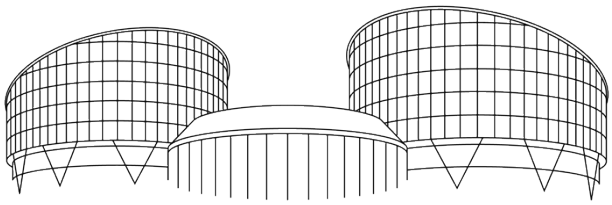

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF TITARENKO v. UKRAINE

(Application no. 31720/02)

JUDGMENT

STRASBOURG

20 September 2012

FINAL

20/12/2012

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

In the case of Titarenko v. Ukraine,

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

Dean Spielmann, *President,*
Mark Villiger,
Karel Jungwiert,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
André Potocki, *judges,*
and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 10 July 2012,

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

PROCEDURE

1. The case originated in an application (no. 31720/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Pyotr Yevgenyevich Titarenko ("the applicant"), on 17 September 2001.

2. The applicant, who had been granted legal aid, was represented by Mr A.A. Kristenko, a lawyer practising in Kharkiv. The Ukrainian Government ("the Government") were represented by the then Agent, Mr Y. Zaytsev, from the Ministry of Justice.

3. The applicant alleged, in particular, that he had been the victim of several violations of Article 3, Article 5 §§ 3 and 4, Article 6 §§ 1 and 3 (c), Article 8, as well as Article 13 of the Convention.

4. On 16 December 2008 the President of the Fifth Section decided to give notice of the application to the Government. On 23 February 2010 the Court further invited the parties to submit additional observations as regards the applicant's complaint under Article 6 concerning his right to defence. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Debaltseve.

A. Criminal proceedings against the applicant

6. On 12 April 1996 the applicant (a former police officer) and a Mr B. were placed on the wanted list as suspects in the robbery of a certain Mrs A.

7. On 24 June 1996 five police officers arrived at a summer house outside the town of Svetlodarsk, in the Donetsk region, as it was believed that the applicant and Mr B. were hiding there. When the officers approached the house and identified themselves, they were shot at from a Kalashnikov assault rifle and hand grenades were thrown at them. As a result one police officer was killed and two sustained severe injuries. The perpetrators escaped.

8. On the same day the Artemiskiy District Prosecutor's Office (hereafter "the Prosecutor's Office") instituted criminal proceedings for murder and attempted murder of police officers on duty.

9. On 3 July 1996 the Prosecutor's Office charged the applicant in his absence with the above offences and ordered his arrest. On the following day he was placed on the list of wanted persons.

10. On 10 July 1996 the criminal proceedings against the applicant were suspended because of failure to establish the whereabouts of the applicant and his co-accused.

11. On 9 March 2000 the applicant was arrested in Greece under an international arrest warrant.

12. On 9 August 2000 he was extradited from Greece to Ukraine and the criminal proceedings against him were resumed. On the same day the Donetsk Regional Bar appointed lawyer R. to represent the applicant in the above proceedings from 11 August 2000. The applicant's relatives signed a contract with lawyer R. for the applicant's representation.

13. The applicant alleged that following his arrival in Ukraine he had been placed in police custody and beaten for three days until he incriminated himself. According to the domestic court's findings in the judgment against the applicant (see paragraph 29 below), on 10 August 2000 police officers I.S. and D.S. visited the applicant in the police detention unit for a confidential talk (доверительная беседа) about unrelated matters, namely arms trafficking in the region. The officers did not ask him about the police officer's murder, but the applicant himself told them that on the day of the murder he had been on the first floor of the summer house in question and that, when escaping, he had thrown a hand grenade, which had not exploded. Two other police officers, N. and A., also visited the applicant in connection with yet another unrelated crime. They stated that he had proclaimed his innocence but refused to make any official statement in the absence of his lawyer. All four officers denied any coercion towards the applicant.

14. On 11 August 2000 the applicant was presented with charges, amended to take account of evidence collected since June 1996. After being

formally charged the applicant was questioned in the presence of his lawyer R. He confirmed his earlier confession statements. He did not complain of any ill-treatment. According to the applicant, after this interview he was not allowed to see his lawyer for fifteen days. According to the Government, on 29 August 2000 the applicant was questioned in the absence of his lawyer as he had expressed a wish to be questioned without a lawyer; on other days during this period the lawyer R. did not ask to see the applicant.

15. On 1 and 5 September 2000 an ambulance was called for the applicant in connection with renal colic.

16. On 4 September 2000 the applicant's brother asked the investigator to allow lawyer K. to act as defence counsel in the case, as lawyer R. was busy in other proceedings. This request was allowed.

17. On 6 September 2000 the applicant, assisted by lawyer K., participated in an on-site reconstruction of the events of the crime.

18. On 8 September 2000 lawyer R. asked the investigator to allow him unlimited visits to the applicant during the investigation. On 11 September 2000 the investigator allowed him one visit to the applicant. On 28 September 2000 lawyer R. challenged the investigator's decision before the Donetsk Regional Prosecutor's Office. In October 2000 the Head of the Investigation Department of the Donetsk Regional Prosecutor's Office allowed lawyer R. unlimited visits to the applicant.

19. On 22 September 2000 the Artemivsk District Prosecutor extended the applicant's detention until 26 October 2000. On 14 October and 25 December 2000 the Donetsk Regional Prosecutor further extended the applicant's detention until 26 December 2000 and 26 January 2001 respectively. On 11 January and 20 February 2001 the applicant's detention was extended until 9 March and 9 June 2001 respectively by the General Prosecutor's Office.

20. On 20 October 2000 the applicant's mother complained to the General Prosecutor's Office that the applicant had been ill-treated and that his access to his lawyer had been limited. By letter of 28 November 2000, the Donetsk Regional Prosecutor's Office replied to this complaint. They noted, among other things, that there had been no evidence that the applicant had been ill-treated and the applicant himself denied any ill-treatment. They also noted that the applicant had been questioned in the presence of his lawyer R. on 11 August 2000 and that there had been no obstacles to communication between the applicant and his lawyer. All requests by lawyer R. for meetings with the applicant had been satisfied and the lawyer had obtained a permit to see the applicant at any time without limitation on the duration of his visits.

21. In November 2000 the applicant changed his evidence and claimed that his confessions had been extracted under duress. The applicant stated that he could not have been involved in the imputed offences to him, as he had been in Vladikavkaz (Russia) at the relevant time. The applicant alleged

that, having learned from his relatives that the police were looking for him in relation to the shooting, he had decided not to return to Ukraine.

22. On 13 May 2001 the Donetsk Regional Prosecutor's Office refused to institute criminal proceedings against the police officers for alleged ill-treatment of the applicant on the ground of lack of *corpus delicti*.

23. On 2 July 2001 the Prosecutor's Office submitted to the Donetsk Regional Court of Appeal (hereafter "the Court of Appeal") a bill of indictment against the applicant and his co-defendant, Mr B. They were to stand trial for the murder and attempted murder of police officers on duty and for illegal possession of firearms.

24. On 1 August 2001 a preparatory hearing was held before a judge of the Court of Appeal. Neither the applicant nor his lawyer was present. The judge considered that the case was ready for trial and decided, without giving any reasons, that the applicant was to remain in detention on remand.

25. The trial started on 19 September 2001 in the premises of the Debaltseve Local Court. During the court hearings the applicant was held in a metal "cage" in the court room. His lawyer sat in the courtroom at some distance from the "cage".

26. On 10 January 2002 the applicant lodged an application for release. In a letter of 23 January 2002 the presiding judge informed him that this request would be examined at the next court hearing. That hearing took place on 11 April 2002, when the court examined the above request and refused to change the preventive measure imposed on the applicant on the ground that he could flee from justice or obstruct the investigation. The court took into account that the applicant was accused of serious crimes punishable by more than three years' imprisonment, that he had no permanent residence or work on the territory of Ukraine and that he had been hiding in Greece with false documents and had been extradited from that country.

27. On 21 July 2002 the Court examined another application for release lodged by the applicant on 3 July 2002 and rejected it on the same grounds as on 11 April 2002.

28. During the trial the applicant and his mother requested family visits to the applicant on several occasions. By letters of 31 October 2001, 23 January 2002 and 5 August 2003 the Donetsk Regional Court of Appeal rejected their requests and informed them that under Article 345 of the Code of Criminal Procedure detained defendants could receive family visits only after a conviction.

29. On 6 April 2004 the Court of Appeal, composed of two professional and three lay judges (*народні засідателі*), found the applicant guilty as charged and sentenced him to fifteen years' imprisonment. The applicant's conviction was based on his and Mr B.'s confession statements, given during the investigation in the presence of their lawyers, and on the statements of four police officers involved in the incident of 24 June 1996,

two of whom had identified the applicant as one of the perpetrators. The trial court also took into account an airplane ticket issued in the name of the applicant, which had been found at the scene during the investigation, and the applicant's passport, discovered in bushes near the perpetrators' escape route. The court examined the applicant's complaints about violation of his defence rights. It noted that the initial questioning of the applicant, his confrontation with one of the victims and the reconstruction of the scene of the crime, on which the court relied in its decision, had been conducted with the participation of the applicant's lawyer. As to his questioning on 29 August 2000 without a lawyer, the court noted that the applicant had voluntarily agreed to make statements without his lawyer and had not complained on that date of any ill-treatment.

The court also examined the applicant's complaints of ill-treatment by the police, who had allegedly forced him to incriminate himself during the first days of the investigation. The court found that on the day after his arrest he had been informally questioned by four police officers on matters unrelated to his criminal case and had confessed to being at the scene of the crime without having been asked about this event (see also paragraph 14 above). The court noted that the applicant's allegations had not been supported by any evidence and that the applicant did not complain about any ill-treatment in the presence of his lawyer on 11 August 2000. The court further noted that the prosecution had investigated the applicant's complaints and refused to institute criminal proceedings against the police officers. The court agreed with the prosecutor's decision and dismissed the applicant's complaints.

30. On 6 April 2004 the court also allowed the applicant to see his parents.

31. The applicant appealed to the Supreme Court. In his appeal, among other things, the applicant challenged the bench that had delivered the judgment of 6 April 2004, alleging that, whereas section 65 of the Judiciary Act provided that lay judges were to be appointed from lists approved by the municipal authorities, the names of two out of the three lay judges who had participated in his trial did not appear in the list approved by the Debaltseve Town Council on 27 November 2003.

32. On 16 December 2004 the Supreme Court upheld the judgment of 6 April 2004. It noted, in particular, that the bench of the appellate court had been composed in compliance with law.

B. The applicant's detention in various remand facilities

33. On his arrival from Greece on 9 March 2000 the applicant was placed in the Donetsk City Temporary Detention Centre ("the ITT"). He was subsequently detained in a number of other detention facilities,

including the Donetsk Pre-trial Detention Centre ("the SIZO") and the Debaltseve ITT.

34. In July 2002 the Court of Appeal held several hearings in his case in the town of Debaltseve. In consequence, he was transferred to the Debaltseve ITT, where he was held from 8 to 15 July 2002. During the court hearings, the applicant complained about the conditions of his detention. He alleged that the food supply was inadequate and that he had not been allowed to receive parcels from his relatives. He further complained that, in spite of the summer heat, the cell had no water supply, which rendered the sanitary conditions unbearable.

35. On 23 August 2002 the Donetsk Regional Prosecutor's Office instructed the Debaltseve Town Prosecutor's Office to investigate the applicant's allegations that the applicant was not provided with food and not allowed parcels from his relatives during his stay in the Debaltseve ITT in the period May to June 2001.

36. On 27 August 2002 the Debaltseve Town Prosecutor's Office issued a decision refusing to institute criminal proceedings against the officers of the Debaltseve ITT, for lack of evidence of a crime. The prosecution established that during his stay in the Debaltseve ITT the applicant had received three parcels from his mother and she had never made any complaint. The prosecution further referred to statements by ITT wardens, who alleged that the applicant had been provided with food regularly. The prosecution further noted that during the applicant's stay in the ITT the Debaltseve Prosecutor's Office carried out several inspections of the conditions and lawfulness of the applicant's detention, following his complaints.

37. Whilst in the Donetsk SIZO the applicant was held in a cell designated for (former) law-enforcement officers. The applicant states that on 25 September 2002, he was transferred to a medical wing in a cell assigned to inmates infected with tuberculosis. He was then allegedly transferred to a cell with another inmate, who threatened him with violence on the ground that he was a former police officer.

38. From October 2002 the applicant filed a number of complaints with the Prosecutor's Office concerning the above incident in the Donetsk SIZO and the conditions of his detention in the Debaltseve ITT; he also alleged that this detention was unlawful.

39. On 7 October 2002 the Deputy Prosecutor of the town of Debaltseve issued a certificate (*довідка*) concerning the hygiene norms in the Debaltseve ITT. The certificate stated that the representatives of the Prosecutor's Office and the specialists of the Sanitary-Epidemiological Station had inspected the conditions of detention in the above ITT. They found that the ITT had six cells, equipped with sanitary facilities and a water supply. The toilets and wash basins were in order. Drinking water was supplied as per the schedule. The ITT had a shower which was also in order.

The cells were equipped with bunk beds, a table and benches. The certificate further noted that the ITT had a sufficient quantity of mattresses and bed linen, but the inmates used their own bedding. The inmates were provided with three hot meals per day. It also noted that the applicant had complained about the conditions of his detention in the ITT during his stay there in 2001. During the prosecutor's regular (every ten days) inspections of the conditions of detention in the ITT in 2002 the applicant had made no complaints to him. In conclusion, it was noted that no violation of the relevant legislation had been established.

40. In a letter of 22 October 2002 the Prosecutor's Office stated that in September 2002 the applicant had been examined by a prison doctor and was diagnosed as suffering from chronic gastritis. The doctor recommended that he be moved to the medical wing. There was no indication that the applicant was ever placed in a cell with inmates suffering from tuberculosis. The medical wing did not have a cell designated for (former) law-enforcement officers. However, immediately after his request, the applicant was removed from the cell he was sharing with the person who had allegedly threatened him.

II. RELEVANT DOMESTIC LAW

A. Holding of the defendants during the trial

41. On 16 October 1996 the Ministry of the Interior, the Ministry of Justice, the General Prosecutor's Office, the Supreme Court and the Security Service, by a joint order, approved the Instruction on the Procedure for Escorting Accused or Convicted Persons) to and from, or in, Courts at the Judicial Authorities' Request. The relevant provisions of the Instruction read:

> "7. ...The area in the courtroom where defendants are held shall be equipped with a bench and a wooden barrier of one metre in height, which shall be fastened to the floor. In courtrooms located on the ground floor the windows shall be barred. In each court building, up to 50% of the courtrooms in which criminal cases are heard shall be equipped with stationary metal barriers separating the defendants from the judges' bench and from others persons present in the room... The windows in these rooms shall be barred irrespective of the floor on which they are located."

> "23. On an oral instruction by the presiding judge, the head guard shall allow the accused or convicted person to speak to his counsel, experts or public prosecutors and shall allow a doctor to examine the accused or convicted person; during such exchanges, however, the accused or convicted person shall continue to be guarded.
>
> Such talks are usually conducted in an available room designated for holding accused or convicted person during breaks in court hearings and may be conducted in any language..."

B. Family visits

42. Under section 12(1) of the Pre-Trial Detention Act 1993, permission for relatives to visit a detainee (in principle, once a month for one to two hours) can be given by the authorities of the place of detention, but only with the written approval of an investigator or a court dealing with the case, depending on whether it is the investigation or the trial stage.

43. The relevant provisions of the Code of Criminal Procedure 1960 read:

Article 162

Visiting a detainee

"Visits by relatives or other persons to a detainee may be authorised by the person or institution which is dealing with the case. The duration of the visit shall be fixed from one to two hours. As a rule, visits may be authorised no more than once a month."

Article 345

Granting relatives permission to visit a convicted person

"Prior to the entry into force of the judgment, the presiding judge or the president of the relevant court shall be obliged to grant close relatives of a convicted person, upon their request, permission to visit the detained convicted person."

C. Other relevant domestic law

Other relevant domestic law is summarised in the judgments of *Nevmerzhitsky v. Ukraine* (no. 54825/00, §§ 53-61, ECHR 2005-II (extracts)), and *Shalimov v. Ukraine* (no. 20808/02, §§ 39-42, 4 March 2010).

III. RELEVANT INTERNATIONAL MATERIALS

A. 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

"b. Militia central holding facilities (ITT)

...

49. Despite the measures announced in the responses of the Ukrainian authorities to the recommendations made by the CPT in its two previous reports, the delegation could not identify any noticeable improvements in the conditions of detention of the ITTs visited... The Committee believes that it would be more useful to highlight the main deficiencies in the ITTs from an overall perspective, rather than to enter into an in-depth analysis of each ITT visited; indeed, the challenges facing ITT establishments are, to all intents and purposes, similar.

50. The majority of ITTs visited were overcrowded. For example, in Sebastopol ITT, up to 10 persons were being held in cells of 15 m² and in several cells there were more persons than beds.

51. In all the ITTs visited, access to natural light was obstructed by dense metal netting on the windows or jalousies and the artificial lighting was, in general, insufficient. Reading of any kind was a strain on the eyes. The ventilation was inadequate and the air in the cells visited heavy. The lack of ventilation was exacerbated by the fact that the cells tended to be fetid, detainees being provided with neither products for cleaning their cells nor the possibility of washing themselves other than in a basin of cold water. Only in Lytne ITT did all detainees have the possibility of a shower during their stay. Further, the sanitary facilities in nearly all the ITTs visited left something to be desired. A notable exception was Simferopol ITT, where the delegation noted the cells were clean and the detainees possessed basic hygiene products.

In several ITTs there was an insufficient quantity of mattresses and blankets for all the detainees, while the cleanliness of those available was questionable. Further, with one or two exceptions, the ITTs visited did not possess outdoor exercise facilities. Nor was there any provision for activities; in many ITTs, detainees were not even permitted newspapers.

52. In most ITTs, the single daily meal was supplemented by food parcels from relatives. Those without relatives shared the food of others. Given the fact that the Militia are unable financially to provide sufficient food to detainees, food parcels should not be subject to undue restrictions.

The CPT has already made its position clear ... as regards ready access to drinking water; it is concerned that detainees in Kyiv ITT were denied such access.

53. In the light of the unacceptable conditions referred to above, the CPT was all the more concerned to learn that a significant number of detainees were being held in ITTs for periods much longer than the 10 day legal limit.

...

57. The CPT has already welcomed the measures taken by the Ukrainian authorities in response to the immediate observation made by its delegation. Notwithstanding those measures, the Ukrainian authorities still have some way to go to fulfil their responsibility to detain persons deprived of their liberty under conditions fully consistent with human dignity. It is clear that, in order to achieve lasting improvements, the highest priority should be given to the objective of reducing overcrowding. Only then can the efforts made by the Ukrainian authorities be expected to bear fruit. However, certain steps must be taken in the interim in order to ameliorate the situation. Consequently, the CPT calls upon the Ukrainian authorities

to take, without further delay, the following steps already identified in its two previous reports:

- ensure that all persons detained in ITTs are:

supplied with essential personal hygiene products and have the opportunity to wash every day;

able to take a warm shower on arrival and at least once a week during their period of detention;

given the necessary products to keep their cells clean and hygienic;

authorised to receive parcels from the very outset of their detention.

- ensure that detained persons, in all ITTs, are provided with reading matter (if the establishment does not have a library, detained persons should be authorised to receive newspapers or books from relatives);

- review the regulations and practice concerning detainees' contact with the outside world."

B. 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

The relevant parts of the report read:

"b. Militia central holding facilities (ITTs)

...

40. The follow-up visit to the ITT in Kyiv revealed certain improvements: the establishment was not overcrowded (100 detainees for 156 places); the third floor had been properly renovated and all the detainees on that floor had a bed; the ventilation system on the second floor had been improved. In addition, there were now two exercise areas. However, there were numerous allegations that access to those areas was limited to ten minutes or so. Mattresses and blankets (although dirty) were available. That said, the cell windows were still hidden by shutters and the other detention floors remained in a state of severe dilapidation (cf., inter alia, paragraph 48 of the report on the 2000 visit).

41. As regards the other ITTs visited, the CPT would stress that the best material conditions observed were in the Uzhgorod facility. The cells were well-lit, in part by natural light, clean, correctly equipped (bed, mattress, blankets, table, bench) and spacious (between 11 and 25 m^2). There was, however, one important deficiency, namely the absence of an outdoor exercise yard.

Elsewhere, material conditions were very mediocre. In reality, the descriptions in the previous reports still very much apply. While some efforts had been made by the

authorities shortly before the CPT's visit, such as repainting cells or ensuring that mattresses and blankets were provided (as in Zhytomyr or Odessa, for example), the cells still had no access to natural light, the artificial lighting was often of poor quality and the ventilation deficient. The toilets in the cells were not properly partitioned off, if at all, and the sinks were in a bad state of repair. As in the past, access to hygiene products was dependent on parcels received by the detained persons and there were no arrangements enabling them to maintain adequate personal hygiene.

The situation was variable where food was concerned: in some ITTs, three daily meals were provided, whereas in others there were two or even just one per day.

...

43. In addition, there was rampant overcrowding: for example, an analysis of the detention registers revealed that the Mukachevo ITT, with an official capacity of 28 places, regularly held up to 42 persons, and the Khust facility, with a capacity of 22 places, held up to 35.

...

45. ...it further recommends that steps be taken to ensure:

- without delay that, in those ITTs already possessing outdoor exercise areas, detained persons actually have access to them for one hour each day;

- without delay that, in all ITTs, detained persons are supplied with a full set of clean bedding, which is cleaned at regular intervals;

- without delay that, in all ITTs, detained persons are provided with essential personal hygiene products and are able to wash every day (this includes a hot shower once a week, throughout their detention);

- without delay that, in all ITTs, detained persons are given food at appropriate times;

- the proper and progressive partitioning off of toilets in cells;

- that detained persons, in all ITTs, have access to reading matter;

- that the official occupancy level of ITT facilities is not exceeded and that efforts are made gradually to reduce them; the objective should be to offer living space of at least 4 m² per person."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

44. The applicant complained about the conditions of his detention in the Debaltseve ITT, in particular between 8 and 15 July 2002, and alleged that he had been held in a "cage" with metal bars during the hearings before the Court of Appeal. He relied on Article 3 of the Convention, which provides:

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

A. Admissibility

45. The Government maintained that the applicant had not raised any complaints about being held in the "cage" in his application form.

46. The Court observes that the relevant complaint was made in one of the applicant's letters, to which he referred in his application form.

47. The Court notes that these complaints under Article 3 are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Conditions of detention in the Debaltseve ITT

a. The Parties' submissions

48. The applicant maintained that the cells were not provided with adequate light, the food supply was inadequate, he had no access to the toilet and the cells had no water supply. He noted that at the material time the CPT had drawn attention to the problems existing in detention facilities and submitted that it was for the Government to demonstrate that the conditions in the Debaltseve ITT had been different from those in similar institutions.

49. The Government submitted that the documentation concerning the relevant period of the applicant's detention had been destroyed, since the time-limit for keeping it had expired. They noted, however, that the applicant had complained about the conditions of his detention to the domestic authorities and, according to the information provided by the former head of the ITT, the applicant had been held in

cells nos.1, 2, 3 and 4. Each cell measured 12.9 sq. m and was designed for four persons. They were equipped with four beds, a table, bench and sanitary facilities, including sanitary facilities and a water supply. Persons detained in the SIZO had individual beds and bed linen. They were provided with three hot meals per day. The applicant had also received all parcels containing food and clothes sent by his relatives.

50. They further observed that, following the applicant's complaint, the Debaltseve Prosecutor's Office had investigated the conditions of the applicant's detention and found no violations of the relevant legislation (see paragraph 39 above). The prosecutor also refused to institute criminal proceedings against the personnel of the ITT (see paragraph 36 above). Neither the applicant nor his lawyer had challenged this refusal, which, in the Government's opinion, indicated that the applicant agreed with the prosecutor's conclusions. They noted that there were no grounds to question the domestic authorities' findings with regard to the conditions of the applicant's detention.

51. The Government concluded that the conditions of the applicant's detention did not violate Article 3 of the Convention.

52. The applicant contested the Government's submissions, stating that the cell windows in the cells had been covered by iron sheeting with holes for ventilation. The sheeting did not provide protection from either cold or heat. There was no heating. There was no washbasin and the tap was placed directly over the WC pan, so that he had been obliged to wash himself above excrement. The applicant further maintained that there had been no daylight in the cells. Despite the existence of a yard, he had no outside exercise. The cells were overcrowded. Seven inmates were kept in a cell designed for four persons. Given that half of the inmates smoked and there was no proper ventilation, the applicant could not breathe normally. The applicant also objected to the Government's statement that the detainees had been provided with bed linen. He maintained that he had had to sleep directly on a metal bench, which had been very cold in winter.

53. He also submitted that the investigation into his criminal complaint about the conditions of detention had been neither independent nor professional, as the prosecution authorities had no expert knowledge of sanitary, hygiene or nutrition standards. Furthermore, he considered it futile to challenge statements that did not correspond to reality.

b. The Court's assessment

54. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has adopted the standard of proof "beyond reasonable doubt". According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for

reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see, among others, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 26, ECHR 2004-VII; and *Akdivar and Others v. Turkey* [GC], 16 September 1996, § 168, *Reports of Judgments and Decisions* 1996-IV).

55. The Court has held on many occasions that cases concerning allegations of inadequate conditions of detention do not lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in such instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. It follows that, after the Court has given notice of the applicant's complaint to the Government, the burden is on the latter to collect and produce relevant documents. A failure on their part to submit convincing evidence on material conditions of detention may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Gubin v. Russia*, no. 8217/04, § 56, 17 June 2010, and *Khudoyorov v. Russia*, no. 6847/02, § 113, ECHR 2005-X (extracts)).

56. In the instant case, the Government did not provide any documents, referring to the latter's destruction on expiry of the time-limit for storage. They referred to the findings of the prosecutor who had looked into the applicant's complaints and had found no irregularities in the conditions of his detention (see paragraphs 39 and 50 above). These findings, however, do not refute all of the applicant's allegations. It does not appear that the issues of ventilation and closed-off windows were addressed in the above documents, although the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the CPT) highlighted this problem as being common to most detention facilities of this type. The same is true for daily outside exercise, which is not mentioned in the documents referred to by the Government. Furthermore, in the Court's opinion, compliance with the domestic standards on conditions of detention is not sufficient to satisfy the requirements of Article 3. The domestic standards themselves should correspond to the acceptable minimum standards. As concerns overcrowding, the Government listed the cells in which the applicant was held and indicated their size – 12.9 sq.m. - without mentioning the actual number of inmates kept in those cells, while the applicant alleged that he had to share such cells with six other persons. Moreover, the Government could not disapprove such allegations due to destruction of documents, as mentioned above. On the other hand, the overcrowding also figures in the CPT reports among the recurrent problems of the Ukrainian penitentiary systems. The applicant's allegations suggest

that the detainees had less than 2 sq.m. of living space which is far below the standards developed in the Court's case-law (see, among other authorities, *Kalashnikov v. Russia*, no. 47095/99, § 97, ECHR 2002-VI; and *Melnik v. Ukraine*, no. 72286/01, § 103, 28 March 2006).

57. The applicant's allegations of overcrowding, lack of outdoor exercise, problems with ventilation and lack of daylight in the cells, which are not disapproved by the Government, are sufficient for the Court to conclude that the physical conditions of the applicant's detention between 8 and 15 July 2002 in the Debaltseve ITT amounted to degrading treatment, in breach of Article 3 of the Convention.

2. Holding of the applicant in a metal "cage" during the hearing

58. The applicant considered that the State had been responsible for humiliation experienced by him while held in a "cage" during the hearing, irrespective of whether that was intentional. He had felt discomfort and shame at being separated from the rest of the courtroom, which was full of people.

59. The Government maintained that the State authorities had had no intention to insult or degrade the applicant. He had been kept behind bars on a legal basis, namely the Instruction on the Procedure for Escorting Accused or Convicted Persons to and from, or in, the Courts at the Judicial Authorities' Request, and solely in the interests of public safety. The bars were intended to separate defendants upon whom a preventive measure of detention had been imposed from the judges' bench and from those present in the courtroom, so that such persons were guarded securely during hearings.

60. In their opinion, keeping the applicant in a "cage" could not by any means have caused him distress or humiliation of an intensity exceeding the unavoidable level of suffering or humiliation inherent in detention. They noted that the applicant had not substantiated this complaint with any argument and concluded that holding the applicant behind bars did not amount to degrading treatment within the meaning of Article 3 of the Convention.

61. The Court reiterates that a measure of restraint does not normally give rise to an issue under Article 3 of the Convention where this measure has been imposed in connection with lawful detention and does not entail a use of force, or public exposure, exceeding that which is reasonably considered necessary. In this regard it is important to consider, for instance, whether there is a danger that the person concerned might abscond or cause injury or damage (see, among many authorities, *Raninen v. Finland*, 16 December 1997, § 56, *Reports* 1997-VIII, and *Öcalan v. Turkey* [GC], no. 46221/99, § 182, ECHR 2005-IV).

62. In recent years the Court has had an opportunity to examine the issue of holding a person in a metal "cage" during court hearings in a number of

cases against Georgia, Armenia and Russia (see *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, §§ 96-102, 27 January 2009; *Ashot Harutyunyan v. Armenia*, no. 34334/04, §§ 123-129, 15 June 2010; and *Khodorkovskiy v. Russia*, no. 5829/04, §§ 123-126, 31 May 2011). In the above cases, in which the Court found a violation of Article 3, the applicants were accused of non-violent crimes, they had no criminal record, and there was no evidence that they were predisposed to violence, and the "security risks" were not supported by any specific facts. Furthermore, those applicants' trials attracted considerable media attention. Therefore, the reasonable balance between the different interests at stake was upset.

63. In the present case, the applicant was held in a metal "cage" during the hearings. According to the Government, the relevant domestic law provided for any detained suspect to be placed in a metal "cage" during the court hearing as part of standard procedure (see paragraphs 42 and 60 above). However, it is not for the Court to examine this legislation in the abstract but to access whether in the applicant's case this measure was justified in the light of the above criteria. In this respect the Court notes that the applicant, though without a criminal record, was suspected of particularly violent crimes against police officers who were attempting to arrest him on suspicion of having committed another crime. Furthermore, it does not appear that the applicant's trial had been exposed to public attention via extensive media coverage, as in the cases referred to above.

64. In the Court's opinion, even in the absence of any other specific facts supporting a security risk and lack of assessment of such a risk by the domestic court, the security measure in question was not, in the circumstances of the present case, excessive and did not therefore reach the threshold of degrading treatment within the meaning of Article 3. Accordingly, there has been no violation of Article 3 under this head.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

65. The applicant complained under Article 5 § 1 (c) of the Convention about the excessive length of his detention during the judicial proceedings. The Court, which is master of the characterisation to be given in law to the facts of the case, decided to examine this complaint under Article 5 § 3 of the Convention, which is the relevant provision. The applicant also complained that the court proceedings concerning his detention during the trial had not met the requirements of Article 5 § 4 of the Convention. In his later submissions he further complained about lack of judicial review at the pre-trial stage. The relevant provisions of Article 5 read:

> "3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

1. Alleged inability of the applicant to obtain judicial review of the lawfulness of his detention during the pre-trial investigation

66. The applicant submitted that he had had no access to a court to challenge the lawfulness of his detention at the pre-trial stage.

67. The Government noted that the applicant had never challenged the lawfulness of his arrest and detention during the investigation.

68. The Court notes that this complaint was raised by the applicant for the first time in June 2009 in reply to the Government's observation that the applicant had not sought a judicial review of his detention as ordered by the prosecutor at the pre-trial stage. This complaint is significantly different from his original complaint under Article 5 § 4 about the quality of the judicial review of his detention and, regardless of other reasons for inadmissibility (see *Shalimov v. Ukraine*, no. 20808/02, § 57, 4 March 2010, *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, § 246, 21 April 2011) must be dismissed as being submitted more than five years after the period of the applicant's pre-trial detention had terminated with his conviction. It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. Otherwise as to admissibility

69. The Court notes that the remainder of the applicant's complaints under this head are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Length of pre-trial detention

70. The applicant submitted that his pre-trial detention had been unreasonably long and that in extending his detention the prosecutors and the courts had relied on identical grounds, which had ceased to justify his continued detention after certain lapse of time.

71. The Government noted that the respondent State could be considered responsible only for the period of the applicant's detention on the territory of Ukraine, which started on 9 August 2000. The applicant's pre-trial

detention therefore lasted from 9 August 2000 till his conviction on 6 April 2004.

72. The Government submitted that the applicant was suspected of a serious crime, which required a thorough investigation and implied numerous actions. The criminal case concerned two suspects, five victims and twenty-one witnesses. The investigative authorities conducted seven medical examinations, two psychiatric examinations, four ballistics examinations, three forensic examinations, three cytological examinations, two on-site reconstructions of events, eleven confrontations, fifty-nine interviews with witnesses, fifteen searches and two seizures. During the trial the court held twenty-five hearings and the applicant lodged fifty-one motions. The Government submitted that the domestic authorities acted with required diligence during the investigation and trial.

73. The Court reiterates that the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. This must be assessed in each case according to its special features, the reasons given in the domestic decisions and well-documented facts mentioned by the applicant in his applications for release. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among others, *Labita v. Italy* [GC], no. 26772/95, § 153, ECHR 2000-IV).

74. The Court notes that the applicant's pre-trial detention lasted for three years and almost eight months. It observes that the seriousness of the charges against the applicant and the risk of his absconding were advanced in the initial order on the applicant's detention. Furthermore, the risk of the absconding was confirmed by the applicant's previous behaviour as he was hiding abroad under the false identity for almost four years. The domestic authorities explicitly relied on these grounds throughout the applicant's pre-trial detention and the Court considers that, with regard to the seriousness of those grounds and the period of the applicant's pre-trial detention, there has been no violation of Article 5 § 3 of the Convention

2. Article 5 § 4

75. The applicant maintained that during the trial he had complained about the unlawfulness of his detention and the court had rejected his complaints without any thorough examination. The applicant also observed that there had been significant intervals between the reviews.

76. The Government submitted that at the trial stage the domestic courts reviewed the lawfulness of the applicant's detention on several occasions (1 August 2001, 11 April and 3 August 2002) and concluded on each occasion that the preventive measure had been chosen correctly.

77. The Court reiterates that Article 5 § 4 of the Convention entitles arrested or detained persons to a review bearing upon the procedural and

substantive conditions which are essential for the "lawfulness", in Convention terms, of their deprivation of liberty. This means that the court with jurisdiction has to examine not only compliance with the procedural requirements of domestic law but also the reasonableness of the suspicion underpinning the arrest, and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see *Butkevičius v. Lithuania*, no. 48297/99, § 43, ECHR 2002-II).

78. The Court notes that the applicant's request for release of 10 January 2002 was examined by the court only on 11 April 2002, which does not meet the requirement for speedy review. It appears that the speediness of the review of the lawfulness of the applicant's detention depended on the date set for the hearing in the case against him, which was to the applicant's detriment in the circumstances of the present case and which was already identified as a recurring problem in cases against Ukraine due to the lack of clear and foreseeable provisions which would provide for such a procedure during the trial stage in a manner compatible with the requirements of Article 5 § 4 of the Convention (see *Molodorych v. Ukraine*, no. 2161/02, § 108, 28 October 2010).

79. Accordingly, the Court considers that there has been a violation of Article 5 § 4 of the Convention.

III. ALLEGED VIOLATIONS OF ARTICLES 6 AND 13 OF THE CONVENTION

80. The applicant complained that he had not been provided with a lawyer immediately after his detention and that for fifteen days his lawyer's access to him had been restricted. He also complained that the fact of being held in a "cage" with metal bars during the court hearings had violated his defence rights. He further complained that he had no effective remedies to his above complaints. He relied on Article 6 §§ 1 and 3 (c) and Article 13 of the Convention.

81. The Court notes that the role of Article 6 in relation to Article 13 is that of a *lex specialis*, the requirements of Article 13 being absorbed by more stringent requirements of Article 6 (see, for example, *Efendiyeva v. Azerbaijan*, no. 31556/03, § 59, 25 October 2007). Consequently, it will consider the present complaint solely under Article 6 of the Convention, which reads, in so far as relevant, as follows:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require...”

A. Admissibility

82. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

83. As the requirements of Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1, the Court will examine the complaints under those two provisions taken together (see, among many other authorities, *Van Mechelen and Others v. the Netherlands*, 23 April 1997, *Reports* 1997-III, p. 711, § 49).

1. Right to legal assistance at the initial stage of investigation

84. The Government noted that the applicant had been transferred to Ukraine on 9 August 2000; on 11 August the investigator had explained to him his right to be represented and the applicant had used that right from that same date. All investigative actions involving the applicant had been conducted in the presence of his lawyer. As to the applicant’s complaint that he had not been allowed to see his lawyer R. for fifteen days after the interview on 29 August 2000, the Government noted that during the period in question the investigation had conducted only one action with the applicant’s participation – the on-site reconstruction of the crime, which, however, had been conducted with the participation of another lawyer, Mr K., who had been admitted to the case from 4 October 2000 at the request of the applicant’s brother (see paragraph 16 above). They further maintained that the applicant had raised this complaint before the domestic courts, which had examined them and found no violation of the applicant’s procedural rights.

85. The applicant maintained that the interview on 29 August 2000 had been conducted without a lawyer, although in the light of the charges against him legal representation had been obligatory and he should have been represented, even against his will. Thus, he considered that the domestic courts should not have been permitted to use testimony given during the above interview. He noted that in convicting him the domestic court had referred to his statements at the pre-trial stage, without differentiating between the statements given during his first interview,

which had been lawful, and his second interview on 29 August 2000, which had been unlawful.

86. The Court further reiterates that, although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of a fair trial (see *Krombach v. France*, no. 29731/96, § 89, ECHR 2001-II). Furthermore, Article 6 may also be relevant before a case is sent for trial and in so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with it (see *Imbrioscia*, cited above, § 36; and *Öcalan v. Turkey* [GC], no. 46221/99, § 131, ECHR 2005-...). The manner in which Article 6 §§ 1 and 3 (c) are applied during the investigation depends on the special features of the proceedings and the facts of the case. Article 6 will normally require that the accused already be allowed to benefit from the assistance of a lawyer at the initial stages of police interrogation. The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, 27 November 2008).

87. The Court considers that in the circumstances of the present case, the issue of legal representation is to be assessed from the very beginning of the applicant's detention in Ukraine. The Court notes that in spite of the fact that a lawyer had been appointed on the day of the applicant's arrival in Ukraine in order to represent him in the criminal proceedings concerning the murder and attempted murder of police officers, the applicant was informally questioned by the police on two occasions prior to his official questioning in those proceedings. During those interviews, which according to the police concerned different matters, the applicant allegedly confessed to the murder of the police officer, the crime for which he had been sought and eventually extradited to Ukraine. The Court considers that any conversation between a detained criminal suspect and the police must be treated as formal contact and cannot be characterised as "informal questioning", as stated by the Donetsk Regional Court of Appeal (see paragraph 29 above). The Court notes that the facts of the case, as they stand, show that after being questioned by the police without legal assistance the applicant confessed to a very serious crime. The fact that he repeated his confession in the presence of the lawyer does not undermine the conclusion that the applicant's defence rights were irretrievably prejudiced at the very outset of the proceedings, and the domestic courts did not react to this procedural flaw in an appropriate manner by excluding such statements from the evidential basis for the applicant's conviction.

88. As to the applicant's complaint about being questioned without a lawyer at a later stage and being deprived of legal assistance for a fortnight, the Court, having concluded that the applicant's right under this head had been breached from the outset of the proceedings, is not required to decide

whether or not the applicant's interview on 29 August 2000 without a lawyer affected the fairness of the proceedings.

89. It follows that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention on account of the applicant's being questioned without a lawyer at the outset of the criminal proceedings.

2. Communication with the lawyer during the hearings

90. The Government submitted that the applicant's lawyer had been sitting near the "cage" in which the applicant was held during the trial and could communicate with him. Furthermore, when a confidential conversation was necessary between the applicant and his lawyer they could address the court with the respective motion at any moment. They concluded that the applicant's defence rights had not been infringed by the fact that the applicant had been held behind in the "cage".

91. The applicant maintained that his lawyer had been separated from him by the bars and that the lawyer's seat had been placed three to five metres from the "cage", which deprived them of effective communication. He further complained that the distress caused by being in the "cage" prevented his effective defence. He also submitted that the procedure for arranging confidential contacts with the lawyer had been so complicated and lengthy that he had used it only once.

92. The Court refers to its findings that the security measures in the courtroom did not appear to be disproportionate in the circumstances of the case (see paragraph 64 above). It appears that during the hearings both the applicant and his lawyer were heard by the court, furthermore, the applicant's lawyer had not in any way been restricted from using whatever he needed in order to defend his client's interests. The security arrangements undeniably limited communication between the applicant and his lawyer during the hearing. These limitations did not, however, amount to a complete lack of communication between the applicant and his lawyer; the applicant did not demonstrate that it was impossible to request that the lawyer's seat be brought closer to his "cage", or that they had been denied an opportunity for private communication when necessary. Furthermore, it has not been shown that the applicant at any moment availed himself of the right to bring this issue to the attention of the court which heard the case (see *Seleznev v. Russia*, no. 15591/03, § 69, 26 June 2008).

93. In these circumstances, the Court considers that the applicant's defence rights during the hearings were not restricted unjustifiably and to an extent rendering his legal defence ineffective. Accordingly, there has been no violation of Article 6 §§ 1 and 3 under this head.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

94. The applicant complained that he had been denied family visits while he was in detention during the judicial proceedings. The Court considered that this complaint might raise an issue under Article 8 of the Convention, which provides:

> "1. Everyone has the right to respect for his private and family life...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

95. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Parties' submissions

96. The applicant maintained that having been arrested on 9 August 2000, he had been allowed a family visit only on 6 April 2004, which meant that he was unable to see his family for three years and almost eight months. He considered that such a restriction was unjustified and disproportionate, as the authorities did not demonstrate in what way a family visit could have facilitated absconding.

97. The Government agreed that during the trial, which lasted from 1 August 2001 until 6 April 2004, the applicant had been denied family visits. Only on the latter date, after his conviction, was the applicant allowed a visit by his parents. The Government agreed that such a restriction constituted an interference with the applicant's family life. They observed, however, that the applicant had been suspected of particularly serious crimes, including storing firearms and murdering a police officer in an attempt to conceal another crime. In their opinion, the gravity of the accusations, and the need to prevent his absconding from justice, justified the restriction on family visits during the investigation and trial. The Government noted that such a restriction was clearly provided for by the Code of Criminal Procedure, and the discretion given to the relevant

authority in allowing or denying such visits was necessary in a democratic society in order to avoid the absconding of a suspect or an accused.

The Government further noted that after his or her conviction, the competent authority was obliged to grant the convict a family visit.

2. The Court's assessment

a. Whether there has been an interference

98. The Court finds, and this was not disputed by the parties, that there was "an interference by a public authority" within the meaning of Article 8 § 2 of the Convention with the applicant's right to respect for his family life, guaranteed by paragraph 1 of Article 8.

b. Whether the interference was justified

99. The Court must therefore examine whether the above interference is justifiable under paragraph 2 of Article 8. In particular, if it is not to contravene Article 8, the interference must be "in accordance with the law", pursue a legitimate aim and be necessary in a democratic society in order to achieve that aim (see *Silver and Others v. the United Kingdom*, 25 March 1993, Series A no. 61, § 84, and *Petra v. Romania,* 23 September 1998, *Reports* 1998-VII, § 36).

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

101. In contending that these requirements were met, the Government referred in their written observations to the provisions of Article 162 of the Code of Criminal Procedure, which provides that family visits to a detainee may be authorised during pre-trial detention.

102. The Court notes that in the *Shalimov* case it found that Article 162 of the Code of Criminal Procedure provided that an investigator or a judge could authorise family visits during pre-trial detention, but that this provision did not indicate with reasonable clarity the scope and manner of exercise of the discretion conferred on the public authorities in respect of restrictions on detainees' contacts with their families. Indeed, the above provision did not require them to give any reasons for their discretionary decision or even to take any formal decision that could be appealed against, and therefore contains no safeguards against arbitrariness or abuse (see *Shalimov v. Ukraine*, no. 20808/02, § 88, 4 March 2010). In the present case

the domestic court did not even refer to the above provision and did not give any reasons for refusing family visits, stating that under Article 345 of the Code of Criminal Procedure convicted persons could be granted family visits only after their conviction. Such a response to the applicant's requests supports the Court's above findings in the *Shalimov* case, namely that the Ukrainian legislation on family visits to detainees lacks precision. The Court finds that in these circumstances it cannot be said that the interference with the applicant's right to respect for his family life was "in accordance with the law" as required by Article 8 § 2 of the Convention (see *Shalimov v. Ukraine*, cited above, §§ 88 and 89).

103. In view of the above finding, the Court considers it unnecessary to examine whether the interference in the present case was necessary in a democratic society for one of the legitimate aims within the meaning of Article 8 § 2 of the Convention.

104. There has therefore been a violation of Article 8 of the Convention in this respect.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

105. The applicant complained that he had had no effective remedies for the above complaints under Articles 3 and 8 of the Convention, as required by Article 13 of the Convention, which provides:

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

106. The Government argued that there had been no violation of Articles 3 and 8 of the Convention and that Article 13 was therefore not applicable.

A. Admissibility

107. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Lack of remedies for the complaint concerning the conditions of his detention

108. With reference to its earlier case-law (see, among other authorities, *Melnik v. Ukraine*, cited above, §§ 113-116, and *Ukhan v. Ukraine*,

no. 30628/02, §§ 91-92, 18 December 2008) and the circumstances of the present case, the Court finds that the Government have not proved that, in practice, the applicant had an opportunity to obtain an effective remedy for his complaints – that is, a remedy which could have prevented the violations from occurring or continuing, or which could have afforded the applicant appropriate redress.

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

2. Lack of remedies for the complaint concerning interference with family life

110. The Court notes that it appears that the Ukrainian legal system entitles persons in pre-trial detention to family visits but does not offer any procedure that would make it possible to verify whether the discretionary powers of the investigator and the courts in this matter are exercised in good faith and whether the decisions to grant or refuse all family visits are well reasoned and justified. However, it reiterates that Article 13 cannot be interpreted as requiring a remedy against the state of domestic law, as otherwise the Court would be imposing on Contracting States a requirement to incorporate the Convention (see *Appleby and Others v. the United Kingdom*, no. 44306/98, § 56, ECHR 2003-VI; *Ostrovar v. Moldova*, no. 35207/03, § 113, 13 September 2005). In so far, therefore, as no remedy existed in domestic law in respect of the quality of Article 162 of the Code of Criminal Procedure, the applicant's complaint is inconsistent with this principle (see *Shalimov v. Ukraine*, no. 20808/02, §§ 98 and 99, 4 March 2010). In these circumstances, the Court finds no breach of Article 13 of the Convention.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

111. The applicant made a number of other complaints under Articles 3, 5, 6, 7 and 13 and 34 of the Convention. He also referred to different provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

112. The Court has examined the remainder of the applicant's complaints as submitted by him. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

113. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

114. Article 41 of the Convention provides:

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

A. Damage

115. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

116. The Government considered this claim to be unsubstantiated and exaggerated.

117. Having regard to the circumstances of the case seen as a whole and deciding on equitable basis, the Court awards the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

118. The applicant also claimed EUR 2,000 for the costs and expenses incurred before the Court.

119. The Government noted that the applicant did not substantiate this claim by any supporting documents and, moreover, had received legal aid from the Court. They considered that this claim should be rejected.

120. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court awards the applicant EUR 1,000 under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaints concerning the applicant's conditions of detention in the Debaltseve ITT and the fact of being held in a metal "cage" during the court hearings, the length of his detention and review of its lawfulness, the lack of legal assistance at the initial stage of the investigation and restriction on his communication with his lawyer during the hearing, the lack of family visits during the investigation and trial, and lack of remedies in respect of the complaints about the conditions of his detention and the lack of family visits admissible, and the remainder of the application inadmissible;

2. *Holds* unanimously that there has been a violation of Article 3 of the Convention in respect of the conditions of the applicant's detention in the Debaltseve ITT;

3. *Holds* by four votes to three that there has been no violation of Article 3 of the Convention in respect of his being held in the metal "cage" during the court hearings;

4. *Holds* unanimously that there has been no violation of Article 5 § 3 of the Convention;

5. *Holds* unanimously that there has been a violation of Article 5 § 4 of the Convention;

6. *Holds* unanimously that there has been a violation of Article 6 §§ 1 and 3 of the Convention on account of the applicant's being questioned without a lawyer at the outset of the criminal proceedings;

7. *Holds* unanimously that there has been no violation of Article 6 §§ 1 and 3 of the Convention in respect of restriction on his communication with his lawyer during the hearing;

8. *Holds* unanimously that there has been a violation of Article 8 of the Convention;

9. *Holds* unanimously that there has been a violation of Article 13 of the Convention taken in conjunction with Article 3;

10. *Holds* unanimously that there has been no violation of Article 13 of the Convention taken in conjunction with Article 8;

11. *Holds* unanimously

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

(i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 20 September 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Dean Spielmann
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint dissenting opinion of Judges Spielmann, Zupančič and Power-Forde is annexed to this judgment.

D.S.
J.S.P.

JOINT DISSENTING OPINION OF JUDGES SPIELMANN, ZUPANČIČ AND POWER-FORDE

1. We are unable to agree with the Court's finding that there has been no violation of Article 3 of the Convention in respect of the holding of the applicant in a metal "cage" during his trial. Holding defendants, even those who have not been convicted, in such cages appears to be standard procedure in Ukraine (see paragraphs 41 and 60 of the judgment). This procedure is in itself very problematic.

2. The Court has found a violation in this respect on numerous occasions, and summarised its case-law in the case of *Khodorkovskiy v. Russia* (no. 5829/04, 31 May 2011), in the following terms:

> "123. The Court notes that the practice of placing a criminal defendant in a sort of a 'special compartment' in a court room existed and probably continues to exist in several European countries (Armenia, Moldova, Finland). In some countries (such as Spain, Italy, France or Germany) the accused are sometimes placed in a glass cage during the hearing. Such a practice has occasionally been examined in the context of the guarantee of the presumption of innocence under Article 6 § 2 of the Convention (see *Auguste v. France*, no. 11837/85, Commission Report of 7 June 1990, D.R. 69, p. 104; see also *Meerbrey v. Germany*, no. 37998/97, Commission decision of 12 January 1998). In recent years the Court has begun to examine the practice also from the standpoint of Article 3 of the Convention. Thus, in the case of *Sarban v. Moldova* (no. 3456/05, § 90, 4 October 2005) the applicant was brought to court in handcuffs and held in a cage during the hearings, even though he was under guard and was wearing a surgical collar (see, *a contrario*, the case of *Potapov v. Russia* ((dec.), no. 14934/03, 1 August 2006). A violation of Article 3 of the Convention was found in a case where the applicant was unjustifiably handcuffed during public hearings (see *Gorodnichev v. Russia*, no. 52058/99, §§ 105-109, 25 May 2007). Handcuffing of the applicant gave rise to a violation of Article 3 of the Convention in a situation where no serious risks to security could be proved to exist (see *Henaf v. France*, no. 65436/01, §§ 51 and 56, ECHR 2003-XI; *Istratii and Others v. Moldova*, nos. 8721/05, 8705/05 and 8742/05, §§ 57 and 58, 27 March 2007).
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> 124. Lastly, in the recent case of *Ramishvili and Kokhreidze v. Georgia*, (no. 1704/06, §§ 98 et seq., 27 January 2009) the Court, in a very similar factual context, decided as follows:
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> '...The public watched the applicants [in the courtroom] in ... a metal cage.... Heavily armed guards wearing black hood-like masks were always present ... the hearing was broadcast live .... Such a harsh and hostile appearance of judicial proceedings could lead an average observer to believe that 'extremely dangerous criminals' were on trial. Apart from undermining the principle of the presumption of innocence, the disputed treatment in the court room humiliated the applicants .... The Court also accepts the applicants' assertion that the special forces in the courthouse aroused in them feelings of fear, anguish and inferiority ....

The Court notes that, against the applicants' status as public figures, the lack of earlier convictions and their orderly behaviour during the criminal proceedings, the Government have failed to provide any justification for their being placed in a caged dock during the public hearings and the use of 'special forces' in the courthouse. Nothing in the case file suggests that there was the slightest risk that the applicants, well-known and apparently quite harmless persons, might abscond or resort to violence during their transfer to the courthouse or at the hearings .....'

This approach was recently confirmed by the Court in the case of *Ashot Harutyunyan v. Armenia* (no. 34334/04, §§ 126 et seq., 15 June 2010) where the applicant had been kept in a metal cage during the entire proceedings before the Court of Appeal, and where the Court found a violation of Article 3 of the Convention on that account.

125. In the Court's opinion, most of the decisive elements in the Georgian and Armenian cases referred to above were present in the case at hand. Thus, the applicant was accused of non-violent crimes, he had no criminal record, and there was no evidence that he was predisposed to violence. The Government's reference to certain 'security risks' was too vague and was not supported by any specific fact. It appears that 'the metal cage in the ... courtroom was a permanent installation which served as a dock and that the applicant's placement in it was not necessitated by any real risk of his absconding or resorting to violence but by the simple fact that it was the seat where he, as a defendant in a criminal case, was meant to be seated' (see *Ashot Harutyunyan v. Armenia*, cited above, § 127). Furthermore, the applicant's own safety or the safety of the co-accused was not at stake. Finally, the applicant's trial was covered by almost all major national and international mass media, so the applicant was permanently exposed to the public at large in such a setting. As in *Ashot Harutyunyan* the Court concludes that 'such a harsh appearance of judicial proceedings could lead an average observer to believe that an extremely dangerous criminal was on trial. Furthermore, [the Court] agrees with the applicant that such a form of public exposure humiliated him in his own eyes, if not in those of the public, and aroused in him feelings of inferiority' (§ 128).

126. In sum, the security arrangements in the courtroom, given their cumulative effect, were, in the circumstances, excessive and could have been reasonably perceived by the applicant and the public as humiliating. There was, therefore, a violation of Article 3 of the Convention in that the treatment was degrading within the meaning of this provision."

3. The short reasoning in paragraph 63 of the judgment in support of the finding of non-violation of Article 3 of the Convention seems unconvincing.

4. Admittedly, the applicant was suspected of particularly violent crimes. But that is not the correct test. In view of the principle of presumption of innocence, the only test should be whether there is an actual and specific security risk in the courtroom. In paragraph 64 of the judgment the Court rightly accepts that there were no specific facts supporting a security risk. Moreover, the Court highlights the lack of assessment of such a risk by the domestic court.

5. In such circumstances, and even in the absence of extensive media coverage, the placement of the applicant in a metal "cage" constituted *per se* degrading treatment. Hence, we are of the opinion that there has been a violation of Article 3 of the Convention.