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

FOURTH SECTION

CASE OF ALIEV v. UKRAINE

(Application no. 41220/98)

JUDGMENT

STRASBOURG

29 April 2003

FINAL

29/07/2003

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

In the case of Aliev. v. Ukraine,

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

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

Having deliberated in private on 25 March 2003,

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

PROCEDURE

1. The case originated in an application (no. 41220/98) against Ukraine lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Pakhrudin Mukhtarovich Aliev ("the applicant"), on 31 March 1998.

2. The applicant was represented by Mrs S. Saypudinova, a lawyer practising in Simferopol. She is also his wife. The Ukrainian Government ("the Government") were represented by their Agent, Mrs V. Lutkovska, from the Ministry of Justice.

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

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

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

6. Having consulted the parties, the President of the Chamber decided that in the interests of the proper administration of justice, the proceedings in the present case should be conducted simultaneously with those in the cases of Nazarenko v. Ukraine, Dankevich v. Ukraine, Khokhlich v. Ukraine, Poltoratskiy v. Ukraine and Kuznetsov v. Ukraine (applications

nos. 39483/98, 40679/98, 41707/98, 38812/97 and 39042/97) (Rule 43 § 2)).

7. By a decision of 25 May 1999 the Chamber declared the application partly admissible. On 4 October 1999 the Court carried out a fact-finding visit to Simferopol Prison.

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

9. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Outline of events

10. On 5 March 1996 the applicant was arrested by the Russian police and detained on remand in Krasnodar (Russia). On 7 March 1996 he was transferred to Simferopol (Ukraine) where he continued to be detained on remand.

11. On 10 February 1997 the Criminal Division of the Supreme Court of the Autonomous Republic of Crimea *(судова колегія Верховного суду Автономної Республіки Крим)* convicted the applicant of masterminding and carrying out organised crime and on several counts of aiding and abetting murder and attempted murder, and sentenced him to death. It also ordered the confiscation of his property.

12. On the same day the Administration of the Isolation Block of the Central Department of the Ministry of the Interior of the Autonomous Republic of Crimea *(адміністрація слідчого ізолятору Головного Управління Міністерства внутрішніх справ Автономної Республіки Крим)* moved the applicant to one of the cells for persons awaiting execution of the death sentence.

13. On 15 May 1997 the Criminal Division of the Supreme Court of Ukraine *(судова колегія з кримінальних справ Верховного суду України)* upheld the judgment given at first instance.

14. A moratorium on executions was declared by the President of Ukraine on 11 March 1997. In judgment no. 11рп/99 of 29 December 1999 the Constitutional Court held that the provisions of the Criminal Code concerning the death penalty were contrary to the Constitution of Ukraine.

The death penalty was therefore abolished and replaced by life imprisonment by Act no. 1483-III of 22 February 2000.

15. On 8 June 2000 the Supreme Court of the Autonomous Republic of Crimea commuted the applicant's death sentence to life imprisonment.

B. Oral evidence before the Court Delegates

16. Evidence of the applicant and four other witnesses was taken by the Court Delegates in Simferopol Prison on 4 October 1999. The Delegation was composed of Judges M. Pellonpää, J. Makarczyk and R. Maruste. The evidence taken may be summarised as follows:

1. The applicant

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

17. The applicant stated that he had not been informed that under the general conditions he was entitled to a visit of one to two hours by his relatives. In general, he had been allowed to have one visit per month for 15-20 minutes or half an hour at the most. He said that until the day of the Court Delegates' visit, he had not received a document with his rights and obligations under the prison regime. He further said that he had been moved that day into a newly renovated cell where "something like" that was hanging on the wall. He stated that he had been asked by the prison administration to sign the document, but had refused and had said that he wanted first to be informed about his rights and obligations. According to him, in his previous cell there had been no document listing those rights and obligations. Whenever he had been punished, he had always asked to be shown this document. However, he had been told that it was a secret document.

18. As a punishment, he had once not been allowed to have daily walks for 10 days, he had been kept in isolation under a strict regime, and he had not been allowed to buy food in the prison shop. He had been punished for the first time when he had shared the cell with another inmate; a warder had found "something like a knife" on the other inmate, and the applicant had intervened. On the second occasion, a warder had found a soap of good quality in the cell, had asked where the applicant had found it and had later seized it. The applicant had been punished by being prevented from meeting his two children.

19. According to the applicant, health conditions in the prison were not satisfactory and he was not treated properly as far as his health was concerned. He had never been thoroughly examined, although, according to the rules, inmates had to have a complete medical check-up twice a year. The applicant had complained about food which had caused diarrhoea and

stomach-aches, but had been told that such problems were not serious. He had also complained about heart-pains, headaches and toothache and especially problems with his crowns.

20. According to him, inmates were not provided with soap when taking a shower. However, they were allowed to have their own soap.

21. To the Court Delegates' question: "You are complaining about the food. I understand that you consider that the food provided here provokes diarrhoea and stomach-aches. You also complain that you are not allowed to receive parcels of food, vitamins, books and clothes. We learned that the situation had changed recently, last May. Now you can receive parcels and you can buy more goods from the prison shop. Do you confirm that?" the applicant replied: "Yes, more or less. However, what we can get is not sufficient." In fact, the applicant confirmed that he was allowed to receive one parcel and two small packets every two months.

22. The applicant did not have any contact with other prisoners, apart from the period when he shared his cell with another inmate.

23. To the Court Delegates' question: "Did you ever have a feeling that there was any real attempt by the Government to hinder your complaint to the Strasbourg institutions?" the applicant's lawyer who is also the applicant's wife replied: "Yes, by the Supreme Court. As long I was associated with Mr Aliev, they were reluctant to help me all the time. Actually, he was arrested in Russia, in Krasnodar, but the head of the Simferopol Directorate no. IV, Mr Zverev, personally went there and brought him here without any documents. The applicant was beaten and intimidated. Afterwards, it was recorded that he had been arrested in Simferopol."

(b) Prison practice concerning visits from the applicant's relatives and his lawyer

24. The applicant was handcuffed during his wife's visits. A warden was present all the time, listening to the conversation. He could interrupt the visit. Once, the applicant was allowed to speak for only three minutes. He was not allowed to speak in the Avarian language, which is his mother tongue. The warden interrupted him when he spoke in that language. The applicant did not answer the Delegates' question whether he had complained about the interruption of the visits. On the day of the Delegates' visit, he stated that there was no longer any language ban during his visits. However, in response to the Government representative's question: "Since when? The Government has your letter in which you say that there is no problem with communicating in your native language", the applicant stated: "Now there is no problem because we do not speak it."

25. In response to the Government representative's questions: "Have there been any cases when the prison administration refused you permission to meet your lawyer?" the applicant stated: "Yes, that has happened. I was

even told that there was some information coming from Kiev about that." When asked: "When was the last time you met your representative?", he replied: "Two weeks ago." When the Government representative said: "So, two weeks ago you met your lawyer. Earlier you said that you had a meeting with your relatives in May 1999, which means you have not seen them for four months. However, your lawyer is in fact your wife", the applicant's lawyer answered: "I am his lawyer. I am a member of the Russian Regional Bar Association. According to the international legal rules, I can represent my husband's interests abroad, and thus even in Ukraine. However, when I come to the Department for the Execution of Sentences, I always fear that my request to visit him will be refused. Today I found a letter from the Crimean Bar Association saying that, according to the Decree on Bar Associations, Aliev can only be represented by a Ukrainian citizen, so I cannot represent him any more. Owing to legal restrictions I have not, for the last three and a half years, had any intimate contact with my husband. I have two children; my five-year-old child realises that his father is in prison."

26. To the Government representative's question: "Do you confirm that for the last four months you have not had meetings with your relatives, bearing in mind that two weeks ago you met your wife?" the applicant replied: "I did not have a date with my wife; it was a formal meeting with my lawyer. It is different."

(c) Prison practice concerning daily outdoor walks

27. The applicant had been allowed to have outdoor walks since 24 May 1998. He said that he had been allowed to go for a walk except for the days when he had taken a shower, i.e. once every ten days. He then specified that in September 1999 the prison administration had arranged a shower every seven days, and on that day the inmates could not have a daily walk. He stated that during the walks the inmates had been handcuffed, holding their hands behind their backs. On 31 August 1999 they had been allowed to go for a walk without handcuffs. According to him, in winter they had not gone for walks.

(d) Prison practice concerning receipt of correspondence

28. Since May 1998 the applicant was allowed to write one letter per month. His mail was censored, and one letter from his wife had not been given to him, a fact that he learned during his wife's visit.

(e) The alleged ill-treatment of the applicant in prison

29. In his original application, the applicant alleged that he had been beaten in January 1998, that some masked men had entered his cell and that the prison governor had also been present. Before the Delegates he stated that only a certain Captain Doroshenko had not been wearing a mask. To the

Court Delegates' question: “What, in your view, was the motive for this action?” the applicant replied: “In prison here everything is controlled by fear; nobody tries to educate or rehabilitate people, only to use force.” To the Court Delegates' further questions: “But why did that only happen to you? We have no other complaints. Why did they select you to enforce this 'fear policy'?” the applicant replied: “Many people complain. However, their complaints do not reach the complaints bodies. When someone is afraid, it is easier to control him.”

30. The applicant saw the governor of the prison for the first time on 20 August 1999 after having been beaten because he had not wanted to take off the shorts he had been wearing in hot weather. According to him, beatings had happened quite often before. He had not recognised the people who were beating him, apart from Mr Doroshenko who had not been masked and had given the orders. They had beaten him on his back and had torn his shorts to pieces. The applicant had neither complained to the prison governor nor requested medical assistance considering it to be “useless”.

31. He had also complained to the Prosecutor General's Office, but his letter had not, according to him, reached the addressee, having been stopped by the prison authorities. He said that the Prosecutor General had visited the prison in mid-September 1999, but the applicant was not aware of the results of the visit. The Prosecutor General, accompanied by Colonel Zemlyanskiy from the Crimean Department of the Interior, had asked the applicant about his complaints to the Court. The applicant had confirmed that there had been pressure exerted on him not to complain to Strasbourg. He had expressed fear about the consequences of the Court Delegates' visiting him.

32. The applicant said that prison warders had organised some sort of training three or four times a year or when inmates had seriously violated the prison rules. He described the training as follows: “People in masks come and throw explosive packets with nuts at the cells, making a sound like a grenade. They also shoot with rubber bullets. The inmates are forced to lie down on the floor and the wardens walk through, beating them and pulling some of them to the corridor by the leg.” The applicant had once been burned. According to him, the last “training session” had taken place in February 1999.

2. Mr V. M. Yelizaryev

33. The witness was the governor of Simferopol Prison. He had been working as governor for two and a half years.

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

34. The witness said that about 3,000 prisoners were serving sentences of whom 30 were on death row. According to him, all prisoners were aware of their rights and duties. A copy of the list of rights and duties was posted in

every cell. He confirmed that there was no secrecy as to the rights and obligations of prisoners and that after the decree about prisoners' rights and obligations had been published, the prisoners were aware of them.

35. The witness said that he regularly visited all death row prisoners once a week.

36. He considered the heating conditions to be sufficient. The prison had its own boiler and there was a fresh-air ventilation system in the cells. According to him, the prisoners took a hot shower once every seven days, when the bed linen was also changed. He denied the applicant's allegation that all death row prisoners used the same razor, which would have created health problems on account of the risk of infection. He said that they shaved separately with blades given to them by the prison administration.

37. He stated that in the daytime there were two lamps lit in addition to the natural light from the cell windows, which he considered sufficient. At night, they had only one lamp lit. He said that every death row inmate had a cell of not less than 12 square metres. It was possible to read books and literature using both natural and artificial light.

38. The witness said that the inmates underwent an X-ray examination twice a year. Once a week the head of the medical division visited them, and every day a medical assistant conducted an inspection.

(b) Prison practice concerning correspondence

39. The witness said that death row prisoners had the right to communicate with the outside world without any limitations on either sending or receiving letters. He further said that this situation had improved since May 1999. He admitted that under the existing procedure, inmates' correspondence was censored, but he could not remember any cases when an incoming letter had been stopped without being given to its addressee, including letters from the European Commission of Human Rights. He confirmed that the applicant's correspondence had been registered in the journal. Moreover, all death row prisoner could complain of any violations of the right to exchange letters to the governor, to the Prosecutor who supervised the prison, or to any other official in the relevant department.

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

40. According to the witness, the possibilities for receiving parcels had improved in May 1999. Since then, the prisoners had been allowed to receive six food parcels *(посилка, передача)* and two small packets *(бандероль)* per year [*Nota*: Parcels to be forwarded to a prisoner may be sent by post *(посилка*) or brought in person to the prison *(передача)*. Small items like books or periodicals can be sent by post as a small packet *(бандероль* - literally a “bundle”).]. Previously, they had not been allowed to receive any parcels until the judgment in their criminal case had become final. Moreover, the prisoners could buy food in the prison shop. They could

spend 55 Ukrainian hryvnas (UAH) per month at prices which were the same as in the State-owned shops from which the prison bought the food.

(d) Daily outdoor walks

41. According to the witness, prior to May 1998 the inmates had not been allowed to go for daily outdoor walks. Since then, they had been taken out for one hour without handcuffs.

(e) Alleged ill-treatment of the applicant in prison

42. He denied that any "training" described by the applicant had ever taken place. He said that the Department for the Execution of Sentences had ordered that such training should be carried out without explosives or masks.

3. Mr Vladimir G. Babchinskiy

43. The witness was the doctor in Simferopol Prison, where he had been working since 1992.

44. He said that the prison medical staff included six doctors (four general practitioners, one psychiatrist and one radiologist), medical assistants *(фельдшер)*, an X-ray laboratory assistant, a pharmacist and a clinical assistant. According to him, medical services were provided 24 hours a day. Any inmate could apply at any time and get urgent medical assistance. The death row prisoners were seen by a medical assistant every day during their daily walk. They could ask him for any medical assistance and, if his help was not sufficient, they could request to see the doctor. Besides, they could apply directly to the doctor. Every inmate had a medical file compiled upon his arrival where all details and results of medical examinations were recorded and which was kept during the period of his imprisonment.

45. The witness had received no complaints about the sanitary conditions in the prison. He considered that the changes in regime for death row prisoners, especially the possibility of having outdoor walks and natural light in their cells, had improved their health conditions.

46. According to him, HIV testing of inmates was not obligatory and was only conducted upon individual request. The test was preceded by a confidential interview between the doctor and the prisoner. The witness did not confirm if there were inmates infected with the HIV virus, claiming that this was confidential information. The only other person who knew about inmates infected by HIV was the doctor responsible for the testing and the preceding consultations.

47. The witness confirmed that the applicant had never applied for medical assistance. Nor had he asked for help because he had been beaten;

even if he had done so, the result of his medical examination would have been recorded in his medical file.

4. Mr Y. N. Govorun

48. The witness was a medical assistant who had been working in Simferopol Prison for two and a half years. He was responsible for the daily inspection of the inmates' sanitary conditions, while the doctor conducted visits and attended emergency situations. He considered that there were particular problems with death row inmates and, in fact, he worked mostly with them. He accompanied these prisoners during their daily outdoor walks.

49. He confirmed that the improvement of living conditions in the death row prisoners' cells had had a positive influence on their health. Since then he had not received any further complaints from them regarding health and hygiene.

50. The witness stated that he had never seen any signs of brutality by warders against the death row inmates, or any bodily injuries. He had never heard about any such complaints made to other staff in the prison. He examined the inmates on a weekly basis and reported to his superiors. According to him, the applicant had not complained any more than the other inmates.

51. He further said that for the last one and a half months there had been a dentist in the hospital and that other doctors were able to provide assistance. According to him, the applicant had not applied for dental help.

5. Mr A. M. Pogrebitskiy

52. The witness was the senior warder of Simferopol Prison. His duties consisted in observing inmates, ensuring that they abided by the prison regime, receiving applications and complaints from them, and taking them for outdoor walks or to any meetings they had.

53. He had first met the applicant a year and half ago. He said that he had behaved like other inmates, without any distinguishing characteristics. The applicant had never made any complaints to the witness, and the witness had not heard about any complaints made by the applicant to other institutions. He saw him at least three times a day during the breaks for meals and sometimes at other times of the day.

54. The witness had not heard about any serious complaints from other inmates or any complaints about ill-treatment of an inmate. He could not remember if the applicant had ever been punished for violating the prison rules. He was not personally entitled to punish inmates. If an inmate behaved inappropriately, the witness wrote a report to his superior, who took a decision. The witness had never written anything about the applicant.

C. Inspection of Simferopol Prison

55. The Court Delegates visited the cell where the applicant was detained. The size of the applicant's cell area was about 12 square metres. The cell was in order and clean. There was an open toilet, a washbasin with a cold water tap, two beds fixed on the floor, central heating and a window with bars. There were some books, newspapers, a stock of soap and toilet paper. The cell was sufficiently heated and ventilated.

56. The Delegates were shown the prison shower area, which was reasonably clean. They also visited an exercise yard.

D. Documentary evidence

57. The applicant's medical file was created on 20 March 1996. It includes a list of vaccinations, according to which the applicant was vaccinated on 21 March and 19 September 1997, 20 March and 28 August 1998. Moreover, he underwent a test for detection of tuberculosis on 20 March and 22 September 1996, and on 11 February and 12 August 1999. On 29 April 1998 he underwent a full medical examination. He complained of pain in his hand. He underwent a blood test. The doctor noted that the applicant's state of health was normal and suggested that he take more vitamins.

58. From the documents produced before the Court it appears that the applicant's wife, in her capacity as the applicant's legal representative, made several requests to visit her husband. She received permission to see him on 7, 14 and 21 September 1999. Moreover, on 21 August 1999 she was given permission to visit her client every Tuesday.

59. According to the prison records, the applicant received money in his prison bank account on 22 May (UAH 50), 25 July (UAH 15), 15 August (UAH 20) and 5 September 1997 (UAH 27), and on 20 March (UAH 30), 24 April (UAH 50) and 4 August 1998 (UAH 50).

60. According to the prison shop records, he spent his money purchasing various items in the prison shop on the following occasions:

On 4, 8 and 23 July (UAH 14.45, 7.20 and 8.67 respectively), 8 August (UAH 7.77), 2 (UAH 8.91) and 24 September (UAH 6.67), 6 and 22 October (UAH 6.66 and 8.18 respectively), 5 and 20 November (UAH 6.13 and 7.64 respectively), 3 and 18 December 1997 (UAH 7.87 and 7.15 respectively), and on 9 January (UAH 7.48), 23 February (UAH 14.97), 5 and 20 March (UAH 8.00 and 6.99 respectively), 9 and 21 April (UAH 12.08 and 2.91 respectively), 22 May (UAH 14.99), 9 and 17 June (UAH 8.94 and 5.90 respectively), 7 and 21 July (UAH 7.54 and 7.18 respectively), 6 and 26 August (UAH 6.80 and 8.33 respectively) and 11 September 1998 (UAH 9.22).

On 8 August and 22 October 1997 and on 11 September 1998 the applicant bought some books.

On 1 December 1997 and 27 January 1998 he paid UAH 0.26 and UAH 0.52 respectively for posting two letters.

II. RELEVANT DOMESTIC LAW

A. Constitution of Ukraine

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

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

63. Article 15 § 3 prohibits censorship.

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

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

66. Under Article 29 §§ 2 and 4 no one may be arrested or held in custody other than pursuant to a reasoned court decision and only on grounds and in accordance with procedures established by law. Everyone arrested or detained must be informed without delay of the reasons for his arrest or detention, apprised of his rights, and from the moment of detention must be given the opportunity to defend himself in person, or to have the assistance of a defence lawyer.

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

68. Under Article 59 everyone has the right to legal assistance. Such assistance is provided free of charge in cases envisaged by law. Everyone is free to choose the defender of his rights. In Ukraine the Bar *(адвокатура)*

ensures the right to a defence against charges and the provision of legal assistance in deciding cases in courts and before other State authorities.

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

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

B. Statutory regulations governing the conditions on death row

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

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

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

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

73. The Temporary Provisions extended the rights of persons sentenced to capital punishment in comparison with the Instruction. In particular,

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

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

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

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

76. Section 9(1) of the Act provides *inter alia* that detainees have the right (a) to be defended in accordance with the rules of criminal law, (b) to be acquainted with the rules of detention, (c) to take a one-hour daily walk, (d) to receive twice a month a parcel weighing up to eight kilograms and to receive unlimited money transfers and amounts of money by way of remittance or personal delivery, (e) to buy foodstuffs and toiletries to the value of one month's statutory minimum wage, paying by written order, as well as unlimited amounts of stationery, newspapers and books in prison shops, (f) to use their own clothing and footwear and to have with them documents and notes related to their criminal case, (g) to use TV sets received from relatives or other persons and board games, newspapers and books borrowed from the library in their previous place of detention or bought from shops, (h) individually to perform religious rituals and use religious literature and objects made of semi-precious materials pertaining to their beliefs, provided that this does not lead to a breach of the rules applicable to places of pre-trial detention or restrict the rights of other persons, (i) to sleep eight hours a night, during which time they are not required to participate in proceedings or to do anything else except in cases of extreme emergency, and (j) to lodge complaints and petitions and send letters to State authorities and officials in accordance with the procedure prescribed by section 13 of the Act.

77. Under section 11, detainees are required to be provided with everyday conditions that meet sanitary and hygiene requirements. The cell area for one person may not be less than 2.5 square metres. Detainees are to

be supplied with meals, an individual sleeping-place, bedclothes and other types of material and everyday provisions free of charge and according to the norms laid down by the Government. In case of need, they are to be supplied with clothes and footwear of a standard form.

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

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

D. Correctional Labour Code ("the Code")

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

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

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

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

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

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

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

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

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

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

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

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

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

85. Article 43 § 2 (Correspondence of persons sentenced to imprisonment) provides that sentenced persons held in prisons may receive unlimited mail and may send letters as follows: one letter per month for

those held under the general regime and one letter every two months for those held under the strengthened regime.

E. Public Prosecutor's Office Act

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

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

88. Under section 44(1) the matters subject to the public prosecutor's supervision are: adherence to the legal rules on pre-trial detention and corrective labour or other establishments for the execution of sentences or coercive measures ordered by a court; adherence to the procedures and conditions for holding or punishing persons in such establishments; the rights of such persons; and the manner of carrying out by the relevant authorities of their duties under the criminal law and legislation on the enforcement of sentences. The public prosecutor may at any time visit places of pre-trial detention, establishments where convicted persons are serving sentences or establishments for compulsory treatment or reform, in order to conduct interviews or peruse documents on the basis of which persons have been detained, arrested or sentenced or subjected to compulsory measures; he may also examine the legality of orders, resolutions and decrees issued by the administrative authorities of such establishments, terminate the implementation of such acts, appeal against them or cancel them where they do not comply with the law, and request officials to give explanations concerning breaches which have occurred.

III. RELEVANT DOCUMENTS OF THE COUNCIL OF EUROPE

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

89. In its Resolution, the Assembly deplored the executions which, reportedly, had been carried out recently in Latvia, Lithuania and Ukraine. In particular, it condemned Ukraine for apparently violating its commitments to introduce a moratorium on executions of the death penalty

upon its accession to the Council of Europe. It called upon this country to honour its commitments regarding the introduction of a moratorium on executions and the immediate abolition of capital punishment warning it that further violation of its commitments, especially the carrying out of executions, would have consequences under Order No. 508 (1995).

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

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

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

91. In these texts, the Assembly noted that Ukraine had clearly failed to honour its commitments (212 persons had been executed between 9 November 1995 and 11 March 1997, according to official sources). At the same time, it noted that since 11 March 1997 a *de facto* moratorium on executions had been in effect in Ukraine. The Assembly insisted that the moratorium be reconfirmed *de jure* and that the Verkhovna Rada ratify Protocol No. 6 to the Convention. It stressed the importance of the *de facto* moratorium on executions and firmly declared that, if any further executions took place, the credentials of the Ukrainian parliamentary delegation would be annulled at the following part-session of the Assembly, in accordance with Rule 6 of its Rules of Procedure.

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

92. Delegates of the CPT visited places of detention in Ukraine in the years 1998, 1999, and 2000. Reports on each of the visits were published on

9 October 2002, together with the Responses to the Reports of the Ukrainian Government.

1998 Report

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

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

The equipment in the cells was described in the Report as being rudimentary, consisting of a metal bed and/or sloping platform (equipped with a thin mattress, sheets of dubious cleanliness and a blanket which was manifestly insufficient to keep out the cold), a shelf and two narrow stools. Prisoners were supposed to be able to listen to radio programmes via a speaker built into the wall of the cell, but it had been reported to the delegation that the radio only functioned sporadically (ibid.).

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

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

a member of the health-care staff, who spoke to the prisoners through a grill in the cell-door (paragraph 133).

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

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

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

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

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

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

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

1999 Report

97. A CPT delegation visited Ukraine from 15 to 23 July 1999 in the course of which they again inspected SIZO No. 313/203 in Kharkiv where, at the time of the visit, there were detained 23 prisoners who had been sentenced to death. The Report noted that certain changes had occurred since the previous visit. In particular, the cells had natural light and were better furnished and the prisoners had an hour of exercise per day in the

open air, although it was observed that there was insufficient space for real physical exercise (paragraphs 34-35). The Report further recorded that important progress had been made in the right of prisoners to receive visits from relatives and to correspond (paragraph 36). However, the CPT noted certain unacceptable conditions of detention including the fact that prisoners continued to spend 23 out of 24 hours a day in their cells and that opportunities for human contact remained very limited (paragraph 37).

2000 Report

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

99. Despite these welcome steps, the CPT recorded that the treatment of this category of prisoner was a major source of concern to the Committee (paragraph 67). It was noted that, further to a provisional instruction issued in July 2000 and pending the establishment of two high-security units specifically intended for life prisoners, such prisoners were subjected to a strict confinement regime (paragraph 68). While living space in the cells was generally satisfactory and while work had started on refurbishing cells in all the establishments visited, there were major deficiencies in terms of access to natural light and the quality of artificial light and ventilation (paragraph 69). Moreover, life-sentence prisoners were confined in their cells for 23 ½ hours a day with no form of organized activities and, by way of activities outside their cells, were entitled to only half an hour outdoor exercise, which took place in unacceptable conditions. There was virtually no human contact: since the entry into force of the July 2000 instruction, visits from relatives had been forbidden and prisoners were only allowed to send one letter every two months, although there were no restrictions on receiving letters (paragraph 70).

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

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

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

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

103. The Government further reiterated that according to Article 248(1) of the Code of Civil Procedure, "a citizen has a right of access to a court if he or she considers that his or her rights have been violated by actions or omissions of a State authority, a legal entity or officials acting in an official capacity. Among entities whose actions or omissions may be challenged before the competent court listed in the first paragraph of this provision are the bodies of State executive power and their officials".

104. The applicant disputed the Government's submissions, alleging that he had exhausted all domestic remedies at his disposal.

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

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

106. The Court emphasises that the application of this rule must make due allowance for the context. Accordingly, it has recognised that Article 35 must be applied with some degree of flexibility and without excessive formalism. The Court has recognised that the rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically; in reviewing whether the rule has been observed, it is essential to have regard to the particular circumstances of the individual case. This means, amongst other things, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1211, § 69).

107. In the present case the Court notes from the oral evidence before its Delegates and from the documents submitted to it by the parties that the applicant does not appear to have lodged any complaint – oral or written – with the governor of the prison, his deputy or the senior warder or with the public prosecutor concerning his detention conditions. The Court finds reliable the prison governor's evidence that he regularly came to see the death row inmates once a week (see paragraph 35 above).

108. On the other hand, the Court observes that although the prison governor stated that every death row prisoner had been made aware of his rights and duties and that the inmates had signed a document containing their rights and obligations, the applicant claimed that he had not received such a document until the date of the Delegates' visit but had refused to sign it (see paragraph 17 above). He therefore could not have had sufficient knowledge of what his rights and obligations were.

The Government have adduced no evidence to show that the applicant was otherwise made aware of his rights or of the appropriate means by which he might seek redress for his complaints. In these circumstances, it

cannot be held against the applicant that he did not lodge a formal complaint about his conditions of detention through the correct channels.

109. The Court also has regard to the fact that the applicant had regular visits from his lawyer, during which legal matters - including his conditions of detention - could have been discussed. It is undisputed, however, that the prison system insisted on having warders present at the applicant's meetings with his lawyer and his relatives (see paragraph 24 above). The applicant - who could not in these circumstances communicate freely with his lawyer or his relatives - cannot be blamed for choosing not to submit any complaints concerning his detention conditions that contained allegations about the prison administration.

As to the possibility of lodging a civil action in the courts, the Court reiterates that the Article 35 § 1 requires not only that a domestic remedy is available, but that it is effective to redress the alleged breach of an individual's Convention rights. While it is true that the present applicant did not bring civil proceedings to complain of his conditions of detention, the Court notes that the Government have not shown how recourse to such proceedings could have brought about an improvement in those conditions. Nor have they supplied any example from domestic case-law to show that such proceedings by a prisoner would have stood any prospect of success.

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

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

111. The applicant originally complained about the conditions of detention to which he was subjected on death row in Simferopol Prison. He further claimed that the prison authorities subjected him to torture and inhuman treatment and punishment falling within the scope of Article 3 of the Convention, which reads as follows:

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

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

1. The submissions of the parties

112. The applicant submitted that his right to see his family was restricted to one visit a month for 10-20 minutes, that he had been prevented

from having outdoor walks, that in his cell there was only one small lamp, no window, a mirror and weighing scales, and that he was not allowed to receive parcels of food, vitamins, books or clothes. He stated that the quality of food in the prison was unsatisfactory, and that it caused diarrhoea and stomach-aches and did not contain any meat, vegetables or white bread. He also submitted that during his wife's visits he was not allowed to speak with her in his mother tongue. He also claimed that he was deprived of toiletries such as toothpaste, soap and shampoo, that he did not have hot water and that cold water was allowed only from time to time: he could take a shower only once every ten days for five minutes, without any soap. He submitted that all the prisoners, some of them suffering from AIDS, shared one razor. He finally stated that he was deprived of any qualified medical care, and that there was no television or radio or any other possibility of communication with the outside world from the prison.

113. In his written observations, which the Court received on 17 March 1999, the applicant submitted that between 10 February and 10 October 1997 he had been held in a cell with other prisoners. Three months later a third inmate had been moved to his cell, suffering from cancer and tuberculosis and who died afterwards from dystrophy.

114. According to him, the radio in his cell rarely worked and a washbasin had been installed only in January 1999. There was no hot water in his cell. He stated that frequently there were cockroaches and worms in the food. He was allowed to receive parcels with 8 kilograms of food twice a month. However, there were restrictions on the kind of food: cheese and fish, for example, were forbidden as perishable goods.

115. The applicant further submitted that the visits from his wife had not lasted more than thirty minutes. He had been separated from her by a grill and glass. He also claimed that the razors he was given were used ones, that the bedclothes were not washed properly and that he was allowed to take a bath only once every twelve or fourteen days. He further alleged that he had never been seen by a doctor. When he had asked for a doctor in February 1999, one had come the next day but had left without had examining him, saying: “It is impossible to cure heartburn since it is caused by the bad food.”

116. The applicant stated that until January 1998 he had been allowed to spend only UAH 15 in the prison shop, where there was nothing to buy except books which cost twice the price outside the prison. He had not been provided with any newspapers and had not been allowed to receive them from his relatives. Until May 1998 he had not been allowed to have daily outdoor walks, and the walks he had subsequently been allowed had lasted no more than 15 to 30 minutes. He stated that he had been given permission to write letters on 3 May 1998.

117. In his written observations of 5 August 1999 on the merits, the applicant reiterated that his cell had not been ventilated until 24 May 1998.

Afterwards, he had started to have outdoor walks lasting 20 or 30 minutes, but apart from walking with handcuffs around a yard 15 metres square, he had not been able to have any physical exercise. At the end of December 1998 one part of the window in his cell had been removed so that fresh air could circulate.

118. The applicant also submitted that the food had been of very poor quality without any meat. He had often found cockroaches, worms, flies and other insects in his food. According to the applicant, the bread had also been of poor quality. Moreover, the death row inmates had received only 15 grams of sugar per day, an amount he found insufficient. In the past six months, they had not received any sugar at all. As far as hygiene was concerned, the applicant said that he was allowed to take a shower once every ten or even twelve days in a very dirty bathroom. The shower had lasted five to ten minutes. Moreover, the inmates had used a disposable razor which had been used several times. They had not been provided with soap or toothpaste and were not able to be given those articles by their relatives. The applicant further submitted that the medical care provided in the prison had been insufficient and that the prison administration did not provide any dental treatment; teeth were never treated, but were only extracted. He said that he was unable to sleep or take a rest because of noise around his cell and a lamp which was switched on twenty-four hours a day.

119. The applicant had been punished twice, being confined for ten days in a cell from which everything had been removed. The reason for his second punishment was that the warder had found good-quality soap in the applicant's cell and he had refused to explain where he had found it.

120. The applicant also reiterated that he had been allowed to see his relatives once a month and that for three and half years he had not had any intimate contact with his wife. During the visits, he was not allowed to speak in his mother tongue and had been discriminated against because of his Dagestani origin.

121. According to him, the inmates had not been allowed to receive any daily newspapers or to watch TV or listen to the radio, and the radio had often been broken. The applicant had been allowed to have written contact with the outside world since May 1998. However, letters had been lost several times. The letters had been censored. His cell was very poorly equipped. Until December 1998 he had not had a washbasin.

122. The Government submitted that all the relevant detention rules had been applied in the case of the applicant, including those relating to cell facilities, medical treatment, visits and correspondence as provided for in the Act, in the Correctional Labour Code in the Instruction and in the Temporary Provisions. According to section 8(4) of the Act, a person sentenced to capital punishment was detained separately from other prisoners. They submitted that the facilities in the applicant's cell complied with the required sanitary and hygiene standards: it measured 12 square

metres or 48 cubic metres, and had a radio, a bed, a table, sufficient natural and electric lighting, cold running water and a toilet. The prison building was equipped with a central-heating system operating during the autumn and the winter period. The applicant was provided with three meals a day as prescribed by section 11(3) of the Act, and with clothing, footwear and bedclothes.

123. The Government further submitted that medical assistance, treatment, prophylactic and anti-epidemic measures for persons sentenced to capital punishment were arranged and implemented pursuant to the legislation on health protection. According to the Government, the applicant had not applied for medical assistance and his current state of health was satisfactory. They considered that the latter's allegations about the poor hygiene conditions, the cleanliness of the bedclothes and the lack of outdoor walks were groundless.

124. The Government noted that, in accordance with the prison rules, the inmates bathed not less than once every ten days under a doctor's supervision. They were provided with 50 grams of soap and could shave with an ordinary or an electric razor. After each bath, they received clean bedclothes. Moreover, inmates could buy soap, toothpaste, toothbrushes and other articles in the prison shop. On a monthly basis they could also buy food. The amount of money that could be spent in the prison shop by an inmate was UAH 50 (UAH 45 until 3 July 1998). The applicant bought food in the prison shop every month.

125. The Government stated that since May 1998 the applicant had been allowed to have outdoor walks in a yard where he could also do physical exercise. Moreover, when death row inmates had undergone sanitary treatment, handcuffs had been used in accordance with the law. According to the Government, the applicant had never made any complaint about the way in which his handcuffs had been fastened.

126. They also submitted that, under section 12(1) of the Act, after the applicant's case had been considered by the appellate court, visits by his defence counsel, at the applicant's request, or by his relatives could be granted by the Head of the Central Directorate of the Ministry of the Interior of the Autonomous Republic of Crimea or by his deputy in charge of the Isolation Block. Section 12(4) of the Act provided that visits by defence counsel and solicitors were not limited as to their number or length.

127. The Government lastly submitted that since February 1997 the applicant had not made any complaint regarding his correspondence with his relatives. He had not written any letters to them and they had not written to him. There was no limitation on the number of letters that the applicant was allowed to receive.

128. In their further written observations the Government submitted that their Agent had visited the place of the applicant's detention in July 1999. He had confirmed that the conditions of detention on death row had been

compatible with the legislation then in force, in particular the Instruction of 20 April 1998. The Government underlined that they had undertaken all the necessary measures to improve the legal status of persons sentenced to capital punishment pending the legislative debate on the abolition of the death penalty. To this end, the Temporary Provisions had been adopted on 25 June 1999 and entered into force on 11 July 1999.

2. The Court's assessment

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

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

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

132. In addition, as underlined by the Court in the Soering v. the United Kingdom judgment, present-day attitudes in the Contracting States to capital punishment are relevant for the assessment whether the acceptable threshold of suffering or degradation has been exceeded (see *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, p. 41, § 104).

Where the death penalty is imposed, the personal circumstances of the condemned person, the conditions of detention awaiting execution and the length of detention prior to execution are examples of factors capable of bringing the treatment or punishment received by the condemned person within the proscription under Article 3 (ibid.). When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 48, ECHR 2001-III; and *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI.

133. The Court notes that the applicant complained of certain aspects of the conditions to which he had been subjected in Simferopol Prison. It reiterates in this regard that the Convention only governs, for each Contracting Party, facts subsequent to its entry into force in respect of that Party. The Court therefore has jurisdiction to examine the applicant's complaints in so far as they relate to the period after 11 September 1997, when the Convention came into force in respect of Ukraine. However, in assessing the effect on the applicant of the conditions of his detention, the Court may also have regard to the overall period during which he was detained as a prisoner, including the period prior to 11 September 1997, as well as to the conditions of detention to which he was subjected during that period (see *Kalashnikov*, cited above, § 96).

134. The Court further observes that the applicant was detained under a sentence of death until his sentence was commuted to one of life imprisonment in June 2000. As is noted above (see paragraphs 89-91 above), the use of capital punishment in Ukraine was the subject of strong and repeated criticism in Resolutions of the Parliamentary Assembly of the Council of Europe, in which it was recorded that between 9 November 1995 and 11 March 1997 a total of 212 executions had been carried out in the State. However, on the latter date a *de facto* moratorium on executions was declared by the President of Ukraine; on 29 December 1999 the Constitutional Court held the provisions of the Criminal Code governing the use of the death penalty to be unconstitutional; and on 22 February 2000 the death penalty was abolished by law and replaced by a sentence of life imprisonment (see paragraph 14 above). The applicant was sentenced to death in February 1997, shortly before the moratorium came into effect. The Court accepts that, until the formal abolition of the death penalty and the commutation of his sentence, the applicant must have been in a state of some uncertainty, fear and anxiety as to his future. However, it considers that the risk that the sentence would be carried out, and the accompanying feelings of fear and anxiety on the part of those sentenced to death, must have diminished as time went on and as the *de facto* moratorium continued in force.

135. At the time of his conviction, the applicant was twenty-nine years old. He has been detained in Simferopol Prison since 7 March 1996. He

remained there after his death sentence had been pronounced by the Supreme Court of the Autonomous Republic of Crimea on 10 February 1997 and upheld by the Supreme Court of Ukraine on 15 May 1997 (see paragraphs 11 and 13 above).

136. The Court accepts the applicant's evidence that, initially, he was not aware of the prison rules and of his rights and obligations. On the day of the Court Delegates' visit he had been moved to another cell and was asked to sign a document containing his rights and obligations, without the prison staff giving any explanation as to the contents of the document (see paragraph 17 above). Another document containing the same information was posted on the wall in the cell. The evidence the applicant gave before the Delegates was convincing in this respect and the Government did not adduce any evidence indicating any earlier date on which the applicant had been informed of his rights and obligations.

137. The Court notes that on the date of its Delegates' visit, thirty "death row" inmates in Simferopol Prison, including the applicant, were kept in single or double cells without the possibility of communicating with other inmates (see paragraph 22 above). The light in the applicant's cell was on twenty-four hours a day but at night only one was switched on (see paragraph 37 above).

138. There was no dispute between the parties that the applicant had first been allowed to go for a one hour walk on 24 May 1998. Further, the Court accepts the applicant's evidence that the first time he had gone for a walk without his handcuffs was on 31 August 1999. This evidence was consistent with the testimony of Mr Nazarenko, who was detained in the same prison (Application no. 39483/98). The Court notes that the Government did not support the evidence given by the prison governor that the prisoners had not been handcuffed during their daily outdoor walks since May 1998 (see paragraph 41 above). It therefore concludes that until May 1998 the applicant did not have the opportunity to go for daily outdoor walks and was handcuffed during his daily walks until 31 August 1999 (see paragraph 27 above).

139. The Court accepts the applicant's evidence that inmates were allowed to have daily outdoor walks except for the day on which they had a shower, which was once every seven or ten days. In this connection, the Court accepts that the applicant was able to take a hot shower every seven days, and previously every ten days. However, it is unable to establish the exact date on which this procedure was changed. Although the applicant was not usually provided with soap he could use his own soap (see paragraph 20 above).

140. The cell to which the applicant moved on the day of the Court Delegates' visit was in order and clean (see paragraph 55 above). The size of the cell area seemed to correspond to the details given by the Government in their written observations (see paragraph 122 above). There was an open

toilet, a washbasin with a cold water tap, two beds fixed on the floor, central heating and a window with bars. There were some books, newspapers, a stock of soap and toilet paper. During the Delegates' visit on 4 October 1999 the cell was sufficiently heated. However, the Delegates visited Simferopol Prison during a period of the year when temperatures have a tendency to rise to 20ºC. The Court accepts the applicant's statement that his previous cell was in a worse state than his present one.

141. The Court notes that the applicant has been allowed to write one letter per month since 3 May 1998, and that his correspondence was censored (see paragraphs 28 and 121 above). This information was corroborated by the governor of the prison, who also confirmed that the inmates could receive an unlimited number of letters (see paragraph 39 above). The Court accepts the applicant's evidence that he did not receive one of his wife's letters (see paragraph 28 above). The situation regarding sending and receiving letters improved after 11 July 1999 when the Temporary Provisions entered into force (see paragraphs 39 and 73 above).

142. The Court could not establish with sufficient clarity whether the applicant's allegations concerning his poor health were well-founded, not having been assisted by an independent doctor during its Delegates' visit to Simferopol Prison. According to the prison doctor, the applicant had never applied for medical assistance (see paragraph 47 above). The medical assistant stated that the applicant had not applied for dental treatment (see paragraph 51 above). From the applicant's medical file, which was created on 20 March 1996, it appears that the applicant was vaccinated on 21 March and 19 September 1997 and on 20 March and 28 August 1998, and that he underwent a screening test for tuberculosis (including an X-ray examination) on 20 March and 22 September 1996 and on 11 February and 12 August 1999. On 29 April 1998 he was given a full medical examination and underwent a blood test, after complaining of pain in his hand. The doctor concluded that his state of health was normal and suggested that he take more vitamins (see paragraph 57 above).

143. Consequently, the Court considers that the medical record and the witness statements heard by the Delegates on 4 October 1999, which are partly corroborated by the applicant's evidence, prove to its satisfaction that the applicant had regular access to medical assistance. Furthermore, the aforesaid evidence supports the Government's argument that the applicant received medical assistance when he complained about health problems. According to the evidence examined, the medical examinations were carried out by qualified and authorised professionals. The complaint and evidence submitted by the applicant do not suggest, either explicitly or implicitly, that the treatment was carried out unprofessionally, or that it caused any bodily harm other than that which was related to the therapeutic measures.

144. The applicant's complaints focused on the comparatively low standard of the medical care provided in the prison. However, the Court has

received no evidence to suggest possible professional misconduct or to indicate that medical care provided by the prison medical staff fell short of an adequate standard of competent and professional care. In the light of these circumstances, the Court is unable to establish that the health conditions in Simferopol Prison were in violation of medical and acceptable professional standards.

145. The Court further observes that the applicant's wife, in her capacity as the applicant's legal representative, applied for permission to visit her husband. She received permission to visit him on 7, 14 and 21 September 1999. Moreover, on 21 August 1999 she was given permission to visit her client every Tuesday. During those visits, a warder was present who was authorised to interrupt the conversation or to end the visit (see paragraph 24 above). The Court could not, however, establish with sufficient clarity whether this happened when the applicant's wife visited the applicant as a member of his family or as his legal representative. Generally, the visits of the applicant's wife lasted for 15-20 minutes or half an hour at the most. The applicant saw his wife two weeks before the Delegates' visit in Simferopol Prison when she came in her capacity as his defence counsel. Moreover, the applicant testified that his wife's last visit as a member of his family had taken place in May 1999. There was no document which could prove that the applicant's wife had asked for permission to see her husband as a member of his family after that date.

146. Further, the Court accepts the applicant's evidence that he was not allowed to speak in the Avarian language during his wife's visits (see paragraph 24 above) and that he was handcuffed during the visits. His statements seemed to be reliable and the Government did not submit any evidence to rebut them. The Court notes, nevertheless, that the applicant did not state on the day of its Delegates' visit that he continued to be prohibited from using his mother tongue during meetings with his wife (ibid.).

147. The Court establishes that in May 1999 the applicant was given permission to receive parcels and that since that same date he has been able to buy more goods in the prison shop (see paragraph 21 above). This evidence was corroborated by the governor of the prison (see paragraph 40 above). However, although the latter said that the prisoners were allowed to receive six food parcels and two packages per year, the applicant confirmed that he was allowed to receive one parcel and two packages every two months.

148. The Court has examined as a whole the conditions to which the applicant was subject during his detention in Simferopol Prison. While it cannot establish with complete clarity the conditions of detention to which the applicant was subjected prior to the Court Delegates' visit, certain facts are beyond dispute and clearly established. The Court views with particular concern that, until at earliest May 1998, the applicant, in common with other prisoners detained in the prison under a death sentence, was locked up

for 24 hours a day in cells which offered only a very restricted living space, that the windows of the cells were covered with the consequence that there was no access to natural light, that there was no provision for any outdoor exercise and that there was little or no opportunity for activities to occupy himself or for human contact. In common with the observations of the CPT concerning the subjection of death row prisoners in Ukraine to similar conditions, the Court considers that the detention of the applicant in unacceptable conditions of this kind amounted to degrading treatment in breach of Article 3 of the Convention. The Court further finds that the applicant's situation was aggravated by the fact that he was throughout this period subject to a death sentence, although, as noted in paragraphs 14 and 134 above, a moratorium had been in effect since March 1997.

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

150. The Court acknowledges that, between May 1998 and the date of the visit to Ukraine of the Court's Delegates in October 1999, substantial and progressive improvements had taken place, both in the general conditions of the applicant's detention and in the regime applied within the prison. In particular, the coverings over the windows of the cells were removed, daily outdoor walks were introduced and the rights of prisoners to receive visits and to correspond were enhanced. Nevertheless, the Court observes that, by the date of introduction of these improvements, the applicant had already been detained in these deleterious conditions for a period of over 12 months, including a period of 8 months after the Convention had come into force in respect of Ukraine.

151. The Court has also borne in mind, when considering the material conditions in which the applicant was detained and the activities offered to him, that Ukraine encountered serious socio/economic problems in the course of its systemic transition and that prior to the summer of 1998 the prison authorities were both struggling under difficult economic conditions and occupied with the implementation of new national legislation and related regulations. However, the Court observes that lack of resources cannot in principle justify prison conditions which are so poor as to reach the threshold of treatment contrary to Article 3 of the Convention. Moreover, the economic problems faced by Ukraine cannot in any event

explain or excuse the particular conditions of detention which it has found in paragraph 148 to be unacceptable in the present case.

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

B. Alleged ill-treatment of the applicant by prison officers in January 1998 and August 1999

153. The applicant gave evidence before the Court Delegates that he had been beaten in January 1998 and on 20 August 1999 (see paragraphs 29 and 30 above). He said that a number of masked persons had entered his cell, accompanied by the prison governor (see paragraph 30 above). He also mentioned a certain Captain Doroshenko, who had been the only one without a mask. The second incident had happened, according to the applicant, when he saw the prison governor for the first time in 1999. He said that he had been beaten because he had not wanted to take off the shorts he had been wearing in hot weather.

154. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence (see, *mutatis mutandis*, *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, pp. 17-18, § 30). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161 *in fine;* and *Labita v. Italy* [GC], no 26772/95, § 121, ECHR 2000-IV).

155. In the instant case, the Court observes that in his oral testimony to the Delegates the applicant said that beatings had happened quite often, even before the alleged incidents. He had not been able to recognise the people who were beating him, apart from Mr Doroshenko who was not wearing a mask and was giving the orders. They had beaten him on the back and torn his shorts to pieces. The applicant had neither complained to the prison authorities nor requested medical assistance. He had complained to the Prosecutor General's Office (see paragraph 31 above).

156. The Court considers that the applicant's account contains a certain number of details and elements which it would not expect to find in a fabricated story. It notes, however, that there is no record of any occurrence relating to the ill-treatment described by the applicant. Moreover, the applicant's statement contains certain confusing elements: although he stated that in January 1998 a number of masked persons had entered his cell, accompanied by the prison governor, and that Captain Doroshenko had also been present, the applicant said that the second incident occurred when he saw the prison governor for the first time.

157. The applicant also mentioned Captain Doroshenko in connection with this second incident of 20 August 1999. The Court notes that Mr V.M. Yelizaryev testified during the Delegates' visit that he had been working as the prison governor for two and a half years, i.e. since February 1997. In these circumstances, if it is true that the governor accompanied the masked men in January 1998, it cannot be true that the applicant saw him for the first time on 20 August 1999 (see paragraph 30 above).

158. The Court regrets that its Delegates could not interview Captain Doroshenko during their visit to Simferopol Prison. It notes nevertheless, that the applicant did not submit a single complaint to the governor of the prison, his deputy or the senior warder who was also authorised to receive complaints and applications (see paragraphs 30 and 54 above). Nor, according to his evidence, did he submit any complaint to the prison doctor (see paragraph 47 above). However, the medical assistant stated that the applicant had not complained more than other inmates (see paragraph 50 above).

159. The Court is aware of the applicant's fears about the consequences of his interview with the Delegates (see paragraph 31 above). However, these fears would not appear to explain the absence of any complaint about ill-treatment to the prison authorities. His further explanation that it would have been “useless” to submit a complaint to the governor (see paragraph 30 above) does not convince the Court either.

160. The applicant said that he had seen the prison governor for the first time on 20 August 1999 (see paragraph 30 above). This statement directly conflicts with the testimony given by the governor, who said that he had been visiting inmates regularly on a weekly basis (see paragraph 35 above). The Court observes that the prison governor's evidence was corroborated by the applicant in application no. 39483/98, Nazarenko v. Ukraine, who was detained in the same prison and heard by the Delegates on the same day as the present applicant and who testified that the governor had met the prisoners every Thursday (see paragraph 28 of the Nazarenko judgment). The Court does not consider it credible that the prison administration would not have applied the same procedure to all prisoners, taking into account that there were only thirty death row inmates in Simferopol Prison (see paragraph 34 above). In the light of these circumstances, the Court does not accept the applicant's statement as reliable evidence.

161. In its evaluation of whether there is sufficient evidence to prove the applicant's allegations beyond reasonable doubt, the Court notes that there is no medical or other material evidence establishing that the applicant sustained injury as a result of ill-treatment by prison officers in Simferopol Prison as he alleged. The absence of any use of force by prison officers is supported by the oral statements of witnesses heard by the Delegates. The

Court therefore finds it impossible to establish, beyond reasonable doubt, that the applicant was subjected to ill-treatment in prison as he alleged.

162. Accordingly, there has been no violation of Article 3 of the Convention in this respect.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

163. In his original application to the Commission, the applicant submitted that his right to see his wife was restricted to one visit a month for 10-20 minutes and that during his wife's visits he was not allowed to speak to her in his mother tongue. He also stated that he was not allowed to receive parcels of foodstuffs, vitamins, books or clothes. Lastly, he stated that he could not watch television or listen to the radio and had no other possibility of communication with the outside world from the prison. In his written observations on the admissibility and merits, the applicant further stated that he had been deprived of any intimate contact with his wife.

164. The Court considers that the applicant's complaints fall to be examined under Article 8 of the Convention, which provides:

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

165. The Court first reiterates that the Convention only governs, for each Contracting Party, facts subsequent to its entry into force in respect of that Party. The Court therefore has jurisdiction to examine the applicant's complaints in so far as they relate to the period after 11 September 1997, when the Convention entered into force in respect of Ukraine.

A. Possibility for the applicant to receive parcels and small packets and to correspond with his relatives

166. It was established during the Court Delegates' visit to Simferopol Prison that the applicant had been allowed to write one letter per month since May 1998 (see paragraph 28 above). However, the Court could not establish with sufficient clarity whether the applicant had used that right and whether the number of letters he had received corresponded to the number of letters which had been sent to him by his family. The Court reiterates in this connection that, according to the Instruction, the applicant was entitled to send one letter per month and to receive letters without any restriction (see paragraph 72 above). Moreover, the Court has already noted that the

applicant did not receive one of his wife's letters. However, he did not specify the date on which this letter had been sent to him. According to the statements of the witnesses heard by the Delegates, the situation with regard to sending and receiving mail improved significantly (see paragraphs 39 and 73 above) after the Temporary Provisions had become effective, on 11 July 1999.

167. The Court has also noted above that since May 1999 the applicant had started to receive parcels and had been able to buy more items in the prison shop. The applicant confirmed that he was allowed to receive one parcel and two small packets every two months (see paragraph 21 above).

168. The Court considers that the above-mentioned restrictions by the public authorities interfered with the applicant's right to respect for his correspondence guaranteed under Article 8 § 1 of the Convention and that those restrictions can be justified only if the conditions of the second paragraph of that provision are met.

169. In particular, if it is not to contravene Article 8, such interference must be "in accordance with the law", pursue a legitimate aim and be necessary in a democratic society in order to achieve that aim (see *Silver and Others v. the United Kingdom*, judgment of 25 March 1993, Series A no. 61, p. 32, § 84; and *Petra v. Romania*, judgment of 23 September 1998, *Reports* 1998-VII, p. 2853, § 36).

170. The Court must first consider whether the interference was "in accordance with the law". This expression requires firstly that the impugned measure should have some basis in domestic law; it also refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences for him, and compatible with the rule of law (see *Kruslin v. France* and *Huvig v. France*, judgments of 24 April 1990, Series A no. 176-A, p. 20, § 27, Series A no. 176-B, p. 52, § 26, respectively).

171. The Government referred in their written observations to the Act. In their additional observations, they added a reference to the Correctional Labour Code, the Instruction and the Temporary Provisions (see paragraph 122 above).

1. Period between 11 September 1997 and 11 July 1999

172. The Court observes that the Act governs the conditions of detention until a sentence becomes final (see paragraph 74 above). It appears from the statements of the witnesses heard by the Delegates and the documents submitted by the Government that after the sentence became final, the conditions of detention of persons sentenced to capital punishment were mainly governed by the Instruction issued by the Ministry of Justice, the Prosecutor General and the Supreme Court (see paragraphs 71-73 above). However, the Correctional Labour Code ("the Code) provides a general legal basis for conditions of detention (see paragraphs 80-85 above)

(a) Correctional Labour Code

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

174. It observes that the Government refer to Article 41(3) of the Code according to which "irrespective of the type of regime under which they are held, sentenced persons are not allowed to receive more than two small packets per year" (see paragraph 83 above). However, this provision constitutes part of Article 41, which establishes the rules concerning receipt of parcels and packages by persons sentenced to imprisonment. The Court considers that it is not certain that persons sentenced to death are included among persons sentenced to imprisonment *(позбавлення волі)* within the meaning of the Code, a death sentence being imposed because the offender is deemed incapable of reform through imprisonment. The Court observes that the legal position is made more uncertain by the second paragraph of Article 41 of the Code which provides "convicted persons serving their sentence in a prison are not allowed to receive parcels" (ibid.). In the present case, the applicant was continuously detained in Simferopol Prison but not in a corrective labour colony, an educational labour colony or a corrective labour colony camp mentioned in the first and fourth paragraphs of the same Article (ibid.).

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

(b) Instruction

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

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

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

2. Period after 11 July 1999

179. The Court observes that the applicant did not complain that his letters or those of his relatives, including his wife in her capacity as his lawyer, had been opened and censored by the prison authorities even if that had been the case.

180. As regards the restrictions imposed by the Temporary Provisions whereby the applicant was allowed to receive six parcels and three small packets a year, it is accepted that such a limitation constitutes an interference with the right to respect for correspondence. Such an interference is "in accordance with the law", namely the Temporary Provisions, and can be regarded as pursuing the legitimate aim of the "prevention of disorder or crime", bearing in mind the interest of the prison authorities in ensuring that material harmful to prison security is not smuggled into prisons.

181. As regards the necessity of the interference, the Court must take into account the logistical problem involved in processing an unrestricted quantity of parcels arriving in a large penitentiary, in this case an establishment with over 3,000 inmates (see paragraph 34 above). Granting permission to inmates to receive an unlimited number of parcels or small packets would involve a substantial amount of work on the part of prison staff in checking each parcel with a view to safeguarding prison security. The security regime inside the prison is aimed at protecting the public at large from dangerous offenders and also at protecting the prison inmates themselves. The prison authorities thus have a legitimate interest in protecting security by means which seek to reduce or limit security risks. At the same time a proper balance must be struck between the interests of security and respect for the right of inmates to maintain contact with the outside world.

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

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

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

B. Impossibility of intimate contact between the applicant and his wife

185. The applicant submitted in his written observations that he had been had denied any intimate contact with his wife. She made a similar complaint during the Delegates' visit to Simferopol Prison (see paragraphs 25 and 115 above).

186. The Court observes that the parties did not dispute that the prison authorities denied the applicant the possibility of sexual contact with his wife during her visits.

187. The Court considers that while detention is by its very nature a limitation on private and family life, it is an essential part of a prisoner's right to respect for family life that prison authorities assist in maintaining effective contact with his or her close family members (see, for example, *Messina v. Italy (no. 2)*, no. 25498/94, § 61, ECHR 2000-X). At the same time, the Court recognises that some measure of control of prisoners' contacts with the outside world is called for and is not of itself incompatible with the Convention (see, for example, *mutatis mutandis*, *Silver and Others*, cited above, p. 38, § 98).

188. Whilst noting with approval the reform movements in several European countries to improve prison conditions by facilitating conjugal visits, the Court considers that the refusal of such visits may for the present time be regarded as justified for the prevention of disorder and crime within the meaning of the second paragraph of Article 8 of the Convention (see, for example, *E.L.H. and P.B.H. v. the United Kingdom*, nos. 32094/96 and 32568/96, Commission decision of 22 October 1997, Decisions and Reports 91, p. 61; and *Kalashnikov v. Russia* (dec.), no. 47095/99, ECHR 2001-XI).

189. In the circumstances of the present case the Court thus finds that the restriction of the applicant's wife's visits was proportionate to the legitimate aim pursued.

190. There has accordingly been no violation of Article 8 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

191. 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."

192. The applicant claimed 5,000,000 US dollars (USD) for pecuniary and non-pecuniary damage. He maintained that he had been illegally sentenced and that the violations of the Convention in his case, which had entailed serious physical and mental harm and had interfered with his family life, had caused him to suffer a substantial degree of anxiety and distress. He also sought his acquittal and the removal of his sentence from the criminal record.

As far as the pecuniary damage is concerned, the applicant stated that apart from USD 35 his wife paid twice a month for various items bought in Simferopol Prison during the period of one year and her expenses in connection with her journey to Strasbourg (USD 2,000) for the purposes of introducing his application with the Convention organs, he was not in a position to calculate her costs and expenses.

193. The Government first argued that there was no causal link between the facts examined by the Court and the non-pecuniary damage claimed by the applicant's representative and wife for damages she and her two sons had suffered as a consequence of the applicant's conviction and imprisonment. The Government further argued that the applicant's representative's costs and expenses partly related to the criminal proceedings and not to the claims the applicant had submitted to the Court. Moreover, they were only partly supported by material evidence proving that they were actually and necessarily incurred and that they were reasonable as to quantum.

As regards the applicant's claims for non-pecuniary damage concerning his moral suffering caused by his conviction and imprisonment, the Government argued that those claims did not have any connection to the present case. Finally, as far as the applicant's claims for non-pecuniary damage for the alleged degrading detention conditions were concerned, the Government asked the Court to determine the amount of compensation on an equitable basis taking into account the case-law of the Court and having regard to the economic situation in Ukraine.

194. The Court, bearing in mind its finding above regarding the applicant's complaints under Articles 3 and 8 of the Convention, considers that he suffered some moral damage in connection with the general conditions of his detention and the restrictions by the public authorities on his right to respect for his correspondence (see paragraphs 152 and 178 above). Making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 for non-pecuniary damage, plus any tax that may be chargeable.

Default interest

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

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

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

3. *Holds* that there has been no violation of Article 3 of the Convention as regards the alleged ill-treatment of the applicant in Simferopol Prison by members of the prison administration in January 1998 and August 1999;

4. *Holds* that there has been a violation of Article 8 of the Convention regarding the applicant's right to respect for his correspondence as far as the period from 11 September 1997 to 11 July 1999 is concerned;

5. *Holds* that there has been no violation of Article 8 of the Convention regarding the applicant's right to respect for his correspondence as far as the period after 11 July 1999 is concerned;

6. *Holds* that there has been no violation of Article 8 of the Convention regarding the applicant's right to respect for his private and family life;

7. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into Ukrainian hryvnas at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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

Michael O'BOYLE
Registrar

Nicolas BRATZA
President