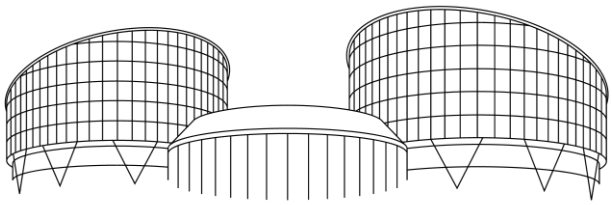

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SALAKHOV AND ISLYAMOVA v. UKRAINE

(Application no. 28005/08)

JUDGMENT

STRASBOURG

14 March 2013

FINAL

14/06/2013

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

In the case of Salakhov and Islyamova v. Ukraine,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ganna Yudkivska,
André Potocki,
Paul Lemmens,
Aleš Pejchal, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 12 February 2013,

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

PROCEDURE

1. The case originated in an application (no. 28005/08) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Linar Irekovich Salakhov ("the first applicant"), on 8 June 2008. On 2 August 2008 the first applicant died, and on 1 September 2008 his mother, also a Ukrainian national, Ms Aliya Fazylovna Islyamova ("the second applicant"), expressed the wish to pursue the application on his behalf and joined her own complaints to the case.

2. The applicants were represented by Mr A. Lesovoy, a lawyer practising in Simferopol. The Ukrainian Government ("the Government") were most recently represented by their Agent, Mr Nazar Kulchytskyy.

3. The applicants complained under Articles 2 and 3 of the Convention that prompt and adequate medical care had not been available to the first applicant in detention, which had jeopardised his life. They also complained that the State authorities had failed to ensure his immediate hospitalisation as was indicated by the Court under Rule 39 of the Rules of Court. Following the death of the first applicant, his mother blamed the authorities for it. In addition to the aforementioned grievances, she complained about her son's handcuffing in hospital. Furthermore, she complained that there had been no effective domestic investigation into his death. Lastly, the second applicant complained under Article 3 of the Convention about her own suffering in respect of the aforementioned.

4. On 7 September 2009 the President of the Fifth Section decided to communicate to the Government the complaints under Articles 2 and 3 of the Convention in respect of the first applicant. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. On 29 May 2012 the Chamber decided, under Rule 54 § 2 (c) of the Rules of Court, that the parties should be invited to submit further written

observations on the admissibility and merits of the application, as regards the complaint under Article 3 of the Convention in respect of the second applicant and the State's compliance with the interim measure indicated by the Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant was born in 1981 and died on 2 August 2008. The second applicant was born in 1955 and lives in the town of Zuya in Crimea.

A. Background information

7. On 30 September 2005 the first applicant tested HIV positive.

8. On 2 February 2006 the Centre for the Prevention and Combating of Aids in Crimea ("the Aids Centre") informed him of the test results and invited him to register for medical monitoring. The first applicant did not, however, follow the advice (see also paragraphs 21 and 59 below).

B. Criminal proceedings against the first applicant and his medical treatment in detention

9. On 20 November 2007 the first applicant was arrested by the police on suspicion of having robbed an acquaintance of a mobile phone. According to the second applicant, on the same day her son informed the investigator about his HIV status and expressed the fear that his health might deteriorate in detention. This information was allegedly ignored. According to the Government, the first applicant did not disclose his HIV status.

10. The first applicant was placed in the Temporary Detention Facility of the Bakhchysaray Police Station ("the ITT"). The officer on duty examined him and reported that he had no visible injuries and had raised no complaints.

11. On 23 November 2007 the Bakhchysaray District Court ("the Bakhchysaray Court") remanded the first applicant in custody pending trial.

12. On 30 November 2007 the first applicant was X-rayed in the local polyclinic; no lung pathology was revealed.

13. On 2 December 2007 he was taken from the ITT to Simferopol Pre-Trial Detention Centre no. 15 ("the SIZO"), where he was examined by a therapist (general practitioner), a dermatologist, a dentist and a psychiatrist. All found him to be in good health. According to the medical records, the first applicant did not have any health-related complaints and did not report

any illnesses. His height and weight were recorded as 180 cm and 78 kg respectively.

14. The first applicant was detained in the SIZO from 2 to 28 December 2007, then subsequently from 10 January to 10 February 2008, and from 18 February to 2 June 2008. During the intervening periods, from 28 December 2007 to 10 January 2008, from 10 to 18 February, and from 2 to 20 June 2008, he was held in the ITT.

15. According to the records of his medical examinations of 10 January and 10 and 18 February 2008, he appeared to be in good health and did not raise any health-related complaints.

16. According to the SIZO medical register, on 28, 29 and 30 May 2008 the first applicant complained of nasal stuffiness, rhinitis, and a sore throat. The SIZO therapist diagnosed him with an "acute respiratory viral infection" and prescribed medication.

17. As to the intervening period between the aforementioned records of 18 February and 28 May 2008, no documents are available in the case file. The applicants submitted, however, that in early March 2008 the first applicant's health had sharply deteriorated. He allegedly had a constant fever of 39-40ºC and suffered from serious digestive disorders. According to the applicants, the administration of the detention facilities called for an ambulance in that regard on many occasions. The nature of the ambulance interventions remained unclear.

18. On 31 May 2008 the first applicant was additionally examined by an infectious disease specialist at the SIZO, who issued a note stating the following. The first applicant had been complaining of experiencing fevers and losing weight for the preceding two months. The doctor recommended an HIV test, to which the first applicant agreed. The test was scheduled for 2 June 2008. However, it did not take place because of the first applicant's transfer from the SIZO to the ITT (see paragraph 14 above).

19. On 2 June 2008, following another transfer from the SIZO to the ITT, the first applicant complained to the ITT medical attendant about feeling weak and having fever and back pain. The medical attendant administered some antipyretics to him.

20. On 3 June 2008 the first applicant was taken to the Central Hospital, where he was examined by a therapist and underwent ultrasound scans of his liver, gallbladder, pancreas, spleen and kidneys. The following tests were also carried out: chest X-ray, electrocardiogram, esophagogastroduodenoscopy, as well as general blood and urine analyses. The therapist diagnosed the applicant with an ulcer, gastrointestinal hemorrhage, haemorrhoids, chronic bronchitis, and suspected HIV infection.

21. On 4 June 2008 the Chief Doctor of the Aids Centre informed the second applicant, in reply to her enquiry of 3 June 2008, that her son had tested HIV positive on 30 September 2005, and had been informed of the result on 2 February 2006, but that he was not registered for monitoring in that Centre.

22. On 5 June 2008 the first applicant was again taken to the Central Hospital, this time for examination by an infectious disease specialist. According to a note issued by the doctor, the first applicant complained to him about suffering from stomach aches, mouth lesions, a skin rash, coughing, and shortness of breath. He also complained of having lost about 10 kg during the preceding three months. Having examined the first applicant, the doctor diagnosed him with pneumocystis pneumonia, oropharynx-esophagus candidiosis (thrush) and an ulcer. Moreover, he concluded that the symptoms disclosed HIV infection at the fourth clinical stage. While the doctor assessed the first applicant's condition as being "moderately severe" and noted that he required medical treatment for the aforementioned conditions, a general conclusion was reached that there was no urgent need for hospitalisation.

23. The first applicant's mother was informed of the diagnoses. She bought the prescribed medications, and the ITT medical attendant administered them to her son.

24. On 6 June 2008 the first applicant's lawyer requested the Bakhchysaray Court to release his client on account of his critical state of health. He noted that the first applicant required urgent specialised medical treatment because he had HIV infection at the fourth clinical stage and concomitant oesophagal candidosis and pneumocystis pneumonia. The lawyer stated that the first applicant's life hung in the balance and that in order to save it he needed to be at liberty so as be able to seek proper medical care. Moreover, the lawyer pointed out, his client had a permanent place of residence and he had neither absconded from the investigation nor hindered it in any way. Furthermore, given his desperate health condition he did not present any danger to society.

25. The Bakhchysaray Court rejected the above-mentioned request (this ruling is not available in the case file before the Court).

26. On 11 June 2008 the Bakhchysaray District Prosecutor's Office instructed the local police department to take the first applicant to the Central Hospital for another examination with a view to clarifying whether his state of health was compatible with detention.

27. On 13 June 2008 the first applicant was taken to the Central Hospital, where he was again examined by an infectious disease specialist. The doctor reached a preliminary conclusion that the first applicant was suffering from HIV infection at the second clinical stage, which did not necessitate urgent hospitalisation. A further examination in the Aids Centre was recommended with a view to deciding on the necessary medical treatment. The doctor also made arrangements for the first applicant to have laboratory tests, such as blood and urine analyses and a sugar test, and a chest X-ray.

28. On 16 June 2008 the applicants requested the Court to indicate to the Ukrainian Government, under Rule 39 of the Rules of Court, that the first applicant should be hospitalised and treated as a matter of urgency given the serious deterioration of his health and the alleged lack of adequate medical treatment.

29. On 17 June 2008 the President of the Fifth Section decided to grant that request and to indicate to the respondent Government, under Rule 39 of the Rules of Court, that the first applicant "should be transferred immediately to a hospital or other medical institution where he [could] receive the appropriate treatment for his medical condition until further notice." On the same day (Tuesday, a working day) a fax message was sent to the Government informing them of this decision.

30. On 18 June 2008 the first applicant's lawyer once again requested the Bakhchysaray Court to release his client. He reiterated that the first applicant's life was in danger. The lawyer also referred to the aforementioned decision of the Court regarding the application of Rule 39 of the Rules of Court in the first applicant's case.

31. On the same date, 18 June 2008, following another enquiry by the Bakhchysaray police about the need for the first applicant's hospitalisation, the Chief Doctor of the Infectious Diseases Department of the Central Hospital stated that the first applicant did not require urgent hospitalisation.

32. As a result, the Bakhchysaray Court rejected the first applicant's request for release submitted earlier that day.

33. On 18 June 2008 the second applicant complained to the Chief Doctor of the Central Hospital about the alleged failure of its staff to provide her son with adequate medical assistance in spite of the applications she had made in that regard on 4 and 5 June, as well as twice on 13 June 2008. She insisted that his life was in danger. According to the second applicant, her son had never undergone a complete medical examination. She considered that the doctors were avoiding treating him because he was, firstly, HIV-positive and, secondly, a detainee.

34. On 20 June 2008 the first applicant was taken to the Aids Centre, where the following diagnoses, classified as preliminary, were established: HIV infection at the fourth clinical stage, systemic candidosis of the oropharynx and oesophagus, continuous fever with expressed intoxication syndrome, a loss of body weight of more than 15%, and seborrheic dermatitis of the scalp. The doctors at the Aids Centre concluded that he required an additional examination with a view to clarifying the diagnoses, as well as in-patient medical treatment.

35. On the same day, he was transferred to the Central Hospital, where he was placed in a ward under police guard. According to the second applicant, her son was kept continuously handcuffed to his bed. She submitted to the Court his two photos taken on 25 June 2008. They showed the first applicant with his left hand handcuffed to the hospital bed. According to the letter of the First Deputy Minister of Public Health to the Government Agent of 23 October 2009 (see also paragraph 67 below), which referred to the first applicant's medical file in the Central Hospital, on 20 June 2008 he arrived there handcuffed. However, it was not recorded in the medical file whether he remained handcuffed throughout his treatment in that hospital.

36. At some point on 20 June 2008 the first applicant wrote an "explanatory note" to the police, according to which he had informed

neither the SIZO nor the ITT administration about his HIV infection "for understandable reasons". After his mother had informed them that he might have that diagnosis, on 5 and 13 June 2008 he had undergone medical examinations in the Central Hospital resulting in the prescription of certain medication. The medical attendant had later administered that medication to him in the ITT. The first applicant stated that he had no complaints about the ITT staff. According to the second applicant, however, her son had written the aforementioned note under duress.

37. On 24 June 2008 the first applicant wrote another note in which he stated that he had started to feel unwell during his detention (the date is illegible on the available copy). He noted that he had sought examination by a therapist on account of his continuous fever, as well as kidney, liver and intestinal pain. The medical attendant had been sent to him instead and had merely given him antipyretics. As he had not got any better, at some point between 22 and 25 May 2008 the medical attendant had begun administering injections of ceftriaxone (an antibiotic) to him. The fever and backache had, however, not ceased. As a result, on 29 May 2008 he had been placed in the SIZO hospital, without any changes to his treatment. Following his transfer to the ITT, on 4 June 2008 he had started to intake some other medicines which had been bought by his mother.

38. On 24 June 2008 the first applicant's lawyer again requested the release of his client, referring to the seriousness of his condition, as well as to the fact that the prosecutor did not object to his release.

39. On the same date the Bakhchysaray Prosecutor requested the judge dealing with the first applicant's criminal case to bring forward the hearing scheduled for 3 July 2008 given "the critical condition" of the first applicant and the need for him to undergo treatment in Simferopol Hospital no. 7, which specialised in the treatment of Aids ("Hospital no. 7"). The prosecutor noted the necessity to examine the aforementioned release request promptly.

40. On an unspecified date (possibly 4 July 2008 – see paragraph 47 below) the Bakhchysaray Court rejected the aforementioned request for the first applicant's release.

41. On 26 June 2008 the Chief Doctor of the Central Hospital responded to the second applicant's complaint about the alleged failure to provide her son with the required medical assistance. He noted that the available medical records were insufficient for evaluating the development of his disease over time. The requests for medical assistance addressed to the Hospital had been of a contextual nature and assistance had been duly provided.

42. On the same day the first applicant was transferred from the Central Hospital to Hospital no. 7.

43. According to an extract from his medical record while in Hospital no. 7, his diagnoses included those established by the Aids Centre on 20 June 2008 (see paragraph 34 above), plus the following: pneumocystis pneumonia, second-degree anaemia, heavy immunosuppression (the CD4

count[1] being 48 cells/mm^3), and encephalitis of unclear origin. Furthermore, toxic hepatitis, hepatolienal syndrome, superficial gastritis, and duodenogastric reflux were indicated as concurrent illnesses.

44. According to the letter of the First Deputy Minister of Public Health to the Government Agent of 23 October 2009 (see also paragraph 67 below), which further referred to information from the management of Hospital no. 7, the first applicant had been handcuffed during his treatment in Hospital no. 7 from 26 June to 18 July 2008. At the same time, it was noted in the aforementioned letter that there was no information as to whether the handcuffing had been constant.

45. On 2 July 2008 the ITT Governor examined the second applicant's complaint about the alleged failure to provide her son with the required medical assistance and delivered a decision refusing to launch a criminal investigation into the matter. He noted that the first applicant had hidden from the administration the fact that he was HIV-positive. In any event, he had received adequate medical care during his detention in the ITT.

46. On the same day the Chief Doctor of Hospital no. 7 wrote to the Chief of the Bakhchysaray Police Department, stating that the first applicant required lengthy medical treatment, that he needed to be unrestricted in his movements, and that any interruption in his treatment would trigger a sharp deterioration in his health.

47. On 4 July 2008 the Bakhchysaray Court found the first applicant guilty of fraud (instead of the robbery charge advanced by the prosecution – see paragraph 9 above) and sentenced him to a fine of 850 Ukrainian hryvnias (at the time equivalent of 115 euros). It was noted in the judgment that, until it became final the first applicant was to remain in detention.

48. On 10 July 2008 antiretroviral therapy began to be administered to the first applicant in Hospital no. 7. According to the information provided by the Public Health Ministry in its letter to the Government Agent of 23 October 2009, the first applicant had refused – apparently on one occasion – to take the prescribed medication.

49. On the same date, 10 July 2008, the second applicant requested the Chief of the Bakhchysaray Police Department to allow her to visit her son and to take care of him in the hospital given his critical condition. She also complained to the Bakhchysaray Prosecutor about the first applicant's continuous handcuffing and sought its discontinuation.

50. On 15 July 2008 the Chief of the Bakhchysaray Police replied to the second applicant that her son would in any case soon be released once the judgment of 4 July 2008 became final.

51. On 18 July 2008 the first applicant's lawyer also sought discontinuation of the handcuffing, noting that it was already clear that his

1. CD4 cell-count testing is an immunological evaluation used for deciding when to initiate of the antiretroviral therapy. According to the WHO guidelines of 2006, antiretroviral therapy was to be applied when CD4 count was ≤200 cells/mm^3. The 2010 revision of the guidelines raised that threshold to ≤350 cells/mm^3 (antiretroviral therapy should be started regardless of the presence or absence of clinical symptoms). Information taken from: http://whqlibdoc.who.int/publications/2010/9789241599764_eng.pdf

client was about to die; nevertheless, he remained guarded by two police officers in a ward with barred windows, handcuffed to his bed. Such security measures were not only unjustified, but also inhuman. The lawyer further submitted that, as the second applicant had discovered, certain police officers guarding her son had mockingly offered him to install a cable in the ward and to handcuff him to that cable so that his movements would be "practically unrestrained".

C. The first applicant's medical treatment after his release from detention and his death

52. On 18 July 2008 the police lifted the security measures in respect of the first applicant (apparently on the ground that the judgment of 4 July had become final), and the second applicant took him home. She wrote a note to the administration of Hospital no. 7 stating that she was taking her son home "for family reasons".

53. On the following day, however, the first applicant was hospitalised again in Hospital no. 7 because of a deterioration in his health.

54. On 1 August 2008 the second applicant took him home again, having written a note to the hospital administration similar to that of 18 July 2008.

55. On 2 August 2008 the first applicant died.

D. Investigation into the death of the first applicant

56. Following the death of her son, the second applicant complained to the prosecution authorities about the alleged denial of timely and adequate medical care available for him in detention which, according to her, had led to his death.

57. On 20 January 2009 the Bakhchysaray Prosecutor informed her that the ITT governor's decision of 2 July 2008 (see paragraph 45 above) had been quashed and the investigation into the medical assistance provided to the first applicant had been resumed.

58. On 17 February 2009 the Ministry of Public Health set up a commission for investigating the matter.

59. On 20 March 2009 the commission issued an official investigation report which concluded that the Central Hospital's doctors bore no responsibility for the first applicant's death. It noted that although the Aids Centre had informed him about his HIV-positive status and had explained to him the necessity of medical monitoring as early as on 2 February 2006, the first applicant had not sought any medical examinations or monitoring. As a result, the antiretroviral therapy had not been started in good time, thus complicating the development of the disease. The commission gave its general findings as follows:

> "1. Medical care to persons in custody is the duty of the police medical staff.

2. Specialists of the Central Hospital do not provide medical consultations or examinations to persons in custody without being called on to do so by the [detention facilities'] personnel.

3. The [first applicant] benefited from examinations, specialist consultations, laboratory tests and treatment in Central Hospital fully and according to the approved standards.

4. The deterioration of [his] health and the complications are attributable to the delay in his application for medical care after testing HIV-positive, as well as the severity of the main disease, which triggered irreversible processes in [his] organism."

60. On 23 March 2009 the second applicant again complained to the Bakhchysaray Prosecutor. She referred, in particular, to the allegedly unjustified conclusion of the infectious disease specialist of 13 June 2008, according to which her son had not required urgent hospitalisation at that time (see paragraph 27 above).

61. On 31 March 2009 the Bakhchysaray Prosecutor refused to institute criminal proceedings against the police or the Central Hospital's staff, finding the second applicant's complaint to be unsubstantiated.

62. On 3 April 2009 the Bakhchysaray Prosecutor quashed the decision of 31 March 2009 as further investigation was required, which was to include the following measures: questioning of the second applicant, the ITT staff, and the Central Hospital doctors concerned.

63. On 4 May 2009 the second applicant was questioned by the prosecutor. She submitted that her son's health had started to deteriorate drastically in March 2008 and that he had not received prompt and adequate medical treatment. According to her, the administration of the detention facilities had merely called for an ambulance on several occasions. She insisted on the seizure and examination of all the medical documentation regarding her son – from the ITT, the SIZO, the Central Hospital and Hospital no. 7 – with a view to an evaluation of his medical needs and the actual response to them from November 2007.

64. On 25 May 2009 the Bakhchysaray Prosecutor refused to open criminal proceedings against the police or the Central Hospital's staff, on account of lack of *corpus delicti* in their actions. He relied, in particular, on the conclusions of the Ministry of Public Health's commission (see paragraph 59 above), as well as statements by police officers and doctors.

65. On 18 August 2009 the Bakhchysaray Court upheld that decision. It noted that the first applicant had himself raised no complaints against the police or medical staff. Furthermore, it appeared that as soon as the authorities had become aware of his HIV status they had provided him with adequate medical treatment.

66. On 13 October 2009 the Court of Appeal of the Autonomous Republic of Crimea ("the Crimea Court of Appeal") quashed the ruling of 18 August 2009 and allowed the second applicant's appeal. It criticised the investigation, in particular, for its failure to give any consideration to the first applicant's state of health and the medical assistance, if any, provided to him in detention from 20 November 2007 to early June 2008. Furthermore, the appellate court noted that the impugned ruling had been

delivered by the first-instance court in the second applicant's absence and without any proof that she had been duly notified of the hearing. It remitted the case to the Bakhchysaray Court.

67. On 23 October 2009 the First Deputy Minister of Public Health sent a letter to the Government Agent, in reply to the latter's enquiry following the communication of the application to the Government by the Court (see also paragraphs 35, 44 and 48 above). It contained the following conclusions:

> "1. The reasons for the deterioration of the [first applicant's] health and the complications in the development of [his] disease were as follows: the delayed application of [the first applicant] to [the Aids Centre] for specific medical assistance (since 2005), the seriousness of the main disease (Aids), and the irregularities in his antiretroviral treatment (there were refusals [on his part] to take the medication).
>
> 2. The death of the [first] applicant is not related to his medical treatment or the conditions in the medical facilities where he was held. It was caused by the gravity of the main disease, which triggered irreversible processes in [his] organism."

68. On 17 December 2009 the Bakhchysaray Court quashed the decision of 25 May 2009 (see paragraph 64 above) and remitted the case to the Bakhchysaray Prosecutor for additional investigation.

69. On 19 August 2010 the Bakhchysaray Prosecutor ordered a forensic medical examination with a view to responding to the following questions:

(1) Did the Central Hospital's therapist establish correct diagnoses in respect of the first applicant on 3 June 2008 (for details see paragraph 20 above)?

(2) Were the diagnoses established by the infectious disease specialist on 5 June 2008 (for details see paragraph 22 above), as well as his conclusion that the first applicant did not require urgent hospitalisation, correct?

(3) Given the diagnoses established on 5 June 2008, did the first applicant indeed not require urgent hospitalisation and could be detained in the ITT or the SIZO?

(4) Did the Central Hospital's doctors prescribe correct medical treatment for the first applicant?

(5) Did the Central Hospital's doctors act correctly in ordering the laboratory tests for the first applicant (blood and urine analyses, a sugar test, and chest X-ray) only on 13 June, and not on 3 or 5 June 2008?

(6) On 18 June 2008, following a repeated enquiry by the Bakhchysaray police as to the need for the first applicant to be hospitalised, the Chief Doctor of the Infectious Diseases Department of the Central Hospital issued a note stating that the first applicant did not require urgent hospitalisation. Did the doctor assess the seriousness of the first applicant's condition correctly? Were her conclusions correct?

(7) Was it lawful on the part of the medical staff of Hospital no. 7 to discharge the first applicant on 18 July 2008, given that his mother's request for him to be discharged did not contain any indication that she had been warned about the possible negative consequences?

(8) Were the actions of the medical staff in compliance with the legislation? Was there any causal link between the actions of the police and the medical staff and the death of the first applicant?

70. On 26 November 2010 the Crimea Republic Bureau for Forensic Medical Examinations completed its expert report.

71. Referring to the absence of medical documentation regarding the first applicant's examination on 3 June 2008, it found it "extremely difficult" to answer question (1).

72. As to questions (2) and (3), the experts concluded that the diagnoses established by the infectious disease specialist on 5 June 2008 had not been based on a thorough examination of the first applicant and had not reflected the seriousness of his condition, in particular, the fever and the haemodynamic parameters. The experts concluded that the doctor's finding that the first applicant's urgent hospitalisation was not required on 5 June 2008 did not correspond to the diagnoses established. They noted that he had been diagnosed, in particular, with pneumocystis pneumonia, which would alone have warranted his urgent hospitalisation for in-patient medical treatment. The doctor's prescription of antibacterial and antifungal medication for the first applicant was found to be correct (this was apparently the reply to question (4), which was not specified).

73. In reply to question (5), the experts found that the doctors' decision of 13 June 2008 on the necessity of further laboratory examinations complied with the applicable medical standards. They noted that such laboratory tests had already been carried out on 4 June 2008 (from the documents in the case file it appears that the correct date was 3 June 2008 – see paragraph 20 above), but had needed to be further verified.

74. The expert commission replied to question (6) that at the time of his examination on 18 June 2008 the first applicant had required urgent hospitalisation and in-patient medical treatment.

75. As regards questions (7) and (8), the experts noted that they were not competent to make a legal assessment of the doctors' actions. Given the absence of an autopsy report, the commission found it impossible to determine the cause of the death of the first applicant or to establish whether there was a causal link between the time of his hospitalisation for specialised treatment and his death.

76. On 27 December 2010 the Bakhchysaray Prosecutor instituted a criminal investigation into the failure of the Central Hospital's doctors to comply with their professional obligations. This decision was mainly based on the expert commission's findings of 26 November 2010. It stated, in particular, as follows:

> "The prosecutor's investigation has collected sufficient evidence of inadequate compliance by the medical officials with their professional duties due to negligence. The delayed hospitalisation and, accordingly, the delayed provision of medical assistance to [the first applicant] contributed considerably to the deterioration of his health, which amounted to a grave consequence for him."

There is no information in the case file on any further developments in this investigation or its outcome.

77. On 29 April 2011 the Bakhchysaray Prosecutor delivered a decision refusing to institute criminal proceedings against the staff of the ITT or the SIZO in connection with the medical assistance provided to the first applicant. Referring to the medical records of 20 November and 2 December 2007, 10 January, 10 and 18 February and 28 May 2008, as well as later medical documentation, the prosecutor did not discern anything criminal in the actions of the administration of the detention facilities.

78. On 9 August 2011 the Bakhchysaray Court upheld that decision having dismissed the second applicant's complaint to that regard.

79. On 22 September 2011 the Crimea Court of Appeal quashed the ruling of the first-instance court and remitted the case back to it for fresh examination.

80. On 16 November 2011 the Bakhchysaray Court again rejected the second applicant's complaint.

81. On 13 March 2012 it however reconsidered its position, apparently after a repeated complaint from the second applicant. The Bakhchysaray Court quashed the prosecutor's ruling of 29 April 2011 and remitted the case for additional investigation. It noted that the investigation undertaken only indirectly concerned the ITT personnel and did not concern at all the SIZO administration or medical staff. Moreover, the SIZO personnel whose duty was to respond to the first applicant's complaints had not even been identified. The Bakhchysaray Court also observed the lack of information in the file as regards any record-keeping of the first applicant's health-related complaints or showing the absence of such complaints during his detention.

82. The Court has not been made aware of any further developments.

II. RELEVANT DOMESTIC LAW AND PRACTICE

83. The Rules on Medical and Sanitary Care in Detention Centres and Penitentiaries, approved by Decree no. 3/6 of 18 January 2000 of the State Department for the Enforcement of Sentences, stipulate that medical assistance to HIV-infected persons is to be provided on the same basis as to everybody else (paragraph 4.3.4). The Rules also contain recommendations stating that accessible, informative and supportive counselling should be available before and after HIV-testing (annex 28 to paragraph 4.3.4).

84. The relevant provisions of Decree No 186/607 of 15 November 2005 of the Ministry of Health and the State Department for the Enforcement of Sentences on the Antiretroviral Treatment of Persons with HIV/Aids Detained in Prisons and Pre-Trial Detention Centres are summarised in the case of *Yakovenko v. Ukraine* (no. 15825/06, §§ 49-52, 25 October 2007).

85. Article 18 of the Pre-trial Detention Act (1993) sets out rules governing the use of security measures, including the use of handcuffs. Prison officers are entitled to use force and special equipment, including unarmed combat, handcuffs and truncheons, with a view to suppressing physical resistance, violence, outrage (*безчинства*) and opposition to the lawful directions of the authorities of the detention facility, when other

means of achieving a legitimate objective have proved ineffective. The type of security measure and the time and manner of its use depend on the particular circumstances of the case and the personality of the detainee.

86. Article 140 § 1 of the Criminal Code penalises medical negligence which has led to grave consequences for the patient by "debarring from the holding of certain offices or pursuing certain activities" for a term of up to five years, or by correctional work for up to two years, or by restriction or deprivation of liberty for the same term.

III. RELEVANT INTERNATIONAL MATERIALS

87. The relevant extracts from the third General Report [CPT/Inf (93) 12] of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") read as follows:

> "**a. Access to a doctor**
>
> ...
>
> 35. A prison's health care service should at least be able to provide regular out-patient consultations and emergency treatment (of course, in addition there may often be a hospital-type unit with beds). ... Further, prison doctors should be able to call upon the services of specialists. ...
>
> Out-patient treatment should be supervised, as appropriate, by health care staff; in many cases it is not sufficient for the provision of follow-up care to depend upon the initiative being taken by the prisoner.
>
> 36. The direct support of a fully-equipped hospital service should be available, in either a civil or prison hospital. ...
>
> 37. Whenever prisoners need to be hospitalised or examined by a specialist in a hospital, they should be transported with the promptness and in the manner required by their state of health."
>
> **b. Equivalence of care**
>
> 38. A prison health care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the outside community. Provision in terms of medical, nursing and technical staff, as well as premises, installations and equipment, should be geared accordingly.
>
> There should be appropriate supervision of the pharmacy and of the distribution of medicines. Further, the preparation of medicines should always be entrusted to qualified staff (pharmacist/nurse, etc.).
>
> 39. A medical file should be compiled for each patient, containing diagnostic information as well as an ongoing record of the patient's evolution and of any special examinations he has undergone. In the event of a transfer, the file should be forwarded to the doctors in the receiving establishment.
>
> Further, daily registers should be kept by health care teams, in which particular incidents relating to the patients should be mentioned. Such registers are useful in that they provide an overall view of the health care situation in the prison, at the same time as highlighting specific problems which may arise.

40. The smooth operation of a health care service presupposes that doctors and nursing staff are able to meet regularly and to form a working team under the authority of a senior doctor in charge of the service."

88. The guidelines of the World Health Organisation ("WHO") on antiretroviral therapy for HIV infection in adults and adolescents can be found in the judgment in the case of *Kozhokar v. Russia*, no. 33099/08, §§ 77-79, 16 December 2010.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 2 AND 3 OF THE CONVENTION IN RESPECT OF THE FIRST APPLICANT

89. Both the first applicant, while still alive, and the second applicant, in maintaining her son's application and joining the case on her own behalf after his death, complained that the State had failed to protect his health, physical well-being and life, contrary to Articles 2 and 3 of the Convention. The second applicant further complained under Article 3 of the Convention about her son's handcuffing in hospital. Lastly, she complained that the domestic investigation into his death had been ineffective.

90. Articles 2 and 3 of the Convention, relied on by the applicants, read as follows in so far as relevant:

Article 2.

"1. Everyone's right to life shall be protected by law."

Article 3

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

A. Admissibility

1. Victim status

91. The Court notes at the outset that the second applicant may claim to be a victim within the meaning of Article 34 of the Convention of the violations alleged by and on behalf of her late son under Articles 2 and 3 of the Convention (see *Renolde v. France*, no. 5608/05, § 69, 16 October 2008).

2. Exhaustion of domestic remedies as regards the medical care provided to the first applicant and his death

92. The Government argued that the above complaints were premature. They noted, in particular, that the criminal investigation (instituted on 27 December 2010) regarding the medical assistance provided to the first

applicant by the Central Hospital's doctors had not yet been completed. The Government further observed that – as of the date of their observations – the second applicant had not challenged the decision of the Bakhchysaray Prosecutor of 29 April 2011 refusing to institute criminal proceedings against the staff of the ITT and the SIZO in connection with the medical care provided to the first applicant during his detention in those facilities.

93. The second applicant submitted that after the domestic authorities had dismissed her son's numerous requests for release and for specialised medical treatment, which he had raised in an attempt to save his life, there remained no effective domestic remedies for her to exhaust after his death. She further expressed the view that, in any event, the domestic investigation into the circumstances of the first applicant's death had been slow and ineffective. The second applicant therefore considered it pointless to await its completion.

94. As regards the rule of exhaustion of domestic remedies, the Court emphasises that it must be applied with some degree of flexibility and without excessive formalism. The Court has already held on a number of occasions that this rule is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case (see *Akdivar and Others v. Turkey* [GC], 16 September 1996, § 69, *Reports of Judgments and Decisions* 1996-IV, and *Aksoy v. Turkey*, 18 December 1996, §§ 53-54, *Reports* 1996-VI). The Court looks, in particular, whether the applicant did everything that could reasonably be expected in order to exhaust available domestic remedies (see *Merit v. Ukraine*, no. 66561/01, § 58, 30 March 2004).

95. The Court observes that the Government's objection in the present case raises issues which are inextricably linked to the question of the effectiveness of the domestic investigation into the first applicant's death. Given the second applicant's complaint about the alleged ineffectiveness of the investigation in question, the Court would normally join this objection to the merits of the aforementioned complaint (see, for example, *Matushevskyy and Matushevska v. Ukraine*, no. 59461/08, § 66, 23 June 2011). However, the particular circumstances of this case call for a different approach.

96. It is noteworthy that, in assessing the effectiveness of a domestic remedy for a complaint under Articles 2 and 3 of the Convention with regard to lack of sufficient care for an applicant suffering from an illness in detention, the Court considers that a decisive question is whether that remedy can bring direct and timely relief. Such a remedy can, in principle, be both preventive and compensatory in nature. Where the applicant has already resorted to either of the available and relevant remedies, considering it to be the most appropriate course of action in his or her particular situation, the applicant should not then be reproached for not having pursued an alternative remedial course of action (see, *mutatis mutandis*, *Melnik v. Ukraine*, no. 72286/01, §§ 68 and 70, 28 March 2006).

97. The Court observes that the parties are in dispute as to when the authorities became aware of the first applicant's HIV status. It will deal with this particular issue later, when assessing the merits of the case. In order to establish whether the rule of exhaustion of domestic remedies has been respected, it suffices for the Court to note the numerous requests for release on health grounds lodged by the first applicant in June 2008 with the court dealing with his criminal case. Those requests, in the Court's view, clearly voiced the first applicant's fears for his life (see and compare with *Dybeku v. Albania*, no. 41153/06, § 28, 18 December 2007, and *Makharadze and Sikharulidze v. Georgia*, no. 35254/07, § 54, 22 November 2011).

98. In other words, at the most pertinent time, when the first applicant was still alive and could personally care for his well-being, he did everything reasonable, at least from early June 2008 onwards, to alert the relevant authorities to his progressing HIV infection and the concomitant diseases, seeking preventive remedial action for the grievances set out in the present application. In such circumstances, it would be wholly inappropriate, from the point of Article 35 § 1 of the Convention, to reproach the second applicant for not having retrospectively pursued any compensatory remedy by seeking completion of the criminal investigation and getting redress for the State's failure to protect her son's health and life (see *Makharadze and Sikharulidze v. Georgia*, cited above, § 55).

99. The Court therefore considers that the first applicant sufficiently pursued a preventive domestic remedy for the exhaustion requirement to be complied with.

100. Accordingly, the Court dismisses this objection by the Government without joining it to the merits of the complaint about the effectiveness of the domestic investigation into the first applicant's medical treatment and death.

3. Exhaustion of domestic remedies as regards the first applicant's handcuffing in hospital

101. The Government submitted that the applicants could have, but failed to, complain about the first applicant's handcuffing to the prosecuting authorities or courts. The Government therefore expressed the view that they could not be regarded as having exhausted the available domestic remedies before bringing this complaint to the Court, as required by Article 35 § 1 of the Convention.

102. The second applicant disagreed.

103. The Court notes that, as can be seen from the case-file materials, the second applicant did complain about her son's handcuffing to the Chief of the Bakhchysaray Police Department and to the Bakhchysaray Prosecutor (see paragraph 49 above). The first applicant's lawyer also raised this issue before the domestic authorities (see paragraph 51 above). These complaints, however, produced no effect.

104. The Court therefore concludes that the applicants took sufficient steps at the domestic level to bring this complaint to the attention of the

national authorities (see *Sylenok and Tekhnoservis-Plus v. Ukraine*, no. 20988/02, § 76, 9 December 2010). Moreover, it appears that the first applicant's handcuffing in hospital constituted a practice officially condoned or tolerated by the guards' supervisors (see, for a similar situation, *Okhrimenko v. Ukraine*, no. 53896/07, § 94, 15 October 2009, and, for an example to the contrary, *Tsygoniy v. Ukraine*, no. 19213/04, § 51, 24 November 2011).

105. Accordingly, the Court also rejects this objection by the Government.

4. Otherwise as to admissibility

106. The Court considers that the above complaints (see paragraph 89 above) are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further finds that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Scope of the issues for consideration

107. The Court notes that in previous cases where a death occurred in detention and the deceased's relatives complained about the lack or inadequacy of medical care prior to the death, relying on both Articles 2 and 3 of the Convention, it examined that complaint primarily from the standpoint of Article 2 (see *Tarariyeva v. Russia*, no. 4353/03, § 68, ECHR 2006-XV (extracts)), and *Kats and Others v. Ukraine*, no. 29971/04, § 131, 18 December 2008).

108. In cases where the applicants referred to both the aforementioned provisions in respect of allegedly inadequate medical assistance available to them in detention, but where there was no death, the Court examined the complaint under Article 3 of the Convention (see, for example, *A.B. v. Russia*, no. 1439/06, § 114, 14 October 2010).

109. The present case is, however, different from any of the situations described above. The Court notes that the first applicant died two weeks after his release from detention following specialised treatment in a civil hospital.

110. The Court observes that the applicants' complaints, which they raised with reference to both Articles 2 and 3 of the Convention, concern several specific issues, namely

(a) whether adequate medical assistance was available to the first applicant during his detention in the ITT and the SIZO;

(b) whether the Central Hospital's doctors provided him with medical care which was prompt and which adequately addressed his deteriorating state of health;

(c) whether the first applicant's handcuffing in hospital amounted to inhuman or degrading treatment;

(d) whether the authorities can be regarded as having discharged their obligation to protect the first applicant's life; and

(e) whether there was an effective domestic investigation into the circumstances of his death.

111. In view of the complex issues to be considered, the Court finds that it must assess each one of them separately: the three first-mentioned ones – in the context of Article 3 of the Convention; and, given the alleged causal link and contributory nature to the first applicant's death, also assess them jointly in considering the complaints under Article 2 of the Convention (see *Bekirski v. Bulgaria*, no. 71420/01, § 124, 2 September 2010).

2. Medical care in the detention facilities

(a) The parties' submissions

112. The first applicant complained that the administration of the ITT and the SIZO had failed to respond in a timely and adequate manner to the deterioration of his health in detention. He submitted that, starting from early March 2008 his health sharply deteriorated. Namely, he allegedly had constant fever of 39-40ºC and could not eat because of serious digestion disorders. Instead of ensuring that he received comprehensive medical examinations and treatment, the administration of the detention facilities had allegedly confined itself to calling an ambulance on several occasions.

113. Referring to the special medical monitoring of persons with HIV infection, the second applicant submitted that the health-care establishments, law-enforcement authorities and the Department for Enforcement of Sentences must have been aware of the HIV-positive status of her son. Furthermore, she noted that he had informed the investigator of his health condition immediately after his placement in police custody on 20 November 2007.

114. The second applicant emphasised that at the time of his placement in detention in November 2007 her son had been in good health. His HIV-positive status had not in fact manifested itself then as having any further negative consequences for his health. Accordingly, the fact that the first applicant had not registered for medical monitoring at the Aids Centre could not be regarded as having absolved the authorities who were holding him in detention from their duty to provide him with medical treatment once it became necessary with the deterioration of his health in March 2008.

115. The Government contested the above arguments. They noted that the first applicant had never himself sought medical monitoring or any assistance in respect of his HIV infection while at liberty. Moreover, during his detention he had concealed his HIV status from the authorities. The medical staff at the detention facilities could not therefore be reproached for not applying a coherent strategy to the first applicant's treatment in respect of the HIV infection, as they did not know about it.

(b) The Court's assessment

116. The Court notes the dispute between the parties as to when the administration of the detention facilities in which the first applicant was detained became aware of his HIV status. Consequently, the Court will begin its examination of the applicants' complaint regarding the alleged lack of timely and adequate medical care available to the first applicant in those detention facilities by establishing this pertinent fact.

(i) Establishment of facts

117. In the absence of the applicants' allegations or any other indication to the contrary, the Court considers it an established fact that the first applicant himself became aware of his HIV-positive status in February 2006 (see paragraphs 8, 21 and 59 above).

118. It is also common ground between the parties that he had not sought any medical treatment in that regard before he was detained.

119. As further agreed by both parties, the first applicant felt well at the time of his placement in detention on 20 November 2007.

120. The question arises whether and when thereafter he informed the administration of the ITT and/or the SIZO of his HIV-positive status.

121. According to the second applicant, her son immediately informed the investigator of his condition. The Court notes, however, that this statement is not supported by any evidence. To the contrary, it appears to be refuted by the first applicant's own written statement of 20 June 2008, in which he admitted that he had concealed his HIV status from the authorities "for understandable reasons" (see paragraph 36 above).

122. Neither does the Court see any indication in the case file that the authorities might have received this information from any other source like, for example, from the second applicant who had apparently herself remained unaware of her son's condition until early June 2008 (see paragraph 21 above, and, for the case-law to compare, see *Kats and Others v. Ukraine*, cited above, §§ 33 and 106).

123. Furthermore, the Court does not lose sight of the records of the first applicant's medical examinations of 31 May and 3 June 2008, from which it can infer that the first applicant, surprisingly, remained silent about his HIV status even before the doctors who examined him.

124. Lastly, given the confidentiality requirements inherent in the medical monitoring of persons with the HIV-positive status, the Court dismisses the second applicant's argument that the authorities must have been aware her son was HIV-positive merely because the Aids Centre had earlier diagnosed him as such.

125. In sum, the Court is inclined to agree with the Government's account of the events, according to which the first applicant did not disclose his HIV status to the authorities. The Court therefore accepts that the authorities became aware of his HIV infection only on 5 June 2008, when he was diagnosed with that infection after an examination in the Central Hospital (see paragraph 22 above).

(ii) Examination of the complaint

126. The Court emphasises that Article 3 of the Convention imposes an obligation on the State to ensure, given the practical demands of imprisonment, that the health and well-being of a prisoner are adequately secured by, among other things, providing him with the required medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, §§ 93-94, ECHR 2000-XI).

127. In order to establish whether an applicant received the requisite medical assistance while in detention, it is crucial to determine whether the State authorities provided him with the minimum scope of medical supervision for the timely diagnosis and treatment of his illness (see *Popov v. Russia*, no. 26853/04, § 211, 13 July 2006, and *Mechenkov v. Russia*, no. 35421/05, § 102, 7 February 2008).

128. In other words, the Court must determine whether during his detention an applicant needed regular medical care, whether he was deprived of it as he claimed, and if so whether this amounted to inhuman or degrading treatment contrary to Article 3 of the Convention (see *Farbtuhs v. Latvia*, no. 4672/02, § 53, 2 December 2004, and *Sarban v. Moldova*, no. 3456/05, § 78, 4 October 2005).

129. One of the important factors for such an assessment is a sharp deterioration in a person's state of health in detention facilities, which inevitably casts doubts as regards the adequacy of medical care available therein (see *Farbtuhs v. Latvia*, cited above, § 57, and *Khudobin v. Russia*, no. 59696/00, § 84, ECHR 2006-XII (extracts)).

130. In establishing the scope of the medical supervision required and provided in each particular case, the Court must have regard to the medical documents submitted by the parties (see *Popov v. Russia*, cited above, ibid.).

131. The Court reiterates in this connection that distribution of the burden of proof is intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (for the principle-setting case-law see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII; and, for the application of this principle in the context of complaints on inadequacy of medical care in detention, see *Štrucl and others v. Slovenia*, nos. 5903/10, 6003/10 and 6544/10, § 65, 20 October 2011).

132. The Court notes that information about conditions of detention, including the issue of medical care, falls within the knowledge of the domestic authorities. Accordingly, applicants might experience difficulties in procuring evidence to substantiate a complaint in that connection (see *Vladimir Vasilyev v. Russia*, no. 28370/05, § 66, 10 January 2012). What is expected from applicants in such cases is to submit at least a detailed account of the facts complained of (see *Visloguzov v. Ukraine*, no. 32362/02, § 45, 20 May 2010). The burden of proof is then shifted to the Government to provide explanations and supporting documents.

133. Thus, an ample medical file proving constant medical supervision and adequate medical care might refute an applicant's view regarding the medical care at his disposal (see *Pitalev v. Russia*, no. 34393/03, § 55, 30 July 2009). Conversely, the Government's failure to provide pertinent medical documents casts doubts as regards the availability of adequate medical supervision of and assistance to the applicant in detention (see, *mutatis mutandis*, *Petukhov v. Ukraine*, no. 43374/02, § 96, 21 October 2010).

134. Turning to the present case, the Court notes that the applicants made quite specific submissions regarding the deterioration of the first applicant's health from March 2008. They further alleged that the medical response on the part of the detention facilities had been limited to sporadic ambulance calls (see paragraphs 17 and 112 above).

135. It is true that they did not submit any documentary evidence in support of those allegations. At the same time the Court does not lose sight of the second applicant's efforts to collect such evidence. Thus, in the course of the domestic investigation into the death of her son she sought access to and examination of his complete medical file from the detention facilities. That request was never granted and this documentation was not made available to the second applicant or to the domestic prosecution authorities (see paragraphs 63 and 81 above).

136. Accordingly, it was for the Government to submit the aforementioned medical file detailing the first applicant's actual medical needs during his detention and the medical response to them.

137. The Court notes, however, that not a single medical document was submitted to it by the Government regarding the first applicant's detention between February and May 2008.

138. In such circumstances the Court finds itself in a position to infer from the Government's failure to submit copies of any relevant medical documents that the first applicant did not receive adequate medical assistance for his deteriorating health in the ITT and the SIZO, even assuming that he had concealed his HIV status from the authorities (see, *mutatis mutandis*, *Mechenkov v. Russia*, cited above, § 110).

139. Accordingly, there has been a violation of Article 3 of the Convention in this regard.

3. Medical assistance in the Central Hospital

(a) The parties' submissions

140. The second applicant submitted that even after her son had been sent for examination to the Central Hospital (a civil health-care establishment), its doctors unjustifiably delayed his hospitalisation and specialised treatment, and this irreversibly undermined his prospects of recovery.

141. The Government disagreed. Referring to the case of *Okhrimenko v. Ukraine* (cited above, § 71), they contended that the Court was not in a

position to speculate on the adequacy of medical treatment provided by civil doctors.

(b) The Court's assessment

142. The Court notes that the hospital in question was a public institution, the acts and omissions of its medical staff being therefore capable of engaging the responsibility of the respondent State under the Convention (see *Glass v. the United Kingdom*, no. 61827/00, § 71, ECHR 2004-II).

143. This is, in any event, not crucial as at the time the first applicant remained in detention and thus under the full control of the authorities, which were obliged to account for his health and to provide him with adequate medical care.

144. The Court agrees with the Government that it is not its task to assess the medical treatment provided by civil doctors.

145. At the same time, it notes that the domestic authorities themselves acknowledged that the medical assistance provided to the first applicant by the Central Hospital's doctors in June 2008 could not be regarded as timely and adequate. Specifically, the Crimea Bureau for Forensic Medical Examinations stated in its report of 26 November 2010 that at least on two occasions, on 5 and 18 June 2008, the Central Hospital's doctors underestimated the seriousness of the first applicant's condition and denied him the urgent hospitalisation which he required (see paragraphs 69, 70-72 and 74 above, and, for the case-law to compare, see *Geppa v. Russia*, no. 8532/06, § 82, 3 February 2011).

146. The Court has no reasons to question those findings.

147. It therefore concludes that there has been a violation of Article 3 of the Convention regarding this particular aspect as well.

4. Handcuffing in hospital

(a) The parties' submissions

148. The second applicant complained that her son had been handcuffed to his bed in the hospital round-the-clock without reason, which had exacerbated his suffering.

149. The Government submitted, with reference to the letter from the Ministry of Health of 23 October 2009 (see paragraph 44 above), that the first applicant had only been handcuffed on the occasions he was escorted outside his hospital room and during any visits to him. They therefore considered that this security measure had been applied reasonably.

(b) The Court's assessment

150. The Court notes that the second applicant's allegation about the handcuffing of her son during his treatment in the Central Hospital from 20 to 26 June 2008 is supported by the photos submitted by her (see paragraph 35 above).

151. As to his stay in Hospital no. 7 from 26 June to 18 July 2008, it appears from the letter of the Ministry of Health of 23 October 2009, cited by the Government, that according to the hospital management the first applicant was handcuffed during that period too. This implies, in the Court's opinion, handcuffing for most of the time, if not all the time, rather than on an occasional basis, as the Government interpreted it to mean.

152. The Court further observes that although the Chief of the Bakhchysaray Police – to whom the second applicant complained about her son's handcuffing – dismissed her complaint on 15 July 2008, referring to the first applicant's imminent release, he did not deny in principle that handcuffing had been applied (see paragraph 50 above).

153. In sum, the Court considers it to be sufficiently established by the evidence at hand that the first applicant was subjected to continuous handcuffing in hospital from 20 June to 18 July 2008.

154. It notes that handcuffing does not normally give rise to an issue under Article 3 of the Convention where the measure has been imposed in connection with lawful detention and does not entail the use of force, or public exposure, exceeding what is reasonably considered necessary. In this regard, it is important to consider, for instance, the danger of the person's absconding or causing injury or damage (see *Raninen v. Finland*, 16 December 1997, § 56, *Reports* 1997-VIII, and *Henaf v. France*, no. 65436/01, §§ 50-53, ECHR 2003-XI).

155. In the present case there is no indication that the first applicant ever behaved violently or attempted to escape. Furthermore, it is not disputed by the parties that he was constantly guarded by police officers while in hospital. Moreover, he suffered from severe immunosuppression caused by his HIV status, as well as a number of concurrent illnesses (see paragraph 43 above). No special medical qualifications were required in order to understand how weak and ill he was. Thus, the prosecutor pursuing criminal charges against the first applicant acknowledged on 24 June 2008 that he was in a "critical health condition" (see paragraph 39 above). Nonetheless, the police still considered it necessary to keep him handcuffed in hospital. The handcuffing continued even after the Chief Doctor of Hospital no. 7 indicated to the Bakhchysaray Police Department on 2 July 2008 that the first applicant was seriously ill and that he needed to be unrestricted in his movements. In total, the first applicant remained handcuffed in hospital for twenty-eight days.

156. The Court considers that this treatment could not be justified by security reasons and, given the first applicant's poor state of health, is to be considered inhuman and degrading (see *Tarariyeva v. Russia*, cited above, §§ 110 and 111).

157. There has therefore been a violation of Article 3 of the Convention in this regard too.

5. The State's obligation to protect the first applicant's life

(a) The second applicant's submissions

158. The second applicant maintained that her son could have recovered and remained alive had the authorities provided him with proper medical treatment in good time. She noted that, while HIV/Aids remained incurable, there were ways to enhance the life of people with the disease. According to her, her son was deprived of any such possibility owing to the fact that he was detained and was therefore fully dependant on the authorities, which, in her view, showed complete disregard for his life.

159. In addition to her arguments regarding the lack of timely and adequate medical assistance available to the first applicant in detention, the second applicant also referred to his continued detention after the pronouncement of the judgment in his case on 4 July 2008, even though a custodial sentence had not been imposed. She considered that by that measure alone the authorities had put her son in a life-threatening situation.

160. The second applicant underlined that she was not complaining about the unlawfulness of her son's detention from the standpoint of Article 5 of the Convention, but that she was referring to it as an argument in support of her claim that the authorities had failed to protect her son's life.

161. She further noted that the first applicant's behaviour before his placement in detention in December 2007 was of no relevance for the fatal outcome of his disease in August 2008, as he had felt well while he had remained at liberty and had not required any particular medical treatment at that stage. It was in detention that his health sharply deteriorated, but remained untreated, which led to his death.

(b) The Government's submissions

162. The Government denied any responsibility on the part of the respondent State for the first applicant's death. They imputed it to his own behaviour. Firstly, the Government observed that the first applicant had not himself sought any medical assistance for about two years prior to his placement in detention. Secondly, they emphasised that he had concealed his HIV-positive status from the authorities during his detention.

163. Reiterating the findings of the Ministry of Health's commission of 20 March 2009, the Government explained the deterioration of the first applicant's health and the ensuing complications by his delayed application for medical care after having tested HIV-positive, as well as by the severity of the main disease (see paragraph 59 above).

(c) The Court's assessment

164. The Court emphasises that the object and purpose of the Convention as an instrument for the protection of individual human beings requires that Article 2 be interpreted and applied so as to make its

safeguards practical and effective (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-147, Series A no. 324).

165. For a positive obligation of a State under Article 2 of the Convention to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports* 1998-VIII).

166. Turning to the circumstances of the present case, the Court notes that the first applicant died two weeks after his release from detention and a day after his voluntary discharge from a civil hospital following about a month and a half of specialised in-patient treatment (see paragraphs 42, 52 and 55 above). The Court also notes that his death was caused by the HIV infection contracted at least two years prior to his placement in detention, if not earlier, and that he did not disclose his HIV status to the authorities (see paragraphs 7 and 125 above).

167. It is not the Court's task to rule on matters lying exclusively within the field of expertise of medical specialists and establish whether the first applicant's disease was treatable and whether, accordingly, his death could have been averted (see, *mutatis mutandis*, *Kozhokar v. Russia*, cited above, § 108). Instead, in order to determine whether Article 2 of the Convention has been complied with, the Court will focus on determining whether the domestic authorities did everything which could reasonably have been expected of them under the circumstances to protect the first applicant's life.

168. Given that the first applicant did not disclose his HIV-positive status, the Court considers that the authorities became aware of it once that diagnosis was clinically established – that is, on 5 June 2008 (see paragraph 125 above).

169. As to the earlier deterioration of his health in the detention facilities and the lack of prompt and adequate medical care available to him there, in respect of which the Court has found a violation of Article 3 of the Convention (see paragraphs 126-139 above), the Court considers that it is not in a position to examine these issues from the standpoint of Article 2 also, for the following reasons. Firstly, it does not appear that at that stage the health of the first applicant had deteriorated to such an extent that it could be considered life-threatening, and, secondly, the administration of the detention facilities were not aware of his HIV status and the inherent risks.

170. At the same time, the Court notes that on 5 June 2008 the Central Hospital's doctors diagnosed the first applicant with HIV infection at the fourth clinical stage, with several concomitant diseases, such as pneumocystis pneumonia, oropharynx-esophagus candidiosis and an ulcer (see paragraph 22 above). As was later established by forensic medical experts, the diagnosis of neumocystis pneumonia alone warranted the first applicant's urgent hospitalisation (see paragraph 72 above).

171. There were therefore, from 5 June 2008 onwards, two key factors in place for the State's positive obligation under Article 2 of the Convention to come into play: firstly, the seriousness of the first applicant's health condition and, secondly, the knowledge of the authorities about it.

172. Nonetheless, the seriousness of his condition was underestimated and, as a result, his hospitalisation – already urgently required on 5 June 2008 if not earlier – was delayed until 20 June 2008 (see paragraphs 145-146 above).

173. The Court has already found a violation of Article 3 of the Convention in that regard (see paragraph 147 above). It further notes that, according to its case-law, a failure on the part of the authorities to monitor a detainee's condition or provide a detainee with medical care in a life-threatening situation may lead to a breach of Article 2 (see *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002, and, as a more recent reference, *Alimuçaj v. Albania*, no. 20134/05, § 130, 7 February 2012).

174. Accordingly, it will take the aforementioned omissions into account in making its conclusions under Article 2 of the Convention too.

175. The Court next notes that the Bakhchysaray Court in charge of the first applicant's trial turned a blind eye to the extreme gravity of his condition even though this had been acknowledged even by the prosecution. Thus, on 24 June 2008 the prosecutor informed the court that there were no objections to the first applicant's release and indicated that it was necessary to deal with his request for release promptly on account of his "critical condition". However, the first applicant continued to be deprived of his liberty, while in Hospital no. 7, even after the pronouncement of the judgment of 4 July 2008, which imposed a fine only and not a custodial sentence. He was released only on 18 July 2008 (see paragraphs 47 and 52 above).

176. There are three particular elements to be considered in relation to the compatibility of an applicant's health with his continued detention: (a) the medical condition of the detainee, (b) the adequacy of the medical assistance and care provided in detention, and (c) the advisability of maintaining the detention measure in view of the state of health of the applicant (see *Mouisel v. France*, no. 67263/01, §§ 40-42, ECHR 2002-IX; *Melnik v. Ukraine*, cited above, § 94; and *Rivière v. France*, no. 33834/03, § 63, 11 July 2006).

177. The Court notes that the first applicant's health was found to be more and more a cause for concern and to be increasingly incompatible with detention (see and compare *Dzieciak v. Poland*, no. 77766/01, §§ 100-101, 9 December 2008, in which the Court examined, in particular, the issue of the applicant's continuous detention from the standpoint of the State's obligation to protect his life). Furthermore, the first applicant posed no danger to the public and his detention appears to have been not only "inadvisable", but particularly cruel in the circumstances (see, for a converse example, *Ceku v. Germany* (dec.), no. 41559/06, 13 March 2007).

178. The Court does not lose sight of the fact that at the time in question the first applicant was being held not in a detention facility cell but in a civil hospital where he was undergoing specialised in-patient treatment.

179. On the surface, that might appear to counterbalance the above considerations against his detention. However, the Court considers that this is not so given, in particular, the first applicant's continuous handcuffing in hospital amounting in itself, under the circumstances, to his inhuman and degrading treatment (see paragraphs 150-157 above).

180. All in all, even if some of the above-mentioned deficiencies would not alone have been sufficient for a finding of inadequate discharge by the State of its positive obligation to protect the first applicant's health and life, the Court considers that their coexistence and cumulative effect are more than enough in this regard.

181. Whether or not the authorities' efforts could in principle have averted the fatal outcome in the present case is not decisive for this conclusion. What matters for the Court is whether they did everything reasonably possible in the circumstances, in good faith and in a timely manner, to try to save the first applicant's life (see, *mutatis mutandis*, *Makharadze and Sikharulidze v. Georgia*, cited above, § 74).

182. The Court considers that this is not the case given, in particular, the fact that the first applicant was denied urgent hospitalisation, which he required, for over two weeks; that he remained detained without any justification and while in a critical health condition; and that he was subjected, contrary to doctors' recommendations, to continuous handcuffing which further exacerbated his health condition.

183. It follows that there has been a violation of Article 2 of the Convention on account of the respondent State's failure to protect the first applicant's life.

6. Domestic investigation regarding the first applicant's medical treatment and death

(a) The parties' submissions

184. The second applicant maintained that there had been no effective domestic investigation into the death of her son. She noted, in particular, that the investigating authorities had never studied the complete medical file of the first applicant from the detention facilities. Nor had they questioned all the medical personnel involved. She also pointed out that the decisions to terminate the investigation had been quashed as premature or superficial on several occasions. At the same time, the shortcomings indicated had never been rectified. She therefore contended that the authorities had sought ways to deny any responsibility for the death of her son instead of making genuine efforts to establish its reasons and punish those responsible.

185. The Government maintained that the domestic investigation into the first applicant's death had been adequate.

(b) The Court's assessment

186. The Court reiterates that where lives have been lost in circumstances potentially engaging the responsibility of the State, Article 2 of the Convention entails a duty for the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 91, ECHR 2004-XII).

187. The system required by Article 2 must provide for an independent and impartial official investigation that satisfies certain minimum standards as to effectiveness. The competent authorities must act with exemplary diligence and promptness, and must initiate investigations capable of, firstly, ascertaining the circumstances in which the incident took place and any shortcomings in the operation of the regulatory system and, secondly, identifying the State officials or authorities involved. The requirement of public scrutiny is also relevant in this context (see, *mutatis mutandis*, *Kats and Others v. Ukraine*, cited above, § 116).

188. In the present case, the second applicant claimed that the death of her son had resulted from the lack of prompt and adequate medical care provided to him by the ITT and the SIZO personnel, as well as by the doctors of the Central Hospital.

189. The Court notes that the first applicant's health seriously deteriorated in detention and that the applicants raised the complaints regarding the medical assistance provided to him, at least before the administration of the detention facilities and the management of the Central Hospital, prior to the first applicant's death. Thereafter, those grievances were further brought to the attention of prosecuting authorities (see paragraphs 33, 45 and 56 above).

190. The Court notes that the investigation was closed and reopened several times and has lasted for over three and a half years (calculated from August 2008 – see paragraphs 55-56). As a result, on 27 December 2010 criminal proceedings were instituted in respect of the Central Hospital's doctors. There is no information in the case file as regards the progress of these criminal proceedings. As to the liability of the detention facilities' staff, the investigation was re-opened on 13 March 2012 and is ongoing.

191. The Court cannot overlook the failure of the investigating authorities to obtain the first applicant's complete medical file from the detention facilities where he had been detained, even though the second applicant insisted on that pertinent measure and, moreover, the Crimea Court of Appeal also found that it was necessary in its ruling of 13 October 2009 (see paragraphs 63 and 66 above). This omission was also noted by the Bakhchysaray Court in its ruling of 13 March 2012. Furthermore, the Bakhchysaray Court pointed out that the SIZO personnel in charge of handling the first applicant's health-related complaints had not even been identified (see paragraph 81 above). In the Court's view, the failure to take

such a basic investigative step, which would have been expected at the very outset of the investigation had it been genuinely aimed at establishing the truth, discloses its flagrant deficiency.

192. It follows that the respondent State failed to account sufficiently for the deterioration of the first applicant's health and his subsequent death.

193. This is a serious omission as, apart from concern for respect of the rights inherent in Article 2 of the Convention in each individual case, important public interests are at stake. Notably, the knowledge of the facts and of possible errors committed in the course of medical care are essential to enable the institutions and medical staff concerned to remedy potential deficiencies and prevent similar errors (see *Byrzykowski v. Poland*, no. 11562/05, § 117, 27 June 2006).

194. There has accordingly been a violation of Article 2 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE SECOND APPLICANT

195. The second applicant additionally complained that, as a result of the denial of prompt and adequate medical care to her son, his subsequent death and the flawed domestic investigation into it, she had endured mental suffering in breach of Article 3 of the Convention. The text of this provision is provided in paragraph 90 above.

A. Admissibility

196. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Neither is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

197. The second applicant submitted that, during several months, she had witnessed her child dying in detention, at the age of twenty-seven, without adequate medical care and subjected to permanent handcuffing. She emphasised that, while being aware of the proximate end of his life, she had found herself in a state of complete helplessness and despair, being unable not only to save his life, but even to alleviate his suffering. The second applicant referred to the cynical and indifferent attitude of the domestic authorities, which had manifested itself, in particular, in the continuous detention of her son even after he had been sentenced to a fine only and after the prosecution had acknowledged his critical health condition and had consented to his release. They had showed similar indifference, in her view,

by their formalistic approach to the investigation into the circumstances of her son's death.

198. Maintaining their assertion as to the absence of any breach of Article 3 of the Convention in respect of the first applicant, the Government considered that the second applicant's complaint under this provision about her own mental suffering was devoid of any grounds.

2. The Court's assessment

199. The Court has never questioned in its case-law the profound psychological impact of a serious human rights' violation on the victim's family members. However, in order for a separate violation of Article 3 of the Convention to be found in respect of the victim's relatives, there should be special factors in place giving their suffering a dimension and character distinct from emotional distress inevitably stemming from the aforementioned violation itself. Relevant elements include the proximity of the family tie and the way the authorities responded to the relative's enquiries (see, for example, *Çakıcı v. Turkey*, no. 23657/94, § 98, 8 July 1999, where this principle was applied in the context of enforced disappearance; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, § 61, 12 October 2006, where the Court further relied on this principle in consideration of a mother's complaint about her suffering on account of her five-year old daughter's detention in another country; and *M.P. and Others v. Bulgaria*, no. 22457/08, §§ 122-124, 15 November 2011, where the respective complaint concerned suffering of the relatives of an abused child).

200. In the cited cases the Court attached weight to the parent-child bond. It also held that the essence of such a violation lay in the authorities' reactions and attitudes to the situation when it was brought to their attention. The Court further emphasised that it was especially in respect of this latter factor that a parent could claim directly to be a victim of the authorities' conduct (ibid.).

201. Another factor leading the Court to find a violation of Article 3 of the Convention, in particular, in respect of relatives of a victim of an enforced disappearance, was the continuous nature of their psychological suffering (see, for example, *Imakayeva v. Russia*, no. 7615/02, § 166, ECHR 2006‑XIII (extracts); and *Luluyev and Others v. Russia*, no. 69480/01, § 115, ECHR 2006‑XIII (extracts)).

202. In sum, in such circumstances, Article 3 enjoins the authorities to react to the plight of the victim's relatives in an appropriate and humane way. On the other hand, in cases of persons who have been killed by the authorities in violation of Article 2, the Court has held that the application of Article 3 is usually not extended to the relatives on account of the instantaneous nature of the incident causing the death in question (see *Yasin Ateş v. Turkey, no. 30949/96*, § 135, 31 May 2005; *Udayeva and Yusupova v. Russia*, no. 36542/05, § 82, 21 December 2010; *Khashuyeva*

v. Russia, no. 25553/07, § 154, 19 July 2011; and *Inderbiyeva v. Russia*, no. 56765/08, § 110, 27 March 2012).

203. Turning to the present case, the Court notes that, as soon as the second applicant became aware of the disease of her son, who was in detention, she took every effort to save his life, appealing to the hospitals, prosecution authorities and courts involved. Nonetheless, the first applicant continued to be detained even after the prosecution had agreed to his release given the gravity of his health condition (see paragraphs 39-40 above). Neither was he released after the verdict had been pronounced in his case with the penalty being limited to a fine and not providing for any custodial sentence (see paragraph 47 above). His mother, the second applicant, could only passively witness this in a state of complete helplessness. Furthermore, her complaints about the underestimation of the seriousness of her son's condition were disregarded, even though later they were found to be well-grounded (see paragraphs 33, 69 and 74 above). The Court does not lose sight either of the second applicant's fruitless efforts to get the handcuffing of her son's lifted during his stay in hospital (see paragraphs 49-50 above). Lastly, the Court observes that even after the death of the first applicant, the authorities manifested an equally unacceptable attitude towards the second applicant, in particular, by ignoring her requests to get access to her son's medical file (see paragraphs 63, 66 and 191 above).

204. Overall, the Court discerns a number of factors in the present case which, taken together, indicate a breach of the second applicant's rights under Article 3 of the Convention. Namely, it notes: the parent-child bond between her and the first applicant; the activeness of her efforts to save his life or at least to alleviate his suffering; the cynical, indifferent and cruel attitude towards her appeals demonstrated by the authorities both before the first applicant's death and during its subsequent investigation; the fact that the second applicant had to witness the slow death of her son without being able to help him in any way; and, lastly, the duration of her inherent suffering for about three months.

205. In the light of the foregoing, the Court considers that the second applicant has been a victim of inhuman treatment.

206. There has therefore been a violation of Article 3 of the Convention in respect of the second applicant.

III. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

207. The applicants complained that the delayed hospitalisation of the first applicant, notwithstanding the interim measure indicated to the Government under Rule 39 of the Rules of Court, had been in breach of Article 34 of the Convention.

208. Article 34 of the Convention reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols

thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

209. Rule 39 of the Rules of Court provides:

"1. The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.

2. Notice of these measures shall be given to the Committee of Ministers.

3. The Chamber may request information from the parties on any matter connected with the implementation of any interim measure it has indicated."

A. The parties' submissions

210. The second applicant maintained that the authorities had failed to comply with the interim measure.

211. The Government disagreed.

B. The Court's assessment

1. General principles

212. Article 34 of the Convention requires Member States not to hinder in any way the effective exercise of an applicant's right of access to the Court (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 100, ECHR 2005-I).

213. The obligation in Article 34 not to interfere with an individual's effective exercise of the right to submit and pursue a complaint before the Court confers upon an applicant a right of a procedural nature – which can be asserted in Convention proceedings – distinguishable from the substantive rights set out under Section I of the Convention or its Protocols (see, for instance, *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 470, ECHR 2005-III).

214. In *Mamatkulov and Askarov* (cited above, §§ 104, 125 and 128), the Court held that the failure to comply with an interim measure indicated under Rule 39 of the Rules of Court could give rise to a violation of Article 34 of the Convention.

215. In *Paladi v. Moldova* ([GC], no. 39806/05, 10 March 2009) the Court stated:

"87. The Court reiterates that the obligation laid down in Article 34 *in fine* requires the Contracting States to refrain not only from exerting pressure on applicants, but also from any act or omission which, by destroying or removing the subject matter of an application, would make it pointless or otherwise prevent the Court from considering it under its normal procedure [...]. It is clear from the purpose of this rule, which is to ensure the effectiveness of the right of individual petition [...], that the intentions or reasons underlying the acts or omissions in question are of little relevance when assessing whether Article 34 of the Convention was complied with ... What matters is whether the situation created as a result of the authorities' act or omission conforms to Article 34.

88. The same holds true as regards compliance with interim measures as provided for by Rule 39, since such measures are indicated by the Court for the purpose of ensuring the effectiveness of the right of individual petition ... It follows that Article 34 will be breached if the authorities of a Contracting State fail to take all steps which could reasonably have been taken in order to comply with the measure indicated by the Court.

89. Furthermore, the Court would stress that where there is plausibly asserted to be a risk of irreparable damage to the enjoyment by the applicant of one of the core rights under the Convention, the object of an interim measure is to preserve and protect the rights and interests of the parties in a dispute before the Court, pending the final decision. It follows from the very nature of interim measures that a decision on whether they should be indicated in a given case will often have to be made within a very short lapse of time, with a view to preventing imminent potential harm from being done. Consequently, the full facts of the case will often remain undetermined until the Court's judgment on the merits of the complaint to which the measure is related. It is precisely for the purpose of preserving the Court's ability to render such a judgment after an effective examination of the complaint that such measures are indicated. Until that time, it may be unavoidable for the Court to indicate interim measures on the basis of facts which, despite making a *prima facie* case in favour of such measures, are subsequently added to or challenged to the point of calling into question the measures' justification.

For the same reasons, the fact that the damage which an interim measure was designed to prevent subsequently turns out not to have occurred despite a State's failure to act in full compliance with the interim measure is equally irrelevant for the assessment of whether this State has fulfilled its obligations under Article 34.

90. Consequently, it is not open to a Contracting State to substitute its own judgment for that of the Court in verifying whether or not there existed a real risk of immediate and irreparable damage to an applicant at the time when the interim measure was indicated. Neither is it for the domestic authorities to decide on the time-limits for complying with an interim measure or on the extent to which it should be complied with. It is for the Court to verify compliance with the interim measure, while a State which considers that it is in possession of materials capable of convincing the Court to annul the interim measure should inform the Court accordingly (see, *mutatis mutandis*, *Olaechea Cahuas v. Spain*, no. 24668/03, § 70, ECHR 2006-X; *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 131, ECHR 1999-IV; and *Orhan v. Turkey*, no. 25656/94, § 409, 18 June 2002).

91. The point of departure for verifying whether the respondent State has complied with the measure is the formulation of the interim measure itself (see, *mutatis mutandis*, the International Court of Justice's analysis of the formulation of its interim measure and actual compliance with it in *LaGrand*, ...). The Court will therefore examine whether the respondent State complied with the letter and the spirit of the interim measure indicated to it.

92. In examining a complaint under Article 34 concerning the alleged failure of a Contracting State to comply with an interim measure, the Court will therefore not re-examine whether its decision to apply interim measures was correct. It is for the respondent Government to demonstrate to the Court that the interim measure was complied with or, in an exceptional case, that there was an objective impediment which prevented compliance and that the Government took all reasonable steps to remove the impediment and to keep the Court informed about the situation."

2. Application of the above principles to the present case

216. The Court notes that the respondent Government were officially informed of the interim measure under Rule 39 on 17 June 2008 (Tuesday, a working day) by a fax message (see paragraph 29 above).

217. The contents of the interim measure included an instruction to the domestic authorities to transfer the first applicant immediately to a hospital for medical treatment. Despite becoming aware of the interim measure at the latest on the evening of 17 June 2008, it was only on 20 June 2008 that the domestic authorities transferred the first applicant to a hospital.

218. It follows that the interim measure was not complied with for a period of three days.

219. The Court notes that the Government considered this delay reasonable, without referring to any impediments which had prevented their earlier compliance with it.

220. The Court however does not share this view. It explicitly and clearly indicated that the first applicant's hospitalisation had to be immediate (see paragraph 29 above). It observes that an identically worded interim measure, which it had indicated in the case of *Yakovenko v. Ukraine* (no. 15825/06, 25 October 2007), had been implemented on the same day (§§ 3 and 22).

221. There appear no objective impediments or difficulties, which might have prevented equally expedient compliance in the present case.

222. The Court emphasises that it did not indicate the necessity of the first applicant's medical examination, but his "[immediate transfer] to a hospital or other medical institution where he [could] receive the appropriate treatment for his medical condition". The authorities, however, waited for one day and decided, on 18 June 2008, that no urgent hospitalisation was required. In other words, instead of complying with the indicated interim measure, they decided to re-evaluate its soundness. And, as it was later acknowledged by the domestic authorities themselves, this re-evaluation was erroneous (see paragraphs 74 and 145 above).

223. Accordingly, there was no acceptable explanation for the domestic authorities' failure to take immediate action to comply with the interim measure (see, and compare with, *Grori v. Albania*, no. 25336/04, §§ 185-195, 7 July 2009). Whether or not the three-day delay in fact caused the damage which the interim measure was designed to prevent, is irrelevant for the Court's assessment (see *Paladi v. Moldova*, cited above, § 89).

224. The Court concludes the State failed to meet its obligations under Article 34 of the Convention by not complying promptly with the interim measure indicated by the Court on 17 June 2008.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

225. The second applicant also complained under Article 6 of the Convention about the alleged unfairness of the first applicant's trial.

226. The Court notes that the second applicant was not a party to the domestic proceedings complained of. Consequently, she cannot claim to be a victim, within the meaning of the Convention, of a violation of her rights guaranteed therein. The Court therefore rejects this complaint as being incompatible *ratione personae* with the Convention provisions, pursuant Article 35 §§ 3 (a) and 4 of the Convention.

227. Lastly, the second applicant complained about the material conditions of her son's detention in the ITT and the SIZO. She raised this complaint for the first time in her reply to the Government's observations.

228. The Court notes that the first applicant's detention in the conditions complained of ended on 20 June 2008 (see paragraphs 14 and 34 above), whereas the respective complaint was lodged with the Court after September 2009 (see paragraph 4 above), that is, more than six months later (see *Novinskiy v. Russia* (dec.), no. 11982/02, 6 December 2007, and *Malenko v. Ukraine*, no. 18660/03, § 40, 19 February 2009). It follows that this complaint was introduced out of time and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

229. Article 41 of the Convention provides:

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

A. Damage

230. The second applicant claimed 50,000 euros (EUR) for non-pecuniary damage associated with the violations of Articles 2 and 3 of the Convention in respect of the first applicant. She also claimed EUR 10,000 for non-pecuniary damage for the violation of Article 3 of the Convention in respect of herself.

231. The Government contested these claims as unsubstantiated and excessive. They also submitted that, if the Court decided to award a just satisfaction in respect of some violations regarding the first applicant, the second applicant should not automatically receive that award. According to the Government, it ought to be distributed among all the eligible heirs of the first applicant.

232. Taking into account the nature of the violations found and ruling on an equitable basis, the Court considers it appropriate to allow this claim in full. It thus makes the following awards under this heading: EUR 50,000 in respect of the non-pecuniary damage suffered by the first applicant, to be paid to the second applicant in her capacity as his successor in the proceedings before the Court after his death; and EUR 10,000 in respect of the non-pecuniary damage suffered by the second applicant herself, to be paid to her in her personal capacity.

B. Costs and expenses

1. Legal fees

233. The second applicant also claimed 10,000 Ukrainian hryvnias (UAH) for legal fees (equal to EUR 900 at the time when her claim was lodged). In support of this claim, she submitted a contract of legal services rendered in the proceedings before the Court dated 5 June 2008, according to which she was to pay the lawyer, Mr Lesovoy, UAH 10,000. That contract contained a handwritten receipt note by Mr Lesovoy according to which he had received the stipulated amount from the second applicant.

234. The Government considered that the second applicant had failed to demonstrate that the costs claimed were reasonable and had actually been incurred.

235. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Bottazzi v. Italy* [GC], no. 34884/97, § 30, ECHR 1999-V).

236. It notes that in the present case the second applicant was bound by and complied with her contractual obligations vis-à-vis Mr Lesovoy, who represented her son and herself in the proceedings before the Court.

237. The Court therefore considers that the aforementioned requirements have been met in this case and awards this claim in full.

2. Postal expenses

238. The second applicant also claimed UAH 262.69 (an equivalent of about EUR 25) for postal expenses. In support of her claim she submitted eight postal receipts in respect of her correspondence with the Court.

239. The Government submitted that the second applicant had failed to support her claim with documents.

240. Regard being had to the documents in its possession, the Court considers it reasonable to grant this claim in full and to award the second applicant EUR 25 under this heading.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 2 and 3 of the Convention in respect of the first applicant and the complaint under Article 3 in respect

of the second applicant admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the inadequate medical care afforded to the first applicant in the detention facilities;

3. *Holds* that there has been a violation of Article 3 of the Convention in respect of the inadequate medical assistance provided to the first applicant in the Central Hospital in June 2008;

4. *Holds* that there has been a violation of Article 3 of the Convention in respect of the first applicant's handcuffing in hospital;

5. *Holds* that there has been a violation of Article 2 of the Convention in respect of the authorities' failure to protect the life of the first applicant;

6. *Holds* that there has been a violation of Article 2 of the Convention in respect of the lack of an adequate investigation into the circumstances of the first applicant's death;

7. *Holds* that there has been a violation of Article 3 of the Convention in respect of the mental suffering of the second applicant;

8. *Holds* that the State failed to meet its obligations under Article 34 of the Convention by not complying promptly with the interim measure indicated by the Court on 17 June 2008;

9. *Holds*

(a) that the respondent State is to pay the second applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable on the date of settlement, plus any taxes that may be chargeable to the second applicant in respect of these amounts:

(i) EUR 50,000 (fifty thousand euros), payable to the second applicant in her capacity as the first applicant's successor in the proceedings before the Court after his death;

(ii) EUR 10,000 (ten thousand euros), payable to the second applicant in her personal capacity;

(iii) EUR 900 (nine hundred euros), plus any tax that may be chargeable to the second applicant, in respect of costs and expenses related to her legal representation;

(iv) EUR 25 (twenty-five euros), plus any tax that may be chargeable to the second applicant, in respect of her postal expenses;

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

Done in English, and notified in writing on 14 March 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President