

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

FIFTH SECTION

# CASE OF YAROVENKO v. UKRAINE

*(Application no. 24710/06)*

JUDGMENT

STRASBOURG

6 October 2016

*This judgment is final but it may be subject to editorial revision.*



**In the case of Yarovenko v. Ukraine,**

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

André Potocki, *President,*
Ganna Yudkivska,
Síofra O'Leary, *judges,*

and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 13 September 2016,

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

# PROCEDURE

1. The case originated in an application (no. 24710/06) 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 Yuriy Mikhaylovich Yarovenko ("the applicant"), on 11 June 2006.

2. The applicant, who had been granted legal aid, was represented by Ms Y.N. Ashchenko, a lawyer practising in Kharkiv. The Ukrainian Government ("the Government") were represented by their Agent, most recently Mr Ivan Lishchyna of the Ministry of Justice.

3. The applicant complained, in particular, of the appalling conditions of his detention and the lack of adequate medical care.

4. On 3 September 2012 the application was communicated to the Government.

5. The President of the Section decided to partially grant the applicant's request for confidentiality of his submissions (Rule 33 § 1 of the Rules of Court). The measure concerned any documents of the case file referring to the names of the applicant's inmates in the Simferopol SIZO, who confirmed his allegation about the refusal of the administration to dispatch his application form to the Court (see paragraph 88 below).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1975. As of October 2013, he was serving a life sentence in Kherson Prison no. 61. On 21 March 2014 his representative informed the Court about the applicant's new address, which was Lugansk Pre-Trial Detention Centre (SIZO), without any further details.

## A. Criminal proceedings against the applicant

7. On 24 (or 25 according to the Government) September 2004 the applicant was arrested on suspicion of robbery and murder. According to the applicant, the police subjected him to various forms of ill-treatment following his arrest.

8. On 23 November 2005 the Court of Appeal of the Autonomous Republic of Crimea, sitting as a court of first instance, found the applicant guilty of aggravated robbery, two counts of murder, and unlawful possession of firearms. The court sentenced him to life imprisonment with confiscation of property.

9. The applicant appealed on points of law.

10. On 20 April 2006 the Supreme Court upheld the judgment of the first-instance court.

## B. Conditions of the applicant's detention

### *1. Facilities in which the applicant was detained*

11. The applicant was detained in the following detention facilities:

- the Simferopol Temporary Detention Facility ("the Simferopol ITT", a part of the police system): from 25 September to 26 October and from 4 to 19 November 2004 (during the intervening period from 26 October to 4 November 2004 the applicant was undergoing a forensic psychiatric examination in a psychiatric hospital);
- the Simferopol Pre-Trial Detention Centre ("the Simferopol SIZO"): from 19 November 2004 to 16 March 2006 and from 2 May to 18 October 2006;
- the Dnipropetrovsk SIZO: from 17 March to 6 April, from 25 April to 1 May and from 19 to 29 October 2006;
- the Kyiv SIZO: from 7 to 25 April 2006 (that is during the time when the applicant's case was examined by the Supreme Court);
- the Odessa SIZO: from 30 October to 4 November 2006 (the applicant raised no complaints in respect of his detention there); and
- Kherson Prison no. 61: from 4 November 2006 onwards.

### *2. Physical conditions of detention*

#### (a) In the Simferopol ITT

12. The applicant did not specify the cells in which he had been detained. According to him, he was held in an overcrowded, cold and damp cell located in a basement and lacking fresh air and sufficient daylight. He also alleged that he had not been provided with any bed linen.

Furthermore, he was allegedly deprived of access to shower and had no facilities for shaving. Nor could he enjoy any outdoor walks. The nutrition was allegedly very poor and did not correspond to the applicant's needs given his health condition.

13. The applicant further submitted that, although he was suffering from active tuberculosis, he had had to share his cell with healthy inmates, which had provoked conflicts.

14. According to the applicant, when he was transferred back to the ITT on 4 November 2004 after his forensic psychiatric examination, the temperature in his cell was very low. Nonetheless, the ITT administration withheld his warm clothes. As a result, the applicant allegedly caught bronchitis and pneumonia.

15. The Government submitted that they were not able to provide details as to the specific cells, in which the applicant had been detained, because the relevant records had been destroyed with the passage of the envisaged period of their storage. The Government therefore provided information about all the cells of the Simferopol ITT based on the information note issued by the ITT's governor on 11 December 2012.

16. As specified in that information note, the ITT had nine cells able to accommodate up to forty-two inmates. Seven of those cells were identical: each of them measured 10 sq. m. and was designated for four persons. The eighth cell measured 13 sq. m. and accommodated two inmates. And, lastly, there was a bigger cell, measuring 21 sq. metres, which was designated for eight persons.

17. All the cells were located in a semi-basement. Each of them had a window and was equipped with a forced ventilation system.

18. The cells had beds for each inmate, a table, a lavatory and a washstand with centralised water supply. There was also centralised heating in the ITT functioning during the cold season (end of autumn, winter and beginning of spring).

19. According to the Government, the inmates were provided with all the required bed linen in the ITT.

#### (b) In the Simferopol SIZO

20. According to the information note issued by the governor of the Simferopol SIZO on 29 November 2012 at the request of the Government's Agent, the applicant was detained in the following cells:

- from 19 November 2004 to 18 March 2005 and from 22 April to 23 November 2005 – in cell no. 101;
- from 18 March to 22 April 2005 – in cell no. 105;
- from 23 to 25 November 2005 – in cell no. 69;
- from 24 November 2005 to 16 March 2006, from 30 June to 7 July 2006 and from 14 to 21 July 2006 – in cell no. 72; and

- from 23 to 30 June, from 7 to 14 July and from 21 July to 18 October 2006 – in cell no. 70.

21. Cells nos. 101 and 105 were ordinary cells, which the applicant shared with two other inmates for most of the time. According to the applicant, however, starting from 29 June 2005 his cell-mates were transferred to other cells and he remained alone in cell no. 101. Cells nos. 69, 70 and 72 belonged to the maximum security unit and the applicant was in solitary confinement there.

22. The case file contains a copy of the SIZO governor's decision of 24 November 2005 about the applicant's placement in a separate cell of the maximum security unit on the ground of the prevention of the spread of tuberculosis (the applicant was then diagnosed with active tuberculosis).

23. Given that in 2007 the numbering of the SIZO cells had been changed, the Government found it impossible to locate with precision each cell, in which the applicant had been detained. They, however, submitted that all the cells of the same category (ordinary or maximum security) had the same characteristics.

24. According to the information provided by the Government, each of the cells had a double-glazed window enabling natural ventilation and penetration of daylight. All the cells were equipped with ventilating equipment, water supply and sewerage, as well centralised heating. There was all the required furniture in the cells.

25. According to the applicant, his cells were cold and damp. The window in cell no. 101 was allegedly not glazed and the inmates had to cover it with blankets and plastic bags.

26. The maximum security cells were allegedly very small and had poor lighting and ventilation. The applicant also submitted that the toilet had not been separated from the living area and smelled of excrement. There was no hot water supply and cold water was supplied irregularly.

27. Furthermore, the nutrition was allegedly very basic often being limited to bread, porridge and soup with sour cabbage. According to the Government, however, the nutrition for the detainees had been in accordance with the applicable legal requirements.

28. Lastly, the applicant submitted that the special "life prisoner" uniform had been too small for him, which had caused him discomfort and had provoked mockery by other inmates. The Government noted, without further details, that wearing a special uniform was a legal requirement.

#### (c) In the Dnipropetrovsk SIZO

29. According to the applicant, he was detained in a solitary cell measuring 1.7 by 3 metres in a semi-basement. It had a concrete floor and was equipped with a bench, which was also made of concrete. The light in the cell was very poor. The toilet was not separated from the rest of the cell.

30. The Government did not make any submissions in respect of the conditions of the applicant's detention in the Dnipropetrovsk SIZO.

**(d) In the Kyiv SIZO**

31. The applicant was held in a solitary cell, in allegedly poor conditions. Furthermore, he was allegedly denied the opportunity to use the common shower facilities. Instead, on 12 and 19 April 2006 he was locked for an hour in a small room equipped with a cold-water tap on the level of his stomach. As the temperature inside was very low, he preferred not to wash himself. The applicant had therefore no access to warm shower for the entire period of his detention in the Kyiv SIZO (from 7 to 25 April 2006).

32. The Government did not comment on this period of the applicant's detention.

**(e) In Kherson Prison no. 61**

33. The applicant, being a life prisoner, was transferred from one cell to another every ten days. According to him, all the cells, in which he had been detained (he mentioned, in particular, cells nos. 8, 10, 11 and 14) were damp and cold. In some of them, the walls were covered with mold and fungus.

34. Furthermore, the prison cells allegedly lacked sufficient daylight and fresh air. They were not ventilated artificially and the only access to fresh air was through a window, which could not be opened wider than five centimetres. The applicant also submitted that the windows were closed during the inmates' daily outdoor walks, as the cells were then being disinfected by ultraviolet germicidal irradiation lamps.

35. The applicant specified the size and population of only two cells: cell no. 8 measured 21 sq. m. and was shared by four inmates; and cell no. 14 measured about 15 sq. m. and accommodated three inmates.

36. During the period from May 2007 to December 2010 there were major repairs in the prison, which had allegedly caused the applicant such inconveniences as having to bear with a high level of noise and inhaling construction dust and paint smells.

37. The applicant further submitted that the yard for outdoor walks (which lasted two hours per day) had no shelter to protect detainees from rain or sun.

38. According to the Government, the conditions of detention in the prison were in compliance with the standards established by the Court.

39. On 17 October 2012 an official of the Kherson City Prosecutor's Office in charge of the supervision of lawfulness in penitentiaries, a representative of the Association of Ukrainian human rights monitors in law-enforcement institutions, as well as the governor and the deputy governor of the prison, conducted "a monitoring visit" of the prison. According to their report, all the maximum security cells were located below the ground level and were damp. Cell no. 8 (in which the applicant

was detained at the time) measured 21 sq. m. and accommodated four inmates. It had sufficient daylight and artificial light. It was, however, impossible for inmates to switch on/off the light or to regulate its brightness. The cell had natural ventilation and the window could be opened from inside. There was centralised heating, but at the time of the visit the weather was warm and the heating was off. The toilet was separated from the living area. There was a washstand, but the water tap was leaking. There were minor flood traces on the ceiling, which the administration explained by a recent accident.

40. On an unspecified date in October 2012 the deputy governor of the prison issued an information note about the conditions of detention in that prison at the request of the Government's Agent. It stated, in particular, that cell no. 8 had a window of 1.3 by 1.1 metres, one 220V lamp and one night watch light (36V). The prison official also stated that between May 2007 and December 2010 the maximum security unit of the prison had undergone major refurbishments. In October 2012 some minor repairs were carried out in cell no. 8.

41. The Government submitted four photographs of cell no. 8, showing a spacious and light room in a visually good state of repair. According to the applicant, those photographs had been taken after his detention in that cell and were of no relevance for his case.

42. According to the information provided by the Government, the prison cells were disinfected on a daily basis during the detainees' outdoor walks. The applicant noted that this did not happen when inmates chose not to go for a walk because of poor weather conditions.

43. As further submitted by the Government, cells for smear-positive and smear-negative inmates were located on different floors and had separate shower facilities, X-ray examination rooms and walking yards. The applicant specified that it had not been so before October 2012.

### *3. The applicant's health condition and medical treatment*

#### (a) Prior to the applicant's detention

44. Prior to his detention the applicant had been suffering from chronic hepatitis, neurocirculatory asthenia, varicose veins, and astigmatism of both eyes. It is not known whether he had undergone any medical treatment in that connection.

45. Furthermore, in 1995 the applicant was diagnosed with tuberculosis for the first time. In November 2001 his tuberculosis disease was considered to have developed in a chronic form.

46. On 30 November 2001 the applicant was admitted for inpatient treatment to the Zaporizhzhya regional tuberculosis dispensary.

47. On 22 February 2002 he was discharged from it on the ground of his refusal from the treatment and his continued absence.

48. On 18 March 2002 the applicant was re-admitted to the aforementioned dispensary for treatment.

49. On 30 April 2002 he was discharged on the ground of his persistent breaches of the treatment regimen and the dispensary's rules.

50. According to an information note issued by the dispensary's chief doctor at the request of the applicant's lawyer on 24 April 2013, during his treatment there in 2002 the applicant had been administered anti-tuberculosis medicines of the first and the second lines.

51. On 26 May 2003 the applicant was recognised as falling within the third category of disability (the mildest) on account of his tuberculosis disease.

**(b) During the applicant's detention**

52. On 25 September 2004 the applicant underwent a medical examination upon his admission to the Simferopol ITT. As recorded in the ITT's journal, the applicant informed the doctor about his tuberculosis disease, but did not raise any complaints.

53. On 11 October 2004 the ITT governor wrote to the Simferopol prosecutor that, according to the conclusion of a tuberculosis specialist of the same date, the applicant was suffering from an active form of tuberculosis and required further examination and inpatient treatment in a hospital environment. At the time of writing he was, however, detained in the ITT as an ordinary detainee. The ITT governor requested the prosecutor to help in organising the applicant's transfer to a tuberculosis dispensary. It appears that there was no follow up to that request.

54. On 26 October 2004, upon the applicant's admission to the psychiatric hospital for his forensic psychiatric examination, a tuberculosis specialist examined him. The applicant complained of coughing with purulent sputum, general weakness, breathlessness and a considerable loss of weight. He was diagnosed with active fibrous-cavernous pulmonary tuberculosis at the stage of infiltration and was prescribed *isoniazid, rifampicin, pyrazinamide, ethambutol, streptomycin* and some other medications and vitamins.

55. On 1 November 2004, while still in the psychiatric hospital, the applicant was X-rayed and repeatedly examined by a tuberculosis specialist. The doctor confirmed the earlier diagnosis and recommended the continuation of the medicinal treatment, subsequent monitoring of the applicant's condition and his isolation.

56. On 4 November 2004 the applicant was transferred back to the Simferopol ITT. According to him, his medical treatment for tuberculosis was disrupted at that point.

57. On 19 November 2004, following the applicant's transfer to the Simferopol SIZO, a panel of doctors, including a tuberculosis specialist, examined him. He was prescribed with: *isoniazid, rifampicin, pyrazinamide,*

*ethambutol* and *streptomycin* – for an intensive treatment phase (for the periods from 19 November 2004 to 28 February 2005, from 1 August to 30 November 2005 and from 2 May to 30 August 2006) and *isoniazid, rifampicin* and *pyrazinamide* – for a follow-up treatment phase (for the periods from 1 March to 31 July 2005, from 1 December 2005 to 16 March 2006 and from 1 September to 13 October 2006).

58. According to the applicant's medical file, he was provided with the prescribed medications on a daily basis. Furthermore, during his detention in the Simferopol SIZO the applicant was examined by a tuberculosis specialist and underwent sputum smear testing on a monthly basis. He also had regular chest X-ray examinations. The applicant's diagnosis remained the same and his X-raying showed no changes in the state of his lungs. The applicant's medical file pertaining to his pre-trial detention contains no reference to his drug susceptibility test.

59. The applicant complained to various authorities, in particular, about his solitary confinement, which he did not consider to be justified on medical grounds. On 8 September 2005 an official of the regional office of the State Department for the Enforcement of Sentences wrote to the applicant that he was the only detainee suffering from an active form of tuberculosis and his isolation was justified. He was receiving regular medical treatment. Furthermore, as stated in the letter, he had undergone drug susceptibility testing carried out with the participation of the Simferopol city tuberculosis dispensary.

60. On 18 October 2006 the applicant was transferred from the Simferopol SIZO to Kherson Prison no. 61.

61. On 4 November 2006 the applicant arrived in Kherson Prison no. 61 having the status of a penitentiary tuberculosis hospital (before his arrival in the prison he had been detained in the Dnipropetrovsk and Odessa SIZOs (see paragraph 11 above), where he allegedly received no medical treatment).

62. Immediately after the applicant's arrival in the prison, a panel of doctors examined him and diagnosed him with: chronic pulmonary tuberculosis, chronic hepatitis in an aggravation phase, neurocirculatory asthenia, varicose veins, and astigmatism of both eyes. He was placed in the prison's medical unit for inpatient treatment.

63. On 28 November 2006, following the applicant's complaint about heartache, weakness and loss of appetite, he was examined by a general practitioner who diagnosed him with chronic hepatitis in an aggravation phase and neurocirculatory asthenia of cardiac type. The doctor prescribed some medications to the applicant and recommended that he undergo an electrocardiogram. It appears that the above recommendation had not been implemented. As the applicant continued raising the same complaints, a general practitioner again examined him on 15 January and 6 June 2007. He confirmed the earlier diagnoses and prescribed medications.

64. Furthermore, in December 2006, April 2007, January 2008 and March 2009, as well as in May and July 2011, an ophthalmologist diagnosed the applicant with astigmatism of both eyes and prescribed eyeglasses for him. It is not known whether the applicant received the eyeglasses according to the prescription.

65. The applicant's chest X-raying in January 2007 (the exact date is illegible) showed that his tuberculosis disease was progressing.

66. On 20 February 2007 the applicant underwent a drug susceptibility test, which established that he was resistant to *isoniazid, rifampicin, pyrazinamide, ethambutol* and *streptomycin*. His treatment was therefore corrected and he was prescribed different medicines (such as *kanamycin, ethambutol, para-aminosalicylic acid, ciprofloxacin* and *ofloxacin*).

67. On 27 April 2007, 24 April 2008, 30 April 2010 and 27 May 2011 the applicant was recognised as falling into the second category of disability on account of his tuberculosis disease (for a period of one or two years, with his condition to be reassessed thereafter).

68. On 15 April 2008 the applicant's X-raying showed negative developments in his lungs.

69. His subsequent X-ray examinations on 3 and 28 October 2008 indicated that his condition "was becoming stable". Accordingly, the applicant's treatment was changed from inpatient to outpatient.

70. In March 2009 his tuberculosis disease progressed again. As a result, on 13 March 2009 he was referred again to the prison's medical unit for inpatient treatment.

71. On 13 April, 28 July and 28 September 2009 the applicant refused to take the anti-tuberculous medicines.

72. On 5 May and 15 September 2009 he also refused from X-raying.

73. On 14 June, 14 July, 19 August, 8 October and 10 November 2009 the applicant refused that his blood samples be taken for analysis.

74. On 20 April and 29 December 2010 the applicant underwent further X-ray examinations of his chest, which showed no changes in his lungs.

75. On 26 January 2011 a neurologist diagnosed the applicant with cervical spine osteochondrosis and recommended him to put a hard surface (something like a wood shield) beneath his matrass. According to the applicant, the prison administration did not allow him to do that.

76. On 15 March and 15 September 2011 the applicant refused to take the anti-tuberculous medicines.

77. On 29 March, 5 July, 8 September and 11 October 2011 his X-raying showed no changes in his condition.

78. As indicated in the applicant's medical records, on 28 October 2011 his treatment was corrected. He was prescribed with: *pyrazinamide, para-aminosalicylic acid, capreomycin, ofloxacin* and *cycloserine*.

79. On 30 January, 4 May and 13 November 2012 the applicant had his chest X-rayed again. Like before, no changes in his lungs were reported.

80. On 10 May 2012 the applicant agreed in writing to palliative care. He wrote that he was aware of the reasons and consequences of that decision and that he had taken it without any pressure.

81. On 14 September 2012 the prison administration wrote a letter to the applicant's mother in reply to her complaint, in particular, regarding his medical care. The prison governor stated that the applicant's treatment for tuberculosis had been without effect for a long period of time, as he had developed multi-resistance to all possible anti-tuberculosis drugs. Accordingly, it had been proposed to the applicant that his treatment be confined to palliative care and he had accepted that proposal. It was explained in the letter that the palliative care consisted of the administration of two anti-tuberculosis drugs of the first line (*isoniazid* and *rifampicin*) regardless of the applicant's resistance to them. As *rifampicin* was not available in the prison, it had been replaced with *ethambutol*. Lastly, the prison official wrote that the palliative care had been prescribed to the applicant for life.

82. On 27 September 2012 the National Institute of Tuberculosis Studies and Pulmonology, to which the applicant's mother had also complained about his medical treatment in detention, responded to her. The director of the Institute wrote that, as it appeared from the medical file, the applicant's tuberculosis disease had become incurable. Accordingly, the prospects of its treatment were deplorable regardless of the place of that treatment. Lastly, as noted in the letter, it was open for the applicant to apply for release on the ground of his incurable infectious disease.

83. As confirmed by a record in the applicant's file of 16 November 2012, his X-ray examinations had not shown any positive changes in the state of his lungs since 2008. More specifically, the lung cavities were not disappearing.

84. On 7 December 2012 the prison doctors recommended to continue the applicant's inpatient treatment according to the prescribed regimen.

85. There is no information in the case file regarding the applicant's health condition and treatment thereafter.

### C. The applicant's correspondence with the Court

86. On 11 June 2006 the applicant sent his first letter to the Court, in which he complained, in particular, about the physical conditions of his detention and the lack of adequate medical care.

87. On 20 June 2006 the Registry sent him an application form and accompanying explanatory documents and instructed him to submit a duly completed and signed application form within six weeks from the date of receipt of the Court's letter.

88. In October 2006 the Court received several copies of the completed application form from the applicant, in which he elaborated, in particular, on

the complaints, which he had outlined in his initial letter to the Court, including about the conditions of his detention in the Simferopol, Dnipropetrovsk and Kyiv SIZOs. According to him (and confirmed by his three cell-mates), he had attempted to send his application form on 30 August 2006, but the administration of the Simferopol SIZO had refused to dispatch it unless he deleted any complaints about his conditions of detention there. The applicant also submitted that the domestic courts had rejected his requests for access to some documents in his case file, which he intended to enclose to his application form, on the ground that he had already received copies of those documents, which was confirmed by his signature. Furthermore, the administration of the Simferopol SIZO allegedly refused to produce copies of some documents at the applicant's request.

89. On 1 February 2012 the applicant sent a letter to the Court supplementing his application form with a complaint about poor physical conditions of detention and inadequate medical care in the Kherson prison.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

90. The relevant domestic law and practice are summarised, in particular, in the judgments on the cases of *Yakovenko v. Ukraine* (no. 15825/06, §§ 48 and 53-55, 25 October 2007), and *Koktysh v. Ukraine* (no. 43707/07, §§ 41 and 42, 10 December 2009).

## III. RELEVANT INTERNATIONAL MATERIALS

91. The relevant extracts from the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") to the Ukrainian Government of 9 October 2002 on its visit to Ukraine from 10 to 26 September 2000 [CPT/Inf (2002) 23], which concerned the conditions of detention and medical care arrangements in the Simferopol SIZO, are quoted in the Court's judgment on the case of *Dvoynykh v. Ukraine* (no. 72277/01, §§ 39-41, 12 October 2006).

92. Further relevant extracts from the aforementioned CPT Report, which concerned the conditions of detention in the Simferopol ITT, can be found in the Court's judgment on the case of *Titarenko v. Ukraine* (no. 31720/02, § 43, 20 September 2012).

93. During its visit to Ukraine from 9 to 21 October 2005 the CPT visited, in particular, several temporary detention facilities (ITTs), as well as Kherson No. 61 Prison. The relevant extracts from the CPT Report [CPT/Inf (2007) 22] of 20 June 2007 read as follows (original emphasis):

> "58. The delegation's observations in relation to tuberculosis are a source of great concern. There were often considerable delays in screening for tuberculosis. Further, persons who were receiving anti-tuberculosis treatment at the time of their apprehension frequently did not continue to receive this treatment while detained in

district police stations. Such unscreened and untreated persons were kept for weeks, even months, in district police stations under the intolerable conditions ... The problem was exacerbated by the refusal of ITTs to accept persons suffering from tuberculosis. This state of affairs engenders unacceptable risks of transmission of tuberculosis between detained persons and also to staff. Furthermore, interruption of treatment can seriously accelerate the advance of the disease for tuberculosis patients.

...

127. Colony No. 61 in Kherson is a prison hospital specialising in all forms of tuberculosis treatment. It is located in a former military barracks built under Catherine the Great in the 18th century. It had a capacity of 850 beds, and was holding 773 male prisoners at the time of the visit [...].

The buildings, in a rectangular configuration, comprised the old original two-storey edifices to which three-storey constructions dating from the 1960s and 70s had been added. The patients were housed in twelve units, according to diagnosis-based criteria, except for the admissions and surgical units [...].

*i. conditions of detention*

128. The premises were in a tolerable state of maintenance, correctly lit (whether by natural light or artificial lighting), ventilated and heated; each patient had his own bed with adequate and clean bedding. However, given the dilapidated state of the original buildings, the material conditions did not meet the standards that might be expected of a hospital establishment (such as those observed, by way of comparison, at the civil dispensary treating tuberculosis in the city of Kherson). In addition, there was one shortcoming common to all the sections visited: the very cramped living space – a far cry from the objective of 5 m² per person fixed by the Code on the Execution of Sentences. In section no. 3 (smear-positive patients, some of whom were terminally ill) there were as many as five patients in just 7 m², seven in less than 28 m², eight in just over 29 m², and in section no. 5 (for non-contagious patients) there were up to 12 in about 33 m²; in the admissions section, living space per person fluctuated around the 3 m² mark.

Further, in the cell-type regime section, where additionally - and in contrast to the other sections – the prisoners were locked up 22 hours out of 24, there was a whole host of shortcomings. In addition to meagre living space (ranging from less than 2 m² to less than 4 m² per person), many cells had poor natural lighting and ventilation.

129. The CPT wishes to underline the efforts made at Colony No. 61, since 2004, to ensure that patients are provided with a diet consistent with the requirements of their state of health; their monthly weigh-ins indicate steady weight gains for most patients.

On the other hand, substantial efforts are required to ensure that the patients have appropriate clothing, can maintain satisfactory personal hygiene and are provided with the necessary cleaning products. There was no budget item allocated for this; neither has any provision been made in the 2006 budget.

In this connection, the patients must also be granted more frequent access to the showers, as once a week is hardly sufficient for tuberculosis sufferers.

...

*ii. medical care*

132. The establishment's medical team comprised 59 full-time doctors including various specialists, assisted by 99 *feldshers* and qualified nurses. The team was

seconded by 49 orderlies, remunerated patient prisoners with the task of helping other patients who had difficulty in performing everyday tasks.

...

133. The facilities were generally satisfactory and might even be considered excellent once the new laboratory, which was being set up at the time of the visit, is in operation. ...

As previously mentioned, patients were allocated to the sections according to diagnosis-based criteria – except for the admissions and surgical units where there were clearly difficulties in separating smear-positive patients from smear-negative patients. **The CPT recommends that steps be taken to remedy this situation**, which is not satisfactory from a medical point of view.

134. As regards pharmaceutical treatment for tuberculosis, supplies of all the first-line drugs had been regular and sufficient for the past three years. However, this was not the case for the second-line drugs and the prisoners could be asked to pay for these drugs.

The tuberculosis treatments were monitored on an ongoing basis; nevertheless, evaluation of the otological toxicity of drugs, such as streptomycin and kanamycin, should preferably be carried out by an otorhinolaryngologist and be regularly recorded."

94. The 21st General Report of the CPT (CPT/Inf (2011) 28) contains a section "Solitary confinement of prisoners" with a number of recommendations on this issue. However, as specified therein, "[this] section does not apply to the isolation of prisoners for medical reasons, as the grounds for such a measure are of a fundamentally different nature".

95. The relevant extracts from the "Treatment of Tuberculosis: Guidelines" by the World Health Organisation (fourth edition, 2009) are quoted in the Court's judgment on the case of *Makshakov v. Russia* (no. 52526/07, § 50, 24 May 2016).

# THE LAW

## I. SCOPE OF THE CASE

96. In their comments on the applicant's observations, the Government submitted that the applicant had complained for the first time about the conditions of his detention in the Dnipropetrovsk and Kyiv SIZOs, as well as in specific cells in the Kherson prison only in reply to the Government's observations. They made a similar submission in respect of the applicant's complaint under Article 34 of the Convention about the alleged lack of his access to copies of documents. Accordingly, the Government argued that the above complaints fell out of the scope of the present case.

97. The Court does not accept the Government's arguments. It notes that it had received the applicant's complaints in question before the application was communicated to the Government (see paragraphs 86-89 above).

98. The Court therefore finds no reasons for exclusion of the complaints in question from the scope of this case.

## II. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

99. The applicant complained under Article 3 of the Convention that he had been detained in poor conditions and that no adequate medical care had been afforded to him in detention. The provision relied on reads as follows:

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

### A. Admissibility

100. The Government submitted that the applicant had failed to exhaust domestic remedies. They contended that he could have raised his complaints before the public prosecutor in charge of supervising the general lawfulness of conduct in penal institutions. Any decision taken by the prosecutor could be further challenged before the domestic courts.

101. The applicant contested the effectiveness of the above remedy.

102. The Court notes that it has already dismissed similar objections by the Government on a number of occasions, finding the remedy referred to by the Government ineffective on the ground that it had not been shown that recourse to such proceedings could have brought an improvement in the applicant's detention conditions (see, for example, *Melnik v. Ukraine*, no. 72286/01, §§ 69-71, 28 March 2006, and *Buglov v. Ukraine*, no. 28825/02, § 74, 10 July 2014). The Court sees no reason to depart from that finding in the present case and therefore considers that this part of the application cannot be rejected for failure to exhaust domestic remedies.

103. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. They are not inadmissible on any other grounds. The Court therefore declares them admissible.

### B. Merits

#### *1. Physical conditions of the applicant's detention*

##### (a) The parties' submissions

104. The applicant, referring to his account of the facts, maintained that, both during the pre-trial investigation and after his conviction, he had been

detained in appalling conditions incompatible with the Article 3 requirements. In support of his allegations, he relied, in particular, on the CPT's reports following its visits to Ukraine in 2000 and 2005 (see paragraphs 91-93 above).

105. The applicant further submitted that his solitary confinement in the Simferopol SIZO had not been justified on medical grounds, but had rather been aimed at discouraging him from raising complaints about the conditions of his detention.

106. The Government contended that the conditions of the applicant's detention had been satisfactory both in pre-trial detention facilities and in prison.

**(b) The Court's assessment**

107. Article 3 of the Convention requires States to ensure that a person is detained in conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

*(i) Conditions of the applicant's detention in pre-trial detention facilities*

108. The Court notes that it has already found violations of Article 3 of the Convention in a number of applications brought by individuals detained in the Simferopol ITT and SIZO during various periods overlapping with or close to those of the applicant's detention in the mentioned facilities in the present case (see, for example, *Pokhlebin v. Ukraine*, no. 35581/06, §§ 46-52, 20 May 2010, *Znaykin v. Ukraine*, no. 37538/05, §§ 49-53, 7 October 2010, *Izzetov v. Ukraine*, no. 23136/04, §§ 42 and 43, 15 September 2011, and *Samoylovich v. Ukraine*, no. 28969/04, §§ 64-66, 16 May 2013).

109. The Court does not find any reason to depart from its previous approach in assessing these matters, and considers that the physical conditions of the applicant's detention in the Simferopol ITT and SIZO were degrading.

110. Having regard to the above finding, the Court does not consider it necessary to deal separately with the applicant's complaint regarding his solitary confinement in the Simferopol SIZO.

111. In so far as the applicant's complaint concerned his detention in the Dnipropetrovsk and Kyiv SIZOs, the Court notes that the Government neither disputed his account of the events nor made any submissions in that regard. Accordingly, the Court accepts the applicant's description of the conditions of his detention in those facilities and considers them degrading too.

112. There has therefore been a violation of Article 3 of the Convention on account of inadequate physical conditions of the applicant's detention in the Simferopol ITT, in the Simferopol SIZO, in the Dnipropetrovsk SIZO and in the Kyiv SIZO.

*(ii) Conditions of the applicant's detention in prison*

113. The Court notes that, when assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

114. The Court reiterates, in particular, that a serious lack of space in a prison cell weighs heavily as a factor to be taken into account for the purpose of establishing whether the detention conditions described are "degrading" within the meaning of Article 3 and may disclose a violation, both alone or taken together with other shortcomings (see, amongst many other authorities, *Karalevičius v. Lithuania*, no. 53254/99, §§ 39 and 40, 7 April 2005, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 146-149, 10 January 2012). Whereas the provision of four square metres remains the desirable standard of multiple-occupancy accommodation, the Court has found that where the applicants have at their disposal less than three square metres of floor surface, the overcrowding must, in general, be considered to be so severe as to justify a finding of a violation of Article 3 (see, *mutatis mutandis*, *Ananyev and Others*, cited above, §§ 144 and 145, and *Zakshevskiy v. Ukraine,* no. 7193/04, § 62, 17 March 2016).

115. The Court further reiterates that, quite apart from the necessity of having sufficient personal space, other aspects of physical conditions of detention are relevant for the assessment of compliance with Article 3. Such elements include access to outdoor exercise, natural light or air, availability of ventilation, and compliance with basic sanitary and hygiene requirements (see *Ananyev and Others*, cited above, §§ 149 et seq. for further details, and *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 222, ECHR 2011).

116. Turning to the present case, the Court notes that the applicant disposed of at least 5 sq. m. of personal space in each of his cells (see paragraphs 35 and 39 above). Accordingly, there is no indication of overcrowding in his conditions of detention in prison. In fact, his criticism of those conditions did not include the overcrowding argument as such. Furthermore, as confirmed by the applicant, he had the possibility to go for an outdoor walk for two hours per day. While he complained that the walking yard had no shelter against sun or rain, he admitted that it was up to detainees to refuse from a walk if the weather conditions were not appropriate (see paragraphs 34, 37 and 42 above).

117. The Court also attaches weight to the undisputed fact that the prison cells were disinfected by ultraviolet germicidal irradiation lamps on a

daily basis, with the exception of the days when prisoners chose not to go for a walk (see paragraphs 34 and 42 above). As regards the ventilation arrangements, it appears that the applicant and his cell-mates could open the window from inside any time they wished so, even if no wider than for five centimetres (see paragraphs 34 and 39 above).

118. In so far as the applicant complained about the inconveniences related to the prison's refurbishment, the Court notes that any repairs imply such inconveniences as noise, dust or paint smells. The applicant did not provide any information showing that the level of his discomfort had been so considerable as to raise an issue under Article 3 of the Convention. The fact that the refurbishment had been carried out indicates for the Court the authorities' effort to improve the conditions of detention in the prison.

119. The Court does not lose sight of the fact that the applicant's cell had been evaluated as damp in October 2012 (see paragraph 39 above). While this is a serious negative factor, especially for inmates suffering from tuberculosis, the Court does not consider it alone to amount to the applicant's inhuman and/or degrading treatment proscribed by Article 3 of the Convention.

120. In sum, having assessed all the aspects of the physical conditions of applicant's detention in Kherson Prison no. 61, the Court finds that there has been no violation of Article 3 of the Convention in this regard.

### *2. Medical care in detention*

#### (a) The parties' submissions

121. The applicant complained that he had not been provided with appropriate treatment for his tuberculosis and other diseases while in detention. More specifically, he contended that no treatment had been provided for him at all in the Simferopol ITT. Although subsequently, during his detention in the Simferopol SIZO and in Kherson Prison no. 61, he had been treated for tuberculosis, that treatment had not been effective and had led to the deterioration of his health. The applicant observed in this connection that his first drug susceptibility test had taken place only on 20 February 2007, that is more than two years since the beginning of his detention. It had shown that he was resistant to the medications, with which he had been treated all that time.

122. The applicant further submitted that there had been interruptions in his treatment for tuberculosis during his intermediary detention in the Kyiv, Dnipropetrovsk and Odessa SIZOs. Furthermore, even in the Simferopol SIZO and Kherson Prison, his treatment was interrupted during every weekend or public holiday.

123. The Government argued that the applicant had been under constant medical supervision and had received proper medical care in detention. They emphasised that the prison, to which the applicant had been

transferred to serve his sentence, had a specialised tuberculosis hospital status.

124. The Government drew the Court's attention to the fact that the applicant had been suffering from tuberculosis and other diseases long time before his detention. They further submitted that he had not undergone any treatment on his own initiative while at liberty.

125. The applicant contested the above statement of the Government and referred to his treatment in the Zaporizhzhya regional tuberculosis dispensary between November 2001 and April 2002 (see paragraphs 46-49 above).

126. The Government next contended that, contrary to the applicant's submissions, he had undergone his first drug susceptibility test during his detention in the Simferopol SIZO. They referred in that connection to the letter of the official of the State Department for the Enforcement of Sentences of 8 September 2005 (see paragraph 59 above). The applicant, in turn, contested the veracity of that statement as not supported by any documents.

127. The Government further observed that the applicant had refused from his medical examinations or treatment on a number of occasions (see paragraphs 71-73 and 76 above). The applicant submitted in reply that it had been his protest against inadequate medical care afforded for him in detention.

**(b) The Court's assessment**

*(i) General principles*

128. The Court has emphasised on many occasions that the health of detainees has to be adequately secured (see *Kudła*, cited above, § 94).

129. The "adequacy" of medical assistance remains the most difficult element to determine. The Court has insisted, in particular, that authorities must ensure that diagnosis and care are prompt and accurate and that – where necessitated by the nature of a medical condition – supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at successfully treating the detainee's health problems or preventing their aggravation. The Court has also reiterated that medical treatment within prison facilities must be appropriate and comparable to the quality of treatment which the State authorities have committed themselves to providing for the entirety of the population. Nevertheless, this does not mean that each detainee must be guaranteed the same level of medical treatment that is available in the best healthcare establishments outside prison facilities (see *Reshetnyak v. Russia*, no. 56027/10, § 84, 8 January 2013, with further case-law references).

130. In assessing the adequacy of medical treatment of detainees for tuberculosis, the Court has attached particular weight to early drug

susceptibility testing and has condemned delays in recommending and performing such a test in the initial stages of the diagnostic process (see *Gladkiy v. Russia*, no. 3242/03, § 93, 21 December 2010, *Makharadze and Sikharulidze v. Georgia*, no. 35254/07, § 90, 22 November 2011, and *Kushnir v. Ukraine*, no. 42184/09, § 146, 11 December 2014).

131. The Court has also considered the authorities' inability to assure a regular, uninterrupted supply of essential anti-tuberculosis drugs to patients to be a key factor in tuberculosis treatment failure (see *Reshetnyak*, cited above, § 87).

*(ii) Application of the above principles to the present case*

132. Turning to the circumstances of the present case, the Court notes that the authorities were aware of the applicant's long history of tuberculosis infection from the beginning of his detention. Accordingly, they were under the obligation to ensure his adequate treatment.

133. The Court observes that, as pointed out by the Government, the applicant had not been diligent himself in pursuing his treatment for tuberculosis while at liberty (see paragraphs 47 and 49 above). This circumstance, however, does not absolve the authorities from safeguarding his well-being in detention.

134. It appears that no medical treatment at all was provided for the applicant during his detention in the Simferopol ITT (from 25 September to 26 October and from 4 to 19 November 2004). The ITT governor acknowledged that problem, brought it to the prosecutor's attention and requested the applicant's transfer to a tuberculosis dispensary, but his request remained without any follow-up (see paragraphs 53 and 56 above).

135. The Court observes that the applicant was prescribed and administered the first-line antibacterial drugs during his inpatient forensic psychiatric examination between 26 October and 4 November 2004 and subsequently, after his transfer to the Simferopol SIZO, starting from 19 November 2004 (see, in particular, paragraphs 54 and 57 above).

136. In the absence of any information from the Government on the medical care provided to the applicant during several periods of his detention in the Dnipropetrovsk, Kyiv and Odessa SIZOs (varying from six to twenty days in 2006), the Court considers plausible the applicant's allegation that his anti-tuberculosis treatment was interrupted then.

137. The Court further takes note of the dispute between the parties regarding the time of the first drug susceptibility test undergone by the applicant. According to the Government, it was on an unspecified date in 2005, whereas the applicant submitted that such test had been carried out only on 20 February 2007. The only document in support of the Government's version is a penitentiary official's letter of 8 September 2005, which had summarily referred to the matter (see paragraph 59 above). At the same time, the first mentioning of the applicant's drug susceptibility test

in his medical file is dated 20 February 2007. The Court therefore considers that it was on that last-mentioned date when the applicant underwent the test in question for the first time.

138. Having regard to the long history of the applicant's tuberculosis disease prior to his detention, it had been crucial to determine as soon as possible whether he had developed resistance to certain drugs. However, the authorities considered it necessary to carry out that testing only after almost two and a half years of his obviously ineffective treatment in detention.

139. The Court observes that, although after 20 February 2007 different antibacterial medicines were prescribed to the applicant (by that time he had been serving his sentence for more than three months in Kherson Prison no. 61 specialising in medical treatment for tuberculosis), his subsequent treatment did not bring any positive results and his health kept deteriorating.

140. Against this background the Court rejects the Government's submissions that the applicant's uncooperative behaviour undermined the efficiency of his therapy. The Court observes that the applicant had interrupted the treatment for the first time in April 2009, that is more than four and a half years after the initiation of the therapy which had proved to be ineffective and had not, in any respect, ameliorated the applicant's condition. It therefore considers that the applicant's decision to interrupt the treatment was no more than a legitimate attempt to draw the authorities' attention to the poor quality of the medical care (see, for a comparable situation, *Makshakov*, cited above, § 100).

141. Eventually, in May 2012, the applicant's tuberculosis disease was found incurable and the authorities proposed to him only palliative care, which he accepted (see paragraph 80 above).

142. The Court takes the view that a serious delay with carrying out the drug susceptibility test and several established interruptions in the applicant's treatment in 2004 and 2005, which were attributable to the authorities, must have adversely affected the chances of the applicant's therapy of having any real prospect of success.

143. The Court considers this to provide sufficient ground for finding a violation of Article 3 of the Convention on account of inadequate medical care afforded for the applicant in detention, without analysing his further complaints regarding some other health-related concerns.

## III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

144. The applicant complained under Article 3 of the Convention that he had been ill-treated by the police following his arrest. He also complained under the same provision that the prison guards had ill-treated and humiliated him on various occasions. The applicant next complained that his arrest and pre-trial detention had been contrary to Article 5 §§ 1 (c), 2, 3 and 4 of the Convention. He also complained under Article 5 § 1 (a) that his

post-conviction detention was unlawful. The applicant further complained under Article 6 §§ 1, 2 and 3 and Article 13 of the Convention that the criminal proceedings against had been unfair, that he had not committed the criminal offences in question, that the courts had misinterpreted the facts and had wrongly applied the law, that they had failed to ensure his right to legal assistance, as well as his rights to examine the case file and to call witnesses. He also complained under Article 8 of the Convention that the police had apparently tapped his phone before his arrest. Relying on Article 14 of the Convention and Article 1 of Protocol No. 12, the applicant complained that he had been subjected to discriminatory treatment by the authorities on the ground of his illnesses. He further complained of a violation of Article 17 of the Convention arguing that the law-enforcement authorities had abused their powers. The applicant next complained that the Supreme Court had failed to duly ensure his right of appeal as guaranteed by Article 2 Protocol No. 7.

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

146. The applicant further complained under Article 34 of the Convention that the administration of the Simferopol SIZO had refused to dispatch his letter of 30 August 2006 to the Court containing his complaints about the conditions of detention in that SIZO. He also complained under the same provision that the authorities had not provided him with copies of documents, which he intended to attach to his application form. Lastly, the applicant complained under Article 34 of the Convention that the administration of the Simferopol SIZO had been turning off the light too early in the cells and that that practice had impeded the exercise of his right of application to the Court.

147. Having regard to all the materials in the case file, the Court does not discern any indication of a breach of the applicant's right of individual application.

148. The Court therefore concludes that the State has not failed to fulfil its obligation under Article 34 of the Convention.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

149. 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

150. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

151. The Government contested the above claim as unsubstantiated and exorbitant.

152. The Court considers that the applicant suffered non-pecuniary damage on account of the violations of his rights under Article 3 of the Convention, which cannot be compensated for by the mere finding of a violation. Having regard to the circumstances of the case and ruling on an equitable basis, as required by Article 41, the Court awards the applicant EUR 8,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

### B. Costs and expenses

153. The applicant did not claim the reimbursement of any costs and expenses in addition to EUR 850 already granted him in legal aid.

154. The Court therefore makes no award under this heading.

### C. Default interest

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

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 3 of the Convention on the physical conditions of the applicant's detention in the Simferopol ITT, Simferopol SIZO, Dnipropetrovsk SIZO, Kyiv SIZO and Kherson prison no. 61, as well as on the lack of appropriate medical care during his detention, admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of poor physical conditions of the applicant's detention in the Simferopol ITT, Simferopol SIZO, Dnipropetrovsk SIZO and Kyiv SIZO;

3. *Holds* that there has been no violation of Article 3 of the Convention in respect of the conditions of his detention in Kherson prison no. 61;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of inadequate medical care afforded to the applicant in detention;

5. *Holds* that the State has not failed to fulfil its obligation under Article 34 of the Convention;

6. *Holds*
(a) that the respondent State is to pay the applicant, within three months, EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
(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;

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

Done in English, and notified in writing on 6 October 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Milan Blaško | André Potocki |
| Deputy Registrar | President |