Selected Legislation and Jurisprudence

European Court of Human Rights

ECHR 2019/10 *Case of Mifsud v. Malta*, 29 January 2019, no. 62257/15 (Third Section)

The Facts¹

The applicant was born in 1925 and lived in Dublin (Ireland). He passed away in December 2017 and the application has been pursued by his widow.

In December 2012 a woman, X, began court proceedings to have the applicant declared her biological father and for this to be put on her birth certificate. The applicant denied paternity and X asked the court to order him to take a DNA test, as provided for by the Civil Code in such cases. The applicant objected, arguing that forcing him to take the test would breach his rights under Article 8 of the European Convention and asking for the question to be referred to the constitutional jurisdictions.

Both the Civil Court in its constitutional competence and the Constitutional Court dismissed the applicant's claim. The Constitutional Court referred in particular to X's right to know who her father was and found that the applicant would not suffer any humiliation in having to take the test, which was by way of a mouth swab. The DNA procedure was eventually carried out.

1 These summaries are based on the provisional text of the judgements of the European Court of Human Rights. These judgments are still subject to editorial revision before their reproduction in Reports of Judgments and Decisions. For the full provisional text, see: www.echr.coe.int.

The Law

Alleged Violation of Article 8 of the Convention

The applicant complained that Maltese law made it mandatory to provide a genetic sample in paternity proceedings, and that such an order that was imposed on him, contrary to his will, resulted in a breach of Article 8 of the Convention (right to respect for private and family life).

The Court considers that the order to submit to the DNA test, and the actual testing despite the applicant's objections, constitute interference with the applicant's private life. Such interference will be in breach of Article 8 of the Convention unless it can be justified under its paragraph 2 as being "in accordance with the law", as pursuing one or more of the legitimate aims listed therein, and as being "necessary in a democratic society" in order to achieve the aim or aims concerned.

As to whether the measure was lawful, the Court notes that the interference was ordered pursuant to the Civil Code. It further considers that the interference pursued a "legitimate aim" namely the protection of the rights and freedoms of others, in the instant case, those of X. Respect for private life requires that everyone should be able to establish details of one's identity as an individual human being and that an individual's entitlement to such information is of importance because of its formative implications for his or her personality. This includes obtaining the information needed to uncover the truth concerning important aspects of one's personal identity, such as the identity of one's parents. Thus, by providing for such testing, the State was attempting to fulfil its positive obligations towards X.

Nevertheless, the Court must examine whether the required balance was reached in the light of the applicant's Article 8 rights. The Court would note at the outset that in cases arising from an individual petition its task is usually not to review the relevant legislation or a particular practice in the abstract. Instead, it must confine itself as far as possible, without losing sight of the general context, to examining the issues raised by the case before it. Here, therefore, the Court's task is not to review, *in abstracto*, the compatibility with the Convention of the law at issue, but to determine, *in concreto*, the effect of the interference on the applicant's right to private life.

The applicant complained that the law failed to respect the equality of arms principle, both because of the timing of the order as well as because of the weight accorded to such evidence. With regard to the timing of the order, the Court cannot agree that the order was made at a stage when

the applicant had not yet been authorised to submit evidence. Both parties had had the opportunity to submit their evidence on equal grounds before the civil court. It was only after fully fledged proceedings before the constitutional jurisdictions, at two instances, that the civil court ordered the test, and at that stage the applicant could still adduce other evidence or challenge the outcome of the test.

With regard to the weight given to such evidence and its “self-incriminatory” nature, the Court, firstly, reiterates that a DNA test is the scientific method available (at the time in the early 2000 and still today) for accurately determining paternity of a child, and its probative value substantially outweighs any other evidence presented by parties to prove or disprove biological paternity. This in itself does not undermine the rights of the parties to the proceedings; what is of importance is that they are given an opportunity personally to participate in the court proceedings. In the present case the applicant had had the opportunity to be personally present, as well as to submit evidence and cross-examine witnesses. Thus, it cannot be said that the applicant had not been involved in the decisionmaking process, seen as a whole, to a degree sufficient to provide him with the requisite protection of his interests.

Secondly, the Court observes that, in the criminal sphere Article 8 does not as such prohibit recourse to a medical procedure in defiance of the will of a suspect, or in defiance of the will of a witness, in order to obtain evidence. What is of paramount importance is that the measure is in accordance with the relevant Convention requirements. Thus, such methods, including in the civil sphere, are not in themselves contrary to the rule of law and natural justice. The Court notes that in such an assessment the legitimate aim is of particular importance and that in the present case, the impugned action was aimed at fulfilling the State’s positive obligations arising under Article 8 vis-à-vis X.

It is true that on paper the measure appears to be mandatory; however, the Court is not convinced that in practice a court would order such a test without regard to any other consideration, such as, for example, that a *prima facie* case was made out. In the instant case, the civil court referred the applicant’s concerns to the constitutional jurisdictions, which, at two instances, proceeded with an assessment of the interests at stake. They found that the interests of X. in determining her paternity outweighed those of the applicant. Moreover, the Court finds nothing arbitrary in those decisions. Indeed, it was only after fully fledged constitutional proceedings that the test was ordered. It follows that the order to undergo the test in the present case was not made on the basis of its mandatory nature. The Court finds that the decisionmaking process, seen as a

whole, was fair and provided the applicant with the requisite protection of his interests safeguarded by Article 8. The Court is also satisfied that the measure was necessary in a democratic society in order to protect X's rights.

In conclusion, the Court finds that, by ordering the applicant to undergo a DNA test, after having carried out the requisite balancing exercise of the interests at stake, in judicial proceedings in which the applicant participated via counsel of his choice and in which his rights of defence were respected on a par with those of his adversary, the domestic courts struck a fair balance between the interests of X. to have paternity established and that of the applicant not to undergo the DNA tests.

For these reasons, the Court, unanimously, holds that there has been no violation of Article 8 of the Convention.

ECHR 2019/11 Case of Fernandes de Oliveira v. Portugal, 31 January 2019, no. 78103/14 (Grand Chamber)

The Facts

The applicant is the mother of A.J., born in 1964. A.J. suffered from mental illnesses and was repeatedly admitted to a psychiatric hospital in Coimbra over a number of years. On 2 April 2000 he was admitted as a voluntary inpatient to this institution because he had attempted to commit suicide. On 27 April 2000 he left the hospital without notifying the hospital authorities and committed suicide by jumping in front of a train.

The applicant lodged a civil action for damages against the hospital in March 2003, claiming that her son should have been under medical supervision and that the hospital staff should have prevented him from leaving. Her claim was dismissed by the Administrative Court in April 2011, as was her appeal to the Administrative Supreme Court, in May 2014. The courts held that the hospital's system for monitoring patients was sufficient and that there had been no breach of the hospital's duty of care as it had not been possible to foresee A.J.'s suicide.

In a Chamber judgment of 28 March 2017, the European Court of Human Rights held, unanimously, that there had been a violation of both the substantive and procedural aspects of Article 2 (see this Journal, ECHR 2017/13, Vol. 24, no. 4, p. 490-493).

The Law

Alleged Violation of Article 2 of the Convention

The applicant argued that the hospital had been negligent in so far as it had not supervised her son sufficiently, had not installed adequate security fencing to prevent him from leaving the grounds and had not provided for an adequate emergency procedure. The Court considers that the applicant's complaints should be examined from the standpoint of the substantive and procedural aspects of Article 2 (right to life).

The Substantive Aspect

As regards the applicant's complaint as to the lack of security fences and walls around the hospital, the Court sees no reason to call into question the approach adopted by the hospital in this respect, which was in line with the Mental Health Act in place at the time. The latter indicated that mental-health care should be provided in the least restrictive environment possible. These general principles mirrored the therapeutic desire to create an open regime where the patient retained the right to move about freely. This approach is in line with the international standards which have been developed in recent years on treating psychiatric patients. The Court further notes that the Mental Health Act provides for the possibility of involuntary hospitalisation where this may be justified by the specific needs of the patient.

The Court is also unable to find any issue with the surveillance procedure in place for voluntary inpatients, which could justify a conclusion that alleged deficiencies resulted in A.J.'s death. As to the emergency procedure, the Court finds that the procedure in place was adequate, and in any case finds no causal link between any alleged deficiencies in the emergency procedures and A.J.'s death. Finally, the Court notes that the applicant had recourse to a judicial system which was able to determine who was accountable for A.J.'s death.

There is no doubt that as a person with severe mental health problems A.J. was in a vulnerable position. The Court considers that a psychiatric patient is particularly vulnerable even when treated on a voluntary basis. Due to the patient's mental disorder, his or her capacity to take a rational decision to end his or her life may to some degree be impaired. Further, any hospitalisation of a psychiatric patient, whether involuntary or voluntary, inevitably involves a certain level of restraint as a result of the patient's medical condition and the ensuing treatment by medical professionals. In the process of treatment, recourse to further kinds of restraint is often an option. The Court considers that the authorities do have a general operational duty with respect to a voluntary

psychiatric patient to take reasonable measures to protect him or her from a real and immediate risk of suicide. In the case of patients who are hospitalised involuntarily, the Court may apply a stricter standard of scrutiny.

Concerning suicide risks, the Court has previously had regard to a variety of factors where a person is detained by the authorities (mostly in police custody or detention), in order to establish whether the authorities knew or ought to have known that the life of a particular individual was subject to a real and immediate risk, triggering the duty to take appropriate preventive measures. These factors include:

- i) a history of mental health problems;
- ii) the gravity of the mental condition;
- iii) previous attempts to commit suicide or self-harm;
- iv) suicidal thoughts or threats;
- v) signs of physical or mental distress

Turning firstly to A.J.'s history of mental health problems, it is common ground that he had been hospitalised at the hospital, on a voluntary basis, on eight occasions between 1984 and 2000. Only the last stay followed an attempted suicide. Secondly, as to the gravity of A.J.'s mental health problems, it is clear, that A.J. had suffered from serious mental health problems over a long period. As to suicidal thoughts or threats, during the last days of his life, A.J. had not demonstrated any behaviour or mood which could have led the hospital staff to suspect that on 27 April 2000 his behaviour would be any different from the preceding days. Lastly, turning to signs of physical or mental distress, there were no worrying signs in A.J.'s behaviour in the days immediately preceding his suicide.

The Court finds that the hospital were aware of A.J.'s long history of mental health problems and knew that, at times, he posed a risk to his own life. However, the Court also observes that while A.J. was vulnerable, he was in an environment which he had come to know well, interacting with staff whom he knew and who knew him. When the hospital considered that the risk he might pose to himself had diminished he was given the freedom to move around the buildings and grounds and to return home for weekends to spend time with his family. When the risk was considered high, he was confined to the pavilion, and subject to a more restrictive regime. The restrictive regime was always lifted when it was considered that A.J.'s symptoms were improving. This was in line with the hospitals general philosophy of giving patients a considerable degree of freedom of movement in order to increase their responsibility and optimise their return to their family environment and society itself.

In conclusion, the (Grand Chamber of the) Court finds (unlike previously – and unanimously – the Chamber) that there has been no violation of the substantive aspect of Article 2 of the Convention.

The Procedural Aspect

The domestic proceedings lasted eleven years, two months and fifteen days for two levels of jurisdiction. The Court notes that the Government have conceded that the proceedings were excessively long and that a reasonable timeframe was not respected, even taking into account the alleged complexity of the proceedings and the rescheduling requested. The (Grand Chamber of the) Court finds (like previously the Chamber) that there has been a violation of the procedural limb of Article 2 of the Convention.

For these reasons, the Court holds, by 15 votes to 2, that there has been no violation of the substantive limb of Article 2 of the Convention; and unanimously, that there has been a violation of the procedural limb of Article 2 of the Convention.

Partly concurring, partly dissenting opinion of Judge Pinto de Albuquerque joined by Judge Harutyunyan defending the view that the substantive as well as the procedural limb of Article 2 is violated.

ECHR 2019/12 *Case of Rooman v. Belgium*, 31 January 2019, no. 18052/11 (Grand Chamber)

The Facts

The applicant, born in 1957, belongs to the German-speaking minority in Belgium. In 1997 he was convicted of theft and sexual assault. While in detention he committed further offences. On 16 June 2003 the Liège Court of First Instance ordered his detention in a psychiatric institution. On 21 January 2004 he was admitted to a social protection facility, located in the French-speaking region of Belgium, where he is still detained.

The applicant made an initial application for release on a trial basis. On 27 January 2006 the Mental Health Board recommended finding an institution that could admit him and provide him with therapy in German, the only language he could understand and speak. After various reviews of his situation,

the Mental Health Board rejected his application for release on 26 January 2007, noting that there was no institution that could meet the security and language requirements in his case.

On 13 November 2013 the applicant applied for release for the third time. In January 2014 a report from the social protection facility observed that he did not speak French and had very little contact with his fellow patients and with staff. The report concluded that he should remain in detention, citing among other reasons his “untreated mental health problems”. The Mental Health Board rejected the applicant’s application for release on a trial basis, finding that the requirements of an improvement in his mental state and guarantees for his social rehabilitation were not met and pointing out that “the mere fact that he only speaks German does not mean that the social protection facility has not taken all the necessary steps to provide him with the care his condition requires.” The Higher Mental Health Board upheld that decision.

In June 2014 the Court of Cassation quashed the decision of the Higher Mental Health Board on the grounds that it had not addressed the applicant’s argument that he was not receiving care appropriate to his situation, in view of the fact that he spoke and understood only German and that no German-speaking staff members were available in the facility where he was being held. The case was sent back to the Higher Mental Health Board, which on 22 July 2014 requested the Mental Health Board to appoint a panel of German speaking experts to provide an update of the expert psychiatric report issued in January 2009. It also instructed the head of the social protection facility to take all the necessary measures to ensure that the requisite care was made available, by at least providing the services of a German-speaking psychiatrist and psychologist.

In parallel with these appeals, the applicant also started proceedings against the Belgian State. On 10 October 2014 the urgent-applications judge found that there had been a breach of his right of access to health care and that his situation amounted to inhuman and degrading treatment. The judge ordered the Belgian State to appoint a German-speaking psychiatrist and medical auxiliary and to provide the applicant with the care routinely provided to French-speaking detainees.

Lastly, the applicant filed a negligence claim against the Belgian State. On 9 September 2016 the French-language Brussels Court of First Instance found the State liable for negligence and ordered it to pay € 75,000 in compensation to the applicant.

The (Second Section of the) Court delivered a judgment on 18 July 2017. It unanimously held that there had been a violation of Article 3 of the Convention. It held, by six votes to one, that there had been no violation of Article 5 § 1 of

the Convention. The request of the applicant that the case be referred to the Grand Chamber was granted.

The Law

Alleged Violation of Article 3 of the Convention

The applicant complained that his compulsory confinement without psychological and psychiatric treatment in the social protection facility in which he had been placed, and the total lack of any prospects of improvement in his situation on account of this absence of treatment, amounted to inhuman and degrading treatment prohibited by Article 3.

The Court notes at the outset that the possibility for a patient to be treated by staff who speak his or her language, even where it is an official language of the State, is not an established ingredient of the right enshrined in Article 3, or in any other Convention provision, particularly with regard to the provision of appropriate care to individuals who have been deprived of their liberty. Taking into account the language difficulties encountered by the medical authorities, the Court must examine whether, in parallel with other factors, necessary and reasonable steps were taken to guarantee communication that would facilitate the effective administration of appropriate treatment. In the area of psychiatric treatment in relation to Article 3, the purely linguistic element could prove to be decisive as to the availability or the administration of appropriate treatment, but only where other factors do not make it possible to offset the lack of communication and, in particular, subject to cooperation by the individual concerned.

The (Grand Chamber of the) Court will examine the applicant's complaint in two stages, taking account of the therapeutic package which has been in place since August 2017, after the (Chamber of the) Court reached its judgment.

The Treatment Situation from the Beginning of 2004 to August 2017
The Court notes that all the evidence in the case file indicates a failure to provide therapeutic treatment resulting from the fact that it was impossible for the medical staff and the applicant to communicate. Both the psychiatrists who were in contact with the applicant and the judicial authorities acknowledged the lack of treatment. They made it sufficiently clear from September 2005 onwards that the applicant was in particular need of long-term psychopharmacological and psycho-therapeutic treatment, to be administered in German, the only language that he spoke and understood. The

language barrier was the sole factor limiting the applicant's effective access to the treatment that was normally available. A report of 2015 stated that the applicant's neuropsychological condition was practically identical to what it had been in 2009.

The Court notes that the applicant was admittedly able to meet qualified German-speaking staff during the period in question. However, that contact was not in a therapeutic context. The only treatment he receives was the contact with an external German-speaking psychologist between May and November 2010. However, viewed in relation to the overall duration of the applicant's deprivation of liberty, these consultations cannot be regarded as a real provision of treatment, especially since they came to an end as a result of the State's failure to pay the relevant fees and expenses.

The Court considers that the national authorities failed to provide treatment for the applicant's health condition. His continued detention in the social protection facility without a realistic hope of change and without appropriate medical support for a period of about thirteen years must accordingly be viewed as particularly acute hardship, causing him distress of an intensity exceeding the unavoidable level of suffering inherent in detention.

Whatever the obstacles that the applicant might himself have created through his behaviour, the Court considers that these did not release the State from its obligations towards the applicant over such a lengthy period of deprivation of liberty.

The Treatment Situation since August 2017

With regard to the development of the situation from August 2017 onwards, the Court takes note of several elements. Monthly meetings with a German-speaking psychologist have been arranged. A German-speaking psychiatrist has been contacted and expressed her willingness to provide treatment at any time. Arrangements have been made to ensure the presence of an interpreter for the monthly meetings with a general practitioner and for all the other treatment measures. A multidisciplinary meeting of the care team, attended by the applicant and an interpreter, was held. These measures may be considered as corresponding, in principle, to the concept of "appropriate treatment".

It seems that the authorities have shown a real willingness to remedy the situation since the Chamber judgment, by undertaking tangible measures. The Court therefore concludes that, although there exist certain organisational shortcomings in the proposed package of measures, the threshold of severity required to bring Article 3 into play has not been reached in respect of the applicant's allegations concerning the period subsequent to August 2017.

Alleged Violation of Article 5 § 1 of the Convention

Relying on Article 5 § 1 of the Convention (which protects the right to liberty and security), the applicant also alleged that his detention was not lawful in that he was not receiving the psychological and psychiatric treatment necessitated by his mental condition.

The Applicant's Deprivation of Liberty from the Beginning of 2004
until August 2017

In spite of the repeated findings by the medical and social protection authorities to the effect that it was essential for the applicant to receive psychiatric treatment in German in order for him to have a chance of progressing and reintegrating into society, no measures were taken to introduce such treatment. It can only be observed that the failure to provide individualised therapy, adapted to the applicant's condition, over a period of about thirteen years amounted to significant negligence, which impeded the applicant's potential for positive change, assuming it existed. The Court considers, in view, firstly, of the indefinite nature of the length of the confinement measure and, secondly, of the applicant's state of health and the requests that he made to obtain appropriate psychiatric and psychological treatment that would allow him a hope of release, that the measures taken by the authorities were inadequate in terms of providing therapeutic treatment. The Belgian authorities took sporadic steps to remedy the applicant's situation, but these efforts were not an integral part of any therapeutic care or treatment path. In addition, the failure to provide the applicant with treatment appears all the more unjustifiable in that he was capable of communicating in a language that is one of the official languages of Belgium: overcoming a problem related to the use of that language does not therefore seem unrealistic.

In conclusion, the lack of treatment suited to the applicant's state of health and the absence of effective action by the authorities from the beginning of 2004 to August 2017 in order to guarantee such treatment had the effect that the applicant's deprivation of liberty from the beginning of 2004 to August 2017 did not take place, as required by Article 5 § 1, in an appropriate institution that was capable of providing him with suitable treatment for his health condition.

The Applicant's Deprivation of Liberty since August 2017

It appears to the Court that the relevant authorities have drawn the conclusions from the Chamber judgment of 18 July 2017 and have put in place a comprehensive treatment package, leading it to conclude that there has been no violation of this provision in respect of the period since August 2017.

However, the Court considers it appropriate to emphasise that the authorities must ensure, having due regard to the applicant's vulnerability and his diminished ability to take decisions, notwithstanding the fact that under domestic law he is formally considered capable of reaching his own decisions, that all the necessary initiatives are taken, in the medium and long term, to secure effective care, including psychiatric and psychological treatment and welfare assistance in accordance with the requirements of Article 5 § 1 (e) of the Convention, so as to provide him with the prospect of release.

For these reasons, the Court holds, by sixteen votes to one, that from the beginning of 2004 until August 2017, there was a violation of Article 3; by fourteen votes to three, that from August 2017 until now, there has been no violation of Article 3; unanimously, that from the beginning of 2004 until August 2017, there was a violation of Article 5; by ten votes to seven, that from August 2017 to date, there has been no violation of Article 5 of the Convention.

Four *partly concurring* and *partly dissenting opinions* are annexed to the judgment.

ECHR 2019/13 *Case of Petukhov v. Ukraine* (No. 2), 12 March 2019, no. 41216/13 (Fourth Section)

The Facts

The applicant, born in 1973, is currently serving a sentence of life imprisonment following his conviction in 2004 of a number of serious offences involving organised crime.

Between 2010 and 2014, suffering from tuberculosis (TB), he was regularly examined by doctors and given various screening and laboratory tests. He had a relapse in July 2010 and was transferred to a prison hospital specialising in the treatment of TB (prison TB hospital). He was certified as having a third-degree disability (the mildest) on account of his tuberculosis and some other health conditions.

Then his TB spread beyond his lungs and in 2011 he was diagnosed with genito-urinary TB, before being told by doctors in 2013 that he had developed resistance to most anti-TB drugs and was placed under palliative care. His health stabilised and in 2015 he was transferred to a pre-trial detention centre where he is still currently serving his sentence.

He complained to the prison authorities of inadequate medical care during that time, in particular about shortages in the required drugs. In response, the prison authorities acknowledged in 2010, 2011 and 2012 that there was a shortage of anti-TB medication in the prison TB hospital.

The European Court has already found a violation of Article 3 of the Convention in another application brought by the same applicant (no. 43374/02) concerning inadequate medical care during the period of his detention not covered by the current case, that is before July 2010 when he was transferred to the prison TB hospital.

The Law

This summary is restricted to the issues raised under Article 3 of the Convention with regard to the medical care in detention.

Alleged Violation of Article 3 of the Convention

Relying on Article 3 of the Convention (prohibition of inhuman or degrading treatment), the applicant complained that he had not been provided with adequate medical treatment.

The Court observes that the applicant suffered a recurrence of his pulmonary TB, which was the reason for his transfer on 3 July 2010 to the prison TB hospital. Shortly after his arrival at that prison, the failure of his previous TB treatment was recorded. It follows that the applicant's state of health at that stage raised serious concerns and warranted particular medical attention.

The Court further notes that, while on 23 November 2010 the applicant had been certified as having the mildest (third degree) category of disability, a year later, on 25 November 2011, his condition was reassessed, and he was certified as having a more serious, second-degree disability. Meanwhile, his TB disease had spread beyond his lungs and on 10 May 2011 he was diagnosed with genito-urinary TB. His TB treatment yielded no positive results, as he had developed resistance to most anti-TB drugs, and on 2 July 2013 his further medical treatment was found to be devoid of any prospect of success.

The Court reiterates that the mere fact that an applicant's state of health has deteriorated may raise, at an initial stage, certain doubts concerning the adequacy of his or her treatment in prison. However, it cannot suffice, by itself, for a finding of a violation of the State's positive obligations under Article 3 of the Convention if, on the other hand, it can be established that the relevant domestic authorities have provided in a timely fashion all reasonably available

medical care in a conscientious effort to hinder development of the disease in question.

The applicant was regularly examined by various doctors and subjected to various screening and laboratory tests. It cannot therefore be said that the respondent State left him unattended. However, the question remains as to whether the State's response to the applicant's disease proved to be an effective one.

The domestic authorities acknowledged on several occasions that there was a shortage of anti-TB medication available in the prison TB hospital. Moreover, having regard to the apparently deficient procurement procedures, which were criticised by the penal authorities themselves, such a deplorable situation appeared to be far from exceptional.

The Court reiterates in this connection that the authorities' inability to assure a regular, uninterrupted supply of essential anti-tuberculosis drugs to patients is a key factor in the failure of tuberculosis treatment. Moreover, when necessary medicines are unavailable, the overall quality of medical assistance is called into question.

Against that background the Court considers that the applicant's isolated refusals of treatment constituted a legitimate attempt to draw the authorities' attention to the poor quality of medical care available to him.

The Court has noted evidence of poor medical assistance and protection against tuberculosis in Ukrainian detention facilities in a number of cases against Ukraine. In the case of *Kondratyev v. Ukraine* (no. 5203/09, 15 December 2011) it noted concerns about multiple-drug-resistant tuberculosis in prisons and the fact that Ukraine still had one of the highest incidences of tuberculosis in Europe.

Similar concerns have been expressed, more recently, by the WHO Regional Office for Europe. According to its 2016 data, Ukraine was among the countries reporting the highest rate of failure in tuberculosis treatment. It also noted that drug-resistant tuberculosis continued to spread in Ukraine and that the reasons for that included continued shortages of first-line drugs and lack of access to second-line full treatment schemes, especially in prison settings. The circumstances of the present case disclose another example of the above-mentioned problems.

Lastly, the Court takes note of the applicant's arguments regarding the lack of adequate palliative care for him in detention. Those arguments are not without basis. The Court observes that the administration of isoniazid regardless of a patient's resistance to it had been a part of standard palliative-care measures until the change in the applicable legal standards in September 2014. Although the applicant's resistance to that drug had been documented as early as in July

2010, once he was placed under palliative care in July 2013, it was administered to him on a regular basis. Subsequently, in April 2014, he received confirmation from an independent tuberculosis specialist that “anti-TB drugs should not be administered to him given his resistance to them and their ineffectiveness, as well as their toxic action on all the body organs”.

More broadly, the Court notes the absence of any legal framework in Ukraine for ensuring palliative care in prisons. Furthermore, the Government did not show that any particular medical arrangements had been made for the applicant in the pre-trial detention centre, other than those for healthy prisoners. The Court therefore considers credible the applicant’s allegation that the palliative care prescribed for him was merely non-existent in practice.

For these reasons the Court holds, unanimously, that there has been a violation of Article 3 of the Convention on account of the lack of adequate medical care available to the applicant in detention.

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