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

FIFTH SECTION

CASE OF YAKOVENKO v. UKRAINE

(Application no. 15825/06)

JUDGMENT

STRASBOURG

25 October 2007

FINAL

25/01/2008

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 Yakovenko v. Ukraine,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mrs R. JAEGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 2 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 15825/06) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Oleg Nikolayevich Yakovenko ("the applicant"), on 26 April 2006.

2. The applicant was represented by Mr Ivan Tkach, a lawyer practising in Sevastopol. The Ukrainian Government ("the Government") were represented by their Agent, Mr Yuriy Zaytsev.

3. On 28 April 2006 the President of the Chamber decided to indicate to the Government, under Rule 39 of the Rules of Court, that it was desirable in the interests of the parties and the proper conduct of the proceedings before the Court to ensure that the applicant was transferred immediately to a hospital or other medical institution where he could receive the appropriate treatment for his medical condition.

4. On 12 September 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. The applicant died on 8 May 2007. On 21 May 2007 his mother, Mrs Nadezhda Nikolayevna Savchenko, expressed the wish to continue the proceedings before the Court on the applicant's behalf.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1975 and lived in Sevastopol.

A. Criminal proceedings against the applicant

7. In June 2003 the applicant, who at that time was on probation after receiving a sentence for burglary, was arrested and placed in police custody (*затриманий*) on suspicion of another count of burglary. The date of his arrest is in dispute between the parties. The applicant contended that this occurred on 17 June 2003, whereas according to the Government he was apprehended on 18 June 2003.

8. On 18 June 2003 the applicant was questioned by the police, in the course of which he admitted that he had participated in the burglary of a house belonging to the sister of his alleged accomplice, Mr Zh.

On 20 June 2003 the Balaklavsky District Court of Sevastopol (*Балаклавський районний суд м. Севастополя*, hereafter "the District Court") extended the term of the applicant's police custody up to a maximum of ten days.

9. On 27 June 2003 the District Court ordered the applicant to be placed in pre-trial detention on the grounds that the offence he was suspected of had been committed while he was on probation in connection with a prior suspended sentence and that if at large the applicant would abscond and thereby obstruct justice.

10. On an unspecified date in August-September 2003, the applicant was committed for trial before the District Court. In the trial proceedings, he was represented by his mother Ms S., and he retracted the confession statements he had given during his detention in police custody, claiming that these had been given under duress.

11. During a hearing on 11 September 2003 the applicant informed the trial court that he felt unwell and thus could not participate in the hearing. The presiding judge called an ambulance to assess the applicant's medical condition.

12. On 29 April 2004 the District Court found the applicant guilty as charged. It rejected the applicant's argument that his confession statements had been given under duress and found that a certificate issued by the Sevastopol City Hospital, according to which the applicant had been treated in that hospital on 21 June 2003 for bruises on his legs, could not be

regarded as conclusive evidence of police brutality, as the applicant himself had failed to give any explanation before the court as to how he had come by those injuries.

13. On 22 March 2005, following an appeal by the applicant, the Sevastopol City Court of Appeal (*Апеляційний суд м. Севастополя*, hereafter "the Court of Appeal") quashed the judgment of 29 April 2004 and remitted the case for a fresh examination. The court indicated, *inter alia*, that the first-instance court had addressed the issue of the applicant's alleged ill-treatment in police custody, although he had never complained before the court that he had suffered any ill-treatment by the police. Without giving any reasons, the Court of Appeal also ordered that the applicant should remain in detention.

14. On 23 November 2005 the District Court convicted the applicant of burglary and sentenced him to three years and seven months' imprisonment. It based this conviction on the confession statements given by the applicant and Mr Zh. during the pre-trial stage of the proceedings, the victim's oral evidence in court, and statements given by two other witnesses in the course of the pretrial investigation. It rejected as unfounded the applicant's allegation that he had been ill-treated by the police.

15. The applicant appealed against the judgment of 23 November 2005, asking for a reduction of his sentence. On 17 October 2006 the Court of Appeal granted the applicant's appeal and reduced his sentence to three years, six months and one day's imprisonment. The applicant did not appeal in cassation.

B. Alleged ill-treatment

16. According to the applicant, after his arrest on 17 June 2003 he was taken to the Balaklavsky District Police Department of Sevastopol (*Балаклавський РВВС м. Севастополя*, hereafter "the Police Department"). There he was allegedly subjected to ill-treatment by the police officers, who coerced him into confessing to burglary, with which he was subsequently charged.

17. On 21 June 2003 the applicant was taken to the Sevastopol City Hospital No. 1 (*Севастопольська міська лікарня № 1*). According to the certificate issued by this hospital on 15 December 2003 the applicant had bruises on his left thigh and buttocks.

18. After having received the required assistance in the Sevastopol City Hospital No. 1, the applicant was taken to the Sevastopol City Temporary Detention Centre (*Севастопольський міський ізолятор тимчасового тримання*, hereafter "the Sevastopol ITT").

19. According to the entry in the Sevastopol ITT register the applicant did not have any visible injuries on his admission and did not complain of any illtreatment.

20. During the trial proceedings before the District Court in MarchNovember 2005, the trial court ordered the Balaklavsky District Prosecutor's Office of Sevastopol (*Прокурора Балаклавського району м. Севастополя*, hereafter "the Prosecutor's Office") to carry out criminal inquires into the applicant's allegations of ill-treatment. On an unspecified date before November 2005 the Prosecutor's Office decided that there was no *prima facie* case of ill-treatment and refused to institute criminal proceedings in respect of the applicant's complaints.

C. Conditions of detention

21. As indicated above (see paragraph 18), on 21 June 2003, the applicant was transferred from the Police Department to the Sevastopol ITT. On 16 July 2003 he was admitted to the Simferopol Pre-Trial Detention Centre no. 15 (*Сімферопольський слідчий ізолятор № 15*, hereafter "the Simferopol SIZO"). However, since the police, prosecution and judicial authorities involved in his criminal case were based in Sevastopol the applicant was transferred each month from the Simferopol SIZO to the Sevastopol ITT, where he stayed for ten days. From 8 to 28 April 2006 the applicant remained in the Sevastopol ITT as, according to a letter of 4 March 2006 from the Deputy Head of the Sevastopol City Police Department (*Управління МВС України в м. Севастополі*), the Simferopol SIZO refused to admit inmates of the Sevastopol ITT who were suffering from tuberculosis.

22. On 28 April 2006 the applicant was admitted to the Sevastopol City Infectious Diseases Hospital (*Севастопольська міська інфекційна лікарня*, hereafter "the Infectious Diseases Hospital").

23. Therefore, between 21 June 2003 and 28 April 2006 the applicant spent a total of around a year in the Sevastopol ITT.

1. Material conditions

a. The applicant's submissions on the facts

24. According to the applicant, during his stay in the Sevastopol ITT he was held in small cells which were constantly overcrowded. In support of this claim, the applicant relied on a letter from the head of the Sevastopol City Police Department, issued on 10 May 2005 and addressed to a third

person. In that letter it was stated that some 240 inmates were being held in the Sevastopol ITT instead of its capacity of 82.

25. The applicant stated that he had been held in cell no. 9 for most of the time and for short periods in cells nos. 4 and 5.

26. Cell no. 9 measured about 15 square metres and had been occupied by 25 inmates. There were three double bunks for three inmates. Cells nos. 4 and 5, both of around 22 square metres, the applicant shared with 30 fellow inmates. They were equipped with one double bunk and wooden planking on the floor, which was also used by the inmates for sleeping.

27. Owing to the lack of bunks, the inmates had to take turns to sleep. The cells were situated in the basement and were thus deprived of daylight. They were dimly lit by electric lamps fixed into the ceiling, which were never switched off, contributing further to the lack of sleep. Moreover, the air in these overcrowded basement cells could be supplied only though the ventilation system, which was often out of order.

28. The applicant's cell was infested with cockroaches and ants, and no attempt was made to exterminate them. The inmates in the Sevastopol ITT cells were furthermore exposed to infectious diseases like tuberculosis, which the applicant contracted whilst being detained there.

29. The applicant further claimed that the food supplied in the Sevastopol ITT was meagre and of poor quality and was supplemented with food sent by his mother.

b. The Government's submissions on the facts

30. The Government submitted that whilst in the Sevastopol ITT the applicant shared cells measuring 16 square metres with 4-6 other detainees. The Government maintained that the cells were equipped with wooden planking, ventilation, water supply and sewerage systems. The applicant was provided with hot meals three times a day and the opportunity to wash at least once a week. There were windows, which allowed daylight and fresh air in. In general, the conditions of the applicant's detention corresponded to the relevant hygiene and sanitation standards.

2. Conditions of transport

31. As indicated above, the applicant was transported to and from the Sevastopol ITT each month.

32. The distance between Sevastopol and Simferopol is about 80 kilometres. The transportation (*eman*) started at 8 a.m. and, according to the Government, ended at 4 p.m. on the same day. The applicant submitted that it usually took 36-48 hours for him to reach the destination. The

applicant was informed beforehand about the journey, and, according to the Government, fed before it started. The applicant submitted that not once was he provided with breakfast before the transportation.

33. The applicant and the other inmates were transported in police vans to and from the railway stations. These journeys usually lasted 30 minutes. The Government indicated that the vans' design capacity of 20-21 persons was never exceeded. The applicant argued that normally the vans carried as many as 30 persons in a stuffy and dimly lit compartment of 6 square metres.

34. When in a train the applicant was held in carriages of special design with a capacity of 104 persons. According to the Government, the number of persons in a carriage never exceeded 70. The applicant alleged that it was always more than 100. According to the applicant's account, during this part of the journey he was not provided with food or water.

3. Medical conditions

35. The applicant's health started to deteriorate in mid-2005. However, as confirmed in the above-mentioned letter of 10 May 2005 by the Head of the Sevastopol City Police Department, the Sevastopol ITT staff did not include a doctor and the "acting paramedic" (*виконуючий обов'язки фельдшера*) was not medically trained or qualified. As a result, the applicant received no medical assistance from the Sevastopol ITT.

36. According to a letter of 25 April 2006 by the Governor of the Simferopol SIZO, the applicant had undergone treatment for bronchitis in the medical unit of the Simferopol SIZO between 14 and 27 February 2006. Two Xray examinations carried out on 1 and 10 February 2006 did not reveal any pathological changes in his heart or lungs. This letter further stated that on 14 February 2006 the applicant's blood was tested for HIV antibodies. On 21 February 2006 the Crimean anti-Aids Healthcare Centre diagnosed the applicant as HIV positive. The applicant alleged that neither he nor his mother had been informed of this diagnosis.

37. On 8 April 2006, while he was in the Sevastopol ITT, an ambulance was called for the applicant. The doctor found the applicant to be suffering from "fever of unknown origin" and administered him a dose of a painkiller, which had a short-term effect. According to the applicant the ambulance doctor stated that the applicant required an examination in a specialist hospital.

38. On 12 April 2006 the applicant complained about further deterioration of his health. An ambulance was called, whose doctor found the applicant to be suffering from an "acute respiratory virus infection".

39. On 14 April 2006 the applicant was taken to the Infectious Diseases Hospital. According to the applicant, during this examination he was diagnosed as suffering from tuberculosis of the lymph nodes and hospitalisation was recommended, which was refused by the administration of the Sevastopol ITT, because it could not afford to detach four officers to guard him in a hospital. The Government stated that the doctors did not find it necessary to hospitalise the applicant, but that they took samples of his blood for HIV testing and prescribed him vitamins.

40. On 20 April 2006 the applicant was taken to the Infectious Diseases Hospital for further examinations. He was diagnosed as suffering from tuberculosis and prescribed anti-tuberculosis treatment. The Government submitted that on that occasion the doctors did not recommend his hospitalisation either. The Government further stated that during this examination it was established for the first time that the applicant was HIV positive. The applicant alleged that it was the first time he had been informed about this condition; whereas the prison authorities had been aware of it long before this date.

41. In a letter of 21 April 2006 the head doctor the Infectious Diseases Hospital informed the applicant's mother that a commission of doctors from this hospital diagnosed the applicant as being HIV positive and suffering from tuberculosis and recommended his urgent hospitalisation.

42. On that same date the applicant's mother lodged a complaint with the Prosecutor-General, stating that the administration of the Sevastopol ITT had unlawfully refused to hospitalise her son, whose health condition was extremely grave. She stated in particular that since the beginning of April 2006 the applicant's body temperature had remained at around 40 C^0, and that he could hardly eat or move without help. The outcome of this complaint is unknown.

43. On 28 April 2006, pursuant to the Court's request made under Rule 39 of the Rules of Court, the applicant was transferred to the Sevastopol AntiTuberculosis Healthcare Centre (*Севастопольський протитуберкульозний диспансер*).

44. According to a letter from the head doctor of the Infectious Diseases Hospital dated 28 August 2006 the applicant was registered at the Sevastopol Anti-Aids Centre as an HIV patient in May 2006 and received the appropriate treatment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

45. The relevant provisions of the Constitution of Ukraine and the PreTrial Detention Act can be found in the judgment of 12 October 2006 in the case of *Dvoynykh v. Ukraine* (no. 72277/01, §§ 28-31, 33-35 and 37).

A. Code of Criminal Procedure

46. Article 236-1 of the Code provides:

> "Within seven days of notification, a decision of the body of inquiry, investigator or a prosecutor not to institute criminal proceedings can be appealed against by an interested party or their representative to the district (town) court within whose area of jurisdiction the authority which took the decision falls..."

47. Article 236-2 of the Code, in so far as relevant, provides:

> "An appeal against the decision of the body of inquiry, investigator or prosecutor not to institute criminal proceedings shall be examined [by a court] in a single-judge formation within ten days of being lodged.
>
> The judge shall request the materials, on the basis of which the decision not to institute criminal proceedings was made, examines them, and informs the prosecutor and the appellant of the date on which the hearing of the appeal is listed.
>
> Having examined the case, the judge ... may take one of the following decisions:
>
> 1) to set aside the decision not to institute criminal proceedings and to remit the case for further preliminary inquiries...
>
> 2) to dismiss the complaint ..."

B. Combating Tuberculosis Act of 5 July 2001

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

C. Decree No 186/607 of the Ministry of Health and the State Prisons Department of 15 November 2005 "on the antiretroviral treatment of persons with HIV/Aids detained in prisons and pre-trial detention centres"

49. Paragraph 2.1 of the Decree provides that persons detained with HIV/Aids should be provided with obligatory outpatient monitoring, treatment for opportunistic infections (infections that can affect people with a weak immune system) and antiretroviral treatment.

50. In accordance with paragraphs 3.1 and 3.2.1 of this Decree, antiretroviral treatment should be prescribed by the prison infectious disease doctors who have undergone the relevant training or by doctors from local anti-Aids establishments. The antiretroviral monitoring of the persons detained in pre-trial detention centres is being carried out by the local anti-Aids establishments.

51. Paragraph 3.5 of the Decree provides that immediately upon the admission of a person with HIV/Aids to a pre-trial detention centre, the head of the medical unit of that facility should provide him or her with antiretroviral drugs from the local antiAids establishment.

52. In accordance with paragraph 3.6 of the Decree, when a person with HIV/Aids is being transferred from one penitentiary establishment to another it should be ensured that the relevant medical documents accompany him or her to the new establishment.

D. Report of 23 June 2006 of the extended board of the Prosecutor-General's Office on the constitutional rights of citizens compulsorily detained in establishments where restriction of liberty, pre-trial detention and deprivation of liberty apply

53. This Report states the following:

> "It should be acknowledged that the police authorities do not follow the demands of [the CPT] expressed during their visit in October last year in respect of immediate cessation of the unlawful and long-term holding of arrested and detained persons in police custody ...
>
> In the majority of the ITTs the rights of the detainees are not respected. ... The requirements of the Combating Tuberculosis Act in respect of the obligation of the authorities to provide detainees suffering from tuberculosis with treatment in specialist medical establishments are not being met. Many people suffering from this disease are being held in ITTs for long periods without any medical assistance. In total, of 2,434 persons suffering from tuberculosis held in the ITT only 719 were treated in the specialist establishments of the Ministry of Health. This not only violates the rights of the detainees, but also contributes to the further dissemination of this disease.
>
> The conditions under which arrested and detained persons in the ITTs of the Autonomous Republic of Crimea are held... may be equated to inhuman or degrading treatment. Detainees are being held in basements or in premises where there are not even the most basic conditions for long-term occupation.
>
> Police officers systematically infringe the law in respect of the maximum ten-day detention of arrested, detained and convicted persons in ITTs. In the Sevastopol ITT, in breach of the law, there were 85 persons who had been held more than ten days, 28 who had been held for more than three months, eleven for more than six months and five for more than a year, including seventeen convicted persons.

E. The third (2003) annual report of the Commissioner for Human Rights of the Parliament of Ukraine

54. The relevant extract from the report reads as follows:

> Under Section 4 of the Pre-trial Detention Act and Article 155 of the Code of Criminal Procedure, persons remanded in custody should be held in the centres for pre-trial detention [SIZOs]. Only in exceptional cases should these persons be held in establishments such as the Ministry of the Interior's Temporary Detention Centres. It is also to be noted that the law clearly defines the time-limits for holding persons in the ITTs, that is three days, and in cases where the ITT is situated far from the relevant SIZO or there are no suitable roads available, ten days. In breach of the above laws, the governors of many SIZOs unreasonably refuse to admit detainees transferred from the ITTs. This attitude on the part of governors of SIZOs has led to inhuman, dreadful and unbearable conditions of detention in the ITTs and their overcrowding (almost twice their capacity) in the Autonomous Republic of Crimea, ... and the cities of ... Sevastopol. In particular, in the Autonomous Republic of Crimea an inmate is admitted to the Simferopol SIZO only in exchange for one inmate being transferred to the ITT.

F. Human Rights in Ukraine-2005. Human rights organisations' report

55. The relevant extracts from section XV of the report "The observance of prisoners' rights in Ukraine" read as follows:

> "...The Ministry of Internal Affairs is in charge of 501 temporary holding facilities (ITT – *izolyator tymchasovoho trymannya*), where they may be held for a maximum of 3 days (10 days in exceptional circumstances) before being moved to a pre-trial detention centre (SIZO – an acronym for *slidchy izolyator*). However there are instances when this time period is exceeded. Each day in Ukraine around 7,000 people who have been detained are held in ITT, with a capacity for 10,400 places. According to information from the Ministry of Internal Affairs, 127 ITT are in need of repair.
>
> The greatest number of cases involving ill-treatment while in custody occur specifically during the time that individuals detained are held in police institutions. The conditions in such institutions are, furthermore, excessively harsh. This is connected to a large degree with poor financing, however, funding has recently been allocated to provide for detainees held in ITT. "Donetsk Memorial" sent formal requests for information to ten regional departments of the Ministry of Internal Affairs (MIA) with questions about the conditions in which prisoners were held in ITT. Information from the responses received is presented in Table 1: "Conditions in which prisoners are held in temporary holding facilities".
>
> According to figures from the departments, in 2004-2005 from 16 to 70 UH was allocated for each individual while being held in an ITT...
>
> ...One of the problems with police custody is the fact that detained individuals suffering from tuberculosis cannot be sent to SIZO. As noted in the Council of Europe (Monitoring Committee Report, on the basis of a number of normative legal acts of the State Department for the Execution of Sentences, individuals suffering from infectious diseases (including tuberculosis) cannot be transferred to pre-trial detention centres (SIZO) from the temporary holding facilities (ITT) under the competence of the Ministry of Internal Affairs. According to some reports, 739 arrested people were

not admitted to SIZO during 2004. TB-infected people were thus held in detention in the ITT, which are not fit for holding such persons, beyond the legally established maximum term of arrest (3 or 10 days). This not only violates the rights of the arrested but also promotes the spread of diseases in the ITT. According to the Ministry of Internal Affairs, more than 1,000 people are held daily in ITT after the maximum time-limit established by law, including 100 people ill with TB. The situation has not improved even after an Instruction (No. 419-p of 5 July 2004) was issued by the Cabinet of Ministers whereby the State Department for the Execution of Sentences was ordered to ensure admission of those arrested who are ill with TB. According to the comments of the Ukrainian authorities, there are plans to solve this problem by delegating the treatment of persons in detention on remand to special establishments of the Ministry of Health which will be guarded by Ministry of Internal Affairs units. This requires changes to the relevant legislation...

...One of the activities of the Human Rights Ombudsperson is the overseeing the conditions in which individuals detained by the police are being held.

A check made by the Human Rights Ombudsperson in June 2005 of a temporary holding facility (ITT) in the city of Feodosia found that the cells were still without windows. Many ITT have semi-basement dark concrete cells, without fresh air, drinking water, or plumbing, posing a risk to people's health and reminiscent of the middle ages. They furthermore constantly hold one and a half or even twice as many people as they have capacity for, and it is possible to breathe there only through forced ventilation.

The Human Rights Ombudsperson found that the rights of citizens regarding three-hour detention in holding rooms were infringed, and that in half of the 808 district police departments people detained were not given anything to eat, despite several submissions from the Human Rights Ombudsperson, on the basis of which State Deputies and the Government allocated funding. Such conditions are also a form of torture, yet due to the continuing large numbers of detentions and arrests, people are placed in the rooms set aside for those detained. Each year more than a million people pass through these ITT..."

III. RELEVANT INTERNATIONAL REPORTS

A. European Committee for the Prevention of Torture and Inhuman and Degrading Treatment and Punishment ("the CPT")

1. Conditions of detention in the ITTs

56. The visit of the CPT delegation to Ukraine took place from 10 to 26 September 2000, in the course of which the delegation inspected six centres for temporary detention (police-run detention facilities designated for a short stay of detained suspects), including the Sevastopol ITT.

57. The relevant parts of the CPT report read as follows:

"50. The majority of ITTs visited were overcrowded. For example, in Sebastopol ITT, up to 10 persons were being held in cells of 15 m² and in several cells there were more persons than beds.

51. In all the ITTs visited, access to natural light was obstructed by dense metal netting on the windows or jalousies and the artificial lighting was, in general,

insufficient. Reading of any kind was a strain on the eyes. The ventilation was inadequate and the air in the cells visited heavy. The lack of ventilation was exacerbated by the fact that the cells tended to be fetid, detainees being provided with neither products for cleaning their cells nor the possibility of washing themselves other than in a basin of cold water..... Further, the sanitary facilities in nearly all the ITTs visited left something to be desired. A notable exception was Simferopol ITT, where the delegation noted the cells were clean and the detainees possessed basic hygiene products.

In several ITTs there was an insufficient quantity of mattresses and blankets for all the detainees, while the cleanliness of those available was questionable. Further, with one or two exceptions, the ITTs visited did not possess outdoor exercise facilities. Nor was there any provision for activities; in many ITTs, detainees were not even permitted newspapers.

52. In most ITTs, the single daily meal was supplemented by food parcels from relatives. Those without relatives shared the food of others. Given the fact that the Militia are unable financially to provide sufficient food to detainees, food parcels should not be subject to undue restrictions.

53. In the light of the unacceptable conditions referred to above, the CPT was all the more concerned to learn that a significant number of detainees were being held in ITTs for periods much longer than the 10 day legal limit.

...

55. Health-care issues have been a matter of concern to the CPT since its first visit; no improvements were observed during the 2000 visit. To begin with, the CPT's delegation noted that in several ITTs (Bakchisaray, Lytne) there was no feldsher at all to maintain the health-care service. Further, the CPT must insist on the importance of all detainees receiving a thorough medical examination upon being admitted to an ITT; this is still not the norm at present. Further, the feldsher should take a proactive stance in dealing with health-care issues arising within an ITT; the cramped living space under which detainees are held and the lack of general hygiene constitute an environment conducive to the spread of diseases, in particular tuberculosis."

58. In its Report to the Ukrainian Government on the visit to Ukraine carried out from 24 November to 6 December 2002 the CPT stated as follows (original emphasise):

"11. The legal framework governing deprivation of liberty by the Militia has already been described in previous CPT visit reports. The Militia, it will be recalled, can, on its own authority, hold a person suspected of a criminal offence for up to 72 hours.

However, by law of 21 July 2001, the Code of Criminal Procedure was brought into line with the Ukrainian Constitution. Now, within 72 hours of detention, the investigating bodies are required, if they wish to have a suspect remanded in custody, to bring the suspect before a judge (Articles 106 and 165-2 of the Code of Criminal Procedure). The judge can order that the suspect be remanded in custody for up to 15 days, and thereafter grant extensions for a maximum total period of 18 months.

A person remanded in custody is in principle transferred to a pre-trial prison (SIZO). The person may nevertheless be detained in an ITT for a maximum period of up to 10 days if the transfer to the SIZO cannot be effected owing to the distance or the absence of appropriate means of communication.

12. In their reply to the report on the 2001 visit (document CPT/Inf (2002) 24), the Ukrainian authorities claimed that, thanks to the intervention of judges, overcrowding in police establishments had been substantially reduced. Unfortunately, the visit

carried out at the end of 2002 demonstrated the contrary. With the sole exception of the Kyiv ITT, all the other establishments of this kind were overcrowded. It emerged that, in the various regions visited, the judges favoured an approach whereby suspects were remanded in custody, as was generally requested by the investigating bodies and prosecutors.

The CPT recommends that the Ukrainian authorities raise the awareness of the investigating bodies and prosecutors/judges of the new legislation and encourage them to make extensive use of their power to apply non-custodial preventive measures to persons suspected of a criminal offence (cf. also paragraph 85 below).

13. Moreover, in 2002, in examining the relevant records, the CPT's delegation again found cases of remand prisoners being held in ITTs for considerably longer than the 10 days permitted (for example, up to 48 days at the ITT of the Ministry of Internal Affairs of the District Directorate of Khust)."

2. Conditions of transportation of detainees

59. The relevant extracts from the Report of the CPT on a visit to Ukraine from 8 to 24 February 1998 read as follows (original emphasise):

"189. During its visit to the Kyiv SIZO of the Security Service of Ukraine, the delegation also had the opportunity to examine a prison van. This vehicle contained three compartments with benches. The artificial lighting was very poor and the ventilation was non-existent. In addition, one of the compartments was extremely small (0.50m²). According to the staff in charge of the vehicle, this type of van was used only for short journeys within the city. However, the delegation heard allegations from prisoners that vehicles of this kind were sometimes used for longer journeys.

The CPT would like to receive a copy of any regulations which might exist concerning the characteristics of vehicles used for transporting prisoners. In addition, it recommends that the Ukrainian authorities check the lighting and ventilation in prison vans, and cease placing prisoners in compartments as small as 0.50m²."

60. The 2000 Report also contains the findings of the CPT concerning the conditions in which detainees were being transferred from one place of detention to another (original emphasise):

"129. Concerning road transport of prisoners, the delegation inspected two Internal Affairs Ministry vans in Simferopol SIZO. Each vehicle had collective compartments and an individual compartment. The individual compartments were as small as 0.5 m²; in paragraph 189 of the report on its 1998 visit, the CPT has already recommended that the practice of placing prisoners in compartments of this size cease. Conditions in the vehicle were also similar in other respects to those described in the aforementioned paragraph of the report on the 1998 visit (poor artificial lighting, inadequate ventilation)**.**

130. Concerning rail transport, the delegation examined the facilities in one of the special carriages used for transporting prisoners. It had compartments measuring 2 and 3.5 m², with folding benches. The authorised capacity in the smaller compartments was six persons for journeys lasting not more than four hours, and four persons for longer journeys. In the larger 3.5 m² compartments, up to sixteen persons could be accommodated for short distances and twelve for long distances. The compartments had some access to natural light; however, ventilation was poor. The

toilets for prisoners were in a disgusting state, clogged with excrement, despite the fact that prisoners were due to board a few minutes later for a long journey.

There were no arrangements to provide prisoners with food, even over long distances; as for drinking water, only a small container was provided to supply the prisoners throughout the journey.

131. The manner in which prisoners are transported, particularly by train, is unacceptable, having regard, inter alia, to the material conditions and possible duration of travel.

The CPT recommends that conditions of prisoners' transport in Ukraine be reviewed in the light of the foregoing remarks. As an immediate measure, it recommends that the Ukrainian authorities take steps to:

- significantly reduce the maximum number of prisoners per compartment in a railway carriage: 3.5 m² compartments should never contain more than six persons, and 2 m² compartments never more than three persons;

- ensure that during rail transport, prisoners are supplied with drinking water and that for long journeys, the necessary arrangements are made for them to be properly fed;

- no longer use 0.5 m² compartments in vans for transporting prisoners."

61. In its Report to the Ukrainian Government on the visit to Ukraine carried out from 24 November to 6 December 2002 the CPT stated as follows (original emphasise):

"142. In its report on the 2000 visit (paragraph 131), the CPT made a number of recommendations concerning the transport of prisoners by road and rail. The matter was raised again in 2002 with the Ukrainian authorities, who stated that a working group had been set up to transfer responsibility for escorting prisoners from the Ministry of Internal Affairs to the Department for the Execution of Sentences. In the light of the critical findings again made by the delegation which carried out the 2002 visit, concerning transport vans, **the CPT recommends that the Ukrainian authorities give a high priority to resolving the issue of the conditions under which prisoners are transported, with due regard to the recommendations in paragraph 131 of its report on the 2000 visit.**"

B. Amnesty International ("AI")

62. As regards the situation in the Sevastopol ITT, AI stated in a briefing on Ukraine for the United Nations Committee against Torture that took place on 30 April 2007:

"According to the World Health Organization, Ukraine has an estimated tuberculosis (TB) case rate of 95 cases per year per 100,000 people which is the eighth highest in Europe and Eurasia. In a country with a very high rate of TB, overcrowding and poor conditions in pre-trial detention have led to a high rate of infection among detainees. In January 2006 the Sevastopol Human Rights Group reported to Amnesty International that there were 3040 TB infected detainees in the Sevastopol ITT in the Crimea. These people are detained for the full period of their pre-trial detention in the ITT, in violation of the Criminal Procedural Code, because of a long-standing practice that the nearest SIZO in Simferopol will not accept detainees infected with TB. In January 2006, 20 TB infected detainees were held in a cell designed for six people.

They are provided with drugs, but reportedly they do not receive special food or the vitamins needed to counteract the effects of the drugs."

63. In a report "Europe and Central Asia. Summary of Amnesty International's Concerns in the Region. JanuaryJune 2004" AI stated the following:

"At a meeting with AI delegates in June the National Human Rights Ombudsperson Nina Karpacheva stated that torture was still widespread. The main problems were lack of immediate access to a lawyer and conditions in pre-trial detention centres (SIZO) and temporary holding facilities (ITT). The problem was aggravated by a very high number of arrests and a failure to use alternative methods such as bonds and bail. Nina Karpacheva also stated that conditions in the Sevastopol ITT were particularly poor and have led to a very high rate of infection with tuberculosis (TB) among the detainees. Cells are overcrowded and detainees are forced to share bunks or sleep in shifts, food is inadequate and until January 2004 when Nina Karpacheva discovered a possible site for an exercise yard, there was no possibility to take exercise.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has repeatedly expressed concern about the spread of TB in prisons and places of detention in Ukraine, and in their report on conditions in 2000 expressed concern that no improvements could be observed. Andrey Ovsiannikov was arrested in June 2003 on suspicion of drug dealing and held in the Sevastopol ITT. He was not ill with TB at the time, but by September had been diagnosed with TB. He was not informed and found out only by chance in November when his health worsened. He did not receive any treatment until March when through the efforts of his family and the Sevastopol Human Rights Group he was hospitalized and received treatment. On 30 June he was returned to the ITT. AI is concerned that he has been held since June 2003 in pre-trial detention in the ITT when domestic law stipulates that detainees may be held in such facilities for a maximum of 72 hours, and that conditions in the Sevastopol ITT constituted cruel and inhuman treatment."

C. International material concerning tuberculosis

64. Relevant international reports and other materials concerning the treatment of tuberculosis in Ukrainian penitentiary establishments can be found in the judgment of 28 March 2006 in the case of *Melnik v. Ukraine*, (no. 72286/01, §§ 47-53).

THE LAW

I. PRELIMINARY OBSERVATION

65. The applicant died on 8 May 2007, while the case was pending before the Court (see paragraph 5 above). It has not been disputed that his mother is entitled to pursue the application on his behalf and the Court sees no reason to hold otherwise (see *Toteva v. Bulgaria*, no. 42027/98, § 45, 19 May 2004).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

66. The applicant complained that he had been subjected to ill-treatment while in police custody. He also complained about the lack of medical assistance and the inhuman conditions of detention in the Sevastopol ITU. He invoked 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. Admissibility

1. Alleged ill-treatment

67. The Government submitted that the applicant had failed to exhaust domestic remedies as he had not challenged the decision of the Prosecutor's Office not to institute criminal proceedings in respect of his alleged illtreatment before the competent court.

68. The applicant pointed out that he had raised the question of his illtreatment before the court which had tried the criminal case against him. As this court in its judgment of 23 November 2005 found that there was no indication of illtreatment, the applicant saw no point in appealing against the prosecutor's decision concerned.

69. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see the *Aksoy v. Turkey* judgment of 18 December 1996, *Reports* 1996-VI, §§ 51-52, and the *Akdıvar and Others v. Turkey* judgment of 16 September 1996, *Reports of Judgments and Decisions*, 1996-IV, §§ 65-67). A mere doubt as to the prospect of success is not sufficient to exempt an applicant from submitting a complaint to the competent court (see, for example, *Elsanova v. Russia* (dec.), no. 57952/00, 15 November 2005).

70. In the course of the trial against the applicant the trial court requested the relevant prosecution authorities to examine his allegations of

ill-treatment. These allegations were considered by the investigators and prosecutors, who did not find a prima facie case of illtreatment. Pursuant to Article 2361 of the CCP, these decisions were amenable to appeal to a court of general jurisdiction (see paragraph 47 above). In such cases contentious proceedings are instituted, to which the applicant and the prosecutor are parties. Although in these proceedings the court of general jurisdiction is not competent to pursue an independent investigation or make any findings of fact, a judicial review of a complaint has the benefit of providing a forum guaranteeing due process of law. In public and adversarial proceedings an independent tribunal is called upon to assess whether the applicant has a *prima facie* case of ill-treatment and, if he has, to reverse the prosecution's decision and order a criminal investigation.

71. The Court finds, therefore, that the appeal procedure provided for in Article 236-1 of the CCP should in principle be regarded as an ordinary and accessible domestic remedy which fulfils the above requirements of a remedy necessary to exhaust under Article 35 § 1 of the Convention (see, *mutatis mutandis, K.F. v. Germany*, judgment of 27 November 1997, *Reports of Judgments and Decisions* 1997VII, §§ 46-52; *Epözdemir v. Turkey*, no. 57039/00, 31 January 2002; and *Belevitskiy v. Russia*, no. 72967/01, § 61, 1 March 2007).

72. As regards the complaint about his alleged illtreatment, raised by the applicant before the court dealing with the criminal case against him, the Court notes that the purpose of the criminal proceedings against the applicant was to find him innocent or guilty of the criminal charges levelled against him rather than to attribute responsibility for alleged beatings or afford redress for an alleged breach of Article 3 of the Convention (see *Belevitskiy*, cited above, § 63). The trial court therefore could not make any separate findings as to whether or not the applicant had been subjected to ill-treatment while in police custody and, accordingly, applied to the prosecution authorities competent under the domestic law to investigate these allegations. As noted above the applicant did not avail himself of the court procedure, specifically designed for challenging the outcome of the subsequent investigation. Therefore, the applicant's apparently rather vague complaint to the trial court about his alleged ill-treatment did not dispense him from the obligation to exhaust the remedy provided by Article 236-1 of the CCP.

73. The Court finds, therefore, that the applicant's complaints concerning the alleged ill-treatment by the police must be rejected for nonexhaustion of domestic remedies pursuant to Article 35 § 1 of the Convention.

2. Conditions of detention

74. The Government considered that the applicant had failed to exhaust the domestic remedies available to him under Ukrainian law before lodging his application with the Court, in that he had not raised the issue of conditions of detention before the prosecutor competent to supervise penitentiary establishments. They next maintained that the applicant had not applied to the domestic courts in order to challenge the conditions of his detention and to receive compensation for pecuniary or non-pecuniary damage.

75. As to the Government's objection to the admissibility of the application on account of the applicant's failure to complain to the competent prosecutor about the poor conditions of his detention and the lack of adequate and necessary medical treatment, the Court finds that these complaints cannot be considered effective and accessible remedies for the purpose of Article 35 § 1 of the Convention (see *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004).

76. As to the Government's reference to the fact that the applicant has not applied to the domestic courts in order to challenge the conditions of his detention, the Court recalls that in several previous cases it has dismissed similar arguments, finding this remedy ineffective on the ground that the Government had not shown how recourse to such proceedings could have brought about an improvement in the applicants' detention conditions (see, for example, *Khokhlich v. Ukraine*, no. 41707/98, § 153, 29 April 2003; *Melnik v. Ukraine*, no. 72286/01, §§ 70-71, 28 March 2006; and *Dvoynykh v. Ukraine*, no. 72277/01, § 50, 12 October 2006). It can see no reason to hold otherwise in the present case.

77. Moreover, the Court notes that it is not disputed that on 11 September 2003 the applicant complained to the trial court about his poor medical condition, that his mother on 21 April 2006 lodged a complaint with the Prosecutor-General challenging the prison authorities' reluctance to move the applicant to a hospital and that the prison administration was aware that the applicant was HIV positive and was suffering from tuberculosis. The authorities were thereby made sufficiently aware of the applicant's situation and had an opportunity to examine the conditions of his detention and, if appropriate, to offer redress (see *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001, and *Melnik*, cited above, § 70).

78. The Court considers that this part of the applicant's complaints cannot be declared inadmissible for non-exhaustion of domestic remedies. Nor can it be rejected as being manifestly ill-founded or declared inadmissible on any other grounds.

B. Merits

1. General principles

79. The Court reiterates the general principles determined in its case-law as regards Article 3 of the Convention in respect of the conditions of detention (see, for example, *Dvoynykh*, cited above, §§ 62-63 with further references).

80. It further reiterates that the authorities are under an obligation to protect the health of persons deprived of liberty (see *Hurtado v. Switzerland*, judgment of 28 January 1994, Series A no. 280-A, opinion of the Commission, § 79). The lack of appropriate medical care may amount to treatment contrary to Article 3 (see *İlhan v. Turkey* [GC], no. 22277/93, § 87, ECHR 2000-VII, and *Sarban v. Moldova*, no. 3456/05, § 90, 4 October 2005).

2. Material conditions of detention

81. The Court notes that between 21 June 2003 and 28 April 2006 the applicant spent a total of around a year in the Sevastopol ITT.

82. In the present case the parties disagreed as to the number of persons detained in the cell together with the applicant and the number of cells in which he was detained while in the Sevastopol ITT. The Government contended that for the whole period at issue the applicant remained in one cell of 16 square metres, which he shared with 4-6 other detainees. However, they have failed to indicate the number of this cell. The applicant submitted that he had been held in cells nos. 9, 4 and 5. Cell no. 9 measured around 15 square metres and normally contained up to 25 inmates. Cells nos. 4 and 5 measured 22 square metres and accommodated up to 30 detainees.

83. The Court notes that during their visit to the Sevastopol ITT in 2000 the CPT observed up to 10 persons being held in cells of 15 square metres. Having regard to the letter from the Head of the Sevastopol City Police Department of 10 May 2005 (see paragraph 24 above) and the recent internal and international reports on the conditions of detention in the Sevastopol ITT (see paragraphs 54-56 and 62-63 above) the situation does not seem to have improved since 2000.

84. The Court therefore observes that there were no more than 1.5 square metres of space per inmate in the applicant's cells. Thus, in the Court's view, the cell was continuously, severely overcrowded. This state of affairs in itself raises an issue under Article 3 of the Convention (see *Kalashnikov v. Russia*, no. 47095/99, § 97, ECHR 2002-VI).

85. In the light of the above finding and having regard to the abovementioned letter from the Head of the Sevastopol City Police, acknowledging that the Sevastopol ITT held almost three times its capacity of detainees, the Court finds the applicant's claims that there was a shortage of bunks and the inmates had to sleep taking turns sufficiently substantiated. Sleeping conditions were further aggravated by the constant lighting in the cell. The resulting deprivation of sleep must have constituted a heavy physical and psychological burden on the applicant.

86. The Court next notes that the applicant alleged that his cells were situated in the basement, which resulted in a lack of daylight and insufficient ventilation. Although the Government did not respond to this argument directly, they stated that the applicant's cell was equipped with windows, which provided sufficient daylight for the inmates, and that a ventilation system was installed in his cell.

87. The Court does not find it necessary to resolve this disagreement between the parties. It notes that in any case the natural light from the windows was obstructed by dense metal netting and the artificial light was insufficient (see paragraph 58 above). It further notes that the ventilation in the cell, which was holding an excessive number of inmates, was inadequate (ibid). It is quite unclear from the parties' submissions whether or not the applicant was allowed outdoor exercise whilst in the Sevastopol ITT, but even if he was, this did not last longer than one hour a day and the rest of the time he was confined in the dimly lit cell, with very limited space for himself, and a stuffy atmosphere.

88. The applicant next complained about poor sanitary conditions and inadequate nutrition in the Sevastopol ITT. The Court recalls that the 2000 CPT report pointed to this establishment as a notable exception among other Ukrainian ITTs, stating that cells there were clean and the detainees possessed basic hygiene products (see paragraph 58 above). As to the applicant's complaints concerning food, the Court observes that he has failed to show that the level of nutrition did not comply with the statutory norms or that food was inadequate.

89. Thus, in the light of its findings above as to overcrowding, sleep deprivation and lack of natural light and air (see paragraphs 83-87), the Court concludes that the conditions of the applicant's detention in the

Sevastopol ITT amounted to degrading treatment. Accordingly, there has been a violation of Article 3 of the Convention.

3. Medical care

90. The applicant complained that he had not received adequate medical assistance for his HIV and tuberculosis.

91. The Government maintained that on two occasions in April 2006 the administration of the Sevastopol ITT called an ambulance for the applicant and on two occasions he was examined at the Infectious Diseases Hospital. Thus, every time the applicant complained of the deterioration of his health condition he received adequate medical assistance.

92. The Court notes that according to the Government's observations, the applicant was diagnosed with HIV for the first time on 20 April 2006. The applicant in his comments alleged that this took place on 21 February 2006. He provided the Court with a copy of the Head of the Sevastopol City Police Department's letter of 25 April 2006 confirming this position. The Government did not comment on this contention.

93. In these circumstances the Court finds no reason not to trust the applicant's account. It notes, therefore, that although the prison authorities learned about the fact that the applicant was HIV positive on 21 February 2006, no urgent medical measures specified in Decree No. 186/607 (see paragraph 49 above) were taken. The applicant was not brought before an infectious diseases doctor for antiretroviral treatment, nor was any monitoring for, *inter alia*, opportunistic infections afforded to him. Instead, the authorities continued to send him to the Sevastopol ITT, which had no medical practitioner on its staff.

94. There is no indication that the Simferopol SIZO shared the information about the applicant's HIV status with the administration of the Sevastopol ITT. In any case, the applicant was registered as an HIV patient at the local anti-Aids centre only in May 2006, although Decree No. 186/607 stipulates that this should be done immediately upon admission to the detention facility concerned.

95. Moreover, when the applicant contracted tuberculosis, which in the circumstances was an opportunistic disease, he was refused admission to the Simferopol SIZO and was ordered to stay, in breach of domestic law, in the Sevastopol ITT for a period exceeding ten days (see paragraphs 21 and 5354 above).

96. The Government stated that the absence of a doctor or paramedic on the Sevastopol ITT's staff was compensated for by the possibility of calling

an ambulance every time the applicant's health condition warranted medical intervention. This was done on 8 and 12 April 2006.

97. The Court recalls in this respect that in order for a call for an ambulance to be made the Sevastopol ITT administration had first to give permission, a difficult decision to take in the absence of professional medical advice (see *Sarban*, cited above, § 87). What is more, the equipment in the ambulance which was called to treat the applicant on 8 April 2006 was manifestly inadequate to establish a definitive diagnosis and the doctor proposed that he be sent to a specialist hospital for further examinations (see paragraph 37 above). However, the authorities refused to do so. As the applicant's health continued to deteriorate, on 12 April 2006 another ambulance was called. It proved equally unable to give a clear diagnosis and assist the applicant with his health problems (see paragraph 38 above). Only after that, on 14 April 2006, did the authorities decide to take the applicant to the Infectious Diseases Hospital for examination and treatment (see paragraph 39 above).

98. The parties disagreed as to whether the doctors at the Infectious Diseases Hospital, who examined him on 14 April 2006, recommended his hospitalisation. Neither the applicant nor the Government produced any documents relating to this examination. The Court, therefore, cannot establish with sufficient clarity the circumstances of this event. It notes, however, that the Government, having specified in their observations that on 14 April 2006 the doctors prescribed a certain follow-up treatment for the applicant, failed to show that any such treatment was in fact afforded to him by the administration of the Sevastopol ITT.

99. For the second time the applicant was examined at the Infectious Diseases Hospital on 20 April 2006. In view of the letter of 21 April 2006 from this establishment's head doctor, the Court cannot accept the Government's contention that the doctors who examined the applicant on this occasion did not recommend his hospitalisation (see paragraph 41 above). On 21 April 2006 the commission of doctors from the Infectious Diseases Hospital confirmed the applicant's need for in-patient treatment in a specialist medical establishment. The applicant was transferred to the Sevastopol AntiTuberculosis Healthcare Centre only on 28 April 2006, following the Court's request made under Rule 39 of the Rules of Court. The applicant stated that this delay was due to the Sevastopol ITT's reluctance to detach four officers to guard him in the hospital. The Government gave no explanation regarding this delay.

100. Although on both occasions on 20 and 21 April 2006 the Infectious Diseases Hospital's doctors prescribed the applicant anti-tuberculosis

treatment, there is no indication that it was provided to him whilst in the Sevastopol ITT.

101. In the Court's view, the failure to provide timely and appropriate medical assistance to the applicant in respect of his HIV and tuberculosis infections amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

102. There has accordingly been a violation of Article 3 of the Convention also in this respect.

4. Conditions of transport between the Simferopol SIZO and the Sevastopol ITT

103. The applicant claimed that the conditions of transport between the Simferopol SIZO and the Sevastopol ITT were inhuman and degrading. The passenger compartments of the vans and railway carriages were severely overcrowded and let no natural light or air in. He was not given food or drink for the entire journey and the cumulative effect of these conditions was mental and physical exhaustion.

104. The Government submitted that the conditions of transport were compatible with domestic standards and did not constitute any inhuman or degrading treatment.

105. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

106. The Court notes that the Government's account of the conditions of transport from one remand facility concerned to another is remarkably terse. The Court reiterates that Convention proceedings, such as the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in certain instances the respondent Government alone have access to information capable of corroborating or refuting the allegations. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

107. In the present case the applicant was not able to take exact measurements of the prison-van compartments or obtain certificates

showing the occupancy level. However, the Government could have readily submitted details in support of their contentions, but did not do so and gave no reasons for withholding such information. In fact, they confined themselves to asserting that the conditions were compatible with applicable standards and that the travel time was three times shorter than that claimed by the applicant. No copy of the standards or regulations on prison vans was submitted. In these circumstances the Court will examine the merits of the complaint on the basis of the applicant's submissions as far as they are supported by the CPT's findings above.

108. As regards the transport of prisoners, the CPT has considered individual compartments measuring 0.4, 0.5 or even 0.8 square metres to be unsuitable for transporting a person, no matter how short the duration (see CPT/Inf (2004) 36 [Azerbaijan], § 152; CPT/Inf (2004) 12 [Luxembourg], § 19; CPT/Inf (2002) 23 [Ukraine], § 129; CPT/Inf (2001) 22 [Lithuania], § 118; and CPT/Inf (98) 13 [Poland], § 68). In the present case the applicant alleged that the prison vans measuring six square metres usually carried thirty detainees. The Government stated that there had never been more than twenty or twenty one persons in a van, but did not specify the overall size of the compartments in which the applicant was held during the journeys. Therefore, even assuming in the Government's favour that there were 0.3 square metres per inmate in the van, this is obviously below the level permissible under the CPT standards.

109. The Court next notes that the applicant's submissions that the vans' compartments were poorly lit and insufficiently ventilated are supported by the findings of the CPT delegation, which in 2000 examined the vans attached to the Simferopol SIZO (see paragraph 60 above).

110. As regards the rail transport the Court notes that the parties disagreed as to the number of persons which the train compartments usually accommodated. The Court notes that having regard to the permissible space per inmate under the domestic standards for short-term railway journeys of 0.3 square metres (see paragraph 60 above) it appears that if in a carriage designed for 104 persons 70 inmates are accommodated the resulting space per inmate is 0.4 square metres, which, as indicated above (see paragraph 108) is unsuitable for transporting a person on journeys of any length.

111. The Court further takes into account the CPT's findings that the ventilation in the carriages was poor, food was not provided and water was in short supply.

112. The Court observes that the applicant had to endure these crammed conditions twice a month on the way to and from the Sevastopol ITT for a period of two years and eight months, thus making about 64 such trips.

113. The Court finds that the treatment to which the applicant was subjected during his repeated transports between the Sevastopol ITT and Simferopol SIZO exceeded the minimum level of severity (see *Khudoyorov v. Russia*, no. 6847/02, §§ 116-120, ECHR 2005... (extracts)) and that there has been a violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

114. The applicant further complained that the overall length of his detention had not been "justified" or "reasonable". He referred to Article 5 § 3 of the Convention, which provides in so far as relevant:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

115. The Government maintained that the applicant had failed to respect the six-month time-limit provided for by Article 35 § 1 of the Convention. They pointed out that the applicant's initial application of 26 April 2006 did not contain any complaint under Article 5 § 3. It was not until 24 June 2006 that the applicant raised this complaint before the Court, whereas the six months started to run on 23 November 2005, when the applicant was convicted and sentenced by the District Court.

116. The applicant countered these submissions, stating that although it is true that he did not raise a separate complaint under Article 5 § 3 in his initial letter of 26 April 2006, he referred there to the facts relating to his subsequent complaint about the unreasonable length of pre-trial detention, such as the date of his arrest.

117. The Court reiterates that, pursuant to Article 35 § 1 of the Convention, the Court may only deal with a matter "within a period of six months from the date on which the final decision was taken". The running of the six-month time-limit is, as a general rule, interrupted by the first letter from the applicant indicating an intention to lodge an application and giving some indication of the nature of the complaints made. As regards complaints not included in the initial communication, the running of the six-month time-limit is not interrupted until the date when the complaint is first submitted to the Court (see *Božinovski v. the former Yugoslav Republic of Macedonia* (dec.), no. 68368/01, 1 February 2005).

118. The parties agreed that the six-month period in respect of the applicant's complaint under Article 5 § 3 began to run on 23 November 2005, when the District Court convicted him of burglary and sentenced him to three years and seven months' imprisonment. The complaint about the

length of the applicant's pre-trial detention was only mentioned in an application form dated 24 June 2006. While it is true that an earlier application form had been submitted by the applicant on 26 April 2006, this did not include any complaints under Article 5 of the Convention. The Court is not persuaded that the reference to the date of the applicant's arrest, made in the context of his complaint about poor medical conditions of detention, may be regarded as an intention to lodge a further complaint under Article 5 § 3. Some indication of the nature of the alleged violation under the Convention is required to introduce a complaint and thereby interrupt the running of the six-month time-limit.

119. It follows that this part of the application is inadmissible for non-compliance with the six-month rule set out in Article 35 § 1 of the Convention and that it must be rejected pursuant to Article 35 § 4.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 3 OF THE CONVENTION

120. The applicant further complained under Article 6 § 3 (c) of the Convention that during the criminal proceedings against him he had not been provided with free legal aid.

121. The Court notes that the applicant has failed to lodge an appeal in cassation with the Supreme Court against his conviction for burglary. Moreover, he failed to raise this issue in his appeal against his conviction of 23 November 2005.

122. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

123. The applicant alleged that he did not have at his disposal an effective domestic remedy for his Convention complaints under Article 3, as required by Article 13 of the Convention. In so far as relevant, 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."

124. The Government did not submit any observations in respect of this complaint.

125. 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. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000XI).

126. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be effective in practice as well as in law.

127. Taking into account its earlier considerations as to the exhaustion of domestic remedies (paragraphs 75-78 above) as well as its previous caselaw on the matter (see *Melnik*, cited above, § 115, and *Dvoynykh*, cited above, § 72), the Court finds that there was no effective and accessible remedy in respect of the applicant's complaints about the conditions of the his detention. There was, therefore, a violation of Article 13 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

128. 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

129. In respect of pecuniary damage the applicant claimed UAH 2,958.16 (434 euros (EUR)) for medical expenses incurred in the course of his in-patient treatment in the Sevastopol AntiTuberculosis Healthcare Centre and submitted documents in support of this claim. He further claimed UAH 42,000 (EUR 6,163) for the food parcels he received during his detention in the Sevastopol ITT.

130. The applicant also claimed EUR 50,000 in respect of non-pecuniary damage.

131. The Government stated that since there had been no violation of the applicant's rights under Article 3 of the Convention, the State should not be held responsible for his medical costs. As to the amount for food parcels, the Government stated that the amount claimed was not substantiated with any evidence.

132. The Court first notes that no violation of Article 3 on account of the nutrition afforded to the applicant during his stay in the Sevastopol ITT has

been found. Accordingly, no award can be made in respect of expenses for food parcels.

133. The Court further notes that the Government did not question the amount of the applicant's medical expenses. Having regard to its findings above concerning the applicant's complaint about the insufficiency of medical assistance afforded to him whilst in the Sevastopol ITT, it awards the applicant the full amount claimed in respect of his medical costs.

134. As to non-pecuniary damage, the Court recalls its findings above of violations of Articles 3 and 13 of the Convention in the present case (see paragraphs 89, 101-102, 113 and 127 above). Having regard to its case-law in comparable cases, and deciding on an equitable basis, the Court awards the applicant EUR 10,000 under this head (see *Melnik*, cited above, § 121).

B. Costs and expenses

135. The applicant claimed UAH 31,188.64 (EUR 4,577) in compensation for the travel expenses of his representative, incurred in the context of the criminal proceedings against him. He also claimed UAH 155.90 (EUR 23) in relation to his postal expenses incurred in the Convention proceedings and submitted bills in this respect.

136. The Government disputed that claim.

137. The Court notes that the applicant has failed to produce any documents proving the alleged travel expenses of his lawyer. The Court, therefore, awards the applicant an additional EUR 23 for his postal expenses.

C. Default interest

138. 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 applicant's complaints under Articles 3 and 13 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in respect of material conditions of the applicant's detention in the Sevastopol ITT;

3. *Holds* that there has been a violation of Article 3 of the Convention concerning the authorities' failure to provide timely and appropriate medical assistance to the applicant in respect of his HIV and tuberculosis infections;

4. *Holds* that there has been a violation of Article 3 of the Convention in respect of the treatment to which the applicant was subjected during his repeated transports between the Sevastopol ITT and Simferopol SIZO;

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

6. *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, the following sums, to be converted into the national currency of the respondent State at the rate applicable on the date of payment:

(i) EUR 434 (four hundred and thirty four euros) in respect of pecuniary damage;

(ii) EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage;

(iii) EUR 23 (twenty-three euros) for costs and expenses;

(iv) plus any tax that may be chargeable on the above amounts;

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

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

Done in English, and notified in writing on 25 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President