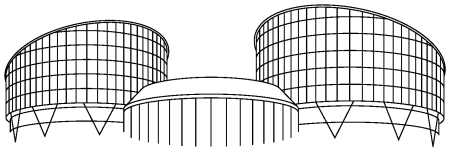

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ALEKSANDR VLADIMIROVICH SMIRNOV v. UKRAINE

(Application no. 69250/11)

JUDGMENT

STRASBOURG

13 March 2014

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 Aleksandr Vladimirovich Smirnov v. Ukraine,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ganna Yudkivska,
Vincent A. De Gaetano,
André Potocki,
Aleš Pejchal, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 18 February 2014,

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

PROCEDURE

1. The case originated in an application (no. 2585/06, subsequently no. 69250/11) 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 Russian national, Mr Aleksandr Vladimirovich Smirnov ("the applicant"), on 24 December 2005.

2. The applicant was granted legal aid and was represented by Mr V. Chernikov, a lawyer practising in Moscow, and then by Mrs A. Mukanova, a lawyer practising in Kharkiv. The Ukrainian Government ("the Government") were represented by their Agent, Mr N. Kulchytskyy.

3. The applicant alleged that the conditions of his detention in the Slavyanoserbsk Colony had been incompatible with human dignity and that his right to mount a defence in criminal proceedings had been breached.

4. On 6 February 2012 the application was communicated to the Government.

5. The Russian Government were invited to submit written comments, in accordance with Article 36 § 1 of the Convention, but declined to do so.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1981 and lives in the Russian Federation.

A. Criminal proceedings against the applicant

7. On 5 December 2002 the applicant was stopped by the police at a bus station in Odessa, Ukraine, and detained in a holding facility for vagrants (*приймальник-спецрозподільник*) on the grounds that he had no identity documents with him.

8. According to the applicant, he was detained and held alternately in the aforementioned facility and the Kakhovka, Kherson and Mykolayiv police detention facilities until 23 December 2002, and was questioned off the record about his alleged involvement with a terrorist group plotting to instigate a revolt to reinstate a communist state. During those question sessions the applicant was beaten and tortured.

9. According to the documents on file, on 9 December 2002 the applicant was examined by B., a medical specialist of the Odessa holding facility for vagrants, who noted that he had no bodily injuries. Subsequently (on 14 December 2002) the applicant was taken to Kakhovka and placed in the police temporary detention facility, where he stayed until 18 December 2002. On the date of his arrival the applicant was examined by S., a medical expert, who recorded no bodily injuries and noted that the applicant had made no complaints of ill-treatment.

10. On 14 and 15 December 2002 the Kakhovka police questioned the applicant as a witness in connection with unidentified proceedings. During those interviews the applicant explained to the police that he was a member of a Russian-based non-governmental organisation, "Z.", which advocated rights for political prisoners and propagated communist political views. He and two other members of Z. had been commissioned to come to Ukraine to distribute their newspaper, *Soviet rabochikh deputatov*, and other materials, participate in public activities organised by opposition political forces in Ukraine, and promote networking with local leftist groups.

11. On 17 December 2002 the applicant participated in a confrontation with V.S., a Kakhovka resident, who confirmed having communicated with the applicant's associates and having received the *Soviet rabochikh deputatov* newspaper.

12. On 23 December 2002 the applicant addressed a handwritten statement to investigator V.K. of the Security Service of Ukraine ("the SSU") in Mykolayiv, in which he confessed, in particular, that he had been distributing the *Soviet rabochikh deputatov* newspaper and other printed materials in Ukraine and that he, with two other members of the communist movement, of which he was a member, had blown up a rubbish bin near the SSU headquarters in Kyiv in October 2002.

13. On the same date the applicant was arrested in Mykolayiv on suspicion of a terrorist offence and was subsequently remanded in custody following a court order. It appears from the arrest report drafted on 23 December 2002 that the applicant, who had been notified of his right to

legal assistance upon his arrest, expressed the wish to consult a lawyer before his first questioning.

14. At about 12.30 p.m. on 24 December 2004 the applicant signed two documents confirming that he understood his rights as a suspect, and also that he wished to consult a lawyer. Subsequently (at about 12.45 p.m.), the applicant signed a statement of consent to be questioned by an SSU officer without a lawyer. During that questioning the applicant reiterated his earlier statements and provided further details concerning his acquaintance and encounters with various activists of the communist movement in Russia and Ukraine.

15. On 26 December 2002 V.V., a lawyer engaged by the applicant's mother, was admitted to the proceedings as his defence counsel.

16. On 29 December 2002 the applicant was indicted for membership of a terrorist group and participation in a terrorist act. Questioned in V.V.'s presence, the applicant confessed to some of the charges against him. In particular, he confirmed his affiliation with the communist movement and participation in political opposition activities, but denied taking part in the rubbish bin explosion or any terrorist activity. Citing his right to remain silent, the applicant refused to explain why his statements differed from those he had given previously.

17. On 30 December 2002 the applicant requested that V.V. be replaced by N.B., a new lawyer engaged by his mother. This request was granted on the same date.

18. In February 2003 the applicant was transferred to the Odessa no. 21 pre-trial detention facility, as the investigation of the case had been transferred to the Odessa SSU.

19. On various occasions in the spring of 2003 the applicant, with his consent, was questioned in Odessa in the absence of N.B., whose practice was in Mykolayiv. When questioned the applicant sometimes refused to answer questions, citing his right to remain silent, and at other times responded to the questions asked, either confirming or modifying his previous submissions.

20. On 27 May 2003 the investigation was completed, and the applicant, along with ten other individuals implicated in affiliation with a criminal association which had engaged in a number of robberies and other crimes committed on behalf of their organisation with a view to reinstating a communist state, was committed to stand trial before the Odessa Regional Court of Appeal ("the Regional Court") acting as a first-instance court.

21. On 24 July 2003 the applicant and his lawyer N.B. signed an affidavit that they had finished studying the case file. On the same date N.B. requested that the case be remitted for a further investigation, alleging that numerous substantive and procedural-law provisions had been breached. He submitted, in particular, that the applicant had been unlawfully detained and tortured between 5 and 23 December 2002, with the aim of extracting self-

incriminating statements from him, in breach of his right to mount a defence.

22. On the same date the investigator in charge of the case refused this request. He noted in particular that, as indicated in the materials in the file, the applicant had been arrested only on 23 December 2002, and no investigative activities had been carried out involving him before that date. Nor had he complained of any ill-treatment.

23. The applicant's trial began in September 2003.

24. During the trial, the applicant pleaded not guilty to all the charges. He admitted that he was acquainted with his co-defendants as members of the pro-communist network and fellow distributors of the *Soviet rabochikh deputatov* newspaper and various communist propaganda material in Ukraine. At the same time he denied being involved in the rubbish-bin explosion imputed to him, and also denied all knowledge of any involvement by his co-defendants in any type of criminal activity. The applicant also submitted that he had been unlawfully detained between 5 and 23 December 2002, and had made false self-incriminating statements as a result of ill-treatment by the investigating authorities. The medical staff of the detention facilities in which he had been held had refused to record his bodily injuries. He had not lodged any relevant complaints at the beginning of the investigation, as he had feared reprisals.

25. After the death of B., one of the applicant's co-defendants, during the trial proceedings, the applicant and his co-defendants demanded an investigation of the circumstances of his death, alleging that it had resulted from torture and that they had also been subjected to ill-treatment during the investigation. Following the investigation, the prosecutor's office reported to the Regional Court that B. had died of cancer and that there had been no ill-treatment case to answer with respect to either the applicant or his co-defendants.

26. On 24 May 2004 the applicant lodged a fresh complaint with the Kakhovka Regional Prosecutor's Office, alleging that he had been ill-treated by Kakhovka police officers in December 2002.

27. On 22 June 2004 the prosecutor's office refused to institute criminal proceedings in connection with the applicant's allegations. It was noted in the text of the relevant decision, in particular, that the officers questioned had acknowledged that the applicant had been detained in their charge from 14-18 December 2002 as an arrestee under investigation. However, those officers had stated that they had neither ill-treated him, nor received any complaints from him concerning ill-treatment by third parties. It was also noted in the decision that the officers' explanations had been consistent with the explanations by the medical expert who had examined the applicant on 14 December 2002.

28. On an unspecified date, N.B.'s engagement having been terminated, O.K. was appointed as the applicant's new lawyer. On several occasions the

applicant complained in court about O.K.'s performance, offering to replace her with his mother as his lay defence representative and with some other individuals. These requests were refused by the court on the basis of various procedural provisions, the applicant having been instructed to engage a competent licensed lawyer to replace O.K. as a condition for her being dismissed.

29. On 19 July 2004 the Regional Court found the applicant guilty of affiliation with a criminal association plotting reinstatement of a communist state in Ukraine by violent means, distribution of the *Soviet rabochikh deputatov* newspaper, whose articles were found to propagate the ideas of such a violent revolt, and participation in a terrorist act (the aforementioned rubbish bin explosion). In the text of its judgment, the court referred to an extensive array of evidence, including the applicant's statements given on 23 and 24 December 2002. The court noted that those statements were consistent with other evidence, and that there was no indication that they had been extracted by ill-treatment or otherwise in defiance of the applicant's will or in breach of his procedural rights. They therefore had to be preferred over the applicant's submissions at the trial. Finally, the court sentenced the applicant to eight years' imprisonment, with effect from 5 December 2002.

30. On 7 September 2004 the applicant lodged a cassation appeal against his conviction, in which he reiterated the submissions he had made during the trial and complained, in particular, that his right to mount a defence had been breached and that the statements he had made at the investigation stage in the absence of a lawyer should be excluded from the evidential basis.

31. On 26 July 2005 the applicant, represented by O.Kh., a new lawyer engaged by his mother, reiterated his position at an oral hearing before the Supreme Court.

32. On the same date the Supreme Court rejected the applicant's allegations of breaches of his procedural rights, and upheld his conviction for distribution of material promoting violent revolt and participation in a terrorist act. It also confirmed the applicant's sentence, having, however, dropped the charges of membership of the criminal association.

33. On several further occasions between 2003 and 2007 the applicant and his mother complained to the Ukraine prosecutor's office and to other authorities that the applicant had been ill-treated by SSU officers and police, as well as by Russian security service officers who had purportedly questioned him in Ukraine concerning criminal acts committed in Russia. The applicant's and his mother's attempts to institute formal criminal investigations in connection with these allegations were to no avail.

B. The applicant's detention in the Slavyanoserbsk Colony

34. In November 2005 the applicant was transferred to the Slavyanoserbsk no. 60 Correctional Colony ("the Slavyanoserbsk Colony"), where he served his sentence until he was transferred to another detention facility in September 2007.

1. Physical conditions of detention in the Slavyanoserbsk Colony

35. On arrival the applicant was assigned to cell no. 201 in the maximum security unit.

36. According to the applicant, the conditions of his detention therein were incompatible with human dignity. In particular, the cell, which measured some thirty square metres, accommodated from ten to sixteen inmates, confined to it all day except for an hour's daily exercise in the outside courtyard. Notwithstanding the general prohibition, many inmates smoked in the cell, which was not equipped with artificial ventilation. As a result, the applicant suffered severely from the effects of passive smoking, while the administration refused his requests for transfer to another cell or for installation of an electric fan his mother had offered to provide. Opening a window to let in some fresh air was problematic, particularly in winter, as with the poor heating the temperature in the cell went down to about eight degrees Celsius. In addition, the windows, which had non-transparent panes of glass, barely let in daylight. With only two small electric bulbs, artificial light was also very poor. As a result, it was very difficult to read or write in the cell. The food was also inadequate. To support the applicant's nutritional needs his mother had to send in regular food parcels, containing such basic products as tea, pasta, cereals and canned meat and vegetables. In support of his allegations, the applicant presented copies of lists of food items sent in by his mother. He also presented copies of his and his mother's appeals to the prosecutor's office and other authorities, in which they requested that the applicant be moved to a non-smoking cell or at least that the use of an electric fan be permitted. They also requested that other matters, in particular, the catering, lighting and heating arrangements be inspected and improved.

37. According to the Government, the conditions of the applicant's detention were fair. In particular, the applicant's cell, which measured thirty-two square metres, was equipped to accommodate eight inmates only, which ensured sufficient personal space per detainee. It had windows allowing access to daylight and fresh air. It was also equipped with electric light of sufficient brightness, and had artificial ventilation in the sanitary facility. The heating functioned adequately and the temperature in the cell was always between nineteen and twenty-two degrees Celsius. Smoking was allowed only in the courtyards, and meals provided to detainees were sufficient and properly balanced to meet their nutritional needs. Following

the applicant's and his mother's complaints, the prosecutor's office had inspected the conditions of the applicant's detention and found them to be in accordance with applicable domestic regulations.

2. Medical assistance

38. According to the applicant, he was deprived of any medical care during his detention in the Slavyanoserbsk Colony. In particular, in January 2006 he requested a full medical examination, as he was suffering from constant fatigue, periodic pain in the kidney area, oedema, headaches and chest pain. This request received no response. In March 2007 he was also refused treatment for chronic dental decay, as the medical unit lacked funding to obtain the necessary supplies. It was only in May 2007, after his mother had procured the necessary supplies at her own expense, that the applicant received the treatment. In addition, on many occasions the applicant's mother sent in parcels containing other basic medicines and supplies, such as antiseptics, activated carbon, adhesive plasters and vitamins, purchased at her own expense.

39. According to the Government, the medical assistance available to the applicant in the Slavyanoserbsk Colony was adequate. The applicant underwent a medical check-up upon his arrival and subsequently benefitted from semi-annual (spring and autumn) checkups. Specifically, he received check-ups on 12 November 2005 and 15 March, 14 April and 30 September 2006. During these check-ups the applicant was also X-rayed for tuberculosis screening. In March 2007 the applicant also had blood and urine samples taken for laboratory testing. The results of all these screenings indicated that the applicant's health was in general satisfactory.

40. The Government also provided records, according to which in March 2007 the applicant had been examined by a dental specialist, who recommended non-urgent treatment for his chronic dental decay, and notified that the appropriate supplies were not available at the Colony's medical unit at that time. In May 2007, the necessary supplies having been procured by the applicant's mother, he received the treatment.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL MATERIALS

41. The relevant provisions of Articles 59 and 63 of the Constitution of Ukraine of 1996 concerning the right to legal assistance and the right not to incriminate oneself can be found in the judgment of 19 February 2009 in the case of *Shabelnik v. Ukraine* (no. 16404/03, § 25).

42. The relevant extracts from the Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 21 October 2005 read as follows:

> "... The CPT also recommends that the Ukrainian authorities review as soon as possible the norms fixed by legislation for living space per prisoner, ensuring that these are at least 4 m² in all the establishments under the authority of the Department for the Enforcement of Sentences ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF DETENTION IN THE SLAVYANOSERBSK COLONY

43. The applicant complained that the conditions of his detention in the Slavyanoserbsk Colony, including physical arrangements and medical assistance, had been incompatible with human dignity. He referred to Article 3 of the Convention in this respect, which reads as follows:

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

A. Admissibility

1. Physical conditions of detention

44. Referring to their submissions as to the facts (see paragraph 37 above), the Government argued that the physical conditions in which the applicant had been detained in the Slavyanoserbsk Colony had been adequate. They submitted that his complaints were vague, general and unsubstantiated, and should be dismissed as manifestly ill-founded.

45. The applicant maintained that the conditions of his detention had been incompatible with Article 3 of the Convention. Referring to his submissions as to the facts (see paragraph 36 above), he argued that he had been confined in a severely overcrowded cell with poor heating, lighting and ventilation, and had suffered there from inadequate nutrition and passive smoking.

46. The Court reiterates that in cases which concern conditions of detention applicants are expected in principle to submit detailed accounts of the facts complained of and provide, as far as possible, some evidence in support of their complaints (see ibid. and *Visloguzov v. Ukraine*, no. 32362/02, § 45, 20 May 2010, with further references). At the same time, these cases do not lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) where the respondent Government alone have access to information capable of corroborating or refuting the relevant allegations

(see, as a recent authority, *Aden Ahmed v. Malta*, no. 55352/12, § 89, 23 July 2013).

47. Turning to the facts of the present case, the Court finds that the applicant has presented a rather detailed description of his personal suffering connected, in particular, to lack of personal space, inadequate ventilation and other aspects of the physical conditions of his detention. He also provided copies of various documents, including his and his mother's correspondence in which the relevant issues had been brought to the attention of the domestic authorities. In the light of the available materials and the Court's case-law in which similar matters have already been examined (see, for instance, *Melnik v. Ukraine*, no. 72286/01, § 103, 28 March 2006; *Iglin v. Ukraine*, no. 39908/05, §§ 51-52, 12 January 2012; and *Titarenko v. Ukraine*, no. 31720/02, § 56, 20 September 2012), the Court finds that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds.

48. It therefore dismisses the Government's objection and declares the applicant's complaint concerning the physical conditions of his detention in the Slavyanoserbsk Colony admissible.

2. Medical assistance

49. The Government submitted that the applicant's complaints concerning poor quality of medical assistance were manifestly ill-founded. As regards the delay in the applicant's dental treatment, he had provided no evidence that his sufferings on this account had reached the severity threshold attracting applicability of Article 3. The dental specialist's examination in March 2007 indicated that there was no urgency. In any event, the applicant received the treatment in May 2007. As regards other aspects of his complaint, there was no evidence that the applicant's health had deteriorated during his detention or that it required any other supervision or treatment beyond that available to him by way of periodic checkups.

50. The applicant disagreed. Referring to his submissions as to the facts (see paragraph 38 above), he argued that had it not been for his mother's intervention, he would have been deprived of the most basic dental and other medical care, normally available in Ukraine free of charge to persons not deprived of their liberty. In particular, his general health complaints had been to no avail. He had also suffered from toothache on account of the delay in his dental treatment and had lost three teeth.

51. The Court reiterates that in determining whether the authorities have discharged their health-care obligations *vis-à-vis* a detainee in their charge, its task is to assess the quality of the medical services provided to the detainee in the light of his state of health and "the practical demands of imprisonment" and to determine whether, in the circumstances of a

particular case, the health-care standard applied was compatible with the human dignity of the detainee (see, for instance, *Kaverzin v. Ukraine*, no. 23893/03, § 138, 15 May 2012, with further references). Failure to provide proper medical aid to a detainee would not fall under Article 3 unless there was actual detriment to his physical or mental condition, or avoidable suffering of a certain intensity, or an immediate risk of such detriment or suffering (see, for instance, *Mikalauskas v. Malta*, no. 4458/10, § 63, 23 July 2013).

52. Turning to the facts of the present case, the Court notes that the Colony administration failed to find any solution for the applicant's chronic dental decay until his mother provided the necessary supplies (see, *mutatis mutandis, Farbtuhs v. Latvia*, no. 4672/02, § 60, 2 December 2004; *Khudobin v. Russia*, no. 59696/00, § 87, ECHR 2006-XII (extracts); and *Ukhan v. Ukraine*, no. 30628/02, § 82, 18 December 2008). At the same time, the documents on file do not indicate that this treatment was urgent. While noting in his observations that he had suffered from toothache, the applicant did not provide any details, and provided no copies of any relevant domestic complaints or other pertinent documents, nor any documentation substantiating his statement that he had also lost three teeth on an unspecified date and under unspecified circumstances. On the basis of the available materials the Court has no grounds to conclude that the two-month delay in the applicant's dental treatment resulted in suffering attracting applicability of Article 3 of the Convention, or led to any adverse consequences whatsoever for his future health (compare and contrast *Iacov Stanciu v. Romania*, no. 35972/05, §§ 183-184, 24 July 2012). As regards other elements of the applicant's complaint, the case-file materials do not indicate that his state of health deteriorated during his detention in the Slavyanoserbsk Colony, or that on account of unavailability of particular medication, treatment or medical supervision he had suffered pain or hardship of an intensity attracting applicability of Article 3 (see, by contrast, for instance, *Logvinenko v. Ukraine*, no. 13448/07, §§ 68-69, 14 October 2010, and *Barilo v. Ukraine*, no. 9607/06, §§ 69-71, 16 May 2013).

53. Regard being had to the materials on file, the Court considers that the applicant, who was legally represented, has failed to formulate an arguable claim that the medical assistance available to him in the Slavyanoserbsk Colony was incompatible with his human dignity within the meaning of Article 3 of the Convention.

54. The Court therefore upholds the Government's objection and rejects this aspect of the case as manifestly ill-founded within the meaning of Article 35 §§ 3(a) and 4 of the Convention.

B. Merits

55. The applicant argued that the physical conditions of his detention in the Slavyanoserbsk Colony were incompatible with the requirements of Article 3 of the Convention.

56. The Government did not submit any observations on the merits of the aforementioned complaint.

57. The Court reiterates that Article 3 of the Convention binds States to ensure that a person is detained in conditions which are compatible with respect for his human dignity, and that the manner and method of the execution of the detention measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention (see, for example, *Visloguzov,* cited above, §§ 56 and 57, with further references).

58. The Court next notes that the parties in the present case provided differing accounts of the conditions of the applicant's detention, including the number of inmates in his cell and the quality of the heating, ventilation, lighting and catering. They also disagreed as to whether the applicant suffered from passive smoking in the cell. The relevant facts cannot be established "beyond reasonable doubt" (see, for instance, *Starokadomskiy v. Russia*, no. 42239/02, § 39, 31 July 2008), as neither position is supported by documentary evidence.

59. In these circumstances, the Court reiterates that where a matter complained of is of such a nature that only the respondent Government have access to documents capable of corroborating or refuting the relevant allegations, failure on their part to submit convincing and rigorous evidence may give rise to the drawing of inferences as to the validity of the applicant's allegations (see, for instance, *Khudoyorov v. Russia*, no. 6847/02, §113, ECHR 2005 X (extracts); *Gubin v. Russia*, no. 8217/04, §56, 17 June 2010; and *Titarenko,* cited above, § 55).

60. The Court next observes that in the present case the Government's submissions concerning the conditions of the applicant's detention are couched in very general terms, and do not address the applicant's major arguments. In particular, according to the applicant, the number of his cellmates was between ten and fifteen. This means that the personal space per inmate in the cell, which measured thirty-two square metres, was between two and three square metres, which is less than the four-square-metre minimum recommended by the CPT for multi-occupancy cells (see paragraph 42 above). The Government did not provide any data to rebut the applicant's allegations of overcrowding, limiting their submissions to a general statement that the cell was designed to accommodate eight inmates only. Likewise, they did not in any way address the applicant's allegation that his inmates had ignored the prohibition on smoking indoors, and had provided no evidence in support of their submissions that the cell had been

properly ventilated, lit and heated or that the catering arrangements had been adequate.

61. The Court next notes that the applicant was detained in the Slavyanoserbsk Colony for nearly two years (between November 2005 and September 2007) and that being assigned to the maximum security unit, he remained confined to his cell most of the time. Regard being had to his allegations of overcrowding, problems with ventilation, lighting, heating and nutrition, which have not been rebutted by the Government, the Court concludes that the physical conditions of the applicant's detention during the above period amounted to degrading treatment, in breach of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE BREACH OF THE RIGHT TO DEFENCE

62. The applicant complained that he had been hindered in the effective exercise of his right to mount a defence in the criminal proceedings against him, as he had not been properly represented. In particular, he had had no access to a lawyer at the beginning of the investigation. Furthermore, the incriminating evidence obtained from him in breach of his right to legal assistance had been used as a basis for his conviction.

63. The applicant relied on Article 6 §§ 1 and 3 (c), which reads as follows in the relevant part:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require."

64. The Court reiterates that the requirements of paragraph 3 of Article 6 of the Convention are to be seen as particular aspects of the right to a fair trial guaranteed by paragraph 1 of that Article, and are thus to be examined together (see *Van Geyseghem v. Belgium* [GC], no. 26103/95, § 27, ECHR 1999-I). On the whole, the Court is called upon to examine whether the proceedings in their entirety were fair (see *Balliu v. Albania*, no. 74727/01, § 25, 16 June 2005).

A. Admissibility

65. The Government did not comment on the admissibility of the above complaints.

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

B. Merits

67. The applicant maintained that he had been hindered in his right to mount a defence in the criminal proceedings against him. In particular, having been arrested on 5 December 2002 under the false pretext of having no identity documents, he had been tortured and coerced into providing self-incriminating statements concerning his involvement in promoting a violent revolt, terrorist activity and other crimes. He had not been afforded any opportunity to contact a lawyer, and his right to legal assistance had not been explained to him upon his arrest. After extracting false self-incriminating statements from him on 23 December 2002 the investigative authorities had regularised his arrest and recorded his wish to have a lawyer. Notwithstanding this wish, they had continued to question the applicant in the absence of a lawyer until 26 December 2002. Statements obtained from him on 23 and 24 December 2002 in breach of his right to legal assistance had subsequently served as decisive elements for his conviction. In addition, the applicant alleged that his right to mount a defence had been breached in numerous other aspects. In particular, even following the admission of a lawyer to the proceedings many investigative activities had taken place in the lawyer's absence, and the Regional Court had arbitrarily refused to admit the lawyer of the applicant's choosing and his mother as his defence representatives during the trial proceedings.

68. The Government contested the applicant's allegations. They noted that on 23 December 2002 the applicant had been arrested as a suspect after voluntarily providing a handwritten confession of participation in a terrorist act and other criminal activities. Before that time he had only been questioned as a witness, and had not given any self-incriminating statements. Upon his arrest, the applicant had been duly notified of his right to access to a lawyer, and had waived that right in writing in respect of his questioning of 24 December 2002. There was therefore no breach of the guarantees against self-incrimination on account of the use by the judicial authorities of his confessions of 23 and 24 December 2002 as a basis for his conviction. Moreover, these confessions were corroborated by other evidence. Once the applicant had requested to be legally represented, a lawyer of his choosing had been admitted to the proceedings. Throughout the investigation stage the applicant had been represented by lawyers of his choosing, whose omissions, if any, could not be imputed to the Government. In addition, each time the applicant had found himself without a legal representative before questioning or another investigative activity, he

had been notified that he was not obliged to take part in it, unless he voluntarily consented.

69. The Court reiterates the principles developed in its case-law, according to which the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, although not absolute, is one of the fundamental features of the notion of a fair trial (see *Krombach v. France*, no. 29731/96, § 89, ECHR 2001-II). As a rule, access to a lawyer should be provided from the first time a suspect is questioned by the police, unless it can be demonstrated in the light of the particular circumstances of each case that there were compelling reasons to restrict this right (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, 27 November 2008). The right to mount a defence will in principle be irretrievably prejudiced when incriminating statements made during police questioning without access to a lawyer are used for a conviction (ibid.). While a defendant in criminal proceedings may, under various circumstances, waive his right to legal representation, such a waiver may not run counter to any important public interest, must be unequivocally established, and must be attended by minimum safeguards commensurate with the waiver's importance (see, for instance, *Sejdovic v. Italy* [GC], no. 56581/00, § 86, ECHR 2006-II).

70. Turning to the facts of the present case, the Court notes that according to the official records, the applicant was arrested as a crime suspect on 23 December 2002. However, as follows from his submissions, by that time he had already been in police custody for nearly three weeks (since 5 December 2002) during which time he had been *de facto* treated and questioned as a suspect. The Court observes that these submissions are consistent with the documents on file. In particular, it is noteworthy that the Regional Court calculated the applicant's prison sentence from 5 December 2002, thus indirectly acknowledging that he was already in custody on that date. There are also records of the applicant's questionings of 14 and 15 December 2002 concerning his involvement in the revolutionary movement, and of his participation in a confrontation with another person associated with this movement on 17 December 2002 (see paragraphs 10-11 above). It is noteworthy that there is no evidence that the applicant was ill-treated by the police and that *de jure* at the material time he was questioned as a witness only. At the same time, according to the explanations given by the Kakhovka police officers interviewed in connection with the applicant's ill-treatment allegations, on 14 and 15 December 2002 he was in fact in their custody as "*an arrestee under investigation*" (see paragraph 27 above).

71. In the light of these documents, and absent any countervailing evidence from the Government, the Court accepts the applicant's submissions that he was actually taken into custody on 5 December 2002 and treated as a crime suspect from that time onwards. It follows that he should have been apprised of his right to legal assistance and given access

to a lawyer no later than the time of his first questioning after his arrest. On the facts of the case, the authorities did not provide the applicant with an opportunity to have access to a lawyer between 5 and 23 December 2002, for no compelling reason. It follows that the information given by the applicant during the period at issue was obtained in breach of his right to mount a defence.

72. The Court further observes that on 23 December 2002, following the regularisation of the applicant's arrest, he was apprised of his right to legal assistance and expressed the wish to be legally represented. Nevertheless, on 24 December 2002 the applicant was again questioned without a lawyer. It is true that the applicant gave written consent to be questioned without a lawyer. However, it is noteworthy that he did so just minutes after expressing the wish to have a lawyer and before having access to one (see paragraph 14 above). He also did not explain why he changed his mind so quickly. In these circumstances the Court cannot accept that the applicant, who was in police custody at the material time and had not consulted a lawyer, unequivocally waived his right to legal assistance in respect of the questioning of 24 December 2002, as required by Article 6 of the Convention. It follows that the information divulged by him during the questioning at issue was likewise obtained in breach of his right to mount a defence.

73. The Court next observes that the applicant was subsequently provided with legal assistance and retracted his initial confessions. However, the deficiencies in safeguarding his right of access to a lawyer at the beginning of the investigation were not remedied in the ensuing proceedings. In particular, the Regional Court expressly relied on the applicant's confessions given on 23 and 24 December 2002 as a basis for his conviction, having rejected his arguments concerning breaches of his procedural rights (see paragraph 29 above). The Supreme Court of Ukraine likewise rejected the applicant's relevant complaints raised in his appeal. In these circumstances the Court finds that the applicant's right to mount a defence was irretrievably prejudiced.

74. There has accordingly been a breach of Article 6 §§ 1 and 3 (c) of the Convention. In light of these findings, it is not necessary to examine the applicant's arguments concerning other aspects of the breach of his right to mount a defence.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Complaints lodged on the applicant's behalf by Mr V.V. Chernikov

75. Between December 2005 and August 2006 Mr V. V. Chernikov, who was representing the applicant at the material time, lodged a number of

additional complaints on his behalf under Articles 2, 3, 6, 8, 9, 10 and 14 of the Convention.

76. On 29 August 2006 the applicant, who had dismissed Mr V. V. Chernikov by that time, notified the Court of his wish to withdraw all these complaints.

77. Taking into account the applicant's request and finding no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the aforementioned complaints under the Convention, the Court considers, in accordance with Article 37 § 1 (a) of the Convention, that this part of the application is to be struck out.

B. Other complaints

78. On various dates the applicant also lodged numerous further complaints alleging breaches of Articles 2, 3, 5, 6, 8, 9, 10, 13, 14 and 34 of the Convention in connection with the criminal proceedings against him and during his detention in various facilities.

79. Having considered these complaints in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

80. It follows that this part of the application must be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. 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

82. The applicant claimed 60,000 euros (EUR) in compensation for non-pecuniary damage.

83. The Government submitted that the applicant's claim was exorbitant and unsubstantiated.

84. The Court reiterates that it has found breaches of the Convention on account of the physical conditions of the applicant's detention in the Slavyanoserbsk Colony and on account of the breach of his right to mount a defence in criminal proceedings. Ruling on an equitable basis, the Court

awards the applicant EUR 10,000 in compensation for non-pecuniary damage.

B. Costs and expenses

85. The applicant also claimed EUR 680 in postal expenses for correspondence with the domestic authorities and the Court; EUR 1,467 in expenses incurred by his mother when assembling food and pharmaceutical parcels for him, and EUR 1,240 in travel expenses from Russia to Ukraine incurred by his mother in connection with visiting the applicant in detention and helping him to defend his interests in criminal, Convention and other proceedings. He presented copies of receipts from post offices, pharmacies and travel agencies, as well as copies of lists of food included in the parcels addressed to him by his mother.

86. The Government noted that according to the receipts submitted, the total sum of postal expenses was 1,520 Russian roubles (RUB) and 37.73 Ukrainian hryvnias (UAH). They noted that they had no objections to reimbursing those amounts. As regards the remaining expenses, it was not clear that they had actually been incurred. In particular, the applicant's mother's choice to send him parcels and to pay him visits did not mean that the applicant had lacked essential medication or food or that her actions had been necessary to redress breaches of the applicant's Convention rights or prevent them from happening.

87. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 200 to cover postal expenses.

C. Default interest

88. 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 complaints concerning the physical conditions of the applicant's detention in the Slavyanoserbsk Colony and breach of his right to mount a defence admissible;

2. *Decides* to strike out the complaints lodged on the applicant's behalf by Mr V.V. Chernikov and to declare the remainder of the application inadmissible;

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

4. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 200 (two hundred 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;

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

Done in English, and notified in writing on 13 March 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President