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

FOURTH SECTION

CASE OF KHOKHLICH v. UKRAINE

(Application no. 41707/98)

JUDGMENT

STRASBOURG

29 April 2003

FINAL

29/07/2003

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Khokhlich v. Ukraine,

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs E. PALM,
Mr J. MAKARCZYK,
Mrs V. STRÁŽNICKÁ,
Mr V. BUTKEVYCH,
Mr R. MARUSTE, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 25 March 2003,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 41707/98) 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 Polish national, Mykola Khokhlich ("the applicant"), on 9 February 1998.

2. The applicant was represented by Mr Voskoboynikov and, from June 2000, by Mr Khitsinskiy and Mr Stetsko. The Ukrainian Government ("the Government") were represented by their Agent, Mrs V. Lutkovska, from the Ministry of Justice.

3. The applicant complained, *inter alia*, that the conditions to which he was subjected on death row in Khmelnitskiy Prison amounted to inhuman and degrading treatment.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. Having consulted the parties, the President of the Chamber decided that in the interests of the proper administration of justice, the proceedings in the present case should be conducted simultaneously with those in the cases of Nazarenko v. Ukraine, Aliev v. Ukraine, Dankevich v. Ukraine, Poltoratskiy v. Ukraine and Kuznetsov v. Ukraine (applications nos. 39483/98, 41220/98, 40679/98, 38812/97 and 39042/97 (Rule 43 § 2)).

7. By a decision of 25 May 1999, the Court declared the application partly admissible. On 7 and 8 October 1999 the Court carried out a fact-finding visit to Khmelnitskiy Prison.

8. The Government, but not the applicant, filed observations on the merits (Rule 59 § 1).

9. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section.

10. Between 13 and 15 June 2000, at the request of the Court, the TB Yanovski Institute carried out an independent medical examination of the applicant and his fellow inmate, Mr R. Yusev.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Outline of events

11. In February 1995 the applicant who was then aged nineteen was arrested by the police on several occasions and on 13 March 1995 he was detained on remand.

12. On 9 February 1996 the Khmelnitskiy Regional Court *(обласний суд)* convicted the applicant of the murder of two persons and sentenced him to death.

13. On 26 March 1996 the Supreme Court *(Верховний суд)* upheld the judgment of the first-instance court.

14. In September 1997 the applicant was diagnosed as having tuberculosis.

15. On 29 October 1997 the Khmelnitskiy Regional Prosecutor *(Прокурор Хмельницької області)* informed the applicant's mother that the domestic legislation did not provide for visits by a notary to persons sentenced to death. On 30 October 1997 the Ministry of the Interior confirmed this information.

16. On 10 December 1997 the Regional Court gave the applicant leave to receive a visit from a notary.

17. On 6 January 1998 the Khmelnitskiy Notary Office *(Перша Хмельницька державна нотаріальна контора)* confirmed that between 5 December 1997 and 6 January 1998 they did not receive any written permission for a visit of the applicant.

18. On 10 February 1998 a notary visited the applicant and certified the applicant's signature on the power of attorney.

19. A moratorium on executions was declared by the President of Ukraine on 11 March 1997. In judgment no. 11рп/99 of 29 December 1999 the Constitutional Court held that the provisions of the Criminal Code concerning the death penalty were contrary to the Constitution of Ukraine. The death penalty was therefore abolished and replaced by life imprisonment by Act no. 1483-III of 22 February 2000.

20. On 21 June 2000 the Regional Court commuted the applicant's death sentence to life imprisonment.

B. Oral evidence before the Court Delegates

21. Evidence from the applicant and four other witnesses was taken by a Court delegation in Khmelnitskiy Prison on 7 and 8 October 1999. The statements may be summarised as follows:

1. The applicant

(a) General conditions of the applicant's detention on death row

22. The applicant stated that he had been informed about his rights and obligations as a convicted person on 23 September 1999, having been given a sheet of paper with the rules containing the rights and obligations of an inmate. He had had to sign this document.

23. He confirmed that he preferred to be detained alone. On the day of the Delegates' visit to Khmelnitskiy Prison, he was held in a single cell.

24. The applicant did not complain about the medical care in the prison, apart from the treatment of tuberculosis. He had applied for dental treatment, but had been told that during such treatment a warder had to be present and that the treatment was lengthy. He had repeatedly complained about this practice to the head of the prison medical unit and to the medical assistant *(фельдшер)*. However, he had never submitted any written complaint. He had not informed his mother about his dental problems.

25. The applicant stated that he was almost always hungry. Moreover, hot water which had been brought from the prison kitchen was not hot enough to prepare tea.

26. He also stated that the temperature in his cell was satisfactory during summer but that in winter it was very cold.

27. He was allowed to take a hot shower once a week, but according to him, the bathroom was in an unacceptable state.

28. The only lamp in his cell was switched on 24 hours a day, but it did not disturb the applicant too much. The window was opened by the prison

staff during his daily walks. He could not open it himself. According to him, the window had been shuttered until 1 October 1999.

29. He said that the toilet in his cell was not covered. He was able to flush it.

30. The applicant stated that the conditions in the cells which he had successively occupied had been similar.

31. He confirmed that on 25 February, 29 April and 27 October 1998 he had written, of his own free will, three statements attesting that he did not have any complaints against the prison administration. He had written these statements at the request of the prison administration without, however, having been told why the statements had been needed. He confirmed that no pressure had been exerted on him in this respect.

32. The applicant said that he had never been punished in the prison.

33. He said that in 1997 he had become aware that the moratorium on execution of the death penalty had been introduced. However, he had not been formally informed about it by the national authorities.

(b) Details concerning the applicant's tuberculosis

34. The applicant stated that he had been placed in a cell with a man, Mr Yusev, who was suffering from tuberculosis and that he had been infected with the same disease. He said that he had undergone his first X-ray examination in March 1995, when he had been admitted to Khmelnitskiy Prison. According to him, between March 1995 and September 1997 he had not been X-rayed. He confirmed that he had been detained with Mr Yusev for five months, between 3 February and 4 July 1997.

35. The applicant stated that the inmates had undergone an X-ray examination every six months and had been given special medication in order to prevent the progress of tuberculosis. However, he did not reply to the Delegates' comment: "You are saying that you are X-rayed every six months. But this does not apply to the period we discussed before, because you said that you were not X-rayed between March 1995 and September 1997."

36. According to the applicant, apart from Mr Yusev, nobody else with whom he had shared his cell had been suffering from tuberculosis.

37. He said that the medication for tuberculosis had been provided by his family. His state of health had not improved immediately after the medication had been administered to him. He said: "It got worse from the very beginning. But as soon as I started taking medicine, my health condition improved." He was not hospitalised.

(c) Prison practice concerning the applicant's correspondence and receipt of parcels and small packets[1]

38. The applicant stated that before his death sentence had become final, he had been allowed to receive monthly one parcel of goods bought from the prison shop. On 5 October 1998 he had received his first parcel from his mother. He wished to receive more parcels or small packets. He had never been punished by the prison administration by means of a restriction on the number of parcels that could be sent to him by his family.

39. The applicant said that prior to 23 September 1999 he had not known that he had the right to send and receive letters and parcels to and from his relatives, but said that he had written one letter a month.

(d) Prison practice concerning daily outdoor walks

40. The applicant confirmed that he had started having daily one-hour outdoor walks on 5 May 1998. The walks had taken place every day, but the applicant, not having had a watch, could not say whether they had lasted exactly one hour. He did not have the impression that the walks had been shortened. He had had to walk alone and had been handcuffed during his walks, even during the winter, which had deprived him of the possibility of physical exercise. He said that when he had been detained with another inmate, they had walked together.

(e) Visit by a notary to the applicant

41. The applicant confirmed that permission from the prison authorities for a visit by the notary public had been delayed and had been given only after a decision by the Regional Court, and that the notary had visited him on 2 February 1998. He complained that the court decision had been given on 10 December 1997 and permission had been granted two months later. Nevertheless, this delay had not caused any damage to him.

42. According to the applicant, it was his mother who had requested that a notary come to see him in the prison. He personally had not applied for the visit in writing, but only orally.

(f) Prison practice concerning visits from the applicant's relatives

43. The applicant said that his mother tongue was Polish. He had encountered some problems on the part of the prison administration in communicating with his relatives in Polish. He confirmed that the matter had been resolved seven months ago.

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1. Parcels to be forwarded to a prisoner may be sent by post *(посилка)* or brought in person to the prison *(передача)*. Small items like books or periodicals can be sent by post as a small packet *(бандероль* - literally a "bundle").

2. Mr Anatoliy P. Yurchenko

44. The witness was the governor of Khmelnitskiy Prison. He had been working as governor for twelve years.

a) General conditions of the applicant's detention on death row

45. The witness said that about 584 persons were detained in the prison of whom 411 were in pre-trial detention and 173 were convicted. Nine inmates were on death row. They were held in a separate corridor in eight special cells intended for that category of prisoners.

46. At the beginning the applicant had shared his cell with another inmate. On the day of the Delegates' visit, he was held in a single cell. According to him, death row inmates were generally detained in double cells and, at their own request, in single cells. During his stay on death row, the applicant had successively occupied four or five cells. The prison had kept a record of the inmates' movement.

47. According to him, the applicant had initially been sentenced to three years' imprisonment in 1994. He had been released under a presidential amnesty. He had been arrested again on 10 March 1995 and detained in Khmelnitskiy Prison since 13 March 1995.

48. The witness stated that inmates had the right to file complaints about their detention conditions through a member of the prison staff responsible for a particular part of the prison who regularly walked around the cells and registered those complaints, forwarding them to the prison governor. The witness confirmed that all internal complaints had been registered.

49. He said that the applicant had never made any written complaints, either to him or to the prosecutor or to the Supreme Court. All the complaints on the applicant's behalf had been submitted by his mother. During his stay in Khmelnitskiy Prison, the applicant had personally submitted one request to be provided with a mattress. His mother had contacted the witness when complaining about the arrangements concerning parcels and small packets and her meetings with the applicant.

50. In reply to the Delegates' question: "Have there been any cases, apart from that of the applicant, when a complaint concerning detention conditions or misconduct on the part of staff members has led to consequences such as a reprimand or a penalty?" the witness stated: "No, we have had no such examples."

51. The witness considered in a positive light the recent improvements concerning the conditions of detention of persons sentenced to death, as a result of the moratorium on execution of the death penalty.

(b) Details concerning the applicant's tuberculosis

52. The witness stated that while in pre-trial detention and after his sentence had been pronounced, the applicant had been held with Mr Yusev.

Both of them had been healthy at that time, a fact that had been confirmed by an X-ray examination.

53. On 4 July 1997 a regular medical examination had revealed that Mr Yusev was suffering from tuberculosis, and his treatment had started. At the same time, the applicant had been separated from Mr Yusev and had been given preventive treatment as a person who had been in contact with an infected person. In fact, two months later the applicant had also been diagnosed with tuberculosis and had had to undergo appropriate treatment.

54. In reply to the Delegates' comments: "The first diagnosis of Mr Yusev occurred on 4 July 1997. At that time, the applicant was X-rayed and there was a suspicion of tuberculosis. Later, on 18 September 1997, that suspicion changed to certainty because the X-ray led to the conclusion that he had tuberculosis," the witness stated: "I would like you to know that every inmate undergoes a medical examination upon his arrival. He is X-rayed and, according to the results, he is placed in an appropriate cell."

55. The witness said that the head of the prison medical division had been working in Khmelnitskiy Prison for five years and had been working there as a doctor between 1995 and 1997, when the applicant's tuberculosis had been detected and treated.

56. He also stated that in 1999, twenty-three persons detained in Khmelnitskiy Prison had been suffering from tuberculosis. They had been held separately and specific measures had been taken to prevent other inmates from any contact with them.

(c) Prison practice concerning correspondence and receipt of parcels and small packets

57. According to the witness, the prison kept a register of incoming and outgoing letters. Each inmate had a personal file in which the prison administration kept a record of all his correspondence, parcels and meetings.

(d) Visit by a notary to the applicant

58. In reply to the Court Delegates' comments: "In 1997 the applicant's mother requested repeatedly that the prison governor certify a power of attorney for her son's lawyer or allow a notary to visit him in the prison. The notary was allowed to visit the applicant on 10 February 1998, but in comparison with other cases there seems to have been a delay of several months," the witness stated: "Permission for the notary to meet the applicant was given by the Regional Court. Only after we received that permission could we allow the meeting to take place." He confirmed that the applicant's mother had been told that the governor of the pre-trial institution was not empowered to certify the power of attorney. The witness added that according to Ukrainian legislation, if an inmate wanted to see his lawyer, he submitted an application to the prison governor. If the lawyer had all the necessary documents proving that he was a certified lawyer, he was

given permission to see the inmate, even every day, without any restriction. However, the regulations governing visits by a notary were different.

59. The Government representative explained that according to the national legislation, a lawyer was entitled to visit his client at any time, without any restriction as to the length of the visits, provided that prior notice had been given to the prison governor. The applicant's representative before the European Court, Mr Voskoboynikov, was not a lawyer and did not have a legal background. If he were a lawyer, he would not need a power of attorney.

60. The witness further stated that since Mr Voskoboynikov was not a lawyer, he was not obliged to give him any information, including information concerning the regime applicable to the applicant.

3. Mrs Maria Y. Khokhlich

61. The witness was the applicant's mother.

(a) General conditions of the applicant's detention on death row

62. The witness said that the electric lamp in her son's cell was very bright and switched on all the time. There was no daylight. The cell was very damp and cold. The food was, according to her, also very bad. She said that she had complained about these facts to the prison governor and to the Head of the Department for the Execution of Sentences.

63. She stated that her son had sometimes been provided with hot water instead of tea.

64. In reply to the Delegates' question: "We were informed that your son had made several statements attesting that he had not made any complaints about detention conditions, medical treatment, etc. Did your son tell you that he had been forced to make such statements?" the witness stated: "After we had applied to the Council of Europe, my son and other inmates wrote the statement saying that they did not want the delegation to come. I spoke to my son and he told me that I did not know many things, and I understood what he meant."

(b) Details concerning the applicant's tuberculosis and other health problems

65. The witness stated that her son had fallen ill from tuberculosis in the prison. During a meeting he had said that he had coughed up blood. Afterwards, she had applied to the prison governor, claiming that the applicant had shared his cell with a sick person. She had also applied to the authorities for medical assistance. The medication had been partly brought by her and partly provided by the prison medical service. According to the witness, the medical treatment had not been sufficient.

66. The witness said that the applicant had had problems with his liver and stomach and with his teeth. She had applied to the prison doctor but had

been told that the prison did not have sufficient financial means to provide the inmates with proper dental treatment. She said that her son had had two teeth extracted without undergoing an anaesthetic, and that she had complained about this orally and in writing.

67. She further said that she had wanted to bring some medicine for her son in prison, but the prison governor had not given the permission to do so. She stated: "The medicine for tuberculosis or flu, general painkillers, I used to bring them regularly. However, the ones like animal fat were first allowed only about two or three months ago."

68. In reply to the Delegates' question: "The prison authorities maintain that Mr Yusev was X-rayed on 19 August 1995 and that he was not ill at that time. Considering that they both fell ill, but no infection was passed on from Mr Yusev to your son, do you have any comments on this allegation?" the witness stated: "They found tuberculosis in Yusev first and after they were both detained in the same cell they discovered tuberculosis in my son as well." In reply to the Delegates' comments: "Our records indicate that the examination in which it was discovered that Mr Yusev had tuberculosis took place on 4 July 1997 and that your son was detained together with him from 5 February to 4 July 1997. The authorities maintain that as soon as the state of health of Mr Yusev was discovered, your son was put into another cell", the witness stated: "No, that is not true. Another inmate who was held with Mr Yusev before my son said that even at that time he was coughing up blood."

69. The witness further said that she had asked to have access to her son's medical file but had been refused. Her request that her son be examined by a specialist had also been refused. She had been told that an examination of that kind was not possible for this category of prisoners.

(c) Prison practice concerning receipt of parcels and small packets

70. The witness confirmed that her son had received his first parcel from her on 5 October 1998. She had applied for permission to send a parcel on several previous occasions since her son had fallen ill, but permission had been refused. Her first application had been submitted a year and a half ago.

71. The witness said that in August 1999 the prison administration had not wanted to accept her parcels for her son. She had been told that his category of prisoners were not allowed to receive normal parcels, but only two small packets per year. She had applied "everywhere" but without any success.

(d) Prison practice concerning daily outdoor walks

72. The witness said that the applicant had not been allowed to go for a walk before she had applied to the Council of Europe. According to her, he had been allowed to go for daily walks since April 1998. The witness

confirmed that her son had complained to the prison governor that he had been handcuffed during the walks.

(e) Prison practice concerning visits from the applicant's mother

73. The witness said that the applicant had been handcuffed during his meetings with her. Moreover, they had encountered problems when they had spoken Polish together during their meetings. According to her, the prison governor had come to one of their meetings with a tape recorder.

4. Mr Oleg S. Vychavka

74. The witness was the prison doctor, having been the head of the prison medical unit since 1 June 1999. Previously, he had been working in Khmelnitskiy Prison as a doctor since 1995.

75. He stated that the medical unit included two full-time doctors and a number of part-time specialists: a dentist, a dermatologist, an X-ray specialist, the head of the laboratory and a tuberculosis specialist. It also had two full-time medical assistants and a part-time nurse, an X-ray assistant and a laboratory assistant. He considered this staffing sufficient for the needs and the size of Khmelnitsky Prison. He confirmed that there was no difference between the categories of prisoners in the eyes of the members of the medical unit. Every day the medical assistant walked around all the cells in the prison. If he was able to provide the necessary assistance in distributing medication, he did so. If not, he arranged an appointment with the prison doctor or an appropriate specialist.

76. The witness stated that those inmates who were detained in the prison for more than six months were X-rayed on a regular basis every six months.

77. In reply to the Delegates' question: "We have information that the applicant and Mr Yusev were X-rayed upon arrival at this prison on 13 March and 19 August 1995 respectively. These examinations did not show any signs of tuberculosis. The applicant and Mr Yusev subsequently shared a cell from 3 February to 4 July 1997. On 4 July 1997 a regular medical examination revealed that Mr Yusev had pulmonary tuberculosis without growth of micro-bacteria. Then the applicant started displaying some symptoms and there was a strong suspicion that he also had tuberculosis. That was confirmed by an X-ray examination of 18 September 1997. We would like to ask you a very important question and we will have to check this with the medical files. Between the initial X-ray examination in 1995 and the examinations which led to the discovery of tuberculosis, first in Mr Yusev and second in the applicant, were the half-yearly regular obligatory X-ray examinations carried out in respect of the two prisoners?" the witness stated: "Not every six months, but once a year." There had been a difference between the normal prisoners and the death row inmates, who had been subjected to stricter conditions during the period

from 1995 to 1996. According to him, conducting half-yearly X-ray examinations could not help prevent the spread of tuberculosis as it was not possible to avoid infection. He said that the applicant and Mr Yusev were the only two cases in which inmates had contracted tuberculosis in the prison.

78. The witness added that the last X-ray examination of the applicant had not shown any signs of nitrification, fibrosis or lung deformation. Mr Yusev's X-ray had revealed only signs of fibrosis. They were now in a special group of inmates and would be under medical observation for the next five years, during which time they would receive preventive treatment in order to avoid a relapse.

79. In reply to the Delegates' question: "The applicant complains that he fell ill because he had been kept in the same cell as a person who was already ill. The Government say that the disease was not transmitted because they both became ill at the same time. What do you think about it?" the witness stated: "Yes, they were held together for five months. But when Mr Yusev was diagnosed with tuberculosis, he was immediately put into a separate cell. He was prescribed treatment and the applicant, as a person who had been in contact with him, was given preventive treatment." According to him, Mr Yusev had undergone an X-ray examination in 1996, after having complained of symptoms of tuberculosis.

80. The witness confirmed that there was a special diet called "8B"for those suffering from tuberculosis. He admitted that there was not always a regular meat supply, but milk and butter were always available for the diet. Moreover, the lack of certain food products was compensated for by what inmates received in parcels from their relatives.

81. He said that the conditions in the cells where the inmates suffering from tuberculosis were held were slightly better than the conditions in other cells. The cells themselves were bigger.

82. The witness further stated that the applicant had complained of his dental problems. Two of his teeth had been extracted because it had not been possible to treat them. He confirmed that teeth were extracted only if they were not treatable. The medical unit had not been able to provide a general anaesthetic, but had used a local one. There was no problem with having false teeth fitted either; the only problem encountered in that connection was lack of money. In such cases the inmate had to pay for the materials because an outside specialist had to come to the prison.

83. In reply to the Delegates' remark: "Yesterday the applicant complained that in the shower room it is so cold that one can catch a cold. We were there yesterday and it really is cold in there. Have you seen the place?" the witness stated: "Yes. It has got colder since yesterday; before, it was relatively warm. But on 15 October the heating will be switched on."

84. In reply to the applicant's representative's question: "How can you explain this logical contradiction: Mr Yusev had no micro-bacterial growth

but after a while he infected the applicant?" the witness stated: "Every human being has the tubercle bacillus. Under certain conditions the bacillus manifests itself. The two inmates stayed together for a long time, for almost two and a half years. And the applicant's statements concerning his being infected by Mr Yusev are unreliable." In reply to the applicant's representative's next questions: "How can you explain the statements of other inmates who were detained with Mr Yusev before the applicant that they saw Mr Yusev coughing up blood even then? Was not that a symptom of tuberculosis in its contagious form?" the witness stated: "Only a doctor can say. The blood could have come from the gums or teeth, or from the nose. The source can be defined only by a doctor. I do not have any information from other inmates, I know that only the applicant said that. The most recent tests did not detect any bacteria in Mr Yusev."

85. The witness acknowledged that the prison was not equipped with a laboratory, instead using the laboratory facilities of the militia hospital and, for tuberculosis tests, those in the regional tuberculosis hospital. He said that the prison medical unit sent an inmate to the tuberculosis hospital only if there was a suspicion of illness. The applicant had last been consulted on 7 October 1998. After that, he had been transferred to the second group. The witness had not received any request from the applicant's mother for detailed tests after the applicant had been diagnosed with tuberculosis.

86. He confirmed that relatives could send additional parcels to inmates suffering from tuberculosis. Permission was given by the prison administration at his suggestion. However, he had not made such a suggestion in the applicant's case.

87. The witness further confirmed that the medical unit possessed the necessary dental equipment. The inmate's relatives had to pay the cost of material. If there was money in the inmate's account, the medical unit could arrange for his dental treatment. According to him, the applicant had officially asked about false teeth two days before the Delegates' visit to Khmelnitskiy Prison. His mother had not applied to the witness for this treatment, but she might have applied to the prison governor.

C. Inspection of Khmelnitsky Prison

88. The Court Delegates visited the cell where the applicant was detained. The size of the applicant's cell was about 9 square metres. The cell was in order and clean. There was an open toilet, a washbasin with a cold water tap, two beds fixed on the floor, central heating and a window with bars. There were some books, newspapers and a cup for making tea. The cell seemed to be sufficiently heated and ventilated.

89. The Delegates were shown the prison shower cubicle which was about 1 metre square. The ceiling was covered only by bars. It was lit by an electrical lamp and was very cold.

90. The Delegates also visited the prison's exercise yard.

D. Excerpts from the statement of the independent medical commission examining the applicant's and Mr Yusev's health

91. The commission established the following:

The applicant was taken to Khmelnitskiy Prison on 13 March 1995. Upon this, he was given a general medical examination by the therapist, who concluded that the applicant was healthy. His first X-ray examination, carried out on 15 March 1995, established that his lungs and heart were in a normal condition. Bacteriological analysis of faeces for dysentery, typhoid and paratyphoid fever did not show any sign of disease. Microprecipitation of the applicant's blood produced a negative reaction. The applicant was given a complete medical examination and a court psychiatric assessment by Khmelnitskiy Regional Psychiatric Assessment Unit no. 1 in May 1995, and a conclusion of "sane" was reached with regard to psychopathy.

On 16 June 1996 the applicant underwent an X-ray examination which did not show any sign of disease of the lungs or heart.

From 13 March 1995 to 18 November 1996 he was held in a separate cell. From 18 November 1996 to 23 April 1997 the applicant and Mr Yusev shared a cell. From 23 April to 4 November 1997 they were again kept in separate cells. Afterwards, the applicant was found to be suffering from pulmonary tuberculosis and was transferred to the cell of Mr Yusev, who also suffered from tuberculosis. They shared the same cell from 4 November 1997 until 9 June 1998. Since 9 June 1998 the applicant and Mr Yusev have been kept in separate cells. On 11 July 1997, when Mr Yusev was found to be suffering from tuberculosis, the applicant was instructed to undergo one and a half to two months' anti-recurrence isoniazid treatment. On 7 August 1997 an X-ray examination for the first time showed pathological changes in the upper right lung. On 18 September 1997 Mr O. Sidenko, a tuberculosis specialist from the prison medical unit, diagnosed the applicant as suffering from tuberculosis and he received treatment in a cell designed for prisoners in that condition. His treatment started on the same day.

The applicant was X-rayed three times in 1998, twice in 1999 and twice in 2000. The examinations showed no changes as regards active tuberculosis in the lungs and no residual changes were observed in the upper right lung. Between 13 and 15 June 2000 the commission carried out a thorough clinical and laboratory examination of the applicant and Mr Yusev. It agreed with the clinical diagnosis of the applicant given by the

prison medical unit in 2000: clinical recovery after focal tuberculosis of the upper right lung, presence of MBT (*mycobacterium tuberculosis*).

Mr Yusev was taken to Khmelnitskiy Prison on 19 August 1995. He was given a general medical examination by a therapist, who concluded that he was healthy. An X-ray examination carried out on 29 August 1995 established that his lungs and heart were in a normal condition. Bacteriological analysis of faeces for dysentery, typhoid and paratyphoid fever did not show any sign of disease. Microprecipitation of his blood produced a negative reaction. He was given a complete medical examination and an interregional court psychiatric assessment by Khmelnitskiy Regional Psychiatric Assessment Unit no. 1 in March 1996. It was concluded that he was reasonably healthy and was sane. X-ray examinations carried out on 20 August 1996 and 14 February 1997 did not reveal any pathological changes in the lungs and heart. Three examinations of phlegm carried out between 11 and 13 February 1997 by the method of bacterioscopy did not reveal any presence of MBT.

On 4 July 1997 an X-ray examination of Mr Yusev showed a homogeneous infiltration in the right lung. On 11 July 1997 the diagnosis was, for the first time, infiltrative tuberculosis of the right lung in the phase of decomposition, with the presence of MBT. Mr Yusev received treatment in a cell designed for his category of prisoners. On 23 July 1997 he began intensive chemotherapy treatment. During 1999 and 2000 he received seasonal (in spring and autumn) anti-recurrence isoniazid treatment (each lasting two months). As the result of the ongoing treatment, there had been a substantial improvement in the general state of his health and the main clinical symptoms of the disease had been eliminated.

The clinical progress observed by X-ray examinations was the most pronounced during the first four months of the treatment. The X-ray examination on 5 May 1998 revealed limited fibrosis and individual infiltrated nidi in the upper right lung. The X-ray examinations carried out at the end of 1998 and in 1999-2000 showed only limited fibrosis at the site of former lesions.

The commission established that it was unlikely that the applicant had contracted tuberculosis from Mr Yusev. In its opinion, the main factor was that the latter did not excrete tuberculosis microbacteria, and therefore did not represent an epidemiological danger. During the first period when the applicant had shared a cell with Mr Yusev, from 18 November 1996 to 23 April 1997, no pathological changes in the lungs had been detected by the X-ray examination of 14 February 1997. During this period Mr Yusev could not therefore have infected the applicant with tuberculosis. The second period during which the applicant and Mr Yusev had shared a cell had lasted from 4 November 1997 to 9 June 1998, that is to say four months after Mr Yusev had been found to be suffering from tuberculosis and his treatment had started, and one and a half to two months after the applicant

had been found to be infected with tuberculosis and his treatment had started. In the period when the two inmates were placed in separate cells, Mr Yusev had been subjected to intensive chemotherapy. Moreover, for the first six weeks during which intensive chemotherapy was administered to the applicant, positive progress had been achieved (X-ray examination of 24 November 1997). Therefore, during the period in which the convicts shared the same cell, there would have been a very insubstantial possibility of repeated infection of the applicant by Mr Yusev. The intensive chemotherapy administered to Mr Yusev during the first two months halted bacillus excretion – that is to say, eliminated the epidemiological threat in 90-100 per cent of bacteria producers.

The commission took also into account the fact that the applicant was suffering from a mild, very limited form of pulmonary tuberculosis without any excretion of bacteria or any destructive changes in the lungs. It was most probable that the origin and manifestation of pulmonary tuberculosis in the applicant was connected with the poor state of his health and the stress caused by having committed a crime, being imprisoned and, finally, being sentenced to capital punishment. In addition, the applicant and Mr Yusev suffered from two different forms of tuberculosis (the applicant suffered from focal tuberculosis, while Mr Yusev suffered from infiltrative tuberculosis).

E. Documentary evidence

92. According to the prison record, the applicant's mother, sometimes accompanied by his grandmother, visited her son on 16 April, 16 May, 11 June, 12 July, 13 August, 13 September, 14 October, 15 November and 17 December 1996, and on 17 January, 17 February, 20 May, 20 June, 21 July, 27 August, 4 February, 5 March, 8 April, 8 May, 8 June, 10 July, 11 August, 11 September and 12 October 1998.

93. The applicant received a parcel from his mother on the following occasions: 27 February, 27 March and 26 April 1996. He received a small packet *(бандероль)* on the following occasions: 27 May, 31 July, 2 October and 15 December 1996 and on 5 February, 11 April, 4 June, 4 August, 6 October and 10 December 1997, and on 10 February and 14 April 1998.

94. The applicant's medical file was created on 10 March 1995. It states that in March and May 1995 the applicant underwent a general medical check-up and X-ray examination. He was found to be healthy. Subsequent X-ray examinations were carried out on 16 June 1996, on 7 August and 24 November 1997, on 10 February, 5 May and 23 September 1998, on 11 January, 15 July and 15 October 1999 and on 21 February and 13 June 2000.

On 11 July 1997 the applicant received isoniazid treatment as a person who was in contact with persons suffering from pulmonary tuberculosis.

On 18 September 1997 he was diagnosed as suffering from pulmonary tuberculosis in its latent form. He was given appropriate treatment. On the same day he underwent a complementary medical examination at the Khmelnitskiy TB Division of the Ministry of Public Health. Further examinations by the Division were carried out on 8 June and 7 October 1998 and on 23 February 2000.

Laboratory analysis of the applicant's mucus was conducted at the Khmelnitskiy Hospital of the Ministry of the Interior on 18, 19 and 20 September, 13, 14 and 15 November 1997, on 25 February, 20 April, 10 July and 23 November 1998, on 24 February 1999, and on 10, 11 and 12 May 2000.

The applicant underwent a blood test on the following dates: 15 November 1995, 18 September and 13 November 1997, 25 February, 20 April, 10 July, 15 October and 24 November 1998, 25 and 26 February 1999, and 14 February and 11 May 2000.

95. Mr Yusev's medical file was created on 3 August 1995. It states that in August 1995 Mr Yusev underwent a general medical check-up and X-ray examination. He was found to be healthy. Subsequent X-ray examinations were carried out on 20 August 1996, 14 February, 4 July and 24 November 1997, on 10 February, 5 May and 23 September 1998, on 11 January and 15 July 1999 and on 1 March and 13 June 2000. The X-ray examinations which took place on 20 August 1996 and 14 February 1997 confirmed that Mr Yusev's lungs and heart were in a good state. The X-ray examination of 11 July 1997 revealed pulmonary tuberculosis in Mr Yusev. On 23 July 1997 a tuberculosis specialist at the Khmelnitskiy TB Division of the Ministry of Public Health confirmed that Mr Yusev was suffering from pulmonary tuberculosis. On that date Mr Yusev was given appropriate medical treatment. On 8 June and 7 October 1998 Mr Yusev underwent complementary examinations at the Division.

According to the medical notes of 6 March and 9 June 2000, Mr Yusev's state of health had improved and the symptoms of tuberculosis had disappeared.

Laboratory analysis of Mr Yusev's mucus took place at the Khmelnitskiy Hospital of the Ministry of the Interior on 11, 12 and 13 February, 20 April, 20 July, 13, 14 and 15 November 1997, on 25 February, 20 April, 10 July and 23 November 1998, on 24 February 1999, and on 10, 11 and 12 May 2000.

Mr Yusev underwent a blood test on the following dates: 24 July and 13 November 1997, 25 February, 20 April, 10 July, 15 October and 24 November 1998, 25 and 26 February 1999, and 11 May and 14 June 2000.

96. In a letter of 28 February 1998, addressed to the Prosecutor General's Office, the applicant stated that he had been detained in Khmelnitskiy Prison since 13 March 1995 and that he had never been

subjected to inhuman or degrading treatment. He also stated that he was satisfied with the conditions in which he was detained and that he had no complaints against the prison administration.

He mentioned a letter from his representative, Mr Voskoboynikov, stating that it had been his mother's idea and that it had only been sent to protect the applicant's interests. The applicant also stated that neither the prison administration nor the investigators had tortured him during the preliminary investigation. Lastly, he stated, placing noticeable emphasis on the statement, that he had not co-operated with the representatives of the Council of Europe because he had not believed that they could help him.

97. On 29 April 1998 Mr O.V. Reatsky, a prosecutor from the Prosecutor General's Office, visited the applicant who then made a written statement. The applicant confirmed, *inter alia*, that he had been detained in Khmelnitskiy Prison since 13 March 1995. He said that he had never been beaten or tortured and he could not remember any episode involving degrading treatment. He also said that he had been given proper medical treatment and that he did not have any complaints against the prison administration.

98. On 27 October 1998 the applicant, visited again by a prosecutor from the Prosecutor General's Office, made another statement. He spoke in particular about the conditions of his detention in Khmelnitskiy Prison. He mentioned that he had been infected with tuberculosis in 1997 sharing a cell with Mr Yusev, who had earlier been diagnosed with the same disease.

The applicant also mentioned that he had never met Mr Voskoboynikov, who had actually been engaged by his mother in order to represent him. The applicant confirmed that a notary had visited him in order to certify a power of attorney for Mr Voskoboynikov. The applicant himself had never applied either to any international organisations or to the notary.

The applicant further said that he did not have any complaints concerning his living conditions (single cell, hot food three times a day, special diet), the prison regime (daily outdoor walks, receipt of small packets in accordance to a special regime of detention), or the medical treatment (X-rays, medical check-ups provided at his request), either at present or as regards the period when he had been sharing a cell with other inmates (he had been kept in a single cell since 14 October 1998).

99. According to the prison record, on 18 June 1996 the applicant was detained in cell no. 14. On 18 November 1996 he was transferred to cell no. 16, where he stayed until 3 February 1997, when he was moved to cell no. 14. On 23 April 1997 he was transferred to cell no. 15, and on 4 November 1997 he was moved to cell no. 13. On 20 February 1998 the applicant was again detained in cell no. 14, where he remained until 7 May 1998, when he was transferred to cell no. 13. Three weeks later, on 28 May 1998, he was moved to cell no. 15, and on 9 June 1998 to cell no. 14.

100. According to the prison record, on 9 October 1996 Mr Yusev was detained in cell no. 16. On 3 February 1997 he was transferred to cell no. 14 where he remained until 11 July 1997, when he was moved to cell no. 12. On 29 October 1997 Mr Yusev was transferred to cell no. 15 and on 4 November 1997 to cell no. 13, where he stayed until 20 February 1998. On that day he was transferred to cell no. 14, where he remained until 7 May 1998, when he was moved to cell no. 13. On 28 May 1998 he was transferred to cell no. 15 and on 9 June 1998 he was detained in cell no. 16.

101. In his letter of 7 March 2000 to the Court, Mr Voskoboynikov submitted that in December 1999 the applicant had been disciplined and deprived of the right to receive an extra medical food parcel. On 6 January 2000 the prison governor orally refused Mr Voskoboynikov permission to meet with the applicant and to see documents concerning the applicant's punishment. Mr Voskoboynikov also submitted that on 17 December 1999 the Head of the Regional Department for the Execution of Sentences upheld the Prison Administration's denial to allow the applicant's mother to bring her son a TV set, an electronic game and an extra medical food parcel.

II. RELEVANT DOMESTIC LAW

A. Constitution of Ukraine

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

103. Article 9 § 1 provides that international treaties which are in force and accepted as binding by the Verkhovna Rada of Ukraine are part of the national legislation of Ukraine

104. Article 15 § 3 prohibits censorship.

105. Under Article 19 the legal order in Ukraine is based on principles according to which no one may be forced to do what is not envisaged by the law. State authorities and local self-government bodies and their officials are obliged to act only according to these principles, within the limits of their authority, and in the manner envisaged by the Constitution and the laws of Ukraine.

106. Article 22 provides that human and citizens' rights and freedoms are guaranteed and may not be diminished by the adoption of new laws or the amendment of laws that are in force.

107. Under Article 29 §§ 2 and 4 no one may be arrested or held in custody other than pursuant to a reasoned court decision and only on grounds and in accordance with procedures established by law. Everyone

arrested or detained must be informed without delay of the reasons for his arrest or detention, apprised of his rights, and from the moment of detention must be given the opportunity to defend himself in person, or to have the assistance of a defence lawyer.

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

109. Under Article 59 everyone has the right to legal assistance. Such assistance is provided free of charge in cases envisaged by law. Everyone is free to choose the defender of his rights. In Ukraine the Bar *(адвокатура)* ensures the right to a defence against charges and the provision of legal assistance in deciding cases in courts and before other State authorities.

110. Article 63 § 3 provides that a convicted person enjoys all human and citizens' rights, subject only to restrictions determined by law and established by a court ruling.

111. According to Article 64, human and citizens' rights and freedoms guaranteed by the Constitution may not be restricted, except in cases envisaged by the Constitution of Ukraine.

B. Statutory regulations governing the conditions on death row

112. Conditions on death row in the Ukrainian prison system were governed successively by an Instruction of 20 April 1998 on conditions of detention of persons sentenced to capital punishment (hereinafter "the Instruction") and by Temporary Provisions of 25 June 1999 on the conditions of detention of persons sentenced to capital punishment in the isolation blocks (hereinafter "the Temporary Provisions").

113. The Instruction provided that after the sentence had become final, persons sentenced to death had to be kept in isolation from other prisoners in specially designed cells. Save in exceptional cases no more than two such prisoners were to be detained in one cell. The cell area allocated to one prisoner in a single cell had to be not less than 4 square metres and in a double cell not less than 3 square metres. The prisoners were provided with an individual sleeping-place and with bed linen. They wore a uniform designed for the category of especially dangerous recidivists. Reference was also made to their legal status and obligations. This determined the frequency of meetings with relatives and the number of letters inmates could send and receive: they were allowed one visit per month and could send one letter per month. There was no limitation on the correspondence they could receive. The inmates could receive two small packets a year.

They were allowed to have a daily one-hour walk in the fresh air. Outside their cells, the inmates were handcuffed. They were not allowed to work.

Prisoners were also allowed to read books, magazines and newspapers borrowed from the prison library and/or bought through the prison distribution network; they could receive money transfers; they could keep personal objects and food in their cells, and buy food and toiletries in the prison shop twice a month (up to the value of the statutory minimum wage), and play board games. They could meet lawyers. Medical treatment was provided in accordance with the national legislation.

The prisoners could lodge complaints with State authorities. Such complaints had to be dispatched within three days. Complaints to the Public Prosecutor were not censored.

114. The Temporary Provisions extended the rights of persons sentenced to capital punishment in comparison with the Instruction. In particular, prisoners were allowed to have eight hours of sleep during the night; they could receive six parcels and three small packets per year, buy food and toiletries in the prison shop (up to the value of 70% of the statutory minimum wage), pray and read religious literature and have visits from a priest, and write complaints to State authorities. They were allowed to send and receive letters without any limits and to have monthly visits of up to two hours from their relatives. A prison official had to be present during those visits. Meetings with a lawyer in order to provide the inmates with legal assistance were carried out in accordance with the correctional-labour legislation.

C. Pre-trial Detention Act 1993 ("the Act")

115. According to the Code of Criminal Procedure, pre-trial detention is a preventive measure applicable to an accused, a defendant or a person suspected of having committed a crime punishable with imprisonment, or a convicted person whose sentence has not yet been enforced.

116. In accordance with section 8(4), persons sentenced to capital punishment but whose sentence had not become final were held separately from all other detained persons.

117. Section 9(1) of the Act provides *inter alia* that detainees have the right (a) to be defended in accordance with the rules of criminal law, (b) to be acquainted with the rules of detention, (c) to take a one-hour daily walk, (d) to receive twice a month a parcel weighing up to eight kilograms and to receive unlimited money transfers and amounts of money by way of remittance or personal delivery, (e) to buy foodstuffs and toiletries to the value of one month's statutory minimum wage, paying by written order, as well as unlimited amounts of stationery, newspapers and books in prison shops, (f) to use their own clothing and footwear and to have with them documents and notes related to their criminal case, (g) to use TV sets

received from relatives or other persons and board games, newspapers and books borrowed from the library in their previous place of detention or bought from shops, (h) individually to perform religious rituals and use religious literature and objects made of semi-precious materials pertaining to their beliefs, provided that this does not lead to a breach of the rules applicable to places of pre-trial detention or restrict the rights of other persons, (i) to sleep eight hours a night, during which time they are not required to participate in proceedings or to do anything else except in cases of extreme emergency, and (j) to lodge complaints and petitions and send letters to State authorities and officials in accordance with the procedure prescribed by section 13 of the Act.

118. Under section 11, detainees are required to be provided with everyday conditions that meet sanitary and hygiene requirements. The cell area for one person may not be less than 2.5 square metres. Detainees are to be supplied with meals, an individual sleeping-place, bedclothes and other types of material and everyday provisions free of charge and according to the norms laid down by the Government. In case of need, they are to be supplied with clothes and footwear of a standard form.

119. In accordance with section 12(1), permission for relatives or other persons to visit a detainee (in principle, once a month for one to two hours) can be given by the administrative authorities of the place of detention, but only with the written approval of an investigator, an investigative authority or a court dealing with the case. Under paragraph 4, detainees have the right to be visited by defence counsel, whom they may see alone with no restrictions on the number of visits or their length, from the moment the lawyer in question is authorised to act on their behalf, such authorisation being confirmed in writing by the person or body dealing with the case.

120. Under section 13(1), detainees can exchange letters with their relatives and other persons and enterprises, establishments and organisations with the written permission of an authority dealing with the case. Once a sentence starts to run, correspondence is no longer subject to any limitations.

D. Correctional Labour Code ("the Code")

121. According to Article 28 of the Code (Main requirements of the regime in detention institutions), the main features of the regime in detention establishments are: the compulsory isolation and permanent supervision of sentenced persons, so as to exclude any possibility of the commission of new crimes or other acts against public order being committed by them; strict and continuous observance of obligations by these persons; and various detention conditions dependent on the character and gravity of the offence and the personality and behaviour of the sentenced person.

Sentenced persons must wear a uniform. They must also be searched; body searches must be conducted by persons of the same sex as the person searched. Correspondence is subject to censorship, and parcels and packages are subject to opening and checking. A strict internal routine and strict rules must be established in corrective labour establishments.

Sentenced persons are prohibited from keeping money and valuables, or other specified objects, in corrective labour establishments. Any money and valuables found are to be confiscated and, as a rule, transferred to the State in accordance with a reasoned decision of the governor of the institution, sanctioned by a prosecutor.

A list of objects which sentenced persons are allowed to possess, giving the number or quantity of each item and the procedure for confiscating objects whose use is prohibited in corrective labour establishments, must be established by the internal regulations of such establishments.

Under the procedure established by the Correctional Labour Code, sentenced persons are allowed to buy food and toiletries, to be paid for by written order, to be visited, to receive parcels and small packets and money by remittance, to correspond and to send money to relatives by remittance.

122. Article 37 § 1 (Purchase of food and toiletries by sentenced persons) provides that sentenced persons are allowed to buy food and toiletries, paying by written order, from the money received by remittance.

123. Article 40 provides *inter alia* that a lawyer may be given permission to meet his client on presentation of his licence and identity card. Visits are not limited as to their number and length and, at the lawyer's request, may be carried out without a prison warder being present.

124. Under Article 41 (Receipt of parcels and small packets by persons sentenced to imprisonment) sentenced persons held in corrective labour colonies *(виправно-трудова колонія)* are allowed to receive, per year: seven parcels in colonies subject to the general regime *(колонія загального режиму)*, six parcels in colonies subject to the restricted regime *(колонія посиленого режиму)* and five parcels in colonies subject to the strict and special regime *(колонія суворого режиму)*. Sentenced persons held in educational labour colonies *(колонія виховно-трудова)* are allowed to receive per year: ten parcels in colonies subject to the general regime and nine parcels in colonies subject to the restricted regime.

Convicted offenders serving their sentence in a prison are not allowed to receive parcels.

Irrespective of the type of regime under which they are held, sentenced persons are allowed to receive not more than two small packets per year, and to buy literature through the sales distribution network without any restrictions.

The quantity of parcels and small packets of all types is not restricted for sentenced persons held in corrective labour colony camps *(виправно-трудова колонія-поселення)*.

A list of foodstuffs and toiletries which sentenced persons are allowed to receive in parcels and small packets, as well as the procedure for their receipt by and delivery to the sentenced persons, is to be established in the internal regulations of corrective labour establishments.

125. Under Article 42 (Receipt and sending of money by sentenced persons by remittance) sentenced persons are allowed to receive unlimited amounts of money by remittance, as well as to send money to their relatives and, if this is permitted by the authorities of the corrective labour establishments, to other persons. The money received by remittance is transferred to the personal account of the sentenced person.

126. Article 43 § 2 (Correspondence of persons sentenced to imprisonment) provides that sentenced persons held in prisons may receive unlimited mail and may send letters as follows: one letter per month for those held under the general regime and one letter every two months for those held under the strengthened regime.

E. Public Prosecutor's Office Act

127. According to section 12(1), the public prosecutor deals with petitions and complaints concerning breaches of the rights of citizens and legal entities, except complaints that are within the jurisdiction of the courts. Paragraph 4 provides that an appeal lies from the prosecutor's decision to the supervising prosecutor and, in certain cases, to the court. Paragraph 5 provides that the decision of the Prosecutor General is final.

128. Under section 38 the prosecutor or his deputy has the power to make a request to a court for any materials in a case where a judgment or another decision has come into force. If there are any grounds for reopening the proceedings, the prosecutor may challenge the court judgment or any other decision.

129. Under section 44(1) the matters subject to the public prosecutor's supervision are: adherence to the legal rules on pre-trial detention and corrective labour or other establishments for the execution of sentences or coercive measures ordered by a court; adherence to the procedures and conditions for holding or punishing persons in such establishments; the rights of such persons; and the manner of carrying out by the relevant authorities of their duties under the criminal law and legislation on the enforcement of sentences. The public prosecutor may at any time visit places of pre-trial detention, establishments where convicted persons are serving sentences or establishments for compulsory treatment or reform, in order to conduct interviews or peruse documents on the basis of which persons have been detained, arrested or sentenced or subjected to compulsory measures; he may also examine the legality of orders, resolutions and decrees issued by the administrative authorities of such establishments, terminate the implementation of such acts, appeal against

them or cancel them where they do not comply with the law, and request officials to give explanations concerning breaches which have occurred.

III. RELEVANT DOCUMENTS OF THE COUNCIL OF EUROPE

Resolution 1097 (1996) of the Parliamentary Assembly on the abolition of the death penalty in Europe

130. In its Resolution, the Assembly deplored the executions which, reportedly, had been carried out recently in Latvia, Lithuania and Ukraine. In particular, it condemned Ukraine for apparently violating its commitments to introduce a moratorium on executions of the death penalty upon its accession to the Council of Europe. It called upon this country to honour its commitments regarding the introduction of a moratorium on executions and the immediate abolition of capital punishment warning it that further violation of its commitments, especially the carrying out of executions, would have consequences under Order No. 508 (1995).

Resolution 1112 (1997) on the honouring of the commitment entered into by Ukraine upon accession to the Council of Europe to put into place a moratorium on executions

131. The Assembly confirmed in this Resolution that it had received official information that, in the first half of 1996, eighty-nine executions had been carried out in Ukraine, and regretted that the Ukrainian authorities had failed to inform it of the number of executions carried out in the second half of the year. The Assembly was particularly shocked to learn that executions in Ukraine had been shrouded in secrecy, with apparently not even the families of the prisoners having been informed, and that the executed had reportedly been buried in unmarked graves. It condemned Ukraine for having violated its commitment to put into place a moratorium on executions, deplored the executions that had taken place, and demanded that Ukraine immediately honour its commitments and halt any executions still pending.

Resolution 1179 (1999) and Recommendation 1395 (1999) on the honouring of obligations and commitments by Ukraine

132. In these texts, the Assembly noted that Ukraine had clearly failed to honour its commitments (212 persons had been executed between 9 November 1995 and 11 March 1997, according to official sources). At the same time, it noted that since 11 March 1997 a *de facto* moratorium on

executions had been in effect in Ukraine. The Assembly insisted that the moratorium be reconfirmed *de jure* and that the Verkhovna Rada ratify Protocol No. 6 to the Convention. It stressed the importance of the *de facto* moratorium on executions and firmly declared that, if any further executions took place, the credentials of the Ukrainian parliamentary delegation would be annulled at the following part-session of the Assembly, in accordance with Rule 6 of its Rules of Procedure.

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

133. Delegates of the CPT visited places of detention in Ukraine in the years 1998, 1999, and 2000. Reports on each of the visits were published on 9 October 2002, together with the Responses to the Reports of the Ukrainian Government.

1998 Report

134. The visit of the delegation, which took place from 8 to 24 February 1998, was the CPT's first periodic visit to Ukraine. In the course of the visit the delegation inspected, *inter alia*, the pre-trial prison (SIZO) ("investigation isolation" establishment) No. 313/203 in Kharkiv. On the ground floor of building No. 2 of SIZO No. 203 were housed at the time of the visit fifteen prisoners who had been sentenced to death, although as was recorded in a footnote to the Report, the delegation had received assurances that since 11 March 1997 a *de facto* moratorium on executions had been observed.

135. In its Report (paragraph 131), the CPT expressed at the outset its serious concern about the conditions under which these prisoners were being held and about the regime applied to them. It was noted that prisoners sentenced to death were usually accommodated two to a cell, the cell measuring 6.5-7m² The cells had no access to natural light, the windows being obscured by metal plates. The artificial lighting, which was permanently on, was not always sufficiently strong with the result that some cells were dim. To ventilate the cells, prisoners could pull a cord that opened a flap; despite this the cells were very humid and quite cold (paragraph 132).

The equipment in the cells was described in the Report as being rudimentary, consisting of a metal bed and/or sloping platform (equipped with a thin mattress, sheets of dubious cleanliness and a blanket which was manifestly insufficient to keep out the cold), a shelf and two narrow stools. Prisoners were supposed to be able to listen to radio programmes via

a speaker built into the wall of the cell, but it had been reported to the delegation that the radio only functioned sporadically (ibid.).

All the cells had un-partitioned toilets which faced the living-area; as a result, a prisoner using the toilet had to do so in full view of his cellmate. As regards toiletries, prisoners sentenced to death were in a similarly difficult situation as many of the other inmates; items such as soap and toothpaste were rarities (ibid.).

It was further recorded that prisoners sentenced to death had no form of activity outside their cells, not even an hour of outdoor exercise. At best they could leave their cells once a week to use the shower in the cell-block, and for an hour a month, if they were authorised to receive family visits. In-cell activities consisted of reading and listening to the radio when it worked. Apart from the monthly visits which some inmates received, human contact was limited essentially to the occasional visit by an Orthodox priest or a member of the health-care staff, who spoke to the prisoners through a grill in the cell-door (paragraph 133).

136. The CPT summarised its findings in this regard as follows:

> "In short, prisoners sentenced to death were locked up for 24 hours a day in cells which offered only a very restricted amount of living space and had no access to natural light and sometimes very meagre artificial lighting, with virtually no activities to occupy their time and very little opportunity for human contact. Most of them had been kept in such deleterious conditions for considerable periods of time (ranging from 10 months to over two years). Such a situation may be fully consistent with the legal provisions in force in Ukraine concerning the treatment of prisoners sentenced to death. However, this does not alter the fact that, in the CPT's opinion, it amounts to inhuman and degrading treatment." (paragraph 134).

It was further recorded that the delegation had received numerous complaints from prisoners sentenced to death about the fact that they lacked information with regard to their legal situation the progress of their cases, follow-up to applications for cases to be reviewed, examination of their complaints etc. (paragraph 138).

137. In its Response to the 1998 Report, the Ukrainian Government recorded that a number of organisational and practical steps had been taken to resolve the problems identified by the CPT. In particular, the Temporary Regulations had been introduced to guarantee to prisoners sentenced to death the right to be visited once a month by relatives, to be visited by a lawyer to get legal assistance, to be visited by a priest and to receive and send correspondence without limitation. It was further noted

(i) that prisoners sentenced to death would have daily walks in the open air and that for this purpose 196 yards of the pre-trial prisons had been rebuilt or re-equipped;

(ii) that, in order to improve natural lighting and air of all cells, the blinds and metal peakes over cell windows had been removed; and

(iii) that, for the purposes of informing inmates sentenced to death of their rights and legal status, extracts from the Temporary Regulations had been placed on the walls of each cell.

1999 Report

138. A CPT delegation visited Ukraine from 15 to 23 July 1999 in the course of which they again inspected SIZO No. 313/203 in Kharkiv where, at the time of the visit, there were detained 23 prisoners who had been sentenced to death. The Report noted that certain changes had occurred since the previous visit. In particular, the cells had natural light and were better furnished and the prisoners had an hour of exercise per day in the open air, although it was observed that there was insufficient space for real physical exercise (paragraphs 34-35). The Report further recorded that important progress had been made in the right of prisoners to receive visits from relatives and to correspond (paragraph 36). However, the CPT noted certain unacceptable conditions of detention including the fact that prisoners continued to spend 23 out of 24 hours a day in their cells and that opportunities for human contact remained very limited (paragraph 37).

2000 Report

139. A third visit to Ukraine took place from 10 to 21 September 2000, in the course of which the delegation inspected, *inter alia*, the pre-trial prison (SIZO No. 15) in Simferopol. The CPT welcomed the decision of the Ukrainian authorities to abolish the death penalty and noted that most of the approximately 500 prisoners subject to the death sentence had had their sentences commuted to life imprisonment.

140. Despite these welcome steps, the CPT recorded that the treatment of this category of prisoner was a major source of concern to the Committee (paragraph 67). It was noted that, further to a provisional instruction issued in July 2000 and pending the establishment of two high-security units specifically intended for life prisoners, such prisoners were subjected to a strict confinement regime (paragraph 68). While living space in the cells was generally satisfactory and while work had started on refurbishing cells in all the establishments visited, there were major deficiencies in terms of access to natural light and the quality of artificial light and ventilation (paragraph 69). Moreover, life-sentence prisoners were confined in their cells for 23 ½ hours a day with no form of organised activities and, by way of activities outside their cells, were entitled to only half an hour outdoor exercise, which took place in unacceptable conditions. There was virtually no human contact: since the entry into force of the July 2000 instruction, visits from relatives had been forbidden and prisoners were only allowed to

send one letter every two months, although there were no restrictions on receiving letters (paragraph 70).

141. In their Response to the Report the Ukrainian Government noted further legal amendments which ensured that life prisoners had one hour of exercise per day and two family visits of up to four hours per month. Further, to ensure adequate access to light, metal shutters had been removed from windows in all cells.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

142. The Government submitted that Mr Voskoboynikov had applied to the Court on behalf of the applicant on 9 February 1998. According to the Government, the applicant had said that he had not met Mr Voskoboynikov a single time in his statement of 27 October 1998 to the Prosecutor General. Moreover, in his of 25 February, 29 April and 27 October 1998 to the Prosecutor General, he had not made any complaints concerning his detention conditions or medical care. The Government therefore contended that the applicant did not have the status of a "victim" within the meaning of Article 34 of the Convention.

143. The Government further submitted that the applicant, who had been on death row for four years, had not once applied to the executive or the judicial authorities at any level regarding the alleged violations of his rights. Therefore, he had not granted the Government an opportunity to react properly to the alleged violations of his rights and to remedy them through the national machinery for the protection of the rights in question.

144. They underlined that the existing national legal system (primarily the Constitution and other legislative acts) afforded a real possibility of effective judicial protection of human rights. They relied on Article 55 § 1 of the Constitution, according to which "everyone is guaranteed the right to challenge before a court decisions, actions or omissions of State authorities, of local self-government bodies, officials and officers". They referred in this regard to the Constitutional Court's decision of 25 December 1997, in which the court had stated: "Article 55 § 1 of the Constitution should be construed to mean that everyone is guaranteed the protection of his rights and freedoms before a court. The latter cannot refuse justice if the rights and freedoms of a citizen of Ukraine, a foreigner or a person without citizenship are violated or their realisation is obstructed or limited in any other way."

145. The Government further reiterated that according to Article 248(1) of the Code of Civil Procedure, "a citizen has a right of access to a court if

he or she considers that his or her rights have been violated by actions or omissions of a State authority, a legal entity or officials acting in an official capacity. Among entities whose actions or omissions may be challenged before the competent court listed in the first paragraph of this provision are the bodies of State executive power and their officials".

146. The applicant disputed the Government's arguments.

147. The Court notes that, when the admissibility of the application was being considered by the Court, although the Government referred to the applicant's three written statements of 25 February, 29 April and 27 October 1998 in which he had declared that he had no complaints against the prison administration concerning violations of his rights, the conditions of his detention, the medical treatment he had received or any ill-treatment during his detention on death row, they did not contend that the applicant could not claim to be a "victim" within the meaning of Article 34 of the Convention. In these circumstances, the Government are estopped from raising the objection at the merits stage (see, among other authorities, *Zana v. Turkey*, judgment of 25 November 1997, *Reports of Judgments and Decisions* 1997-VII, p. 2546, § 44; and *Nikolova v. Bulgaria* [GC], no. 31195/96, § 44, ECHR 1999-II).

148. The Court accordingly dismisses the Government's first preliminary objection.

149. As to the Government's second objection, the Court recalls that according to its established case-law the purpose of Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. However, the only remedies to be exhausted are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time.

Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement. One such reason may be the national authorities' remaining totally passive in the face of serious allegations of misconduct or infliction of harm by State agents, for example where they have failed to execute a court order. In such circumstances, the burden of proof shifts once again, so that it becomes incumbent on the respondent Government to show what they have done in response to the scale and seriousness of the matters complained of (see e.g., the Court's judgment of 28 July 1999 in the case of *Selmouni v. France* (no. 25803/94, §§ 74-77, ECHR 1999-V).

150. The Court emphasises that the application of this rule must make due allowance for the context. Accordingly, it has recognised that Article 35

must be applied with some degree of flexibility and without excessive formalism. The Court has recognised that the rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically; in reviewing whether the rule has been observed, it is essential to have regard to the particular circumstances of the individual case. This means, amongst other things, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants (see *Akdivar and Others v. Turkey,* judgment of 16 September 1996, *Reports* 1996-IV, p. 1211, § 69).

151. In the present case the Court notes from the oral evidence before its Delegates and from the documents submitted to it by the parties that the applicant and his mother claim to have lodged several complaints - oral and written - with the governor of the prison, and with other prison authorities concerning the applicant's detention conditions and the medical treatment he was given. The Court finds the applicant's and his mother's evidence in this regard reliable and convincing (see paragraphs 24 and 66 above). Their evidence was partly supported by the testimony of the prison governor, who stated that it was the applicant's mother who had submitted the complaints on his behalf (see paragraph 49 above). The Court considers that the authorities were thereby made sufficiently aware of the applicant's situation and that they had the opportunity to examine the conditions of the applicant's detention and, if appropriate, to offer redress.

152. In so far as it is suggested that the applicant failed to lodge a formal written complaint to the prison authorities concerning his conditions of detention, the Court observes that, although the applicant knew that he could write one letter per month to his relatives (see paragraph 39 above), he was not officially asked to sign a list of the inmates' rights and obligations until 23 September 1999 (see paragraph 22 above). In this regard, it cannot be said that he had sufficient knowledge of precisely what his rights and obligations were. The Government have adduced no evidence to show that the applicant was otherwise made aware of his rights or of the appropriate means by which he might seek redress for his complaints. In these circumstances, it cannot be held against the applicant that he did not lodge a formal complaint about his conditions of detention through the correct channels.

153. As to the possibility of lodging a civil action in the courts, the Court reiterates that Article 35 § 1 requires not only that a domestic remedy is available, but that it is effective to redress the alleged breach of an individual's Convention rights. While it is true that the present applicant did not bring civil proceedings to complain of his conditions of detention, the Court notes that the Government have not shown how recourse to such proceedings could have brought about an improvement in those conditions.

Nor have they supplied any example from domestic case-law to show that such proceedings by a prisoner would have stood any prospect of success.

154. In these circumstances, the Court considers that it has not been sufficiently established that recourse to the remedies suggested by the Government would have been capable of affording redress to the applicant in relation to his complaints concerning his conditions of detention. Accordingly, the Court decides that the Government's objection on grounds of a failure to exhaust domestic remedies cannot be upheld.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

155. The applicant complained about the conditions of detention to which he was subjected on death row in Khmelnitskiy Prison, alleging that these conditions subjected him to treatment falling within the scope of Article 3 of the Convention, which reads as follows:

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

A. Conditions of the applicant's detention on death row

156. The applicant submitted that he had been prevented from having outdoor walks, receiving extra parcels of food from his mother, and receiving two-hour visits from his relatives as provided for by law. He further complained that he had been placed in a single cell for more than six months and that his representative had been refused any information about the regime applied to him.

1. The submissions of the parties

157. The Government submitted that all the relevant detention rules had been applied to the applicant, including those relating to cell facilities, medical treatment, visits and correspondence, as laid down in sections 1, 8, 9, 11, 12 and 13 of the Act, in certain provisions of the Code of Criminal Procedure, in Articles 28, 37, 40, 41, 42 and 43 of the Code, in the Instruction of 20 April 1998 and in the Temporary Provisions. They said that according to section 8(4) of the Act, a person sentenced to capital punishment had to be kept in custody, separated from other prisoners. In certain cases, two inmates might share a cell. According to the Government, on 9 February 1997 the applicant had been confined in a cell which had satisfied the requirements of these provisions. The cell facilities complied with the requirements for sanitary and hygiene standards: it measured 9.75 square metres or 29.2 cubic metres, it had a radio, a bed, a table, sufficient natural and electrical lighting, heating, water supply and a toilet. The cell was heated during the autumn and winter.

158. According to the Government, the applicant had been provided with three meals a day as prescribed by section 11(3) of the 1993 Act, and with clothing, footwear, bedclothes and articles for personal hygiene. Since April 1998 he had been allowed to go for daily outdoor walks of one hour and to do physical exercise.

159. The Government contested the applicant's allegations that he had not been allowed to receive parcels from his mother. They stated that persons sentenced to death were allowed to receive two parcels of up to 8 kg each per month before the sentence came into effect and two parcels of up to 8 kg per year after the sentence became final. According to the prison records, the applicant had received 15 parcels and small packets from his relatives and had never made any complaints about the arrival of food parcels. Besides, inmates could purchase food and toiletries twice a month in a prison shop up to the value of the minimum monthly wage, and newspapers and books without any limitation. The quality of food complied with the national legislation. The Government noted that between October 1997 and October 1998, the applicant had purchased food and toiletries on a regular basis and that between March 1996 and October 1998 his relatives had made 28 requests to visit him, all of which had been granted.

160. They submitted that the applicant's allegations about violations of the rules on detention conditions had been examined and found to be unsubstantiated. The applicant had not lodged any complaints with the prosecution in this respect. His relatives had never complained of the prohibition on sending food parcels. Between 2 February 1996 and 14 April 1998 he had received 15 parcels and between 16 April 1996 and 4 February 1998 his relatives had been permitted to visit him 20 times.

161. The Government also contested the applicant's allegation that the prison authorities had refused to inform his representative about the regime of detention under which he had been held. On 6 January 1998 his representative had been informed that his client's regime had been regulated by the Act, the Correctional Labour Code and the Instruction. He could not examine the Instruction as it was classified as restricted, but he had been given detailed information as to its contents. Moreover, the applicant's representative had not complained that the prison authorities had refused to provide him with information on this issue.

2. The Court's assessment

162. As the Court has held on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy* [GC], no. 26772/75, § 119, ECHR 2000-IV).

163. According to the Court's case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. Furthermore, in considering whether treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. Even the absence of such a purpose cannot conclusively rule out a finding of a violation of this provision (see *Peers v. Greece*, no. 28524/95, §§ 67-68, 74, ECHR 2001-II; and *Valašinas v. Lithuania*, no. 44558/98, § 101, ECHR 2001-VIII).

164. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. In accordance with this provision the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to such distress or hardship exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 93-94, ECHR 2000-XI).

165. In addition, as underlined by the Court in the Soering v. the United Kingdom judgment, present-day attitudes in the Contracting States to capital punishment are relevant for the assessment whether the acceptable threshold of suffering or degradation has been exceeded (see *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, p. 41, § 104). Where the death penalty is imposed, the personal circumstances of the condemned person, the conditions of detention awaiting execution and the length of detention prior to execution are examples of factors capable of bringing the treatment or punishment received by the condemned person within the proscription under Article 3 (ibid.). When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (see *Dougoz v. Greece,* no. 40907/98, § 48, ECHR 2001-III; and *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI).

166. The Court notes that the applicant complained of certain aspects of the conditions to which he was subjected in Khmelnitskiy Prison, where he was detained. It reiterates in this regard that the Convention only governs, for each Contracting Party, facts subsequent to its entry into force in respect

of that Party. The Court therefore has jurisdiction to examine the applicant's complaints in so far as they relate to the period after 11 September 1997, when the Convention came into force in respect of Ukraine. However, in assessing the effect on the applicant of the conditions of his detention, the Court may also have regard to the overall period during which he was detained as a prisoner, including the period prior to 11 September 1997, as well as to the conditions of detention to which he was subjected during that period (see *Kalashnikov v. Russia,* cited above, § 96).

167. The Court further observes that the applicant was detained under a sentence of death until his sentence was commuted to one of life imprisonment in June 2000. As is noted above (see paragraphs 130-132 above), the use of capital punishment in Ukraine was the subject of strong and repeated criticism in Resolutions of the Parliamentary Assembly of the Council of Europe, in which it was recorded that between 9 November 1995 and 11 March 1997 a total of 212 executions had been carried out in the State. However, on the latter date a *de facto* moratorium on executions was declared by the President of Ukraine; on 29 December 1999 the Constitutional Court held the provisions of the Criminal Code governing the use of the death penalty to be unconstitutional; and on 22 February 2000 the death penalty was abolished by law and replaced by a sentence of life imprisonment (see paragraph 19 above). The applicant was sentenced to death in February 1996, over 12 months before the moratorium came into effect. The Court accepts that, until the formal abolition of the death penalty and the commutation of his sentence, the applicant must have been in a state of some uncertainty, fear and anxiety as to his future. However, it considers that the risk that the sentence would be carried out, and the accompanying feelings of fear and anxiety on the part of those sentenced to death, must have diminished as time went on and as the *de facto* moratorium continued in force.

168. At the time of the murders in respect of which the applicant was convicted he was nineteen years old. He has been detained in Khmelnitskiy Prison since 13 March 1995 and remained there after his death sentence had been pronounced by the Khmelnitskiy Regional Court and upheld by the Supreme Court on 26 March 1996 (see paragraphs 11-13 above).

169. The Court accepts the applicant's evidence that he was informed about his rights and obligations as a convicted person on 23 September 1999, when he was given a sheet of paper with the rules containing the rights and obligations of an inmate, which he had to sign (see paragraph 22 above).

170. The Court notes that on the date of its Delegates' visit, about 584 persons were detained in the prison, of whom 411 were in pre-trial detention and 173 were convicted. Nine inmates were on death row, being held in a separate corridor in eight special cells intended for that category of prisoners (see paragraph 45 above). It accepts as convincing and reliable the

applicant's statement that the temperature in his cell was satisfactory during summer but that in winter it was very cold (see paragraph 26 above). This evidence was partly confirmed by the findings of the Court Delegates, who visited the prison at the beginning of October 1999 and found the prison shower cubicle very cold (see paragraph 89 above), and by the prison doctor, who admitted that this part of the prison was cold (see paragraph 83 above). The Court also agrees with the applicant's submission that the shower cubicle was in an unacceptable state, being about 1 metre square, having a ceiling covered only by bars and being lit by an electric lamp. It accepts his evidence, which was not contested by the Government, that he was allowed to take a hot shower once a week (see paragraph 27 above).

171. The only lamp in the applicant's cell was switched on 24 hours a day, but it did not disturb the applicant too much. The Court considers the latter's evidence on this point more reliable rather than the evidence given by his mother that the light was "very bright" who only interpreted what she had heard from her son (see paragraphs 28 and 62 above). The window had to be opened by the prison staff during the applicant's daily walks. The Court accepts the applicant's statement that the window was shuttered until 1 October 1999 (see paragraph 28 above). His evidence was convincing and was in any event not contested by the Government. The toilet in the applicant's cell was not covered, but the applicant was able to flush it (see paragraph 29 above). The Court finds reliable the applicant's and his mother's evidence concerning the small quantity of food he was provided with and low temperature of the water brought from the prison kitchen in order to prepare tea (see paragraphs 25 and 63 above). It also finds plausible the applicant's statement that the conditions in the cells which he had successively occupied were similar (see paragraph 30 above).

172. Although he originally complained about having been placed in a single cell for more than six months, the applicant confirmed on the day of the Delegates' visit that he preferred to be detained alone (see paragraph 23 above). The Court notes that his wish was respected on that day as he was held in a single cell.

173. The applicant did not complain about medical care in the prison, apart from the treatment of tuberculosis. He had applied for dental treatment, but had been told that during such treatment a warder had to be present and that the treatment was lengthy (see paragraph 24 above). He had repeatedly complained about this practice to the head of the prison medical unit and to the medical assistant, without, however, submitting any written complaints. He had not informed his mother about his dental problems.

174. The Court does not consider reliable the applicant's evidence – supported by the statement of his mother – that he received his first parcel from her on 5 October 1998 (see paragraphs 38 and 70 above). It refers to the prison record, according to which the applicant had already received a parcel *(передача)* from his mother on 27 February 1996. She had also

brought him two more parcels on 27 March and 26 April 1996. Moreover, the applicant received small packets *(бандероль)* from her on 27 May, 31 July, 2 October and 5 December 1996, on 5 February, 11 April, 4 June, 4 August, 6 October and 10 December 1997, and on 10 February and 14 April 1998 (see paragraph 93 above). The Court notes that, according to the prison records, the number of parcels or small packets that could be sent to him by his family was never reduced as a consequence of a punishment imposed on him by the prison administration. It observes, however, that according to the applicant's representative's letter of 7 March 2000, the applicant's mother had been denied permission to bring her son a TV set, an electronic game and an extra food parcel (see paragraph 101 above). The Court also notes that although until 23 September 1999 the applicant had not been fully informed of his rights and obligations, including the right to send and receive letters and parcels to and from his relatives, he had written one letter a month (see paragraph 39 above). The applicant never complained that any of his letters had not been sent to its addressee or that he had not received a letter from his relatives.

175. As far as the applicant's visit from his relatives are concerned, the Court notes that according to the prison record, his mother, sometimes accompanied by his grandmother, visited him on 16 April, 16 May, 11 June, 12 July, 13 August, 13 September, 14 October, 15 November and 17 December 1996, on 17 January, 17 February, 20 May, 20 June, 21 July, 27 August, 4 February, 5 March, 8 April, 8 May, 8 June, 10 July, 11 August, 11 September and 12 October 1998. The applicant did not submit that the number of visits was limited, although he originally complained that his relatives' visits did not last two hours as provided for by the national legislation. The Court observes, however, that two-hour visits were prescribed by the Act, which only applied until criminal sentences became final, and that the Temporary Provisions, which also provided for two-hour visits, entered into force on 11 July 1999.

176. The Court notes that the applicant's mother tongue was Polish and that he had encountered some problems on the part of the prison administration when he had tried to communicate with his relatives in Polish. This fact was confirmed by his mother's evidence (see paragraphs 43 and 73 above). The Court notes, however, that the applicant confirmed on the day of the Delegates' visit that the matter had been settled seven months previously, i.e. in March 1999 (see paragraph 43 above).

177. The Court accepts the applicant's evidence that he started having daily one-hour outdoor walks on 5 May 1998, that the walks took place every day and that the applicant did not have the impression that the walks had been shortened. He had to walk alone and was handcuffed during his walks, even during the winter, which had deprived him of the possibility of physical exercise. The Court notes that the handcuffing of the inmates during their walks was confirmed by the applicant's mother, who mentioned

a slightly different date (April 1998) on which the walks had started to take place (see paragraphs 40 and 72).

178. The Court has examined as a whole the conditions to which the applicant was subject during his detention in Khmelnitskiy Prison. While it cannot establish with complete clarity the conditions of detention to which the applicant was subjected prior to the Court Delegates' visit, certain facts are beyond dispute and clearly established. The Court views with particular concern that, until at earliest May 1998, the applicant, in common with other prisoners detained in the prison under a death sentence, was locked up for 24 hours a day in cells which offered only a very restricted living space, that the windows of the cells were covered with the consequence that there was no access to natural light, that there was no provision for any outdoor exercise and that there was little or no opportunity for activities to occupy himself or for human contact. In common with the observations of the CPT concerning the subjection of death row prisoners in Ukraine to similar questions, the Court considers that the detention of the applicant in unacceptable conditions of this kind amounted to degrading treatment in breach of Article 3 of the Convention. The Court further finds that the applicant's situation was aggravated by the fact that he was throughout this period subject to a death sentence, although, as noted in paragraphs 19 and 168 above, a moratorium had been in effect since 11 March 1997.

179. The Court considers that in the present case there is no evidence that there was a positive intention of humiliating or debasing the applicant. However, although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 of the Convention (see *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX; and *Kalashnikov*, cited above, § 101). It considers that the conditions of detention, which the applicant had to endure in particular until May 1998, must have caused him considerable mental suffering, diminishing his human dignity.

180. The Court acknowledges that, between May 1998 and the date of the visit to Ukraine of the Court's Delegates in October 1999, substantial and progressive improvements had taken place, both in the general conditions of the applicant's detention and in the regime applied within the prison. In particular, the coverings over the windows of the cells were removed, daily outdoor walks were introduced and the rights of prisoners to receive visits and to correspond were enhanced. Nevertheless, the Court observes that, by the date of introduction of these improvements, the applicant had already been detained in these deleterious conditions for a period of over 24 months, including a period of 8 months after the Convention had come into force in respect of Ukraine.

181. The Court has also borne in mind, when considering the material conditions in which the applicant was detained and the activities offered to

him, that Ukraine encountered serious socio-economic problems in the course of its systemic transition and that prior to the summer of 1998 the prison authorities were both struggling under difficult economic conditions and occupied with the implementation of new national legislation and related regulations. However, the Court observes that lack of resources cannot in principle justify prison conditions which are so poor as to reach the threshold of treatment contrary to Article 3 of the Convention. Moreover, the economic problems faced by Ukraine cannot in any event explain or excuse the particular conditions of detention which it has found in paragraph 178 to be unacceptable in the present case.

182. There has, accordingly, been a breach of Article 3 of the Convention.

B. The applicant's suffering from tuberculosis in prison

183. The applicant originally complained that he had been placed in a cell with a man suffering from an advanced stage of tuberculosis and that he had become infected and his health had deteriorated. He confirmed his allegations before the Delegates when he stated that he had undergone his first X-ray examination in March 1995, when he had been admitted to Khmelnitskiy Prison. Between that date and September 1997 he had not been X-rayed (see paragraph 34 above). He stated that he had been detained with Mr Yusev for five months, between 3 February and 4 July 1997. However, he did not give any details concerning that statement when interviewed by the Court's Delegates.

184. The Government submitted that medical assistance, treatment and prophylactic and anti-epidemic measures for persons sentenced to capital punishment had been provided in accordance with health-protection legislation. On 13 March and 19 August 1995 the applicant and another inmate had undergone a general examination including an X-ray, which had shown that neither of them had been suffering from tuberculosis. The applicant and Mr Yusev had been placed in the same cell on 3 February 1997. On 4 July 1997 Mr Yusev's general medical examination had shown that he had been suffering from pulmonary tuberculosis without any growth of microbacteria. The applicant and Mr Yusev had been moved to separate cells. On the same day the applicant had undergone a medical examination, which had shown that he was also suffering from pulmonary tuberculosis. According to the Government, he could not have contracted the disease from his cell-mate as they had both become ill at the same time. They had again been in the same cell between 29 October and 14 November 1997 and between 20 February and 14 October 1998.

185. According to the applicant, apart from Mr Yusev, nobody else with whom he had shared his cell had been suffering from tuberculosis.

186. The applicant said that the medication for tuberculosis had been provided by his family. His state of health had not improved immediately after the medication had been administered to him. He said: "It got worse from the very beginning. But as soon as I started taking medicine, my health condition improved." He was not hospitalised.

187. The Court notes that the applicant has been held in Khmelnitskiy Prison since 10 March 1995. It reiterates that, according to the generally recognised principles of international law, the Convention is binding on the Contracting States only in respect of facts occurring after its entry into force. The Convention entered into force in respect of Ukraine on 11 September 1997. However, in assessing the effect on the applicant of the conditions of his detention – during which time he was infected with tuberculosis – the Court may also have regard to the overall period during which he was detained, including the period prior to 11 September 1997.

188. The Court has established that the applicant and Mr Yusev first underwent a medical examination in March and August 1995 respectively, on their admission to the prison. It was not disputed between the parties that the applicant underwent his first X-ray examination on 15 March 1995, which gave a negative result as to the presence of pulmonary tuberculosis. On 11 July 1997 the applicant received isoniazid treatment as a person who was in contact with persons suffering from pulmonary tuberculosis. On 18 September 1997 he was diagnosed as suffering from pulmonary tuberculosis in its latent form. He was given appropriate treatment. On the same day he underwent a complementary medical examination at the Khmelnitskiy TB Division of the Ministry of Public Health. Further examinations at the Division were carried out on 8 June and 7 October 1998 and on 23 February 2000.

189. Mr Yusev underwent his first X-ray examination on 29 August 1995 and his lungs were found to be normal (see paragraph 91 above). X-ray examinations were subsequently carried out on the applicant on 16 June 1996, on 7 August and 24 November 1997, on 10 February, 5 May and 23 September 1998, on 11 January, 15 July and 15 October 1999 and on 21 February and 13 June 2000 (see paragraph 94 above). Mr Yusev was X-rayed on 20 August 1996, on 14 February, 4 July and 24 November 1997, on 10 February, 5 May and 23 September 1998, on 11 January and 15 July 1999 and on 1 March and 13 June 2000. His X-ray examinations on 20 August 1996 and 14 February 1997 confirmed that his lungs and heart were in a good condition. The X-ray examination of 11 July 1997 revealed that he was suffering from pulmonary tuberculosis. On 23 July 1997 a TB specialist at the Khmelnitskiy TB Division of the Ministry of Public Health confirmed that diagnosis. On that date Mr Yusev was given appropriate medical treatment. On 8 June and 7 October 1998 he underwent complementary examinations at the Division. According to the medical

notes of 6 March and 9 June 2000, Mr Yusev's state of health improved and the symptoms of tuberculosis disappeared (see paragraph 95 above).

190. The Court further observes that according to the prison record, the applicant and Mr Yusev shared the same cell between 18 November 1996 and 23 April 1997 and then from 4 November 1997 to 9 June 1998 (see paragraphs 99 and 100 above). The record does not fully accord with the evidence of the applicant who told the Delegates that he had been detained with Mr Yusev from 3 February to 4 July 1997 (see paragraph 34 above) or with that of the Governor of the prison, who appeared to assert that the two inmates had shared a cell until 4 July 1997, when a regular medical examination revealed that Mr Yusev was suffering from tuberculosis (see paragraph 53 above). To the extent that the oral evidence and the contemporaneous prison record conflict, the Court prefers to rely on the latter as likely to be the more accurate and thus finds that the applicant was detained in a separate cell from Mr Yusev from 23 April 1997. The Court further does not consider to be reliable the applicant's evidence that, during the period that they were detained in the same cell, Mr Yusev was already ill. In fact, the latter's X-ray examination of 14 February 1997 showed no pathological changes in his lungs. It was only on 4 July 1997 that an X-ray examination revealed an infiltration in his upper right lung (ibid.). One week later, on 11 July 1997, the diagnosis that Mr Yusev had pulmonary tuberculosis was confirmed and on 23 July 1997 he began intensive chemotherapy (ibid.). The Court underlines in this connection that Mr Yusev's tuberculosis was diagnosed more than two months after he had been detained together with the applicant. It would theoretically be possible for Mr Yusev to have been suffering from tuberculosis while sharing a cell with the applicant and before the pulmonary tuberculosis was officially diagnosed on 11 July 1997. The Court notes that according to the conclusions of the independent medical commission, Mr Yusev and the applicant suffered from two different types of tuberculosis and Mr Yusev was not suffering from an active form of tuberculosis (see paragraph 91 above).

191. The Court further observes that pathological changes in the applicant's upper right lung were revealed for the first time in an X-ray examination carried out on 7 August 1997 (see paragraph 91 above), more than three months after he had been separated from Mr Yusev; the fact that he was suffering from pulmonary tuberculosis was officially established on 18 September 1997. On that day his intensive chemotherapy started. The date on which the applicant was diagnosed with tuberculosis was confirmed by the prison governor (see paragraph 53 above).

192. Having regard to these circumstances, the Court does not consider plausible the applicant's and his mother's argument that the applicant was infected by Mr Yusev. It points out in this regard that according to the medical report, the applicant and Mr Yusev suffered from two different

sorts of tuberculosis: the applicant suffered from focal tuberculosis and Mr Yusev from infiltrative tuberculosis. Moreover, the medical report mentioned that Mr Yusev did not suffer from an active form of tuberculosis, not excreting tuberculosis microbacteria and therefore not presenting an epidemiological danger.

193. The Court accepts the Government's argument, which is supported by the medical report (see paragraph 91 above), that the applicant and Mr Yusev received appropriate and adequate medical treatment. It therefore considers convincing the findings of the medical commission that during the second period in which the applicant and Mr Yusev shared a cell (from 4 November 1997 to 9 June 1998) – four months after Mr Yusev had been found to be suffering from tuberculosis and had started his treatment, and one and a half to two months after the applicant had been found to be infected with tuberculosis and had started his treatment – there would have been a very insubstantial risk of repeated infection of the applicant by Mr Yusev (ibid.)

194. The Court adds that according to the medical documents submitted to it and the results of the enquiry carried out by the medical commission (see paragraph 91 above), the applicant's and Mr Yusev's health conditions are satisfactory and they are under continuous medical supervision.

195. In the light of all these circumstances, the Court concludes that the applicant was not subjected to ill-treatment prohibited by Article 3 of the Convention as a result of the pulmonary tuberculosis from which he was suffering in Khmelnitskiy Prison.

196. There has therefore not been a breach of this provision on that account.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

197. The Court considers that the applicant's complaints that he had been prevented from receiving extra parcels of food from his mother and receiving two-hour visits from his relatives fall to be examined under Article 8 of the Convention, which provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is 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."

198. The Court first reiterates that the Convention only governs, for each Contracting Party, facts subsequent to its entry into force in respect of that Party. The Court therefore has jurisdiction to examine the

applicant's complaints in so far as they relate to the period after 11 September 1997, when the Convention entered into force in respect of Ukraine.

199. From the prison record it appears that the applicant received parcels from his mother on 27 February, 27 March and 26 April 1996. Moreover, he received small packets *(бандероль)* from her on 27 May, 31 July, 2 October and 5 December 1996, on 5 February, 11 April, 4 June, 4 August, 6 October and 10 December 1997, and on 10 February and 14 April 1998 (see paragraph 93 above). The Court notes that the number of parcels or small packets that could be sent to the applicant by his family was never reduced as a consequence of a punishment imposed on him by the prison administration.

200. The Court considers that by limiting the number of parcels and small packets which the applicant was allowed to receive and by preventing him from receiving two-hour visits from his relatives, the public authorities interfered with the applicant's right to respect for his private and family life and his correspondence guaranteed by Article 8 § 1 of the Convention and that such a restriction can only be justified if the conditions in the second paragraph of that provision are met.

201. The Court must first consider 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,* judgments of 24 April 1990, Series A no. 176-A, p. 20, § 27, and Series A no. 176-B, p. 52, § 26, respectively).

202. The Government referred in their written observations to the Act. In their further observations, they added a reference to the Correctional Labour Code ("the Code"), the Instruction and the Temporary Provisions (see paragraph 158 above).

A. Period between 11 September 1997 and 11 July 1999

203. The Court observes that the Act governs the conditions of detention until a sentence becomes final. It appears from the statements of the witnesses heard by the Court Delegates during their fact-finding visit and the documents submitted by the Government that after the sentence became final, the detention conditions of persons sentenced to capital punishment were mainly governed by the Instruction issued by the Ministry of Justice, the Prosecutor General and the Supreme Court (see paragraph 112 above). However, the Code provides a general legal basis for the conditions of detention (see paragraphs 121-126 above).

1. Correctional Labour Code

204. The Court notes that although the Code satisfies the second requirement resulting from the phrase "in accordance with the law", namely that the law be accessible, this is not true of the third requirement, namely that the law be foreseeable as regards the meaning and nature of the applicable measures.

205. It observes that the Government refer to Article 41 § 3 of the Code according to which "irrespective of the type of regime under which they are held, sentenced persons are not allowed to receive more than two small packages per year" (see paragraph 124 above). However, this provision constitutes a part of Article 41, which establishes the rules concerning receipt of parcels and small packets by persons sentenced to imprisonment. The Court considers that it is not certain that persons sentenced to death are included among persons sentenced to imprisonment *(позбавлення волі)* within the meaning of the Code, a death sentence being imposed because the offender is deemed incapable of reform through imprisonment. The Court observes that the legal position is made more uncertain by the second paragraph of Article 41 of the Code which provides that "convicted persons serving their sentence in a prison are not allowed to receive parcels". In the present case, the applicant was detained in Khmelnitskiy Prison, and not in a corrective labour colony, an educational labour colony or a corrective labour colony-camp mentioned in the first and fourth paragraphs of the same Article (ibid.).

206. In the light of these circumstances, the Court finds that the restrictions imposed by the Code referred to by the Government in the present case were not sufficiently foreseeable to comply with the requirements of the second paragraph of Article 8 of the Convention in that the applicant could not know with sufficient certainty whether the limits laid down in the Code as to the number of parcels and packages which prisoners were allowed to receive from relatives applied to him.

2. Instruction

207. The Court notes that it was established that the Instruction was an internal document which was not accessible to the public: the Government submitted only part of it to the Court.

208. The Court finds that in these circumstances it cannot be said that the interference with the applicant's right to respect for his private and family life and his correspondence was "in accordance with the law" as required by Article 8 § 2 of the Convention. It is true that the Instruction was replaced by the Temporary Provisions**,** approved by the State Department for Execution of Sentences on 25 June 1999 as Order no. 72 and registered by the Ministry of Justice on 1 July 1999 as no. 426/3719, which entered into force on 11 July 1999 and are accessible to the public.

However, the Temporary Provisions have no application to the facts occurring before 11 July 1999.

209. There has consequently been a violation of Article 8 of the Convention as regards the period between 11 September 1997 and 11 July 1999.

B. Period after 11 July 1999

210. The Court observes that the applicant's original complaint concerned the period prior to 11 July 1999 when he had the right to receive two small packets per year (see paragraph 113 above), and that he has made no complaint that his correspondence was controlled after this date.

211. However, taking into account the importance of contact between prisoners sentenced to death and their families, it considers it appropriate to examine also the restrictions imposed by the Temporary Provisions whereby the applicant was allowed to receive six parcels and three small packages a year.

It is accepted that such a limitation constitutes an interference with the right to respect for correspondence. Such an interference is "in accordance with the law", namely the Temporary Provisions, and can be regarded as pursuing the legitimate aim of the "prevention of disorder or crime", bearing in mind the interest of the prison authorities in ensuring that material harmful to prison security is not smuggled into prisons.

212. As regards the necessity of the interference, the Court must take into account the logistical problem involved in processing an unrestricted quantity of parcels arriving in a large penitentiary, in this case an establishment with 584 inmates (see paragraph 45 above). Granting permission to inmates to receive an unlimited number of parcels or packages would involve a substantial amount of work on the part of by prison staff in checking each parcel with a view to safeguarding prison security. The security regime inside the prison is aimed at protecting the public at large from dangerous offenders and also at protecting the prison inmates themselves. The prison authorities thus have a legitimate interest in protecting security by means which seek to reduce or limit security risks. At the same time a proper balance must be struck between the interests of security and respect for the right of inmates to maintain contact with the outside world.

213. In the present case the Court considers that the possibility of receiving parcels or small packets every sixth week can be regarded as respecting such a balance, bearing in mind that the prison authorities are able to provide clothing, meals and medical care for all prisoners during their detention. In addition, the Court has heard evidence from the Government that there is no restriction on relatives sending money to inmates to enable them to purchase goods in the prison shop.

214. Against this background and bearing in mind the margin of appreciation afforded to the Government in the regulation of prison life, the Court considers that the measures are proportionate to the aim of preventing disorder or crime.

215. There has accordingly been no violation of Article 8 of the Convention as regards the period after 11 July 1999.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

216. The applicant complained that for more than eight months he had not been allowed a visit by a notary for the purposes of certifying his power of attorney.

217. The Court understands this part of the application as a complaint that, in consequence of the refusal of a visit from a notary, the applicant had been unable to have certified a power of attorney in favour of his legal representative and had thereby been prevented from having access to an effective remedy in respect of his Convention claims. It therefore considers it appropriate to examine the applicant's complaint under 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."

218. The applicant submitted that the problems which had arisen in connection with his request to the prison governor to certify his representative had all been artificial because prison governors had normally certified letters of authority by persons sentenced to death.

219. The Government submitted that during 1997 the applicant's mother had repeatedly requested the prison governor to certify a power of attorney from her son in favour of his representative so that he could act for him in the criminal proceedings which had led to his detention. As the prison governor had not been competent to deal with her requests, the case had been referred to the Khmelnitskiy Regional Court, which on 10 December 1997 had permitted a notary to visit the applicant. The visit had taken place on 10 February 1998.

220. The Court notes that according to the applicant, it was his mother who had requested that a notary come to see him in the prison. He personally had not applied for the visit in writing, but only orally. On the day of the Court Delegates' visit, the applicant confirmed that permission from the prison authorities for a visit by the notary public had been delayed and had been given only after a decision by the Regional Court, and that the notary had visited him on 2 February 1998. He complained that the court decision had been given on 10 December 1997 and permission had been

granted two months later. He confirmed, nevertheless, that this delay had not caused any damage to him (see paragraph 41 above).

221. In the light of these circumstances, the Court considers that the above mentioned situation cannot be regarded as a breach of the applicant's right to effective remedies.

222. Accordingly, there has been no violation of Article 13 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

223. 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."

224. The applicant's mother claimed on behalf of her son 90,000 Ukrainian hryvnas (UAH) for non-pecuniary damage resulting from her son's and her own emotional suffering. She also claimed UAH 38,270 for costs and expenses incurred in connection with the journeys and administrative steps undertaken following the criminal proceedings before the national courts and during the proceedings before the Convention institutions.

Mr Voskoboynikov, for his part, claimed UAH 24,000 for non-pecuniary damage and UAH 16,040 for costs and expenses.

225. The Government found the claims for non-pecuniary damage unsubstantiated, noting that neither the applicant's mother nor Mr Voskoboynikov were themselves party to the proceedings before the Court. Their claims for compensation for the distress allegedly suffered by the applicant's mother, father and grandmother because of the applicant's having contracted tuberculosis, and Mr Voskoboynikov's claims for compensation for moral damage allegedly caused by the State authorities when he acted as the applicant's representative should be rejected.

As to the compensation for non-pecuniary damage claimed by the applicant, the Government considered the amount excessive and not corroborated by any evidence that the applicant had sustained moral suffering as the result of violations of the Convention. The Government requested the Court to determine the amount of compensation on an equitable basis taking into account the substantial improvement of the conditions of the applicant's detention and having regard to the economic situation in Ukraine.

226. The Government further noted that neither the applicant's mother nor Mr Voskoboynikov had presented any documents proving that the expenses claimed by them had actually been incurred. Moreover, according to the Government, the amounts calculated by them were not precise. The

applicant's mother had not submitted any proof of the expenses allegedly incurred by Mr Ostrovsky, defence lawyer. The Government maintained that there was no indication that the work carried out by this lawyer related to the proceedings before the Convention organs or to any proceedings before the national institutions for the prevention or redress of the violation of the Convention. In addition, there was no evidence that the applicant's mother had been under any legal obligation to pay those fees.

227. In reply to the Government's observations, the applicant's mother modified her claims for just satisfaction claiming, for the period from 1 March 1995 to 9 September 1999 (date on which the applicant's former representative submitted his claims for just satisfaction), UAH 13,291,460 for non-pecuniary damage resulting from her son's emotional and psychological suffering, UAH 10,017,460 for non-pecuniary damage resulting from her own psychological suffering and negative impacts on her private life, and UAH 600,000 for non-pecuniary damage relating to the applicant's family members' emotional suffering resulting from the applicant's allegedly illegal sentence and the fact that he contracted tuberculosis. She further claims UAH 1,150,000 for non-pecuniary damage for deterioration of the applicant's and his family members' health. As far as the pecuniary damage is concerned, she claims UAH 42,390.

Moreover, for the period after 9 September 1999, she claims UAH 82,125 for non-pecuniary damage resulting from her son's and his family's psychical distress, UAH 16,425 for non-pecuniary damage for deterioration of the applicant's and her health. She also claims UAH 26,530 for pecuniary damage.

228. The Court, bearing in mind its finding above regarding the applicant's complaints under Articles 3 and 8 of the Convention, considers that he suffered some non-pecuniary damage in connection with the general conditions of detention and the restrictions by the public authorities on his right to respect for his private and family life and for his correspondence (see paragraph 181 above). Making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 for non-pecuniary damage, plus any tax that may be chargeable.

Default interest

229. 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 (see *Christine Goodwin v. the United Kingdom*, no. 28957/95, 3 July 2002, § 124, to be published in ECHR 2002).

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Holds* that there has been a violation of Article 3 of the Convention as regards the conditions of detention to which the applicant was subjected on death row;

3. *Holds* that there has been no violation of Article 3 of the Convention as regards the alleged ill-treatment of the applicant in Khmelnitskiy Prison on account of his infection with tuberculosis;

4. *Holds* that there has been a violation of Article 8 of the Convention 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 is concerned;

5. *Holds* that there has been no violation of Article 8 of the Convention 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;

6. *Holds* that there has been no violation of Article 13 of the Convention;

7. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into Ukrainian hryvnas at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (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;

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

Done in English, and notified in writing on 29 April 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President