

Press release issued by the Registrar

**CHAMBER JUDGMENTS IN THE CASES OF POLTORATSKIY, KUZNETSOV,
NAZARENKO, DANKEVICH, ALIEV AND KHOKHLICH v. UKRAINE**

The European Court of Human Rights has today notified in writing six judgments¹ against Ukraine in the cases of *Poltoratskiy* (application no. 38812/97), *Kuznetsov* (39042/97), *Nazarenko* (39483/98), *Dankevich* (40679/98), *Aliev* (41220/98) and *Khokhlich* (41707/98). Judgment is final in the cases of *Poltoratskiy* and *Kuznetsov*.

In the cases of *Poltoratskiy* and *Kuznetsov* the Court held:

- unanimously that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment or punishment) of the European Convention on Human Rights as regards the conditions of detention to which the applicants had been subjected on death row;
- unanimously that there had been **no violation of Article 3** as regards the alleged assaults of the applicants in Ivano-Frankivsk Prison;
- unanimously in *Poltoratskiy* and by six votes to one in *Kuznetsov* that there had been a **violation of Article 3** regarding the failure to carry out an effective official investigation into the applicants' allegations of assaults in Ivano-Frankivsk Prison.
- unanimously that there had been a **violation of Article 8** (right to respect for private and family life and correspondence); and
- unanimously that there had been a **violation of Article 9** (freedom of religion).

In the cases of *Dankevich* and *Nazarenko* the Court held unanimously that there had been:

- a **violation of Article 3** as regards the conditions of detention to which the applicants had been subjected on death row;
- a **violation of Article 8** as far as the period between 11 September 1997 and 11 July 1999 was concerned; and
- **no violation of Article 8** as far as the period after 11 July 1999 was concerned.

In the case of *Dankevich* alone the Court held unanimously that there had been a **violation of Article 13** (right to an effective remedy) of the Convention in connection with Articles 3 and 8.

1. Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

In the cases of *Aliev* and *Khokhlich* the Court held unanimously that there had been:

- **a violation of Article 3** of the Convention as regards the conditions of detention to which the applicants had been subjected on death row;

In the case of *Aliev* the Court held unanimously that there had been:

- **no violation of Article 3** as regards the alleged ill-treatment of the applicant in Simferopol Prison by members of the prison administration in January 1998 and August 1999;
- **a violation of Article 8** regarding the applicant's right to respect for his correspondence as far as the period from 11 September 1997 to 11 July 1999 was concerned;
- **no violation of Article 8**
 - regarding the applicant's right to respect for his correspondence as far as the period after 11 July 1999 was concerned and;
 - regarding the applicant's right to respect for his private and family life.

In the case of *Khokhlich* the Court held unanimously that there had been:

- **no violation of Article 3** as regards the alleged ill-treatment of the applicant in Khmelnytsky Prison on account of his infection with tuberculosis;
- **a violation of Article 8** regarding the applicant's right to respect for his right to private and family life and his correspondence as far as the period from 11 September 1997 to 11 July 1999 was concerned;
- **no violation of Article 8** regarding the applicant's right to respect for his right to private and family life and his correspondence in respect of the period after 11 July 1999;
- **no violation of Article 13.**

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant in each of the cases 2,000 euros (EUR) for non-pecuniary damage and in the cases of *Poltoratskiy* and *Kuznetsov* EUR 1,000 for costs and expenses.

(The judgments are available only in English.)

1. Principal facts

The applicants are Borislav Yevgen Poltoratskiy, Mikhail Sergeyevich Kuznetsov, Igor Nikolayevich Nazarenko, Yuriy Oleksandr Dankevich, Pakhrudin Mukhtarovich Aliev and Mykola Khokhlich. Apart from Mr Aliev and Mr Khokhlich, who are of Avarian (the Caucasus) and Polish origin respectively, they are all Ukrainian nationals. Mr Poltoratskiy, Mr Kuznetsov and Mr Khokhlich were born in 1976, Mr Nazarenko in 1969, Mr Dankevich in 1967 and Mr Aliev in 1968. Mr Poltoratskiy and Mr Kuznetsov are in Ivano-Frankivsk Prison, Mr Nazarenko and Mr Aliev in Simferopol Prison, Mr Dankevich in Zaporozhie Prison and Mr Khokhlich in Khmelnytsky Prison. In 1997 Mr Khokhlich was diagnosed as having tuberculosis.

Mr Aliev was convicted of masterminding and carrying out organised crime and on several counts of aiding and abetting murder and attempted murder. The other applicants were convicted of murder. They were all sentenced to death. A moratorium on executions was declared by the President of Ukraine on 11 March 1997 and the death penalty abolished on 22 February 2000. The applicants' death sentences were accordingly commuted to life imprisonment in June 2000.

2. Procedure and composition of the Court

In the cases of ***Poltoratskiy***, ***Kuznetsov***, ***Nazarenko***, ***Dankevich***, ***Aliev*** and ***Khokhlich*** the applications were lodged with the European Commission of Human Rights (“the Commission”) on 19 September 1997, 25 November 1997, 12 September 1997, 20 February 1998, 31 March 1998 and 9 February 1998 respectively. The Commission declared the first two cases partly admissible on 30 October 1998. Between 23 and 26 November 1998 the Commission carried out a fact-finding visit to Kiev and Ivano-Frankivsk Prison. In its report of 26 October 1999 it expressed the unanimous opinion that there had been no violation of Article 3 of the Convention due to ill-treatment of Mr ***Poltoratskiy*** and Mr ***Kuznetsov*** in prison; that there had been a violation of Article 3 as a result of the conditions of their detention in Ivano-Frankivsk Prison; by twenty-four votes to one that there had been a violation of Article 3 as a result of the failure to carry out an effective investigation into their allegations of ill-treatment in prison; and unanimously that there had been a violation of Articles 8 and 9. The applications were referred to the Court on 11 September 1999. On 1 November 1998 the other four cases were transmitted to the Court, which declared them partly admissible on 25 May 1999. The Court carried out a fact-finding visit to Simferopol Prison on 4 October 1999, to Zaporozhie Prisons nos. 1 and 2 on 6 October 1999 and to Khmelnytskyi Prison on 7 and 8 October 1999. Between 13 and 15 June 2000 the TB Yanovski Institute carried out an independent medical examination of ***Mr Khokhlich*** and his fellow inmate, Mr Yusev.

Judgment was given by a Chamber of 7 judges, composed as follows:

Nicolas **Bratza** (British), *President*,
Elisabeth **Palm** (Swedish),
Jerzy **Makarczyk** (Polish),
Viera **Strážnická** (Slovakian),
Marc **Fischbach** (Luxemburger),
Volodymyr **Butkevych** (Ukrainian),
Rait **Maruste** (Estonian), *judges*,

and also Michael **O’Boyle**, *Section Registrar*.

3. Summary of the judgment¹

Complaints

The applicants all complained that the conditions to which they had been subjected on death row amounted to inhuman and degrading treatment contrary to Article 3 of the Convention. They all also complained of violations of Article 8 (right to respect for private and family life and for correspondence). **Mr Poltoratskiy** and **Mr Kuznetsov** complained of a violation of Article 9 (freedom of religion) in that they had been denied visits from a priest. **Mr Khokhlich** and **Mr Dankevich** alleged, under Article 13, that they had not had an effective remedy in respect of their claims under the Convention.

1. This summary by the Registry does not bind the Court.

Decision of the Court

The Court dismissed the Government's preliminary objections regarding lack of victim status in the case of Mr **Khokhlich** and non-exhaustion of domestic remedies in the cases of Mr **Khokhlich**, Mr **Aliev**, Mr **Dankevich** and Mr **Nazarenko**.

Article 3

Allegations of assaults in prison

Mr **Poltoratskiy** and Mr **Kuznetsov** complained to the Commission's Delegates that they had been beaten by prison officers in Ivano-Frankivsk Prison in September 1998. Mr **Kuznetsov** was found hanging in his cell on 3 September 1998 and was taken to hospital. The Court agreed with the Commission that it had not been established beyond reasonable doubt that the applicants had been ill-treated in Ivano-Frankivsk Prison and therefore held that there had been no violation of Article 3 of the Convention in this respect. Mr **Aliev** complained of ill-treatment by prison officers in January 1998 and August 1999. His account of ill-treatment had contained confusing elements; and no complaint had been submitted to the prison governor or other authority or to the prison doctor. There was no medical or other material evidence to establish that he had sustained injury from ill-treatment as alleged. Accordingly, the Court found that there had been no violation of Article 3 in this respect.

Adequacy of investigation into alleged assaults

Mr **Poltoratskiy** and Mr **Kuznetsov** had raised arguable complaints of ill-treatment by prison officers. The Court reiterated that in these circumstances the Convention required that there should be an effective official investigation capable of leading to the identification and punishment of those responsible. A medical examination had not been carried out in either case until 28 October 1998 and there were no contemporaneous records to demonstrate the nature of the investigation into the allegations. Nor did any external authority appear to have been involved in the investigations. The Commission had concluded that the investigations had been both perfunctory and superficial and had not reflected any serious effort to discover what had really happened in the prison in September 1998. The Court shared the Commission's findings and held, accordingly, that there had been a violation of Article 3 in this respect.

Conditions of detention on death row

In the case of **Nazarenko**, the Court took note of the request of the applicant's lawyer not to consider the case further now that Mr Nazarenko's complaints had been resolved following improvements in his conditions of detention. However, the Court observed that his complaint raised serious issues of a general nature affecting the application of Article 3 of the Convention in relation to the conditions of detention of death-row prisoners in Ukraine. It considered that respect for human rights as defined in the Convention required the Court's continued examination of the complaint.

In all the cases the Court reiterated its case-law in respect of Article 3 regarding a prohibition in absolute terms on torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour. It noted that were the death penalty was imposed, the personal circumstances of the condemned person, the conditions of detention

awaiting execution and the length of detention prior to execution were examples of factors capable of bringing the treatment or punishment within the proscription under Article 3.

The Court had jurisdiction to examine only the complaints relating to the period after 11 September 1997 when the Convention came into force in Ukraine, but could have regard to the overall period during which the applicants had been detained as a prisoner when assessing the effect on them of the conditions of their detention. The Court observed that the applicants had been condemned to death until their sentences were commuted to life imprisonment in June 2000. Recourse to capital punishment in Ukraine had been strongly criticised by the Council of Europe. A total of 212 executions had been recorded between 9 November 1995 and 11 March 1997. Until the death penalty was formally abolished in February 2000, the applicants must have suffered fear and anxiety as to their future, though the risk that the sentence would be enforced had diminished as time went by.

Of particular concern to the Court was their finding that until May 1998 at the earliest the applicants had been locked up 24 hours a day in restricted living space with no natural light. There had been no provision for outdoor exercise and little or no opportunity for activities or human contact. This had been aggravated in the case of Mr *Kuznetsov*, who had been kept in solitary confinement following his suicide attempt on 3 September 1998. Although there was no evidence of a positive intention to humiliate or debase the applicants, the conditions must have caused them considerable mental suffering, diminishing their human dignity. By the time the situation had improved, in May 1998, the applicants had been detained for periods ranging from 12 to 30 months. The Court had borne Ukraine's socio-economic problems in mind and had regard to the prison authorities' difficulties with those conditions and the implementation of new legislation and regulations. However, a lack of resources could not in principle justify prison conditions so poor as to constitute inhuman and degrading treatment. The Court accordingly held that there had been a violation of Article 3 in this respect.

Mr *Khokhlich* complained that he had had to share a cell with an inmate suffering from tuberculosis; that he had become infected as a result and that his health had deteriorated. The Court observed that it was not until three months after he had been separated from his fellow inmate, Mr Yusev, that pathological changes in his lung had been revealed. It was not therefore plausible that he had been infected by Mr Yusev. Moreover, the medical report showed that he and Mr Yusev had suffered from two different types of tuberculosis. According to the medical documents submitted to the Court, Mr Khokhlich's health conditions were satisfactory and under continuous medical supervision. There had accordingly been no violation of Article 3 in this respect.

Article 8

The applicants' complaints under this head mainly concerned restricted visits from and correspondence with relatives; limitations on the authorised number of parcels containing food, clothes and toiletries; and lack of contact with the outside world through TV or radio. Mr *Aliev* also complained that he had been denied any intimate contact with his wife.

With regard to the complaint of lack of intimate contact, the Court considered that the prison authorities' refusal to allow prisoners intimate contact with their spouse could for the present time be regarded as justified under Article 8 § 2 for the prevention of disorder and crime.

Period from 11 September 1997 to 11 July 1999

The other restrictions had constituted interference by a public authority with the applicants' exercise of their right to respect for their private life and their correspondence. The Court reiterated that such interference had to be in accordance with the law, pursue a legitimate aim and be necessary in a democratic society in order to achieve that aim. In order to satisfy the first of those conditions, the law had to be accessible to the person concerned, who had to be able to foresee its consequences. Although the Correctional Labour Code had provided a legal basis for conditions of detention, the authorities had not referred to its provisions when informing the applicants or their relatives about the rules applicable to death-row inmates. After their sentences had become final, their detention had been governed by an Instruction, which was an internal and unpublished document not accessible to the public. That Instruction had been replaced by the Temporary Provisions, which had entered into force on 11 July 1999 and were accessible to the public, extending the rights of death-row inmates, in particular to receiving six parcels and three small packets per year; unlimited correspondence and monthly visits of up to two hours from relatives. However, these were of no application to the applicants' complaints in respect of the period before 11 July 1999. The interference had not therefore been in accordance with the law and there had been a violation of Article 8.

Period after 11 July 1999

The Court had taken into account the logistical problem in processing an unlimited quantity of parcels in a large penitentiary. It found that the restriction to receiving parcels every sixth week could be regarded as respecting a proper balance between protecting security and respecting inmates' right to contact with the outside world.

Article 9

Mr *Poltoratskiy* and Mr *Kuznetsov* complained that they had not been allowed visits from a priest. The Commission had established that they had been unable to participate in the weekly religious services available to other prisoners and had not in fact been visited by a priest until 26 December 1998. The Court held that this interference had not been in accordance with the law because the Instruction did not qualify as a law under Article 9 § 2. It had been replaced by Temporary Provisions on 11 July 1999, which allowed death-row inmates to pray, read religious literature and receive visits from a priest, but the facts complained of had occurred before then. There had accordingly been a violation of Article 9.

Article 13

The Court reiterated that this provision required an effective remedy at national level to enforce Convention rights and freedoms. Mr *Khokhlich* complained that he had not been allowed a visit from a notary for more than eight months, but subsequently confirmed that this delay had not prejudiced his claim in any way. The Court therefore found that there had been no violation of Article 13. Reiterating its finding in respect of the Government's preliminary objection, the Court held that there had been a violation of this provision in Mr *Dankevich*'s case.

Judge Bratza expressed a separate opinion in the case of *Poltoratskiy* and a partly dissenting opinion in the case of *Kuznetsov*, both of which are annexed to their respective judgments.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

Registry of the European Court of Human Rights

F – 67075 Strasbourg Cedex

Contacts: Roderick Liddell (telephone: +00 33 (0)3 88 41 24 92)

Joanna Reynell (telephone: +00 33 (0)3 90 21 42 15)

Stéphanie Klein (telephone: +00 33 (0)3 88 41 21 54)

Fax: +00 33 (0)3 88 41 27 91

The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.