinations and supervision of prisoners for the purpose of evaluating their health and, if an illness was discovered, applying therapy and restoring their working capacity; and outpatient medical treatment and in-patient general and specialised treatment, according to the means and methods recommended by the Ministry of Health. Individuals arriving in correctional labour institutions were to undergo a mandatory medical examination, the results of which were recorded in the prisoners' medical files.

*2. Order no. 167 of the State Prison Department of 10 October 2005
“On Approval of the Regulations on the Special Taskforce Units”*

142. Order no. 167 provided, *inter alia*, that a special unit could participate in the search and inspection of penitentiary institutions and prisoners. It could also be involved in special actions relating to riots, mass disobedience, the taking of hostages and other extraordinary circumstances. (The Order and the Regulation were in force from 10 October 2005 to 26 December 2007, when the Order's registration was annulled by the Ministry of Justice of Ukraine with effect from 14 January 2008. This Order and Regulation replaced the previous Order no. 163 of 8 September 2003

“On creation of special units of the system of enforcement of sentences, approval of staffing needs and Regulations on these units”, which was not publicly accessible). According to expert opinion no. 15/88 of the Ministry of Justice and the opinion of the Secretariat of the Agent of the Government of Ukraine before the European Court of Human Rights, Order no. 167 and the Regulations approved by it did not comply with the European Convention on Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights.

F. The 2004 report of the Commissioner for Human Rights of the Parliament of Ukraine

143. The 2004 report notes, in general, the use of the special forces by the Prison Department for actions within penitentiary institutions (*відпрацювання установ*) and for searches conducted in them. The Commissioner stated that the practice of using such units could be equated to torture. In particular, the report stated that prisoners were forced out of their cells, beaten with truncheons, had to lie on the floor, were put in the “*roztyazhka*” (*розтяжка*) position (i.e. “spreadeagled” or in a position whereas a person stood with his arms against the wall and legs stretched wide apart; see paragraph 13 of the Annex to the judgment) during searches and were forced to sit (*навприсядки*) with their hands behind their heads while waiting for their turn to be searched. Inmates were forced to remain stretched out for a couple of hours and to swear that they would not violate the regime and would cooperate with the penitentiary administration. The fact of use of such units was discovered in Prison no. 78 of the Khmelnytsky region. The report generally notes that the main purpose of these searches was in reality to demonstrate force rather than to find prohibited items. It also referred to the problematic situation with regard to overcrowding in prisons and penitentiary institutions in Ukraine. However, the report provided no information as what actions were undertaken by the authorities on the basis of these findings.

THE LAW

I. PRELIMINARY CONSIDERATIONS

144. The Court recalls that in its admissibility decision of 15 January 2007, adopted in the present case, it declared the applicants' complaints under Articles 3, 8, 13 and 34 admissible. It also decided that the Government's request to strike the complaints lodged by ten applicants out of the Court's list of cases and their objection as to the exhaustion of domestic remedies (see paragraph 5 above) should be joined to the merits.

145. It further notes that, after declaring the applications admissible, the Court decided to conduct and did conduct a fact-finding mission in order to establish the facts of the case, which were in dispute between the parties. After the mission, the parties lodged additional submissions as to the admissibility and merits of the applicants' complaints. In particular, in their written submissions, the Government asked the Court to find that the applicants' allegations were unsubstantiated and that there had been no violation of the Convention. The applicants disagreed with the Government and asked the Court to find violations of Articles 3, 8, 13 and 34 of the Convention and to award them just satisfaction under Article 41.

146. The Court considers that, taking into account the procedural developments in the case, the matters raised above should be examined in the following order:

- *firstly*, it must decide on the scope of the case, where it shall rule on the Government's request to strike the applications out from the list of cases;
- *secondly*, it must establish the facts of the present case and assess evidence presented by the parties, obtained by it as a result of the fact-finding mission;
- *thirdly*, it must examine the merits of the applicants' complaints and rule on the Government's objection as to the exhaustion of domestic remedies, which was joined to the merits.

II. THE SCOPE OF THE CASE

A. The parties' submissions

147. The Government submitted that only the first, second and third applicants had standing before the Court. In particular, they stated that the remainder of the applications should be struck out of the list of cases as the other ten applicants and/or their heirs had lost their interest in pursuing them. In particular, they mentioned that the fourth and fifth applicants had been released from serving their sentences and their whereabouts were not known. Also, Mr Kiselev and Mr Kuzmenko had been transferred to other penitentiaries and apparently did not wish to maintain their applications. Furthermore, the sixth applicant had died in 2004 on account of illness, and he had no successor in respect of the claims submitted to the Court.

148. The applicants' representatives initially submitted that the fourth applicant's complaints should not be struck out of the Court's list of cases unless there was an unequivocal confirmation from him that he did not intend to pursue his application. They alleged that no such information was available and therefore striking the fourth applicant's complaints out of the list of cases would run contrary to "respect for human rights as defined in the Convention and the Protocols thereto" (Article 37 § 1 of the Convention *in fine*). As to the other nine applicants, they disagreed with the Government and requested the Court not to strike their applications out unless the Court

received full factual and legal information on their complaints directly from the applicants or their relatives and heirs.

B. The Court's assessment

149. The Court notes, taking into account that the case was declared admissible on 15 January 2007 and the fact-finding hearing in Khmelnytsky organised in June 2007, that applicant Mr Druzenko was summoned on 30 May 2007 to appear before the Delegates and failed to respond to any of the written requests made by the Registry. The information requests included letters sent to applicants Mr Kulyk, Mr Mironov, Mr Litvinov, Mr Kuzmenko, Mr Kiselev and Mr O. Didenko on 13 April 2007, by which the Registry asked them to provide it with a name of their representative. As to Mr Salov, the Court notes that he had died and that his possible heirs, whose whereabouts were unknown to the Court and the parties, failed to express an interest in pursuing the application.

150. As to the applications lodged by Mr L. Shvets and Mr Martov, their whereabouts were unknown to the Court and the parties. These applicants had also failed to maintain their original applications lodged with the Court by Mr Zherdev on their behalf. In particular, Mr Martov had not corresponded with the Court or his original representative Mr Zherdev since 1 April 2003, when he had informed the latter in writing that he had no complaints in relation to Zamkova Prison and the conditions in which he was serving his sentence. Mr Shvets's whereabouts were unknown and he had lodged no complaints with the Court since the original submission by his representative Mr Zherdev.

151. In these circumstances, taking into account the lack of reaction of the applicants in responding to the Registry's requests and complying with the requests to appoint a representative, the summons of the Court to appear at a hearing of oral evidence (see paragraphs 149 - 150 above) and the absence of an indication that they themselves or their heirs wished to pursue their applications before it, the Court concludes that it is no longer justified to continue the examination of the ten applications lodged by the applicants Mr Druzenko, Mr Kulyk, Mr Mironov, Mr Litvinov, Mr Kuzmenko, Mr Kiselev, Mr O. Didenko, Mr Salov, Mr Shvets and Mr Martov, within the meaning of Article 37 § 1 (c) of the Convention.

152. The Court is concerned that the complaints raised by the ten applicants above related to allegations of serious breaches of the obligations under the Convention. However, it notes that the issues arising from the complaints of these ten applicants largely overlap with those of the first three applicants. It considers that there is therefore no risk that these issues will not be examined by the Court. Further, the Court notes that, in addition to their failure to respond to the Court's summonses and the other matters set out above (see paragraph 151 above), none of these ten applicants has

even completed an application form, thereby failing to comply with even the minimum requirements of Rule 47 of the Rules of Court.

153. The Court finds no reasons of a general character, as defined in Article 37 § 1 *in fine*, which would require the examination of these applications by virtue of that Article.

III. THE COURT'S ASSESSMENT OF THE EVIDENCE AND ESTABLISHMENT OF THE FACTS

A. Arguments of the parties

1. *The applicants*

154. The applicants argued that the written and oral evidence before the Court proved that they were ill-treated in the course of the training exercises by the special forces and the searches which were held on 30 May 2001 and 29 January 2002. They further maintained that the authorities had failed to carry out an adequate investigation into these complaints. They asked the Court to find that the Government had violated Articles 3, 8, 13 and 34 of the Convention in respect of all of the complaints raised by them (see paragraph 4 above).

2. *The Government*

155. The Government refuted the applicants' arguments and claimed that the evidence given in the fact-finding hearing in the Khmelnytsky Regional Court of Appeal had shown that the applicants' allegations were ill-founded and that there had been no violation of any provision of the Convention. In particular, the Government stressed that there was no proof that the applicants had been subjected to ill-treatment or that the authorities breached Article 3 of the Convention. Moreover, the Government considered that the witness evidence, taking into account a number of contradictions and inconsistencies in the testimonies given in the course of the fact-finding hearing, clearly showed the lack of a factual basis for a possible finding that the prisoners had been beaten or ill-treated in Zamkova Prison on 30 May 2001 and 28 January 2002.

3. *The Court's considerations*

156. Since the facts of the case are in dispute between the parties, it is necessary for the Court to establish the facts by making its own assessment in the light of all the material before it.

157. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case. Nonetheless, it considers that where sufficiently strong allegations are made in respect of Article 3 of the Convention, which ranks

as one of the most fundamental provisions in the Convention and from which no derogation is permitted, it must conduct a particularly thorough scrutiny (see *Ülkü Ekinci v. Turkey*, no. 27602/95, § 136, 16 July 2002), even if certain domestic proceedings and investigations have already taken place.

158. In this respect the Court reiterates its recent jurisprudence confirming the standard of proof “beyond reasonable doubt” in its assessment of evidence (see *Orhan v. Turkey*, no. 25656/94, § 264, 18 June 2002; *Tepe v. Turkey*, no. 27244/95, § 125, 9 May 2003; and *Yöyler v. Turkey*, no. 26973/95, § 52, 24 July 2003). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). The Court will proceed first with the assessment of the Government's conduct.

B. The Government's conduct

1. General principles (issues under Article 38 § 1(a) of the Convention

159. Article 38 § 1 (a) of the Convention provides:

“1. If the Court declares the application admissible, it shall

(a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities...”

160. The Court reiterates that it is of utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see *Orhan*, cited above, § 266, and *Tanrikulu v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999-IV). It is inherent in proceedings relating to cases of this nature, where an individual applicant accuses State agents of violating his rights under the Convention, that in certain instances solely the respondent Government have access to information capable of corroborating or refuting these allegations. A failure on a Government's part to disclose such information which they possessed without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicants' allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1(a) of the Convention (see *Timurtaş v. Turkey*, no. 23531/94, §§ 66 and 70, ECHR 2000-VI). The same applies to a failure of the State to ensure the attendance of important witnesses at a fact-finding hearing, which prejudices the establishment of the facts in a case (see *İpek v. Turkey*, no. 25760/94, § 112, ECHR 2004-II (extracts)).

2. Absent applicants and witnesses

161. The Court notes that it has no powers to compel witnesses to appear. In the present case, of all the witnesses called, ten applicants and six witnesses did not appear before the Delegates. Consequently, the Court had to establish the facts in the absence of potentially important depositions, which could have rebutted some of the applicants' allegations. In particular, the applicants who failed to appear before the Delegates included Mr Druzenko, Mr Martov, Mr Salov, Mr Kuzmenko, Mr Kiselev, Mr Didenko, Mr Shvets, Mr Litvinov, Mr Mironov and Mr Kulik. The witnesses who failed to appear on behalf of the Government were Mr Gaydamaka, Mr Mazepa, Mr Mazurenko, Mr Pylypenko and Mr Zakharov. Mr Kostenko, a witness proposed by the applicants, also failed to appear.

162. The Court notes in relation to the absence of Mr Gaydamaka, Mr Mazepa, Mr Mazurenko, Mr Pylypenko and Mr Zakharov that these witnesses were previously employed by the Prison Department, they were pensioners who received their pension from the State and thus it should have been possible to identify their whereabouts and to provide the Delegates and the Court with explanations from these witnesses as to their absence or at least to provide more detailed and timely information and in advance that they would be absent during the hearing. In this respect the Court notes that the Delegates were informed on the day on which Mr Pylypenko and Mr Mazepa were due to give evidence (26 June 2007) that the latter's whereabouts were not known to the Government. The same applies to the absent witnesses Mr Pylypenko and Mr Mazepa who ultimately refused to appear before the Delegates. The Court notes that they were both pensioners of the Prison Department who receive State pensions and that they initially cooperated with the Court by making written submissions as potential witnesses to be summoned by it (see paragraph 33 above).

163. As to the absence of Mr Druzenko, it is to be noted that, according to the information available to the Court as of 17 November 2006 (letter of Mr Bushchenko stating that he was unable to correspond with him), this applicant was in the Government's custody as he was being held in SIZO no. 21. According to different information provided by Mr Bushchenko, after his release from SIZO no. 21 Mr Druzenko resided in Odessa (see paragraph 34 above). As to the applicants Mr Kiselev, Mr Didenko, Mr Shvets, Mr Litvinov, Mr Mironov and Mr Kulik, according to the information in the Court's possession, they were still detained or serving their sentences and thus also remained in the Government's custody. However, the Government provided no further information or explanations as to the absence of these applicants. In particular, in relation to Mr Druzenko, the Court notes that he stayed in SIZO no. 21 as he was under criminal investigation and thus his whereabouts should have been known to the Government. Furthermore, the applicants Mr Didenko, Mr Litvinov and

Mr Mironov were at Zamkova Prison. The applicant Mr Kuzmenko was held in Lugansk SIZO and the applicant Mr Kiselev was serving his sentence in Berdychiv Prison no. 70. Thus, the Court considers, in relation to the witnesses who were in custody, that the Government had an opportunity to duly summon them to appear before the Delegates. In contrast, Mr Kostenko's absence cannot be attributed to the failure of the State to summon this witness as he was a witness for the applicants and was not in the Government's custody.

164. The lack of timely explanations provided by the Government as to the absence of these witnesses is a matter of concern for the Court; it delayed the hearing of oral evidence in the case and thus impeded the due processing of the applications, which might be regarded, to some extent, as a failure to comply with the State's obligation to furnish all necessary facilities to make possible a proper and effective examination of applications (see, *mutatis mutandis*, *Nevmerzhitsky v. Ukraine*, no. 54825/00, § 75, ECHR 2005-II (extracts)). Furthermore, the Government's inability to provide adequate explanations as to why two of the witnesses (Mr Pylypenko and Mr Mazepa) who initially gave written statements to the Court with regard to the events, ultimately refused to appear before the Delegates, together with the failure to provide plausible explanations as to the means used by the Government to ensure that other witnesses, who were under the authority of the State or had strong affiliation with the State authorities, attended a hearing or were compelled to appear, is also a matter of concern. Moreover, the Government had been invited, on 14 August 2007, "possibly after consulting the individuals concerned, to submit the reasons for their absences in writing before 28 September 2007". No reply was ever received by the Court.

165. Moreover, on learning about Mr Pylypenko's and Mr Mazepa's unilateral decision not to appear before the Delegates, the Government's role should have been to assist the Court in contacting these witnesses, duly summoning them and providing relevant information from these witnesses to the Court explaining the reasons for their absence. Then, it should have been for the Delegates to decide on whether these witnesses had good reason for refusing to testify (see, *mutatis mutandis*, *İpek*, cited above, § 120).

166. Notwithstanding the above consideration in respect of the witnesses who failed to attend the hearing before the Delegates, the Court notes that the witnesses Mr Pylypenko, Mr Mazepa and Mr Kostenko initially cooperated with it and produced written witness statements of relevance to the proceedings, which have not been subjected to cross-examination. In the circumstances, it will approach with caution the content of these statements. It will also confront this evidence with other evidence produced before the Delegates, taking it into account to the extent it is consistent with or contradict other evidence (see, *İpek*, cited above, § 120). Thus, as it ensues from the preliminary written witness statements given by Mr Pylypenko and

Mr Mazepa, they denied that the training at Zamkova Prison involved the participation of prisoners, that force was used against them and that they were ill-treated in the course of these tactical trainings. In contrast to these statements, Mr Kostenko maintained that he stayed in Zamkova Prison from 2001 to 2003 and knew one of the applicants (Mr Davydov), who was incarcerated in the cell opposite to his cell. Mr Kostenko further stated that in the course of the training on 30 May 2001 he was beaten by officers in masks, had to stay kneeled down and then on “roztyazhka” in the corridor. As a result of the training his left knee and ribs were broken. He also mentioned that one of the officers stated that he had been sentenced to death and shot at him from the automatic gun. He requested medical assistance and received painkillers. His injuries were not registered and complaints not accepted. During the second training he was beaten again and had injuries of internal organs, including liver. After these beatings he attempted to commit suicide by cutting his veins with the edge of a safety razor.

3. Complementary documentary evidence

167. As to the documentary evidence, the Court considers that a different matter of concern arises from the Court's written request of 14 August 2007, by which it sought additional information to complement the oral evidence in the case and the fact-finding investigation conducted by it (see, for information requested by the Court, paragraph 65 above).

168. In respect of the aforementioned request, on 28 September 2007 the Government, providing copies of certain documents and some of the replies mentioned in the letter of 14 August 2007 (see paragraphs 65 and 66 above), informed the Registry that it could not provide the Court with the following documents and further evidence:

“... – Order of the State Department for Enforcement of Sentences no. 193ДСК of 30 August 2002 “On Monitoring of Inmates' Correspondence”, since, in line with the Information Act, it was classified as confidential information and, as provided by the Resolution of the Cabinet of Ministers no. 1893 of 27 November 1998, could not be submitted to the Court. The Government mentioned in this respect that monitoring of the prisoners' correspondence was governed by the Code on the Enforcement of Sentences;

– a copy of the report of the internal investigation undertaken by the State Department for the Enforcement of Sentences and a copy of the reports as to the operative situation in Zamkova Prison from January 2001 to December 2002, as they were destroyed due to the expiry of the retention period;

– video-recordings made during the training exercises which took place on 30 May 2001 and 29 January 2002, as, according to information received from the State Department for the Enforcement of Sentences no video recordings were made during the training;

– custody records listing the prisoners detained in the cells which were visited by the Delegates on 27 June 2007, for the dates of the training exercises on 30 May 2001 and 29 January 2002. ...

169. The Court, having examined the Government's reasons for not providing the aforementioned information, concludes that it cannot accept them. In this respect, it again underlines that a failure on a Government's part to submit evidence which could be in their hands without a satisfactory and well-founded explanation may reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 120, 24 February 2005). In particular, it notes that the Prison Department Order no. 193дск of 30 August 2002, the report on the investigation prepared by the Prison Department and the custody records were important evidence in the present case, and essential for the fulfilment of the Court's functions. The evidence not submitted by the Government had been specifically referred to in the witnesses' oral submissions during the on-site hearing, which, *inter alia*, related to the issue of how effective the investigation into the applicants' complaints had been and whether the authorities had interfered with the applicants' correspondence. Thus, it should have been made available to the Court.

170. The Court does not accept that Resolution no. 1893 of 17 November 1998 provided an obstacle to the disclosure of instructions marked “for service use only” (*для службового користування*). In particular, the Government have not stated why the instructions needed to be secret. Indeed, the Court notes that when Order no. 193дск of the Prison Department was replaced on 25 January 2006, the new Order, no. 13 of 25 January 2006 “On approval of the Instruction on organising the review of correspondence of persons held in penitentiary institutions and SIZO”, was a legal act which is a publicly accessible document. The Government have not provided any reasoning which could indicate why Order no. 193дск needed to be secret if its successor did not. They also gave no information or explanations as to why the Order no. 193дск stayed secret after it was no longer in force.

171. In addition, the Court considers unacceptable the line of reasoning suggested by the Government by which regulations relating to the review of prisoners' correspondence would constitute a “State secret”. Furthermore, the question of whether certain documents or evidence “should or should not be submitted to it” is not a matter that can be unilaterally decided by the respondent Government that is obliged, as a party to the proceedings, to comply with the Court's evidential requests (see, *mutatis mutandis*, *Khashiyev and Akayeva*, cited above, § 120).

172. As to the video-recording which was allegedly not made, the Court finds it improbable that officers of the Prison Department, including those acting within the “documenting groups” whose task was to identify and “document” specific offenders or prisoners inciting riots or mass disobedience for further prosecution, and who were provided with two video cameras on 30 May 2001 (see paragraph 56 above) and photo and video cameras on 29 January 2002 (see paragraph 62 above), according to

written Plans nos. 2 and 5 on the training exercises and searches, had never used it, filmed no action or took no pictures on these dates.

173. The Court also considers that the Government's explanations as to their failure to provide the investigation report of the State Prison Department, as "it was destroyed due to expiry of the retention period", and their failure to list the prisoners detained on 30 May 2001 and 29 January 2002 in the cells which were visited by the Delegates on 27 June 2007, unconvincing and legally and factually unsubstantiated.

4. Conclusions

174. The Court would underline that it is for the Court, being master of its own procedure and of its own rules, to police the conduct of its own proceedings, assess the admissibility and relevance of evidence as well as its probative value, as it is not bound, under the Convention or under the general principles applicable to international tribunals, by strict rules of evidence (see *Ireland*, cited above, § 210). In particular, only the Court may decide whether and to what extent the participation of a particular witness would be relevant for its assessment of the facts and what kind of evidence the parties should produce for due examination of the case. The Court reiterates that the parties are obliged to comply with its evidential requests and instructions, and provide timely information on any obstacles in complying with them and provide any reasonable or convincing explanations for such a failure (see *Nevmerzhitsky v. Ukraine*, no. 54825/00, § 77, ECHR 2005-II (extracts)). However, in the instant case, the Government failed to act in full compliance with the principles mentioned above.

175. In the light of the above principles, the Court has examined the Government's conduct in assisting the Court in its task of establishing the facts of this case and has come to the conclusion that Government have failed to discharge their obligations under Article 38 § 1 (a) of the Convention. The Court will rely on this conclusion – making such inferences as appropriate – in establishing the facts of the case.

C. The Court's evaluation of evidence

1. Parties submissions

176. The applicants alleged that they had been ill-treated during the training exercises held on 30 May 2001 and 29 January 2002. They further alleged that they had not been provided with medical treatment and assistance and that there had been no investigation into their complaints. The applicants further argued that the conditions in which they were detained were poor.

177. The Government denied this.

178. The Court notes that the applicants' case turns essentially on whether they can establish that they were ill-treated by the special forces and personnel in Zamkova Prison in the course of the training exercises and general searches of the premises and prisoners conducted on 30 May 2001 and 29 January 2002. The Government deny that any of the prisoners received injuries during these trainings and searches. In the absence of any medical forensic records, the Court must establish the facts on the basis of the parties' submissions and the evidence, oral and documentary, it has obtained.

2. Oral evidence

(a) General considerations

179. The Court will verify and determine the facts by assessing the weight and effects of the evidence gathered by the Court's Delegates (see *Tepe v. Turkey*, no. 27244/95, § 136, 9 May 2003; *Tekdağ v. Turkey*, no. 27699/95, § 2, 15 January 2004; and *Yöyler v. Turkey*, no. 6973/95, § 53, 24 July 2003).

180. The Court, like its Delegates, must also have close regard to the fact that a large number of witnesses gave statements. In particular, the Delegates heard three applicants and seventeen other witnesses, including the parties' representatives, who gave statements in respect of the absentees, in the course of the oral hearing of evidence. It is to be further observed that the applicants and their witnesses were testifying in respect of matters of personal concern, with the attendant risks that their interpretation of events might lack objectivity on their part. As to the Government's witnesses, the majority of whom were educated persons; some relatively high-ranking officials, with extensive experience of work in the penitentiary system and knowledge of its functioning, who might have already spoken or testified about the events at issue before various bodies on a number of occasions. The credibility of these witnesses must also be considered carefully as they risked professional or other sanctions, if the applicants' allegations were made out and accepted.

181. Moreover, the passage of time takes a toll on a witness's capacity to recall events in detail and with accuracy. In the instant case, the witnesses testifying before the Delegates were asked to recollect incidents which occurred five to six years previously. Nor can the Court overlook that some of the applicants and their witnesses might have had conflicts with the personnel of Zamkova Prison, where they were serving their sentences, and thus might have tried to seize on opportunities to discredit the Government or its public servants by making unfounded allegations against them (see, *mutatis mutandis*, *İpek*, cited above, § 117). These factors have to be borne in mind when assessing the weight to be given to the evidence heard by the Delegates.

182. The Court observes that oral evidence given to the Delegates by the first (see Annex, paragraphs 2-9), the second (see Annex, paragraphs 10-18) and the third applicants (see Annex, paragraphs 19-23), i.e. Mr Davydov, Mr Ilchenko and Mr Gomeniuk, respectively, broadly reiterated the written statements they had given both to the national authorities and to the Convention institutions. Their evidence on the whole was detailed and precise and consistent with the applications and statements they had made following the aforementioned training exercises of 30 May 2001 and 29 January 2002. Their recollection of the events, various points and places from where they observed and witnessed the conduct of the training, confirmed a number of facts presented to the Court by other witnesses such as the timing and manner of the searches, the conduct of a training exercise and presence of an outside special forces, the uniforms worn by the officers, their equipment, the lack of a possibility to complain to bodies other than the local prosecutor's office - whose representatives were present in the course of the training - and deficiencies in the investigation.

183. The Court notes that the layout and use of the buildings has changed from the time of the events at issue to the time when the Delegates inspected Zamkova Prison. However, the premises of Zamkova Prison, mentioned by the applicants and witnesses in their statements, which were inspected by the Delegates, were perfectly recognisable as based on the oral descriptions of that prison and statements as to the conduct of the trainings given by the applicants and witnesses prisoners in the course of the oral hearing. This lent support to the applicants' description of the unfolding of the events during the two training sessions (see Annex, paragraphs 2-9 and 19-23).

184. The Court is satisfied on the basis of the evidence presented by the applicants that, in the particular circumstances of the present case, medical records or their absence cannot be relied upon to prove that a person had or had not been injured, as the injuries were not always recorded in the special medical registers of Zamkova Prison. In particular, it notes in this respect that the medical records disappeared when the applicant Mr Davydov was transferred from Zamkova Prison to Berdychiv Prison no. 70 (see Annex, paragraph 8). Additionally, general medical records were already destroyed due to the expiry of their retention period (see paragraph 168 above).

(b) The Court's evaluation of oral evidence

185. The account of the incidents on 30 May 2001 and 29 January 2002 by witnesses, all the prisoners, Mr Vagif Didenko (see Annex, paragraphs 24-30), Mr Leonid Mikhaylenko (see Annex, paragraphs 31-36), Mr Oleg Tishalkov (see Annex, paragraphs 37-40) and Mr Vadym Getmansky (see Annex, paragraphs 41-45) were clear and generally consistent with the witness statements they made to the applicants' representative, Mr Bushchenko, at the Court's request and in advance of the mission by the Delegates. The Court considers their statements to be

credible, precise and reliable. In particular, in relation to the statements given by Mr Mikhaylenko (see Annex, paragraphs 31-36), the Court notes that he had no direct contact with the applicants and was able to describe how the training exercise had been conducted and what happened in the course of it. Also, the point of observation from where Mr Mikhaylenko witnessed the events was perfectly recognisable in the course of inspection of Zamkova Prison and reasonably suitable for observations this witness made. His statements were consistent with those given by the applicants and other witnesses who were prisoners of Zamkova Prison, who were placed at different observation points and observed it at different times, so they could witness different aspects of the training. These statements corroborated a number of similar key points in their evidence which related to the presence of special forces during both training exercises, their uniforms, the noise, explosions and shots that were heard, the time and manner of the searches, the complaints raised by the applicants, the investigation into these complaints, injuries sustained and the lack of medical treatment and assistance provided to the injured.

186. The evidence given by Mr Sergiy Shedko, a prisoner proposed as a witness by the Government (see Annex, paragraphs 46-49), corroborated the main thrust of the previous evidence presented by witnesses Mr Vagif Didenko (see Annex, paragraphs 24-30), Mr Leonid Mykhaylenko (see Annex, paragraphs 31-36) and Mr Oleg Tishalkov (see Annex, paragraphs 37-40). In particular, Mr Shedko confirmed that exercises and searches took place on the dates as alleged, but he was reluctant to confirm certain factual elements which were previously established. His memory was weak and he generally stated that there were no irregularities in the conduct of the training exercises and searches and everything accorded to the regulations.

187. In the Court's view, some of the statements given by Mr Shedko were not fully credible, neither convincing nor consistent. In particular, he was reluctant to speak about the applicants' allegations as he appeared to be obliged to deny the allegations, without giving any further details requested from him by the Delegates or without providing any explanations which would prove to the contrary. Thus, his statements could not be examined in detail in context of other evidence obtained and could not be contrasted to that evidence. The Court points out in this connection that the witness did not remember particular important details about the training exercise which related to the applicants' allegations of ill-treatment. Furthermore, with regard to the participation of special forces from outside the penitentiary, he stated that only the personnel of Zamkova Prison participated in the search, with staff from the guard company. Nevertheless, he confirmed a number of facts presented by others, which related *inter alia* to the time and manner of the searches, the uniform worn by the penitentiary officers, etc.

188. As to the witness statements given by Mr Vasyl Bondar, head of the medical unit of Zamkova Prison (see Annex, paragraphs 50-58), this

witness confirmed a number of facts presented by other witnesses, including the approximate time of the searches, the participation of an outside “rapid reaction group (special unit)”, the uniforms worn by the officers, their equipment, medical treatment, the procedure for registering complaints and the supervision of his activities. His statements also revealed that there was no adequate system for receiving and registering medical complaints and that no reliable system for keeping medical records and files existed in Zamkova Prison. The Court further notes certain inconsistencies in his statements with regard to the presence of the special units at the residential zone and where exactly he was during the searches (see Annex, paragraphs 51-54). In respect of the applicants' complaints that they were not given adequate medical attention, the Court considers that it cannot draw any conclusions from the evidence given by this witness with regard to the medical treatment provided to the applicants, as this witness's responses were given to prove that he acted in compliance with the law and in defence against the applicants' accusations of his inadequate work. However, the Court would still take into account the evidence given by that witness as to how the medical unit operated and that its operation generally corresponded to the regulations at issue. Also, he was unable to respond credibly and clearly to the questions concerning the registration of medical complaints, and in particular how he learned about medical complaints from prisoners and the procedure for responding to such complaints. It further notes that there were only two employees in the medical unit, including Mr Bondar. Thus, this witness could not be present everywhere in the course of the searches in cells and training exercises, could not have witnessed all of the training, even though he mentioned that the cells were searched one-by-one. For the Court this inconsistency means that Mr Bondar witnessed only a part of the search and training, but not the whole training and search exercise in its entirety. Also, Mr Bondar initially stated that he did not know which group or unit trained at Zamkova Prison, but eventually confirmed that there were some “additional forces” from the outside. In this respect, the Court takes into account this witness's dependency, from a hierarchical perspective, on the Governor of the Prison and the Prison Department and considers that inconsistency in some of his statements was a result of this dependency.

189. As to the statements given by two prosecutors, Mr Oleg Bukher, the local prosecutor (see Annex, paragraphs 59-63) and Mr Yevhen Volkov, the special prosecutor who dealt with the supervision of lawfulness in Zamkova Prison, (see Annex, paragraphs 64-70), the Court finds that these witnesses were evasive in their testimonies. This especially concerned confusing witness statements given by Mr Volkov, who failed to give consistent description of the events. In particular, Mr Volkov answered the questions posed by the Delegates without providing direct answers and without giving exact factual details. In his statements he repeated on a number of occasions that the search and training in May 2001 had been

conducted in accordance with the law and he vigorously denied any possible violation of internal prison regulations, regulations as to the conduct of training exercises or searches. His statements were general in that he gave no details or explanations as to what exactly had occurred. The Court notes, with regard to the statements given by Mr Bukher, that although he was willing to help the Delegates, he had no direct information about the trainings and searches as he did not witness them and only supervised investigation into the events of the case. Nevertheless, he stated that Zhytomyr special unit had been involved in the training in May 2001 (see Annex, paragraph 62).

190. The Court finds that the witness statements given by Mr Bukher, Mr Volkov and Mr Bondar, respectively, the local prosecutor, the special prosecutor and the head of the medical unit, can be used in relation to particular elements of the case in which these witnesses were involved. In particular, Mr Bukher's statements were useful from the point of view of examining how the investigation into the applicants' complaints had been conducted. Mr Volkov's statements can be used in relation to the examination of the applicants' complaints and the procedure for their submission by the complainants, as well as to certain general factual details related to the conduct of the trainings. As to the statements given by Mr Bondar, they were useful for understanding the operation of the medical unit and how the unit dealt with the incoming medical complaints (see paragraph 188 above). Thus, the events viewed by these witnesses from that angle, and important details added in the course of the cross-examination to the statements previously given, confirm the statements given by the applicants as to the manner in which investigation had been performed and the way in which medical assistance had been provided to them.

191. Mr Bukher, a local prosecutor, also gave important evidence as to the role of the special prosecutor's office in the investigation and its effectiveness. In general, his statements with regard to the manner of investigation were quite credible, as he tried to prove that he was right in refusing to institute criminal proceedings against the Prison employees and the members of the rapid reaction group. He further tried to prove that the investigative acts undertaken by his group, him and the assistants who questioned the applicants and witnesses, were reasonable and correct in the circumstances of the complaints and that they examined all important evidence, performed all necessary investigative acts and concluded that it was unnecessary to institute criminal proceedings in the case.

192. The Court further notes that the evidence given by Mr Yevhen Volkov, supervising prosecutor, indicated that the witness was an inexperienced prosecutor, who had just started to work in the specialised prosecutor's office dealing with the prisons' supervision and was not fully aware of the prison functioning, legal and practical issues involved in this job (see Annex, paragraphs 65-70). His statements in relation to the conduct of the trainings on both occasions were unreliable as they were not

consistent throughout the questioning. In particular, firstly, he mentioned that he was new to his job and the training exercises at issue were exceptional events, and that he therefore tried to understand, remember and see as much as possible. Nevertheless, although he was new to the job and was fascinated by its importance, especially from the point of view of necessity to ensure that the law was complied with and properly enforced, he was not able to recall many significant details related to the trainings and searches. In particular, he was unable to give clear and direct answers to a number of factual questions. For instance, he stated that the applicants and other prisoners were informed about the training and search by radio well in advance and that it was a normal way of informing them. However, notwithstanding some unclear answers to the other questions raised, this witness was firm in his view that the rapid reaction unit was present in Zamkova Prison on 30 May 2001 and was, most possibly, in the “residential zone” (see Annex, paragraph 65). For the Court his testimony also confirmed the manner in which the investigation into the complaints had been organised. Furthermore, it was apparent from his statements that prisoners were prevented from complaining to the prosecution or other State authorities directly and had to try to use “illegal” channels for lodging their complaints. He confirmed in his statement the documentary evidence submitted by the Government that he requested sanctions on the prisoners for lodging these illegal complaints.

193. The Court finds, with regard to the witness statements given by Zamkova Prison officers Mr Pavlo Klipatsky, Mr Andriy Shatskiy, Mr Sergiy Zlotenko and Mr Pavlo Zaremskiy (see Annex, paragraphs 71-85), that these statements in relation to the conduct of the training were general in nature, but still useful, in that they complemented the oral witness statements given by the applicants and former prisoners of Zamkova Prison. Particularly, these witnesses failed to give exact details of the trainings held and made more general statements as to that law or internal prison regulations were never violated in the course of the trainings. In this respect the Court, as in the case of Mr Bondar, underlines the dependency of these witnesses on the State and specifically those from the Prison Department. Nevertheless, on the whole their statements were consistent with the previous written statements submitted to the Court by the applicants on the manner in which the training was organised and certain factual details of the training, like the presence of rapid reaction units during both training exercises, their uniforms, the shots and noise that were heard and the time and manner of the training.

194. The Court also notes that the statements given by Mr Pavlo Klipatsky were not consistent with other statements given by the applicants and witnesses. In particular, first he did not want to admit the presence of special forces in the Prison, but then mentioned that they were present at the industrial zone during the training (see Annex, paragraph 72). Notwithstanding that the Court considers that he, indirectly, like the other

officers from Zamkova Prison heard by the Delegates confirmed the presence of the rapid reaction units in Zamkova Prison, within the residential zone. They also provided additional details about the manner in which the investigation into the events was organised and how the complaints lodged by the prisoners, including those lodged by the applicants with the European Court of Human Rights through Mr Zherdev, were reviewed within the Penitentiary and how they were sent out from Zamkova Prison (see Annex, paragraph 81).

195. With regard to the statements made by Mr Sergiy Snegir, the former Governor of Zamkova Prison (see Annex, paragraphs 94-100 above), the Court considers that they confirmed the presence of the rapid reaction units in the residential zone during both training exercises, provided important details about the investigation of the events and the review of the complaints by the prisoners. In particular, this related to the commissary inspection of cells organised by the Governor in presence of the prosecutor and the persons present during the training and search. He also gave detailed statements as to how the complaints lodged by the applicants were reviewed and in particular as to the meeting about the complaints he had with Mr Ilchenko, in response to his complaints lodged through Mr Zherdev with the European Court of Human Rights (see Annex, paragraph 100). Also, Mr Snegir confirmed that Zamkova Prison staff were using special equipment and a special uniform, as they were described by the applicants in their submissions and testimonies, and therefore prisoners could not identify members of the special forces. Also, some of them were from Prison no. 31 (see Annex, paragraph 99).

196. As to the statements given by Mr Vasyl Leventsov, the former First Deputy Head of the Regional Prison Department (see Annex, paragraphs 87-93), the Court finds that they confirmed the evidence previously given by other witnesses. On the basis of these statements and those of other witnesses, the Court concluded that the rapid reaction units had been present at Zamkova Prison during both training exercises. In particular, the Zhytomyr special unit was present during the first training exercise, held on 30 May 2001, and the rapid reaction unit formed from the personnel of the Prison and nearby penitentiaries, including Prison no. 31, was present at Zamkova Prison on 29 January 2002. This witness did not respond directly to, and did not deny, the suggestion that rapid reaction units had been present in the Prison's Monastyr during the search. In spite of the fact that this witness tried to avoid giving direct answers to the above question or claimed that he could not remember certain facts, for the Court his statements confirmed the manner of the search, already described by the applicants and other witnesses, and other important details about the organisation of training and search, the description of which corresponded to the training plans that were approved and elaborated by the Prison Department, where this witness was responsible for personnel training.

197. The Court notes that the statements produced by Mr Mykola Iltiy, the First Deputy Head of the Prison Department, (see Annex, paragraphs 101-107 above) gave important factual details concerning the internal investigation conducted by the Prison Department and the review of the prisoners' complaints within the Prison Department. In accordance with these witness statements, which the Court accepts as credible, notwithstanding the failure of the Government to provide any records relating to the conduct of investigation (see paragraph 168 above), the investigators of the State Prison Department (Mr Irshko) questioned and received written explanations from one hundred persons in a single day, without reviewing the medical evidence and looked at the complainants' personal files, noting that the complainants were regarded as "malicious violators of the law" (see Annex, paragraph 102 above). These details, for the Court, are useful elements in examining the manner and nature of the investigation conducted by the domestic authorities into the applicants' complaints. The Court also notes that Mr Iltiy gave important factual details about the purpose of and grounds for the use of the special forces and the equipment they carried and used during the training exercises. In particular, he stated that the officers of the special and rapid reaction units acting within the Prison Department had been required to know the premises of the penitentiaries, including the residential area, in case of unforeseen circumstances such as the taking of hostages or mass riots. Thus, these statements lend further support to the evidence that the searches were conducted with presence of the special forces, who had to be trained within the residential area of Zamkova Prison they were obliged to be acquainted with.

4. Material and documentary evidence provided in the course of the inspection of Zamkova Prison

198. After the oral hearing of witnesses the Delegates decided to inspect the following premises and documentation, subject to its availability, at Zamkova Prison:

- (1) detention and isolation units (including the so-called "Monastyr" wing);
- (2) medical service units.
- (3) registers of prisoners;
- (4) registers of complaints submitted by prisoners to the local and General Prosecutor's Offices;
- (5) registers of the medical complaints relevant to the material time;
- (6) solitary confinement unit registers;
- (7) registers of disciplinary sanctions applied to the applicants.

199. As to the inspection of Zamkova Prison, the Court notes that the Delegates visited the Monastyr cells, the former medical unit premises, the disciplinary detention premises and the solitary confinement premises of the

Prison no. 58. They also visited the special equipment storage room, which was a temporary storage room for such equipment.

200. The registers and documents mentioned in points above 3, 4, 5, 6 and 7 (above in paragraph 198 above) relating to the period of the first and second training exercises, were not made available to the Delegates, mainly on account of the fact that they had allegedly been destroyed on the expiry of the period for their administrative use. The Delegates inspected the premises mentioned in points nos. 1 and 2. The Delegates were shown fresh administrative registers, which contained no relevant information that might have been useful for the purposes of the fact-finding mission. Thus, the Court cannot draw any conclusions from this documentary evidence.

201. On the basis of the inspection conducted by the Delegates, the Court concludes that the conditions of detention at Zamkova Prison generally corresponded to the conditions described by the applicants in their submissions and the parties' observations on the case. They also concluded that the description of premises of Zamkova Prison generally corresponded to the oral description thereof given by the prisoners-witnesses in the course of the hearing.

5. The Court's findings of fact and conclusions

(a) General comments as to the facts

202. The Court notes, as a general remark, that the prisoners were never properly informed in advance that the training exercises would be conducted (see Annex, paragraphs 12, 16, 18, 26, 32, 38, 42 and 70). They only heard rumours that the trainings would be organised and received certain threats from the Prison officers (see Annex, paragraphs 26 and 42). The prisoners, including the applicants, never gave their consent to participate in the training exercises and were never asked whether they could be involved in it. They were all in a vulnerable position, unable to defend themselves or to protect themselves from excessive use of force or humiliating searches. Furthermore, they were being treated as objects in the course of these trainings. The applicants were unable to complain against abuses in the course of the training sessions as they could not identify masked perpetrators (see Annex, paragraphs 12, 17 20, 27, 39, 45, 48 and 52) or lodge their complaints through the legally available to them channels as these channels involved censorship of their correspondence by the alleged perpetrators and specific personal negative consequences such as imposing administrative sanctions on them for their complaints.

203. Moreover, having regard to the testimonies of the witnesses heard by the Court's Delegates (see Annex) and the documentary evidence submitted by the parties (see paragraphs 51-100 above), the Court has reached the following factual conclusions specific to each of the training exercises, conducted in Zamkova Prison on 30 May 2001 and 29 January 2002 (see, respectively, paragraphs 204-220 and 221-230 below). It has also

reached factual conclusions as to the investigation into the applicants' complaints, which are further summarised below (see paragraphs 231-234 below).

(b) Events of 30 May 2001 and the ensuing events

204. The first training exercise, conducted on 30 May 2001, was to start early in the morning from 5 a.m. (according to the training plan (Plan no. 1)) and the search (according to the Plan no. 3) was to be conducted from 8 a.m. to 12 noon (see paragraph 55 and 57 above). It started with the gathering of officers who participated in the training exercise in the social room of Zamkova Prison. There they were informed of their tasks and the “operative circumstances” within Zamkova Prison.

205. The training itself started when an alarm sounded, following which the 231 officers involved in the training entered the industrial zone through the checkpoint of Zamkova Prison. This group included officers from Zamkova Prison, officers from the rapid reaction units of Prisons nos. 31, 58 and 98, and 18 officers from Zhytomyr special unit.

206. Firstly, a training exercise on liberating hostages was to take place in the carpentry workshop of the industrial zone, without the involvement of the prisoners. The training focused on preparation of the rapid reaction unit which existed in Zamkova Prison and officers of the Prison Department on possible extraordinary events in prison. However, contrary to the timing envisaged in Plan no. 1 of 25 May 2001 (see paragraphs 52-55 above), at about 8 a.m., the Zhytomyr special unit, the rapid reaction units and the officers of Zamkova Prison, that were a part of the so-called “joint detachment” and were divided into groups, entered the residential zone and participated in the general search of the residential premises. The forces conducted a general search before the training exercise on liberating hostages from 8 to 10 a.m. and then from 10 a.m. to 11.30 a.m. they trained in the industrial zone (see paragraphs 55 and 57 above and paragraphs 182 and 185 with further references above).

207. The following groups were involved in the general search in the course of the first training: the blocking, documentation, medical assistance, convoy, search, special and reserve groups (see paragraph 56 above). The special unit and the rapid reaction units participated in the search as a “reinforced presence group” or groups participating in a “supervisory search” or selective general search in the isolated departments of Zamkova Prison (see paragraphs 53 and 55 above). The training exercise involved the use of special equipment (see paragraph 54, 56 and 58 above) and a special camouflage uniform, which was green or other camouflage colours. This uniform had been distributed to the personnel of Zamkova Prison on the day of the training. The Zhytomyr special unit had its own uniform and special equipment. The special equipment included helmets, shields, the automatic guns used by the special unit, firecrackers, black flak jackets that were usually worn on the top of the uniform, thus creating the impression for

certain applicants and witnesses that the uniform was black, rubber truncheons, handcuffs, immobilising pitchforks (see paragraphs 54 and 56 above). The prison officers participating in the search also used automatic guns, firecrackers, truncheons and shields in the actions to search the premises where the prisoners were held (see paragraph 54 and 56 above).

208. The role of the special unit was to guide the search conducted after the training exercise. There were 53 cells, containing 750 prisoners, which had to be searched in the course of the general search, which lasted for about 2-3 hours. The task of this unit was to demonstrate to the personnel of Zamkova Prison how to conduct a general search in the most efficient way, within the given time-limit, and to provide a practical opportunity for the special unit to instruct the personnel of the penitentiary and the rapid reaction units (see paragraph 53 above). This included assuming formation in the corridor, taking the prisoners out of the cells, placing them against the walls in the corridor and conducting full personal searches.

209. The Governor of Zamkova Prison, officers Mazepa and Mazurenko, prosecutor Volkov and medical officer (head of medical unit) Bondar were present during the first training event. However, they were not present during the search of all of the cells.

210. The events of the search were as described by the applicants (see Annex, paragraphs 3-4 and 11-14) and the prisoners witnesses in their submissions (see Annex, paragraphs 25-29, 32-34, 38-40 and 42-43).

211. In particular, as regards the search in the cell no. 8 of the Monastyr in Zamkova Prison, where the first and second applicants were held, it started with the sounds of explosions and blank shots from the automatic guns, apparently in the corridor leading from the entry to the Monastyr, in front of the cell no. 8, and some noise and shouting. The applicants could hear people being dragged out from the cells and beaten. The search forces also used firecrackers and banged with truncheons on the shields. The officers lit a firecracker near the cell and shot near it.

212. Shortly after, the door into the cell opened and two officers, apparently those who belonged to a special unit involved in the search, as they wore masks and flak jackets, ran into the cell, pointing their guns inside the cell. They ordered the first and the second applicants to lie on the floor face down. They were not allowed to move. The second applicant was kicked by an officer for finding no place to lie down inside the cell. The second applicant received multiple kicks. The officers were moving inside the cell, stepping on the prisoners.

213. The officers ordered the prisoners of cell no. 8, including the first and second applicant and other prisoners of the cell to run into the corridor of the Monastyr one-by-one where other soldiers who had truncheons and shields formed a "corridor", through which the prisoners ran to the wall in front of the cell. They ran with their heads bent down to the level of their legs. The first and second applicants were forced to stand up and to run. The second applicant had been dragged out of the cell, with two soldiers holding

his hands up behind his back so that he was bent down and could hardly walk.

214. When the second applicant ran he received blows from truncheons to his forehead and back. Those officers forming a “corridor” tried to strike the first and second applicant and other prisoners from cell no. 8 with truncheons or kick them with their feet. Other officers with shields were making a noise, knocking on the shields with their batons. The first applicant was stopped by a member of a search team who ordered him to stand near the wall. Both the first and second applicant had to stand in the “*roztyazhka*” position (see, for explanations as to the position, paragraph 143 above) near it. The second applicant fell after he stayed in this position and was kicked, but was again raised to stand near the wall in the same position. The officers started to search them and the first and second applicants were ordered to strip naked; their clothes were piled in the middle of the corridor and not inspected. Both applicants were asked to give their names, the reasons for their conviction and the duration of their sentences. They were asked to swear that they would not violate the detention regime and comply with the prison officers' orders. Then the officers, after receiving instructions from someone from Zamkova Prison, who knew that both applicants were “malicious violators of the detention regime”, started hitting at parts of the first applicant's body as his answers were not loud enough.

215. The second applicant was ordered to run back to the cell, and started to look for his clothes, which were muddled together in the middle of the corridor, but was kicked for taking too much time for it. When the second applicant ran back into the cell naked and holding clothes, he had to bend down as he was constantly struck. When he entered the cell, he was again ordered to lie down. Then all prisoners were ordered to stand up and to restore order in the cell. Following return to the cell they saw all their belongings scattered all over the floor, broken or in a heap in the middle of the cell.

216. The procedure for conduct of searches and full personal searches of the applicants was regulated by the internal prison regulations of the Prison Department (see paragraphs 67-76, 122 and 136 above). The prisoners who violated the regime, in particular, “malicious violators of the regime”, were given most of the attention in the course of the search from the rapid reaction unit officers and the officers who participated in the search. The Court notes that the first and second applicants held in the Monastyr were identified by Zamkova Prison officers as “malicious violators of the regime” and dangerous criminals who were unwilling to reform and thus received particular attention from the guards, being guided by Zamkova Prison officers.

217. The special forces left before lunchtime on the day of the training. Ten to fifteen minutes after the cell door had been closed after the search, on the prisoners' return from the corridor to the cell no. 8, they had a visit

from Mr Zakharov, Mr Mazepa and Mr Mazurenko who asked them, including the first and second applicants, whether they had any complaints. This was done in the presence of the soldiers from the special forces. Mr Volkov and Mr Stasiuk attended the training exercise and visited cells. Officers from the Prison administration (including Mr Gaydamaka and Mr Zakharov) were also present.

218. The Court considers that the force used by the authorities against the applicants during the search was inherently likely to lead to injuries of those prisoners held in cell no. 8 of Monastyr. The Court finds sufficient evidence ensuing from oral statements given by the applicants and witnesses to establish that injuries were inflicted on the first and the second applicants (see Annex, paragraphs 5 and 16). Furthermore, in the Court's view, the lack of material evidence, such as medical records or medical examination certificates, substantiating specific injuries sustained by the applicants does not prevent the Court from making findings as to whether excessive force was applied as a result of which the applicants were injured. In this respect the Court finds that the system for recording injuries enabled penitentiary officials not to record injuries and not to react to medical complaints, as the Court considers happened in the case. The Court notes that, in view of lack of medical records in the instant case, there is no reliable written source of evidence for determining whether a particular applicant prisoner was or was not subjected to ill-treatment. Also, it is not for the Court to establish the kind or degree of injury if it is satisfied that the treatment attained the level at which Article 3 applies. The Court also refers in support of these findings to others witness statements, which it found convincing. In particular, it considers that the statements given by the second applicant (see Annex, paragraph 11), who watched the search in the corridor through a chink in the door, and the results of it seen by Mr Getmansky, who saw injured prisoners pass by to the medical unit (see Annex, paragraphs 43-44), under guard or with help of the other prisoners, were reliable and trustworthy. The Court further notes that the conduct of the training largely corresponded to the training plans (see paragraphs 52-64 above) and the internal domestic regulations (see paragraphs 66-80 and 134 above), a position which was on a number of occasions underlined by the witness statements given by the officials of Zamkova Prison, local and special prosecutors and the officials of the Prison Department. However, some of these regulations like the Order no. 75 of 27 April 2000 on the conduct and operation of the special units (see paragraphs 77-80 above) were not publicly accessible and were provided by the Government only upon request of the Court (see paragraphs 142 above). Thus, the Court considers that there were no grounds provided by law, within the meaning of the Convention, for operation of the aforementioned special unit.

219. The Court further accepts that the applicants asked for medical assistance immediately after the training exercise and on the next day, but none was provided so they had to give medical aid to each other. The

injuries inflicted on the prisoners in the course of the general search were not recorded and there were no traces of any records of injuries inflicted on the applicants. No medical treatment and assistance was provided for the injuries which both the first and the second applicant sustained. Given the inadequacy of the recording of medical complaints (see paragraph 218 above), the mere absence of records is not sufficient to counterbalance the evidence before the Court. The Court concludes that the first and second applicants received injuries which resulted from the events surrounding search in cell no. 8 of Monastyr on 30 May 2001.

220. The Court also notes that the applicants were unable to seek redress for alleged infringements of their rights, and by the first applicant, Mr Davydov, and the second applicant, Mr Gomeniuk, were punished for bypassing the prison authorities and lodging their complaints directly with the respective prosecutor's office, i.e. by means other than those envisaged in domestic law for lodging such complaints, and thus in breach of the internal prison regulations (see, for particular events, paragraphs 91 and 93 and for relevant prison regulations on sending and censorship of correspondence, paragraphs 118, 132 and 134-135 above). Mr Ilchenko on several occasions had to explain why he had complained about the training exercises to Prison authorities. The complaints given by the first and second applicants during the next day to Mr Gaydamaka, head of their prison detachment, and to Mr Mazurenko were not sent out. After these complaints were given to Mr Gaydamaka, who threatened the applicants and demanded them to withdraw their complaints, which they eventually did, again, following different threats.

© Events of 29 January 2002 and the ensuing events

221. The second training exercise and search started at 6 a.m. and involved units from Prisons nos. 31 and 58, rapid reaction units from rapid reaction units of Zamkova Prison, Iziaslav Prison no. 31, Shepetivka Prison no. 98, Prison no. 78 and SIZO (pre-trial detention centre) no. 29 of the Khmelnytsky Region. The groups were trained near the checkpoint on the grounds outside Zamkova Prison from 8.30 a.m. to 11 a.m.; at 11 a.m. they entered the residential area of Zamkova Prison and continued with the general search of the isolated sections until 3 p.m. (see paragraph 61 above). According to the relevant plan of the training (Plan no. 4), the search started at 9 a.m. and finished at 12 a.m. (see paragraph 63 above).

222. The training exercise on how to combat mass disobedience was supervised by representatives of the Prison Department, officers from the aforementioned prisons and officers to whom the special units acting within the Prison Department were subordinated. A substantial number of persons was involved in the training, and there was noise from firecrackers and blank shots.

223. The training exercise involved participation by the groups responsible for blocking, documenting, medical assistance, convoy, search,

and the special and reserve groups. According to the training plan the total number of staff to be involved was 151. The special unit was to use 3 automatic guns, firecrackers, signal rockets, etc. A total of 29 members of staff of Zamkova Prison, out of 151 persons overall, were to be involved in the general search (see paragraph 62 above). One of the aims of the training was to train Zamkova Prison's personnel and the rapid reaction units in conducting searches of the premises occupied by prisoners and searching the prisoners themselves. In particular, the search of prisoners and of the residential area was mentioned as one of the main training aims. The stated aim of the search was to find prohibited items and to identify preparations for escape, preparatory actions for the commission of criminal offences. The search also had the aim of prevention of possible breaches of prison regulations as it mainly concerned "malicious violators of the regime" and focused on inspection of disciplinary cells and those cells where the operational circumstances had been troublesome. The personnel involved in the search were divided into three mixed groups, with different commanding officers who conducted a general search in the residential zone of Zamkova Prison. The search had been conducted in the SHIZO, PKT, OK, TU in the severe detention regime area; cells nos. 19 and 29 in departments nos. 5 and 8; departments nos. 9 and 10 in the prison section of the general detention regime area.

224. The results of the fact-finding mission confirmed that the events of the second training exercise and search of 29 January 2002 were as described by the applicants (see Annex, paragraphs 6-8, 16-17 and 20-22) and the witnesses who were detained in their submissions (see Annex, paragraphs 35 and 44-45). The Court also observes that the assumptions of some prisoners, such as Mr Getmansky (see Annex, paragraph 44), that there was a substantial number of officers involved, were true, since the number of participants exceeded that of the first training exercise.

225. After the training session the forces entered the residential zone, where they participated in general searches; as noted above, this was as "reinforced presence groups". They blocked entrances to localised zones of Zamkova Prison and remained in the corridors to prevent prisoners' "unexpected behaviour". The rapid reaction units involved in the search wore green camouflage uniform, had special equipment, including "sphere" helmets, shields, black flak jackets; some of them carried automatic guns, rubber truncheons, handcuffs, immobilising pitchforks and firecrackers. The special forces involved in the search also wore camouflage and masks, with automatic guns. The officers from the search group were from the same type of military unit, differed from the Prison staff and wore bulletproof vests (flak jackets), *khaki* uniforms with rolled-up sleeves, and had weapons and shields (yellow or light brown). They also had immobilising pitchforks, masks and helmets.

226. There was noise from automatic gunshots, explosions of "firecrackers" and smoke. The forces searched cells, opening them one by

one. They searched the first floor (the “second” floor in Ukraine) of Monastyr and ordered the prisoners, including the first applicant who was incarcerated there, to lie down. Then they used force to drag prisoners out to the corridor, where the prisoners would pass through the “live corridor” of soldiers who kicked or struck at the prisoners with rubber truncheons. They were ordered to stay in the “roztyazhka” position (see, for explanations as to description of this position, paragraph 143 above) and ordered to shout their names, swear that they would not violate the detention regime and cooperate with the administration. One of the Prison officers gave instructions to the officers participating in the search. Then officers ordered the prisoners to run to the cell.

227. In the course of the second training exercise, the officers searched the solitary confinement cell, situated on the first floor of Monastyr, where the first applicant was held (see Annex, paragraph 6). This applicant was dragged out of the cell by two officers who threw him into a very narrow passageway between the cells, where he saw Mr Volkov, Mr Stasiuk and a third person standing at a distance of 5-6 metres. He also saw some other prisoners who were dragged out from solitary confinement cells. The first applicant was beaten as he refused to swear that they would comply with the administration's instructions. He was thrown back into the cell, where one of the soldiers, who wore solid military boots, kicked him and he fainted. The applicant was not examined by the prison doctors with regard to his medical complaints. Eventually, only a doctor from outside informed him that his ribs were broken and recorded this information in the medical register (see Annex, paragraph 8), which disappeared during his transfer to a different prison (see, facts in relation to the second training exercise as shortly summarised in the admissibility decision in the present case, *Druzenko and Others v. Ukraine* (dec.), nos. 17674/02 and 39081/02, 15 January 2007).

228. The second applicant's cell was not searched, as the officers only searched cells nos. 19 and 29 nearby, in the same corridor, while he was held on the first floor, after transfer from the “imprisonment regime” to a maximum security regime or regime of the highest severity, in cell no. 23 of the Monastyr. However, he was beaten and received injuries following the training of the special forces, after the special forces left Zamkova Prison, by Mr Zaremsky and some junior prison inspectors from the 8th detachment. He was never examined by the doctor in relation to these injuries and received no medical treatment in that respect.

229. The third applicant's cell was in disarray. Also, he received injuries, which resulted from the acts of the officers who participated in search. The third applicant sustained rib and nose injuries, as well as did a number of other prisoners. However, he was neither examined nor provided with medical treatment for these injuries.

230. Again, the absence of medical records is not conclusive for determining that none of the applicants were able to complain about their injuries to the authorities outside Zamkova Prison, even though the prison

authorities were aware of the injuries and the complaints raised in that respect. The first applicant was unable to lodge his complaints with authorities outside the prison as the penitentiary officers censored all correspondence, Mr Mazurenko and Mr Mazepa tore them up, but the complaints were eventually sent to Mr Zherdev. The first applicant was placed in the solitary confinement cell (*камера*) as a sanction for sending correspondence by unauthorised means.

(d) Investigation into the applicants' complaints

231. The Court notes that the applicants received several replies from the prosecution authorities upon their complaints concerning the first training exercise (see paragraphs 85-88 above). Also, Mr Skokov conducted review of the complaints on behalf of the State Prison Department which concerned the first training exercise (see paragraph 98 above). Furthermore, two investigations were conducted by the domestic prosecution authorities on the basis of the complaints lodged on behalf of the applicants by Mr Zherdev, however, after the second training exercise (see, as to the facts of first and second investigation, respectively, paragraphs 87-94 and 95-97).

232. The investigations and review were organised in such a way that the persons who initially authorised the search and who were present during its conduct (Mr Volkov, Mr Yantselovsky and Mr Satsyuk), were the same persons who gave legitimacy to the investigation's findings, were present during questioning of those who wished to complain or were responsible for reviewing the applicants' complaints (see paragraphs 90 and 98 above). In particular, Mr Snegir accepted that he was present during the first applicant's questioning by the prosecutor (see Annex, paragraph 100 above), which was most probably conducted in the presence of the security guards. The same applied to the prosecutor's and administration's visits to the cells immediately after the search and the questioning with regard to complaints of injuries and ill-treatment, which were conducted in the presence of the possible or alleged perpetrators and guards from the special unit or rapid reaction units (see Annex, paragraphs 4, 15, 67 and 93).

233. Thus, taking into account documentary and oral evidence, the investigation conducted by the prosecutors corresponded to the evidence presented to the Court. Furthermore, notwithstanding the written submissions given by some of the applicants as to their ill-treatment they were not examined and no medical examinations were ever organised in the course of investigation conducted by the Khmelnytsky Regional Prosecutor's Office. Moreover, some complaints sent by the applicants were not sent out as outgoing mail was censored and as well as all the correspondence dropped into a special mailbox designated for complaints against Zamkova Prison authorities (see, for regulations concerning the use of mailboxes, paragraph 134 above), which had to be sent out within one day of receipt according to the applicable regulations (see paragraph 118 above).

234. The investigation conducted by Mr Iltiy and his deputy, officers of the State Prison Department, which concerned complaints with regard to the second training exercise, involved questioning of about hundred witnesses by Mr Irshko within a day (see Annex, paragraph 103), involved no review of medical evidence, and no other medical examinations. The conduct and manner of this investigation was such as described by the relevant witness statements, even though it was not supported by any records of this investigation. The Court also notes that this report was not provided to it for review as the time-period for its retention expired and it was destroyed (see paragraph 168 above). Thus, it was not possible to ascertain the factual details established by this review of the complaints, or even exact date on which questioning of witnesses took place. Finally, the Court notes that a report was also prepared by Mr Skokov, on the basis of the report from officer Danyshesky who had investigated the matter from 3 to 4 October 2001, and on the basis of instructions given by the State Prison Department (see paragraph 98 above). That report might have formed part of the investigation carried out under the authority of Mr Irshko, but again no copy has been made available to the Court (see Annex, paragraph 103).

235. The Court will proceed to examine the applicants' complaints under the various Articles of the Convention on the basis of the findings made above (see paragraphs 202-234 above).

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

236. The applicants, that is the first, second and third applicants (see, paragraphs 149-153 above), mainly complained under Articles 3 of the Convention that they were ill-treated by the special forces and were injured and humiliated in the course of the special training exercises organised on 30 May 2001 and 29 January 2002. They also claimed that the conditions of their detention and the lack of adequate medical treatment and assistance were inhuman and amounted to degrading treatment. Article 3 of the Convention provides:

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

237. The Government stated that the applicants were not disciplined for their attempts to complain about ill-treatment by the special police forces or prison administration. In particular, they stated that, according to the registers of prisoners kept in isolation units nos. 2688 (records for the period from 8 June 2000 to 16 July 2002) and 3914 (records for the period from 17 January 2002 to 30 December 2003), only the first applicant (Mr Davydov) had been subjected to disciplinary sanctions. In particular, on 14 July 2001 he was disciplined by 15 days' solitary confinement for his refusal to be detained with other prisoners. The Government further argued that these disciplinary measures imposed on the first applicant pursued the

legitimate aims of maintaining order and security in prison and avoiding the commission of other offences in prison. Also, they stated that the length of his detention was reasonable.

238. The applicants disagreed with the Government and stated that disciplinary measures against the applicants were applied arbitrarily and as a punishment for their complaints about the prison authorities' acts or omissions. They stated that, for instance, the second applicant had been subjected to disciplinary measures on twenty-seven occasions.

239. The Court considers it inappropriate to review complaints concerning interference with the applicants' correspondence and impediments to their various complaints in conjunction with those under Article 3 of the Convention, as they are rather an element of proof for the complaints under Articles 8 § 1 and 34 of the Convention.

A. The Government's objections as to exhaustion of domestic remedies

1. The parties' submissions

240. The Government contended that the first, second and third applicants had failed to exhaust all the domestic remedies available to them under Ukrainian law. In particular, considered that the applicants could and should have made complaints to the prison or prosecution authorities and thereafter to the domestic courts.

241. The Government stated that the second applicant never raised complaints that specifically concerned his alleged ill-treatment by special forces.

242. As to the complaints lodged by the third applicant, the Government noted that he did not apply to the General Prosecutor's Office at all, although he did complain to the local prosecutor's office, raising similar allegations to the first and second applicants.

243. Furthermore, with respect to the conditions of the applicants' detention and the alleged lack of medical treatment and assistance, the Government noted, referring to the relevant domestic case-law, that the acts or omissions of the State bodies and their officials could be appealed directly to courts under Article 55 of the Constitution and the relevant provisions of the Codes of Civil and Criminal Procedure. The Government stated that the applicants had provided no evidence in support of their complaints about the conditions of detention.

244. The applicants submitted that they had exhausted all the domestic remedies available to them under Ukrainian law. They further alleged that they had lodged complaints with the prosecutor's office about their ill-treatment by the special police forces, but that office had failed to organise and conduct an effective investigation upon their complaints. They also mentioned that the prosecutor's office failed to adopt a procedural decision

on their complaints, thus making the possibility of a successful appeal against it theoretical. They also maintained that they had sent their complaints to various State authorities, but without success.

245. The applicants submitted that there were no effective and accessible remedies to complain about the conditions of their detention.

2. The Court's assessment

(a) Preliminary considerations

246. In the Court's opinion, three issues arise out of the Government's objection as to exhaustion of domestic remedies, joined to the merits of the applicant's complaints (see *Druzenko and Others v. Ukraine* (dec.), nos. 17674/02 and 39081/02, 15 January 2007), which require further examination:

- *firstly*, whether there were any effective and accessible remedies available for the applicants to complain about their ill-treatment in the course of the training exercises;
- *secondly*, whether there were any effective and accessible remedies to complain about the lack of necessary medical treatment and assistance while they were incarcerated;
- *thirdly*, whether there were any effective and accessible remedies to complain about the conditions of their detention and overcrowding in the cells.

(b) Applicable principles

247. The Court recalls that, according to its established case-law, the purpose of the domestic remedies rule in Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. However, the only remedies to be exhausted are those that are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Dankevich v. Ukraine*, no. 40679/98, § 107, 29 April 2003).

248. The Court emphasises that the application of this rule must make due allowance for the context. Accordingly, it has recognised that Article 35 must be applied with some degree of flexibility and without excessive formalism. The Court has recognised that the rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically; in reviewing whether the rule has been observed, it is essential to have regard

to the particular circumstances of the individual case. This means, amongst other things, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general legal context in which they operate, as well as the personal circumstances of the applicant (see *Akdivar and Others v. Turkey*, 16 September 1996, § 69, *Reports of Judgments and Decisions* 1996-IV). It must examine whether, in all the circumstances of the case, the applicants did everything that could reasonably be expected in order to exhaust domestic remedies.

249. The Court further recalls that the decisive question in assessing the effectiveness of a remedy concerning a complaint about ill-treatment is whether the applicant can raise this complaint before domestic courts in order to obtain direct and timely redress, and not merely an indirect protection of the rights guaranteed in Article 3 of the Convention. The remedy can be both preventive and compensatory in instances where persons complain about their ill-treatment in detention or the conditions thereof (see *Melnik v. Ukraine*, no. 72286/01, § 68, 28 March 2006).

250. The Government suggested the following remedies: complaints to the prison or prosecution authorities and complaints to the domestic courts, according to the procedures provided by the national law. The Court, taking into account its case-law as to the exhaustion of domestic remedies described above (see paragraphs 247 - 249 above), will examine the effectiveness and accessibility of these remedies in relation to each of the applicants' complaints under Article 3 of the Convention.

(c) The Court's assessment

(i) The applicants' ill-treatment

251. The Court notes that, in respect of the allegations of ill-treatment in prison, a complaint lodged with the public prosecutor who is responsible for supervising the general lawfulness of the enforcement of judgments in criminal cases has been held not to be an effective and accessible remedy. In particular, the status of such a prosecutor under domestic law, his proximity to the prison officials with whom a prosecutor supervises on respective prisons on a daily basis and integration into that prison system, do not offer adequate safeguards to ensure conduct of an independent and impartial review of the ill-treatment complaints that are aimed at prison officials (see *Melnik v. Ukraine*, no. 72286/01, § 69, 28 March 2006). His discretion to decide in cases involving allegations of ill-treatment is limited to reviewing the evidence that the complainant provides to substantiate the allegations. In particular, when deciding on whether it is necessary to institute criminal proceedings the investigator or prosecutor considers whether there are procedural and substantive grounds for instituting criminal proceedings, that is, whether the complainant has provided sufficient proof that an act at issue was socially dangerous and prohibited by criminal law (see Article 94

paragraph 2 of the Criminal Code, see also paragraphs 112 and 113 above). To institute criminal proceedings, the investigator or prosecutor has to have sufficient proof to be able conclude that evidence of a crime has been discovered. Further judicial review of a resolution to refuse institution of criminal proceedings is limited to formal supervision of the lawfulness of such a decision in the light of the procedural requirements of Article 97 of the Code of Criminal Procedure (see paragraphs 112-113 above).

252. Turning to the facts of the present case, the Court notes that the applicants sent a series of complaints to the authorities about both the first and the second training exercises (see paragraphs 23, 25 and 99 above). On 17 August 2001 Prosecutor Volkov replied that there had been no violations of the law (see paragraph 85 above). Following a prosecutor's investigation, on 11 June 2002 Mr Bukher refused to institute criminal proceedings as the applicants' complaints did not disclose any unlawfulness (see paragraph 93 above). After a further direction from the Deputy Prosecutor General, on 6 August 2002 the Acting Regional Prosecutor informed the Deputy Prosecutor General that the complaints were unsubstantiated, and that the file had been transferred to the General Prosecutor's Office for examination (see paragraph 97 above). The applicants' complaints also gave rise to an investigation by the prison authorities which concluded on 15 October 2001 that the complaints about the first training exercise were ungrounded as the training had been based on a lawful decision and had been supervised by prosecutor Volkov (see paragraph 98 above).

The Court notes that it would have been open to the applicants to refer the decisions of 17 August 2001, 15 October 2001 and 11 June 2002 to the courts under Article 236-1 of the Criminal Code with reference to Articles 4 and 99 thereof, but that they did not. Such an application would have required the applicants to produce relevant medical evidence to the courts, which they were not in a position to do because no medical records were available in prison (see the findings at paragraphs 218 and 219 above) and the Government do not suggest that it would have been open to the applicants to be examined by an independent medical expert for the purposes of a court action whilst they were detained. Moreover, a court review would only have considered compliance with the substantive and procedural grounds for instituting proceedings, and in the absence of medical evidence (i.e. substantive grounds) the applicants would have had to claim that the prosecutor had not complied with Article 97 of the Code of Criminal Procedure (see paragraph 112 above). Such a review would have been limited to whether the prosecutor had respected the time-limits and taken a decision which was open to him, neither of which was the case.

253. The Court concludes that the applicants were not required to pursue the complaints they made to the various prosecution authorities before the courts. Taking into account the aforementioned considerations, the Court concludes that the Government's objection as to exhaustion of domestic remedies should be dismissed.

(ii) *The applicants' complaints about the lack of medical treatment and assistance*

254. As to the complaints about the lack of medical treatment and assistance, the Government contended generally that the applicants could have gone to the courts under Article 55 of the Constitution and the relevant provisions of the Codes of Civil and Criminal Procedure. The Court recalls that it has already found that Article 55 of the Constitution did not possess the necessary effectiveness for a complaint under Article 5 of the Convention, as it is of a very general nature and did not provide specific redress for the allegations (see *Nevmerzhitsky v. Ukraine* (dec.), no. 54825/00, 25 November 2003). Those considerations apply also to the present circumstances, and as in that case, the Government have not shown how such an application could provide direct and speedy protection for breach of rights under Article 3 of the Convention. As to other possible remedies, – complaints to the prison or prosecution authorities, or to the courts – the Court finds that the Government have failed to demonstrate how in, the absence of medical findings of injuries or any medical records (see paragraphs 218-220 and 227-230 above), the domestic courts or other competent State authorities could have remedied the apparent refusal of the sole available qualified medical officer to provide the applicants with adequate and necessary medical treatment for the injuries they sustained as a result of the training exercises or how they could claim compensation or redress in the absence of such medical findings.

255. The Court concludes therefore, as to the alleged complaints procedures open to the applicants regarding the lack of adequate medical treatment and assistance, including complaints to the domestic courts, that the Government's objection must be dismissed.

(iii) *The applicant's complaints about the conditions of detention*

256. As to the applicants' complaints about the conditions of detention, the Court notes that while it is true that the applicants did not use the channels suggested by the Government, the Court finds that the problems arising from the conditions of detention are of a structural nature and concern not only the applicants' personal situation (see *Melnik v. Ukraine*, no. 72286/01, § 70, 28 March 2006).

257. In the instant case the Government have not demonstrated what redress the domestic courts or other State authorities could have afforded the applicants, given the accepted economic difficulties of the prison administration. Furthermore, they have not shown how the applicants' complaints about poor conditions in the cells, including overcrowding, could have been remedied by complaints to the domestic prison authorities, prosecutor's office or the domestic courts, as the domestic minimal standard, according to the domestic law applicable at the material time (see paragraph 121 above) for an prisoner's floor space was 2 m² (for correctional labour colonies) and 2.5 m² (for prisons and educational colonies) and in the instant

case, on the domestic calculations that were based on overall residential prison space and a number of prisoners these standards were complied with (see paragraphs 44-48 above). Nor have they shown how these complaints could bring improvement to the applicants' detention conditions (see *Kucheruk v. Ukraine*, no. 2570/04, § 117, ECHR 2007-X).

258. The Court, taking into account its previous case-law on the matter of exhaustion of domestic remedies in respect of conditions of detention in Ukrainian prisons, its findings in similar cases (see *Melnik v. Ukraine*, no. 72286/01 and *Dvoynykh v. Ukraine*, no. 72277/01, quoted above), the specific circumstances of the present cases relating to acts undertaken by the domestic authorities to examine the applicants' complaints (see paragraphs 85-97 and 99-100 above) and its conclusions as to the factual circumstances of the case (see paragraphs 219-220 and 227-228 above), considers that the applicants had no effective and accessible remedies for their complaints about the conditions of detention, including overcrowding in the prison cells. Thus, the Court considers that the applicants complied with exhaustion requirements, and the Government's objection in this respect must therefore be dismissed.

(iv) The Court's conclusions

259. In these circumstances and taking into account the Court's conclusions as to the Government's objections raised above (see paragraphs 251-253, 254-255 and 256-258 above), the Court finds that these applicants' complaints cannot be dismissed for failure to exhaust domestic remedies.

C. Merits of the remainder of the applicants' complaints under Article 3 of the Convention

1. The applicants' alleged ill-treatment

260. In their initial submissions as to the admissibility and merits of the applications, the Government stated that no special police forces trained at Zamkova Prison, no ill-treatment of the applicants ever occurred and that there was no breach of Article 3 of the Convention. They maintained the same point of view before the fact-finding mission and at its preliminary stages. In their submissions lodged after the fact-finding mission, the Government accepted that it was established that special tactical training exercises were held in Zamkova Prison on 30 May 2001 and 29 January 2002. These exercises, involving a search of the prison premises, were aimed at preparing staff to suppress possible riots and resolve kidnapping situations. They further pointed out that those exercises did not involve the prisoners and that the applicants had not been subjected to any ill-treatment. They concluded that the applicants had failed to substantiate their complaints and did not provide any corroborating evidence (e.g. medical

certificates, testimonies of independent eye-witnesses, etc.) in support of their allegations under Article 3 of the Convention. Thus, there had been no infringement of that provision.

261. The applicants disagreed. They maintained, throughout the proceedings, that the very fact that the police forces “trained on them” and the lack of a legal basis for such training showed that it was aimed at intimidating the prisoners. Moreover, the organisation of the training and the manner in which it was conducted proved that its purpose was to ill-treat and humiliate the prisoners.

262. The Court recalls that Article 3 enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment. The obligation on High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment (see *Afanasyev v. Ukraine*, no. 38722/02, § 59, 5 April 2005). Moreover, the State is directly responsible for the well-being of persons deprived of their liberty (see *Stepuleac v. Moldova*, no. 8207/06, § 55, 6 November 2007; and *Kadiķis v. Latvia (no. 2)*, no. 62393/00, § 55, 4 May 2006).

263. The Court further reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see the judgments in *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; *Assenov and Others v. Bulgaria*, 28 October 1998, § 94, Reports 1998-VIII; *Selmouni v. France* [GC], no. 25803/94, § 99, ECHR 1999-V; *Berliński v. Poland*, nos. 27715/95 and 30209/96, § 59, 20 June 2002; *Kucheruk v. Ukraine*, no. 2570/04, § 131, ECHR 2007-...; and *Suptel v. Ukraine*, no. 39188/04, § 46, 19 February 2009).

264. Turning to the facts of the present case in relation to each of the applicants, the Court observes that the first applicant, Mr Davydov, was held in Zamkova Prison from 3 February 2001 to 19 May 2001, when he was transferred to Shepetivka Penitentiary no. 98 for medical treatment. He returned to Zamkova Prison on 25 May 2001 and he was held there until 20 April 2002. The second applicant, Mr Ilchenko, arrived at Zamkova Prison on 3 February 2001 and left it on 27 September 2004. The third applicant, Mr Gomenyuk, was held in Zamkova Prison from 3 November 2001 to 27 September 2002. Thus, the Court will examine the first and the second applicants' complaints concerning ill-treatment in respect of both

special training exercises and the third applicant's complaints in respect of the second training exercise only.

265. In relation to both training exercises, the Court has already remarked on the lack of information provided to the prisoners as to the fact that such trainings would be conducted. Lack of such information as to the training, from the Court's point of view, underlines proof ensuring from various reports confirming the domestic practice of treating prisoners as objects of the training and search exercises (see paragraphs 104-106 and 143 above), who are not asked for their consent and are not informed about searches or trainings. This seemed to be a normal and unquestionable practice for the witnesses that appeared on the part of the Government (see paragraphs 195-197 above), partly corresponding to the domestic regulations that allow requests for use of the special units to be used in problematic prisons upon requests of prison governors (see paragraphs 77-80 above). Such an attitude on the part of the authorities suggests to the Court that the treatment to which the applicants were subjected was degrading and incompatible with their human dignity. Additionally, it finds that at least part of the aim of the training was to frighten and humiliate prisoners, and to coerce those who frequently violated the regime ("malicious violators of the regime of detention") to comply with the prison rules and regulations (see, for definitions of the malicious violators of the regime, paragraphs 119, 202 and 214-216 above). An example of such threatening, intimidating and uninformed use of special equipment was the use of the automatic guns at the moment of entering the cells, without any prior notification or explanation (see Annex, paragraphs 4 and 6). Also, the use of special units was a normal practice in the State Prison Department, aimed at dealing with prisons containing dangerous prisoners, as it ensued from various domestic and international human rights reports (see paragraphs 104-108 and 143 above).

266. The Court further finds that excessive force was used against the prisoners, without any justification or lawful grounds. The force and special equipment were used without any reasonable grounds and contrary to international standards for use of force and special equipment (see paragraphs 101-102 and 108 above). It also is of the opinion that the manner in which these trainings were organised unavoidably led to the injury and humiliation of the prisoners. This resulted not only from the excessive use of force by the officers, who aimed to comply with short time-limits for inspections inside the cells, but also from dragging the prisoners out of the cells, their "speeding up" when they left their cells and enforcement of unjustified and humiliating orders by the officers participating in the training. Humiliating orders included those to completely undress and to swear in front of others that the applicants would comply with the prison administration's demands and that they would not break the regime of detention. Injuries were inflicted on the applicants if they resisted, refused to comply or were not sufficiently fast, from the officers' point of view, in

complying with their orders or in reacting to a sudden inspection of the cell (see paragraphs 212-214 and 226-227 above).

267. As to the circumstances of each of the searches, the Court would underline that the prisoners of the Monastyr block, where the applicants were held, suffered most (see paragraphs 210 and 223 above, with further references) on both occasions. Furthermore, excessive force was used against particular prisoners, including the first and second applicants in the course of the first training and the first, second and third applicants in the course of the second training exercise. Particular force and humiliation was used against them as they were considered “malicious violators” of the detention regime (see paragraphs 213-214, 218 and 226-229 above).

268. The Court finds that the first and the second applicants were injured in the course of the first training exercise and that all three of them were injured as a result of the second exercise, in which officers from the State Department for the Enforcement of Sentences used excessive force against the applicants. The Court bears in mind the difficulties in policing modern societies, the unpredictability of human conduct and the need to train and keep staff prepared for possible unexpected conduct of prisoners, including conduct related to mass riots or taking of hostages, for which the special forces were being trained. It also notes that the applicants were convicted criminals, who were serving their sentences for serious crimes. However, even in the most difficult circumstances, such as the fight against terrorism, organised crime or dangerous criminals, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Dikme v. Turkey*, no. 20869/92, § 89, ECHR 2000-VIII). Furthermore, Article 3 of the Convention establishes, like Article 2 of the Convention, a positive obligation on the State to train its law enforcement officials in such a manner as to ensure their high level of competence in their professional conduct so that no-one is subjected to torture or treatment that runs contrary to that provision (see, *mutatis mutandis*, *Abdullah Yilmaz v. Turkey*, no. 21899/02, § 57, 17 June 2008). This also presupposes that the training activities of law enforcement officials, including officials of the penitentiary institutions, are not only in line with that absolute prohibition, but also aim at prevention of any possible treatment or conduct of a State official, which might run contrary to the absolute prohibition of torture, inhuman or degrading treatment or punishment.

269. The Court considers that the excessive force and equipment used, such as helmets and masks, so as to conceal identity of the officers who participated in the trainings and so that those involved in the training could not be distinguished or identified, making any further complaints practically impossible, coupled with injuries and the humiliating manner in which the

searches were conducted (see paragraphs 207-220 and 222-230), caused physical and mental pain or suffering to the first and second applicants as a result of the first training and to all three applicants as a result of the second training.

270. Furthermore, the Court finds that the applicants suffered not only from injuries and humiliation in the course of the training, but from fear and anguish as to what might happen to them when they awaited at least the second training exercise; having experienced the first training session, the applicants must have suffered distress from the rumours that another session was planned, and then, as the time approached, from noise coming from outside. They also were ill-treated due to being subjected to full body searches in the Monastyr's corridor in front of their cells, in the absence of any grounds for such full body searches or any reasonable necessity to perform them in the manner they were performed (see paragraphs 213-215 and 226 above). Moreover, the Court underlines that the manner in which the searches and the full body searches were conducted surpassed the usual degree of indignity that is inherent in the so-called "ordinary searches" (see paragraphs 67-76 above) that were conducted at Zamkova Prison.

271. The Court finds that the first and the second applicants, in the course of the first training, and all three applicants in the course of the second training exercise were ill-treated in a way that was likely to arouse in them feelings of fear, anxiety and vulnerability and was likely to humiliate and debase them and break their resistance and will. The Court further considers that such treatment was intentionally meted out to the applicants by agents of the State in the performance of their duties, with the aim of breaking the applicants' will as they were difficult to deal with, and to ensure that they cooperated with Zamkova Prison authorities. Nevertheless, it considers that the applicants' ill-treatment, physical and mental violence against them, considered as a whole, did not reach such a level of "severity" to be characterised as torture, within the meaning of Article 3 of the Convention. Thus, in view of the specific circumstances of the case, such as the duration of the treatment, its physical or mental effects, sex, age and state of health of the victims, the Court considers that the violence inflicted on the applicants was both inhuman and degrading (compare and contrast, *Selmouni v. France* [GC], cited above, §§ 103-105).

272. The Court therefore concludes that the State is responsible under Article 3 on account of the inhuman and degrading treatment to which the applicants were subjected in the course of the training exercises held on 30 May 2001 and 29 January 2002. Accordingly, there has been a violation of Article 3 of the Convention with regard to the ill-treatment of the first and second applicants in the course of the training held on 30 May 2001 and that there was a violation of Article 3 of the Convention on account of ill-treatment of the first, second and third applicants in the course of the training exercise organised on 29 January 2002.

2. *The alleged failure of the domestic authorities to conduct an effective investigation (procedural limb of Article 3 of the Convention)*

(a) Parties' submissions

273. The applicants stated that no effective investigation had been conducted. They further mentioned that the review conducted by the domestic authorities had yielded no actual results and was therefore useless.

274. The Government stressed that they had complied with the positive obligation to investigate under Article 3 of the Convention and maintained that the investigation by the domestic authorities in the present case had complied with the requirements of this provision.

275. The Court also notes that the Government raised a preliminary objection concerning the applicants' failure to exhaust domestic remedies in relation to failure of the authorities to conduct effective investigation into the circumstances of the case. It decided that these issues were closely linked to the merits of the applicant's complaints (see *Druzenko and Others* (dec.), nos. 17674/02 and 39081/02, 15 January 2007) and ruled that these matters fell to be examined under Articles 3 and 13 of the Convention invoked by the applicant. The Court will thus examine these issues accordingly. In particular, it considers that parallel issues under Article 13 of the Convention, the requirements of which are broader than the obligation to investigate imposed by Article 3 (see *Cobzaru v. Romania*, no. 48254/99, § 83, 26 July 2007), must be examined separately.

(b) Principles enshrined in the applicable case-law

276. Where an individual raises an arguable claim that he has been subjected to ill-treatment by agents of the State unlawfully and in breach of Article 3 of the Convention, that provision, read in conjunction with the State's general duty under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. Article 3 thus includes a procedural obligation to carry out an effective investigation into alleged breaches of the substantive limb of its requirements (see *Šilih v. Slovenia* [GC], no. 71463/01, § 153, 9 April 2009). As with an investigation under Article 2, such an investigation should be capable of leading to the identification and punishment of those responsible (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, §§ 324 - 325, ECHR 2007-...; *Poltoratskiy v. Ukraine*, no. 38812/97, § 125, ECHR 2003-V). Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of

the State to abuse the rights of those within their control with virtual impunity (see *Dikme v. Turkey*, no. 20869/92, § 101, ECHR 2000-VIII).

277. The Court further notes that allegations of ill-treatment are extremely difficult for the victim to substantiate if he or she has been isolated from the outside world, without access to doctors, lawyers, family or friends who could provide support and assemble the necessary evidence (see *Bati and Others v. Turkey*, nos. 33097/96 and 57834/00, § 134, ECHR 2004-IV (extracts)). The State authorities must secure the evidence concerning the incident, including, *inter alia*, a detailed statement concerning the depositions from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical certificates apt to provide a full and accurate record of the injuries and an objective analysis of the medical findings, in particular as regards the cause of the injuries (see, *Tanrikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, §§ 104 et seq., and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injury or the person responsible will risk falling foul of this standard. Moreover, for an investigation into torture or ill-treatment by agents of the State to be regarded as effective, the general rule is that the persons responsible for the inquiries and those conducting the investigation should be independent hierarchically and institutionally of anyone implicated in the events, i.e. the investigators should be independent in practice (see, *Bati and Others*, § 135, cited above).

278. It is beyond doubt that a requirement of promptness and reasonable expedition is implicit in this context. A prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as critical for maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see, among other authorities, *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001, and *Özgür Kılıç v. Turkey* (dec.), no. 42591/98, 24 September 2002). While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, it may generally be regarded as essential for the authorities to launch an investigation promptly (see, *mutatis mutandis*, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 72, ECHR 2002-II). For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory, which may well vary from case to case. In all cases, however, the complainant must be afforded effective access to the investigatory procedure (see *Aksoy v. Turkey*, 18 December 1996, § 98, *Reports of Judgments and Decisions* 1996-VI).

279. Whether it is appropriate or necessary to find a procedural breach of Article 3 will therefore depend on the circumstances of the particular case (*Caloc v. France*, no. 33951/96, § 90, ECHR 2000-IX). Moreover, a finding of a procedural breach of Article 3 of the Convention can also depend on

such factors as authorities' failure to reach any conclusive findings of fact, their failure to timely react to the complaints, question relevant possible witnesses or more generally their failure to reach any tangible results (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, §§ 102-103, *Reports* 1998-VIII; *Sadık Önder v. Turkey*, no. 28520/95, § 44, 8 January 2004; and *Bekos and Koutropoulos v. Greece*, no. 15250/02, § 54, ECHR 2005-XIII (extracts)).

(c) Application of these principles in the present case

280. As to the facts of the present case, in the Court's opinion, the complaints made by the first and second applicants as to the first training exercise and all three applicants as to the second gave rise to an arguable claim that they were ill-treated in the course of the special units' training exercises and general searches on 30 May 2001 and 29 January 2002 (see paragraph 272 above). It is clear that the State authorities, including the Regional Prosecutor's Office and the State Department for the Enforcement of Sentences carried out certain inquiries into their allegations. Thus, the Court considers it necessary to assess conduct of these inquiries from the point of view of their compliance with the requirements of Article 3 of the Convention and the criteria referred to in the case-law above (see paragraphs 276-279 above). It must examine, therefore, whether on the whole the authorities took all reasonable steps to secure evidence concerning the incidents, whether they acted promptly, reaching any tangible results and whether the investigation at issue was independent in practice.

281. The Court notes that no detailed records of the investigations in the case were ever provided to it by the authorities, after the case was communicated to the respondent Government. Furthermore, the records of investigation were unavailable to the Delegates and to the Court as they had allegedly been destroyed due to the expiry of the retention period (see paragraph 168 above). However, as from the moment of communication the authorities could or should have thought to keep the records that were still available to them, in order to preserve evidence which could demonstrate to the Court that the investigations were appropriate. Such a failure to provide records of the investigation deprived the Court of a full opportunity to review steps taken by the authorities to investigate the applicants' allegations of ill-treatment. In this respect, the Court considers that existence of detailed investigation records until final examination of the case could have served as an important indicator of the authorities' willingness to demonstrate steps taken by them to investigate allegations of ill-treatment and to prove that action was undertaken on the basis of these allegations. However, the authorities never regarded these allegations as arguable and had never intended to undertake serious investigation into the applicants' allegations, seeing no practical need or necessity in recording steps taken in the course of obviously routine review of unsubstantiated

complaints (see paragraphs 231-234 above). The Court will review the steps taken in the course of investigations by the Prison Department and the Prosecutor's Office on the basis of the evidence as it stands.

282. The Court observes that the inquirers from the Prison Department made no attempts to establish themselves whether the applicants were injured, did not conduct any search for medical evidence, failing to review possibly available medical records, and made no attempts to organise independent medical examinations for the alleged injuries and instead, like the other prison officers questioned by the Court, looked at the complainants' personal characteristics and the crimes for which they were convicted (see Annex, paragraphs 61 and 102 and paragraphs 89-90 and 208-210 above). This conclusion can be reached on the basis of the report produced by Lieutenant Danovsky concluded upon instructions received from the State Prison Department (see paragraph 98 above). It can also be seen from the investigation conducted by the Colonel Irshko who according to Mr Iltiy, established that the investigators questioned one hundred persons in a single day (see Annex, paragraphs 103-104), although the written investigation report from Mr Danovsky stated that he inspected Zamkova Prison for two days from 3 to 4 October 2001 (see paragraph 98 above). Moreover, it is not clear for the Court whether these were two separate inspections or a single one as the report produced by Mr Skokov never mentioned Mr Iltiy or Colonel Irshko. Furthermore, the Government failed to provide any documentary records as to the investigation conducted by Colonel Irshko, purportedly due to the fact that these records were destroyed due to the expiry of the time-limit for their storage (see paragraph 168 above). Thus, for the Court, the investigation conducted by Prison Department led to no real findings of fact or tangible factual conclusions.

283. As to the investigation conducted by the prosecution authorities, the Court notes that Mr Volkov, the special prosecutor who conducted the initial review of the complaints, personally participated in the first training exercise and approved the training plans. He had strong professional affiliation with Zamkova Prison officers with whom he worked on day-to-day basis. As to his inquiry, the Court notes that he never verified the applicants' allegations and reviewed no medical evidence whatsoever. Furthermore he imposed sanctions on the first applicant who complained about being ill-treated (see paragraph 91 above). For the Court, Mr Volkov's acts and omissions showed his lack of objectivity and his bias in his review of the applicants' complaints. His status of a prosecutor supervising the lawfulness of sentences being served vested him with wide discretionary powers, which he failed to exercise (see paragraph 192 above). The Court concludes therefore that the review of the complaints conducted by the special prosecutor Volkov's could not be considered an effective and thorough investigation into the applicants' ill-treatment allegations, compatible with the requirements of Article 3.

284. As to the investigation conducted by Mr Bukher, the prosecutor of the Regional Prosecutor's Office, the Court notes that the investigation he undertook had a number of deficiencies. In particular, a formal investigation by the prosecutor's office was initiated only after the second training exercise, more than six months after the first training exercise, which cannot be regarded as complying with the requirement of promptness. The individuals involved in the investigation on the part of the regional prosecutor's office were those who had approved the training plan or participated in the training itself (see paragraphs 232-233 above) or came from Zamkova Prison. In this respect the Court notes that Mr Bukher deemed it unnecessary to appoint different prosecutors to investigate the applicants' complaints, from those prosecutors who had participated in and approved the training exercises, even though some of the complaints were made against these very prosecutors. Thus, the regional prosecutor's office could not act as hierarchically and institutionally independent from prison authorities' external investigating authority in the instant case, as maintained by the Government, insofar as the investigators participating in questioning witnesses and gathering evidence for Mr Bukher had a strong interest in a particular outcome of the investigation. He has not thought that an independent medical examination of the applicants' state of health should be conducted. Also, the possibility of independent or alternative medical expert opinion was not even looked into by the relevant investigators of the regional prosecutor's office (similarly to the inquiries conducted by Prison Department and special prosecutor Volkov). Lack of medical evidence from the prison doctor and medical unit has not aroused his suspicion and he has never tried to verify credibility of statements as to the absence of injuries and medical complaints.

285. Moreover, the Court notes that Mr Bukher paid no attention to the fact that certain witnesses sent complaints by means that ran contrary to the internal prison regulations on sending correspondence. It also notes that the investigation did not examine why these complaints were not sent by means specified in domestic regulations. Furthermore, the manner and speed with which the investigators gathered evidence rebutting the applicants' allegations raised no suspicion in him. The Court concludes that the investigation at issue was conducted contrary to the spirit of efficient and independent investigation, which could establish factual details relevant to the case. Both investigations focused on complying with the formal requirements necessary for the completion of the investigation file, including gathering written statements on the basis of unknown criteria, and giving a formal response that no violations of the law occurred. The majority of statements in the file confirmed that the applicants had not been subjected to any sort of ill-treatment, and the prisoners stated that they had no complaints about Zamkova Prison officers. The applicants' statements were disregarded and not taken into account (see paragraph 93 above).

286. The Court further notes that the conclusions by the national authorities, including the report of Colonel Irshko and Mr Bukher's refusal to institute criminal proceedings upon the applicants' complaints, which were submitted to it, contained no relevant findings of fact. In particular, it had no findings as to what actually happened in Monastyr cells during the searches of 30 May 2001 and 29 January 2002. Nor have these decisions ever provided detailed and well-substantiated reasons for the dismissal of the applicants' complaints. The investigation reports, largely based on the evidence obtained from the officers implicated in the complaints, referred to the fact that the allegations were unsubstantiated as they did not name specific perpetrators involved. Such investigation reports clearly showed a dysfunctional system of review of the ill-treatment complaints.

287. In this respect the Court notes that it was difficult for the applicants to identify their assailants as their faces were covered. However, certain witnesses were able to have an educated guess as to who participated in the search and training because they recognised those involved by the manner of walking, their behaviour or sound of their voices (see Annex, paragraphs 13 and 45). Nevertheless, these allegations were never verified and there were no reports about questioning the officers involved in the searches and trainings. As it ensues from the materials in the Court's possession, the authorities have never made any serious attempts to verify the applicants' allegations and to identify the alleged perpetrators. No attempt was ever made to identify and question officers who allegedly inflicted injuries on the applicants or who commanded these units or who were identified by the applicants as those who possibly participated in the searches and trainings. In this respect, the Court again underlines that it was not able to review the investigation files or relevant investigation records (see paragraphs 168 and 200 above) and therefore was not able to evaluate the reasons for which the authorities discontinued investigation into the applicants' allegations. It reiterates that there were no contemporaneous records which could demonstrate, step by step, the nature of the investigations carried out by the prosecutor's office and the State Prison Department.

288. As to the objectivity of the investigation, the Court considers that the imposition of disciplinary measures such as incarceration in a single occupancy disciplinary cell on those who tried to complain manifested that the authorities were not willing to inquire into the reasons of sending complaints by prohibited means, which once again proves that the investigation lacked objectivity from the very beginning, was formal and superfluous, aimed at providing a routine unfavourable reply to the applicants (see paragraphs 232-234 above). The Court underlines that by such measures the authorities have shown that they had initial lack of trust in the submissions made by the prisoners, favoured Zamkova Prison authorities in their explanations as to the events, putting more emphasis on

the complainants' identity than on establishing facts and investigating their allegations of ill-treatment.

289. Finally, the Court remarks that, with regard to the investigations conducted by the domestic authorities, they were not hierarchically and institutionally independent of those implicated in the events. In particular, it notes that the investigators conducting the on-spot inquiry were the same as those who participated in the trainings or supervised them. Moreover, they belonged to the same prosecutor's office as Mr Volkov, who signed the training plans and supervised the training and who also was supposed to conduct an investigation into the prisoners' complaints against prison authorities (see paragraphs 232-233 above). Also, the internal investigation organised by the Prison Department, led by Colonel Irshko and supervised by Mr Iltiay, and the inquiry conducted by Lieutenant Danyshevksy, concerned senior officers of the Prison Department, including Prison Governor Mr Snegir and the Deputy Head of the Regional Prison Department Mr Leventsov, who planned the training, participated in it and supervised its conduct (see paragraphs 98 and 197 above).

290. Thus, for the Court, the investigations which were organised on the instructions of the Prison Department and the General Prosecutor's Office, were perfunctory and superficial and led to no tangible results, such as findings of fact which could lead to the identification or punishment of those responsible. The Court reiterates that due to numerous shortcomings mentioned above these investigations did not reflect any serious attempt to discover neither what had really occurred on 30 May 2001 and 29 January 2002, nor who had ill-treated the applicants or given instructions to ill-treat them. It concludes, therefore, that the applicants' arguable claim that they were ill-treated in the course of the training exercises of the special units on 30 May 2001 and 29 January 2002 was not subject to a prompt, independent and effective investigation by the domestic authorities that could lead to any tangible results, as required by the procedural obligation under Article 3 of the Convention.

291. There has therefore been a violation of that provision and the Government's objection must be dismissed.

3. The applicants' complaints as to the lack of medical treatment and assistance provided to them in view of the injuries sustained

292. The applicants claimed that they had not been provided with the necessary medical treatment for the injuries sustained by them as a result of the police training exercises, and that the prison authorities had refused to record these injuries. They further alleged that they were not provided with adequate medical assistance while in detention.

293. The Government submitted that there were no records in the Prison's Medical Registers of requests from the applicants for medical assistance. The Government maintained that the applicants received necessary medical treatment and were provided with any required

prescription drugs whilst serving their sentences and therefore concluded that Article 3 of the Convention was not breached. They further stated that the applicants were provided with necessary medical treatment and assistance in general.

294. The Court reiterates that Article 3 of the Convention imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty and to ensure that their health is adequately secured (see *Kudla v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI), for example by provision of the requisite medical assistance to them (see *Keenan v. the United Kingdom*, no. 27229/95, § 111, ECHR 2001-III, and *Koval v. Ukraine*, no. 65550/01, § 79, 19 October 2006). The lack of appropriate medical care may amount to treatment contrary to Article 3 (see *İlhan v. Turkey* [GC], no. 22277/93, § 87, ECHR 2000-VII, and *Price v. the United Kingdom*, no. 33394/96, § 26, ECHR 2001-VII). In particular, in a situation where, exceptionally, impermissible conduct under Article 3 of the Convention had taken place and a prisoner had been ill-treated, which resulted in injuries, it is the duty of the State to ensure provision of timely and relevant treatment to the applicant's specific state of health and the injuries the prisoner suffers from. This positive obligation requires *inter alia* registration of medical complaints, timely identification and diagnosis of injuries, development of comprehensive medical strategy for injuries' treatment, documenting progress in medical treatment, assessing the state of health of the person after medical treatment and the possible need for post-injury treatment, which might include assessment of the psychological state of health (see, among many other authorities and in so far as relevant to the circumstances of the present case, *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 114, 29 November 2007; *Mathew v. the Netherlands*, no. 24919/03, § 193, ECHR 2005-IX; *Melnik v. Ukraine*, § 106, cited above; and *Dvoynikh v. Ukraine*, no. 72277/01, § 56, 12 October 2006).

295. The Court has already found, on the basis of the evidence before it, that it could not be established that the applicants were ever examined by a medical officer in relation to their medical complaints of injuries sustained in the course of the training exercises and ill-treatment by officers of the special forces (see paragraphs 216-219 and 226-230 above). Furthermore, the Court notes that at the material time, only two medical officers, only one of whom was a doctor, worked in Zamkova Prison, where more than 750 prisoners were held.

296. For the Court, the lack of adequate medical treatment for the injuries the applicants received during the relevant training exercises, the lack of proper registration and follow up for medical complaints, are sufficient to conclude that there was a violation of Article 3 of the Convention in that no adequate medical treatment for injuries sustained by the applicants was ever provided to them. There is no need to examine other

elements of the applicants' complaints in respect of lack of sufficient or adequate medical treatment and assistance.

4. *The conditions of detention*

297. The applicants complained that they were detained in poor conditions, and were kept in overpopulated and overcrowded cells.

298. The Government stated that the conditions in which the applicants were detained corresponded to the standards required by domestic law.

299. The Court observes that the Government constantly maintained that the standards established in the domestic law (see paragraphs 44-48 and 129 above) had been respected and even slightly exceeded in Zamkova Prison (see paragraphs 44-48 above). It notes in this respect that the domestic standards for cell space of a prisoner allowed not less than 2-2.5 m² (see paragraphs 121 and 129 above). Additionally, a minimum of 3 m² was allowed for single occupancy cells (see paragraph 129 above). The Court notes that the established domestic standards were far below recommendatory standards established by the CPT for Ukraine, which set at least 4 m² of living space per prisoner as a desirable occupancy rate for the multiple occupancy prison cells or dormitories (see *Nevmerzhitsky v. Ukraine*, no. 54825/00, § 66, ECHR 2005-II (extracts)). They were also beyond minimum recommendatory standards established by the CPT single and multiple occupancy cells, 4 m² of living space for a single inmate in multi-occupancy cells (see *Rodić and Others v. Bosnia and Herzegovina*, no. 22893/05, § 77, 27 May 2008), 7 m² per detainee in single occupancy police cells (see *Malechkov v. Bulgaria*, no. 57830/00, § 137, 28 June 2007) and 9 m² of living space in single prison cells (Report to the UNMIK on the visit to Kosovo carried out by the CPT from 21 to 29 March 2007, Strasbourg, 20 January 2009, § 59).

300. From the Court's point of view this in itself was not compatible with the standards established by the Convention and the Court's case-law, which has already established that a space of 1-2.5 m² of space per prisoner amounts to continuous and severe overcrowding (see *Melnik v. Ukraine*, no. 72286/01, § 103, 28 March 2006; *Yakovenko v. Ukraine*, no. 15825/06, § 84, 25 October 2007; and *Dvoynykh v. Ukraine*, no. 72277/01, § 66, 12 October 2006). Thus, in the Court's view, the cells in which the applicants were held and in which they were allowed about 3 m² in single occupancy cells and 4.6 m² in single occupancy punishment cells (SHIZO), were continuously overcrowded, a problem of a structural nature which in itself raises an issue under Article 3 of the Convention.

301. The Court concludes that there has been a breach of Article 3 of the Convention in this regard.

5. Conclusions of the Court

302. The Court concludes that there has been a violation of Article 3 of the Convention in its substantive and procedural limbs in respect of the following:

- the applicants' inhuman and degrading treatment by special forces in the course of the training and search exercises on 30 May 2001 (first and second applicants) and 29 January 2002 (first, second and third applicants) that were held at the Zamkova Prison (see paragraph 272 above);
- the lack of prompt, independent and effective investigation by the domestic authorities into the applicants' complaints about their ill-treatment by the special forces on 30 May 2001 and 28 January 2002 at the Zamkova Prison, which could lead to tangible results (see paragraphs 290-291 above);
- the lack of adequate medical treatment and assistance provided to the applicants, failure to record their injuries and to follow up on the applicants' complaints (see paragraph 296 above), and
- the poor conditions of their detention, which were incompatible with the standards established by the Convention and the Court's case-law (see paragraphs 300-301 above).

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

A. Parties' submissions

303. The applicants complained that they had no effective remedies in respect of their complaints about ill-treatment by the special units, the poor conditions of their detention, the lack of adequate medical treatment and assistance. They referred in this respect to Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in this 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.”

304. The Government restated the arguments set out above in their objection to the exhaustion of domestic remedies, and concluded that the applicants had had available effective domestic remedies which they did not pursue. In particular, they stated that Article 55 of the Constitution, Articles 248-1 to 248-9 of the Code of Civil Procedure of Ukraine and Article 99-1 of the Code of Criminal Procedure of Ukraine, allowed for submission of the complaints with the prison and prosecution authorities and directly or subsequently challenging their decisions to the domestic judicial authorities. They thus concluded that there had been no violation of Article 13 of the Convention in this respect.

305. The applicants disagreed.

306. The Court finds that the applicants' complaints about lack of effective remedies mainly concern whether they had an effective remedy to complain and seek redress for:

- their ill-treatment and injuries in the course of training exercises and the lack of medical treatment and assistance for such injuries;
- the poor conditions of detention.

307. The Court considers that each of the aforementioned complaints under Article 13 of the Convention requires separate examination in the light of the principles enshrined in its case-law. For practical reasons it will first jointly examine the complaints about the applicants' ill-treatment and the lack of medical treatment and assistance.

B. The applicants' ill-treatment and injuries in the course of training exercises and lack of medical treatment and assistance

308. The Court has already found that the State authorities were responsible for the inhuman and degrading treatment and injuries inflicted on the applicants in the course of the training exercises on 30 May 2001 and 29 January 2002. The applicants therefore had an “arguable claim” for the purposes of Article 13 and were entitled to an effective remedy in respect of it.

309. The Court reiterates that Article 13 guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of this Article is thus to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision.

The Court considers that the effectiveness of this particular remedy or an aggregate of remedies require separate examination from the point of view of Article 13 of the Convention, which is different from the examination of the specific deficiencies in the inquiries conducted by the domestic authorities that were already examined more specifically from the point of view of compliance with procedural or positive obligations under Article 3 of the Convention (*compare and contrast, Bekos and Koutropoulos v. Greece*, no. 15250/02, § 57, ECHR 2005-... (extracts)). In particular, the Court considers it necessary to examine:

- whether investigative procedure under Article 97 of the Code of Criminal Procedure allowed for effective and thorough investigation compatible with the requirements of Article 13 of the Convention;
- whether a refusal to institute criminal proceedings under Article 97 of the Code of Criminal Procedure legally barred access to a civil court on the

basis of a possible claim for damages arising out of the same event (see *Chember v. Russia*, no. 7188/03, § 72, 3 July 2008).

310. The Court notes that inquiries into allegations of ill-treatment under Article 97 of the Code of Criminal Procedure are only aimed at and limited to establishing how well-founded the requests for institution of criminal proceedings are or whether such requests related to a possible criminal act. Thus, the scope of review referred mainly to whether there were formal grounds to institute criminal proceedings, i.e. whether a complaint contained “sufficient evidence” to institute criminal proceedings. The investigating authority, acting under Article 97 of the Code of Criminal Procedure, could only request certain explanations (*пояснения*) from persons and officials and demand documents necessary for its review (see paragraphs 112-113 above). As an exception, before criminal proceedings were instituted, the investigating authority could examine the crime scene but was not allowed to perform any other actions (see paragraphs 112-113 above). Thus, the preliminary review undertaken by an investigating authority could not carry out investigative actions relevant for effective and thorough investigation under Article 13 of the Convention, which would have included assessment of reliable medical evidence and interrogation of witnesses.

311. Most importantly, victims of alleged ill-treatment have no formal status in the inquiry until a formal criminal investigation has been initiated (see paragraphs 112-113 above). These elements show that the Court also sees no effectiveness in a possibility of lodging an appeal with the court against the refusal to institute criminal proceedings, as such a judicial review would only focus on the manner in which these legal and factual findings were reached by the prosecutor, but would not go into the substance of the ill-treatment allegations.

312. For the Court these elements show that investigations were not capable of leading to factual findings relevant to possible identification and punishment of those responsible and, where appropriate, to possible payment of compensation for victims of ill-treatment. Consequently, any other remedy available to the applicant, including a claim for damages, had limited chances of success and could be considered as theoretical and illusory, and not capable of affording redress to the applicant as the alleged perpetrators were never identified (see *Afanasyev*, cited above, § 77) and no relevant findings of fact were ever made by the investigative authorities. The Court also finds that similar considerations apply to complaints about lack of medical treatment and assistance or any claim for damages in that respect, as in the absence of medical findings that the applicants were injured and thus requiring medical treatment or assistance, any claim would have no reasonable prospect of success.

313. The Court therefore finds that the applicants have been denied an effective remedy in respect of their complaints that they were ill-treated in the course of the two training exercises and that medical treatment was not

available. Consequently, there has been a violation of Article 13 of the Convention.

C. Conditions of detention

314. The Court notes that the Government suggested in their preliminary objections as to exhaustion of domestic remedies that there were remedies available for the applicants' complaints about detention conditions. However, in respect of these objections the Court found that the possibility of lodging a complaint about the detention conditions with the public prosecutor responsible for supervising the general lawfulness of detention, with the Governor of the relevant prison or the State Department for the Enforcement of Sentences could not be considered effective and accessible remedy (see paragraphs 256-258 above). Insofar as they rely on the same reasoning by way of response to the Article 13 complaint, their arguments must, like their objections, be rejected.

315. Thus, the Court finds that the State has failed in its obligation under Article 13 of the Convention in ensuring that effective and accessible remedies exist to complain and seek redress for the poor conditions of detention.

D. The Court's conclusions

316. The Court therefore concludes that there has been a violation of Article 13 of the Convention on account of the lack of effective and accessible remedies under domestic law for the applicants' complaints in respect of their ill-treatment and the injuries inflicted during the training exercises, the lack of medical treatment and assistance for these injuries, and also the poor conditions of detention. These findings fall to be considered against the background of other cases against Ukraine in which violations of Articles 3 and 13 have been found concerning:

(a) ill-treatment in prisons or detention facilities (see, among many other authorities, *Afanasyev v. Ukraine*, no. 38722/02, § 69, 5 April 2005, and *Kucheruk v. Ukraine*, no. 2570/04, §§ 132-133, ECHR 2007-X);

(b) lack of effective investigation into the detained applicants' allegations of ill-treatment (see, *Poltoratskiy v. Ukraine*, no. 38812/97, §§ 127-128, ECHR 2003-V; *Kuznetsov v. Ukraine*, no. 39042/97, §§ 107-108, 29 April 2003);

(c) failure to provide proper medical treatment and assistance to detained applicants (see, *Koval v. Ukraine*, no. 65550/01, § 81, 19 October 2006; *Melnik*, cited above, § 106; *Mikhaniv v. Ukraine*, no. 75522/01, § 74, 6 November 2008; and *Nevmerzhiysky v. Ukraine*, no. 54825/00, § 106, ECHR 2005-II (extracts);

(d) conditions of detention ((see, *Poltoratskiy v. Ukraine*, no. 38812/97, § 149, ECHR 2003-V; *Aliiev v. Ukraine*, cited above, § 150;

Kuznetsov v. Ukraine, cited above, § 128; *Nazarenko v. Ukraine*, cited above, § 144; *Khokhlich v. Ukraine*, cited above, 182; *Dankevich v. Ukraine*, cited above, § 145; *Yakovenko v. Ukraine*, no. 15825/06, § 89, 25 October 2007; and *Dvoynykh*, cited above, § 69).

However, the Court does not find it appropriate to determine in the present case whether these issues disclose a systemic or structural problem.

317. Consequently, there has been a violation of Article 13, taken together with Article 3 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLES 8 § 1 (SEPARATELY AND TAKEN TOGETHER WITH ARTICLE 13) AND 34 OF THE CONVENTION

318. The applicants complained about an interference with their correspondence to the Court and an infringement of their right of individual application. The applicants alleged that their correspondence and complaints did not reach the domestic authorities they complained to, as they were intercepted by the prison administration, referred to prosecutor's office and destroyed. Their attempts to communicate their complaints were punished. No effective investigation of these allegations had ever been conducted by the General Prosecutor's Office and the local prosecutor's office. In this connection they referred to Articles 8 § 1 and 34 of the Convention respectively, which, insofar as relevant, provide:

Article 8

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

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

Article 34

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

319. The applicants also complained that they had no effective remedies in respect of their complaints about interference with their correspondence. They referred in this respect to Article 13 of the Convention, which provides:

Article 13

“Everyone whose rights and freedoms as set forth in this 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

320. The Government noted that the Ukrainian law in force at the material time allowed the authorities to review letters addressed to the European Court of Human Rights. Following changes introduced to Article 113 of the Code on the Enforcement of Sentences and Order no. 275 of the Prison Department (see paragraph 118 above), correspondence sent to the European Court of Human Rights can no longer be reviewed. Nevertheless, the Government stated that although the procedure was not in conformity with the Convention and its case-law, there was no evidence of the authorities' interference with the applicants' correspondence.

321. The Government further asserted, in relation to the complaints under Article 34, that no State body or official had restricted the applicants' right to communicate freely with the Court; moreover the applicants were never punished or disciplined in any way for their communication with the Court. The Government concluded that there were no grounds to believe that the administration of the penitentiaries in which the applicants served their prison sentences had exerted pressure on the applicants or had in any other way hindered their right of individual application to the Court. With regard to the complaints about the problems encountered by the applicants in corresponding with their representative, the Government noted that these allegedly unlawful acts by the penitentiaries' administration had not been challenged before any domestic court.

322. The applicants did not agree with the Government and maintained that the prison authorities had interfered with their correspondence to the Court and tried to put pressure on them to discourage them from pursuing their applications. The applicants alleged that their correspondence and complaints did not reach the domestic authorities they were sent to, as they were intercepted by the prison administration, forwarded to the prosecutor's office and eventually destroyed. No effective investigation into these allegations had ever been conducted by the General Prosecutor's Office and the local prosecutor's office.

B. Admissibility

323. The Court notes at the outset that the applicants' complaints under Articles 8 § 1 of the Convention were declared admissible and the Government's objections to their admissibility were joined to the merits (see *Druzenko and Others v. Ukraine* (dec.), nos. 17674/02 and 39081/02, 15 January 2007). Thus, it considers that these objections must be reviewed in

conjunction with examination of the merits of the applicants' complaints now. Furthermore, the Court considers it necessary to examine separately the applicants' allegations about interference with their complaints sent to the domestic authorities and their representative under Article 8 § 1 of the Convention, as well as jointly with allegations under Article 13, and those under Article 34 concerning correspondence sent to the Court.

C. The Court's assessment

1. Complaints under Article 8 § 1 of the Convention (with regard to interference with correspondence sent to the domestic authorities and the applicants' representative)

324. In so far as the applicants complain about interference with their correspondence sent to the domestic authorities and the applicants' representative, the Court notes that the first, second and third applicants' complaints were intercepted and not sent out by the prison authorities on several occasions (see paragraphs 220 and 230 above), which followed the trainings of 30 May 2001 and 29 January 2002. Furthermore, they were subjected to reprisals for trying to lodge these complaints or to write to the relevant law enforcement or investigation authorities (see paragraphs 91 and 288 above). In this respect, the Court recalls that an “interference by a public authority” with the applicants' exercise of their right to respect for their correspondence, as guaranteed by Article 8, would contravene Article 8 unless it is “in accordance with the law”, pursues one or more of the legitimate aims referred to in paragraph 2 and, furthermore, is “necessary in a democratic society” in order to achieve them (see *Labita v. Italy* [GC], no. 26772/94, § 179, ECHR 2000-IV). It also notes that the Government's preliminary objection as to exhaustion of domestic remedies is closely linked to the issue of whether the alleged interference was “in accordance with the law”. The Court will examine these issues in turn.

325. The Court is able, based on witness statements given in the course of the oral hearing (see Annex, paragraphs 9, 15, 18 and 23), which it found credible, to conclude that there was interference with the first, second and third applicants' correspondence sent to the domestic authorities and their representative. As a result of this correspondence they were put under pressure from the authorities for maintaining their complaints, even after the regulations mentioned by the Government above were amended. In particular, confirmation that correspondence and complaints to the domestic authorities, like any correspondence involving complaints to the domestic authorities, was controlled was given in the course of the proceedings before the Delegates (see Annex, paragraphs 63, 81, 85 and 100; paragraphs 134-135 above) and in certain documentary evidence (letter of Zamkova Prison Governor of 14 April 2003, see paragraphs 100 above;

decision of 10 May 2002 by the special prosecutor Volkov to subject the applicants Mr Kulyk, Mr Litvinov and Mr Ilchenko to disciplinary sanctions, see paragraph 91 above). Accordingly, the Court considers that all the correspondence sent by the applicants was checked and censored, and thus there has been interference with the applicants' right to respect for their correspondence.

326. It must therefore be examined whether the interference satisfied the conditions set out in § 2 of Article 8. In particular, the measure at issue must be “in accordance with the law”, which requires in particular that the contested measure should have a basis in domestic law. It also refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences for him, and be compatible with the rule of law (see *Kruslin v. France* and *Huvig v. France*, 24 April 1990, § 27, Series A no. 176-A, and § 26, Series A no. 176-B, respectively).

327. As to whether the interference was “in accordance with the law”, the Court notes that the Government argued that this interference had a legal basis, as Article 113 of the Code on the Enforcement of Sentences and Order no. 275 adopted by the State Department for the Enforcement of Sentences on 25 December 2003 did allow for the review of correspondence by a prisoner (see paragraph 118 above). However, the Order referred to by the Government was not in force at the material time. They have neither referred to nor specified and provided any other legal act in this respect.

328. Consequently, the interference with the applicants' correspondence had no legal basis, as the Government have failed to show that the interference at issue had any legal basis. Thus, such an interference was not “in accordance with the law”, as required by Article 8 of the Convention. In the light of the foregoing, the Court does not consider it necessary in the instant case to examine whether the other requirements of paragraph 2 of Article 8 were satisfied. It further considers that the Government's objection made in respect of exhaustion of domestic remedies (see paragraph 323 above), made at the admissibility stage of the proceedings, should be rejected.

329. There has therefore been a breach of Article 8 of the Convention.

2. Complaints under Article 13 of the Convention (lack of effective remedies for the first, second and third applicants' complaints about interference with their correspondence)

330. The Government have suggested, in their preliminary objections, which were joined to the merits, that there were remedies available for the applicants' complaints. The applicants have disagreed.

331. Article 13 requires a remedy in domestic law in respect of grievances which can be regarded as “arguable” in terms of the Convention. In the present case, there has been a finding of a violation of Article 8, and the complaint under Article 13 therefore falls to be considered (see, *mutatis*

mutandis, *Tysiāc v. Poland*, no. 5410/03, § 134, ECHR 2007-IV). However, the Court observes that the applicants' complaint about the State's failure to put in place an adequate legal framework for complaints about undue interference with correspondence. This complaint essentially overlaps with the Court's ruling that the interference with the applicants' correspondence was not based on law and thus in breach of Article 8 of the Convention. It holds, therefore, that no separate issue arises under Article 13 of the Convention.

3. Complaints under Article 34 of the Convention

332. With regard to the Government's objection concerning the applicants' failure to exhaust domestic remedies, the Court notes complaints lodged under the second sentence of Article 34 do not give rise to any issue of admissibility, including exhaustion of domestic remedies, under the Convention (see, *mutatis mutandis*, *Ergi v. Turkey*, 28 July 1998, § 105, *Reports* 1998-IV; *Shamayev*, cited above, § 507; and *Mohammed Ali Hassan Al-Moayad v. Germany* (dec.), no. 35865/03, 20 February 2007).

333. The Court recalls that it is of the utmost importance for the effective operation of the system of individual petition guaranteed under Article 34 of the Convention that applicants or potential applicants should be able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see *Akdivar and Others v. Turkey*, 16 September 1996, § 105, *Reports* 1996-IV, and *Kurt v. Turkey*, 25 May 1998, § 159, *Reports* 1998-III). The Court considers that it is particularly important to respect the confidentiality of mail from the Convention organs to persons who are detained or their mail sent to the Convention organs, as it may concern allegations against prison authorities or prison officials. The opening of letters to the Convention organs undoubtedly gives rise to the possibility that they will be read and may also conceivably, on occasions, create the risk of reprisals by the prison staff against the prisoner concerned (see *Campbell v. the United Kingdom*, 25 March 1992, § 62, Series A no. 233).

334. The Court first observes that in the present case it has been alleged that the initial applications lodged by the first, second and third applicants and their subsequent letters were censored as they were torn up and the Court received them damaged and partly illegible (see Annex, paragraph 23). In particular, the third applicant, Mr Ilchenko, maintained that after he lodged his application with the Court, he immediately encountered “various problems” in his daily prison life and in serving his sentence as he was being transferred to different cells, where the prisoners were told that he “worked for the administration”. Also, the third applicant's complaints were torn apart by Mr Mazurenko and Mr Mazepa, so he had to transmit his application to the Court through Mr Zherdev (see paragraphs 182, 202, 220 and 230 above). The Court is also aware of the

applicants' statements, which it considers credible, concerning undue pressure from Zamkova Prison authorities and threats against the first, second, third applicants, other applicants and witnesses that have been allegedly made in the present applications (see Annex, paragraphs 5, 9, 18, 23, 28-29 and 36 below).

335. As to the merits of the applicants' complaints, the Court reiterates that observance of the provisions of Article 34 of the Convention by the States is an important guarantee of effective exercise of the right of individual petition. In this respect any form of pressure from the authorities on applicants or potential applicants to withdraw or modify their complaints which results in a situation where they are unable to communicate freely with the Convention organs is a grave interference with the very essence of the exercise of the right of individual petition enshrined in Article 34 of the Convention. Moreover, the expression "any form of pressure" must be taken to cover not only direct coercion and flagrant acts of intimidation but also improper indirect acts or contact designed to dissuade or discourage applicants from pursuing a Convention remedy (see *Kurt v. Turkey*, 25 May 1998, § 160, *Reports* 1998-III). Furthermore, the question whether contact between the authorities and an applicant constitutes an unacceptable practice from the standpoint of Article 34 must be determined in the light of the particular circumstances of the case. In that connection, the Court must assess the vulnerability of the complainant and the risk of his being influenced by the authorities (see *Akdivar and Others*, § 105, and *Kurt*, § 160, both cited above).

336. In the present case, the first, second and third applicants have asserted that they were unable to apply to the Court from their place of custody, and that their application had in fact been lodged by Mr Zherdev, who was representing them at the beginning of the proceedings. The other applicants, including Mr Druzenko, Mr Kulyk, Mr Myronov, Mr Martov and Mr Kuzmenko have signed standard response letters all dated 1- 4 April 2003, destined for Mr Zherdev, which were attached to a reply given by the Governor of Zamkova Prison Mr Snegir, stating that they no longer wished to pursue their complaints and that they had no complaints about the prison authorities at all (see paragraph 100 above). Applicants such as Mr Druzenko, Mr Kulyk, Mr Myronov and Mr Kuzmenko, some of whom are or were serving their sentences in Zamkova Prison when the complaints were lodged, subsequently chose not to pursue their applications, as according to submissions given in the course of the hearing, they foresaw complications arising from attempts to pursue their complaints or these applicants were persuaded by whatever reasons not to pursue them. The Court has also had regard to the oral and written evidence of threats and pressure made against the applicants and the witnesses proposed on the part of the applicants to participate in the oral hearing of evidence (see Annex, paragraphs 5, 9, 18, 23, 28-29 and 36). It takes the view that such acts constitute an improper and unacceptable form of pressure, which hindered

the applicants' exercise of the right of individual petition, and for which the Court has not been given any explanation.

337. The Court also notes that the applicants' questioning and explanations given to the Governor Mr Snegir, which resulted in letters dated 1- 4 April 2003 about the applications (see paragraph 100 above) lodged with the Court were clearly essential to the meetings with prison authorities. The subject of this was to make sure that all applicants made statements that they no longer wished to pursue their complaints. In particular, in their standard-response letters the applicants were requested to give details about why they decided not to pursue their complaints (see *Dulaş v. Turkey*, no. 25801/94, § 81, 30 January 2001). Thus, the Court considers that the aforementioned meetings and explanations given by the applicants confirm that they were put under pressure to withdraw their complaints. In such circumstances the Court concludes that there was an undue interference with the applicants' right of petition.

338. The Court considers that such conduct on the part of the Government of Ukraine was capable of hindering its examination of the applications lodged in exercise of the right of individual petition and thereby interfered with the first, second and third applicants' rights guaranteed by Article 34 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

339. 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.”

340. The applicants claim 150,000 euros (EUR) each for the non-pecuniary damage caused to them by the alleged beating and gross humiliation in the course of the training exercises and EUR 6,000 in total for their fees and expenses for representation.

341. The Government disagreed with these claims, stating that they were unsubstantiated and exorbitant.

A. Non-pecuniary damage

342. The Government repeated their arguments that the applicants had not been subjected to ill-treatment in breach of Article 3 of the Convention and their respective complaints were manifestly ill-founded. Accordingly, their claims for the non-pecuniary damage should be rejected. Moreover, the Government, referring to the Court's case-law and the principles thereof, wished to emphasize that an applicant's claims should not serve as a basis for unjustified enrichment.

343. The Court has found multiple and serious violations of Articles 3, 8 § 1, 13 and 34 of the Convention in the present case. Deciding on an equitable basis, the Court awards the first and the second applicants EUR 20,000 each under this head and the third applicant EUR 15,000 for non-pecuniary damage.

B. Costs and expenses

344. The Government noted that, pursuant to Rule 60 § 2 of the Rules of Court, “itemized particulars of all claims made, together with the relevant supporting documents or vouchers, shall be submitted, failing which the Chamber may reject the claim in whole or in part”. As the applicants failed to present any supporting document to confirm their fees and expenses for representation both before the Court and national bodies, their claims in this part should be rejected.

345. As to the applicants' claims for the fees and expenses, which amounted from their point of view to EUR 6,000, the Court recalls that the applicants' representative received in total EUR 1,350 in legal aid. It further notes that, according to its case-law, the applicants are entitled to reimbursement of their costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the applicants did not substantiate their claim under this head. The Court therefore makes no award.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary request as to striking the first, second and third applications out from the list of cases;
2. *Decides* to strike out the applications lodged by Mr Druzenko, Mr Martov, Mr Salov, Mr Kuzmenko, Mr Kiselev, Mr Didenko, Mr Shvets, Mr Litvinov, Mr Mironov and Mr Kulik from the Court's list of cases;
3. *Holds* that the Government have failed to fulfil their obligation under Article 38 § 1 (a) of the Convention;

4. *Holds* that there has been a violation of Article 3 of the Convention in its substantive limb in that the first applicant (Mr Davydov) was ill-treated in the course of the training exercises on 30 May 2001 and 29 January 2002, received no medical treatment and assistance for the injuries inflicted on him in the course of the trainings and was detained in poor conditions in Zamkova Prison, and dismisses the Government's objection as to exhaustion of domestic remedies;
5. *Holds* that there has been a violation of Article 3 of the Convention in its substantive limb in that the second applicant (Mr Ilchenko) was ill-treated in the course of the training exercises on 30 May 2001 and 29 January 2002, received no medical treatment and assistance for the injuries inflicted on him in the course of the trainings and was detained in poor conditions in Zamkova Prison, and dismisses the Government's objection as to exhaustion of domestic remedies;
6. *Holds* that there has been a violation of Article 3 of the Convention in its substantive limb in that the third applicant (Mr Gomeniuk) was ill-treated in the course of the training exercise on 30 May 2001, received no medical treatment and assistance for the injuries inflicted on him in the course of the trainings and was detained in poor conditions in Zamkova Prison, and dismisses the Government's objection as to exhaustion of domestic remedies;
7. *Holds* that there has been a violation of Article 3 of the Convention in its procedural limb in that the first, second and third applicants' complaints of their ill-treatment in the course of the training exercises were not duly investigated by the Ukrainian authorities, and dismisses the Government's objection as to exhaustion of domestic remedies;
8. *Holds* that there has been a violation of Article 13 of the Convention, taken together with Article 3 of the Convention, on account of the lack of effective and accessible remedies under domestic law for the applicants' complaints in respect of their ill-treatment and the injuries inflicted during the training exercises, the lack of medical treatment and assistance for these injuries, and also the poor conditions of detention;
9. *Holds* that there has been a violation of Article 8 § 1 of the Convention in that interference with the first, second and third applicants' correspondence was not lawful and that no separate issue arises under Article 13 of the Convention, taken together with Article 8, in that they had no effective and accessible remedies for their complaints of interference with their correspondence;

10. *Holds* that there has been a hindrance of the first, second and third applicants' exercise of the right of individual petition under Article 34 of the Convention;

11. *Holds*

(a) that the respondent State is to pay the first and the second applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros) each in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(b) that the respondent State is to pay the third applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(c) 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;

12. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 1 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Judge Villiger is annexed to this judgment.

P.L.
C.W.

CONCURRING OPINION OF JUDGE VILLIGER

I agree with the operative provisions of the Section judgment, in particular §§ 4-6, according to which there has been a violation of Article 3 of the Convention. However, I disagree with the accompanying reasoning, namely that the applicants were “ill-treated in the course of the training exercise(s)” and that they “received no medical treatment and assistance for the injuries inflicted”.

Rather, I find that the treatment at issue went beyond ill-treatment and amounted to *torture* for the purposes of Article 3 of the Convention.

Introduction

At the outset I duly note that the establishment of the facts in this case proved to be exceptionally difficult. I can agree with the facts as they have been set out in the judgment.

I am further aware that the applicants were convicted criminals serving prison sentences for particularly serious criminal offences which they had committed. However, their punishment must be limited to the prison sentence as set out in the respective court judgment which convicted them and certainly cannot comprise unforeseen corporal punishment.

Furthermore, it goes without saying that a State is entitled to conduct whatever prison exercises it finds necessary. As the judgment points out in § 268, the Court bears in mind “the difficulties in policing modern societies, the unpredictability of human conduct and the need to train and keep prison staff prepared for possible unexpected conduct of prisoners, including conduct related to mass riots or taking of hostages”. The point is however precisely that such exercises must comply with the guarantees enshrined in the Convention.

As a final introductory remark, I would add that prisoners are placed in a particularly vulnerable situation as they cannot fend for themselves. They depend on the State and in particular the prison authorities for their health and well-being. The mere lack of care, for instance, can already amount to inhuman treatment. Any additional negative treatment weighs all the more severely in this context.

Facts

A review of the facts discloses, *inter alia*, the following elements of the prison exercises as experienced by the three applicants individually or collectively during the exercises of 30 May 2001 and/or 29 January 2002 (§§ 202 *et seq.*):

- the officers involved in the exercises wore masks and flak jackets during one exercise, during another they wore green camouflage uniform, helmets, shields, some carried automatic guns, rubber truncheons, handcuffs, immobilising pitchforks and fire-crackers;

- the search of the applicants' cells started with sounds of explosions and blank shots from the automatic guns; the search forces used firecrackers and banged with truncheons on the shields;
- the officers ran into the cells, pointing their guns inside the cells. Two applicants were ordered to lie on the floor face down. They were not allowed to move;
- one applicant thereby received multiple kicks. The officers stepped on him;
- the officers ordered two applicants to run into the corridor one by one where other soldiers who had truncheons and shields formed a “corridor” through which the prisoners had to run. They did so with their heads bent down to the level of their legs. The officers forming a “corridor” tried to strike prisoners with truncheons or kick them with their feet. One applicant thereby received blows from truncheons on his forehead and back;
- one applicant was dragged out of the cell, with two soldiers holding his hands behind his back, he was bent down and could hardly walk;
- two applicants were forced to stand spread-eagled; when one applicant fell, he was kicked and again raised to stand near the wall in the same position;
- two applicants were ordered to strip naked, their clothes were piled in the middle of the corridor;
- the applicants had to swear that they would not violate the detention regime and comply with the prison officers' orders. The officers hit one applicant as his answers were not loud enough;
- one applicant who refused to swear, was thrown back into the cell where one of the soldiers who wore heavy military boots kicked him, whereupon he fainted;
- one applicant was ordered to run back to the cell and started to look for his clothes which were muddled in the middle of the corridor. He was kicked for taking too much time over it;
- this applicant ran back into the cell naked and holding his clothes, he had to bend down as he was constantly struck;
- upon return to their cell the cell inmates saw that all their belongings had been scattered all over the floor, broken or in a heap in the middle of the cell;
- two applicants were injured as a result of the first training exercise, all three were injured as a result of the second exercise. An external doctor informed one applicant that his ribs were broken;
- immediately after these events and on the next day the applicants asked for medical treatment and assistance, but none was provided, so they had to give medical aid to each other;
- the medical injuries inflicted on the prisoners in the course of the general search were not recorded and there were no traces of any records of injuries inflicted on the applicants.

I have summarised these facts here, the full details and explanations as to how they were established can be found in the judgment.

Evolution of the Court's case-law on Article 3 of the Convention

In the interstate case of *Ireland v. the United Kingdom*, the Court was called upon to examine whether the so-called “five interrogation

techniques” amounted to inhuman and degrading treatment, or even to torture, within the meaning of Article 3 of the Convention. In its judgment the Court held in 1978 (Series A no. 25, §§ 167 et seq.):

“The Court considers in fact that, whilst there exists on the one hand violence which is to be condemned both on moral grounds and also in most cases under the domestic law of the Contracting States but which does not fall within Article 3 of the Convention, it appears on the other hand that it was the intention that the Convention, with its distinction between 'torture' and 'inhuman or degrading treatment', should by the first of these terms attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering.

Moreover, this seems to be the thinking lying behind Article 1 in fine of Resolution 3452 (XXX) adopted by the General Assembly of the United Nations on 9 December 1975, which declares: 'Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment'.

Although the five techniques, as applied in combination, undoubtedly amounted to inhuman and degrading treatment, although their object was the extraction of confessions, the naming of others and/or information and although they were used systematically, they did not occasion suffering of the particular intensity and cruelty implied by the word torture as so understood.

168. The Court concludes that recourse to the five techniques amounted to a practice of inhuman and degrading treatment, which practice was in breach of Article 3”.

This case-law and in particular the thresholds of inhuman treatment and torture were reviewed in the Court's judgment of *Selmouni v. France* of 2001. There, the Court established the facts of that case as follows (ECHR 1999-V):

“102. The Court is satisfied that a large number of blows were inflicted on Mr Selmouni. Whatever a person's state of health, it can be presumed that such intensity of blows will cause substantial pain. Moreover, a blow does not automatically leave a visible mark on the body. However, it can be seen from Dr Garnier's medical report of 7 December 1991 ... that the marks of the violence Mr Selmouni had endured covered almost all of his body.

103. The Court also notes that the applicant was dragged along by his hair; that he was made to run along a corridor with police officers positioned on either side to trip him up; that he was made to kneel down in front of a young woman to whom someone said “Look, you're going to hear somebody sing”; that one police officer then showed him his penis, saying “Here, suck this”, before urinating over him; and that he was threatened with a blowlamp and then a syringe ... Besides the violent nature of the above acts, the Court is bound to observe that they would be heinous and humiliating for anyone, irrespective of their condition.

104. The Court notes, lastly, that the above events were not confined to any one period of police custody during which – without this in any way justifying them – heightened tension and emotions might have led to such excesses. It has been clearly established that Mr Selmouni endured repeated and sustained assaults over a number of days of questioning ...”

In *Selmouni* the Court distinguished these facts from those in the case of *Ireland v. United Kingdom*. The Court had no doubt that the treatment inflicted on that applicant constituted inhuman and degrading treatment

contrary to Article 3 of the Convention (§ 99). The question arose, however, whether the treatment also amounted to torture. The Court held in *Selmouni*:

“100. [I]t remains to be established in the instant case whether the 'pain or suffering' inflicted on Mr Selmouni can be defined as 'severe' within the meaning of Article 1 of the United Nations Convention. The Court considers that this 'severity' is, like the 'minimum severity' required for the application of Article 3, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc.

101. The Court has previously examined cases in which it concluded that there had been treatment which could only be described as torture (see the *Aksoy* judgment cited above, p. 2279, § 64, and the *Aydın* judgment cited above, pp. 1891-92, §§ 83-84 and 86). However, having regard to the fact that the Convention is a 'living instrument which must be interpreted in the light of present-day conditions' (see, among other authorities, the following judgments: *Tyrer v. the United Kingdom*, 25 April 1978, Series A no. 26, pp. 15-16, § 31; *Soering* cited above, p. 40, § 102; and *Loizidou v. Turkey*, 23 March 1995, Series A no. 310, pp. 26-27, § 71), the Court considers that certain acts which were classified in the past as 'inhuman and degrading treatment' as opposed to 'torture' could be classified differently in future. It takes the view that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies.”

As a result, in view of the treatment which the applicant suffered, the Court concluded in *Selmouni*:

“105. Under these circumstances, the Court is satisfied that the physical and mental violence, considered as a whole, committed against the applicant's person caused 'severe' pain and suffering and was particularly serious and cruel. Such conduct must be regarded as acts of torture for the purposes of Article 3 of the Convention.”

Appreciation of the facts of this case in the light of Article 3 and the Selmouni case-law

The *Selmouni* case is a – if not *the* – leading case of the Court as regards the thresholds in Article 3 of the Convention in respect of inhuman and degrading treatment and torture. Hence, the facts of the present case must be appreciated in the light of that case-law.

It is of course difficult to compare the facts of different cases. Still, some similarities between *Selmouni* and the present case may be highlighted.

Both in *Selmouni* and in the present case, the officers formed a “corridor” through which the applicants had to run. In both cases the applicants were severely beaten. It is true that in *Selmouni* a police officer exposed himself and urinated on the applicant; in the present case two applicants were forced to undress and run naked with their heads bent down to their knees and they were then hit. In *Selmouni* the applicant was threatened with a blow lamp and a syringe, here the applicants were terrified by armed officers with

masks and in camouflage uniform shooting blank shots and firecrackers, banging truncheons on their shields and storming into the prison cells.

Some facts in the present case would appear more serious than in *Selmouni*. Thus, one applicant suffered broken ribs. Furthermore, one applicant was kicked by an officer wearing heavy military boots; he was so badly hurt that he then fainted.

Moreover, since *Selmouni* we know that *all* facts of the case have to be seen and assessed together. In my view, it does not correspond with this case-law if in the present judgment the lack of medical treatment and assistance is treated separately as leading to a further conclusion of ill-treatment (§§ 292-296). Rather, these many facets have to be seen as part and parcel of the general treatment which the applicants suffered. If appreciated in this light, the lack of medical treatment and assistance further worsened the applicants' plight.

Finally, and perhaps most seriously, this case raises the particularity that the exercises were twice planned in advance. The applicants were intended to be part of events which were from the beginning likely to, and eventually did, result in humiliating and painful treatment. The first exercise of 30 May 2001 was planned and approved by the superiors. Subsequently, in full knowledge of what had happened during the first exercise a further exercise was again planned and approved for 29 January 2001. This deliberateness is in my view a further serious aspect of the case.

Conclusion

In my view, the present judgment fails to apply the increasingly high standards which the Court set itself in *Selmouni* in particular as to the appropriate threshold for a finding of torture as in Article 3 of the Convention. In the present case, the same conclusion should be drawn as in that case.

Thus, bearing in mind the present applicants' vulnerable situation, I consider that the physical and mental violence intentionally committed against them, considered as a whole, caused severe pain and suffering and was particularly serious and cruel.

In my view, such treatment must be regarded as acts of torture within the meaning of Article 3 of the Convention.

ANNEX

Summary of Oral Evidence

1. The witness evidence taken by the Court's Delegates at hearings conducted in Khmelnytsky, between 25 and 27 June 2007, may be summarised as follows.

A. The applicants

1. The first applicant (Mr Sergiy Viktorovych Davydov)

2. The applicant told the Delegates that he was detained in the Zamkova Prison at the time of the events. He had known Mr Gomenyuk (the third applicant) since 1986. He was held in cell no. 8 at the time of the events, in front of the entrance to the Monastyr, with 10 other convicts (among whom he mentioned Mr Ilchenko, Mr Vagif Didenko, Mr Oleg Didenko). As they were all held in different cells, however, he did not know who was held in the other cells. He learned that Mr Gomenyuk was in Zamkova Prison only in 2002.

3. The applicant stated that in the morning of 30 May 2001 prisoners heard drums (or possibly the knocking of truncheons against shields) and other noise and understood that forces were inside the territory of the Prison. There had been rumours about the arrival of special units ten days in advance, so the inmates had been awaiting these units every day since 18-20 May. He could see the units entering the penitentiary grounds from the window in his cell. In his opinion, they were not composed of officers from the Zamkova Prison. He inmates heard explosions and blank shots from the automatic guns, and some shouting. The officers were dressed in black uniforms and flak jackets, and something was written on the back of these uniforms; they carried long truncheons and yellow shields. In his opinion, and on the basis of the rumours he had heard, they had been from the “Berkut” special unit. They also had automatic guns with short stocks. The applicant assumed that the noise was made by automatic gunshot.

4. He described the events of 30 May 2001 inside the cell as follows. Two “fighters” (officers) ran into the cell wearing masks and carrying automatic guns pointing into the cell. They ordered the inmates to lie on the floor face down, and then ordered them to run into the corridor of the Monastyr, where other soldiers carrying truncheons and shields were waiting, forming a corridor through which the inmates ran to the wall. He was the first person to be forced to stand up and to run. All the soldiers forming the “corridor”, who were carrying shields and truncheons, tried to strike him. He was stopped by another soldier and told to stand near the wall. Near the applicant was Mr Vagif Didenko. The officers started to search them and they were ordered to strip naked; their clothes were piled in

the middle of the corridor and were not inspected. Afterwards someone pointed to them and said “these ones” and officers then came up to him and Mr Didenko and asked them to give their names, the reasons for their conviction and the duration of their sentences. Then they stated that he did not answer loudly enough and started striking him in the leg muscles, liver, etc. Officers told them to stop infringing the detention regime. Then they were ordered to run back one-by-one, but were still struck at with truncheons. Other soldiers with shields were making a noise, knocking on the shields with their batons. He saw about 50 persons wearing masks. Some people were laughing, and others were trying to strike the running inmates. Ten to fifteen minutes after the cell door had been closed on their return, they had a visit from Mr Zakharov and Mr Mazurenko who asked whether they had any complaints. This was done in presence of the soldiers from the special unit. He also knew that Mr Volkov (who spoke to him about the events in September 2001, when he reviewed the complaints) and Mr Stasiuk attended the training exercise.

5. The applicant's submissions with regard to the medical complaints were as follows. As a result of the first exercise he sustained numerous injuries and felt “threatened”, deeply morally humiliated and scared. However, no medical treatment had been provided. He alleged that treatment was given “when you start dying”. He mentioned that “everyone” complained to the General Prosecutor's Office. However, the complaints to the Supreme Court, the Prosecutor's Office in Khmelnytsky Region, etc. were not dispatched. He and Mr Ilchenko sent the complaints to the prosecutor's office, and then Major Boyko called him and Mr Ilchenko and told them that they had to cooperate with the administration and comply with the regime. They were further told that their complaints had no prospect of success.

6. As to the second training exercise of 29 January 2002, the applicant stated that it started at about 10-11 a.m. and that during the training exercise he was held in solitary confinement cell no. 13 or no. 14. He saw the barrel of an automatic gun, and then heard blank shots. He immediately dropped on the floor on hearing shots from the gun. He was lifted from the floor by two soldiers who threw him into a very narrow passageway between the cells, where he saw Mr Volkov, Mr Stasiuk and someone else standing at a distance of 5-6 metres. He also saw that other cells had been opened. One of the inmates, Mr Kostenko, cut his wrists with a razor hidden on his person. The officers asked the inmates to swear that they would comply with the administration's instructions. He refused to swear and they started beating him in the kidneys and ribs. One of the soldiers, wearing solid military boots, kicked him and he fainted. He was then thrown back into his cell.

7. With regard to the presence of the special units, the applicant said that he had seen special units for the first time in 1994, while held in Bila Tserkva Prison. He again stated that he believed these were special units, supposedly the “Berkut”, who had automatic guns and flak jackets and wore

black uniforms. He considered that the aim of these training exercises was to “show force” and to train on real inmates in order to force the inmates to behave as the authorities wished.

8. In the course of the second training exercise, he sustained injuries (from the blows) and had pain in one side; an X-ray examination was conducted by an external doctor. He also told this doctor that he was worried that he had contracted pneumonia, as there was no heating in his cell and it was quite cold. The doctor stated that he had fractured ribs and noted his examination in the medical records, stating that he would heal within a month. The medical doctor of the Prison did not want to help, as he was fully controlled by the Prison. Some other persons, including Mr Kostenko and an inmate who had epilepsy, were also seriously injured. The latter inmate eventually had a heart attack and was transferred to Klementovichi. While beating the person suffering from epilepsy, the soldiers did not believe that he had this illness and continued to beat him, thinking that he was pretending to suffer from epilepsy. The inmates again made a number of complaints to different institutions (he also mentioned the CPT and a member of the CPT staff). In December 2002 Mr Volkov replied to him, stating that no violations of the law had been found. Upon his arrival at Berdychiv Prison no. 70 he discovered that his medical card was not transferred with him, as it had been lost. He did not try to record these fractures at a subsequent date, because “there was no point” and in any case it was impossible to prove that they had occurred as a result of the training exercise rather than other events.

9. He tried to send his complaints to the General Prosecutor's Office with a request for religious literature, in violation of the established procedure for submitting complaints, and was eventually sanctioned for sending them by unauthorised means. He again mentioned that there was no point in complaining to the prosecutor, as any correspondence was checked by the penitentiary staff anyway. In addition, these complaints were returned to the prosecutors who had been present during the search, so they had no prospect of success.

2. The second applicant (Mr Vitaliy¹⁴ Volodymyrovych Ilchenko)

10. When giving evidence to the Delegates, this applicant was serving his sentence in Iziaslav Prison no. 52. He knew other applicants, including Mr Druzenko, whom he met in Vinnitsa in 1998, when they shared a cell. Mr Druzenko was later transferred to Zamkova Prison. He met Mr Druzenko again in Iziaslav and learned that he had already lodged his complaints to the Human Rights Ombudsman about various aspects of his imprisonment before his arrival in the Zamkova Prison, for which he already received an additional one-year sentence. The second applicant met Mr Gomenyuk much later, when he was held in a single occupancy cell and

14. Rectified on 31 August 2010: the former text referred to “Vasyl.”

had inter-cell communication with Mr Gomenyuk, who was occupying a nearby cell. He also knew Mr Martov, Mr Kiselev and others, but not by surname.

11. During the events of 30 May 2001, the second applicant was held in cell no. 8, on the first floor, at the very end of the corridor. He described the events surrounding the training exercise on 30 May 2001 as follows. The day had started as usual with the wake-up bell and according to the internal daily routine. Then he heard some sort of noise in the corridor, coming from the entrance to the Monastyr. Through the narrow 20 cm chink in the door he saw people wearing flak jackets and carrying shields; the noise was getting closer. He could hear people being taken and beaten, and firecrackers exploding. He heard the sound of truncheons banging on the shields and explosions near his cell.

12. The second applicant heard the first cell open, then again the sound of a firecracker exploding. Another 10-15 minutes passed. The first two cells to be opened were situated on the right side. The cellmates understood that something was going to happen. Some people were taking medicines, others were putting on additional clothes, and everybody was preparing for something. He had put on additional clothing. Then he heard the noise of firecrackers again, and the sounds of a shot near the cell. The door opened and persons in masks and flak jackets and carrying machine-guns ran into the cell. They started shouting out orders (i.e. to lie down on the floor), using obscene language. There were already two persons lying on the floor in the passageway and there was no room for him to lie down. A man in uniform ran to him and shouted: “the order was to lie down on the floor!” Then he kicked the applicant in the stomach, spine and nape, so that he was lying on the floor with his hands behind his head and legs spread apart. He tried to move his head, as he felt uncomfortable facing the floor, but immediately received a kick. The soldiers were moving inside the cell, stepping on the inmates.

13. The second applicant was then ordered to go into the corridor; the cellmates were ordered to exit one-by-one into the corridor, their heads bent down to the level of their legs. He had been dragged out of the cell, with two soldiers holding his hands up behind his back so that he was bent down and could hardly walk. Then near the door he heard the order “forward, run”, followed by blows from truncheons to his head, so that he had to bend down, to the forehead and then to the back. People in military uniforms came and put him into the “*roztiashka*” position (*розтяжка* or “*spreadeagled*”)¹⁵. Officers from the Prison administration were also present. He received blows from different sides, when he fell he was raised into the same position and then again beaten. Then everyone was ordered to turn around and undress. He was even asked to take off his underwear. He

15. The applicant explained that this was a position in which a person stood with his arms against the wall and legs stretched wide apart.

could see those persons (from the special forces) who were dressed in additional military camouflage *khaki* uniform; they had some sort of *rogachi* (“*розачі*” or immobilising forks), flak jackets, black masks, weapons. They also wore “bertsy” (“*берти*”, special military boots). While the inmates undressed they were constantly struck with truncheons on the body, muscles, liver, spine, etc. The soldiers were shouting “faster, faster” and the convicts had to go into the *roztiashka* position, naked, with their hands against the wall. He fell several times and was raised and beaten. He had to sit down. Then he was ordered to swear that he would not violate the detention regime and would comply with orders. He was ordered to run back to the cell, and started to look for his clothes, which were muddled together in the middle of the corridor. The applicant heard the voice of the commander of their prison detachment, Mr Gaydamaka, who was laughing. When he was running back into the cell naked, he had to bend down as he was constantly struck. When he entered the cell, he was again asked to lie down. Then someone ordered all of the convicts to stand up and to restore order in the cell. The state of the cell was not the result of a “general search”, as items were scattered around, certain items had been broken, some (food, clothes, personal belongings, etc.) were in a heap in the middle of the floor. The forces left when the inmates were going to have a meal. They asked for medical assistance immediately after the training exercise and on the next day, but nobody arrived so they had to provide medical aid to each other. Their medical complaints were not examined and neither assistance nor treatment had been provided to the inmates. The inmates treated themselves. The applicant had pain in his kidneys and blood in his urine for several days. No medical treatment and assistance was provided to them after the training exercise and the inmates treated themselves. The applicant stated that he had suffered from pain in his kidneys for a long time.

14. As to the presence of the Prison's employees, the applicant stated that Mr Zakharov and that Mr Gaydamaka were in attendance during the training exercise. He said that these individuals were directing the soldiers to use more force on certain inmates, as he was beaten more than others. The inmates who had complained about detention conditions had been beaten more.

15. As to his complaints about the training exercise, the applicant stated that after the training exercise a commission composed of Mr Zakharov, Mr Mazurenko, Mr Mazepa and one more person, apparently a prosecutor, entered his cell. The inmates were asked if they had any complaints. At that time they stated that they had no complains, but he and another applicant, Mr Davydov, started writing complaints to the Supreme Court, as Mr Davydov had a number of complaints pending before the first-instance courts, regional courts and the Supreme Court. They gave these complaints to Mr Gaydamaka, head of their prison detachment, and he handed these to the special department, that is, to Mr Mazurenko. This happened on the next

day. Mr Gaydamaka called them and threatened them, demanding that they withdraw their complaints. Following different threats they were obliged to withdraw these complaints. He started complaining on 7 February. The applicant further concluded that nobody had investigated their complaints.

16. During the second training exercise, the applicant was held on the second floor, as he had been transferred from the “imprisonment regime” (so-called “ТЗ” or “*тюремне ув'язнення*”) to a maximum security regime. He stayed in cell no. 23 in the Monastyr. On 29 January 2002 he again saw forces. Their total number was more than 200 soldiers. Then he heard explosions, shouts, moaning and military orders. The sounds were coming mainly from cells nos. 19 and 29, which were situated not far from cell no. 23. Inmates were asked to shout their names and to state that they would cooperate with the administration. He himself was not beaten up in the course of the search, but after the military forces left the Zamkova Prison, he was called by Mr Zaremsky. Some junior prison inspectors from the 8th detachment were also present. Mr Zaremsky asked him to stop complaining since, if he did not stop, he would be “wiped out” and that “it would be worse for him than for the others”. He was beaten for between an hour and an hour and a half by the inspectors present.

17. With regard to the presence of the special units, the applicant mentioned that the soldiers used were from the same type of military unit. They differed from the Prison staff and wore bulletproof vests (flak jackets), *khaki* uniforms with rolled-up sleeves, and had weapons and shields (yellow or light brown). They also carried immobilising pitchforks, masks and helmets. He further stated that some of the officers might have had automatic guns.

18. The second applicant maintained that only three applicants were left from those who lodged their applications with the Court. He had been put under pressure to withdraw his application and the other prisoners might have also been in a similar situation. The applicant complained about problems he had, in particular that he was forced to leave his cell no. 23 and placed in a cell no. 53, with notorious criminals (*кримінальні авторитети*), and they too subjected him to pressure at the request of the Zamkova Prison administration. Eventually, he was to stay with other persons, the so-called “socially unadapted” (*соціально неадаптовані*). He said that a special show had been staged to suggest that he was a representative of the penitentiary administration, which he was not. Similarly, he mentioned that Mr Gomenyuk and Mr Davydov “had problems”, as someone had tried to kill Mr Davydov.

3. The third applicant (Mr Sergiy Yakovych Gomenyuk)

19. This applicant stated that he was detained in the Zamkova Prison at the time of the second event with some of the other applicants, including Mr Druzenko, Mr Martov and Mr Ivanov. Among the officers, he noticed the presence of Mr Stetsiuk, Mr Satsiuk, Mr Mazurenko and Mr Mazepa.

The head of their Prison detachment was also present (*загін Виправно-Трудової Установи*).

20. The third applicant explained that on the morning of 29 January 2002 the inmates woke up as usual at about 6 a.m. with the wake-up bell. Then they saw special forces in camouflage and masks, with automatic guns (probably AKSU automatic guns, “*Автомат Калашникова ствол укороченный*” or “*АКСУ-74*”), heard automatic gunshots, heard the explosions of “firecrackers” (*вибухових пакетів*) and saw smoke. He was not sure whether the special forces officers were prison guards. The applicant mentioned that some kind of special units actually searched the Zamkova Prison. He thought that the aim of these training exercises was to “show force”, threaten them and to train on real inmates.

21. He saw the forces going up to the first floor (known as the second floor in Ukraine), where they ordered everyone to lie down, started to beat everyone and dragged the inmates out to the corridor. The cells were opened one by one. Inmates were passed through the “live corridor” of soldiers and were kicked or struck by rubber truncheons. They were ordered to stay in the “*roztiazhka*” position, humiliated and ordered to swear that they would not violate the detention regime. The operative officer (*оперативник*), apparently someone from the Prison, was giving instructions as to who should be beaten more. Then officers ordered the inmates to run to the cell. Mr Druzenko, the fourth applicant, was ordered to stay in the corridor with others and was then was thrown into the cell. Everything was upside down, things were torn apart, sugar, tobacco and cigarettes were piled up in the middle of the cell.

22. The applicant stated that it was also possible to see from the cell how inmates had been beaten on the first floor. He had sustained rib and nose injuries, and for five or six days his urine had contained blood. He further maintained that Mr Druzenko had been taken to the medical department as he had problems with the spine and intervertebral disk, but received no medical treatment. The third applicant also stated that Mr Martov's kidneys and legs were badly injured.

23. When he wrote complaints, Mr Mazurenko and Mr Mazepa tore them up. Some complaints were sent with the use of a religious coded text known to Mr Zherdev, with reference to the Bible. He was placed in the solitary confinement cell (*карцер*). In order to be released from solitary confinement, he had inflicted injuries to his stomach and feet and was still feeling their consequences, as he was unable to work at the construction works where he was employed.

B. Witnesses proposed by the applicants

1. Mr Vagif Nurzali Didenko

24. This witness was a former inmate of the Zamkova Prison. He was an eyewitness to the events of 30 May 2001 and allegedly a witness to the consequences of the events of 29 January 2002.

25. This witness stated that during the first training exercise he was forced out from cell no. 8, where he was held with applicant Ilchenko and with seven other inmates. He had to bend down while passing the row of special force officers and could not see who was around him, as the officers kicked him along to “speed him up”. He objected to the officers who searched and ordered him to strip naked, and was badly beaten. Then they helped him to take off his underpants and he dropped all of his clothes on a general pile of clothes. These officers struck him with their truncheons, feet and hands, and he had to stay in the “*roztiazhka*” position in the corridor in front of his cell. He stated that he was asked to state his name, the article of the Criminal Code under which he had been convicted and the sentence imposed. He gave this information and, when he refused to repeat it ten times, was beaten again. The search and beating of those in his cell lasted for about 40 minutes. Then someone came to the cell and asked them whether they wanted to complain, adding that they should be happy that “it was easy on them”.

26. He also confirmed that he had heard a signal before the training started, explosions, and blank gunshots from automatic weapons. He saw about 30 soldiers from the special forces. The inmates prepared for the training exercise, had tried to prepare in advance, as there were rumours of the soldiers' arrival. Some of them were putting on additional clothing, others took tranquilisers, so that the blows would not be felt so much. He mentioned that a number of persons, including Mr Ilchenko and Mr Mikhaylenko, had injuries as a result of the training. Many persons showed him their injuries. In the course of the training exercise they saw two soldiers carrying an unconscious person.

27. This witness confirmed the presence of prosecutor Volkov during the first search, and also that the corridor was filled with 30 officers. He also stated that the special forces stayed in the Zamkova Prison from early morning until evening. The witness was not sure which special forces had participated in the training, but mentioned that they were either “Berkut” or OMON, as these were common names for special forces. The officers had special equipment, including motorcycle helmets - some of which had visors covering the face - and shields; the special helmets they wore looked like motorcycle helmets. Some of them wore masks. After several minutes' search there was disorder inside the cell: everything had been turned upside down, there was tea and sugar on the floor, bed linen had been ripped apart, and personal belongings scattered around.

28. The witness stated that the training exercises had been used to suppress and punish the inmates. Nobody had explained to them their rights and duties in the course of such a “search” and nobody had told them when these forces would train, as they were brought in secretly and unexpectedly. He remembered that someone wanted to speak to him about his complaints, but he refused as the person concerned did not really wish to investigate them. He then lodged complaints about ill-treatment during the training with Mr Ilchenko, via Mr Zherdev.

29. Mr Mazurenko and Mr Shatskiy had tried to influence him so that he would not complain about the ill-treatment suffered in the course of the training. He claimed that inmates could not complain about the ill-treatment, as they were threatened by the officers present during the training exercise. Afterwards they had nothing to complain about, as no medical records were kept of his injuries and the injuries of others. The doctor told him that he would try to provide medical assistance, but that he would not include anything in his records. Eventually, however, he had to undergo additional medical treatment and surgery in Kherson and L'viv, as his medical condition had aggravated. He could walk only with a stick.

30. He confirmed that he had been absent from the Zamkova Prison at the time of the second training exercise, undergoing medical treatment in Prison no. 98. Upon his return to the penitentiary on 2 February 2002, he had been transferred to solitary confinement. He was called in by Mr Mazurenko, who told him that he could not avoid the injuries and beatings experienced by the others. He had ultimately been beaten by Mr Mazurenko and Mr Shatskiy; the officers had also tried to strangle him. He was taken back to the cell, where he was told that other inmates were also injured.

2. Mr Leonid Volodymyrovych Mikhaylenko

31. This witness was a former inmate of the Zamkova Prison and a direct witness of the events of 30 May 2001. He was detained in the same cell as some of the applicants in the course of the events of 30 May 2001. He left Zamkova Prison on 12 June 2001.

32. This witness was initially kept in cell no. 13 and was then transferred to cell no. 16. He stated that he knew the convicts Mr Litvinov and Mr Didenko. In his opinion, the cell was not suitable for detention, as it was cold and there had been no bed linen. He had been diagnosed as suffering from tuberculosis while in prison, as the inmates suffered from hunger, and was transferred to a single occupancy cell, no. 17. On the day in question he heard some noise (explosions and shots), the door to his cell was opened and he saw people standing in the corridor, and inmates in the “*roztiazhka*” position who were being beaten on their feet. They were searched and stripped. Orders were given, such as “stand still”, “say that you are going to cooperate with the administration”, “on your knees”.

33. The witness stated that he saw people in special uniform, which was the same for all officers. They carried truncheons, but not automatic guns. He considered that they were from outside the Prison. He also saw Mr Mazepa, Mr Mazurenko, Mr Shatskiy and Mr Bondarchuk, who were actively participating in the training exercise. They were standing to the side and possibly pointing at those inmates who should be beaten further. Mr Davydov, Mr Gomenyuk, Mr Druzenko and Mr Didenko were badly beaten. Some inmates fell and were made to stand up with kicks and beaten again. They were ordered to give an oath of obedience to the prison administration and swear to comply with the detention regime. Some of the inmates were ordered to give an oath on their knees. This lasted for about 10-15 minutes. He saw undressed inmates from cells nos. 15 and 16.

34. In his opinion, Mr Didenko from cell no. 8 was beaten most badly. He saw the injuries later and spoke to the other inmates during walks in the yard with cellmates from nos. 8, 14 and 16, as there were only 3 yards for daily walks. He stated that, notwithstanding the fact that he was already diagnosed with the open form of tuberculosis, he still took daily walks with other inmates. They submitted their complaints about the incidents during the training exercise to the Prison officer. However, these were not forwarded any further. As he understood it, these complaints and injuries were not registered.

35. As to the incident on 29 January 2002, the witness mentioned that a couple of inmates in the cells had been heavily beaten. He was told that Mr Druzenko and Mr Gomenyuk were beaten so badly that they could not walk or even use the toilet without assistance. As a tuberculosis patient, he was transferred to Prison no. 61 in Kherson Region and returned to the Zamkova Prison only on 12 June 2002. He was held in that Prison until 2006.

36. The witness referred to threats made against him on account of his testifying as a witness before the Court. In particular, he said that he had been threatened by Major Kyslov and Colonel Polevoy, who promised that he would suffer from negative consequences if he would give statements in the course of the hearing before the Court.

3. Mr Oleg Tishalkov

37. The witness was a former inmate of the Zamkova Prison and an eyewitness of the events of 30 May 2001. He stated that he had been in cell no. 2 during the events in question. He said that he knew the applicants, although he could not remember all of them by their surnames. He knew nothing about the second incident, as he had been transferred from the Zamkova Prison in September 2001. But other inmates had told him that the second training exercise was even more brutal than the first.

38. He stated that the search started after 6 a.m., about an hour after the wake-up bell. They had heard that such a search would be conducted one to

one-and-a-half weeks beforehand. However, they were never instructed on how to behave and what to do.

39. The officers, who wore identical black uniforms, masks and helmets, and carried truncheons and firecrackers, ran into the cell, ordering everyone to lie down on the floor. They exerted a sort of psychological pressure as everything was done chaotically and very quickly. He noticed about 30 officers. The witness said that he saw that the search was being video-recorded and that some persons were taking notes. Then the inmates were taken to the corridor one by one. Five or six officers who came into the cell were shouting and did not let the inmates look up, and struck them at random with the truncheons. The inmates had to strip naked and were ordered to stand in the “*roztiashka*” position, and were ordered to swear that they would cooperate with the administration and comply with the detention regime. When they were running back to the cell, the officers again hit them with truncheons. In the cell everything was turned upside down: linen, mattresses, personal belongings, etc. The penitentiary officers were indicating who was to be beaten more severely. This concerned those inmates who complained a lot and demanded improvements in the detention conditions. The unit involved was from the Khmelnytsky region, and was some kind of special unit. The prosecutors were present in the course of the search. Representatives of the administration visited the cell, guarded by officers with automatic guns.

40. He stated that he had not been kept in the same cell as the applicants and could not say anything about their injuries, as he saw only those who were outside the cells. Everyone had some sort of injury: blows, haematomas, etc. He personally received some injuries; his eardrum had been badly damaged. He never received adequate medical treatment for this injury, as there was no “ear, nose and throat specialist” (“otolaryngologist”).

4. Mr Vadym Getmansky

41. This witness was a former inmate of the Zamkova Prison and an eyewitness of the events of 30 May 2001 and 29 January 2002. At the time of the events he was held in cell no. 4, with 10 other inmates; this was not in the Monastyr, but in the residential area of the Prison. This was a residential sector. Inmates held there could leave their cells from 6 a.m. to 10 p.m., so he could see the events and people passing by these premises, but not from his cell. There was a staircase to the first floor from where he could see over the fence surrounding the detention premises where he was held.

42. The witness found out about the forthcoming first training exercise from a Major Kroshka, who said that something “interesting would occur”. The witness stated that on the day of the first training exercise, namely 30 May 2001, many soldiers entered the premises. They threw firecrackers at the volleyball ground near the building where he was held and in which inmates were taking walks at that moment, then they entered the residential premises, fired inside and entered the cells suddenly. They entered his cell

on the second floor through the staircase. Everyone was ordered to lie on the floor and then they started throwing firecrackers. All the inmates were on the floor and a lot of soldiers were involved. Everyone was taken out of the premises. They were ordered to run from the cell, and soldiers in the corridor struck them with truncheons. Truncheons were used sporadically, so that some inmates received blows. Certain inmates were placed along the wall with their hands against it. Others, including this witness, had to kneel in the centre of the courtyard. He had to stay on his knees with his hands behind his head for 20 minutes. The soldiers took everybody out of the residential premises where he stayed, so that almost everyone was outside near the volleyball ground, on their knees and standing along the fence. Inmates were taken out of the premises one by one with their hands behind their backs, were told to bend down, etc. The whole procedure lasted about 20 minutes. The soldiers beat the inmates on their feet so they would stand in the “roztyazhka” position. Those who could not stand for a long time were taken to the medical unit. The soldiers entered the next premises. Major Kroshka came with two tall soldiers. They demanded to know where inmate Roman Ogly was, took him with them and went in the direction of the Monastyr. Then everyone was taken back to the first and second floor of the residential premises. The witness mentioned that Mr Zakharov, Mr Mazepa and a representative of the prosecutor's office were present during the training exercise of May 2001. He complained about these incidents to Colonel Zakharov, the deputy Governor of the Prison, who told him that it did not matter. He further stated that no investigation had ever been conducted into these events.

43. The witness mentioned that he had not sustained serious injuries, but the inmates who were standing near the fence received blows to their legs. Those who could not stand and fell down were lifted and taken in the direction of the medical unit. The soldiers left for the Monastyr and he subsequently heard that the soldiers had beaten other inmates held in the Monastyr. He could see people being taken to the medical unit, because they were passing by the premises in which he was held. In particular, he saw five or six persons; some of whom were left in the medical unit and others were not, i.e. two persons returned to the cells in the Monastyr. It was evident that some inmates had been beaten, as they were carried by two warrant officers (*praporschiki* - *ннанопицукі*) or helped by other injured inmates. Some were limping and others were clutching their injuries. According to this witness, Mr Gomenyuk was badly beaten either during the first or the second training exercise. Those most badly beaten were those who were held on the ground or first floor of the Monastyr. The units that participated in the search stayed at the Monastyr for about an hour, then the inmates started going to the medical unit. He mentioned that Mr Litvinov, whom he knew and who was held in the Monastyr, passed him and told him that his entire cell, made up of 6-7 inmates, had been beaten up.

44. As to the second training, he stated that the soldiers were beating up inmates in solitary confinement cells and isolation wards. The soldiers came into the Prison, threatened the inmates and then went to the Monastyr, where they beat severely those held in cells. He stated that about 300 persons were involved during the second training. During the second event, he saw Mr Litvinov walking from the Monastyr to the medical unit, accompanied by a *praporschik-kontroler* from the Zamkova Prison. They also beat a man named Vova Kievsky. The beatings occurred on the basis of the instructions of the officers from the Prison administration; those who were pointed out by the administration were taken to the Monastyr and beaten there (this happened on both occasions). The inmates in the Monastyr were severely beaten.

45. As to the special units and their equipment, he stated that about 20 participants in the training exercise wore masks fully covering their faces, carried automatic guns and helmets, wore camouflage uniform. Some soldiers had the visors of their helmets open, but he could not see their faces as he had to bend down; had he lifted his head he would have received a blow, and everything was done in haste. He recognised the head of the prison detachment, who wore camouflage, by his gait. The superior officers were wearing regular military uniforms. There were people from outside the Zamkova Prison; they behaved aggressively, were all tall, close to 2 metres in height. It looked as though if they had been specially chosen.

C. Witnesses proposed by the Government

1. Mr Sergiy Shedko

46. This witness has been an inmate of the Zamkova Prison since May 1999 and was a direct witness of the events of 30 May 2001 and 29 January 2002. He knew Mr Gomenyuk as he became acquainted with him during medical treatment from December 2002 to February 2003. He also saw and heard about two other applicants - Mr Ilchenko and Mr Salov. He was held in cell no. 20 in the course of the events of 30 May 2001 with 13 other inmates, whom he was able to enumerate by surname. However, he knew nothing about the second event as he was not in the Zamkova Prison. He knew the applicants, but was not personally acquainted with them.

47. He said that searches were conducted regularly, at least once a month, by employees of the Zamkova Prison and the security unit. On 30 May 2001 there had been an ordinary search of personal belongings. He indicated that when a search was held the officers normally ordered the inmates to provide their personal belongings for search and to await their turn during the search in front of the wall. The inmates did not have to remove their clothes. The cells were usually searched one-by-one. The search started at 8 a.m. and lasted until 9 a.m.

48. The witness said that only the personnel of the Zamkova Prison participated in the general search, and then only its security unit. He said that there were certain officers present who wore camouflage and masks, but in his opinion they were not from a special unit.

49. When asked what would happen if someone disobeyed orders in the course of a search, the witness stated that the Governor and a commission review the incident and then apply sanctions – namely a reprimand, serious reprimand, DIZO, etc. He himself had not heard anyone complaining, but he had learned afterwards that some inmates had lodged complaints. He did not know about any injuries, but was sure that they were normally recorded in the register of inmates' complaints, because he himself had once had a problem with an eye injury and dermatitis and these injuries were recorded in the register of requests for medical aid.

2. Mr Vasyl Bondar

50. This witness was the Head of the medical department of the Zamkova Prison and captain of the internal service (*капітан внутрішньої служби*). He is currently continuing to work on the same position. He is a graduate of L'viv Medical University, specialising in pharmaceuticals. He previously worked as an occupational pathologist and as a doctor in an emergency unit. Then he began working at the Zamkova Prison. He stated that the medical unit consists of a therapist (general practitioner), dentist, radiographer, three medical assistants (paramedics) and a nurse. At the time of the events the medical unit was composed of this witness and an assistant medical officer.

51. The witness stated that there were no training exercises as such in the Prison. There were unscheduled searches and daily searches. With regard to training exercises, he stated that there were training exercises by the “rapid reaction unit”, which had been training according to a plan. He and his colleagues had participated in the training in order to provide medical assistance, since someone, such as prison staff, could have received injuries. The training exercises were last held in 2001–2002. He received no complaints after the searches in 2001–2002.

52. In 2001 a special unit (of unknown subordination that he knew nothing about) was deployed. It was trained in how to rescue captured hostages. Some of the staff members of the Prison impersonated the seizure of hostages and others imitated hostages, and the special unit was trying to liberate the hostages. The special unit had flak jackets, special uniforms, helmets, shields and rubber truncheons. The employees involved in the training were carrying shields and rubber truncheons and wore flak jackets. The rapid reaction unit officers wore camouflage and had black masks. The staff of the Prison also wore masks, so as not to injure themselves. He could nevertheless distinguish those who worked in the Zamkova Prison and those from the outside.

53. Initially he stated that it was possible that such a training exercise had been held on 30 May 2001 and started between 10 a.m. and 11 a.m. The exercise to free hostages was held in the industrial zone, woodworking workshop, on the second floor, and in the joiner's shop, where some of the Prison's employees had played the role of criminals and barricaded the entrance. Other officers were trying to remove the barricades and break down the doors. About 30-40 persons participated in the training exercise, of whom 25 persons participated in the role-playing and assault and others were surrounding the training ground. Some of the external forces stayed outside the Prison in the course of the training. There were no inmates inside the industrial zone, as the training involved only employees of the Zamkova Prison. However, he then underlined that some "additional forces" from outside were present when the "hostages were taken". He was not sure whether they were in the residential zone, since during the search he was on the first floor of the Monastyr. He thought that the special forces left the residential zone, for the time of the search, but he was unsure. He saw no soldiers entering the "residential zone". The training was conducted and then there was a general search.

54. During the search of the premises, all of the special unit employees who participated in the training exercise had left the territory of the Prison. This search included: the ground floor, first floor, DIZO cells (disciplinary detention), PKT cells (cell-type premises) and OK cells (solitary confinement cells). He was present during the search of the ground floor and in the DIZO, OK, PKT and punishment cells. Later he was present on the first floor. Medical staff had to be present during the search. Then he stated that he saw all the premises. If a search was being organised, there was normally a plan and the personnel was divided into groups. There were usually three groups participating in the search. The witness was not sure whether the prosecutor Mr Volkov was also present, but he said that representatives of the prosecutor's office were supposed to be present during this kind of search.

55. In reply to a question regarding the medical aid provided to the applicants, the witness first stated that he had read the accusations. He mentioned that everything was done in the presence of a doctor; every inmate had a medical record, journal of attendance and journal of injuries. He was preparing copies of the medical files for the persons who had applied to the European Court. In particular, Mr Martov underwent a full medical inspection and it had been established that he had no broken ribs. He mentioned that medical assistance was always provided to the inmates and no medical complaints were received as a result of the search and training exercise. There were some medical complaints before the training exercises, but not after.

56. He further stated that Mr Martov was registered with the medical unit and received medical treatment in Prison no. 98 for tuberculosis and hypertension. Mr Druzenko suffered from problems with his spine muscles.

Mr Ilchenko had requested medical assistance while he was held in solitary confinement, and did not wish to work. His medical complaints had no grounds. Mr Mykhaylenko had tuberculosis and Mr Gomenyuk was registered as a person who frequently injured himself; he swallowed nails and had undergone in-patient treatment in Prison no. 98.

57. His activity was frequently checked, and he prepared documents in response. His work was supervised by inspectors from the State Prison Department. These inspectors conducted scheduled and unscheduled checks. Additionally, the prosecutors' office and representatives of hospitals and medical stations monitored his work. The prosecutor's office had investigated the incidents of which the applicants complained, reviewed his records and spoken to inmates. Normally, he checked the inmates' health according to the plan. If someone was sick or needed medical aid, the "controller" (*контролер*) of the detention unit was obliged to inform him. He knew nothing about a refusal by the controller to inform him of the need to provide medical aid. Regular medical checks were scheduled, but an inmate could also make an appointment to see him. In general, he concluded that it was impossible for medical aid not to be provided.

58. As to the events of January 2002, the witness mentioned that this had been a normal search, which was usually held once a month. The forces involved in the search were searching cells one-by-one. Thus, the groups were divided according to the sectors for which they were responsible. The search was first conducted on the first floor, then the second floor, then in the special premises, punishment cells, DIZO (disciplinary isolation cells), PKT (cell-type premises) and OK (solitary confinement cells). The witness mentioned that special forces from outside were not deployed during this search. The Prison itself had a "rapid reaction group", consisting of 10-15 specially selected officers.

3. Mr Oleg Bukher

59. This witness, at the time of a hearing, was employed as head of the investigative division in the prosecutor's office in the Khmelnytsky Region. He was a senior assistant to the Prosecutor of the Khmelnytsky Region from 10 January 2001 and personally took part in the investigations into the events in Prison no. 58 in January 2001 - 2002. He supervised the work of the Shepetivka special prosecutor's office, which had responsibility for supervising Prison no. 58. That investigation resulted in a resolution of 11 June 2002, refusing to initiate criminal proceedings against the police officers who had participated in the training exercises, due to a lack of *corpus delicti* in the inmates' complaints.

60. This witness had personally investigated the events on the basis of an order from the deputy regional prosecutor, and had gone to Iztiaslav in person. He had examined the work of Mr Stasiuk and Mr Yantselovsky, the prosecutors who were directly responsible for supervising the Zamkova Prison and who had participated in training exercises. He asked them to

seize documents from the penitentiary administration and to adopt a decision under Article 97 of the Code of Criminal Procedure as to whether to initiate criminal proceedings. Eventually, a resolution (*ностанова*) was adopted on termination of the criminal proceedings in the case. He investigated the events for 10 days; he had only three days to decide whether to institute criminal proceedings. He prepared an internal report and then a prosecutor's resolution on that basis.

61. As a result of the investigation he came to the conclusion that the inmates had not been beaten. He mentioned that a special prosecutor (Mr Volkov and perhaps also Mr Manzyuk or Mr Yantselovsky) was present during the training. He also based the decision on the findings of the investigation, materials from the medical unit, the lack of records as to physical injuries; in general there was no evidence in this respect. The medical unit provided information on the provision of medical assistance and medicines to the inmates. He himself did not question witnesses and inmates, as he had two assistants, Mr Stasiuk and Mr Manzyuk, in the local prosecutor's office. For instance, Mr Stasyuk, acting as his assistant, questioned 10-20 witnesses and then he (Mr Bukher) had to analyse this information. He had no grounds not to trust the assistants and, in any case, he was not entitled to include someone else from the local prosecutor's office in the investigation group. The assistants were much closer to the penitentiary and had to spend less time travelling to it, and he had seen no grounds for questioning the inmates in person. He also saw no grounds to invite prosecutors different from those who were present in the penitentiary at the time of the training exercise to investigate the events. He analysed everything, including the inmates' personality, and came to the conclusion that there was no evidence to institute criminal proceedings on the basis of the inmates' allegations as presented by Mr Zherdev. In general, when analysing the complaints lodged by Mr Druzenko, Mr Davydov and Mr Gomenyuk, he thought that the complaints were somewhat "artificial", that the inmates had agreed on what they would say. He took into account their criminal records and personal files in assessing their complaints and investigating the allegations of ill-treatment. He further informed the Delegates that the investigation was conducted in June 2002, that is, after the second training exercise (January 2002), since no complaints had been received or lodged after the first training exercise. Special prosecutor Mr Volkov had informed him that everything was acceptable during the first training exercise.

62. As to the presence of the special units, he said that the training exercises normally conducted in penitentiary institutions involved role-playing of taking hostages and disorder, in order that the special units or penitentiary staff would know their way around the penitentiary, be aware of where the various premises were situated, etc. There was a general plan; it might have been related to a worsening of the general criminal situation in the Penitentiary, and approved by Prosecutor Mr Volkov or

Mr Yantselovsky, Mr Mandzyuk and Mr Stasyuk, in other words, by one of the prosecutors responsible for supervising the Zamkova Prison. He did not remember which unit was involved in the training, or whether it belonged to the Zamkova Prison. However, there was a general search conducted in the course of the training exercise and the Zhytomyr rapid reaction unit was involved in this. Initially there was a training exercise, and then a general search. It was “absolutely prohibited” to use police forces for this kind of training. He knew that these kind of special units operated, and had seen the documents on the basis of which they operated, but had never seen the units themselves.

63. As to the complaints lodged, he did not know whether any complaints had been lodged locally; however, he considered that the inmates should be sanctioned for violating the normal procedure. The “illegal” submission of a complaint did not arouse any suspicions on his part. He had not really looked into it. The explanations were in the investigation file, including the information on the possible use of force. Furthermore, he had found no evidence of threats against the applicants on account of their complaints.

4. Mr Yevhen Volkov

64. This witness was the Head of the Novoushytskyy District Justice Department of the Ministry of Justice. He was a former Prosecutor of Shepetivka, responsible for supervising the lawfulness of the enforcement of sentences in criminal cases. He retired from this post in September 2002. He was present during the training exercise on 30 May 2001 and absent from the second on account of annual leave.

65. The witness stated that on 30 May 2001 a training exercise was held in the industrial zone, which involved training the units in how to act in a situation where the inmates took hostages. The exercise was organised because hostages had been taken in another penitentiary and the staff had been unprepared. Prison staff played the role of hostages. The groups which participated in the training included Prison staff and a small unit of 10-15 persons. The special unit was not involved in the search, but only in the training exercise. The penitentiary employees outnumbered them. He was not sure whether the unit remained in the Prison after the exercise, and indicated that they might have remained. He was present during the training exercise and countersigned its plan. Senior officers from the Prison Department were also present *inter alia* Mr Leventsov, Mr Yakymchuk. Mr Satsyuk, from the Prosecutor's Office, was present at the second training exercise.

66. He stated that not only were personnel from the Zamkova Prison involved in the training exercise, but also a unit from the Zhytomyr region (a group of 10-15 persons). They had special equipment: helmets (*шоломи / каски*), flak jackets (*бронежилети*), automatic guns, rubber truncheons, special gear (*спеціальні засоби*). “Special effects” were used, such as

firecrackers, empty shots from automatic guns, etc. About 5-6 persons were liberating hostages and the remainder, nine to ten men from the unit and another 75-80 persons, stayed aside watching how the special unit trained.

67. A search was held later on the same day. He was present during the search and saw no violations of the law or beatings of inmates. The penitentiary guards went into the cells and no special unit officers searched the cells. He and Mr Stasyuk had meetings with the inmates after the training and heard no complaints. He went around the penitentiary, escorted by the guards and a representative of the penitentiary administration, visiting cells and asking inmates whether they had any injuries and whether they wanted to complain. He also had a separate room at the penitentiary for meetings with inmates.

68. He was asked to investigate the complaints and informed Mr Bukher, senior assistant to the Regional Prosecutor, of the results. He remembered Mr Ilchenko and how he questioned him with regard to the complaints. He read his file, saw that he had been sentenced for three murders and eventually formed the opinion that he could not be rehabilitated. He saw that he refused to work and always had unreasonable demands, and that the penitentiary administration did not want to pressure him, as he was constantly complaining. He also stated that he could have intervened, if necessary, through the “prosecutor's response” (*заходу прокурорського реагування*), but it was unnecessary as there had been no violations of the law. If a complaint remained uninvestigated then he would sanction the person who had failed to investigate it. If he did not react, he would be prosecuted by the higher law-enforcement authorities.

69. Mr Volkov imposed sanctions on those inmates who had sent their complaints “other than through the legally allowed channels”. He did not think that inmates were prevented from complaining directly and he did not react to the applicants' allegations as to the injuries inflicted on them, as he thought that they were unfounded. The inmates had the possibility of signing up for a meeting with him.

70. Mr Volkov said that information about such training exercises was usually disseminated among the inmates by means of lectures. The inmates were informed of their rights before the training was held, they have access to the Constitution of Ukraine and the “daily routine” (*розпорядок дня*) was available to them in writing. He visited cells and spoke to the inmates. He also mentioned that the administration informed the inmates about the training by radio. The Governor of the Zamkova Prison informed the convicts by radio about the future training exercise, a couple of days before it was held.

5. Mr Pavlo Klipatsky

71. Mr Pavlo Klipatsky was the senior inspector of the ITZO and communications group in the Zamkova Prison. As one of the heads of groups, he searched the inmates during the first training exercise. He also

took part in the second training exercise. He supervised the inmates who worked as technicians and ensured electricity and water supplies for the Zamkova Prison. Mr Klipatsky participated in the search of the workshop, laundry, bath-house and other buildings.

72. The witness initially did not want to admit that special forces were present in Prison. He mentioned that only the personnel of Prison were participating in a search and not special forces that were involved in some sort of training at the industrial zone.

73. Mr Klipatsky had heard of Mr Ilchenko, but probably in a private conversation. The witnesses stated that the employees of the Prosecutor's Office and the State Prison Department were usually present during searches. Prosecutor Volkov attended the first training exercise, as did Mr Bekh, Mr Leventsov and Mr Zlotenko. No medical assistance was requested after the first training exercise.

6. Mr Andriy Shatskiy

74. Mr Andriy Shatskiy was head of the sector for the organisation of operative work and a major in the Internal Ministry. He was the senior Ministry of the Interior investigation officer at the Zamkova Prison in 2000-2002.

75. During the first training exercise, Mr Shatskiy was present during the search as a member of one of the groups, and then during the "administration's visit" (*комісійний обхід*), when they visited cells and spoke to inmates. This was according to the established procedure for touring the premises by representatives of the State Prison Department and the prosecutor, who was also present during the training exercise. He spoke to Mr Didenko and other inmates.

76. The witness mentioned that on 30 May 2001 all the staff of the Zamkova Prison had participated in the general search for prohibited items, organised in the residential zone. It was conducted according to the internal regulations of the State Prison Department. These searches were held once a month. Only the personnel of the Zamkova Prison had been involved in the searches, and no one else. The first training exercise started at 7 a.m. in the industrial zone. The personnel took up position and were read the plan of action, the content of the training exercise, the "operational circumstances" (*оперативна обстановка*), including what they had to pay attention to (particular cells and dangerous persons), the composition of the groups, their tasks, and the aims of the training.

77. The witness explained that there were different types of searches: scheduled, unscheduled and additional searches. The scheduled searches were known in advance; the individuals responsible were also identified, as were the means to be used. They were intended to locate the storage of prohibited items. He stated that such searches were usually held in the following way. The group, composed of the head of the detachment (like himself) and its members, went to the cell and told the inmates about the

search, asked them to dress and to stay near their beds. The staff members then went to the personal belongings and searched through them.

78. The witness said that there had been many investigations into these training events, including those by the General Prosecutor's Office, the State Prison Department. They had not been informed of any results from these investigations.

7. Mr Sergiy Zlotenko

79. Mr Sergiy Zlotenko had been head of the guarding, supervision and security division in the Khmelnytsky Regional Prison Department since 2001. He was subordinated to the First Deputy Head and the Head of the Regional Prison Department.

80. He mentioned that the approximate number of persons, who participated in the first training, was 80, plus 10-15 from the rapid reaction unit, which included those staff whose tasks were related to the training objectives. Four penitentiary institutions took part in the training exercise, namely Iziaslav Correctional Colony (Iziaslav Prison) no. 31, Raykovetska Correctional Colony (Raykovetska Prison) no. 78, Shepetivka Correctional Colony (Shepetivka Prison) no. 98 and the Zamkova Prison (Zamkova Prison no. 58). The training was based on a decision of the State Prison Department and the relevant plan prepared in advance. The training was held at the industrial zone and finished at approximately 11 a.m. It started at 10 a.m. in the same zone.

81. Witness Mr Zlotenko stated in relation to applicants Mr Gomenyuk and Mr Ilchenko that he had heard about them, as he had reviewed complaints by them, but not in relation to this specific training and search. They belonged to the category of “malicious violators of the regime” (he referred to Article 133 of the Code on the Enforcement of Sentences). Mr Gomenyuk refused to work (in violation of Article 107 of the same Code) and had to be transferred to a stricter regime for serving his sentence. Mr Ilchenko submitted his complaints; however, they appeared to be unsubstantiated. In addition, the complaints had been sent by prohibited means, as they were supposed to be sent “exclusively” through the administration of the penitentiary institution. Mr Ilchenko was seen sending complaints by prohibited means.

82. A special Zhytomyr rapid reaction unit (*група швидкого реагування*) was present during the first search. It trained the personnel, and the exercises included training in how to free hostages. This unit was made up of about 10-15 persons; they wore flak jackets and helmets, and carried rubber truncheons and weapons. One could hear the shots. They were tall, strong and physically fit personnel. They wore special dark green field camouflage uniforms (*формений польовий одяг*) (but there might have been other colours, khaki and light green), and special shoes, trousers and caps. One of the aims of the training was to demonstrate how to act and how to use the “special restraining equipment” (*спецзасоби*). This was used

during training exercises, but only in exceptional circumstances. The units had the obligatory equipment with them (*обов'язкове спорядження*). They also had explosives; they used weapons, firecrackers and ammunition rounds. All of this equipment had to be returned to the special equipment storage room after its use in the search. During the search, a “reinforced supervision” group (*група посиленого нагляду*) was created, made up of those individuals who had special equipment. This “reinforced supervision group” was not normally involved in searches, but was used for blocking the entrances and exits to Prison departments. The rapid reaction unit did not remain with the rest of the staff, as they trained only in the industrial zone. After the training exercise, which lasted one and a half to two hours, the rapid reaction unit left the territory of the Zamkova Prison and the search continued.

8. Mr Pavlo Zaremskiy

83. Mr Pavlo Zaremskiy was a senior operative officer in the operative department at the Zamkova Prison. He was the Head of the Division on Social and Psychological Work with the Inmates in the Zamkova Prison, was and responsible for supervising Mr Ilchenko at the relevant time. From December 2001 he was an operative officer in the Zamkova Prison.

84. As to the second search, the witnesses stated that special units had also been involved in it. There were a number of different groups, with different tasks. Some of them were waiting. The groups were standing outside the Prison, near the checkpoint entrance and close to the perimeter fence. The training started at about 7 a.m. and lasted about 1.5 hours. First, the participants received information from the commanders.

85. A planned search was also held. They arrived at the administration building, which was outside the penitentiary's territory, and received instructions on the areas to which greater attention should be paid. After the training exercise the groups searched specific cells and the officers documented the search. The second training exercise took place “outside the territory of the guarded object” (*поза зоною охоронюваного об'єкту*). The training exercises, involving the personnel of the Zamkova Prison, were intended to provide training in combating possible mass disobedience. Special equipment and firecrackers were used. Weapons may have been used in the course of the second training exercise. Mr Zaremsky was a member of the “documenting group”, which trained how to prepare reports on the participants in the staged mass disobedience, identify the perpetrators and persons inciting mass disobedience, and to take photographs and videos of those participating in a riot, so that they could be sanctioned afterwards.

86. The witness stated that there was a “blocking group” (*група блокування*), made up of penitentiary employees, usually one or two junior inspectors, who carried and used special equipment (shields, “PR-73” rubber truncheons). If a cell was small, the inmates had to go into the corridor, but one person from the cell could remain and watch how the

search was being conducted. There is a “blocking group” in the corridor, or usually one or two junior inspectors. The inmates had to stay near the wall or windows, but not near the doors to the other cells. Full searches were not usually conducted in the corridor, but the staff normally searched inmates through their clothes. If necessary, a full body search was conducted in separate warm premises by persons of the same sex. Also, there was usually something on the floor to stand on and a place to put clothes. The witness stated that he had never seen a full body search being conducted in the corridor.

87. As to the complaints by Mr Ilchenko and Mr Davydov, witness Zaremsky mentioned, in relation to the personality of the complainants, that Mr Ilchenko was being used by Mr Davydov and Mr Gomenyuk. They all wished to become renowned criminals (*asmopumemu*). Mr Ilchenko wished to become a preacher in the colony, and constantly complained about the lack of possibilities to profess his religion. He had become acquainted with Mr Zherdev. Many documents were available to inmates with regard to complaints and he had given a lot of legal information to Mr Ilchenko, who had read it. However, he was punished for sending the complaints through illegal channels, and sanctioned according to the instructions (*npunuc*) of the prosecutor. Mr Ilchenko did not work particularly well and had problems with his work. At some point he had become a “militant Christian”, had no tolerance and was aggressive towards other inmates who had different religious beliefs.

9. Mr Vasyl Leventsov

88. This witness was the first deputy head of the Regional Prison Department in 2001-2005 and had since retired from the civil service. He was the commanding officer during the second training exercise. He worked at the Shepetivka Regional Prison Department and became responsible for the Zamkova Prison from 25 June 2001, that is, after the first training exercise. At the time of the first exercise he worked in Prison no. 98, situated in the same region and close to the Zamkova Prison.

89. He stated that the situation in the Zamkova Prison remained stable. The staff needed to know the operative situation so as to be ready to deal with the dangerous inmates. However, according to the general information received by the staff before the training, the number of murders had increased and the “operational environment” (*оперативна обстановка*) in the Penitentiary had seriously worsened. The task was to train staff in how to react to mass disobedience in the Prison.

90. The witness mentioned that training for staff of the Zamkova Prison was conducted on a regular basis, at least once every six months. He was responsible for staff training and thus managed the training exercise. It was held with the staff of the Zamkova Prison and no officers from the outside were involved. On the occasion in question there had also been a general search. The purpose of the training exercise had been to prepare personnel

for extraordinary circumstances. Depending on the event, different forces could be employed, including the special taskforce units. The special unit was not involved in training from June 2001 to 2005. However, he stated that the special rapid reaction unit was probably involved in the training prior to June 2001. He never saw the rapid reactions units, or had maybe seen them but only during parades. Mr Yantselovsky, but not Mr Volkov, was present during the search in the Zamkova Prison and countersigned the training plan. A special prosecutor had the right, which he exercised, to enter into any of the premises.

91. As to the manner in which the training exercise was organised, the witness mentioned that the personnel had first to take up position. Then the action was explained to them. No special equipment had ever been used. A rapid reaction group is usually made up of personnel trained within a penitentiary. This group usually included 10-12 persons. Their task in the course of the search was to ensure security for the personnel inspecting the cells. They usually wore ordinary camouflage, flak jackets and helmets. They also had weapons and rubber truncheons, which was the only special equipment used. "Firecrackers" and "active defence equipment" (*засоби активної оборони*) were also used. It was impossible for him to state the exact number of persons wearing special equipment; in addition, this information was not kept in the archives for more than a year. The equipment was used to ensure that the personnel received no injuries.

92. Scheduled searches were also conducted by the staff of the Zamkova Prison, wearing the same uniform. He confirmed that the rapid reaction units of penitentiaries nos. 31, 58, 78, 98 and SIZO no. 29 were present in the course of the training. After the training exercise there was a ten-minute break, then the staff of the penitentiary returned to the penitentiary. There they entered the residential zone for a general search. A video recording was usually made, but it was normally secret information. However, no video-recording was made on this occasion, as one could film this kind of film only outside the penitentiary institutions.

93. The witness stated that the search was organised in the following way. The group took up position in the corridor of the premises where the inmates were held. The inmates also had to take up position in the corridor. The inmates were then ordered- "belongings for inspection!" (*"речі до впізнання!"*). They were not asked to take off their clothes. It was prohibited to order them to remove their clothes in the presence of other inmates. He could not remember whether the rapid reaction unit went into the residential area.

94. The witness mentioned that Mr Yantselovsky, a prosecutor from the Shepetivka prosecutor's office, was present in the course of the training. The commissary round or "*administration's visit*" (*комісійний огляд камер*) was held; the heads of the prison detachments were present, as were the heads of the social and medical services, and inmates were asked if they had problems and questions. He learned about the events when speaking to the

Governor and Deputy Governor of the Zamkova Prison by telephone. No complaints were received. If he received complaints, he would immediately have ordered an investigation into them. No medical complaints were received by the medical unit. He could not remember whether he was questioned with regard to the training and could not give any further details as to the investigation.

10. Mr S.V. Snegir

95. Mr S.V. Snegir was the Governor of the Zamkova Prison from 1999-2004. He has meanwhile retired from the civil service.

96. This witness stated that the first training exercise held in the Zamkova Prison took place in the industrial zone. It included the rapid reaction unit and involved the taking of hostages. The personnel of the Zamkova Prison were also involved. The rapid reaction unit was later in the residential zone, but remained separate from the staff. Training of this kind was normally held twice a year and included general searches. The plans were approved by superiors from the SDES. In his opinion, such training was important for the psychological and physical preparation of the personnel, who worked with inmates with complicated backgrounds and who were mainly serving life sentences or had committed serious crimes. Mr Volkov, Mr Zlotenko and Mr Bekh attended the training.

97. The special exercise started at about 6 or 7 a.m. A general plan had been approved by the Head of Department of the Zamkova Prison. An alarm went off and the personnel took up position in front of the Prison, near the entrance gates. The plan involved entry to the Prison through the checkpoint (KPP – control and entry checkpoint) to the industrial zone. The persons involved included about 50 persons from the Prison and 5-6 persons from the rapid reaction unit. Other persons present were those from Prison no. 31, most possibly the Governor and Vice-Governor of that Prison. About 8-10 persons from the supervision and security department who participated in the training were playing the role of hostages. A person from the rapid reaction unit was managing the exercise to free the hostages. The special equipment involved camouflage uniform, “sphere” helmets, handcuffs and rubber truncheons. The usual uniform of the SDES was a military uniform, worn on a daily basis. The rapid reaction unit came to the residential zone after they had finished the exercise in the industrial area, but did not participate in the search. Only penitentiary staff were involved in the search, which included more than 2-3 groups searching different cells in the residential area. No complaints as to excessive use of force were received and nobody complained about a lack of medical treatment and assistance.

98. He stated that the search had been conducted in the following way. It started at about 8 a.m. There were about 53 cells and it took 2-3 hours to complete the search of the entire residential area. The cells were searched one by one, as a simultaneous search of all the cells was impossible on account of the low number of staff involved in searching the cells, which

had a total population of about 750 inmates. The inmates were instructed to come out of their cells. One of the inmates remained in the cell and the officers inspected the bedside tables, beds, clothes, everything, including the ceiling, walls, floor, potential hideouts in them. After completion of the search the staff drew up a written document stating whether any items had been found. Inmates were required to obey and there were no instances where they did not obey the orders in the course of a search. The sanctions if someone did not obey would depend on the circumstances and could involve disciplinary or other sanctions, according to the instructions. The head of the penitentiary detachment was the person responsible for informing the personnel about the requirements of the legislation in force, the Code on the Enforcement of Sentences, internal regulations, etc.

99. Sometimes staff conducted a full search of an inmate. He stated that this was done in the following way: the officer asked the inmate to take everything out of his pockets and to remove his jacket, shoes. The inmates were obliged to comply and if necessary they could be accompanied to a separate room for the inspection. Normally, the full search was carried out in a corridor, where a couple of staff members could check inmates one by one. In response to the query he explained that the “roztiashka” position was one where a person had to put his hands against the wall and keep his feet apart at shoulder width. An immobilising pitchfork (*позач*) could be used in the course of a search in order to extract an inmate from the cell so that he would be isolated from others, without inflicting any injuries on other inmates or the personnel. No weapons, such as firecrackers, automatic guns and ammunition, were given to the staff. Staff had only the special equipment, which included rubber truncheons, shields and helmets.

100. With regard to the second training exercise, the *kontrolery*, who were penitentiary officers, changed into special camouflage uniforms. The training was aimed at eliminating mass disobedience and was held outside the “protected zone” (*зони, яка охороняється*). The forces participating in the training belonged to the Zamkova Prison and Prison no. 31. They were divided into different groups. Some were playing the role of rioters and others were suppressing the riot. They had special equipment, shields, helmets, rubber truncheons, uniform with kneepads and elbow pads, and were wearing camouflage uniform in different colours, mainly darker or lighter camouflage. The equipment also included teargas. A fire-fighting vehicle with water canon had been made available to divide the rioters, but was ultimately not used. The rapid reaction units were not involved. Representatives of the SDES, Mr Leventsov and Mr Zlotenko, were present.

101. With regard to Mr Ilchenko and his complaints, he stated that he remembered him as rather problematic person. For instance, he wanted to exercise his religious rights but did not know what he wanted. Also, he refused to work. Talks had been held with Mr Ilchenko about these issues. As to the investigation of the complaints, mainly from Mr Davydov and Mr Ilchenko, they had been investigated by different authorities, including

the Prosecutor's Office and the Prison Department. He had personally attended the questioning of Mr Druzenko by the prosecutor. Furthermore, he confirmed that disciplinary sanctions were applied to Mr Davydov for violations of the detention regime. He had violated the procedure for sending his correspondence. The witness further confirmed that no pressure had been exerted on the applicants with regard to their applications to the European Court of Human Rights. He indicated that they were questioned normally about their complaints.

11. Mr Mykola Iltiay

102. This witness was the Head of the Security and Supervision Department of the State Prison Department. He is a General Major of the Interior and is currently the First Deputy Head of the State Prison Department.

103. This witness reviewed the complaints lodged by Mr G. Zherdev, complaining that the Zamkova Prison had infringed the rights of the inmates and used force against the inmates. The Prison Department had sent Colonel Irshko, his former Deputy, to investigate the matter. Colonel Irshko informed him of the results of the inspection of the Zamkova Prison. He had examined the materials submitted to him, including the report on the investigation (*службова записка*), the Departments' conclusions and information from the inmates who complained about the excessive use of force against them. He had also reviewed witness statements from the inmates. About 100 statements were provided to him and the staff of the Prison, including reports from the medical unit. There were no reports confirming the injuries of the inmates and no complaints by them to the medical unit. He also reviewed the personal files of the inmates who complained. He discovered that the complainants were “malicious violators of the law”. They informed the First Deputy Head of the SDES O.B. Ptashynsky of the results of the investigation. He reviewed the materials and agreed to send a reply to Mr Zherdev, stating that no infringements of the law had been found. They had two meetings with Mr Zherdev concerning these complaints, including one meeting with Mr Koshynets, the Head of the SDES.

104. Mr Iltiay stated that he understood from the investigation report that there had been a training exercise in freeing hostages for the Zhytomyr special unit (*Житомирський підрозділ особливого призначення*) and the rapid reaction unit (*загін швидкого реагування*), held in the industrial zone of the Zamkova Prison. About 15 persons from the special unit had been present in the Zamkova Prison. They were training at the same time as the search, and could not therefore participate in the search and train simultaneously. A general search had been organised in the residential area, in compliance with the law and internal regulations, and the prosecutor attended it. He and Colonel Irshko had had enough time to investigate all of

this and to gather sufficient information. Colonel Irshko had questioned about hundred persons within a day.

105. As to the investigation into the second training exercise, the investigation was conducted in a similar manner as the first investigation. An inquiry had been organised, witnesses were questioned, a report had been drafted and a reply sent to Mr Zherdev. There was no training exercise on that occasion, but only a general search organised by the Khmelnytsky Regional Prison Department. The general search complied with the law and with the approved plan. The prosecutor's office was also informed.

106. As to the use of the special units in January 2002, he stated that the special unit was not used on the second occasion. In general, training of units was aimed at preparing them and preventing unnecessary losses of staff. Until 1999 these forces had operated within the Ministry of the Interior. In 2000 they were reformed within the SDES system.

107. The special units normally wore special camouflage uniform, flak jackets and “Sphere” or normal helmets. They had special equipment, rubber truncheons, handcuffs and automatic weapons. But they were prohibited from carrying weapons into the penitentiary institutions, as this is a very serious violation of security in any penitentiary. This unit was different from “Berkut”, so it could not be the “Berkut” unit. He further stated that “Berkut” units had not been used by the Prison Department since 1992. A special decree had been issued by the Department in 2000, regulating the existence of special units, and was a public document.

108. The witness stated that the rapid reaction units from four penitentiaries had been present during the second training exercise; it was useful for them to be trained by the special unit. He admitted that the special units also participated in the general searches. In particular, they had been employed on 47 occasions in general searches or so-called “supervisory searches” (*контрольні обшуки*), where the special units supervised searches conducted by the ordinary penitentiary staff.