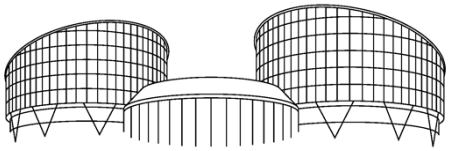

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF SERGEY SMIRNOV v. UKRAINE

(Application no. 36853/09)

JUDGMENT

STRASBOURG

18 December 2018

This judgment is final but it may be subject to editorial revision.

In the case of Sergey Smirnov v. Ukraine,

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

Paulo Pinto de Albuquerque, *President,*
Egidijus Kūris,
Iulia Antoanella Motoc, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 27 November 2018,

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

PROCEDURE

1. The case originated in an application (no. 36853/09) 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 Sergey Aleksandrovich Smirnov ("the applicant"), on 14 June 2009.

2. The applicant, who had been granted legal aid, was represented by Ms O. Ashchenko and G. Tokarev, lawyers practicing in Kharkiv, and Mr Y. Boychenko, a lawyer practising in Strasbourg. The Ukrainian Government ("the Government") were represented by their Agent, most recently Mr I. Lishchyna.

3. On 9 November 2016 the applicant's complaints concerning the conditions of his detention at the Slovyanoserbsk Correctional Colony, the allegedly inadequate medical assistance that he had received while in detention, the alleged interception and monitoring of his correspondence in detention and the alleged lack of an effective domestic remedy were communicated to the Government. The remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

4. The Government objected to the examination of the application by a Committee, but provided no reasons. After having considered the Government's objection, the Court rejects it (see, for a similar approach, *Nedilenko and Others v. Ukraine* [Committee], no. 43104/04, § 5, 18 January 2018, and *Lada v. Ukraine* [Committee], no. 32392/07, § 4, 6 February 2018).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965 and lives in Kharkiv.

A. The applicant's detention – general information

6. On 3 April 2008 the applicant shot a person, causing a serious injury. He was arrested at the scene of the crime. He remained in detention throughout the criminal proceedings against him, primarily at the Kharkiv pre-trial detention centre (SIZO).

7. On 14 April 2009 the Kharkiv Court of Appeal sentenced him to ten years and six months' imprisonment and the confiscation of all his property. On 29 December 2009 the Supreme Court upheld that judgment.

8. The applicant served his sentence in a number of correctional colonies, including, from 11 May 2010 until 7 April 2011, the Slovyanoserbsk Correctional Colony in the Luhansk Region (hereinafter, "the colony").

9. On 27 May 2015 the applicant was transferred to a semi-open correctional institution.

10. On 25 December 2015 the applicant was released.

B. Conditions in the Slovyanoserbsk Correctional Colony

11. On 13 May 2010, the applicant was placed in a single-occupancy cell at his request, as he feared an attack on his life and health by other inmates. Decisions on his placement in isolation from the general prison population were taken in July and August 2010.

12. According to a report by a prison guard dated 10 September 2010, the applicant refused to move from the single-occupancy cell to a dormitory, claiming that he feared violence from other inmates. Similar reports were filed monthly from October 2010 until February 2011.

13. In his application form of 8 November 2010 the applicant described the conditions of his detention in the following fashion: since 13 May 2010 he had been held in an isolation cell, which measured 4.5 sq. m as a whole (including the toilet and the washbasin), with the living space proper measuring 1 sq. m.

14. Following the communication of the application to the respondent Government, the applicant submitted that the average living space per inmate in the dormitory cells of the colony was 2.8 sq. m. He referred in this respect to the report (dated 23 November 2011) of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or

Punishment (hereinafter, "the CPT") on its visit to Ukraine from 9 until 21 September 2009 (CPT/Inf (2011) 29), which mentioned overcrowding in respect of most of the colony's dormitories.

C. Correspondence

15. The applicant alleged that in the course of his detention all of his correspondence had been systematically monitored by the prison authorities. He submitted in particular that on 22 July and 9 September 2009 the prison administration had handed him two letters from the Court and on 18 December 2010 a letter from the parliamentary secretariat, all of which had been opened by the administration.

16. The applicant submitted copies of registers compiled by prison authorities of his outgoing mail. They show that in the period from 22 July 2009 until December 2010 the applicant sent at least forty-seven letters to various public entities – correspondence which, under domestic law (see paragraph 40 below), was subject to monitoring by the prison authorities – most notably various domestic courts, the High Council of Justice, the Department for the Execution of Sentences (the executive agency in charge of prisons) and Parliament. However, the same register records that the applicant also addressed a number of letters to the Court and a letter to his lawyer, correspondence exempt from such monitoring. The letters to non-exempt addresses are accompanied by brief summaries of their content (for example, in respect of the letter of 18 February 2010 addressed to a domestic court it is noted that it concerned "study of the file, presence at a hearing") or are marked in the register as "application", "petition" or "complaint" ("*звернення*", "*клопотання*" or "*complaint*", respectively), while letters to the Court and the lawyer are marked as "sealed letter".

D. The applicant's state of health and medical assistance in detention

1. Conditions of the digestive system

17. According to the applicant, in November 2009, while he was in the Kyiv SIZO, somebody poisoned him; as a result, he developed gastroduodentitis (inflammation of the stomach and duodenum), which became chronic.

18. The applicant's prison records contain no information in respect of the period from his arrest until 26 January 2010 (see paragraph 46 below).

19. On 26 January 2010 the Kharkiv SIZO medical officer noted that the applicant was suffering from chronic gastroduodentitis that was in unstable remission (*хронічний гастродуоденіт у стадії загострення*). He

prescribed a number of medications. The applicant alleges that he was not actually given those medications.

20. On 18 March 2010 the applicant underwent a radiological examination of his intestinal tract, as a result of which the SIZO general practitioner confirmed the diagnosis of chronic gastroduodentitis.

21. From 6 until 19 April 2010 the applicant was hospitalised in the medical unit of the Kharkiv SIZO and treated for his gastroduodentitis.

22. On 15 February 2011 he was examined by a general practitioner at the colony, who confirmed the diagnosis of chronic gastroduodentitis, which he noted was in a state of exacerbation (*хронічний гастродуоденіт у стадії загострення*). The general practitioner recommended the applicant's transfer to the hospital at Luhansk SIZO for examination and treatment. No transfer followed.

23. On 4 October 2011 the applicant was examined at a civilian hospital in Kharkiv. He underwent an ultrasound examination and a biochemical blood test, which included aspartate aminotransferase (AST) and alanine aminotransferase (ALT) markers for liver function. He was diagnosed with acute pancreatitis, congestive duodenopathy, gastric stasis (reduced stomach functioning), inflammation of the oesophagus and chronic hepatitis (with diffuse changes in the liver). A number of medications and a special diet were prescribed.

24. The next day a general practitioner at the correctional colony at which the applicant was being held at the time recommended hospitalisation in the prison hospital at Temnivka, a specialist prison hospital for the Kharkiv region. On 11 October 2011 the applicant was taken there. The applicant refused hospitalisation because he mistrusted the prison doctors and preferred to be treated in a civilian institution.

25. On 17 October 2011 the applicant was examined by a general practitioner, who diagnosed chronic pancreatitis in the acute stage and prescribed treatment.

26. On 1 August 2012 a general practitioner diagnosed biliary dyskinesia (a disorder in which bile has difficulty in moving normally through the biliary tract) and prescribed medication. The applicant alleges that he was not given this medication.

27. From 25 until 31 January 2013 the applicant was treated for hepatitis – specifically, he received antispasmodic and hepatoprotective medicine – as an inpatient in the prison's medical unit. Upon his discharge it was recommended that he abstain from spicy and fried foods. The applicant alleges that the prison authorities did not comply with this recommendation.

28. Beginning on 15 February 2014 the applicant received medical care in civilian institutions.

2. Back conditions

29. The applicant had been suffering from osteochondrosis of the lumbar spine since 1998. He was hospitalised and treated for that condition from 28 February until 5 March 2008, prior to his arrest.

30. From 24 April until 4 May 2012 the applicant was treated in the medical unit of the colony in which he was detained at the time for his osteochondrosis and disk protrusion.

31. On 17 May 2012 the applicant underwent an MRI (magnetic resonance imaging) scan of the spine in a civilian hospital.

32. On 31 May 2012 a surgeon examined the applicant and recommended that he undergo examination and treatment in a specialist neurology ward. The applicant alleges that the recommendation was not implemented.

33. From 13 until 23 July 2012 the applicant was hospitalised in the colony's medical unit and treated for osteochondrosis and multiple Schmorl's nodes (protrusions of the intervertebral disc).

34. On 20 March 2013 the applicant was examined by a traumatologist. The previous diagnoses were confirmed. The traumatologist prescribed painkillers and anti-inflammatory medication and the use of a back-support device. The applicant alleges that the recommendations were not implemented.

35. From 13 August until 4 September 2015 he was hospitalised in a civilian institution specialising in spinal conditions. On 3 September 2015 the applicant underwent spinal surgery. The doctors explained that surgery was needed in view of the ineffectiveness of the conservative care that he had received and the increase in pain that he was suffering.

36. On 11 November 2015, owing to his back condition, the applicant was recognised as a person suffering from Category 2 disability. The second category is the intermediary one, the first constituting the severest level of disability and the third the least severe.

3. Other medical information

37. In the course of his detention the applicant also underwent several chest X-rays (which revealed no abnormality), and was diagnosed with bronchitis and a fungal infection of the nails; he was prescribed treatment for that infection. He was also examined by a dentist and an ophtalmologist.

38. Beginning in October 2011 the applicant was also diagnosed with a number of heart-related conditions, notably coronary heart disease. This diagnosis was subsequently confirmed on a number of occasions. No specific treatment was indicated.

II. RELEVANT DOMESTIC LAW AND PRACTICE

39. Under the 1993 Pre-Trial Detention Act (hereinafter, "the Act") and the 2003 Code on the Enforcement of Sentences (hereinafter, "the Code"), the status of remand prisoners changed to that of prisoners who are serving their sentences after their convictions are upheld on appeal. The former category of prisoners is governed by the Act; the latter category is governed by the Code. However, the rules governing prisoners' correspondence remain largely the same in both cases.

40. Section 13 of the Act and Article 113 of the Code stipulate that prisoners are allowed to correspond with relatives, other persons and organisations. All such correspondence, unless it is specifically exempted, is subject to automatic monitoring and censorship by the administration of the prison. Under the rules in effect when the applicant was first detained, correspondence addressed by prisoners to the Parliamentary Commissioner for Human Rights, the Court and other international institutions of which Ukraine was a member and to prosecutors was exempt from such monitoring. In addition, rules issued by the Department for the Enforcement of Sentences on 25 January 2006 (order no. 13) also exempted from such monitoring correspondence sent by those entities to prisoners.

The law of 21 January 2010 (in force from 9 February 2010) added to the list of exemptions prisoners' correspondence addressed to and received from their lawyers.

THE LAW

I. SCOPE OF THE CASE

41. In his observations in response to those of the Government the applicant complained that at the Slovyanoserbsk Colony he had been placed in solitary confinement without justification. However, in his original submissions the applicant did not complain about this and stressed that he had been placed in isolation from other prisoners at his own request.

42. The Court considers that this complaint cannot be considered as constituting an elaboration of the applicant's original complaints, on which the Government have already commented. The Court considers, therefore, that it is not appropriate at this time to take up this matter within the context of the present case (see, for example and *mutatis mutandis*, *Khamroev and Others v. Ukraine*, no. 41651/10, § 62, 15 September 2016).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

43. The applicant complained that the medical assistance he had received in detention in various penitentiary establishments and the physical conditions of his detention in the colony had been so inadequate as to breach Article 3 of the Convention, which reads as follows:

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

A. Allegedly inadequate medical care in detention

1. Admissibility

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

2. Merits

(a) The parties' submissions

i. The applicant

45. The applicant pointed to the alleged failure of the prison authorities to implement medical recommendations, as referred to in paragraphs 19, 22, 26, 27, 32 and 34 above. In addition, the authorities had failed to determine the type of hepatitis (B or C) from which he had been suffering or to provide the applicant with the prescribed diet, even though he had needed it in view of his poor physical condition.

ii. The Government

46. The Government submitted that there was no information in the applicant's medical records for the period from his arrest in 2008 until 26 January 2010 – that is to say until his arrival, for the second time, at the Kharkiv SIZO. The applicant had received adequate medical care and treatment, which had ensured that his health had remained stable; indeed, it had partially improved. The authorities could not be held responsible for the delay caused by the applicant's refusal to be hospitalised (see paragraph 24 above).

(b) The Court's assessment

47. Article 3 imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty by, *inter alia*, providing them with the requisite medical care (see *Blokhin v. Russia* [GC], no. 47152/06,

§ 136, 23 March 2016). In this connection, the "adequacy" of medical assistance remains the most difficult element to determine. The Court reiterates that the mere fact that a detainee is seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance received was adequate. The authorities must also ensure that a comprehensive record is kept concerning the detainee's state of health and his or her treatment while in detention, that diagnosis and care are prompt and accurate, and that where necessitated by the nature of a medical condition supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation, rather than addressing them on a symptomatic basis. The authorities must also show that the necessary conditions were created in order for the prescribed treatment to be actually followed through. Furthermore, medical treatment provided within prison facilities must be appropriate, that is, at a level comparable to that which the State authorities have committed themselves to provide to the population as a whole. Nevertheless, this does not mean that every detainee must be guaranteed the same level of medical treatment that is available in the best health establishments outside prison facilities (ibid., § 137).

48. It is for the Government to provide credible and convincing evidence that an applicant received comprehensive and adequate medical care in detention (see, for example, *Savinov v. Ukraine*, no. 5212/13, § 50, 22 October 2015).

49. The applicant pointed to a number of failings in the implementation of recommendations made in respect of him. The Government failed to rebut those allegations. The situation is further aggravated by the loss of the applicant's health records for the period prior to January 2010 (see paragraph 46 above).

50. The Court is particularly struck by the fact that, even though the applicant was diagnosed with hepatitis (see paragraph 23 above), the authorities apparently took no steps even to determine the type of hepatitis he was suffering from.

51. The Government have not argued that the applicant's state of health, because of its nature, did not require any particular treatment (see, *mutatis mutandis*, *Pivovarnik v. Ukraine*, no. 29070/15, § 42, 6 October 2016). It is also relevant that there is no indication that the applicant had suffered from diseases of the digestive organs prior to his detention. The applicant's allegation that he had acquired those diseases in detention has not been rebutted.

52. What is more, in the course of the applicant's detention the condition of his spine deteriorated considerably, eventually leading to a disability (see paragraph 36 above; see also, *mutatis mutandis*, *Pokhlebin v. Ukraine*, no. 35581/06, § 66, 20 May 2010). The Government have not shown that

his deterioration occurred as a result of the natural development of disease, aging or other factors outside their control rather than their failure duly to make provision for the appropriate care of the applicant.

53. It follows that the Government failed to discharge their burden of proof; doing so would have allowed the Court to consider that the applicant received adequate medical care for his hepatitis and other diseases of the digestive organs and for his back condition.

54. These considerations are sufficient for the Court to find that there has been a violation of Article 3 of the Convention on account of the inadequacy of the medical care that he received in detention.

55. However, the Court accepts the Government's argument that they cannot be held responsible for the delay in the affording of care caused by the applicant's refusal to be hospitalised (see paragraphs 24 and 46 above).

56. In view of these findings, the Court considers that there is no need to examine the remainder of the applicant's submissions concerning the alleged inadequacy of the medical assistance that he received in detention (see, *mutatis mutandis*, *Konovalchuk v. Ukraine*, no. 31928/15, § 63, 13 October 2016).

B. Physical conditions of detention in the Slovyanoserbsk Correctional Colony

57. In addition to the inadequacy of the medical care that he had received, the applicant also complained that the physical conditions of his detention in the colony had been inadequate. In particular, in his initial submissions he complained of the small size of his single-occupancy cell, which according to him measured 4.5 sq. m (see paragraph 13 above). In this respect, the Court cannot but reiterate that in cases where a detainee disposed of more than 4 sq. m of personal space, in principle no issue with regard to the question of personal space arises (see *Muršić v. Croatia* [GC], no. 7334/13, § 140, 20 October 2016) Following communication of the application, the applicant made submissions (summarised in paragraph 14 above) concerning alleged overcrowding in the colony's dormitories..

58. The Government submitted that they had a limited range of information about the applicant's detention as the colony in question was located in territory that the Government no longer controlled following the events of 2014 and 2015 described in *Khlebik v. Ukraine* (no. 2945/16, §§ 9-12, 25 July 2017).

59. The Court notes that in his initial submissions the applicant described the size of his single-occupancy cell in the colony. He did not describe the regime governing his detention in any detail: he did not explain how much time he had had to spend inside and outside the cell, did not refer to the availability or otherwise of any out-of-cell activities and, indeed, did not say exactly how long he had been kept in the single-occupancy cell.

60. Moreover, even as far as the size of the cell was concerned, he abandoned his initial account after communication of the application: while prior to the communication the applicant stated that he had been placed in isolation at his own request and appeared to complain of the size of his single-occupancy cell (see paragraph 13 above), after communication he discussed conditions in the colony's multi-occupancy dormitories rather than single-occupancy cells. According to the post-communication allegations, the average personal space per inmate at the colony was 2.8 sq. m, which does not match any of the numbers the applicant himself cited in his original submissions (compare paragraphs 13 and 14 above).

61. In this context the Court reiterates that information regarding the physical conditions of detention falls within the knowledge of the domestic authorities. Accordingly, applicants might experience certain difficulties in procuring evidence to substantiate a complaint in that connection. Still, in such cases applicants may well be expected to submit at least a detailed account of the facts complained of and to provide – to the greatest possible extent – some evidence in support of their complaints (see, for example, *Visloguzov v. Ukraine*, no. 32362/02, § 45, 20 May 2010).

62. In view of the above considerations the Court concludes that the applicant has failed to provide a coherent and sufficiently detailed account of the physical conditions of his detention in the colony.

63. The Court concludes that this part of the application is manifestly ill-founded and should be rejected, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

64. The applicant complained of a violation of his right to respect for his correspondence on account of the prison authorities' monitoring of and interception of his correspondence. He relied on Article 8 of the Convention, which, in so far as relevant, reads as follows:

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

A. The parties' submissions

65. The applicant submitted that:

(i) all of his correspondence had been systematically monitored by the prison authorities;

(ii) in the course of his detention a number of his letters and letters addressed to him had been withheld and delayed by the prison authorities;

(iii) the prison authorities failed to forward, in a timely manner, to his home address a letter informing him of the communication of his application to the respondent Government and of the Government's observations.

66. The Government submitted that the applicant had failed to exhaust available domestic remedies in that he had not complained to the prosecutors or the courts of the alleged violations. They also submitted that all of the applicant's correspondence had been duly sent out and delivered to him.

B. The Court's assessment

1. Admissibility

(a) Withholding and delaying letters during the detention and after release

67. There is no evidence before the Court showing that the prison authorities withheld or delayed the applicant's correspondence during his detention.

68. As to the post-detention period, his allegations are equally manifestly ill-founded. The applicant last informed the Court of his address at the Dergachivsk Correctional Colony on 20 March 2014. He did not inform the Court of his new address after his release. Accordingly, the Court's subsequent correspondence in respect of the communication of his application was sent to the applicant's last known address at the Dergachivsk Colony. The applicant has not shown that any difficulty he might have had in receiving that correspondence was caused by any omission on the part of the authorities rather than by his own failure to provide information about the changes in his address.

69. It follows that these complaints are manifestly ill-founded and must be rejected, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

(b) Monitoring of the applicant's correspondence by prison authorities

(i) Exempt entities

70. To the extent that the applicant complained that his correspondence with the exempted entities – notably the Court – had been monitored, in contravention of the domestic law prohibiting such monitoring (see paragraph 40 above), there is no material before the Court that would corroborate the applicant's allegations. In any event, it appears that the applicant did not initiate any proceedings in that respect before the domestic courts, as was his right (see *Chaykovskiy v. Ukraine*, no. 2295/06, §§ 72 and 73, 15 October 2009).

71. The Court finds, therefore, that this part of the application should be rejected for failure to exhaust domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

(ii) Non-exempt entities

72. The Government raised an objection in respect of the applicant's failure to exhaust domestic remedies.

73. The Court found in *Glinov v. Ukraine* (no. 13693/05, §§ 45-47, 19 November 2009) that, to the extent that the monitoring was based on the domestic law, any complaint to the prosecutor or to the court in this connection would have had no prospect of success, given that neither of those authorities was empowered to overrule the legal provisions underpinning the monitoring.

74. The Court sees no reason to find otherwise in the present case and dismisses the Government's objection of non-exhaustion of domestic remedies.

75. Moreover, this part of the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

76. The Court notes that the Government did not specifically contest the applicant's submission that his correspondence with non-exempt entities, including the Court, had been routinely monitored by the prison administration, pursuant to the applicable domestic law (see, for a similar situation, *Vintman v. Ukraine*, no. 28403/05, § 126, 23 October 2014). The registers of correspondence submitted by the applicant, the authenticity of which the Government did not contest, demonstrate that the authorities did in fact engage in such monitoring (see paragraph 16 above).

77. That monitoring constituted an interference with the exercise of the applicant's right to respect for his correspondence under Article 8 § 1. Such interference will contravene Article 8 § 1 unless, among other conditions, it is "in accordance with the law" (see *Enea v. Italy* [GC], no. 74912/01, § 140, ECHR 2009).

78. The Court has already found in *Belyaev and Digtyar v. Ukraine* (nos. 16984/04 and 9947/05, §§ 53 and 54, 16 February 2012) and *Vintman v. Ukraine* (no. 28403/05, §§ 126, 129-33, 23 October 2014) that, since the Ukrainian legislation required, in a blanket fashion, the monitoring of all correspondence with non-exempt addresses in the absence of appropriate safeguards, monitoring conducted under those domestic legal provisions had not been "in accordance with the law" for the purposes of Article 8 of the Convention. The Court reached the same conclusion in respect of rules governing the monitoring of correspondence of remand

prisoners in the case of *Sergey Volosyuk v. Ukraine* (no. 1291/03, §§ 84-86, 12 March 2009).

79. As far as correspondence with non-exempt addressees is concerned, the Court sees no reason to reach a different conclusion in the present case.

80. It follows that the interference complained of was not "in accordance with the law". The Court therefore does not consider it necessary in the instant case to ascertain whether the other requirements of paragraph 2 of Article 8 of the Convention were complied with, and holds that there has been a violation of that provision.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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

82. The Government contested that argument.

83. The Court, having declared inadmissible the applicant's complaint under Article 3 in respect of the physical conditions of detention in the colony (see paragraph 63 above) concludes that there is no arguable claim for the purposes of Article 13 in respect of that complaint (see, for example, *Valeriy Fuklev v. Ukraine*, no. 6318/03, § 98, 16 January 2014); therefore, the complaint under Article 13 in that part must be rejected as being incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 35 §§ 3 (a) and 4.

84. As far as lack of adequate medical care in detention is concerned, the Court in its previous judgments has already found that there is no effective and accessible domestic remedy in respect of such complaints in Ukraine (see, amongst many other authorities, *Ukhan v. Ukraine*, no. 30628/02, §§ 91 and 92, 18 December 2008, and *Sergey Antonov v. Ukraine*, no. 40512/13, §§ 96 and 97, 22 October 2015). The Court finds no reason to reach a different conclusion in the present case.

85. There has, therefore, been a violation of Article 13 of the Convention on account of the lack of an effective domestic remedy in respect of the applicant's complaint regarding inadequate medical care in detention.

V. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

86. The applicant complained that the authorities had monitored and intercepted correspondence between him and the Court. He relied on Article 34 of the Convention, which provides:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

87. The applicant's allegations in this respect are unsubstantiated. In particular, he has not shown that any monitoring and/or alleged interception of his correspondence with the Court has in any way prevented the latter from carrying out a proper and effective examination of his application.

88. The Court concludes that the respondent State has not failed to comply with its obligations under Article 34 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. Article 41 of the Convention provides:

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

A. Damage

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

91. The Government maintained that there has been no violation of the applicant's rights.

92. The Court, ruling on an equitable basis, awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

93. The applicant also claimed EUR 850 for the costs and expenses incurred before the Court.

94. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award, in addition to the sum already received by way of legal aid (see paragraph 2 above), the amount claimed, EUR 850, in respect of the proceedings before the Court.

C. Default interest

95. 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* admissible the applicant's complaints under Articles 3 and 13 of the Convention concerning inadequate medical care in detention and lack of an effective remedy in this regard; as well as under Article 8 of the Convention concerning the monitoring of the applicant's correspondence with entities not exempted from monitoring under domestic law;

2. *Holds* that the respondent State has not failed to comply with its obligations under Article 34 of the Convention;

3. *Declares* the remainder of the application inadmissible;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of inadequate medical care in detention;

5. *Holds* that there has been a violation of Article 8 of the Convention on account of the monitoring of the applicant's correspondence with entities not exempted from monitoring under domestic law;

6. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of an effective domestic remedy in respect of the applicant's complaint regarding inadequate medical care in detention;

7. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 850 (eight hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

Done in English, and notified in writing on 18 December 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Deputy Registrar	Paulo Pinto de Albuquerque President