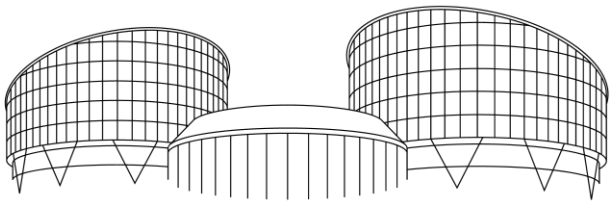

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF LOGVINENKO v. UKRAINE

(Application no. 13448/07)

JUDGMENT

STRASBOURG

14 October 2010

FINAL

14/01/2011

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

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

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

Peer Lorenzen, *President,*
Karel Jungwiert,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva,
Ganna Yudkivska, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 21 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 13448/07) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Aleksandr Vladimirovich Logvinenko ("the applicant"), on 25 January 2007.

2. The applicant, who had been granted legal aid, was represented by Mr A. A. Kristenko, a lawyer practising in Kharkiv. The Ukrainian Government ("the Government") were represented by their Agent, Mr Y. Zaytsev.

3. The applicant alleged, in particular, that the conditions of his detention, including medical assistance and the physical arrangements for his health needs, and the manner in which he was treated by the officers of Penitentiary no. 47 had been inhuman and degrading.

4. On 12 January 2009 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

5. The applicant was born in 1976 and is currently serving a life sentence in Kherson.

I. THE CIRCUMSTANCES OF THE CASE

A. Criminal proceedings against the applicant and his detention record

6. On 2 March 2001 the applicant was arrested and placed in the Kyivskyy District police station of Simferopil on suspicion of murder.

7. On 7 March 2001 the applicant was transferred to the Simferopil police temporary detention centre (the "ITT").

8. On 27 April 2001 the applicant was transferred to the Simferopil no. 15 pre-trial detention centre ("the SIZO") and on the same date placed in the Crimean Psychiatric Hospital for in-patient psychiatric assessment.

9. On 24 May 2001 the applicant was transferred back to the SIZO.

10. On 26 October 2001 the Court of Appeal of the Autonomous Republic of Crimea convicted the applicant of murder and sentenced him to life imprisonment.

11. On 28 February 2002 the Supreme Court of Ukraine upheld this judgment and it became final.

12. In October 2004 the applicant was transferred to Sokalska no. 47 Penitentiary, Lviv Region ("Penitentiary no. 47").

13. In November 2006 the applicant was transferred to Kherson no. 61 Penitentiary ("Penitentiary no. 61) and placed in the prison hospital.

B. Treatment for HIV and tuberculosis, and the physical conditions of the applicant's detention

14. In spring 1997 (prior to his detention) the applicant was diagnosed with infiltrated tuberculosis of the lung. In February 2000 he was also diagnosed with late stage of HIV (Aids).

1. The applicant's account of events

15. According to the applicant, throughout the period of 2001-2008 the medical assistance afforded to him on account of his HIV and tuberculosis was grossly inadequate, while the physical arrangements of his detention were incompatible with his state of health.

16. In particular, as regards HIV, no treatment was offered whatsoever. Furthermore, in spite of the doctors' recommendations and the applicant's numerous requests, throughout the period of his detention he was denied blood tests to establish his count of CD-4 immunity cells, which are instrumental in combating tuberculosis and possibly inhibited as a result of HIV. On several occasions the applicant was informed that antiretroviral therapy would become available to him after the successful treatment of his tuberculosis.

17. As regards the treatment for tuberculosis, it was irregular and insufficient. In particular, in spite of the applicant's numerous complaints about his state of health (namely, shortness of breath, fever, chest pain, and so on), no medical assistance whatsoever was provided to him between March and May 2001.

18. On 28 May 2001 the applicant was examined by a panel of the SIZO medical officers, who found that he was at risk of death if his state of health was not promptly addressed and recommended his release in view of the fact that the SIZO lacked the necessary facilities for his treatment. The applicant submitted a copy of the letter from the medical panel addressed to the SIZO governor and a letter from the governor to the district court dated 16 July 2001 requesting his release on humanitarian grounds. It is not clear whether these letters generated any reaction from the court. The applicant, however, remained in detention.

19. Since June 2001 the applicant has been receiving treatment for tuberculosis, but it has not been effective. On many occasions he was denied routine consultations in spite of his demands. However, even when he was able to obtain consultations, the recommendations of the doctors were not followed through effectively. For example, on 13 July 2006 the applicant consulted a panel of medical specialists and was advised to undergo a number of tests. However, these tests were not carried out because the necessary facilities were unavailable, with the exception of two blood tests (biochemical and general) carried out in August 2006. The applicant was likewise unable to obtain timely tests on a number of other (unspecified) occasions in spite of his demands.

20. The applicant's recovery from tuberculosis was further impeded by the physical conditions of his detention. In all of the facilities in which he was detained, the applicant was largely confined to his cell. In the ITT he had to sleep on a bare mattress, as no linen was provided. Furthermore, he had no opportunity to wash, shave or take outdoor exercise. In Penitentiary no. 47 the cells had no mirrors or drawers and were poorly heated. The air was so damp that the walls and ceilings were covered with fungi and mould, as well as frost during the winter months. The drinking water was rusty and hot water for washing was not available more than once every two to three weeks. Despite suffering from active tuberculosis, on some occasions the applicant had to share a cell with other prisoners, including those who were healthy, which provoked conflicts. As a result of the lack of treatment and the inadequate conditions of his detention, the applicant caught bronchitis and pneumonia on various occasions, while his tuberculosis spread further and became chronic.

21. By way of evidence, the applicant presented a statement by his cellmate, Mr G. According to him, he shared the applicant's cell on various occasions for periods lasting from several days to several weeks. Their cell was very cold and no adequate clothing was provided. On numerous

occasions the applicant's requests for medical assistance were ignored and the actual administration of anti-tuberculosis drugs was irregular, provoking the aggravation of his condition and resistance of the bacteria to treatment.

22. On numerous occasions the applicant complained to various authorities, including the ombudsman, the Prosecutor's Office and the local Department for the Enforcement of Sentences, of the inadequacy of his medical assistance and the incompatibility of the conditions of his detention with his state of health. His complaints, however, were to no avail.

23. On two occasions the applicant attempted to lodge complaints about the conditions of his detention with two different courts; however, his submissions were rejected with reference to a lack of territorial jurisdiction. At one time the applicant demanded that a court clerk be commissioned to assist him in drafting his submissions, but this request was refused as not based on law. The applicant never appealed against the court decisions not to examine his claims.

24. In September 2006, following the applicant's numerous complaints to the prosecutor's office, the Lviv Prosecutor's Office contacted the Chief of the Regional Department for the Enforcement of Sentences and the governor of Penitentiary no. 47, urging them to take urgent measures to ensure that the applicant receive a comprehensive medical examination. Following this intervention, in November 2006 the applicant was transferred to Kherson no. 61 Penitentiary Hospital. However, following the applicant's transfer, healthcare arrangements did not improve significantly. In particular, no HIV therapy was made available to him.

2. The Government's account of events

25. The Government presented extensive handwritten medical notes, which are hardly legible, and a typed synopsis of the applicant's treatment history, on the basis of which they alleged that the applicant was regularly and consistently supervised and received treatment in compliance with the applicable Ministry of Health guidelines.

26. According to the synopsis, on 27 April 2001 the applicant was examined by a tuberculosis specialist and diagnosed as suffering from focal tuberculosis of the upper part of the right lung in the consolidation stage.

27. On 28 May 2001 the applicant was x-rayed. His x-ray indicated small low-intensity foci of the tuberculosis infection in the upper part of the right lung. Following this test, the applicant was prescribed standard treatment of a combination of “first-line” anti-tuberculosis antibiotics (streptomycin, isoniazid, rifampicin, ethambutol and pyrazinamide) and vitamins.

28. The applicant was further examined by a tuberculosis specialist and (or) x-rayed in September 2001 (infiltrating tuberculosis; same treatment continued); March 2002 (diffusion and consolidation of the infection – positive dynamics); September and November 2004 (disseminated

tuberculosis of the upper parts of both lungs, diffusion and consolidation stage); February 2005 (positive dynamics: namely, large remaining modifications after the tuberculosis infection – anti-recurrence treatment with "first-line" antibiotics and diet prescribed); May 2005 (same as before); June and November 2005 (recurrence of the tuberculosis infection in both lungs, including tissue destruction); January and February 2006 (recurrent tuberculosis, consolidation stage (positive dynamics), same treatment); June and July 2006 (same diagnosis including tissue destruction; same treatment); October 2006 (chronic tuberculosis including pulmonary fibrosis, numerous polymorphous foci of various sizes and numerous tuberculomas); October 2007 (results unspecified); August 2008 (the number of foci increased in both lungs); February 2009 (slight diffusion and consolidation of the infection foci (positive dynamics)).

29. The synopsis further gives a detailed account of the numerous tests carried out of the applicant's blood, urine and sputum between November 2006 and December 2007 and a record of a drug-resistance test taken in February 2007. Following the test for drug resistance, it was established that the applicant was resistant to some of the "first-line" anti-tuberculosis medication and his treatment regime was supplemented with some "second-line" drugs.

30. In addition, in May and June 2005 the applicant received anti-inflammatory treatment on account of pneumonia in May 2005 and was treated for bronchitis in August 2005. In August 2008 the applicant was diagnosed with chronic bronchitis and hepatitis.

31. In the light of the positive tuberculosis dynamics, the applicant began preparing for HIV therapy at the beginning of 2009.

C. Ill-treatment by the officers of Penitentiary no. 47

32. According to the applicant, immediately upon his and two other convicts' arrival at Penitentiary no. 47 in October 2004, they had their heads covered with sacks, were forced onto their knees, handcuffed and beaten by unnamed junior officers for no reason. Furthermore, they were threatened with a dog, strip searched, and then forced to do sit-ups which were counted. Subsequently, on numerous occasions the officers continued to humiliate the applicant and create a stressful atmosphere. In particular, on numerous occasions they beat him, threatened him with a dog, knocked on the door with a stick for no reason, interrupted his sleep, opened the door to the cell suddenly for various checks, and verbally insulted him. During the daytime the applicant was forbidden to lie on the bed. Furthermore, when the applicant needed to leave the building, for instance for fluorography, his head was covered with a sack and he was made to walk in an unnatural position ("a duck"- legs bent with hands behind the head). On 6 April 2005 the applicant was beaten for lying on his bed during the daytime when ill

and on 29 June 2005 for refusing to assume the "duck" walking position. Each day the applicant was handcuffed and body-searched, being forced to stand barefoot on the concrete floor while the officers searched his shoes.

33. The applicant presented a handwritten statement of claim dated 14 June 2006 referring to the above conduct of the prison officers and addressed to the Shevchenkivskyy District Court of Kyiv. However, he did not provide any evidence that this statement was received by the court or even despatched from the penitentiary.

34. According to the Government, none of the incidents mentioned above concerning the applicant's ill-treatment at the hands of the penitentiary officers ever took place.

II. RELEVANT DOMESTIC AND INTERNATIONAL MATERIALS

A. Constitution of Ukraine, 1996

35. Article 55 of the Constitution of Ukraine, insofar as relevant, reads as follows:

> "Human and citizens' rights and freedoms are protected by the courts.
>
> Everyone is guaranteed the right to challenge in court the decisions, actions or omissions of bodies of State power, bodies of local self-government, officials and officers. ...
>
> Everyone has the right to protect his or her rights and freedoms from violations and illegal encroachments by any means not prohibited by law."

B. Code of Civil Procedure of 1963 (repealed with effect of 1 September 2005)

36. Article 248-1 of the Code (Chapter 31-A) provided in so far as relevant:

> "Every citizen has the right to apply to court ... with an application, should he consider that a decision, action or inactivity of a public authority, legal person or official during the exercise of their administrative functions has violated his rights or freedoms ..."

C. The Code of Administrative Justice (in force since 1 September 2005)

37. Article 2 of the Code, insofar as relevant, reads as follows:

"1. The task of the administrative justice system is the protection of the rights, freedoms and interests of physical persons, and the rights and interests of legal entities in the field of public law relations from violations by public authorities ...

2. Any decisions, actions or inactivity of public authorities can be appealed against in administrative courts, except for cases in which the Constitution and laws of Ukraine foresee a different procedure of judicial appeal against such decisions, actions or inactivity ..."

D. Combating Tuberculosis Act of Ukraine of 5 July 2001

38. Section 17 of the Act provides that persons suffering from tuberculosis detained in pre-trial detention centres (SIZOs) must receive appropriate treatment in the medical units of these detention centres. Persons detained in penitentiary establishments should be treated in specialised prison hospitals.

E. Order of the Ministry of Health of Ukraine no. 120 of 25 May 2000 "On Improving the Organisation of Medical Assistance for HIV Sufferers"

39. According to paragraph 14 of the Order, depending on the stage of the disease, HIV sufferers should have their count of CD-4 cells tested every one to six months.

F. Order of the State Department for the Enforcement of Sentences of Ukraine and the Ministry of Health of Ukraine no. 186/607 of 15 November 2005 "On the Organisation of Antiretroviral Therapy for HIV Sufferers Held in Penitentiary Institutions and Remand Centres"

40. According to paragraphs 2.1 and 2.3 of the Instruction, approved by the Order, medical assistance for HIV sufferers is viewed as comprising compulsory dispensary supervision, treatment of opportunistic diseases and access to antiretroviral therapy. In-patient treatment of patients with stage III-IV HIV suffering from active tuberculosis infections should be administered in prison hospitals specialising in the treatment of tuberculosis.

G. Order of the Ministry of Health of Ukraine no. 45 of 28 January 2005 "On Approval of the Protocol of Medical Assistance for Tuberculosis Sufferers" (repealed on 9 June 2006 by Order no. 384 approving the updated Protocol).

41. According to paragraph 6.1 of the Protocol, tuberculosis treatment was to be administered in specialised anti-tuberculosis institutions and to consist of two phases: basic chemotherapy and rehabilitation. The basic chemotherapy course consisted of intensive and supportive treatment stages with "first-line" anti-tuberculosis antibiotics (streptomycin, isoniazid, rifampicin, ethambutol and pyrazinamide), or, in the event of resistance of the infection to the above drugs, with "second-line" or "reserve" antibiotics.

42. According to paragraph 6.6.1, to obtain maximal results, medical or surgical treatment was to be implemented in conjunction with a particular hygiene and exercise regime (complete bed rest, part-time bed rest or training regime) prescribed to an individual patient based on an assessment of his condition.

43. Treatment was to be followed by rehabilitation, including curative exercise, massage and physiotherapy, which was recommended to be started within two to two and a half months after the antibiotic treatment.

44. According to paragraph 6.6.4, within several months of starting treatment, a medical commission was to examine whether the intensive treatment stage could be substituted by the supportive stage based on x-ray and microbiological tests. If treatment appeared ineffective at this stage the patient was to be tested for drug resistance, and, if necessary, his case referred to a more qualified institution. In the event that chemical treatment remained ineffective, surgical intervention was to be explored as a possible alternative.

45. According to paragraph 6.6.4.3, it was recommended that antibiotic treatment be supplemented with anti-pathogenic medicines.

46. According to paragraph 6.7, tuberculosis patients were to be continuously monitored, which included x-rays every two months; blood (general and biochemical) and urine tests every month during the intensive therapy stage and once every two months during the supportive stage.

47. On 9 June 2006 Order no.45 was replaced with the Order no. 384 approving an updated Protocol; however, the major approaches remained the same.

H. Order of the Ministry of Health no. 276 of 28 May 2008 "On Approval of the Clinical Protocol of Medical Assistance to HIV-tuberculosis Co-infection Sufferers"

48. According to the Protocol, patients co-infected with HIV and tuberculosis should predominantly be administered anti-tuberculosis therapy

first, based on the same principles as for patients suffering from tuberculosis only. Under the general rule, antiretroviral therapy should be administered after the completion of the intensive anti-tuberculosis therapy stage, unless the level of CD-4 immunity cells is lower than a certain threshold, in which case antiretroviral therapy is administered immediately. On average, the level of CD-4 cells is expected to be tested once every three months.

I. Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 21 October 2005 (CPT/Inf (2007) 22)

49. Relevant parts of the Committee for the Prevention of Torture's report on its visit to Ukraine in 2005 read as follows:

3. Prisoners sentenced to life imprisonment

" ...

115. Access to medical care in specialised facilities remains problematic for this category of prisoner, both male and female...

Further, the transfer of life-sentenced prisoners suffering from tuberculosis to specialised medical penitentiary facilities was still not possible. Such persons were kept in their detention units, isolated in their cells, sometimes for many months.

The CPT recalls that obliging prisoners to stay in an establishment where they cannot receive appropriate treatment due to a lack of suitable facilities or because such facilities refuse to admit them, is an unacceptable state of affairs which could amount to inhuman and degrading treatment.

The CPT recommends that the Ukrainian authorities ensure that life sentenced prisoners – men and women – who require treatment in a specialised hospital facility can be transferred to such a facility without undue delay."

J. Other relevant materials

50. Other relevant domestic and international materials can be found in the judgments in the cases of *Melnik v. Ukraine* (no. 72286/01, §§ 47-53, 28 March 2006), *Yakovenko v. Ukraine* (no. 15825/06, §§ 49-55, 25 October 2007) and *Kats and Others v. Ukraine* (no. 29971/04, §§ 85-86, 18 December 2008).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

51. The applicant complained that the conditions of his detention between 2001 and 2008 had been incompatible with the guarantees of Article 3 of the Convention on account of inadequate medical assistance and incompatibility of the physical arrangements of his detention with his state of health. He further complained under the same provision of the misconduct of the officers of Penitentiary no. 47. The relevant provision of the Convention reads as follows:

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

A. Admissibility

1. Submissions of the parties

52. The Government submitted that in so far as the applicant referred to wilful ill-treatment by the officers of Penitentiary no. 47, as well as the healthcare and detention conditions, except for those in Penitentiary no. 47, he had not exhausted relevant domestic remedies. In particular, he could have brought these complaints at three levels of domestic jurisdiction (in this respect they referred to Article 55 of the Constitution, Article 248-1 of the Code of Civil Procedure and Article 2 of the Code of Administrative Justice) or addressed them to the Prosecutor's Office. They noted, in particular, that in so far as the applicant had complained to the Prosecutor's Office of the inadequacy of medical assistance available to him in Penitentiary no. 47, it was the Prosecutor's Office that had facilitated his medical assessment and eventual transfer to Penitentiary no. 61.

53. The Government further submitted that the applicant's complaints concerning the physical conditions of detention and medical assistance in the Kyivskyy District police station and the ITT were vague, unsubstantiated, and could not be the basis for an arguable claim.

54. The applicant disagreed. He submitted that the remedies referred to by the Government were ineffective. In any event, he had raised all of his complaints before the Prosecutor's Office on a number of occasions, but had not obtained sufficient redress. Although he was eventually transferred to Penitentiary no. 61 after his numerous complaints that the conditions of his detention and the physical arrangements in Penitentiary no. 47 had been incompatible with his state of health, his situation had not significantly

improved. In particular, he had still been denied access to antiretroviral therapy.

55. In so far as the applicant raised his complaints before the judicial authorities, in view of the unclear rules of procedure and the absence of any law entitling him to participate in the hearings in person, this remedy could hardly have provided him with any prospect of success.

56. In any event, the problems he complained about were of a structural nature. He was therefore unlikely to obtain their resolution by applying to any additional authority.

2. The Court's assessment

(a) Healthcare and physical conditions of detention

57. In so far as the Government relied on the non-exhaustion argument with respect to the applicant's complaints about healthcare and the physical conditions of his detention, the Court notes that it has rejected similar objections in a number of other cases, where the complaints concerned problems of a structural nature in the domestic penitentiary system in question (see, for example, *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001; *Melnik*, cited above, §§ 69-71; and *Koktysh v. Ukraine*, no. 43707/07, § 86, 10 December 2009).

58. The Court finds that the same reasoning is pertinent in the present case. In this regard the Court notes, in particular, that the applicant has presented copies of his abundant correspondence with various authorities on the matters at issue, which, however, did not seem to have brought about adequate resolution to his grievances. The Court finds that the competent authorities were well aware of the applicant's situation and his dissatisfaction with it and yet they did not redress it. In the light of the above, it dismisses the Government's objection as to non-exhaustion of available remedies in this respect.

59. As regards other reasons for inadmissibility of this part of the application, the Court notes that the applicant's complaints about the physical conditions of his detention in pre-trial detention facilities (the Kyivskyy District police station, the ITT and the SIZO), relate to the period ending in October 2004, when he was transferred to Penitentiary no. 47 to serve his sentence. In the meantime, the present application was lodged only on 25 January 2007 (i.e. outside the six-month time-limit established by Article 35 § 1 of the Convention). The Court can therefore not assess as such the compatibility of the above conditions of detention with Article 3 of the Convention.

60. However, in so far as the applicant's complaints relate to healthcare arrangements for HIV and tuberculosis, the Court's conclusion is different. Notwithstanding that between 2001 and 2008 the applicant was held in five different facilities, his allegations of inadequacy of medical assistance

during the entire period (namely, inadequacy of tuberculosis treatment and complete unavailability of HIV therapy) are sufficiently similar and can be characterised as a continuing situation (see, *mutatis mutandis*, *Nedayborshch v. Russia*, no. 42255/04, § 24, 1 July 2010). The Court also finds that certain allegations concerning, *prima facie*, the physical conditions (namely, being largely confined to a cell with a lack of exercise and fresh air) are so closely connected to the complaints of ineffective treatment of pulmonary tuberculosis, that it would be artificial to discount them in the overall examination of the healthcare arrangements. By the same token, the applicant's complaint of the incompatibility of the physical conditions of his detention in Penitentiary no. 47 with his state of health (for example, the cell being damp and cold), should, in the circumstances of the present case, be examined in the light of his more general complaint of incompatibility of the physical conditions of his detention with his healthcare needs (see, for example, *Ukhan v. Ukraine*, no. 30628/02, §§ 81-83, 18 December 2008).

61. The Court finds that the applicant's complaints, in so far as they relate to medical assistance and the compatibility of the physical conditions of his detention with his state of health throughout the period of his detention between 2001 and 2008, are sufficiently consistent and detailed and not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

(b) Ill-treatment by the officers of Penitentiary no. 47

62. In so far as the applicant's complaints relate to wilful ill-treatment by the officers of Penitentiary no. 47, he has not presented any evidence that this treatment was habitual, endorsed or deliberately tolerated by either the domestic penitentiary system as a whole or even the management of Penitentiary no. 47. The Court, therefore, agrees with the Government that the applicant should have made the authorities aware of his alleged suffering in this respect (see *Aliev v. Ukraine (no. 2)* (dec.), no. 33617/02, 14 October 2008).

63. In the meantime, notwithstanding that the case file contains copies of the applicant's numerous complaints to various authorities about different aspects of his medical treatment and the physical conditions of his detention, the only document containing reference to the officers' alleged misconduct is a handwritten copy of an application to the Shevchenkivsky District Court of Kyiv dated 14 June 2006. There is no indication whether this particular document was ever received by or even despatched to the addressee.

64. In these circumstances the Court finds that the applicant failed to show that he had exhausted domestic avenues for redressing his complaints

about the officers' conduct and upholds the Government's objection of non-exhaustion.

65. This part of the application should therefore be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Merits

66. The applicant asserted that the physical conditions of his detention and medical assistance for HIV and tuberculosis were incompatible with his state of health. In particular, although the authorities had been well aware of his medical condition upon his placement in custody in March 2001, he had not received any HIV therapy throughout the period complained about. As regards tuberculosis, no treatment was made available to him until the end of May 2001, after which time treatment was prescribed but remained largely ineffective. The applicant's state of health was further aggravated by the poor physical conditions of his detention, including a lack of heating, hot water, exercise and fresh air.

67. The Government contested this view. They submitted that the applicant had been systematically supervised by competent doctors, had undergone the necessary tests on numerous occasions and had obtained treatment in accordance with medical prescriptions. They further noted that, as a result of effective therapy, by the end of 2008 some positive dynamics had been achieved in respect of the applicant's tuberculosis and he had been preparing for HIV therapy.

68. The Court notes that the applicant's general state of health appears to have deteriorated during the period of his detention (see paragraphs 27, 28, and 30 above). While the Court is unable to compare the applicant's current and previous HIV status in the absence of the necessary records, his tuberculosis has progressed. In spring 2001 the applicant was suffering a low-intensity tuberculosis infection in the upper right lung. Notwithstanding a few instances of positive dynamics following the administration of antibiotics, the infection recurred on several occasions, eventually spreading to both lungs and becoming chronic, as well as leading to tissue destruction and the formation of tuberculomas by 2008. In addition, by August 2008 the applicant was diagnosed with other infectious diseases (hepatitis and chronic bronchitis).

69. Analysing to what extent the Government may be held responsible for the deterioration of the applicant's health in the light of the general principles established in its case-law (see *Ukhan v. Ukraine*, cited above, §§ 72-74), the Court notes the apparent lack of systematic and strategic supervision and conditions of detention reasonably adapted to his state of health, which, in its view, was indispensible given the applicant's particular condition.

70. While the applicant consulted medical specialists, underwent various tests and received medicine on a number of occasions, based on the available materials, no conclusion can be made that these measures were prompt, coherent and regular. The synopsis of the applicant's medical history contains abundant information as regards certain periods (for example, data concerning blood and urine tests from the period of November 2006 to December 2007), but no data has been presented whatsoever for other periods (such as from March to May 2001 and March 2002 to September 2004). Moreover, it appears that on certain occasions the authorities themselves acknowledged the inadequacy of the applicant's medical support (namely, in spring 2001 the SIZO governor requested the applicant's release in view of the unavailability of treatment facilities and in autumn 2006 the applicant was transferred to a different penitentiary following his persistent complaints of insufficient healthcare arrangements).

71. Some of the therapeutic measures appear to have been taken with prohibitive delay. In particular, for some six years the applicant was continuously prescribed the same “first-line” anti-tuberculosis medication in spite of the fact that the infection kept recurring and progressed to both lungs. It was not until February 2007 that some of these drugs were replaced with “second-line” antibiotics following a drug-resistance test, which, according to the applicable guidelines (developed in January 2005, see paragraph 41) was recommended to be taken in the early stages of treatment.

72. Yet other standard therapies, indicated in the applicable guidelines, appear to have never been contemplated, or at least recorded. As regards tuberculosis, the applicant's treatment consisted solely of the prescription of antibiotics, a special diet and, occasionally, vitamins. There is no information that any alternative (such as surgical) or complimentary (such as anti-pathogenic, physiological, rehabilitation) strategies (seeparagraphs 43 - 45 above) were ever implemented or even explored.

73. As regards HIV, the Court finds it unacceptable that no therapy whatsoever was provided to the applicant during the entire period in issue (more than eight years). The Court considers that this delay cannot be explained by the medical tactics of preferential treatment for tuberculosis (see paragraphs 16 and 48 above). There is no record to suggest that HIV therapy was discussed during the several periods when the applicant's tuberculosis was inhibited (for example, in March 2002 and February 2005 – see paragraph 28 above). Moreover, according to the applicable guidelines, HIV treatment in tuberculosis patients is expected to be commenced immediately if the level of CD-4 immunity cells, which is advised to be monitored every few months, drops below a particular threshold. In any event, this treatment is expected to be contemplated within months of the administration of the tuberculosis therapy. The applicant, in the meantime, was denied tests to establish his count of CD-4 cells for

numerous years in a row. In the absence of the level of his immunity cells being monitored, it may not be excluded that the applicant's recovery from tuberculosis was impeded by the absence of HIV therapy.

74. Finally, as provided in the applicable guidelines, particular importance in the treatment of tuberculosis is attached to adhering to a specific hygiene and exercise regime (see paragraphs 42-43 above). There is nothing to suggest whether any special hygiene or exercise regime was developed for the applicant in the present case. The Court notes first of all that according to the Ukrainian legislation it is generally expected that tuberculosis treatment be administered in specially equipped hospitals (see paragraphs 38, 40 and 41 above). It is notable that in the present case, the applicant spent over two years in penitentiary no. 47, designed for healthy inmates. It appears that for extensive periods of time he was confined to a common prison cell, at times sharing it with other inmates. In the absence of any information from the Government to the contrary, it also appears that at least during his stay in Penitentiary no. 47, the applicant was likewise generally expected to follow the basic exercise–rest regime established for healthy inmates (namely, confined to the cell without outdoor exercise for most of the day and generally not allowed to lie on the bed during the day).

75. In so far as the applicant raises other complaints of incompatibility of his detention conditions with his state of health (in particular, damp and cold cells and insufficient hot water for hygiene purposes), the Court notes that these allegations, disputed by the Government, have not been established "beyond reasonable doubt". However, regard being had to absence of documentary evidence on the Government's behalf, a statement by G. (the applicant's occasional cellmate) and the general deterioration of the applicant's health (including the development of pneumonia in May 2005 and chronic bronchitis by August 2008), the Court finds his description credible and is prepared to conclude that the physical conditions of the applicant's detention were not properly adapted to his healthcare needs.

76. The Court refers to the findings of the Committee for the Prevention of Torture following its visit to Ukraine (see paragraph 49 above) and considers that obliging prisoners to stay in an establishment lacking suitable facilities for appropriate treatment of tuberculosis or refusing them access to such facilities is unacceptable. In addition, when inaccessibility of adapted detention conditions is followed by failure to segregate healthy inmates from those sick with contagious diseases, such as tuberculosis, can not only provoke severe physical and mental suffering in a prisoner needing treatment, but facilitate dissemination of the disease and have serious adverse consequences for the prison population as a whole.

77. Overall, in the light of the findings concerning the lack of a comprehensive approach to the applicant's medical supervision and treatment for tuberculosis and HIV and failure to ensure physical conditions

reasonably adapted for his recovery process, the Court considers that the State authorities have not done what could be reasonably expected of them to discharge their Convention duty under Article 3 *vis-à-vis* the applicant. As a result he was subjected to inhuman and degrading treatment.

78. There has therefore been a violation of this provision.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

79. The applicant also alleged that he did not have at his disposal an effective domestic remedy for his complaints under Article 3, as required by Article 13 of the Convention. This provision reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

80. The Government referred to their arguments concerning non-exhaustion of domestic remedies, summarised in paragraph 52 above and contended that the applicant should have complained about his grievances to the Prosecutor's Office and the domestic courts.

81. The applicant insisted that these remedies were ineffective.

82. The Court refers to its findings in paragraphs 61 and 65 above and observes that the applicant has made out an arguable claim under Article 3 only in so far as his allegations concerned the adequacy of medical assistance for HIV and tuberculosis and the compatibility of the physical arrangements of his detention with his state of health. It finds, therefore, that his complaint under Article 13 of a lack of effective remedies for these complaints must be declared admissible.

83. As regards the remainder of the claim, it must be dismissed in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Merits

84. The Court points out that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. It notes that the Ukrainian law contains certain provisions, which may enable prisoners to complain about violations of their rights (see paragraphs 35-37 above). However, with reference to its earlier case-law (see, among other authorities, *Melnik v. Ukraine*, cited above, §§ 113-116 and *Ukhan*, cited above, §§ 91-92) and the circumstances of the present case, the Court finds that the Government have not proved

that the applicant had in practice an opportunity to obtain effective remedies for his complaints, that is to say, the remedies, which could have prevented the violations from occurring or continuing, or could have afforded the applicant appropriate redress.

85. The Court concludes, therefore, that there has been a violation of Article 13 of the Convention on account of the lack of an effective and accessible remedy under domestic law for the applicant's complaints in respect of his treatment in and the conditions of detention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

86. The applicant also complained under Article 6 § 1 of the Convention that, in view of the fact that he suffered from Aids and tuberculosis, it was unfair to sentence him to life imprisonment. He also complained that he had not had access to a court in view of the fact that his submissions were rejected for lack of territorial jurisdiction and that no court clerk had been made available to him to assist in the proper preparation of his complaint. Lastly, the applicant invoked Articles 2 and 14 of the Convention in respect of the facts of the present case, without further substantiation.

87. However, in the light of all the material before it, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the provisions relied upon by the applicant.

88. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. Article 41 of the Convention provides:

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

A. Damage

90. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

91. The Government submitted that this claim was exorbitant and unsubstantiated.

92. The Court finds that the applicant must have suffered non-pecuniary damage on account of the violations found; however, the requested amount

is excessive. Making its decision on an equitable basis, the Court awards the applicant 8,000 euros (EUR) in respect of non-pecuniary damage plus any tax that may be chargeable.

B. Costs and expenses

93. The applicant, who had also been granted legal aid, claimed EUR 2,000 in legal fees for his representation before the Court.

94. The Government noted that the applicant had not provided any documents in support of his claim.

95. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the fact that the applicant had been granted legal aid and to the fact that he did not provide any evidence in support of his claim, the Court gives no award.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the quality of medical assistance and compatibility of the physical conditions of the applicant's detention with his health and the unavailability of effective remedies in this respect admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *Holds*

   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to be converted into the national currency of Ukraine at the rate applicable on the date of settlement;

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

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

Done in English, and notified in writing on 14 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Peer Lorenzen
Registrar	President