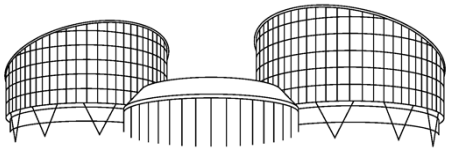

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SUKACHOV v. UKRAINE

(Application no. 14057/17)

JUDGMENT

Art 3 • Degrading treatment • Poor conditions of pre-trial detention
Art 13 • Lack of effective domestic remedies
Art 46 • Pilot-judgment • Structural problem • Respondent State required to reduce prison overcrowding, improve conditions of detention and introduce preventive and compensatory remedies

STRASBOURG

30 January 2020

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 Sukachov v. Ukraine,

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

Angelika Nußberger, *President*,
Ganna Yudkivska,
André Potocki,
Yonko Grozev,
Síofra O'Leary,
Mārtiņš Mits,
Lado Chanturia, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 10 December 2019,

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

PROCEDURE

1. The case originated in an application (no. 14057/17) 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 Viktor Valeryevich Sukachov ("the applicant"), on 10 February 2017.

2. The applicant, who had been granted legal aid, was represented by Ms Y. Ashchenko, a lawyer practising in Kharkiv. On 23 August 2018 Ms Ashchenko informed the Court that she could no longer represent the applicant. The Ukrainian Government ("the Government") were represented by their Agent, Mr I. Lishchyna.

3. The applicant alleged, in particular, that the conditions of his pre-trial detention and of his transfer to and detention at the court on hearing days had been inhuman and degrading, in breach of Article 3 of the Convention. He also complained, in substance under Article 13 of the Convention, that he had had no effective remedies for the above complaints.

4. On 19 December 2017 the Court decided to grant priority to the application under Rule 41 of the Rules of Court, give the Government notice of the applicant's complaints, and invite the parties to comment on the suitability of the case for the pilot-judgment procedure (Rule 61 § 2 (a)).

5. The parties provided observations on the case. The Government also submitted comments on the application of the pilot-judgment procedure in the present case, while the applicant left this matter to the Court's discretion.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1978 and is currently detained in Dnipro.

A. Conditions of the applicant's pre-trial detention

7. On 31 May 2012 the applicant was arrested on suspicion of involvement in terrorism and production and storage of explosives.

8. Eventually, on 20 February 2018, the Industrialnyy District Court of Dnipro ("the District Court") found him guilty as charged and sentenced him to twelve years' imprisonment.

9. Since 12 July 2012 the applicant has been held in detention in the Dnipropetrovsk (now Dnipro) Pre-trial Detention Facility no. 3, which in March 2016 was recategorised as a prison (hereinafter referred to, for practical purposes, as "the Dnipro SIZO").

10. From 12 July 2012 to 19 July 2013 the applicant was held in cell no. 661 and from 21 November 2013 to 8 May 2014 in cell no. 655. According to him, both cells were located in unit 6. The parties did not specify in which of those cells the applicant had been held from 19 July to 21 November 2013, the applicant having referred to both cells. Each cell had an overall surface area of 7.7 square metres of which 6.7 square metres was the living space meant for two people. The applicant submitted that the personal living space available to him in the cells had been 3.35 square metres, which suggests that another detainee was held with him in each cell. Without disputing that submission, the Government stated that they were unable to provide information about the number of detainees held in those cells because the relevant records had been destroyed on expiry of the statutory storage period.

11. From 8 to 26 May 2014 the applicant was held in cell no. 931, which had an overall surface area of 14.5 square metres or 13 square metres of living space and was designed for five people. The applicant submitted that four to five detainees had been held in that cell. Without disputing the above submission, the Government referred again to the unavailability of the relevant records.

12. From 26 May 2014 to 22 March 2017 the applicant was held in cell no. 911, which had an overall surface area of 14.5 square metres or 13 square metres of living space and was designed for five people. The table below provides information submitted by the Government, which has not been disputed by the applicant, about the number of detainees held in the cell in various periods from 1 January 2015 to 22 March 2017. The parties did not provide exact information about the number of detainees held in that cell between 26 May 2014 and 1 January 2015, the applicant having

referred to "four to five detainees", which the Government did not dispute. Based on the principles established in *Muršić v. Croatia* ([GC], no. 7334/13, § 114, 20 October 2016), the last column in the table indicates the personal space available to the applicant in the cell between 1 January 2015 and 22 March 2017 (the parties did not provide information for the period beyond the latter date):

Period of the applicant's detention (days)	Number of detainees	Personal space, square metres
01.01-15.01.2015 (14)	5	2.6
15.01-16.01.2015 (1)	3	4.3
16.01-18.01.2015 (2)	4	3.25
18.01-28.01.2015 (10)	5	2.6
28.01-13.03.2015 (44)	4	3.25
13.03-15.03.2015 (2)	5	2.6
15.03-20.03.2015 (5)	4	3.25
20.03-28.03.2015 (8)	5	2.6
28.03-17.04.2015 (20)	4	3.25
17.04-05.05.2015 (18)	5	2.6
05.05-15.05.2015 (10)	4	3.25
15.05-28.05.2015 (13)	5	2.6
28.05-09.06.2015 (12)	3	4.3
09.06-16.06.2015 (7)	4	3.25
16.06-26.06.2015 (10)	4	3.25
26.06-07.07.2015 (11)	4	3.25
07.07-27.07.2015 (20)	5	2.6
27.07-02.08.2015 (6)	4	3.25
02.08-07.08.2015 (5)	5	2.6
07.08-11.08.2015 (4)	4	3.25
11.08-22.08.2015 (11)	3	4.3
22.08-04.09.2015 (13)	5	2.6
04.09-24.09.2015 (20)	4	3.25
24.09-27.09.2015 (3)	3	4.3
27.09-07.10.2015 (10)	4	3.25
07.10-14.11.2015 (38)	5	2.6
14.11-16.11.2015 (2)	4	3.25
16.11-04.12.2015 (18)	5	2.6
04.12-17.12.2015 (13)	4	3.25
17.12-18.12.2015 (1)	5	2.6
18.12.2015-11.02.2016 (55)	4	3.25
11.02-08.04.2016 (57)	5	2.6
08.04-19.04.2016 (11)	4	3.25
19.04-13.10.2016 (177)	5	2.6
13.10-17.10.2016 (4)	4	3.25
17.10-31.10.2016 (14)	5	2.6
31.10-03.11.2016 (3)	4	3.25
03.11.2016-03.01.2017 (61)	5	2.6
03.01-17.01.2017 (14)	4	3.25
17.01-22.03.2017 (64)	5	2.6

13. According to the applicant's initial submissions, the above-mentioned cells were poorly ventilated. In the winter the windows were locked shut so that they could not be opened and no fresh air could enter the cells. From May to October the window frames were removed and the air inside the cells became cleaner. However, due to the partial absence of glass panes in the windows, mosquitos attracted by the artificial light from the cells, which was never switched off, flew into the cells. The toilet facilities in the cells were separated from the living area by a low partition wall. They were not equipped with a siphon drainage system, as a result of which an unpleasant odour always remained in the cells. Detainees had the opportunity to take a shower only once a week. The shower cabins had an insufficient number of taps, of which only a few were usually working. It was often impossible to set an acceptable water temperature. Centralised laundry was not organised by the administration, and detainees had to wash and dry their laundry in their cells. Cells were constantly damp.

14. In support of his statements the applicant submitted five photographs of cell no. 911 taken by him and other detainees. The photographs show a toilet facility with a low partition wall and no door, a wash stand, a table, a bench, five beds, and laundry hanging on ropes. The applicant also referred to other detainees' written statements. In particular, A.B., R.Sh. and A.Y., who had apparently shared cell no. 911 with him during an unspecified period, stated that the available space in the cell was limited to the 0.9-metre wide passage between the beds, which was insufficient for any physical activity. They also stated that the toilet was separated from the living area only by a 0.53 metre high wall. Detainees had had to conceal the toilet with a "curtain" made from bed sheets. The toilet hole had been blocked with a plug (*grusha*) made by the detainees, as there was a smell from the sewage pipe. The detainees also mentioned the inadequate ventilation in the cell and said that mosquitos entered the cell in huge quantities (given that in the summer the window frame was removed).

15. The applicant further referred to the written statements of the above-mentioned detainees and two other detainees (S.K and K.Z.) about the general situation in the Dnipro SIZO. All of them stated that detainees could take a shower only once a week and that the showers were dirty and some of the taps were out of order. They also confirmed the situation with the laundry as described by the applicant. S.K. and K.Z. also referred to overcrowding, poor lighting and ventilation in their own cells, their unsanitary condition, lack of separation of the toilet from the living area, no provision of personal hygiene material, necessities or cleansers, daily walks lasting less than one hour in a small, dirty and dusty exercise yard, poor food, and so on.

16. Lastly, in support of his submissions about the conditions of detention in the Dnipro SIZO, the applicant referred to the reports prepared by the European Committee for the Prevention of Torture and Inhuman or

Degrading Treatment or Punishment ("the CPT") following its 2009 and 2013 visits to Ukraine (see paragraphs 28 and 30 below) and to the report for 2012 prepared by the National Preventive Mechanism ("the NPM"; see paragraph 46 below), both of which had visited the SIZO.

17. According to the Government, which referred to a letter from the Administration of the State Service for the Execution of Sentences ("the SSES") of 16 March 2018 prepared at their request, all cells mentioned by the applicant were in a satisfactory state. They were equipped with sitting and sleeping places as well as the necessary furniture and other items. Detainees had the possibility to work with documents, eat and rest in the cells. All cells had sanitary facilities, including wash stands and toilets with a working flush system, which were isolated from the living area by a 1.6 metre high wall. Lights were on day and night in the cells and the ventilation was adequate. From 10 p.m. until 6 a.m. detainees were allowed to sleep uninterrupted; daily walks outside the cells lasted for one hour; the exercise yard for cells nos. 661 and 655 measured 11.5 square metres, and for cells nos. 911 and 931 – 15 and 30 square metres, respectively.

18. On 2 December 2016 the applicant sent a petition (*звернення*) to a member of parliament, M., in which he complained, *inter alia*, that the material conditions in the Dnipro SIZO had deteriorated and that detainees had not been allowed to take a shower for three weeks. He requested M. to assist with arranging an inspection of the SIZO. On 22 December 2016 M. asked the Prosecutor General to take the relevant measures and inform him thereof. On 19 January 2017 the regional prosecutor, to whom the petition had been forwarded, informed M. and the applicant that, following an internal inspection, the latter's allegations had not been confirmed. Bathing facilities and laundry services for prisoners were provided in accordance with the set schedule and there were no irregularities in the functioning of the boiler facility and shower cabins.

19. On 23 February 2017 the applicant sent a complaint to the Prosecutor General, claiming that his complaints about the inappropriate condition of the shower cabins had not been properly examined and that the condition of some shower cabins had not been checked during the inspection. He also stated that he could take a shower only once a week.

20. On 31 May 2017 the regional prosecutor informed the applicant that the inspection carried out following his petition had established that washing facilities in the SIZO had been provided in accordance with the law and the set schedule. In accordance with the domestic standards, washing facilities were available at least once a week. No disruptions in the functioning of the boiler facility and washroom had been established. The sanitary and technical condition of showers had been satisfactory. Following the interviewing of other detainees, no complaints on their part had been established in this respect.

B. Conditions of the applicant's transfer and detention on hearing days

21. The Government stated, and the applicant did not dispute, that from November 2012 to March 2018 the latter had been transported by prison van, on 392 occasions, from the Dnipro SIZO to the District Court to participate in court hearings on his criminal case. The distance from the SIZO to the court was about 26.5 km and a one-way trip lasted from forty minutes to one and a half hours.

22. According to the applicant, the following vehicles were usually used for transporting detainees: a GAZ van with two cells designed for two to three and three to four detainees respectively; a GAZ van with two cells measuring 2.1 to 2.2 square metres (for six to ten detainees) and 0.4 square metres (for one detainee); a GAZ van with three cells, two of which were designed for one to two detainees and one for four to five detainees; and a GAZ van with four cells. The vans had insufficient lighting and ventilation. It was cold inside them during the winter, whilst in the summer the temperature rose to 35-40 degrees Celsius. The vans had no special space for smokers, and non-smokers had to inhale tobacco smoke. In support of his statements the applicant submitted eight photographs of several vans, showing that some of them had no windows. He also generally referred to the NPM report for 2013 (see paragraph 47 below).

23. According to the Government, which referred to a letter from the National Police of Ukraine of 27 March 2018, based in turn on an inspection of 21 November 2017, the applicant had been transported in the following vehicles: a UAZ-31519 van, with one multi-prisoner cell designed for two detainees; a GAZ-27521 van, with one multi-prisoner cell for four detainees; a TK-AZU-1 van designed for transporting seven detainees, with one multi-prisoner and three single cells; a GAZ-2705-222 van designed for transporting eight detainees, with two multi-prisoner cells; a Foton-BL 1043 van, designed for transporting twelve detainees, with one multi-prisoner, two two-prisoner and three single cells; and a GAZ-3307 van, designed for transporting twenty-one detainees, with one multi-prisoner, two two-prisoner and two four-prisoner cells. The above-mentioned vehicles had been constructed in accordance with domestic and international standards. Each cell in them was equipped with artificial lighting, which was always turned on during the transfer. The ventilation of the cells was achieved by means of vents installed in the body of the vehicles; these could be regulated by prisoners in order to get access to air. The upper and lower parts of the cell doors consisted of grates through which access to air was also ensured. The vans were equipped with heaters. The 2017 records stated that ventilation and heating systems had been "available" in the prison vans, and that the ventilation system had been "functioning" in one van and the heating system in three vans.

24. On arrival at the District Court, the applicant was held in cells located in the holding area, where there was a room for convoy officers, three holding cells for detainees and a toilet facility. The Government stated, and the applicant did not dispute, that the cells measured 6 square metres each, were equipped with benches and had artificial lighting.

25. According to the applicant, there was no access to fresh air and natural light, no artificial ventilation and no tables in the holding cells. Detainees were allowed to go to the toilet only with the permission of a convoy officer when there were two to three officers in the holding area. From three to seven detainees were usually held in the holding cells. On hearing days the applicant remained in the court for most of the day, since a van collected detainees from the SIZO at 8.30 a.m., but hearings did not begin until 2.20 to 2.30 p.m. and finished at 5.30 p.m., after which the van went back to the SIZO.

26. In support of his statements, the applicant submitted four photographs of the holding cells. He also referred to a letter from the State Judicial Administration of 25 May 2015, which confirmed that there had been no artificial ventilation in those cells. The applicant also referred to the NPM reports for 2013 and 2014 (see paragraph 47 below).

II. RELEVANT COUNCIL OF EUROPE, INTERNATIONAL AND DOMESTIC MATERIAL

A. Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

1. General Reports

27. Relevant excerpts from the CPT's General Reports read as follows:

2nd General Report (CPT/Inf (92) 3)

"46. Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.

47. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners ... [P]risoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature ...

48. Specific mention should be made of outdoor exercise. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely

accepted as a basic safeguard ... It is also axiomatic that outdoor exercise facilities should be reasonably spacious and whenever possible offer shelter from inclement weather ...

49. Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment ...

50. The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners ..."

7th General Report (CPT/Inf (97) 10)

"13. As the CPT pointed out in its 2nd General Report, prison overcrowding is an issue of direct relevance to the Committee's mandate (cf. CPT/Inf (92) 3, paragraph 46). An overcrowded prison entails cramped and unhygienic accommodation; a constant lack of privacy (even when performing such basic tasks as using a sanitary facility); reduced out-of-cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. This list is far from exhaustive.

The CPT has been led to conclude on more than one occasion that the adverse effects of overcrowding have resulted in inhuman and degrading conditions of detention ..."

11th General Report (CPT/Inf (2001) 16)

"28. The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports. As the CPT's field of operations has extended throughout the European continent, the Committee has encountered huge incarceration rates and resultant severe prison overcrowding. The fact that a State locks up so many of its citizens cannot be convincingly explained away by a high crime rate; the general outlook of members of the law enforcement agencies and the judiciary must, in part, be responsible.

In such circumstances, throwing increasing amounts of money at the prison estate will not offer a solution. Instead, current law and practice in relation to custody pending trial and sentencing as well as the range of non-custodial sentences available need to be reviewed. This is precisely the approach advocated in Committee of Ministers Recommendation No R (99) 22 on prison overcrowding and prison population inflation. The CPT very much hopes that the principles set out in that important text will indeed be applied by member States; the implementation of this Recommendation deserves to be closely monitored by the Council of Europe.

29. In a number of countries visited by the CPT, particularly in central and eastern Europe, inmate accommodation often consists of large capacity dormitories which contain all or most of the facilities used by prisoners on a daily basis, such as sleeping and living areas as well as sanitary facilities. The CPT has objections to the very principle of such accommodation arrangements in closed prisons and those objections are reinforced when, as is frequently the case, the dormitories in question are found to hold prisoners under extremely cramped and insalubrious conditions ... Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives ...

All these problems are exacerbated when the numbers held go beyond a reasonable occupancy level; further, in such a situation the excessive burden on communal facilities such as washbasins or lavatories and the insufficient ventilation for so many persons will often lead to deplorable conditions.

30. The CPT frequently encounters devices, such as metal shutters, slats, or plates fitted to cell windows, which deprive prisoners of access to natural light and prevent fresh air from entering the accommodation. They are a particularly common feature of establishments holding pre-trial prisoners. The CPT fully accepts that specific security measures designed to prevent the risk of collusion and/or criminal activities may well be required in respect of certain prisoners ... [E]ven when such measures are required, they should never involve depriving the prisoners concerned of natural light and fresh air. The latter are basic elements of life which every prisoner is entitled to enjoy; moreover, the absence of these elements generates conditions favourable to the spread of diseases and in particular tuberculosis ...”

2. Reports in respect of Ukraine

28. Since 1 September 1997, when the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment entered into force in respect of Ukraine, CPT delegations have visited various detention facilities in Ukraine, including the Dnipro SIZO (in 2009 and 2013). Thus, in its 2011 Report (CPT/Inf (2011) 29) prepared following the visit to Ukraine on 8-21 September 2009, the CPT noted as follows (original emphasis; footnotes omitted):

“107. ... **The CPT recommends that the Ukrainian authorities make strenuous efforts to offer organised out-of-cell activities (work, recreation/association, education, sport) to prisoners at the Kyiv SIZO. Further, the Committee recommends that steps be taken to construct more appropriate exercise yards which allow prisoners to exert themselves physically, as well as indoor and outdoor sports facilities** ...

109. When visited by the delegation, the SIZO in Dnipropetrovsk was holding 2,900 prisoners (including 220 women and 63 juveniles) for an official capacity of 3,456. The prisoner population comprised 26 life-sentenced prisoners. The SIZO served as a transit point for prisoners being transferred between penitentiary establishments and had a monthly turnover of some 5,000 inmates.

Prisoners were accommodated in 10 buildings of different age and configuration. Given that the visit to the establishment was of a targeted nature – focusing on newly arrived prisoners and life-sentenced prisoners – the delegation received an impression of material conditions only in some of the buildings.

110. In a detention block which had recently been renovated (units 6 and 7), cells measuring some 7 m² were holding usually 2, but occasionally 3, prisoners. There was enough natural light coming through the cells’ large windows, and access to artificial light and ventilation also appeared to be adequate. Each cell was equipped with a partitioned toilet and sink. This block, referred to as the “Euro-standard” block, was considered by the administration as a model.

In the four-storey building accommodating female prisoners (unit 10) and some of the male remand prisoners (unit 9), the delegation observed that the cells were less overcrowded than in the Kyiv SIZO (e.g. a cell measuring some 15 m² was holding 6 female prisoners; there were 13 prisoners in a cell of 33 m²). The cell equipment

(double-bunk beds, lockers, a partitioned sanitary annexe) did not call for any particular comments. However, it was a matter of concern to the delegation that all cells' windows were fitted with a solid metal shutter which considerably limited access to natural light. The CPT welcomes the immediate steps taken by the management of the SIZO to remove the metal shutters from all the cell windows in units 9 and 10, following a remark by the delegation at the end of the visit to the SIZO in Dnipropetrovsk.

The CPT recommends that, at the Dnipropetrovsk SIZO, efforts be made to decrease overcrowding, the objective being to offer a minimum of 4 m² of living space per prisoner in multi-occupancy cells.

111. As at the Kyiv SIZO, the vast majority of prisoners spent almost all their time locked up in their cells, without being offered any activities worthy of the name. **The first recommendation made in paragraph 107 applies equally to the Dnipropetrovsk SIZO."**

29. The CPT also made the following general recommendations to the Ukrainian authorities:

"- the examination of proposals to amend the Code of Criminal Procedure and the Criminal Code to be considered a priority, the aim being to shorten the length of court proceedings in criminal cases and to circumscribe more closely the circumstances in which recourse can be had to the preventive measure of remand in custody ...

- efforts to be made to develop the training provided to judges and prosecutors, with a view to promoting the use of alternatives to imprisonment ...

- in their endeavours to combat prison overcrowding, the Ukrainian authorities should be guided by Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec(2003)22 on conditional release (parole) and Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse ...

- the Ukrainian authorities to review as soon as possible the norms fixed by legislation for living space per prisoner, ensuring that they provide for at least 4 m² per inmate in multi-occupancy cells in all the establishments under the authority of the Department on Enforcement of Sentences (SIZOs included ...

- the Ukrainian authorities to step up their efforts to develop the programmes of activities for sentenced and remand prisoners. The aim should be to ensure that both categories of prisoner are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature ..."

30. In its 2014 Report (CPT/Inf (2014) 15) prepared following the visit to Ukraine on 9-21 October 2013, the CPT noted as follows (original emphasis; footnotes omitted):

"118. The CPT's delegation paid follow-up visits to Kyiv, Dnipropetrovsk, Odessa and Simferopol SIZOs, where remand prisoners/inmates not yet serving their sentences represented about 90% or more of the whole prison population in these establishments. It should be noted from the outset that these establishments were operating below their official capacities at the time of the 2013 visit, although these

capacities were still based on the national standard of 2.5 m² of living space per inmate: ...

● Dnipropetrovsk SIZO was accommodating 1,777 inmates (including 129 women and 24 juveniles) for an official capacity of 3,519 places; ...

119. The CPT is pleased to note that in the establishments visited, all the inmates appeared to have been provided with their own beds in the cells seen by the delegation. Further, the standard advocated by the Committee of 4 m² of living space per inmate in multi-occupancy cells was observed in many cells of the establishments concerned. Both penitentiary staff and prisoners with whom the delegation spoke expressed their appreciation about the significant reduction of the prison population and the larger amount of living space in the cells in the context of the adoption and entry into force of the new CCP.

Nevertheless, ... the CPT's delegation observed localised overcrowding in all the establishments visited. Cell occupancy rates in many cells were not only far from meeting the CPT's standard of at least 4 m² per prisoner, but were also in breach of Ukrainian standards, with as little as 1.5 m² of living space per prisoner in some multi-occupancy cells (e.g. 38 prisoners were being held in a cell of some 57 m², without counting the space taken up by the in-cell toilet, in Kyiv SIZO; four prisoners were being accommodated in a cell of some 7 m², not including the space taken up by the in-cell toilet, at Odessa) ...

The delegation noted that at *Dnipropetrovsk SIZO,* metal shutters attached to the cells' windows in blocks Nos. 9 and 10 had been removed following the 2009 visit. Steps were also being taken to pursue gradual renovation works in the cells; most of the accommodation areas were indeed in a poor state of repair, badly ventilated and dirty. Further, in-cell toilets were only partially partitioned ...

c. outdoor exercise

122. In all the SIZOs visited, inmates had access to one hour of daily outdoor exercise (two hours for juveniles). Nevertheless, the yards seen by the CPT's delegation were frequently too small for their intended occupancy and for real physical exertion (e.g. 9.5 m² for up to two inmates or 34 m² for up to 12 prisoners in Kyiv) ...

d. activity programmes

123. The philosophy behind the detention regime applicable to remand prisoners is set out in Section 7 of the Pre-Trial Detention Act. More specifically, the main characteristics of the detention regime are the "isolation" of remand prisoners, their constant supervision and the observance of the segregation rules. Accordingly, the activities which remand prisoners are entitled to consist mainly of watching TV (when a TV set is provided), playing board games, reading books/magazines and having access to religious literature.

Newly adopted Internal Rules on SIZOs indicate that remand prisoners may have access to general education regardless of their age. However, if a remand prisoner wishes to work, an authorisation from an investigator or judge should be sought ...

124. In the course of the 2013 visit, the delegation found that there was virtually no change as regards the provision of *out-of-cell activities* for remand prisoners. Most remand prisoners were locked up in their cells for 23 hours per day, with little to occupy themselves (e.g. watching TV or reading books). Only a few women on remand were allowed to work (e.g. in Kyiv) and none of the prisoners interviewed were offered any kind of educational activities. As on previous visits, the only

exception concerned juveniles on remand, who had access to some schooling, association and sports activities during weekdays ...

f. conclusions

126. The delegation's findings during the 2013 visit clearly indicate that the adoption/entry into force of the new CCP and other recent measures had contributed to the eradication of massive, severe, overcrowding in the establishments visited. The Ukrainian authorities should be commended for this. However, overcrowding remains an issue for many inmates who still enjoy an extremely limited amount of living space (i.e. far lower than 4 m² per inmate) in cells which were often found to be in a poor condition. In addition, the bulk of remand prisoners were confined to such cells for at least 23 hours a day, with no meaningful out-of-cell activities on offer and little incentive to take daily outdoor exercise. In addition, few of them had opportunities to maintain contacts with their relatives. This situation was aggravated for a number of prisoners who were still being held in such a situation for several years under the former CCP. In short, the cumulative effect of these conditions and restrictions could well be considered, for many inmates, as a form of inhuman and degrading treatment.

127. In the light of the above remarks, **the CPT recommends that ... the Ukrainian authorities take further action to:**

● redouble their efforts in the SIZOs visited to meet the objective of offering at least 4 m² of living space per inmate in multi-occupancy cells and of placing no more than one inmate in cells measuring 6 m² (not counting the area taken up by the in-cell toilets), in particular by distributing prisoners more evenly amongst the available accommodation, reducing intended capacity levels in the cells in compliance with national standards and reviewing the official capacities of the establishments in question accordingly; ...

● pursue their refurbishment/reconstruction programmes in older accommodation buildings of Kyiv and Dnipropetrovsk SIZOs; ...

● ensure, when implementing refurbishment/(re)construction programmes, that in-cell toilets/sanitary annexes are fully partitioned (i.e. up to the ceiling); ...

● ensure that prisoners have the possibility of genuine physical exertion every day; this will require enlarging the exercise yards. Whenever possible, the current yards located on the roofs of the accommodation blocks should be replaced by outdoor exercise facilities located at ground level;

● ... **steps should be taken to ensure that, when designing and constructing new SIZOs/accommodation blocks for remand prisoners, provision is made for proper outdoor exercise at ground level, association with prisoners from other cells, work, education and other meaningful activities** ..."

31. The CPT has also repeatedly acknowledged general problems concerning conditions of detention in Ukraine. In particular, in its 2017 Report (CPT/Inf (2017) 15) prepared following its visit to Ukraine on 21-30 November 2016, it stated that it had been informed by the Ukrainian authorities about the ongoing re-organisation of the prison system and of measures taken to reduce prison overcrowding. In particular, the authorities planned to close down some of the old SIZOs and to sell the old buildings and the land to private investors who would then build new remand prisons.

The CPT welcomed the reforms, but urged the authorities to pursue their efforts to further reduce the number of remand prisoners. It observed:

> "... unfortunately, the above-mentioned reforms have not yet impacted upon the situation of remand prisoners. In particular, the old inadequate norm of living space per inmate in SIZOs (2.5 m²) was still in force at the time of the visit, complex rules on separation of different categories of remand prisoners continued to result in localised overcrowding in the pre-trial facilities visited ..."

32. The CPT thus called upon the Ukrainian authorities to take decisive steps to revise the legislation and the regime for remand prisoners. It also observed (original emphasis, footnotes omitted):

> "... the most striking feature of the SIZOs visited were the appalling material conditions, in particular at Odesa, Khmelnytskiy and Kyiv SIZOs (with the notable positive exception of the juvenile units at Khmelnytskiy and Kyiv SIZOs). Those in Kyiv and Odesa had further deteriorated since the CPT's last visits in, respectively, September 2014 and October 2013 and could now easily be considered inhuman and degrading. The above-mentioned situation was made even worse by the fact that the heating was either completely switched off or barely working.
>
> Conditions were somewhat better at Kharkiv SIZO although they remained quite poor due to the age and infrastructure of the buildings. The Committee recommends that the ongoing renovation of Kharkiv SIZO be continued and that, to the extent possible with the existing infrastructure, it comprise the transformation of large-capacity cells into smaller living units. Such transformation should also be the objective for all the other SIZOs (and, as applicable, all the other penitentiary establishments) in Ukraine.
>
> Further, it is a matter of serious concern for the CPT that, in all the SIZOs visited, remand prisoners were usually not offered any out-of-cell activities other than outdoor exercise for one hour per day."

33. Most recently, in the 2018 Report (CPT/Inf (2018) 41) prepared following its visit to Ukraine on 8-21 December 2017, the CPT stated as follows (original emphasis; footnotes omitted):

> "9. ... the CPT is very concerned to note that, after its 7th periodic visit to Ukraine (and 14 visits altogether), little or no action has been taken to implement several of its long-standing recommendations concerning in particular the prison system, especially as regards material conditions, the legal norm of living space for remand prisoners, the regime for remand prisoners ...
>
> The CPT must stress that if no progress is made to implement its recommendations, the Committee might have to consider having recourse to Article 10, paragraph 2, of the Convention. However, the CPT hopes that decisive action by the Ukrainian authorities to implement its recommendations will render such a step unnecessary ...
>
> 54. The delegation carried out a follow-up visit to Kyiv Pre-Trial Detention Centre (hereafter Kyiv SIZO); further, first-time visits were carried out to Chernivtsi Penitentiary Institution No. 33 (hereafter Chernivtsi SIZO), Ivano-Frankivsk Penitentiary Institution No. 12 (hereafter Ivano-Frankivsk SIZO), Lviv Penitentiary Institution No. 19 (hereafter Lviv SIZO) ...
>
> A general description of Kyiv SIZO can be found in the reports on previous visits. At the time of the 2017 visit, the establishment was accommodating 2,371 inmates ...

and had the official capacity of 2,474. However, this capacity included the former women's block which was out of service due to fire damage; in fact, the establishment had 2,200 operational places which meant that it was officially overcrowded.

Chernivtsi SIZO is an old Austrian-built prison, a listed monument located in centre of town. It was opened in 1819, partly damaged during WW2 and extensively refurbished in the 1950s (when electricity, sewage and central heating were installed). With the official capacity of 304, the establishment was accommodating 198 inmates living in a single detention block (with two floors) ...

Ivano-Frankivsk SIZO, brought into service in 1918, is located in the centre of town on a relatively small area adjoining to the city's police headquarters, the prosecutor's office and the court. The establishment has the official capacity of 401 and was accommodating 380 prisoners ...

Lviv SIZO, located in the city centre and with the official capacity of 900, occupies a former monastery built in the 17th century and transformed into a prison in 1784. A listed monument composed of two 3-storey detention blocks and several adjoining buildings (administration, health-care unit, kitchen, etc.), it was accommodating 821 prisoners ...

55. At the outset of the visit, the delegation was informed by senior officials from the Ministry of Justice about the progress of prison reform which *inter alia* included the drafting of new legislation (e.g. the new draft Penitentiary Service Act which would define anew the mission of the Service and put more stress on the objective of prisoner rehabilitation, draft new house rules for SIZOs and colonies, draft legislation facilitating early release and setting up probation service) and preparation of a document called 'Passport for reforms' containing the aims of further reforms of the prison system.

Unfortunately, most of these measures were still at an early stage of adoption and/or implementation and the aforementioned draft legislation was under consideration by the Rada with no clear indication as to when it would be adopted. Meanwhile, since the repeal of the 'Savchenko Act' in May 2017, the prison population had reportedly started growing again – especially in SIZOs, some of which were again overcrowded even as compared with the official norm of living space per prisoner (e.g. in Kyiv, see paragraph 54 above). The Ministry of Justice tried to take measures to tackle this trend e.g. by planning to open new remand units in some of the colonies with spare accommodation.

The situation was rendered even more difficult by the fact that – despite very poor, sometimes indeed appalling (see paragraph 62 below) conditions of detention in prisons – the Ministry had close to no budget for refurbishment and repairs, forcing the establishments' Directors to seek funds by themselves, from private sponsors, municipalities and charities, and even from inmates' (and their families') own resources. The 2018 budget of the prison service was actually lower than in 2017, despite the population increase and ongoing deterioration of material conditions. Furthermore, implementation of the plans regarding prison estate (described in ... the report on the 2016 ad hoc visit) had hardly progressed.

56. The CPT wishes to stress that it is fully aware of the overall difficulties and challenges facing Ukraine. However, given the dramatic situation in at least some of the penitentiary establishments visited, the Committee is of the view that real action is urgently required to bring about a positive change for the prison system.

In the light of the fact found during this visit, and especially as concerns Kyiv SIZO which was the subject of an immediate observation ..., **the CPT calls upon the**

Ukrainian authorities to attach the highest priority to the implementation of all the measures mentioned in paragraph 55 above. This will necessitate putting in place a proper inter-agency co-ordination (including the Ministry of Finance) and a realistic action plan with precise deadlines and allocated budget.

The Committee also urges the Ukrainian authorities to pursue their efforts to reduce prisoner population, in particular by making more use of the available alternatives to remand detention.

57. Regarding the situation of remand prisoners, the CPT regrets that the inadequate norm of living space per inmate in SIZOs (2.5 m²) is still in force. Further, there has still been no change to the regime for remand prisoners based on the concept of 'isolation', with no association between cells and nothing even remotely resembling a programme of meaningful out-of-cell activities. The Committee calls upon the Ukrainian authorities to take decisive steps to revise the legislation and regime for remand prisoners, taking into account the above remarks and the Committee's long-standing recommendations ...

62. The most striking feature of the establishments visited (all of them except Kremenchuk Juvenile Colony ...) were the generally poor or even appalling material conditions, in particular in Kyiv and Lviv.

The situation at Kyiv SIZO had even worsened since the CPT's November 2016 visit, because ... it was now overcrowded (even according to the national norm of 2.5 m² of living space per remand prisoner) and there were some cells with more inmates than beds (e.g. cells nos. 21 and 32), obliging prisoners to sleep in shifts. Despite sporadic efforts to carry out small repairs (usually using inmates' own resources), the detention blocks had further deteriorated, with cells being poorly lit, poorly ventilated, often extremely dilapidated and dirty (the most so in the "quarantine" and transit units), and with the whole infrastructure (electricity, water, sewage) close to total breakdown.

In short, for the bulk of the prisoner population (except women and juveniles) conditions at Kyiv SIZO could easily be considered as inhuman and degrading.

63. ... at the end of the visit the delegation invoked Article 8, paragraph 5, of the Convention and requested the Ukrainian authorities to provide the Committee, within 3 months, with a detailed action plan, comprising precise deadlines and financial allocations, to address the situation at Kyiv SIZO.

In their letter dated 5 April 2018, the Ukrainian authorities informed the CPT of steps taken and planned in response to the aforementioned immediate observation. This included carrying out a technical assessment, drawing up detailed reconstruction plans and preparing cost estimates for addressing all deficiencies in the material conditions at Kyiv SIZO. The Committee welcomes these plans but notes with regret that no concrete financial resources seem to have been allocated to implement these works, which are mentioned as conditional upon receipt of funds and without any precise timelines for completion.

In the light of the indeed totally unacceptable situation at Kyiv SIZO, the CPT calls upon the Ukrainian authorities to reconstruct/refurbish Kyiv SIZO without further delay. In this context, steps must also be taken to ensure that every prisoner has his own bed.

64. The material conditions at Lviv SIZO were determined to a large extent by the obsolete infrastructure of the ages-old buildings, and the situation was compounded

by a total absence of budget for repairs, resulting *inter alia* in repeated breakdowns of power and water supply.

Cells were generally dilapidated and so were the furniture, mattresses and bedsheets. Further, some of the cells were stuffy and humid, especially the larger ones. In many of the cells, conditions were cramped (e.g. 14 inmates sharing a cell measuring some 50 m², including sanitary annexe; six inmates living in a cell measuring some 16 m²) and both the access to natural light and artificial lighting left much to be desired.

On the positive side, the cells were mostly clean. Conditions were somewhat better in the cells for women and juveniles (which had in-cell showers and were not overcrowded).

65. According to the Director of Lviv SIZO, talks were ongoing with the city's Mayor's Office and with a private investor in order to close the prison and move it to a new purpose-built facility in the outskirts of town. **The Committee would like to receive more information on these plans and prospects for their implementation** ...

67. Material conditions were somewhat better at Chernivtsi and Ivano-Frankivsk SIZOs which were less overcrowded.

Thanks to strenuous efforts of its Director to search for donors, prisoner accommodation at Chernivtsi SIZO was being refurbished gradually (approximately 40% of all the cells had been refurbished so far) and conditions in already refurbished cells were quite good including fully partitioned sanitary annexes and even (in some cells, mostly for women and juveniles) showers. The unrefurbished cells were dilapidated (but clean), as were collective showers. The Director told the delegation that central heating and sewage system required urgent repairs but the establishment had no budget for this, as well as to replace old and broken furniture. However, the biggest problem was the leaking roof which quickly ruined any positive effects of refurbishment carried out in the cells.

Evidence of recent repairs was also visible at Ivano-Frankivsk SIZO (likewise, only because the Director had managed to secure help from the municipality and some local companies), and a few of the cells had been redecorated with the help of the inmates. However, most of the prisoner accommodation was run down (including the furniture), with cells being quite stuffy, dark and not very clean.

68. ... **the CPT calls upon the Ukrainian authorities to urgently allocate sufficient State budget resources to Lviv, Chernivtsi and Ivano-Frankivsk SIZOs** ... **and to proceed without delay with refurbishment/reconstruction of these establishments so as to address the above-described deficiencies; this should include, wherever applicable, transforming large-capacity dormitories into smaller cells. Reference is also made to the recommendation i[n] paragraph 57 above** ...

70. Most of the in-cell toilets in the prisons visited were still only partially screened. Further, as a rule, inmates had access to a shower only once a week, hygiene items (other than soap) were not provided free of charge and, in all the establishments visited except in Kremenchuk, the delegation heard complaints from prisoners about poor quality of the food. **The CPT recommends that steps be taken to address these deficiencie**s ...

71. The CPT's long-standing recommendation to develop a regime for remand prisoners remains, regrettably, unimplemented (see also paragraph 57 above).

As during the previous visits, the vast majority of remand prisoners spent up to 23 hours a day locked up inside their cells with no organised activities. Inmates had access to outdoor exercise for one hour per day (two hours for women and juveniles) in small, oppressive and dilapidated yards which were, moreover, usually located on the roofs of detention blocks and offered nothing but sky view.

The only other distractions for remand prisoners were watching TV or listening to the radio in their cells, reading books and newspapers, and playing board games with their cellmates ...

73. ... **The CPT calls upon the Ukrainian authorities to intensify their efforts to develop the programmes of activities for both sentenced and remand prisoners, notably as regards work, educational and vocational activities** ...

The Committee also calls upon the Ukrainian authorities to take steps without further delay, in the SIZOs visited (and in all remand prisons in general), to enlarge and improve exercise yards ..."

B. Committee of Ministers of the Council of Europe

1. General documents

34. On 30 September 1999 the Committee of Ministers adopted Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation, which provides in particular as follows:

"Considering that prison overcrowding and prison population growth represent a major challenge to prison administrations and the criminal justice system as a whole, both in terms of human rights and of the efficient management of penal institutions;

Considering that the efficient management of the prison population is contingent on such matters as the overall crime situation, priorities in crime control, the range of penalties available on the law books, the severity of the sentences imposed, the frequency of use of community sanctions and measures, the use of pre-trial detention, the effectiveness and efficiency of criminal justice agencies and not least public attitudes towards crime and punishment ...

Recommends that governments of member states:

- take all appropriate measures, when reviewing their legislation and practice in relation to prison overcrowding and prison population inflation, to apply the principles set out in the appendix to this recommendation ...

Appendix to Recommendation No. R (99) 22

I. Basic principles

1. Deprivation of liberty should be regarded as a sanction or measure of last resort and should therefore be provided for only, where the seriousness of the offence would make any other sanction or measure clearly inadequate.

2. The extension of the prison estate should rather be an exceptional measure, as it is generally unlikely to offer a lasting solution to the problem of overcrowding. Countries whose prison capacity may be sufficient in overall terms but poorly adapted to local needs should try to achieve a more rational distribution of prison capacity ...

II. Coping with a shortage of prison places

6. In order to avoid excessive levels of overcrowding a maximum capacity for penal institutions should be set.

7. Where conditions of overcrowding occur, special emphasis should be placed on the precepts of human dignity, the commitment of prison administrations to apply humane and positive treatment, the full recognition of staff roles and effective modem management approaches. In conformity with the European Prison Rules, particular attention should be paid to the amount of space available to prisoners, to hygiene and sanitation, to the provision of sufficient and suitably prepared and presented food, to prisoners' health care and to the opportunity for outdoor exercise ...

III. Measures relating to the pre-trial stage

Avoiding criminal proceedings - Reducing recourse to pre-trial detention

10. Appropriate measures should be taken with a view to fully implementing the principles laid down in Recommendation No R (87) 18 concerning the simplification of criminal justice, this would involve in particular that member states, while taking into account their own constitutional principles or legal tradition, resort to the principle of discretionary prosecution (or measures having the same purpose) and make use of simplified procedures and out-of-court settlements as alternatives to prosecution in suitable cases, in order to avoid full criminal proceedings.

11. The application of pre-trial detention and its length should be reduced to the minimum compatible with the interests of justice. To this effect, member states should ensure that their law and practice are in conformity with the relevant provisions of the European Convention on Human Rights and the case-law of its control organs, and be guided by the principles set out in Recommendation No R (80) 11 concerning custody pending trial, in particular as regards the grounds on which pre-trial detention can be ordered.

12. The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision and assistance by an agency specified by the judicial authority. In this connection attention should be paid to the possibilities for supervising a requirement to remain in a specified place through electronic surveillance devices.

13. In order to assist the efficient and humane use of pre-trial detention, adequate financial and human resources should be made available and appropriate procedural means and managerial techniques be developed, as necessary."

35. On 11 January 2006 the Committee of Ministers revised the European Prison Rules (Recommendation Rec(2006)2), originally adopted on 12 February 1987. These are its recommendations to member States of the Council of Europe on the minimum standards to be applied to persons held in pre-trial detention and to convicted persons. They provide, in so far as relevant, as follows:

"1. All persons deprived of their liberty shall be treated with respect for their human rights.

2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.

3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.

4. Prison conditions that infringe prisoners' human rights are not justified by lack of resources ...

Allocation and accommodation

...

18.1. The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.

18.2. In all buildings where prisoners are required to live, work or congregate:

a. the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system;

b. artificial light shall satisfy recognised technical standards; and

c. there shall be an alarm system that enables prisoners to contact the staff without delay.

18.3. Specific minimum requirements in respect of the matters referred to in paragraphs 1 and 2 shall be set in national law.

18.4. National law shall provide mechanisms for ensuring that these minimum requirements are not breached by the overcrowding of prisons.

18.5. Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation.

18.6. Accommodation shall only be shared if it is suitable for this purpose and shall be occupied by prisoners suitable to associate with each other.

18.7. As far as possible, prisoners shall be given a choice before being required to share sleeping accommodation.

18.8. In deciding to accommodate prisoners in particular prisons or in particular sections of a prison due account shall be taken of the need to detain:

a. untried prisoners separately from sentenced prisoners;

b. male prisoners separately from females; and

c. young adult prisoners separately from older prisoners.

18.9. Exceptions can be made to the requirements for separate detention in terms of paragraph 8 in order to allow prisoners to participate jointly in organised activities, but these groups shall always be separated at night unless they consent to be detained together and the prison authorities judge that it would be in the best interest of all the prisoners concerned.

18.10. Accommodation of all prisoners shall be in conditions with the least restrictive security arrangements compatible with the risk of their escaping or harming themselves or others.

Hygiene

19.1. All parts of every prison shall be properly maintained and kept clean at all times.

19.2. When prisoners are admitted to prison the cells or other accommodation to which they are allocated shall be clean.

19.3. Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy.

19.4. Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene.

19.5. Prisoners shall keep their persons, clothing and sleeping accommodation clean and tidy.

19.6. The prison authorities shall provide them with the means for doing so including toiletries and general cleaning implements and materials.

19.7. Special provision shall be made for the sanitary needs of women.

Exercise and recreation

27.1. Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.

27.2. When the weather is inclement alternative arrangements shall be made to allow prisoners to exercise.

27.3. Properly organised activities to promote physical fitness and provide for adequate exercise and recreational opportunities shall form an integral part of prison regimes.

27.4. Prison authorities shall facilitate such activities by providing appropriate installations and equipment.

27.5. Prison authorities shall make arrangements to organise special activities for those prisoners who need them.

27.6. Recreational opportunities, which include sport, games, cultural activities, hobbies and other leisure pursuits, shall be provided and, as far as possible, prisoners shall be allowed to organise them.

27.7. Prisoners shall be allowed to associate with each other during exercise and in order to take part in recreational activities ...”

2. Decisions in respect of Ukraine

36. The issue of conditions of detention in Ukraine (examined within the so-called *Nevmerzhitsky*, *Yakovenko*, *Logvinenko*, *Isayev* and *Melnik* groups of cases) has been on the agenda of the Committee of Ministers for many years. Pursuant to Article 46 § 2 of the Convention, the Committee of Ministers has considered measures adopted by the Ukrainian authorities with a view to complying with the Court’s relevant judgments.

37. Thus, during the 1144th meeting held on 4-6 June 2012, Ministers’ Deputies adopted the following decision (CM/Del/Dec(2012)1144/27):

“The Deputies

1. recalled that the first judgment examined in these groups of cases was delivered by the Court in 2005;

2. invited the Ukrainian authorities to provide urgently a comprehensive action plan aimed at responding to the structural problems highlighted by the Court in respect of conditions of detention..., as well as aimed at setting up effective remedies in respect thereof ...

4. invited further the Ukrainian authorities to provide also their assessment on the impact of the measures adopted so far and the results achieved by these measures ...”

38. During the 1288th meeting of the Ministers’ Deputies held on 6-7 June 2017, the Committee of Ministers adopted the following decision (CM/Del/Dec(2017)1288/H46-35):

“The Deputies

...

4. noted the authorities’ commitment to adopting comprehensive measures to resolve the complex issues raised by these judgments and the important legislative and institutional reforms underway ...

6. with regard to conditions of detention in pre-trial detention facilities and prisons, noted the introduction of the probation system and strongly encouraged the authorities to explore further the use of alternatives to detention to reduce overcrowding;

7. strongly encouraged the authorities to focus on elaborating a coherent strategy to fight overcrowding and remedy the broader shortcomings in detention conditions, drawing inspiration from the relevant recommendations of the [CPT] and the Committee of Ministers ...

10. noted the elaboration of a draft law aimed at introducing both preventive and compensatory remedies and strongly encouraged the authorities to continue their efforts, in the context of the on-going cooperation activities with the Council of Europe, to put in place an effective remedy or combination of remedies ...”

39. During the 1302nd meeting of the Ministers’ Deputies held on 5-7 December 2017, the Committee of Ministers adopted the following decision (CM/Del/Dec(2017)1302/H46-37):

“The Deputies

...

As regards general measures

Conditions of detention in pre-trial detention centres

2. noted with satisfaction the legislative and administrative measures underway to reform the penitentiary system, and in particular the efforts taken towards the full implementation of the probation system to reduce the overall prison population;

3. strongly encouraged the authorities to continue with these reforms and to put in place a clear global strategy to address all the deficiencies in material conditions in pre-trial detention centres taking into due consideration the recommendations of [the CPT];

Establishment of effective remedies

4. considered that, in light of the length of time that this issue has been pending, it is now urgent that the authorities take decisive action to establish both preventive and compensatory remedies in line with the European Court's case law;

5. invited the authorities to submit full details on the content of the draft law currently pending before the Parliament, together with clarifications on the outstanding issues, by 21 December 2017 ..."

40. During the 1310th meeting of the Ministers' Deputies held on 13-15 March 2018, the Committee of Ministers adopted the following decision (CM/Del/Dec(2018)1310/H46-24):

"The Deputies

...

As regards general measures

4. noted with interest the information submitted by the authorities regarding the on-going reform of the penitentiary system; regretted however that the information submitted so far is not sufficiently detailed to demonstrate concrete results either in terms of reduction in overcrowding or improvement in material conditions of detention and access to medical care;

5. strongly urged the authorities to adopt a comprehensive long-term strategy capable of leading to the resolution of these problems of a structural nature, drawing due inspiration from the longstanding recommendations of the [CPT], as well as the Committee of Ministers' recommendations in the areas concerned;

6. expressed profound concern that, despite the Committee's repeated calls, the authorities have not yet taken decisive action to establish, in law and in practice, preventive and compensatory remedies in line with the European Court's case law; considered that the lack of progress and the continuing influx of similar applications put an undue burden on the Court and undermine the credibility of the authorities' commitment to resolve the long-standing issues identified in numerous judgments of the Court;

7. decided to resume examination of these groups of cases at the 1331st meeting (December 2018) (DH) at the latest and, in the event that no concrete progress has been made on the establishment of effective compensatory and preventive remedies in the meantime, instructed the Secretariat to prepare a draft interim resolution for that meeting."

41. As no such progress was made and, in particular, as it appeared that the draft law previously referred to by the authorities had apparently been put aside and no concrete alternatives were under consideration (CM/Notes/1331/H46-33), during the 1331st meeting held on 4-6 December 2018 the following interim resolution (CM/ResDH(2018)472) was adopted:

"The Committee of Ministers ...

Having regard to the judgments of the [Court] in the *Nevmerzhitsky, Yakovenko, Logvinenko, Isayev* and *Melnik* groups of cases against Ukraine ... transmitted to the Committee for supervision of their execution under Article 46 of the Convention;

Recalling that the problems revealed by the present cases, notably the inhuman and/or degrading treatment suffered by the applicants because of overcrowding, poor material conditions of detention ... and the lack of an effective remedy in respect

thereof, for which the Court found violations of Articles 3 and 13 of the Convention, have been pending before the Committee since 2005;

Underlining that, given the structural nature of the problems arising from the judgments of these groups, and the many years that have elapsed since the issues first came to the attention of the Committee, it is of paramount importance that the authorities now take concrete and decisive steps to address all these deficiencies;

Noting with interest the adoption of the Passport for Reform, a strategy paper in which the authorities seem to have identified the main obstacles to the improvement of conditions of detention in Ukraine;

Recalling that in previous decisions the Committee has repeatedly called upon the authorities to take decisive action to establish, in law and in practice, preventive and compensatory remedies in line with the European Court's case-law;

Noting that some steps have been taken to initiate reflection on the adoption of such remedies by the establishment of a working group but that no concrete progress in this respect has so far been reported;

STRESSED the seriousness of the implications based on the nature of the findings in the present judgments relating to the absolute prohibition of torture and ill-treatment in Article 3 of the Convention;

UNDERLINED the urgent need for the authorities to follow up on their Passport for Reform and continue to work on the adoption of a comprehensive long-term strategy capable of leading to the resolution of these problems of a structural nature, with clear and binding timelines for the adoption of the relevant measures and the provision of the necessary human and financial resources;

RECALLED that the lack of concrete steps to establish effective domestic remedies for allegations of ill-treatment on account of overcrowding, poor material conditions of detention ... undermines the credibility of the authorities' commitment to resolve these long-standing issues;

NOTED that, in view of the increasing number of applications brought before the European Court, this lack of progress also puts an additional undue burden on the Convention system;

NOTED that, in order for such remedies to be effective in practice, there should at the same time be an overall improvement of material conditions and medical care in detention;

CALLED UPON the authorities to act on their commitment to resolve the problems linked to conditions of detention and, therefore, to establish, as a matter of priority, effective domestic remedies for allegations of ill-treatment on account of overcrowding, poor material conditions ... in detention."

C. United Nations

42. On 17 December 2015 the United Nations General Assembly adopted the United Nations Standard Minimum Rules for the Treatment of Prisoners (A/RES/70/175) as global key standards for the treatment of prisoners. In the relevant part they provide:

"**Accommodation**

...

Rule 13

All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

Rule 14

In all places where prisoners are required to live or work:

(a) The windows shall be large enough to enable the prisoners to read or work by natural light and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

Rule 15

The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner ...

Rule 17

All parts of a prison regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times ...

Exercise and sport

Rule 23

1. Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

2. Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end, space, installations and equipment should be provided ..."

D. Subcommittee on Prevention of Torture

43. In accordance with the 2002 Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the 2002 Protocol"), which was ratified by Ukraine on 21 July 2006, the Subcommittee on Prevention of Torture ("the SPT") established by the Protocol has carried out two visits to Ukraine (in 2011 and 2016).

44. In particular, in its report (CAT/OP/UKR/1) following the 2011 visit, the SPT observed overcrowding in many SIZOs in Ukraine. It also considered the general material conditions of the SIZOs to be inadequate as regards minimum floor space per detainee, lighting, heating and ventilation. The general levels of hygiene, access to clean water and the conditions of toilet facilities (including lack of privacy when using the toilet) in the

SIZOs gave rise to equal concerns. The exercise yards were often "small, dilapidated and bare". The SPT recommended that Ukraine take urgent steps to reduce overcrowding in the SIZOs, prioritise the improvement of general hygiene and access to water, sanitation and personal hygiene articles in SIZOs, and conduct a nation-wide audit into their material conditions.

E. Parliamentary Commissioner for Human Rights (Ombudsman) of Ukraine/National Preventive Mechanism

45. The question of whether the rights of detainees in Ukraine are observed has been addressed in the Ombudsman's annual reports since 2000. In addition, since November 2012 the Ombudsman has exercised the NPM functions provided for by the 2002 Protocol. A number of issues have been raised by the Ombudsman/NPM in this respect.

46. In the 2012 report the NPM made the following observations in respect of the facilities visited, including the Dnipro SIZO: non-compliance with the domestic norm of 2.5 square metres of personal space per detainee in SIZOs; insufficient natural and artificial lighting in cells; absence of ventilation; excessive humidity and presence of mould in some cells.

47. In the 2013 report the NPM mentioned the following shortcomings, which had been identified during inspection of vehicles used for transporting arrested, detained and convicted persons: the personal space in the cells of such vehicles was less than 0.5 square metres; the height of the cell doors was less than 1.55 m; the cell doors had no ventilation grills; lighting in the cells was absent or inadequate; the cells had no heating or air conditioning systems, or they were out of order; vehicles and cells were not cleaned and the floor was covered with litter. The NPM also observed that in a number of domestic courts, the personal space in holding cells where defendants waited for their court hearings was only 0.7 to 1.5 square metres. Similar issues concerning holding cells were observed in the 2014 report.

48. The 2016 report stated that despite the ongoing prison reform in Ukraine, systemic breaches of human rights continued to take place in the majority of penal institutions and detention facilities. Overcrowding remained one of the main issues. Other problems included unsatisfactory sanitary, hygiene and material conditions in cells; inadequate heating; lack of lighting, fresh air and drinking water; and inadequate toilet facilities, lacking privacy. Cells were often dirty and had an unpleasant odour; their walls were damp and covered with mould. Prisoners were not always provided with sleeping places or bedding; they often complained of vermin in the cells and the absence of cleaning products. The food given to detainees was insufficient and of poor quality.

49. The Ombudsman's report for 2017, which included a chapter on the NPM's activities in 2017, again stated that despite the ongoing prison reform, there had been no significant improvement in the situation regarding

detainees' and prisoners' rights. Indeed, there were signs of negative trends in that respect. Conditions of detention in pre-trial detention facilities were of particular concern. That situation could be explained by the lack of a real vision of the situation in penal institutions. There was no systematic approach to introducing changes in this field and, as a result, controversial decisions were being adopted by the authorities. In the vast majority of the facilities visited, adequate material conditions of detention were not created because the facilities were underfunded. Breaches of the domestic standards on the personal space for detainees and prisoners were repeatedly confirmed. Some cells were often left unoccupied because they required major repairs. The vast majority of SIZO multi-occupancy cells remained in a neglected state; they were covered with mould; there was no proper access to fresh air or artificial ventilation, and natural light or artificial lighting was insufficient. The equipment in the cells did not fully comply with the relevant domestic standards. In most cases, the bedding was old and worn out; some prisoners were not provided with any at all. Privacy while using the toilet was not ensured (the toilets had no doors).

50. In 2018 all Ukrainian SIZOs and penal institutions with SIZO functions were visited. In her report for 2018, the Ombudsman observed that in almost all of them the cells did not comply with international standards of sanitation, lighting, heating and ventilation. Most cells were overcrowded (for instance, in cells designed for two persons based on the domestic standards for personal space, six or more persons were being held). Overall, inadequate conditions of detention were found in almost all SIZOs. The Ombudsman recommended that the authorities bring the domestic standards for personal space and conditions of detention in line with the European standards.

III. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of Ukraine (1996)

51. Article 28 provides that everyone has the right to respect for his or her dignity and that no one may be subjected to torture, cruel, inhuman or degrading treatment or punishment that violates his or her dignity.

B. Pre-trial Detention Act (1993)

52. Section 1 provides that detention must be based on the principles of strict observance of the Constitution of Ukraine and the requirements of the Universal Declaration of Human Rights, and other international norms and standards of treatment of detainees. Deliberate acts that cause physical or mental suffering or humiliation cannot be tolerated.

53. Section 4 provides that persons taken into custody as a preventive measure must be held in pre-trial detention facilities, or SIZOs (*слідчі ізолятори*). In certain cases, such persons may be held in temporary detention facilities (*ізолятори тимчасового тримання*).

54. Section 9 provides that detainees have the right, *inter alia*, to one hour's exercise per day and eight hours' sleep. They may lodge complaints, submit requests and send letters to the State authorities and officials.

55. Section 11 provides that detainees must be accommodated in conditions that meet statutory sanitary and hygiene requirements. The cell space for each person must not be less than 2.5 square metres.

56. Under section 21 the SIZO administration must provide detainees with material and living conditions that meet the established statutory norms, and provide them with the necessary food and medical care.

57. Section 22 provides that prosecutors are responsible for ensuring that SIZOs comply with the relevant laws. The SIZO administration must comply with decisions and instructions issued by prosecutors in respect of conditions of detention.

C. Prosecutors Act (2014)

58. Section 2 provides that prosecutors are responsible for ensuring compliance with the law during the execution of criminal sentences and oversee the application of other coercive measures related to restriction of personal freedom.

59. Section 26 provides that in exercising the above-mentioned function, prosecutors have the right to visit pre-trial detention facilities at any time and to interview persons held in them for the purpose of obtaining information about the conditions of their detention and treatment. They may also acquaint themselves with documentation and obtain copies of it, and verify the legality of orders, decisions and other acts issued by the relevant bodies and institutions. If the relevant legislation is not being complied with, they may demand that the officials or officers cancel those orders and decisions and eliminate any breaches of the law which they have entailed, as well as put an end to any individual unlawful action. They may demand that the prison administration provide explanations for the breaches committed and eliminate those breaches and the reasons and conditions which have contributed to such breaches. Prosecutors are responsible for holding the perpetrators liable as provided for by the law. They have the right to demand that the relevant authorities carry out inspections of pre-trial detention facilities for which they are responsible. Prosecutors carry out the above supervisory functions by way of conducting regular inspections and in response to information about alleged breaches of legislation contained in complaints or applications, or from other sources. Prosecutors' written instructions regarding compliance with the statutory procedure and

conditions of detention in SIZOs are binding and must be complied with immediately.

D. Code of Criminal Procedure (2012)

60. Article 176 of the Code of Criminal Procedure ("the CCP") provides that a personal undertaking, personal warranty, bail, house arrest and pre-trial detention may be applied as preventive measures.

61. Article 183 provides that pre-trial detention is an exceptional measure. It may be applied only if the prosecutor proves that a less strict preventive measure cannot prevent the risks specified in the Code.

62. On 4 April 2013 the Higher Specialised Civil and Criminal Court of Ukraine sent the appellate courts an information letter, in which it gave its interpretation of the above and other relevant provisions of the Code. It stated, in particular, that pre-trial detention was an exceptional preventive measure; that in examining a request for an application or extension of pre-trial detention, the courts must examine the possibility of using other (alternative) measures; and that when ordering pre-trial detention, the courts must take into account reasonable time requirements.

E. Code on the Execution of Sentences (2003)

63. The Code on the Execution of Sentences ("the 2003 Code") regulates the procedure for and conditions of the execution of criminal sentences.

64. Article 8 (as partly amended in 2016) provides, *inter alia*, that convicted persons are entitled to send proposals, applications and complaints to the administration of penal organs and institutions, their supervisory bodies, the Ombudsman, the court, the prosecutor, and other State and local self-government bodies. Relevant applications are lodged through the administration of the penal institution. As confirmation, the administration issues the convicted person with a receipt for the application. It must forward the application to the addressee within three days (and in some cases within one day) of receiving it.

65. Articles 51, 60-1 and 108 (as amended or introduced between 2014 and 2016) extended the rights of persons sentenced to detention (*apeum*) (one type of criminal sentence) to spend money on the purchase of food and necessities and to receive visitors. It provided for a compulsory social and pension insurance for those sentenced to a restriction of liberty (another type of criminal sentence); and eliminated restrictions on the purchasing of food, clothes, shoes, laundry and necessities by convicted persons.

F. Pre-trial Detention Facilities Regulations (2013)

66. The 2013 Regulations reiterate and further specify the provisions of the Pre-trial Detention Act in respect of the procedure for and conditions of detention in SIZOs.

67. In particular, detainees have, *inter alia*, the right to an hour's daily exercise; to send complaints, applications and letters to State bodies and officials; to live in conditions that are in accordance with the rules on sanitation and hygiene; and to be provided with free hot meals three times a day, with an individual sleeping area, bedding and other household items, and with personal hygiene products.

G. Concept of Reform (Development) of the Prison System of Ukraine (2017)

68. On 13 September 2017 the Government (Cabinet of Ministers) of Ukraine approved the Concept of Reform (Development) of the Prison System of Ukraine ("the 2017 Concept"), which set out the general principles underlying the reform and functioning of the prison system in Ukraine.

69. The 2017 Concept acknowledged that the existing penal system did not fully conform to the principles of humanism and respect for human rights, and that conditions of detention in Ukraine needed to be brought in line with European standards. It stated that most of the penal institutions were in an unsatisfactory condition and some were in a critical condition, which was why standards of detention were not being complied with. The main problems were lack of natural light and artificial lighting in cells; lack of automatic ventilation; lack of regular access to drinking water; insufficient washstands; excessive damp and presence of mould, and so on. Most SIZOs were very old: 12% of them were built more than 200 years ago, 58% from 100 to 200 years ago, 14% from fifty to 100 years ago, and 14% from ten to fifty years ago. Given how long they had been in use, they were seriously dilapidated and obsolete. Only between 2015 and the first quarter of 2017 had the number of persons held in prisons decreased by a factor of 1.4 (from 57,396 to 41,800 persons), whereas the number held in SIZOs had increased by a factor of 1.2 (from 16,035 to 18,821 persons). Chronic underfunding of the penal system by the State had led to systemic problems of inappropriate conditions of detention in SIZOs, requiring complex decisions and adequate funding.

70. The 2017 Concept proposed the following ways of solving the above-mentioned problems: enhancing the legislation on the functioning of SIZOs and prisons in accordance with European standards; optimising the SSES structure and the network of penal establishments; repairing existing facilities and constructing new SIZOs and prisons; bringing conditions of

detention in line with the European Prisons Rules and creating conditions which respect human dignity and do not lead to breaches of the Convention; creating an effective system for combating inhuman or degrading treatment and conditions for its prevention; implementing the recommendations of international organisations on strengthening guarantees for protection of the rights of detained and convicted persons; improving the organisational and staffing structure of SIZOs and prisons; and introducing the use of modern information technologies in them.

71. The Government submitted that owing to financial constraints, implementation of the 2017 Concept was estimated to take until 2020.

H. Draft law on preventive and compensatory remedies

72. On 8 July 2016 a draft law on preventive and compensatory remedies for convicted and detained persons who have suffered torture, inhuman or degrading treatment or punishment and on the introduction of the institution of post-sentencing judges ("the 2016 draft law") was submitted to Parliament. It provides for preventive and compensatory remedies in respect of inappropriate treatment of convicted and detained persons, and sets out the types of remedy and the procedure for their application and for the execution of relevant decisions. Preventive remedies are defined as actions aimed at ending or preventing prohibited treatment. They include, *inter alia*, an obligation on the part of the relevant officials to change the detention facility or cell in which a detained or convicted person is being held; to make repairs to the cell, to equip or disinfect it, or to stop using it; to provide adequate food, and so on. Compensatory remedies are defined as actions aimed at compensating victims of prohibited treatment. They include monetary compensation for pecuniary and non-pecuniary damage inflicted on such victims. The draft law also introduces the institution of post-sentencing judge, who deals with applications for preventive and compensatory remedies and for the adoption of binding decisions in this respect. Thus, applications for preventive remedies should be examined within three working days, but in certain circumstances within a period of up to one month. The judge is obliged to visit in person the relevant detention facility and to conduct an anonymous interview with a detainee who made an application. Upon the latter's wish, participation of a defender is ensured during the interview. Decisions on the application of preventive measures should immediately be complied with by the relevant authorities or persons. Failure to comply with them entails disciplinary or criminal liability.

73. The Government submitted that the draft law was being examined by the relevant parliamentary committees. According to the information available on the Parliament's website, on 29 August 2019 that draft law was withdrawn.

I. Statistics on persons held in pre-trial detention

74. According to the NPM report for 2016, the following numbers of detainees were held in SIZOs between 2009 and 2017: 34,148 in 2009; 38,030 in 2010; 39,363 in 2011; 37,632 in 2012; 30,854 in 2013; 21,502 in 2014; 15,638 in 2015; and 16,615 in 2016.

75. According to the Government, as of 22 October 2017, there were 19,516 persons being held in SIZOs and penal institutions with SIZO functions.

76. According to the information on the SSES website, as of 1 April 2019, 20,346 persons were being held in SIZOs.

J. Statistics on the use of pre-trial detention as a preventive measure

77. According to information on the website of the Prosecutor General's Office of Ukraine, the following number of applications for a detention order were lodged by prosecutors and other law-enforcement officers and were rejected by the courts between 2012 and 2018: in 2012 - 27,746 applications lodged and 3,178 (11%) rejected; in 2013 - 17,373 applications lodged and 1,882 (10%) rejected; in 2014 - 18,149 applications lodged and 2,099 (11.5%) rejected; in 2015 - 23,969 applications lodged and 2,294 (9.5%) rejected; in 2016 - 17,593 applications lodged and 3,163 (18%) rejected; in 2017 - 22,473 applications lodged and 4,556 (20%) rejected; and in 2018 - 21,501 applications lodged and 4,875 (22.6%) rejected.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

78. The applicant complained under Article 3 of the Convention that the conditions of his detention in the Dnipro SIZO and of his transfer to and detention at the court on hearing days had been inhuman and degrading. Article 3 reads as follows:

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

A. The parties' submissions

1. The applicant

79. As to the conditions of his detention in the Dnipro SIZO, the applicant submitted, with reference to the information provided by the Government (see paragraph 12 above), that he had spent "540 days in total" in cells nos. 911 and 931, where his personal space had been less than 3 square metres. He suggested that this had in itself constituted a breach of Article 3. He further stated that there had been a number of periods, "totalling 256 days", during which his personal space in those cells had been 3.25 square metres, and that his personal space in cells nos. 655 and 661 had been 3.35 square metres. He considered that this had constituted a breach of Article 3 as well. In particular, his situation had been aggravated by the fact that he had been confined to the cells for most of the day, except for a one-hour daily walk in a small exercise yard. The exercise yard measuring 11.5 square metres for cells nos. 661 and 655 could not be considered reasonable for a detainee who spent twenty-three hours per day in such cells. Other factors included improper isolation of the toilet, lack of fresh air, poor ventilation, dampness and insects in the cells.

80. As to the conditions of his transfer to the District Court on hearing days, the applicant submitted that the letter of 27 March 2018 (see paragraph 23 above) had only stated the number of times he had been transported and the average duration of the trips, but contained no information about the material conditions of the transfer. In addition, the records of 21 November 2017 (ibid.) had been prepared seven months after he had submitted the application to the Court. He assumed that the prison vans must have been put in a proper condition after he had lodged the application. Moreover, those records had mainly concerned the suitability of the vans from a security point of view. Furthermore, the inspection carried out by the prison officials could not be considered independent and unbiased. Lastly, the applicant reiterated his initial submissions about the lack of proper ventilation in the prison vans. He considered therefore that the conditions of his transfer had also been in breach of Article 3.

81. As regards the conditions of his detention in the court's holding cells, the applicant noted that the Government had not commented on his complaint about the lack of ventilation in those cells and had not specified the number of detainees held with him. He thus submitted that there had been a breach of Article 3 on that account as well.

2. The Government

82. Relying on their account of the events (see paragraphs 12, 17 and 23 above), the Government submitted that there had been no breach of Article 3 in the present case.

B. The Court's assessment

1. General principles

(a) Assessment of the evidence and establishments of the facts

83. The relevant principles were summarised in *Ananyev and Others v. Russia* (nos. 42525/07 and 60800/08, 10 January 2012) as follows:

> "121. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has adopted the standard of proof "beyond reasonable doubt". However, it has never been its purpose to borrow the approach of the national legal systems that use that standard. Its role is not to rule on criminal guilt or civil liability but on Contracting States' responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention – conditions its approach to the issues of evidence and proof. In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see, among others, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 26, ECHR 2004-VII; ...).
>
> 122. The Court is mindful of the objective difficulties experienced by the applicants in collecting evidence to substantiate their claims about the conditions of their detention. Owing to the restrictions imposed by the prison regime, detainees cannot realistically be expected to be able to furnish photographs of their cell or give precise measurements of its dimensions, temperature or luminosity. Nevertheless, an applicant must provide an elaborate and consistent account of the conditions of his or her detention mentioning the specific elements, such as for instance the dates of his or her transfer between facilities, which would enable the Court to determine that the complaint is not manifestly ill-founded or inadmissible on any other grounds. Only a credible and reasonably detailed description of the allegedly degrading conditions of detention constitutes a prima facie case of ill-treatment and serves as a basis for giving notice of the complaint to the respondent Government.
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> 123. The Court has held on many occasions that cases concerning allegations of inadequate conditions of detention do not lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in such instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. It follows that, after the Court has given notice of the applicant's complaint to the Government, the burden is on the latter to collect and produce relevant documents. A failure on their part to submit convincing evidence on material conditions of detention may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Gubin v. Russia*, no. 8217/04, § 56, 17 June 2010, and *Khudoyorov v. Russia*, no. 6847/02, § 113, ECHR 2005-X (extracts))".

(b) Relevant principles under Article 3

84. Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. While ill-treatment that attains this minimum usually involves actual bodily injury or intense physical or mental suffering, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see *Ananyev and Others*, cited above, §§ 139-40, and *Neshkov and Others v. Bulgaria*, nos. 36925/10 and 5 others, §§ 226-27, 27 January 2015).

85. In the context of detention, in order to fall under Article 3, the suffering and humiliation involved must go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant and the amount of time spent in these conditions (see *Ananyev and Others*, §§ 141-42, and *Neshkov and Others*, §§ 228-29, both cited above).

86. Extreme lack of space in a cell weighs heavily in the assessment of whether conditions of detention are in breach of Article 3 of the Convention (see *Ananyev and Others*, cited above, § 143; *Neshkov and Others*, cited above, § 231; and *Muršić v. Croatia* [GC] no. 7334/13, § 104, 20 October 2016). Thus, when a detainee has less than 3 square metres of personal space in multi-occupancy accommodation, the lack of personal space is considered so severe that a strong presumption of a violation of Article 3 arises. The burden of proof is then on the respondent Government, who could, however, rebut that presumption by demonstrating that there were factors capable of adequately compensating for the scarce allocation of personal space. The strong presumption of a violation of Article 3 will normally be capable of being rebutted only if the following factors are cumulatively met: (1) the reductions in the required minimum personal

space of 3 square metres are short, occasional and minor; (2) such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities; and (3) the applicant is confined in what is, when viewed generally, an appropriate detention facility, and there are no other aggravating aspects of the conditions of his or her detention. When the personal space is between 3 and 4 square metres, the space factor remains a weighty factor in the assessment of the adequacy of conditions of detention. In such instances a violation of Article 3 will be found if that factor is coupled with other aspects of inappropriate physical conditions of detention, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of room temperature, the possibility of using the toilet in private, and compliance with basic sanitary and hygiene requirements (see *Muršić*, cited above, §§ 138-39; see also *Ananyev and Others*, cited above, §§ 149-159; *Neshkov and Others*, cited above, §§ 233-243; and *Varga and Others v. Hungary*, nos. 14097/12 and 5 others, §§ 75-78, 10 March 2015).

87. As to conditions of transfer to and detention at the court on hearing days, the Court has held that the general principles concerning the duty of the State to ensure that a person is detained in conditions compatible with respect for his human dignity are also applicable in those situations (see *Lutsenko v. Ukraine (no. 2)*, no. 29334/11, § 155, 11 June 2015, with further references). Moreover, it has recently summarised the principles concerning conditions of transfer. Thus, assessment of whether there has been a breach of Article 3 cannot be reduced to a purely numerical calculation of the space available to a detainee during the transfer. Only a comprehensive approach to the particular circumstances of the case can provide an accurate picture of the reality for the person being transported. Nevertheless, a strong presumption of a violation arises when detainees are transported in vehicles offering less than 0.5 square metres of personal space. The low height of the ceiling, especially of single-prisoner cubicles, which forces prisoners to stoop, may exacerbate physical suffering and fatigue. Inadequate protection from outside temperatures, when prisoner cells are not sufficiently heated or ventilated, will constitute an aggravating factor. The above presumption is capable of being rebutted only in the case of a short or occasional transfer. By contrast, the pernicious effects of overcrowding must be taken to increase with longer duration and greater frequency of transfers, making the applicant's case of a violation stronger (see *Tomov and Others v. Russia*, no. 18255/10 and 5 others, §§ 123-26, 9 April 2019).

2. Conditions of the applicant's detention in the Dnipro SIZO

(a) Admissibility

88. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Merits

(i) General findings

89. The Court notes that in his observations in response to those of the Government, the applicant only mentioned issues with isolation of the toilet facilities, ventilation, fresh air, dampness and insects in the cells in which he had been held. He did not maintain his initial submissions about issues with the toilet drainage system, and showering and laundry services. The Court will therefore not comment on the latter issues (see, *mutatis mutandis*, *Sergey Antonov v. Ukraine*, no. 40512/13, § 89, 22 October 2015).

90. As to the former issues, the Court notes that the applicant's submissions in respect of cells nos. 931 and 911 are supported by the photographs and written statements of his cellmates and other detainees (see paragraphs 14 and 15 above). The Government did not contest that evidence as such. The applicant's submissions are also generally supported by the CPT's 2014 report (see paragraph 30 above). The Court further notes that it established similar conditions of detention in the case of other applicants detained in the Dnipro SIZO during the same period as the present applicant (see *Bilozor and Others v. Ukraine* [CTE], no. 9207/09 and 5 others, 20 July 2017; *Maystrenko v. Ukraine* [CTE], no. 45811/16, 28 June 2018; *Syenin v. Ukraine* [CTE], no. 19585/18, 21 February 2019; *Radyukin v. Ukraine* [CTE], no. 27805/18, 11 July 2019; *Petrov and Korostylyov v. Ukraine* [CTE], nos. 19591/18 and 19596/18, 11 July 2019; *Lysenko v. Ukraine* [CTE], no. 38092/18, 19 September 2019; *Tsukur and Others v. Ukraine* [CTE], nos. 53132/18, 53181/18 and 59802/18, 17 October 2019; and *Onyshchenko and Others v. Ukraine* [CTE], no. 54434/18 and 4 others, 14 November 2019). On their part, the Government made only general statements, confining themselves to relying on the information prepared by the prison authorities in March 2018, that is from one to four years after the applicant's detention in the aforementioned cells (see similarly *Belyaev and Digtyar v. Ukraine*, nos. 16984/04 and 9947/05, § 38, 16 February 2012, and *Rodzevillo v. Ukraine*, no. 38771/05, § 53, 14 January 2016). Moreover, in respect of some of the issues mentioned by the applicant (dampness and insects in the cells), they made no comments at all. In view of the above, the Court accepts the applicant's account of the conditions of his detention in cells nos. 931 and 911.

91. As regards cells nos. 655 and 661, however, the Court notes that they were located in unit 6 (see paragraph 10 above). It cannot overlook the fact that after its 2009 visit to the Dnipro SIZO, the CPT observed that the detention block including unit 6 had been renovated, that each cell had been equipped with an isolated toilet and that the ventilation had appeared to be adequate (see paragraph 28 above). Although the applicant was held in those cells between 2012 and 2014, the Court cannot exclude that the situation observed by the CPT in 2009 may still have applied during his subsequent detention in unit 6. Accordingly, it cannot conclude "beyond reasonable doubt" that cells nos. 655 and 661 were in the same condition as cells nos. 931 and 911.

92. Lastly, the Court notes that the applicant had one-hour daily walks during his detention in the Dnipro SIZO (see paragraphs 17 and 79 above).

93. The Court will next assess in turn the conditions of the applicant's detention in the four cells mentioned above.

(ii) The applicant's detention in cells nos. 655 and 661

94. From 12 July 2012 to 8 May 2014 the applicant was held in cells nos. 655 and 661, in which he had 3.35 square metres of personal space (see paragraph 10 above). The space factor is therefore a weighty factor in the assessment of the adequacy of the conditions of the applicant's detention in those cells (see *Muršić*, cited above, § 139). His situation was further aggravated by the fact that he was held in the cells for twenty-three hours a day and his access to outdoor exercise was limited to a one-hour walk. The exercise yard measuring 11.5 square metres was only 3.8 square metres larger than the cells themselves (see paragraph 17 above) and was apparently used by other detainees at the same time. As such, in the Court's view, it was too small to give him a genuine opportunity to exercise (see similarly *Trepashkin v. Russia (no. 2)*, no. 14248/05, § 118, 16 December 2010). The Court thus notes that the space factor was coupled with the fact that the applicant had to spend almost all the time inside the cells for a period of one year and ten months. The applicant's situation is comparable with other cases (see, for instance, *István Gábor Kovács v. Hungary*, no. 15707/10, § 26, 17 January 2012, in which the applicant had had 3.5 square metres of personal space for sixty-seven days, and *Truten v. Ukraine*, no. 18041/08, §§ 51 and 54, 23 June 2016, in which the applicant had had 3.1 square metres of personal space for more than a year), in which the Court found a breach of Article 3 in circumstances where the applicants' detention had been coupled with their having to spend twenty-three hours a day inside their cells. The Court thus concludes that there has been a breach of Article 3 of the Convention in the present case as well (see also *Muršić*, cited above, § 139).

(iii) The applicant's detention in cell no. 931

95. From 8 to 26 May 2014 the applicant was held in cell no. 931, in which he had from 2.6 to 3.25 square metres of personal space, depending on the number of detainees held with him (see paragraph 11 above). Even assuming that he had the latter amount of space for most of his time in that cell (see, similarly, *Gaspari v. Armenia*, no. 44769/08, § 60, 20 September 2018), the space issue was still a weighty factor in the assessment of the adequacy of the conditions of his detention (see *Muršić*, cited above, § 139). The applicant's situation was further aggravated by other aspects of the conditions of his detention (see paragraphs 90 and 92 above). In the Court's view, the cumulative effect of the above-mentioned factors amounted to a breach of Article 3 of the Convention.

(iv) The applicant's detention in cell no. 911

96. From 26 May 2014 to 22 March 2017 the applicant was held in cell no. 911. From 26 May 2014 to 1 January 2015 he had from 2.6 to 3.25 square metres of personal space, depending on the number of detainees held with him; and from 1 January 2015 to 22 March 2017 he had, in various non-consecutive periods, 2.6, 3.25 or 4.3 square metres of personal space (see paragraph 12 above).

97. In particular, between 1 January 2015 and 22 March 2017 the applicant had 2.6 square metres of personal space during a number of non-consecutive periods ranging from thirty-eight to 177 days. In the Court's view, none of those periods could be used, in terms of the length of each of them, to rebut the strong presumption of a violation of Article 3 (see *Muršić*, cited above, §§ 151-52, where even a shorter period of twenty-seven days could not be used to rebut such a presumption). Furthermore, there were several other non-consecutive periods, ranging from one to fourteen days, during each of which the applicant also had 2.6 square metres of personal space. Although these non-consecutive periods were short, in the Court's view such reductions in personal space below 3 square metres should be considered as part of a longer, continuous situation of the applicant's detention in cell no. 911 (see, similarly, *Gaspari*, cited above, § 57). In any event, those conditions were not compensated for by other factors (see *Muršić*, cited above, § 138, and *Nikitin and Others v. Estonia*, nos. 23226/16 and 6 others, § 179, 29 January 2019). On the contrary, the applicant's outdoor activities were limited and there were other aggravating aspects of the conditions of his detention (see paragraphs 90 and 92 above). The Court considers, therefore, that the Government have failed to rebut the strong presumption of a breach of Article 3 in respect of the periods ranging from one to fourteen days when the applicant had 2.6 square metres of personal space.

98. As to the periods during which the applicant had 3.25 square metres of personal space, and even assuming that between 26 May 2014 and

1 January 2015 he had 3.25 square metres of personal space for most of the time, the space factor was aggravated by other aspects of the conditions of his detention (see paragraphs 90 and 92 above). Their cumulative effect also amounted to a breach of Article 3 of the Convention.

99. Lastly, during several non-consecutive periods, ranging from one to twelve days, the applicant had 4.3 square metres of personal space and no issue with regard to the question of personal space therefore arises (see *Muršić*, cited above, § 140). Furthermore, the Court notes that in his observations the applicant specifically linked an alleged breach of Article 3 of the Convention to the periods when he had had less than 3 or between 3 and 4 square metres of personal space (see paragraph 79 above). The Court will not therefore make any findings in respect of the periods when the applicant had 4.3 square metres of personal space in cell no. 911.

(v) Conclusion

100. The Court concludes that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the Dnipro SIZO (except for periods during which he had 4.3 square metres of personal space in cell no. 911).

3. Conditions of the applicant's transfer and detention on hearing days

101. From 8 November 2012 to 12 March 2018 the applicant was transferred, on 392 occasions, from the Dnipro SIZO to the District Court (see paragraph 21 above). Given that on each hearing day the conditions of his transfer alternated with the conditions of his detention in that court, the Court will assess those conditions together (see, for a similar approach, *Seleznev v. Russia*, no. 15591/03, §§ 57-63, 26 June 2008, and *Svetlana Kazmina v. Russia*, no. 8609/04, §§ 76-79, 2 December 2010).

102. The Court notes at the outset that it has no information from the parties about the personal space available to the applicant in the prison vans and in the court's holding cells. Thus, in his initial submissions the applicant only stated, in general and impersonal terms, that one of the vans had had two cells, one measuring 2.1-2.2 square metres and designed for six to ten people, and another measuring 0.4 square metres and designed for one person; he did not specify whether he had personally been transported in one or both of those cells, with how many detainees and on how many occasions. He also stated that between three and seven detainees had usually been held in the holding cells. Neither in his initial submissions nor in his subsequent observations did the applicant, whose duty it is to provide an elaborate and reasonably detailed account of the alleged events (see *Ananyev and Others*, cited above, § 122), specify the sizes of the cells in the other vans. Nor did he say with how many detainees and on how many occasions he had personally been transferred in various prison vans and held in the court's holding cells. Nor did he state that he was unable to

provide all or part of that information. The Court also notes the abstract and impersonal language employed by the applicant in his initial submissions (see paragraphs 22 and 25 above). Represented by a lawyer, the applicant had ample opportunity to elaborate on those submissions after notice of the case had been given to the Government. However, he failed to elaborate on how and to what extent what was described in his generally couched statements affected his individual situation. Lacking the above information and details, the Court is unable to make any assessment as to the personal space available to the applicant in the vans' and the court's cells (see, *mutatis mutandis*, *Zakshevskiy v. Ukraine*, no. 7193/04, §§ 75, 77 and 78, 17 March 2016).

103. The Court next notes that in his observations in reply to those of the Government, the applicant did not maintain his initial submissions about inadequate lighting and temperature in the prison vans; he only expressly mentioned ventilation issues in them (see paragraph 80 above). Similarly, he did not maintain his initial submissions about lack of access to natural light and absence of tables in the holding cells, and issues with attending the toilet; he only mentioned lack of ventilation in those cells (see paragraph 81 above). It follows that the only aspect of the conditions of the applicant's transfer and detention on hearing days to be examined is the issue with ventilation in the prison vans and the court's holding cells.

104. The Court notes that the applicant's submission about inadequate ventilation in the prison vans is generally supported by the NPM report for 2013 (see paragraph 47 above). Furthermore, even assuming that he was transported in the vans referred to by the Government, the Court notes that the records of 21 November 2017 stated that the ventilation had been functioning in only one of them, while in others it had been "available" (see paragraph 23 above). Furthermore, the records were prepared more than five years after the applicant had first been transported and even the record which mentioned the functioning ventilation system in one van did not necessarily reflect its actual condition when the applicant had been transported (see, *mutatis mutandis*, *Belyaev and Digtyar*, § 38, and *Rodzevillo*, § 53, both cited above). As to the absence of ventilation in the court's holding cells, it was confirmed by the letter of 25 May 2015 (see paragraph 26 above). The Court thus finds that the applicant's submissions in this respect have not been refuted by the Government.

105. The Court is mindful of the number of times the applicant had to remain in poorly ventilated or unventilated cells in the vans and the court, and accepts that this circumstance may have caused a certain degree of inconvenience to him. However, it also notes that he did not provide any submissions regarding the nature and extent to which he had allegedly suffered from that inconvenience and to show whether that inconvenience alone reached the threshold of severity bringing the matter within the ambit of Article 3 of the Convention. In such circumstances, the Court finds that

the applicant has not made out an arguable claim concerning the conditions of his transfer in prison vans and of his detention in the court's cells on hearing days (see, *mutatis mutandis*, *Temchenko v. Ukraine*, no. 30579/10, § 97, 16 July 2015, and *Korban v. Ukraine*, no. 26744/16, §§ 106 and 108, 4 July 2019).

106. Accordingly, this part of the application is manifestly ill-founded and must be rejected under Article 35 §§ 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

107. The applicant further complained, in substance under Article 13 of the Convention, that there were no effective remedies in Ukraine in respect of his complaints under Article 3. The former 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. The parties' submissions

1. The applicant

108. The applicant submitted that he had not had any effective remedies for his Article 3 complaints. Complaints to the administration of the Dnipro SIZO would not have had any positive result, as poor conditions of detention were a systemic issue in Ukraine. As to a possibility of lodging complaints to a prosecutor, referred to by the Government below, in the case of *Melnik v. Ukraine* (no. 72286/01, § 69, 28 March 2006) the Court had held that the Government had not shown that such a complaint could offer any redress for conditions of detention that were contrary to Article 3. That conclusion had been reiterated in a number of other cases, in which the Court had held that the applicants had not had at their disposal an effective remedy for their similar complaints. The applicant thus concluded that there had been no effective remedies available to him for his Article 3 complaint.

2. The Government

109. Referring to Article 8 of the 2003 Code (see paragraph 64 above) the Government submitted that the applicant had been free to complain to a prosecutor about the conditions of his detention. He had lodged complaints with a prosecutor about the sanitary and hygiene conditions of his detention, but not about the conditions of detention in the cells specified in the present application or the conditions of his transfer and detention on hearing days. An inquiry into the applicant's complaints had resulted in reasoned answers from the prosecutor (see paragraphs 18 and 20 above). The applicant had thus had an effective domestic remedy for his Article 3 complaints and there

had been no breach of Article 13 of the Convention. The Government lastly referred to the 2016 draft law providing for preventive and compensatory remedies in respect of inadequate conditions of detention (see paragraph 72 above).

B. The Court's assessment

1. Admissibility

110. The Court notes that it has declared manifestly ill-founded the applicant's complaint about the conditions of his transfer and detention on hearing days. Accordingly, there is no arguable claim under Article 13 of the Convention in this respect (see *Temchenko*, cited above, § 98).

111. As to the complaint concerning the alleged lack of effective remedies for the complaint about the conditions of detention in the Dnipro SIZO, the Court notes that it is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention; nor is it inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles

112. Article 13 of the Convention guarantees the availability at domestic level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured. The effect of this Article is thus to require the provision of a domestic remedy to deal with the substance of an arguable complaint under the Convention and grant appropriate relief. This remedy must be effective in practice and in law. Such effectiveness does not depend on the certainty of a favourable outcome for the person concerned (see, for instance, *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 197, ECHR 2012).

113. The scope of the obligation under Article 13 depends on the nature of the complaint under the Convention. With respect to Article 3 complaints concerning conditions of detention, two types of relief are possible: improvement in such conditions, and compensation for damage sustained as a result of them. For a person held in such conditions, a remedy capable of rapidly bringing the ongoing violation to an end is of the greatest value. However, once such a person has been released or placed in conditions meeting the requirements of Article 3, he or she should have an enforceable right to compensation for any breach that has already occurred. Thus, in the case of *Domján v. Hungary* ((dec.), no. 5433/17, § 25, 14 November 2017), which was a response to the *Varga and Others* pilot judgment (cited above), the Court noted that two pre-conditions had been set in the relevant domestic law for the use of the compensatory remedy: first, the previous use

of the preventive remedy if the number of days spent in inadequate conditions of detention exceeded thirty (where inadequate conditions of detention existed over a longer period of time, a further complaint did not need to be lodged within three months); and second, compliance with the six-month time-limit running from the day on which the inadequate conditions of detention had ceased to exist or, for those who had already been released at the date of entry into force of the new law, from a particular date set by the law. The Court concluded that neither of those two conditions seemed to be unreasonable obstacles to the accessibility of the remedy. Accordingly, preventive and compensatory remedies might be complementary to be considered effective (see *Ananyev and Others*, §§ 96-98 and 214, and *Neshkov and Others*, § 181, both cited above; see also *Varga and Others*, cited above, §§ 48-49, and *Ulemek v. Croatia*, no. 21613/16, § 72, 31 October 2019 [not final]).

For the purposes of the exhaustion of domestic remedies under Article 35 of the Convention, the Court has held that, in the absence of a preventive remedy providing for an effective avenue which the applicants could and should have used during their detention, the use of a compensatory remedy after unsatisfactory conditions of detention have ended is normally an effective remedy. However, where an effective preventive remedy has been established, the applicants in detention, as a rule, cannot be dispensed from the obligation to use it. In other words, before bringing their complaints to the Court, they are first required to use properly the available and effective preventive remedy and then, if appropriate, the relevant compensatory remedy. If the use of an otherwise available and effective preventive remedy is futile in view of the brevity of an applicant's stay in inadequate conditions of detention, the only viable option would be a compensatory remedy allowing for a possibility to obtain redress for the past placement in such conditions. This period may depend on many factors related to the manner of operation of the domestic system of remedies and the nature of the alleged inadequacy of an applicant's conditions of detention. In any event, the compensatory remedy in this context should normally be used within six months of the end of the allegedly inadequate conditions of detention. This is, of course, without prejudice to the possibility that the domestic law provides for different arrangements in the use of remedies or for a longer statutory time-limit for the use of a compensatory remedy, in which case the use of that remedy is determined by the relevant domestic arrangements and time-limits (see *Ulemek*, cited above, §§ 82-83 and 86-90).

114. The authority referred to in Article 13 is not necessarily a judicial one. The Court has already found that remedies in respect of conditions of detention before an administrative authority can satisfy the requirements of this provision. However, the powers and procedural guarantees that an authority possesses are relevant in determining whether the remedy before it

is effective. For instance, for a preventive remedy with respect to conditions of detention before an administrative authority to be effective, that authority must: (i) be independent of the penal authorities; (ii) secure the detainee's effective participation in the examination of his or her complaint; (iii) ensure that the complaint is handled speedily and diligently; (iv) have at its disposal a wide range of legal tools for eradicating the problems leading to the complaint; and (v) be capable of rendering binding and enforceable decisions within reasonably short time-limits (see *Ananyev and Others*, §§ 214-16 and 219, and *Neshkov and Others*, §§ 182-83, both cited above).

115. As regards compensatory remedies, the burden of proof imposed on a detainee should not be excessive. While he or she may be required to make a prima facie case and produce such evidence as is readily accessible, such as a detailed description of the impugned conditions, witness statements, or complaints to and replies from the prison authorities or supervisory bodies, it then falls to the authorities to refute the allegations. In addition, the procedural rules governing the examination of claims for compensation must conform to the principle of fairness enshrined in Article 6 § 1 of the Convention, including the reasonable-time requirement, and the rules governing costs must not place an excessive burden on the detainee where his or her claim is justified. Lastly, a detainee should not be required to establish that specific officials have engaged in unlawful conduct, since poor conditions of detention are not necessarily due to failings of individual officials, but are often the product of more wide-ranging factors (see *Ananyev and Others*, §§ 228-29, and *Neshkov and Others*, § 184, both cited above).

116. The effective remedy required by Article 13 is one where the authority or court dealing with the case has to consider the substance of the Convention complaint. In cases such as the instant one, for a domestic remedy in respect of conditions of detention to be effective, the above-mentioned authority or court must review the acts or omissions alleged to have amounted to a breach of Article 3 of the Convention in line with the principles and standards laid down by this Court in its case-law under that provision. A mere reference to that provision in the domestic decisions is not sufficient; the examination of the case must be consistent with the standards flowing from the Court's case-law (see *Neshkov and Others*, cited above, §§ 185-87).

117. If the authority or court finds that there has been a breach of Article 3 of the Convention in relation to the conditions in which a detainee has been or is being held, it must grant appropriate relief. In the context of preventive remedies, the relief may, depending on the nature of the underlying problem, consist either in measures that only affect the detainee concerned or – for instance where overcrowding is concerned – in wider measures that are capable of resolving situations of massive and concurrent violations of prisoners' rights resulting from the inadequate conditions in a

given detention facility. In the context of compensatory remedies, monetary compensation should be accessible to any current or former detainee who has been held in inhuman or degrading conditions and has made an application to this effect. A finding that the conditions fell short of the requirements of Article 3 gives rise to a strong presumption that they have caused non-pecuniary damage to the detainee. The domestic rules and practice governing the operation of the remedy must reflect that presumption, rather than make the award of compensation dependent on the detainee's ability to prove the existence of non-pecuniary damage in the form of emotional distress. Lastly, detainees must be able to avail themselves of remedies without having to fear that they will incur punishment or negative consequences for doing so (ibid., §§ 188-91).

(b) Application of the above principles in the present case

(i) Preventive remedies

118. The Court notes that the Government referred to Article 8 of the 2003 Code, which deals with prisoners' right to lodge complaints with various authorities, including a prosecutor. It also notes, however, that the Code concerns convicted persons and not those held in pre-trial detention, as was the present applicant. Nevertheless, section 9 of the Pre-trial Detention Act provides for a similar right for detainees (see paragraph 54 above).

119. The Court has already examined the effectiveness of lodging a complaint with a prosecutor on a number of occasions. Thus, as early as 2006 it held that a complaint lodged with a prosecutor, in accordance with the Pre-trail Detention Act or the Prosecutors Act, was not an effective and accessible remedy, given that the prosecution's status under domestic law and its particular "accusatorial" role in the investigation of criminal cases did not offer adequate safeguards for an independent and impartial review of a complaint. Moreover, such a complaint could not lead to preventive or compensatory redress. The Court also held that the problems relating to conditions of detention did not concern an individual situation but were of a structural nature (see *Koval v. Ukraine*, no. 65550/01, § 95, 19 October 2006). It has since rejected similar references made by the Government in a number of other cases (see, for instance, *Yakovenko v. Ukraine*, no. 15825/06, § 75, 25 October 2007; *Koktysh v. Ukraine*, no. 43707/07, § 86, 10 December 2009; *Znaykin v. Ukraine*, no. 37538/05, § 42, 7 October 2010; *Iglin v. Ukraine*, no. 39908/05, § 43, 12 January 2012; *Belyaev and Digtyar*, cited above, § 31; *Samoylovich v. Ukraine*, no. 28969/04, § 55, 16 May 2013; *Gorbatenko v. Ukraine*, no. 25209/06, § 125, 28 November 2013; *Zinchenko v. Ukraine*, no. 63763/11, § 53, 13 March 2014; *Rodzevillo*, cited above, § 41; and *Zakshevskiy v. Ukraine*, no. 7193/04, § 59, 17 March 2016).

120. The Court further notes that in the Ukrainian legal system, the public prosecutor is responsible for ensuring compliance with the law during the application of measures related to the restriction of a person's freedom. In performing that task, a prosecutor may demand that the relevant officials eliminate any breaches and the causes and conditions which have contributed to them (see paragraphs 58-59 above). Even though the prosecutor undeniably has the power to play an important role in securing appropriate conditions of detention, a complaint to a prosecutor falls short of the requirements of an effective remedy also because of the procedural shortcomings. Thus, such a complaint is not based on a detainee's personal right to obtain redress, and there is no requirement for such a complaint to be examined with his or her participation or for the prosecutor to ensure such participation (including an opportunity to comment on submissions by the governor of the detention facility requested by the prosecutor, to put questions and to make additional submissions). The matter would be dealt with entirely between the prosecutor and the relevant facility, and the detainee would only be entitled to obtain information about the way in which the prosecutor had dealt with his or her complaint (see, similarly, *Ananyev and Others*, §§ 104 and 216, and *Neshkov and Others*, § 212, both cited above).

121. Furthermore, even if a detainee obtains an order from the prosecutor requiring the administration of a detention facility to redress a violation of his or her right to adequate conditions of detention, his or her personal situation in an already overcrowded facility could only be improved at the expense and to the detriment of other detainees. Given the structural nature of the problem which the Court has identified in a number of other cases against Ukraine and reconfirmed in the present case (see paragraphs 135-143 below), the administration would not be able to satisfy a large number of simultaneous requests (see, *mutatis mutandis*, *Ananyev and Others*, § 111, and *Varga and Others*, § 63, both cited above).

122. In the present case the Government have not provided any new information as to how lodging a complaint with a prosecutor about inadequate conditions of detention could have prevented the alleged violation or its continuation, or provided the applicant with adequate redress. The Court thus concludes, as it has in previous cases against Ukraine, that such a complaint falls short of the requirements of an effective remedy.

123. The Court also observes that the only domestic remedy advanced by the Government in the present case was a complaint to the prosecutor. As found above, that cannot be considered an effective remedy. In a number of other similar cases, the Government suggested other allegedly effective remedies in respect of complaints related to conditions of detention. Having examined them, the Court found that they were also ineffective, in particular: a complaint to the SIZO administration (see, for instance,

Zinchenko, cited above, § 53) or to any other State authority (see, for instance, *Koval*, cited above, § 96), and a civil or administrative claim to the courts (see, for instance, *Malenko v. Ukraine*, no. 18660/03, § 37, 19 February 2009; *Iglin*, cited above, § 43; *Samoylovich v. Ukraine*, no. 28969/04, § 55, 16 May 2013; and *Kobernik v. Ukraine*, no. 45947/06, § 38, 25 July 2013). The Court took into account that the problems complained of were of a structural nature and did not concern the applicants' personal situation alone. It considers that, for the same reasons, the above-mentioned remedies would not have been effective in the present case either.

(ii) Compensatory remedies

124. The Court notes that the Government did not suggest that any such remedies had been available to the applicant in the present case.

(iii) Conclusion

125. The Court thus concludes that there has been a violation of Article 13 of the Convention, read in conjunction with Article 3 of the Convention, on account of the absence for the applicant of an effective remedy to complain about the conditions of his detention in the Dnipro SIZO.

III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

126. Article 46 of the Convention provides, in so far as relevant:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

A. The parties' submissions

1. The applicant

127. The applicant submitted that he could not provide comments regarding the suitability of the present case for the application of the pilot-judgment procedure and left this matter for the Court to decide. At the same time, he submitted that the majority of positive changes mentioned below by the Government had taken place only recently and some of them well after he had lodged the present application. He had been held in improper conditions in the Dnipro SIZO since July 2012. Therefore, regardless of the reforms mentioned by the Government, his rights under Articles 3 and 13 of the Convention had been breached.

2. The Government

128. The Government submitted that the prison reform in Ukraine had been launched in 2016. It had been preceded by amendments to the 2003 Code (see paragraphs 64-65 above), which had expanded prisoners' rights and introduced changes to their conditions of detention in accordance with the European standards. In September 2016 Parliament had adopted several laws aimed at improving access to justice for detained and convicted persons; the execution of sentences and exercise by convicted persons of their rights; humanisation of the procedure for and conditions of execution of sentences; and the application of new incentives and penalties to convicted persons. Those laws made the sentencing process more humane and provided for mechanisms that allowed convicted persons to exercise their rights. In 2017 the Concept was adopted (see paragraphs 68-71 above). As regards remedies for inadequate conditions of detention, the Government referred to the 2016 draft law (see paragraph 72 above). They also stated that the Ministry of Justice had prepared a number of other pieces of draft legislation.

129. Furthermore, the 2013 Regulations (see paragraphs 66-67 above) were being amended to allow detainees to submit online complaints about poor conditions of detention to the NPM, the prison authorities and the prosecutor. The service offered a range of tools for lodging an electronic complaint and sending it to one or several addressees, for receiving and viewing the response, and for accessing the correspondence history. Eighty-six sets of equipment and 104 terminals for sending such complaints had been installed in eighty-six penal institutions.

130. In May 2016 the State Prisons Service was liquidated and its tasks were assigned to the Ministry of Justice; responsibility for penal institutions was thus transferred to the Ministry of Justice. In 2016 repairs were completed to 889 objects belonging to penal facilities (buildings, engineering facilities and networks) at a cost of 20.6 million Ukrainian hryvnias (UAH). According to the budgetary requests made by the Ministry of Justice, in 2016 the need for capital and current repairs to 952 objects amounted to UAH 53.6 million and in 2017 the need for repairs to 856 objects amounted to UAH 59.68 million. In September 2017 the Ministry of Justice approved a list of eleven correctional centres or prisons to undergo conservation work. With a view to the rational allocation of convicted and detained persons and prevention of overcrowding, pre-trial detention units were being established in minimum and medium-security institutions and specialist hospitals. Further work was continuing on the legislative and institutional reorganisation of the SSES, a process requiring significant financial support and the collaboration of many authorities.

131. The Government further stated that in 2016 a division had been created in the Ministry of Justice for the inspection of respect for human rights in penal institutions. In 2017 it had inspected twenty penal

institutions, and had then sent the interregional bureaux of the Ministry of Justice recommendations for the elimination of the breaches found and for measures to be taken.

132. The Government also stated that the prison reform in Ukraine was being carried out with the support of international organisations and other States. Thus, in the framework of cooperation with the Council of Europe in 2011 to 2014, the following had been accomplished: (a) implementation of the project "Support for Prison Reform in Ukraine", aimed at supporting and developing activities related to the introduction of a probation system, improving management of penal institutions and bodies, and pre-trial detention facilities in Ukraine; and (b) participation in the project "Combating Ill-Treatment and Impunity", which focused on improving the efficiency of decentralised preventive mechanisms in penal institutions by strengthening the functional capacity of civil society institutions. As a result of the latter project, twenty-three recommendations on the evaluation of mechanisms allowing convicted persons to raise complaints of ill-treatment were made. The project stakeholders found that neither the existing mechanisms for alleged victims of ill-treatment to make complaints, nor the authorities' response to them, met the principles of independence and impartiality, promptness, sufficient involvement of the victim and transparency of civil control. In 2015 the project "Further Support for the Prison Reform in Ukraine" was launched. It focused on improving the rehabilitation approach to the execution of criminal sentences and on strengthening procedures and practices for prison inspection and the handling of complaints raised by detained and convicted persons. One of the results of co-operation with the Council of Europe was also the preparation of a prison management booklet, a code of conduct for prison personnel and a handbook on the penal system and human rights, and development of standards for the assessment of performance by penal institutions. Lastly, the experience of other countries in the implementation of the probation system in Ukraine was broadly being taken into account.

133. The Government also submitted that during its 1302nd meeting (see paragraph 39 above), the Committee of Ministers had noted with satisfaction the legislative and administrative measures being taken to reform the prison system. Taking into account the circumstances of the present case and the reforms being conducted, the Government concluded that it was not appropriate to apply the pilot-judgment procedure in the present case.

B. The Court's assessment

1. General principles

134. The relevant principles concerning the application of Article 46 of the Convention in pilot-judgment proceedings were recapitulated in *Ananyev and Others* (cited above, §§ 180-83; see also *Neshkov and Others*, § 267, and *Varga and Others*, §§ 94-97, both cited above) as follows:

(i) Article 46 § 1, read in the light of Article 1 of the Convention, imposes on the respondent State a duty to implement, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the right of an applicant which the Court has found to have been breached. Such measures must also be taken in respect of other persons in the applicant's position, notably by solving the problems that led to the Court's findings. The Committee of Ministers has consistently emphasised this obligation when supervising the execution of the Court's judgments;

(ii) To facilitate the effective implementation of its judgments along these lines, the Court may resort to a pilot-judgment procedure allowing it to identify a structural problem underlying the breach and to indicate the measures to be taken by the respondent State to remedy them. However, the above approach is pursued with due respect for the functions of the Convention organs: under Article 46 § 2 of the Convention it is for the Committee of Ministers to evaluate the implementation of relevant measures;

(iii) Another important role of the pilot-judgment procedure is to induce the respondent State to resolve large numbers of individual cases arising from the same structural problem at domestic level, thus implementing the principle of subsidiarity that underpins the Convention system. The Court's task, defined by Article 19 of the Convention, is not necessarily best achieved by repeating the same findings in a number of cases. The object of the procedure is to facilitate the speediest and most effective resolution of a dysfunction affecting protection of the Convention rights in question in the domestic legal order. While the respondent State's actions should primarily aim at resolving such a dysfunction and at introducing, where appropriate, effective remedies in respect of the breaches found, it may also include *ad hoc* solutions, such as friendly settlements with the applicants or unilateral remedial offers in line with Convention requirements. The Court may adjourn examination of all similar cases, giving the respondent State an opportunity to settle them in such ways;

(iv) If the respondent State fails to adopt such measures following a pilot judgment, the Court will have no choice but to resume examination of any similar applications pending before it which it may have decided to adjourn and to take them to judgment, with a view to ensuring effective observance of the Convention.

2. Existence of a structural problem warranting the application of the pilot-judgment procedure in the present case

135. The Court notes that the present case concerns a recurrent problem underlying frequent violations of Article 3 of the Convention by Ukraine. In particular, since its first judgment concerning conditions of detention in Ukraine (*Nevmerzhitsky v. Ukraine*, no. 54825/00, ECHR 2005-II), the Court has delivered fifty-five judgments (in some of them with multiple applicants) finding violations of Article 3 on account of poor conditions of detention in pre-trial detention facilities there (for the list of those judgments, see Appendix).

136. In a number of those judgments the Court also concluded that there had been a violation of Article 13 of the Convention due to the absence of effective domestic remedies for the applicants' Article 3 complaints. Furthermore, in many of those judgments the Court held that the problem of conditions of detention in Ukraine was of a structural nature (see, for instance, *Koval*, cited above, § 96; *Koktysh*, cited above, § 86; *Visloguzov v. Ukraine*, no. 32362/02, §§ 42-43, 20 May 2010; *Logvinenko v. Ukraine*, no. 13448/07, §§ 57-58, 14 October 2010; *Petukhov v. Ukraine*, no. 43374/02, § 78, 21 October 2010; *Izzetov v. Ukraine*, no. 23136/04, § 38, 15 September 2011; *Ustyantsev v. Ukraine*, no. 3299/05, § 58, 12 January 2012; *Iglin*, cited above, § 43; *Belyaev and Digtyar*, cited above, §§ 30-31; *Barilo v. Ukraine*, no. 9607/06, § 56, 16 May 2013; *Gorbatenko*, cited above, § 125; *Zinchenko*, cited above, § 53; *Rodzevillo*, cited above, § 41; *Sosnovskiy v. Ukraine*, no. 9450/06, § 65, 8 December 2016; and *Komarov v. Ukraine*, no. 4772/06, § 94, 19 January 2017).

137. Most of the cases against Ukraine in which the Court found a violation of Article 3 of the Convention concerned problems of overcrowding and various other recurrent issues related to the material conditions of detention: inappropriate hygiene and sanitation conditions, insufficient lighting and ventilation, presence of insects and mould in cells, limited access to showers, limited daily walks, lack of privacy when using toilets, poor food, and so on. Violations have been found with respect to a wide range of establishments in various regions of Ukraine. It thus indeed appears that the violations were not prompted by an isolated incident or a particular turn of events in each individual case. They originated in a widespread structural problem resulting from a malfunctioning of the Ukrainian penal system and insufficient safeguards against treatment proscribed by Article 3.

138. Despite these conclusions voiced by the Court in respect of Ukraine almost on a yearly basis since 2005, the structural problem appears to remain unresolved at the domestic level. Indeed, according to the Court's case management database, around 120 prima facie meritorious applications against Ukraine featuring conditions-of-detention complaints, are currently pending before the Court. The above figure, taken on its own, is indicative

of the existence of a recurrent structural problem (see *Ananyev and Others*, § 184, and *Varga and Others*, § 98, both cited above). Moreover, the identification of a systemic problem that justifies the application of the pilot-judgment procedure is not necessarily linked only to the number of pending applications; the potential inflow of future similar applications is also an important factor (see *Neshkov and Others*, cited above, § 270). In this connection, the Court observes that as of 1 April 2019 the number of persons held in pre-trial detention facilities in Ukraine stood at 20,346 (see paragraph 76 above). As noted in a number of international and domestic reports (see paragraphs 28-33, 44, 46 and 48-50 above), many of those persons have been kept in overcrowded and otherwise inadequate conditions. Moreover, they do not have effective remedies enabling them to obtain an improvement of their situation (see paragraphs 118-125 above).

139. The Committee of Ministers has also acknowledged the structural nature of the problem of conditions of detention in Ukraine. It has been supervising execution of the Court's judgments concerning conditions of detention since 2005. In December 2018 it adopted an interim resolution, in which it emphasised once again the structural nature of the problem. It pointed out that in previous decisions it had repeatedly called upon the Ukrainian authorities to take decisive action to establish preventive and compensatory remedies in order to tackle that problem. Although some steps had been taken, no concrete progress had been made, which had also put an additional burden on the Convention system. The Committee of Ministers thus stressed the urgent need for the authorities to continue to work on the adoption of a comprehensive long-term strategy capable of leading to the resolution of those structural problems, with clear and binding timelines for the adoption of the relevant measures and the provision of the necessary resources (see paragraph 41 above).

140. The CPT has also repeatedly acknowledged the persisting nature of the problems of conditions of detention in Ukraine. In its most recent report concerning Ukraine, it welcomed the ongoing reform of the prison system and the measures taken to reduce overcrowding, but stressed that the reform had not impacted upon the situation of persons held in pre-trial detention and urged the authorities to further reduce their number. It noted that the old norm of 2.5 square metres of living space per inmate in SIZOs was still in force, and complex rules on separation of different categories of detainees continued to result in localised overcrowding. The CPT thus called on the Ukrainian authorities to take decisive steps to amend the legislation and regime for such persons. It further observed the poor material conditions of detention in the SIZOs visited, in some of which they had even deteriorated since its previous visits (see paragraph 31 above).

141. Insufficient progress in resolving the problem of poor conditions of detention had also been observed by the NPM, which concluded that despite the ongoing prison reform, systemic violations of human rights continued to

take place in the majority of SIZOs in Ukraine (see paragraph 48 above). Similar conclusions have also been drawn by the Ombudsman, who has exercised the NPM functions since 2012 (see paragraph 45 above) and who has observed inadequate conditions in almost all Ukrainian SIZOs. She recommended that the authorities bring the domestic standards for personal space and conditions of detention in line with the European standards (see paragraph 50 above).

142. The Court notes that even though the Government contended that the present case was not suitable for application of the pilot-judgment procedure, in particular in view of the ongoing prison reform, they did not deny the existence of a structural problem concerning the conditions of detention in Ukraine. In fact, that problem was directly acknowledged in the 2017 Concept, which stated that most of the penal institutions in Ukraine were in an unsatisfactory or even critical condition, a fact that required complex decisions and adequate funding (see paragraph 69 above). The Court considers, therefore, that notwithstanding the positive steps being taken in Ukraine in the framework of the ongoing prison reform, the urgency of the problem of conditions of detention has not abated in recent years. The violations identified in the present case have been found fourteen years after the Court's first judgment concerning conditions of detention in Ukraine, despite the Government's obligation under Article 46 to adopt the necessary general and individual measures.

143. In view of the above considerations and taking into account the recurrent problem which has persisted for many years, the large number of persons it has affected or is capable of affecting, and the urgent need to grant them speedy and appropriate redress at domestic level, the Court considers it appropriate to apply the pilot-judgment procedure in the present case (see similarly *Torreggiani and Others v. Italy*, nos. 43517/09 and 6 others, § 90, 8 January 2013; *Ananyev and Others*, cited above, § 190; *Neshkov and Others*, cited above, § 271; *Varga and Others*, cited above, § 100; and *Rezmiveș and Others v. Romania*, nos. 61467/12 and 3 others, §§ 110-11, 25 April 2017).

3. General measures to deal with the structural problem

144. Given that the Court's judgments are essentially declaratory, the respondent State remains free, subject to the supervision of the Committee of Ministers, to choose the means by which it will discharge its obligation under Article 46 of the Convention, provided that they are compatible with the conclusions made in the Court's judgment. However, with a view to helping the respondent State to fulfil its obligation, the Court may exceptionally indicate the type of measures that might be taken in order to put an end to a problem it has identified (see *Varga and Others*, cited above, §§ 101-02). In a number of cases it has already indicated general measures to facilitate the speediest and most effective solutions to the recurrent

irregularities in detention conditions (see *Orchowski v. Poland*, no. 17885/04, § 154, 22 October 2009; *Torreggiani and Others*, §§ 91-99; see also *Ananyev and Others*, §§ 197-203 and 214-231; *Neshkov and Others*, §§ 276-78; *Varga and Others*, §§ 104-05; and *Rezmiveș and Others*, §§ 115-120, all cited above).

(a) Measures to reduce overcrowding and improve conditions of detention

145. The Court would emphasise that the issue of improving conditions of detention in Ukraine goes beyond its judicial function. However, even though it is not tasked to give directions on a complex prison reform or to make recommendations on how Ukraine should organise its penal system, for which the Committee of Ministers is better placed, the Court is not barred from highlighting specific issues that may warrant consideration by the Ukrainian authorities. Such issues as highlighted by the Court may help to ascertain the contours of the problem outlined in the pilot judgment and find solutions to it (see *Ananyev and Others*, §§ 194-95; *Neshkov and Others*, § 274; and *Varga and Others*, § 105 with further references, all cited above).

146. For the purposes of the present pilot judgment, the Court finds it important therefore to highlight the problem of overcrowding, which Ukraine will inevitably need to address in implementing this judgment. It reiterates that when a State is not able to guarantee each detainee conditions consistent with Article 3 of the Convention, the most appropriate solution to the problem of overcrowding would be to reduce the number of detainees by more frequent use of non-custodial measures and by minimising the recourse to pre-trial detention (see *Ananyev and Others*, § 197; *Varga and Others*, § 104; and *Rezmiveș and Others*, § 115, all cited above; see also relevant recommendations by the CPT and the Committee of Ministers in paragraphs 27, 33, 34 and 38 above).

147. In this connection, the Court notes that the problem of overcrowding during pre-trial detention is closely linked to another problem frequently found in its judgments against Ukraine concerning complaints under Article 5, namely the excessive length of pre-trial detention. In particular, it has repeatedly found a breach of Article 5 § 3 of the Convention on account of the lack of proper justification both for short and for lengthy periods of pre-trial detention in Ukraine (see, for instance, *Kharchenko v. Ukraine*, no. 40107/02, § 99, 10 February 2011; *Komarova v. Ukraine*, no. 13371/06, §§ 77-81, 16 May 2013; *Osakovskiy v. Ukraine*, no. 13406/06, §§ 82-85, 17 July 2014; *Yaroshovets and Others v. Ukraine*, nos. 74820/10 and 4 others, §§ 123-28, 3 December 2015; *Ignatov v. Ukraine*, no. 40583/15, §§ 40-42, 15 December 2016; *Zherdev v. Ukraine*, no. 34015/07, §§ 121-24, 27 April 2017; *Makarenko v. Ukraine*, no. 622/11, §§ 91-94, 30 January 2018; and *Krivolapov v. Ukraine*, no. 5406/07, §§ 106-08, 2 October 2018).

148. To date, the Court has found breaches of Article 5 § 3 of the Convention in more than ninety cases against Ukraine. Thus, in *Kharchenko* (cited above, §§ 98-101), which concerned, *inter alia*, the compatibility of the old CCP (adopted in 1960) with Article 5 of the Convention, it invited the respondent State to take urgent action to bring the domestic legislation and administrative practice into line with the Court's conclusions in respect of Article 5. In *Ignatov* (cited above, §§ 52-53) it further held that, despite the adoption in 2012 of the new CCP, breaches of Article 5 were recurrent in the case-law concerning Ukraine and considered that the most appropriate way to address them was to bring the reform of legislation and/or practice forward to ensure that domestic criminal procedure complied with Article 5.

149. The Court further observes that the statistics compiled by the Prosecutor General's Office (see paragraph 77 above) show a reduction in 2018 in the number of requests by prosecutors for detention orders as compared with 2012. Yet, those numbers are still higher than in 2013, 2014 and 2016, which suggests that the reduction in such applications is not stable and constant. The Court also notes that the number of requests rejected by courts doubled in 2018 as compared with 2012. It welcomes the steps taken by the Ukrainian courts to subject the requests for detention to a stricter scrutiny, which has ultimately led to the reduction of the number of persons in respect of whom detention requests are granted. Nevertheless, it notes that despite the steps taken by the courts, the number of persons held in Ukrainian SIZOs increased in 2019 as compared with 2015-17 (see paragraphs 74-76 above), which may be explained by the increased recourse to extension orders or by other reasons (see paragraph 33 above). Whatever the reason for the increase in overcrowding in SIZOs, the Court would reiterate that Ukrainian prosecutors and other law-enforcement officers should be encouraged to further decrease the number of requests they make for initial detention and for its extension, except in the most serious cases. Prosecutors and judges should also be encouraged to use alternatives to detention as widely as possible.

150. Reduction in overcrowding in the SIZOs would also follow from a change in the current minimum domestic standard of 2.5 square metres of personal space per detainee provided for in Section 11 of the Pre-trial Detention Act of 1993 (see paragraph 55 above); a change recommended by the CPT on a number of occasions (see paragraphs 28, 30, 31 and 33 above) and required by the standards set by the Court in *Muršić* (cited above, §§ 138-40).

151. Another problem concerns improvement of the material conditions in Ukrainian SIZOs. While the Court welcomes the measures referred to by the respondent State (see paragraph 130 above), it observes that despite those efforts, the material conditions in the SIZOs remain poor or have even deteriorated, as confirmed by international and domestic reports (see paragraphs 28-33, 44, 46 and 48-50 above). In view of the extent of the

problem at issue, the Court considers that consistent and long-term efforts and the adoption of further measures aimed at major renovation work in the existing detention facilities, or at replacing obsolete or conserved facilities with new ones should continue without delay, and that appropriate funds should be set aside for this purpose. Although implementation of those measures may require substantial financial resources, a lack of resources cannot in principle justify conditions of detention that amount to a breach of Article 3 of the Convention. It is incumbent on the respondent State to organise its penal system in such a way as to ensure compliance with that provision, regardless of any difficulties (see *Neshkov and Others*, §§ 277-78, and *Varga and Others*, § 103 with further references, both cited above).

152. The Court leaves it to the Ukrainian authorities, subject to supervision by the Committee of Ministers, to take the practical steps they consider appropriate to reduce overcrowding and improve conditions of detention, which may also include the measures suggested above.

(b) Effective remedies

153. As in other pilot judgments (see *Ananyev and Others*, § 212, and *Neshkov and Others*, § 279, both cited above), the Court has abstained in the present case from giving specific indications on the general measures to be taken by the Ukrainian authorities in order to bring conditions of detention in pre-trial detention facilities into line with Article 3 of the Convention in execution of the present judgment. While suggesting possible ways of dealing with some of the problems, the Court considers that to issue specific instructions on these points would be to exceed its judicial function. However, the position in relation to the general measures required to redress the systemic problem underlying the breach of Article 13 of the Convention found in the present case is different. The Court's findings under this provision require specific changes in Ukrainian legislation that will enable any person in the applicant's position to complain of a breach of Article 3 resulting from poor detention conditions and obtain adequate relief for any such breach at domestic level. The Court has already identified the shortcomings in Ukrainian law and set out the Convention principles that should guide the authorities in setting up the domestic remedies required by Article 13 in this context (see paragraphs 112-125 above). The respondent State is certainly free, under the supervision of the Committee of Ministers, to choose the means to discharge its duty under Article 46 § 1 of the Convention (see *Ananyev and Others*, § 213, and *Neshkov and Others*, § 280, both cited above). It may put in place new remedies, such as those which were envisaged in the draft law (see paragraph 72 above) subsequently withdrawn from the Parliament, or amend existing ones with a view to rendering them compliant with the requirements of Article 13 of the Convention (see *Ananyev and Others*, § 232; *Torreggiani and Others*, § 98;

and *Neshkov and Others*, § 280, all cited above). To assist the respondent State in finding appropriate solutions, the Court will set out below possible preventive and compensatory remedies.

(i) Preventive measures

154. A preventive remedy must fully conform to the requirements set out in paragraph 114 above and, most importantly, be capable of providing swift redress. The best way of putting it into place would be to set up a special authority to supervise detention facilities. The examination of detainees' complaints by a special authority normally produces a speedier result than dealing with them in ordinary judicial proceedings. For it to be an effective remedy, such an authority should be entitled to monitor breaches of detainees' rights, be independent from the penal authorities, have the power and duty to investigate complaints with the participation of the complainant, and be capable of rendering binding and enforceable decisions indicating appropriate redress (see *Ananyev and Others*, §§ 215-16; and *Neshkov and Others*, §§ 281-82, both cited above).

155. The respondent State may also set up such a procedure before the existing authorities, for instance public prosecutors. As noted above, at present a complaint to a prosecutor is not an effective remedy in Ukraine for a number of reasons (see paragraphs 119-121 above). Therefore, if the respondent State eventually chooses to comply with this judgment by amending the procedure for complaining to a prosecutor, the procedure should comply with the principles set out in paragraphs 114 and 154 above.

156. The Court would emphasise that it is for the Ukrainian authorities to decide what kind of authority to envisage (for examples of preventive remedies that have been implemented in similar cases, see *Stella and Others v. Italy* (dec.), no. 49169/09, §§ 46-55, 16 September 2014; *Domján v. Hungary* (dec.), no. 5433/17, §§ 21-23, 14 November 2017; and *Ulemek*, cited above, §§ 73, 93 and 103). It also notes that the draft law referred to by the Government (see paragraph 72 above) provided for the institution of a post-sentencing judge, who would be responsible for dealing with applications for preventive and compensatory remedies and adopting binding decisions in this respect. Although it appears that the above institution, its powers and functions as provided for in the draft law *prima facie* conformed to the requirements of a "preventive remedy", the Court notes, with regret, that on 29 August 2019 the draft law was withdrawn from the Parliament (see paragraph 73 above) and that the Government did not inform the Court of any alternatives being currently under consideration.

(ii) Compensatory measures

157. If a breach of Article 3 of the Convention has already taken place, the State must acknowledge it and provide compensation. A preventive remedy alone would not be sufficient because a remedy that prevents or

stops breaches of Article 3 cannot make good inhuman or degrading treatment that has already taken place. Therefore, there must also be a remedy that can redress past breaches. Such a remedy is particularly important in view of the principle of subsidiarity, so that aggrieved persons are not forced to submit to the Court complaints that require the finding of basic facts and the fixing of pecuniary compensation, both of which should be the domain of the domestic courts (see *Ananyev and Others*, § 221, with further references, and *Neshkov and Others*, § 285, both cited above). Thus, preventive and compensatory remedies might be complementary to be considered effective (see also paragraph 113 above). Account should further be taken of the interrelationship between them as referred to in the second sub-paragraph of paragraph 113 above.

158. One form of compensation may consist in reducing the sentence of the person concerned in proportion to each day that he or she has spent in inadequate conditions of detention. Such a remedy can only concern persons who are still incarcerated (see *Neshkov and Others*, cited above, § 287). However, a reduction of their sentence can only constitute adequate and sufficient redress for them if it entails an acknowledgement of the breach of Article 3 of the Convention and provides measurable reparation of that breach (see *Stella and Others*, cited above, §§ 58-60, and *Porchet v. Switzerland* (dec.), no. 36391/16, § 20, 8 October 2019).

159. Another form of compensation is the provision of monetary compensation, the only option possible for persons who are no longer in detention. Any such remedy must fully comply with the requirements set out in paragraphs 115 and 117 above. Furthermore, the amount of compensation for non-pecuniary damage should not be unreasonable in comparison with the Court's just satisfaction awards made in similar cases. The relevant domestic authority will have to give exceptionally compelling reasons to justify a decision to award lower or no compensation in respect of such damage (see *Ananyev and Others*, cited above, § 230). As to the elements relevant for assessing the extent of the damage, the time spent by a detainee in conditions which are found to be in breach of Article 3 of the Convention is the most important factor (ibid., § 172). Lastly, a compensatory remedy must operate retrospectively, in the sense of providing redress in respect of breaches of Article 3 that pre-date its introduction, both in cases where the impugned situation has already come to an end with the detainee's release or in another way, and in cases where the detainee continues to be held in the conditions in issue (ibid., § 289).

(iii) Time-limit for making the preventive and compensatory remedies available

160. The Court notes that in its 2018 interim resolution (see paragraph 41 above) the Committee of Ministers underlined the urgent need for the Ukrainian authorities to continue working on the adoption of a comprehensive long-term strategy capable of leading to the resolution of the

structural problems, with "clear and binding timelines" for the adoption of the relevant measures, without specifying those timelines. In turn, the Court considers that, in view of the persisting and long-lasting nature of the structural problem identified in the present case and of the apparent absence of any concrete solution of that problem being currently considered at the domestic level, a specific time-limit should be set and that the required preventive and compensatory remedies must be made available not later than eighteen months after this judgment becomes final (see *Torreggiani and Others*, § 99; *Neshkov and Others*, § 290; and, *mutatis mutandis*, *Tomov and Others*, § 198, all cited above).

(c) Procedure to be followed in other similar cases

161. Under Rule 61 § 6 of its Rules, the Court can adjourn the examination of all similar applications pending implementation by the respondent State of the measures set out in this pilot judgment. However, adjournment is optional rather than mandatory, as shown by the words "as appropriate" in this Rule and the variety of approaches in previous pilot cases (see *Ananyev and Others*, cited above, § 235, with further references). In view of the principles established in *Ananyev and Others* (§ 236), the Court does not find it appropriate at this juncture to adjourn the examination of similar cases, whether pending or impending (see also *Neshkov and Others*, § 291, and *Varga and Others*, § 116, both cited above).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

162. 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

163. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

164. The Government considered the claim to be excessive and invited the Court to reject it.

165. As regards the breach of Article 3 of the Convention found in the present case, the Court considers that the applicant must have sustained non-pecuniary damage as a result of the violation of his rights under the above provision. Taking into account all the circumstances of the case, in particular the length of the period during which the applicant remained in conditions in breach of Article 3, principles governing the award of non-pecuniary damage in this area (see paragraph 159 above), and ruling on

an equitable basis, the Court awards the applicant EUR 9,500 under this head. As regards the violation of Article 13 of the Convention, it considers that the finding of a violation constitutes sufficient just satisfaction (see *Ananyev and Others*, § 173; *Neshkov and Others*, §§ 299-300; and *Varga and Others*, § 120, all cited above).

B. Costs and expenses

166. The applicant did not make any claim in this respect.
167. Accordingly, the Court makes no award under this head.

C. Default interest

168. The Court considers it appropriate that the default interest rate 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 complaint under Article 3 of the Convention about the conditions of his detention in the Dnipro SIZO and the complaint under Article 13 of the Convention about the lack of effective remedies in respect of the above complaint admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's conditions of detention in the Dnipro SIZO (except for the periods when the personal space available to him was above 4 square metres);

3. *Holds* that there has been a violation of Article 13 of the Convention on account of the absence of effective remedies for the applicant's complaint under Article 3;

4. *Holds* that the finding of a violation constitutes sufficient just satisfaction in regard to Article 13 read in conjunction with Article 3 of the Convention;

5. *Holds*
   (a) that, in regard to Article 3, 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 9,500 (nine thousand five hundred euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
(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;

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

7. *Holds* that the respondent State must, within eighteen months from the date on which this judgment becomes final, in accordance with Article 44 § 2 of the Convention, make available a combination of effective domestic remedies in respect of conditions of detention that have both preventive and compensatory effects, in order to comply fully with the requirements set out in this judgment.

Done in English, and notified in writing on 30 January 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Grozev is annexed to this judgment.

A.N.
C.W.

CONCURRING OPINION OF JUDGE GROZEV

I agree with the present judgment, which raises important structural issues with respect to overcrowding and conditions in the SIZO detention facilities and the available effective domestic remedies in Ukraine, and I voted on all points with the majority. The reason for my separate opinion is the doubts which I have about a statement of principle included in the judgment, regarding the relationship between preventive and compensatory remedies in cases of alleged inhuman conditions of detention. In paragraph 113 of the judgment the majority stated that for the purposes of the exhaustion of domestic remedies under Article 35 of the Convention an applicant is required to exhaust an existing and effective preventive remedy, before being able to seek a monetary award through a compensatory remedy. This statement of principle is not relevant for the specific findings of the present judgment, as no effective preventive remedy exists in Ukraine. It is, however, a new development in the case law of the Court, which follows a somewhat similar *obiter dictum* in a recent Croatian case (see *Ulemek v. Croatia*, no. 21613/16, § 86-87, 31 October 2019). As this statement of principle is couched in rather general terms, it does raise some concerns and I prefer to express my doubts as to its validity and future application.

The majority held in paragraph 113, to quote it correctly, that "... where an effective preventive remedy has been established, the applicants in detention, as a rule, cannot be dispensed from the obligation to use it. In other words, before bringing their complaints to the Court, they are first required to use properly the available and effective preventive remedy and then, if appropriate, the relevant compensatory remedy. If the use of an otherwise available and effective preventive remedy is futile in view of the brevity of an applicant's stay in inadequate conditions of detention, the only viable option would be a compensatory remedy allowing for a possibility to obtain redress for the past placement in such conditions. This period may depend on many factors related to the manner of operation of the domestic system of remedies and the nature of the alleged inadequacy of an applicant's conditions of detention. In any event, the compensatory remedy in this context should normally be used within six months of the end of the allegedly inadequate conditions of detention."

I do share the premise, which also appears in the *Ulemek* judgment, that for a person held in inhuman prison conditions "a remedy capable of rapidly bringing the ongoing violation to an end is of the greatest value" (see paragraph 113). Putting an end to a violation of Article 3, an absolute right, should clearly have priority. However, it is quite a leap from saying that the preventive remedy is extremely important, to making it a mandatory first

remedy on which the possibility of seeking compensation depends. Trying to impose on both Governments and applicants a preference for the preventive remedy through our admissibility requirements is not without risks. My concern is that in trying to impose such a preference for the preventive remedy, the Court will confuse its case-law on admissibility and risk creating a procedural labyrinth for both the Governments, in designing the domestic remedies, and for the applicants in exhausting them.

My first concern is that making access to a compensatory remedy dependant on the exhaustion of a preventive remedy, set in the abstract, without the specific elements of an individual case, runs a not insignificant risk of creating confusion. Both time and other factors would be critical for a decision whether the preventive remedy was effective and, in turn, as of when the compensatory remedy would or should have been available. How long it took the applicant to complain, how long it took the authorities to react, whether the inhuman prison conditions are a systemic problem or not and what the available alternatives were for terminating a particular applicant's detention in inhuman conditions will all be relevant questions. The Court could decide whether, in a given case, waiting one, two or three months, before moving a person detained in inhuman conditions to another facility is acceptable or not. Then it could assess whether the specific domestic system refusing or allowing a claim for compensation, and the point at which the claim is determined, are compatible or incompatible with the Convention. Making such a decision in the abstract, however, is far more problematic.

My second concern is of a more basic character. This new approach on the admissibility of a compensation claim implicitly accepts that the Court is prepared to deny a person detained in inhuman and degrading prison conditions the right to compensation for a certain period of time spent in such conditions. The Court might find that the need to prioritise a preventive remedy justifies limiting the right to compensation of a prisoner held in inhuman conditions. It is rather a difficult balancing exercise, however, particularly where the exercise is conducted in a general, abstract manner.

Finally, this new approach to the admissibility of a compensation claim for inhuman prison conditions also creates tensions with a well-established principle in the Court's case law, to the effect that if more than one potentially effective remedy is available, the applicant is only required to have used one of them (see *Aquilina v. Malta* [GC], [GC], no. 25642/94, ECHR 1999, § 39) and that it is for the applicant to select the remedy that is most appropriate in his or her case (see *O'Keeffe v. Ireland* [GC], no. 35810/09, ECHR 2014 §§ 110-111, and *Nicolae Virgiliu Tănase*

v. Romania [GC], no. 41720/13, 25 June 2019 § 176). Giving priority to the preventive remedy, and taking the logic of the Court's case law on exhaustion of domestic remedies into account, would risk creating an unintended result - undermining the domestic compensation remedies. Both in individual cases and particularly in cases of systemic problems with prison conditions, the preventive remedy may not provide relief, even after a certain period of time. The Court having relegated the compensatory remedy to a subsidiary role, the result will be that the compensatory remedy will either be ineffective, as it cannot put a stop to the inhuman conditions, or duplicatory, or both. Thus, the Court will become the "first instance" for claims of inhuman prison conditions. Rather than strengthening the domestic remedies, it might find itself in a position of undermining a working compensation system at the domestic level, in violation of the principle of subsidiarity.

APPENDIX

The list below contains references to final judgments against Ukraine in which a violation of Article 3 of the Convention was found on account of inadequate conditions of the applicants' detention in SIZOs, along with the SIZO's name and the period during which the applicant was held in it.

1. *Nevmerzhitsky v. Ukraine*, no. 54825/00, ECHR 2005-II (extracts); SIZO no. 1 of the Kyiv Region (2000);
2. *Dvoynykh v. Ukraine*, no. 72277/01, 12 October 2006; Simferopol SIZO (2000);
3. *Koval v. Ukraine*, no. 65550/01, 19 October 2006; Kyiv SIZO no. 13 (2000);
4. *Malenko v. Ukraine*, no. 18660/03, 19 February 2009; Mariupol SIZO (1999-2003);
5. *Koktysh v. Ukraine*, no. 43707/07, 10 December 2009; Simferopol SIZO (from 2007);
6. *Visloguzov v. Ukraine*, no. 32362/02, 20 May 2010; Simferopol SIZO (2003-2004);
7. *Znaykin v. Ukraine*, no. 37538/05, 7 October 2010; Simferopol SIZO (2005-2006);
8. *Kharchenko v. Ukraine*, no. 40107/02, 10 February 2011; Kyiv SIZO no. 13 (2001-2003);
9. *Izzetov v. Ukraine*, no. 23136/04, 15 September 2011; Simferopol SIZO (1999-2006);
10. *Ustyantsev v. Ukraine*, no. 3299/05, 12 January 2012; Odessa SIZO (2001-2006);
11. *Iglin v. Ukraine*, no. 39908/05, 12 January 2012; Dnipro SIZO (2004-2006);
12. *Belyaev and Digtyar v. Ukraine*, nos. 16984/04 and 9947/05, 16 February 2012; Sumy SIZO (2001-2004 and 2002-2004);
13. *Gavula v. Ukraine*, no. 52652/07, 16 May 2013; Kyiv SIZO no. 13 (2003-2010);
14. *Samoylovich v. Ukraine*, no. 28969/04, 16 May 2013; Simferopol SIZO (1999-2006);
15. *Kobernik v. Ukraine*, no. 45947/06, 25 July 2013; Lugansk SIZO (2007);
16. *Vitkovskiy v. Ukraine*, no. 24938/06, 26 September 2013; Dnipro SIZO (2007-2009);
17. *Gorbatenko v. Ukraine*, no. 25209/06, 28 November 2013; Kharkiv SIZO (2004-2006 and 2011-) and Dnipro SIZO (2006, 2007 and 2011);

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19. *Zinchenko v. Ukraine*, no. 63763/11, 13 March 2014; Odessa SIZO (2003-2005);

20. *Buglov v. Ukraine*, no. 28825/02, 10 July 2014; Donetsk SIZO (from 2000);

21. *Kushnir v. Ukraine*, no. 42184/09, 11 December 2014; Kyiv SIZO (2009-2012);

22. *Lutsenko v. Ukraine (no. 2)*, no. 29334/11, 11 June 2015; Kyiv SIZO (2010-2012);

23. *Rodzevillo v. Ukraine*, no. 38771/05, 14 January 2016; Dnipro SIZO (2003-2007);

24. *Zakshevskiy v. Ukraine*, no. 7193/04, 17 March 2016; Kharkiv SIZO (2004);

25. *Korneykova and Korneykov v. Ukraine*, no. 56660/12, 24 March 2016; Kharkiv SIZO (2012);

26. *Kleutin v. Ukraine*, no. 5911/05, 23 June 2016; Odessa SIZO (2004-2007);

27. *Truten v. Ukraine*, no. 18041/08, 23 June 2016; Poltava SIZO (2006-2010);

28. *Savchenko v. Ukraine* [CTE], no. 1574/06, 22 September 2016; Kherson, Odessa and Kyiv SIZOs (2005-2012);

29. *Yarovenko v. Ukraine* [CTE], no. 24710/06, 6 October 2016; Simferopol (2004-2006), Dnipro (2006) and Kyiv SIZOs (2006);

30. *Sosnovskiy v. Ukraine* [CTE], no. 9450/06, 8 December 2016; Simferopol SIZO (2006);

31. *Komarov v. Ukraine* [CTE], no. 4772/06, 19 January 2017; Zaporizhzhya SIZO (2003-2006 and 2008-2009);

32. *Kulik v. Ukraine* [CTE], no. 34515/04, 2 February 2017; Kyiv SIZO (2003-2005);

33. *Kiyashko v. Ukraine* [CTE], no. 37240/07, 23 February 2017; Poltava SIZO (2004-2007);

34. *Malchenko and Others v. Ukraine* [CTE], no. 3001/06 and 6 other applications, 6 April 2017; Kharkiv SIZO no. 27 (2002-2007, 2010-2013), Poltava SIZO (2006-2010, 2011, Ivano-Frankivsk SIZO no. 12 (2011-2013), Kyiv (2010-2013, 2013-2014) and Odessa SIZOs (2011-);

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36. *D.S. v. Ukraine* [CTE], no. 24107/13, 9 November 2017; Kharkiv SIZO (2012-2015);

37. *Urzhanov v. Ukraine* [CTE], no. 24392/06, 14 December 2017; Odessa SIZO (2002-2008);

38. *Starenkiy and Rudoy v. Ukraine* [CTE], nos. 44807/10 and 15752/14, 11 January 2018; Kyiv SIZO (2010-2014);

39. *Yeremenko and Kochetov v. Ukraine* [CTE], nos. 68183/10 and 62963/13, 14 June 2018; Lviv (2009-2010) and Simferopol SIZOs (2010-2014);

40. *Maystrenko v. Ukraine* [CTE], no. 45811/16, 28 June 2018; Dnipro SIZO (2012-2016);

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42. *Grabovskiy v. Ukraine* [CTE], no. 4442/07, 29 November 2018; Kharkiv SIZO (2005-2006);

43. *Shcherbak v. Ukraine* [CTE], no. 81646/17, 20 December 2018; Zaporizhzhya SIZO no. 10 (2015-2018);

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46. *Korol and Others v. Ukraine* [CTE], no. 54503/08 and 7 other applications, 7 March 2019; Mariupol SIZO (2009-2011);

47. *Malyy v. Ukraine* [CTE], no. 14486/07, 11 April 2019; Dnipro SIZO (2005-2007);

48. *Radyukin v. Ukraine* [CTE], no. 27805/18, 11 July 2019; Dnipro SIZO (2015-2018);

49. *Petrov and Korostylyov v. Ukraine* [CTE], nos. 19591/18 and 19596/18, 11 July 2019; Dnipro SIZO (2014-2018 and 2013-);

50. *Lysenko v. Ukraine* [CTE], no. 38092/18, 19 September 2019; Dnipro SIZO (2016-2018);

51. *Tsukur and Others v. Ukraine* [CTE], nos. 53132/18, 53181/18 and 59802/18, 17 October 2019; Kyiv SIZO (2016-2018 and 2015-2018) and Dnipro SIZO (2014-2018);

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53. *Onyshchenko and Others v. Ukraine* [CTE], no. 54434/18 and 4 others, 14 November 2019; Dnipro SIZO (various periods between 2012 and 2019);

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55. *Tsatsenko v. Ukraine* [CTE], no. 17853/19, 5 December 2019; Dnipro SIZO (2017-2019).