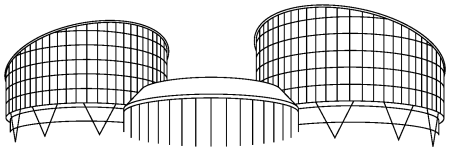

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF VINTMAN v. UKRAINE

(Application no. 28403/05)

JUDGMENT

STRASBOURG

23 October 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 Vintman v. Ukraine,

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

Mark Villiger, *President,*
Ann Power-Forde,
Ganna Yudkivska,
Vincent A. De Gaetano,
André Potocki,
Helena Jäderblom,
Aleš Pejchal, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 30 September 2014,

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

PROCEDURE

1. The case originated in an application (no. 28403/05) 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 Yevgeniy Moiseyevich Vintman ("the applicant"), on 29 June 2005.

2. The applicant, who had been granted legal aid, was represented by Mr A.A. Kristenko, a lawyer practising in Kharkiv. The Ukrainian Government ("the Government") were represented by their then Agent, Mr N. Kulchytskyy.

3. The applicant complained, under Article 8 of the Convention, that his rights to family life and to respect for his correspondence had been violated. He also raised a complaint regarding the medical care available to him in detention in respect of his pathological condition of ingrowing eyelashes.

4. On 2 January 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1968 and is currently serving a prison sentence in Sokal Prison no. 47 in the Lviv region.

A. Criminal proceedings against the applicant

6. In February 2000 the applicant was detained on suspicion of several counts of robbery and a murder. He claimed that he had been beaten by the police.

7. On 13 September 2000 the Zaporizhzhya Regional Court ("the Zaporizhzhya Court"), sitting as a court of first instance, found the applicant guilty as charged. It sentenced him to life imprisonment for murder and considered that the prison terms for the other crimes were absorbed by the life sentence. The court dismissed the applicant's allegation of ill-treatment as unsubstantiated.

8. On 21 December 2000 the Supreme Court of Ukraine upheld the judgment.

9. On 30 October 2009 the Supreme Court reviewed the applicant's case under an extraordinary procedure and commuted his sentence to fifteen years' imprisonment. It reasoned that life imprisonment had not been listed as a possible penalty in the Criminal Code on the date when the murder for which the applicant had been sentenced had been committed.

B. Prisons in which the applicant served his sentence, and his requests for transfer to a prison closer to his home

10. On 6 December 2001 the applicant was transferred to Vinnytsya Prison no. 1, which had a section for life prisoners, to serve his sentence. That prison is located some 700 kilometres from Zaporizhzhya, where the applicant had been living before his detention and where his mother lived. The train journey from Zaporizhzhya to Vinnytsya takes from twelve to sixteen hours.

11. On numerous occasions the applicant and his mother, Mrs Kapiton, who acted on his behalf as his representative under a power of attorney, asked the State Department of Ukraine for the Enforcement of Sentences ("the Prison Department") to transfer the applicant to a prison closer to his home to make it easier for her to visit him. They drew attention, in particular, to the long travel time from Zaporizhzhya to Vinnytsya by public transport, which was very burdensome for Mrs Kapiton given her advanced age (born in 1938) and poor health (she had been officially certified "second-degree" (medium) disabled).

12. On 10 June and 15 September 2004 the Prison Department replied to the applicant's mother that her request had been rejected, since "in accordance with the legislation in force, convicted prisoners must serve their entire sentence in the same prison".

13. On 29 October 2004 Mrs Kapiton arrived at Vinnytsya Prison to visit the applicant. During the visit she fainted and was provided with medical assistance for low blood pressure. Her meeting with the applicant

was not resumed once she had recovered, on the recommendation of a medical professional.

14. On many subsequent occasions Mrs Kapiton continued to contact various authorities on her own and the applicant's behalf, requesting his transfer to a prison closer to his home to enable her to visit him. She always enclosed with her requests the medical certificate confirming her disability and her doctor's advice not to travel outside the Zaporizhzhya region.

15. All Mrs Kapiton's requests were rejected. On numerous occasions (on 2, 12 and 18 November 2004, and on 12 February, 21 and 24 March 2005) the Prison Department repeated its previous reasoning, referring to the legal requirement that prisoners must serve their entire prison term in the same establishment.

16. On 17 March 2006 the Prison Department informed the applicant's mother that her request could not be granted because no places were available for life prisoners in establishments closer to Zaporizhzhya.

17. On 3 May 2006 the Prison Department wrote to the applicant's mother again, informing her that the applicant was supposed to serve his entire sentence in the same prison and that, in any event, there were no places available in prisons closer to his home.

18. On 7 August 2006 the Prison Department further notified the applicant that, in accordance with unspecified regulations, persons convicted of aggravated murder were usually detained in prisons located outside the region in which the crime had been committed.

19. On 16 November 2006, 8 August 2007 and 24 March 2009 the Prison Department reiterated, in reply to the repeated requests of the applicant's mother for his transfer, that "under the legislation in force, convicted prisoners must serve their entire sentence in the same prison".

20. On 1 December 2009, following a review of the applicant's sentence (see paragraph 9 above), the Prison Department's regional commission on prisoner distribution, allocation and transfers examined his case. It decided that he would be held in a maximum-security prison, in ordinary accommodation. Pursuant to that decision, on 10 December 2009 he was transferred to Sokal Prison no. 47 (a maximum-security prison) located in the Lviv region, around 1,000 kilometres from Zaporizhzhya. The train journey from Zaporizhzhya to Lviv takes from nineteen to twenty-three hours.

21. On an unspecified date Mrs Kapiton complained to the Prison Department that that transfer was unfair, as Sokal Prison was even further away from the applicant's home address.

22. On 17 February 2010 the administrative commission of Sokal Prison examined the applicant's request that the level of security of his prison regime be reduced from high to medium security. It was noted that, under the Code on the Enforcement of Sentences, a prisoner could be transferred from a high to a medium-security prison if he had already served more than

half of his sentence and if he had been manifesting good behaviour as an indication of his willingness to improve. However, the applicant had been disciplined eleven times and was not therefore eligible for such a transfer. Accordingly, his request was rejected. It remained open for him to challenge that decision before the regional commission of the Prison Department.

23. On 17 April 2010 the Prison Department's regional commission on prisoner distribution, allocation and transfers rejected the applicant's request for transfer to a prison in the Zaporizhzhya region. As noted in the minutes of its meeting, the applicant had been disciplined twelve times.

24. On 26 April 2010 the Prison Department further informed Mrs Kapiton that its appeal board had rejected the applicant's request for transfer to a medium-security prison in the Zaporizhzhya region, and that decision would be reviewed only if his conduct improved.

25. The applicant's mother then requested the applicant's transfer to a prison in the Donetsk or Lugansk region (neighbouring the Zaporizhzhya region).

26. On 17 November 2010 the Prison Department appeal board rejected her request. As noted in its meeting report, the applicant had been disciplined fifteen times and had received no incentives.

C. Medical treatment provided to the applicant

27. The applicant suffers from ingrowing eyelashes of the left eye, which have to be removed periodically. His mother made a general allegation, without providing any factual details, that he had been hit in his left eye following his arrival at Vinnytsya Prison. No further information is available as to the duration and origin of the above-mentioned condition.

28. As regards the medical treatment for the ingrowing eyelashes, the applicant's submissions to the Court were limited to his mother's general statement, which she had made on two occasions, in November 2005 and April 2010, that the responsibility for the condition lay with the authorities and that, although the ingrowing eyelashes were regularly removed, the applicant felt pain and discomfort in his left eye.

29. On an unspecified date in 2005 the applicant's mother complained to the prosecutor's office that the applicant's eye problem was connected to his alleged beating by prison guards following his arrival at the prison in 2001.

30. On 5 and 25 April 2005 the Vinnytsya Prosecutor's Office responded that there was no basis for launching a criminal inquiry into that complaint. In particular, the applicant had not requested a medical examination or assistance on account of any injuries inflicted on him. Furthermore, according to the testimony of other prisoners who had arrived at the prison together with the applicant, they had not experienced or witnessed any beatings. The prosecutor also noted that the applicant's condition was under constant medical supervision. In particular, he had his

ingrowing eyelashes removed by a qualified ophthalmologist on a regular basis. No other health-related complaints had been recorded.

31. According to extracts from the applicant's medical file provided by the Government, the applicant had had his ingrowing eyelashes removed on 21 January, 26 March, 9 July and 13 December 2004, as well as on 1 August 2005 and 4 January 2008. Furthermore, on 30 June 2010 and 6 April 2012 he had refused medical examinations and treatment.

D. Monitoring of the applicant's correspondence in Vinnytsya Prison

32. The applicant and his mother, acting on his behalf, complained to the prosecution authorities and the Prison Department about the routine monitoring of his correspondence by the prison administration.

33. The prosecutor's response was that the applicant's correspondence was subject to monitoring under the legislation in force; however, there had been no instances of withholding letters or seizing objects which the prisoners were allowed to keep.

34. On 7 July 2003 the Vinnytsya Regional Prison Department wrote to the applicant's mother, in reply to her complaint regarding, in particular, the interference with his correspondence, that on 11, 16 and 23 April 2003 the prison administration had "withheld some letters written by [the applicant], because their content did not comply with the requirements of the Instruction on Review of Prisoners' Correspondence".

35. On 3 October 2006 the Prison Department informed the applicant's mother that no correspondence had been withheld from the applicant and that since the beginning of the year he had sent fifty-one letters and had received twenty-four recommended letters and thirty-eight standard letters. There had been no complaints from the applicant himself regarding his correspondence.

36. On 14 November 2006 the applicant made a written statement that he had no complaints against the prison administration.

37. On 21 November 2006 the Vinnytsya Regional Prosecutor's Office wrote to the applicant's mother informing her that the applicant had sent fifty-six letters, had received seventy-two letters, and that he had had fifteen paid telephone conversations.

38. On 12 May 2008 the applicant made a written statement that he had no complaints concerning the work of the prison official in charge of the monitoring of prisoners' correspondence.

39. On 19 June 2008 the applicant asked the prison administration to allow him to make a telephone call on 24 June 2008 instead of a short-term private meeting to which he was entitled. According to a hand-written note on the request, apparently added by a prison official, the applicant's last private meeting had been on 26 December 2007.

40. On 27 July 2009 the applicant asked the prison administration to allow him to make a telephone call on 3 August 2009. As noted on the request, he had last made a telephone call on 3 May 2009.

41. According to the official records, during the period from 16 August 2002 to 30 September 2009 the Vinnytsya prison administration dispatched sixty-nine letters from the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant domestic legislation

1. Allocation of prisons and transfers from one prison to another

42. The relevant provisions of the Code of Ukraine on the Enforcement of Sentences (*Кримінально-виконавчий кодекс України*) of 2003 read as follows:

> **Article 93. Service of the entire prison sentence in one correctional or educational colony**
>
> "1. A [person] sentenced to deprivation of liberty shall serve the entire term of the sentence in one and the same correctional or educational colony, as a rule, within the boundaries of an administrative territorial unit corresponding to the place of his ["permanent" – deleted as of 16 April 2009] residence before conviction.
>
> 2. The transfer of a sentenced [person] from one correctional or educational colony to another for further service of the sentence shall be permitted under exceptional circumstances that prevent the continued stay of the sentenced [person] in that correctional or educational colony. The procedure for transferring the sentenced person shall be determined by the normative legal acts of the Ministry of Justice of Ukraine [before the amendments of 16 April 2009 – "the Prison Department"]."
>
> **Article 100. Changing the conditions of detention of convicted prisoners**
>
> "1. Depending on the conduct of a prisoner and his attitude towards work and studies, his conditions of detention may be changed within the same colony or by his transfer to a colony of a different type.
>
> ...
>
> 3. A prisoner may be transferred to a prison with a different level of security following a decision by the central executive authority implementing the state policy on the enforcement of sentences ["the central executive authority for the enforcement of sentences" – before the amendments of 16 October 2012] ..."

43. Pursuant to the Instruction on the Procedure for Prisoner Distribution and Transfer *(Інструкція про порядок розподілу, направлення та переведення для відбування покарання осіб, засуджених до позбавлення волі)* approved by Order of the Prison Department no. 261 of 16 December 2003 (repealed on 8 February 2012 and replaced by a similar Order of the Ministry of Justice), the distribution and transfer of prisoners was the

responsibility of the respective regional commissions of the Prison Department (the State Prisons Service following the organisational reform in the prison system of December 2010). Its decisions could be challenged before the appeal board of the Prison Department (the State Prisons Service). Further challenges to appeal board decisions could be lodged with the Head of the Prison Department (the State Prisons Service), who could quash them and remit the matter to the appeal board for a fresh examination, subject to newly discovered circumstances.

44. In its Information Letter No. 1619/10/13-09 of 30 November 2009, which was addressed to all administrative courts, the Higher Administrative Court clarified the judicial practice, in particular, regarding the choice of jurisdiction in disputes on prisoner distribution and transfers. It specified that contestations by prisoners of related decisions of the Prison Department's regional commissions fell to be examined by ordinary (general jurisdiction) courts under the criminal procedural legislation as related to execution of a sentence, but not by administrative courts under the administrative procedure.

2. Monitoring of prisoners' correspondence

45. Article 113 of the Code on the Enforcement of Sentences (2003) stipulates that prisoners are allowed to correspond with relatives, other persons and organisations. All such correspondence, with some exceptions, is subject to automatic monitoring and censorship by the prison administration. Prior to the amendments of 1 December 2005, those exceptions had been limited to correspondence with the Ombudsman and prosecution authorities. As of 1 December 2005 prisoners' correspondence with the Court or other international organisations of which Ukraine is a member was also exempted from monitoring. As of 21 January 2010 prisoners' correspondence with their lawyers was added to the list of exceptions.

46. Further details of the above provisions were provided in the Instruction on Review of Correspondence of Persons Held in Prisons and Pre-trial Detention Facilities (*Інструкція з організації перегляду кореспонденції осіб, які тримаються в установах виконання покарань та слідчих ізоляторах*), approved by Order no. 13 of the Prison Department of 25 January 2006 (repealed on 2 July 2013).

47. Furthermore, paragraph 4.1 of the aforementioned Instruction stipulated as follows:

> "4.1. Letters written with the use of cryptography, codes or cyphers, as well as those containing confidential information, shall not be dispatched to their addressees or handed to prisoners/detainees. They shall be withheld and destroyed."

48. On 2 July 2013 the Instruction referred to above was replaced by a similar Instruction approved by Order no. 1304/5 of the Ministry of Justice.

It generally reiterated the provisions quoted above. The novelties included a clause that prison authorities were to provide prisoners with free envelopes and postage stamps if they did not have sufficient funds to purchase them and wished to send letters to the Ombudsman, the Court or the prosecution authorities. Another new clause added letters written in illegible handwriting to the list of correspondence subject to being withheld and destroyed.

49. The relevant provisions of the Internal Prison Regulations *(Правила внутрішнього розпорядку установ виконання покарань)*, approved by Order no. 275 of the Prison Department dated 25 December 2003, read as follows:

> "43. Procedure for dispatching correspondence from prisoners
>
> Prisoners may only dispatch letters and applications via the prison administration. There are mail boxes on the premises of the prison for that purpose, which are checked by the responsible prison officers on a daily basis. Prisoners in confinement hand letters for dispatching to the administration. ...
>
> Letters shall be posted in mail boxes or handed to representatives of the administration unsealed. ...
>
> Letters written with the use of cryptography, codes or cyphers, as well as those containing ["cynical statements or" – deleted on 9 August 2006] confidential information, shall not be dispatched to their addressees or shall not be handed to prisoners. They shall be withheld and destroyed.
>
> Correspondence received or dispatched by prisoners shall be subject to screening.
>
> Proposals, applications and complaints addressed to the Ombudsman of the Verkhovna Rada of Ukraine, to a prosecutor or to the European Court of Human Rights ["as well as other international organisations of which Ukraine is a member or participant, or their authorised representatives" – added on 6 May 2006] shall not be subject to screening and shall be dispatched within twenty-four hours."

B. Case-law of domestic administrative courts cited by the Government

50. In its ruling of 26 September 2007 the Rivne Regional Administrative Court declined jurisdiction over a claim lodged by a convicted prisoner, V., seeking a transfer from one prison to another. In particular, the claimant requested the court to oblige the Prison Department to take a decision on his transfer. The court noted that the case did not fall to be examined in administrative proceedings, since it did not concern any decision, action or omission of a public authority.

51. On 10 January 2008 the Rivne Regional Administrative Court rejected a claim lodged by a life prisoner, M., who had sought to be transferred to a prison closer to his home address given the poor health of his mother. The court's reasoning was as follows: at the time when the verdict in respect of the claimant had become final (15 December 2003), the

Correctional Labour Code of 1970 was still in force (it was replaced by the Code on the Enforcement of Sentences of 11 July 2003, which took effect on 1 January 2004). The 1970 Code provided that prisoners should as a rule serve the entire period of their sentences in the same prison. It made no mention of the location of that prison. As the claimant had been serving his sentence in one prison, there were no legal grounds for his transfer to a different prison.

52. On 13 February 2008 the Kharkiv Regional Administrative Court declined jurisdiction over a claim lodged by a prisoner, T., who had challenged the sanctions imposed on him by the prison administration from 2005 to 2008. The court considered that the defendant was not a public authority within the meaning of the Code of Administrative Justice. On 27 May 2008 the Kharkiv Administrative Court of Appeal upheld the ruling of the first-instance court.

53. On 22 July 2009 the Kyiv Regional Administrative Court also declined jurisdiction over a similar claim lodged by a prisoner, A., who considered unlawful the sanctions imposed on him in prison.

54. On 30 March 2010 the Dnipropetrovsk Regional Administrative Court, likewise, refused to institute proceedings in respect of a claim lodged by a prisoner, L., against the prison administration (concerning allegedly unlawful sanctions, restrictions on his communication with his lawyer and numerous other issues) on the grounds that the prison administration was not a public authority under the Code of Administrative Justice.

55. On 20 May 2011 the Vinnytsya Regional Administrative Court rejected a claim lodged by a prisoner, R., against the State Prisons Service regarding the latter's refusals to transfer him to a prison closer to his home address. The court's reasoning was as follows: a prisoner could be transferred to a prison with a lower level of security if, in particular, he had improved his conduct; and his transfer to another prison of the same level of security was possible only under exceptional circumstances that prevented his remaining in the prison. None of the aforementioned preconditions was considered to have been met. The remote location of the prison from the applicant's family was not considered an exceptional circumstance justifying his transfer.

II. RELEVANT COUNCIL OF EUROPE DOCUMENTS

A. European Prison Rules

56. The European Prison Rules are recommendations of the Committee of Ministers to member States of the Council of Europe as to the minimum standards to be applied in prisons. They were introduced in 1987 (Recommendation No. R (87) 3) and were subsequently amended and supplemented on a number of occasions. States are encouraged to be guided

by the Rules in their legislation and policies, and to ensure wide dissemination of the Rules to their judicial authorities and to prison staff and inmates.

1. 2003 European Prison Rules

57. The relevant extract from Recommendation Rec(2003)23 of the Committee of Ministers of the Council of Europe to member States on the management by prison administrations of life and other long-term prisoners, adopted on 9 October 2003, reads as follows:

> "The Committee of Ministers ...:
>
> [Recommends those governments of member states:
>
> – be guided in their legislation, policies and practice on the management of life sentence and other long-term prisoners by the principles contained in the appendix to this recommendation;
>
> – ensure that this recommendation and the accompanying report are disseminated as widely as possible.
>
> **Appendix to Recommendation Rec(2003)23**
>
> **Counteracting the damaging effects of life and other long-term sentences**
>
> ... 22. Special efforts should be made to prevent the breakdown of family ties. To this end:
>
> – prisoners should be allocated, to the greatest extent possible, to prisons situated in proximity to their families or close relatives;
>
> – letters, telephone calls and visits should be allowed with the maximum possible frequency and privacy. If such provision endangers safety or security, or if justified by risk assessment, these contacts may be accompanied by reasonable security measures, such as monitoring of correspondence and searches before and after visits."

2. 2006 European Prison Rules

58. The relevant parts of Recommendation Rec(2006)2 of the Committee of Ministers to member States on the European Prison Rules, adopted on 11 January 2006, reads as follows:

> "17.1 Prisoners shall be allocated, as far as possible, to prisons close to their homes or places of social rehabilitation.
>
> 17.2 Allocation shall also take into account the requirements of continuing criminal investigations, safety and security and the need to provide appropriate regimes for all prisoners.
>
> 17.3 As far as possible, prisoners shall be consulted about their initial allocation and any subsequent transfer from one prison to another.
>
> ...
>
> 24.1 Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.

24.2 Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.

24.3 National law shall specify national and international bodies and officials with whom communication by prisoners shall not be restricted.

24.4 The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

24.5 Prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so."

B. Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf/E (2002) 1 - Rev. 2013)

59. The relevant extract reads as follows:

"51. It is ... very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations.

The CPT wishes to emphasise in this context the need for some flexibility as regards the application of rules on visits and telephone contacts vis-à-vis prisoners whose families live far away (thereby rendering regular visits impracticable). For example, such prisoners could be allowed to accumulate visiting time and/or be offered improved possibilities for telephone contacts with their families."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S INABILITY TO OBTAIN A TRANSFER TO A PRISON CLOSER TO HIS HOME

60. The applicant complained that in refusing his requests for transfer to a prison closer to his home, the Prison Department's failure to consider his arguments about his mother being unfit for long-distance travel had been unlawful and unfair.

61. The Court considers that this complaint falls to be examined under Article 8 of the Convention, which reads as follows:

"1. Everyone has the right to respect for his private and family life ....

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. Admissibility

62. The Government contended that the applicant had not exhausted domestic remedies as required by Article 35 § 1 of the Convention. They submitted that he could have challenged before the administrative courts the rejections of his transfer requests by the Prison Department (from 9 December 2010 – the State Prisons Service).

63. The Government referred in this connection to the case-law of the domestic administrative courts (see paragraphs 50 to 55 above) illustrating, in their view, the accessibility and effectiveness of the remedy in question.

64. The applicant contested the Government's arguments. He submitted that the possibility of his bringing administrative proceedings against the Prison Department or the State Prisons Service had been merely theoretical, as the administrative courts were not duly equipped for organising hearings with the participation of police-escorted detainees. Nor was there any legal framework for organising a detainee's police escort to an administrative court. The applicant therefore concluded that that could not be regarded as an accessible legal avenue in his case.

65. The applicant further observed that in a number of cases cited by the Government the administrative courts had declined jurisdiction over claims against the prison authorities. While in some other cases such claims had been considered on the merits, the judicial decisions had been against the claimants.

66. According to the applicant, the Government had failed to demonstrate what kind of reasonable redress the domestic courts could have afforded to him given the broad discretional decision-making powers of the Prison Department as regards his placement in a specific prison or transfer from one prison to another. He thus maintained that the respective remedy was ineffective.

67. The Court reiterates that the only remedies required to be exhausted under Article 35 of the Convention are those which are effective (see, among other authorities, *A.B. v. the Netherlands*, no. 37328/97, § 69, 29 January 2002).

68. The Court observes that in the present case the applicant has raised a separate complaint under Article 13 of the Convention, alleging that he had no such effective domestic remedy (see paragraph 105 below).

69. The issue of exhaustion of domestic remedies is therefore closely linked to the merits of the applicant's complaint that he had not been afforded an effective remedy for the aforementioned complaint under

Article 8 of the Convention. Accordingly, the Court joins the Government's objection to the merits of the complaint under Article 13 of the Convention (see paragraphs 108 to 117 below).

70. The Court further notes that this complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

71. The applicant submitted that the authorities' refusals to transfer him to a prison closer to his home address had amounted to an unjustified interference with his right to respect for his family life guaranteed by Article 8 of the Convention. He emphasised that he had in fact been denied any opportunity of seeing his elderly mother for many years.

72. The applicant further submitted that the relevant domestic legislation was not sufficiently precise and that it vested broad discretional powers with the Prison Department in deciding where prisoners were to serve their sentences and whether they could be transferred elsewhere if they so requested. In the applicant's opinion, this allowed for arbitrariness.

73. The applicant considered that the circumstances of his case disclosed such arbitrariness in practice. He noted that different reasons had been given for refusing his requests: the absence of a legal basis for transfer; the requirement to detain convicts outside the region in which the criminal offence had been committed; the absence of available places; and the requirement that he improve his conduct as a precondition for granting his transfer request.

74. In sum, the applicant contended that the interference with his right to respect for family life had been unlawful, had not pursued any legitimate aim and had not been necessary in a democratic society.

75. The Government did not submit any observations on the merits of this complaint, having objected as to its admissibility.

2. The Court's assessment

(a) Whether there was an interference with the applicant's rights under Article 8 of the Convention

76. The Court reiterates at the outset that prisoners should "continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention save for the right to liberty" (see *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 69, ECHR 2005-IX). There is therefore no question that a prisoner should forfeit all of his Article 8 rights merely because of his status as a person detained following conviction (see

Khodorkovskiy and Lebedev v. Russia, nos. 11082/06 and 13772/05, § 836, 25 July 2013).

77. At the same time, it is obvious that a person's detention entails by its nature a limitation on his or her private and family life (see, for example, *Messina v. Italy (no. 2)*, no. 25498/94, § 61, ECHR 2000-X, and *Kalashnikov v. Russia* (dec.), no. 47095/99, ECHR 2001-XI (extracts)).

78. The Court has also held in its case-law that the Convention does not grant prisoners the right to choose their place of detention, and the fact that prisoners are separated from their families, and at some distance from them, is an inevitable consequence of their imprisonment. Nevertheless, detaining an individual in a prison which is so far away from his or her family that visits are made very difficult or even impossible may in some circumstances amount to interference with family life, as the opportunity for family members to visit the prisoner is vital to maintaining family life (see *Ospina Vargas v. Italy* (dec.), no. 40750/98, 6 April 2000). It is therefore an essential part of prisoners' right to respect for family life that the prison authorities assist them in maintaining contact with their close family (see *Messina v. Italy* (no. 2), cited above, § 61).

79. In its recent judgment in the case of *Khodorkovskiy and Lebedev v. Russia*, the Court concluded that the applicants' allocation to a remote prison (located several thousand kilometres from the city where their family lived) constituted an interference with their Article 8 rights (cited above, § 838). The Court had regard, in particular, to the long distances involved, the geographical situation of the colonies concerned and the realities of the Russian transport system, which rendered a trip from the applicants' home city to their colonies a long and exhausting endeavour, especially for their young children. As a result, the applicants received fewer visits from their families.

80. The Court notes that in the present case the applicant has not seen his mother since her last (or, possibly, the only) visit to the prison on 29 October 2004 (see paragraph 13 above) – that is, for almost ten years.

81. Given her advanced age and poor health, as well as the distances involved, compounded by the realities of the Ukrainian transport system (see paragraphs 10, 11 and 20 above), Mrs Kapiton was unfit to travel to visit the applicant.

82. Thus in the circumstances of the present case the authorities' failure to transfer the applicant to a prison closer to his home address was tantamount to denying him any personal contact with his mother.

83. The Court considers that this amounted to an interference with the applicant's right to respect for his family life under Article 8 of the Convention.

(b) Whether the interference was "in accordance with the law"

84. The Court notes that any restriction on a detained person's right to respect for his or her private and family life must be applied "in accordance with the law" within the meaning of Article 8 § 2 of the Convention (see *Kučera v. Slovakia*, no. 48666/99, § 127, 17 July 2007). The expression "in accordance with the law" not only necessitates compliance with domestic law, but also relates to the quality of that law (see *Niedbała v. Poland*, no. 27915/95, § 79, 4 July 2000, and *Gradek v. Poland*, no. 39631/06, § 42, 8 June 2010).

85. The Court further observes that law which confers discretion on public authorities is not in itself contrary to that requirement (see *Lavents v. Latvia*, no. 58442/00, § 135, 28 November 2002, and *Wegera v. Poland*, no. 141/07, § 71, 19 January 2010). However, the law must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference (see, for example, *Al-Nashif v. Bulgaria*, no. 50963/99, § 119, 20 June 2002, and *Aleksejeva v. Latvia*, no. 21780/07, § 55, 3 July 2012).

86. The level of precision required of domestic legislation – which cannot in any case provide for every eventuality – depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI).

87. The search for certainty should remain reasonable so as not to entail excessive rigidity. Many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (see *Onoufriou v. Cyprus*, no. 24407/04, § 94, 7 January 2010, with further references).

88. Turning to the present case, the Court notes that, pursuant to Article 93 of the Code on the Enforcement of Sentences, prisoners should "as a rule" serve their entire prison sentence close to their home address (see paragraph 42 above). The general rule established by the aforementioned provision is in line with the European Prison Rules, which call for the allocation of prisoners, to the greatest extent possible, to prisons situated in the proximity of their families or close relatives (see paragraphs 56 to 58 above). Likewise, it is concordant with the requirement that the authorities assist prisoners in maintaining contact with their close family, which is inherent in Article 8 of the Convention (see paragraph 78 above).

89. It follows from the wording used in Article 93 of the Code of Ukraine on the Enforcement of Sentences, cited above, that the above-mentioned rule is not absolute and allows for exceptions in some unspecified cases. The Court does not share, however, the applicant's opinion that the failure of the legislator to specify all possible exceptions

should be regarded as undermining the quality of the applicable law, contrary to the requirements of Article 8 of the Convention. It would be excessively rigid and practically unfeasible to provide for all possible eventualities calling for a departure from the general rule in question.

90. The Court further takes note of the legal provision permitting a prisoner's transfer from one penal establishment to another only in exceptional circumstances where the prisoner cannot remain in the "initial" establishment (see paragraph 42 above). This restriction as such does not appear deficient if the aforementioned general rule regarding the initial allocation of a prisoner is complied with.

91. This was not, however, the case for the applicant, who had initially been assigned, for unknown reasons, to a prison some 700 kilometres away from his home and who had later been transferred to an even more remote prison located about 1,000 kilometres from his home (see paragraphs 10 and 20 above). The authorities kept rejecting his requests for transfer to a prison closer to his home, mainly relying on the absence of any statutory grounds for it.

92. Although the formalistic and restrictive approach followed by the authorities in their interpretation and application of the relevant legislation does raise questions and will be analysed below, the Court is prepared to accept that their decisions were based on sufficiently clear and foreseeable domestic legislation.

93. The Court will thus proceed on the assumption that the interference in question was lawful.

(c) Whether the interference was "necessary in a democratic society"

(i) Whether the interference pursued a legitimate aim

94. The Court notes that it remains unknown why the applicant was initially allocated to a remote prison, contrary to the general rule, in accordance with which he was supposed to serve his sentence in the same region as his home. The reasons given by the domestic authorities for rejecting the applicant's requests for transfer to a prison closer to his home address were as follows: (a) the legal requirement that a convicted prisoner must serve his entire prison sentence in the same establishment unless exceptional circumstances warranted his transfer (see paragraphs 12, 15, 17 and 19 above); (b) the absence of available prison places (see paragraphs 16 and 17 above); (c) the necessity to allocate a prisoner to a prison outside the region in which the crime had been committed (see paragraph 18 above); and (d) the applicant's supposedly unsatisfactory behaviour in prison (see paragraphs 23 and 26 above).

95. In so far as the first ground is concerned, the Court notes that it was a mere reference to a legal provision interpreted to the applicant's disadvantage, without any explanation as to what purpose it actually served.

Had it been interpreted in the light of the general rule that a prisoner should serve his entire sentence in the region where his home was located, its purpose could be, in particular, to facilitate maintaining his family ties. In the present case the Government failed, however, to provide any justification for keeping the applicant for his entire sentence in a remote prison to which he had been allocated at the outset.

96. As regards the second ground, based on the absence of available places, the Court can accept that, if that were indeed the reason for the authorities' refusals of the applicant's transfer requests, it could be aimed at combating prison overcrowding. The Court is mindful, however, that this ground was advanced by the authorities on only two occasions, in March and May 2006, whereas the applicant and his mother made repeated requests for his transfer to a prison closer to his home address. Indeed, they made such requests from December 2001 until November 2010 or later (see paragraphs 10, 16, 17 and 25 above).

97. The Court further observes that the third ground, based on the necessity to allocate a prisoner to a prison outside the region in which the crime had been committed, was cited only once by the authorities (see paragraph 18 above). While, in principle, this could be regarded as a precautionary measure required for a convict's security in certain cases, the Court notes that there was no mention of any danger for the applicant in the materials of the present case. It is known that the applicant was convicted for a murder and several counts of robbery (see paragraph 7 above). The rejections of his numerous requests for transfer to a prison closer to his home did not mention the places where the crimes in question had been committed. Moreover, if the authorities were relying on that consideration, they should have explained why it was necessary that the applicant serve his sentence in a different region. The Court does not therefore consider that this was a genuine ground for the authorities' constant refusals to transfer the applicant to a prison closer to his home address. Accordingly, the restriction of his rights under Article 8 of the Convention for the mentioned reason cannot be regarded as having pursued any legitimate aim within the meaning of that provision.

98. Lastly, the Court observes that the authorities refused to transfer the applicant to Zaporizhzhya where his mother lived or to a neighbouring region on the ground that his conduct in detention had been unsatisfactory and that he needed to improve it before any such transfer could be granted (see paragraphs 23 and 26 above). The Court considers that enhancing discipline and encouraging good behaviour in prison constituted a legitimate aim for the restriction of the applicant's rights under Article 8 of the Convention.

99. In sum, the Court considers that in general the interference complained of can be regarded as having pursued certain legitimate aims

such as prevention of prison overcrowding and ensuring adequate discipline in prisons.

(ii) Whether the interference was proportionate to the legitimate aims pursued

100. The Court notes that, when relying on the absence of available places, the authorities failed to give any details as to the prisons to which they had considered transferring the applicant, if that was the case, and the population rate of those prisons. A consultation of the administrative map of Ukraine shows that eleven regions are closer to Zaporizhzhya than Vinnytsya where the applicant was sent to serve his sentence. Furthermore, the Lviv region where he was transferred in December 2009 – along with the two other regions in the extreme west of the country (Lutsk and Uzhgorod) – is the furthest from Zaporizhzhya. In other words, any other of the remaining twenty-two regions would have been closer to the applicant's home address.

101. There is no evidence in the case file that the domestic authorities, despite claiming that there were no available places in 2006 when the applicant was in Vinnytsya Prison, had in fact considered placing him in any of the regions closer to his home address. Moreover, he was subsequently transferred even further away, to the Lviv region.

102. As regards the authorities' reliance on the allegedly unsatisfactory behaviour of the applicant to justify their refusals to transfer him, the Court notes that no differentiation was made between the applicant's requests for mitigation of his prison regime and those for his transfer to a prison of the same security level closer to his home (see paragraphs 24 and 26 above). It is also noteworthy that the above-mentioned reason was advanced for the first time in April 2010, whereas the applicant had been asking for a transfer since December 2001.

103. The Court further notes that the authorities did not dispute that the applicant's elderly and frail mother was physically unable to travel to visit him in Vinnytsya, and even less so in Sokal. Even though the applicant and his mother kept advancing that argument, the authorities never commented on it in their constant refusals of those requests. As can be judged from their responses, the applicant's personal situation and his interest in maintaining his family ties were never assessed, and no relevant and sufficient reasons for the interference in question were ever adduced.

104. The Court considers the above considerations sufficient to conclude that the interference complained of was disproportionate to the legitimate aim pursued. Accordingly, there has been a violation of Article 8 of the Convention in this regard.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 8 (INABILITY TO OBTAIN A TRANSFER TO A PRISON CLOSER TO HOME)

105. The applicant complained of the lack of an effective domestic remedy for his complaint under Article 8 of the Convention regarding the rejections of his requests for transfer to a prison closer to his home. He relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

106. The Court notes that it has joined the Government's objection regarding the admissibility of the applicant's complaint under Article 8 on account of his inability to obtain a transfer to a prison closer to his home address based on non-exhaustion of domestic remedies to the merits of his complaint under Article 13 of the Convention (see paragraph 69 above).

107. The Court considers that the applicant's complaint under Article 13 in conjunction with Article 8 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

108. The parties mainly reiterated their arguments about the compliance of the Article 8 complaint in question with the requirement of exhaustion of domestic remedies (see paragraphs 62-66 above).

109. The applicant added that some of his transfer requests had been rejected in a "non-official" manner, by letters sent to him or his mother without any information as to how the respective decisions had been taken and on what grounds they were based. He noted that many of his requests had been merely ignored, without any follow-up having been given.

110. The Court notes that, in order to comply with Article 13 of the Convention, a remedy must be "effective" in practice as well as in law, in particular, in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Aksoy v. Turkey*, 18 December 1996, § 95, *Reports of Judgments and Decisions* 1996-VI). In other words, for a remedy to be effective it must be independent of any action taken at the authorities' discretion and must be directly available to those concerned (see *Gurepka v. Ukraine*, no. 61406/00, § 59, 6 September 2005); able to prevent the alleged violation from taking place or continuing; or provide adequate redress for any

violation that had already occurred (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR 2000-XI).

111. Turning to the present case, the Court observes that, according to the information in the case file, the applicant or his mother acting on his behalf kept submitting requests for his transfer to a prison closer to his home address for about nine years (from December 2001 to November 2010 – see paragraphs 10, 11 and 26 above). They addressed those requests mainly to the Prison Department or to its regional commission for prisoner distribution, allocation and transfer or the appeal board.

112. The Court notes that the above-mentioned avenues were pursued in compliance with the applicable national legislation, namely Article 93 of the Code on the Enforcement of Sentences, which provided that the procedure for transferring prisoners from one penal establishment to another was to be decided by the Prison Department (or later, from April 2009, by the Ministry of Justice), and the relevant Instructions of the Prison Department and the Ministry of Justice (see paragraphs 42 and 43 above).

113. The Court further observes that the only possibility of challenging appeal board decisions that was explicitly provided for in the cited Instructions was by appealing to the head of the Prison Department (the State Prisons Service). He could then quash that decision and remit the case to the appeal board for a fresh examination. The applicant apparently exhausted those remedies, which were directly available to him.

114. According to the Government, the applicant should also have challenged the decisions of the authorities before the administrative courts. The Court does not, however, accept that argument. It notes that, pursuant to the Higher Administrative Court's explanations, such issues did not fall to be examined by administrative courts, but were to be dealt with under the criminal procedural legislation (see paragraph 44 above). The Court further observes that in four out of the six cases cited by the Government, the domestic administrative courts declined jurisdiction over similar claims (see paragraphs 50 and 52 to 54 above). It follows that it was not obvious, even for the Ukrainian courts, whether such disputes fell within their jurisdiction. The applicant cannot therefore be reproached for having failed to resort to that remedy.

115. The lack of clarity both in the legislation and in the judicial practice as regards the administrative courts' competence to deal with the prison authorities' decisions on the transfer of prisoners from one penal establishment to another is sufficient to demonstrate to the Court that the remedy in question cannot be regarded as "effective" in law as well as in practice.

116. As to possible complaints on this issue within the structure of the Prison Department, or later the State Prisons Service, their examination was broadly discretional and did not offer an effective domestic remedy either.

117. The Court therefore finds that there has been a violation of Article 13 of the Convention in this regard. It also dismisses the Government's objection regarding the admissibility of the applicant's complaint under Article 8 on account of his inability to obtain a transfer to a prison closer to his home address based on non-exhaustion of domestic remedies, which was previously joined to the merits of his complaint under Article 13 of the Convention (see paragraph 69 above).

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF THE ALLEGED MONITORING OF THE APPLICANT'S CORRESPONDENCE IN PRISON

118. The applicant also complained that the administration of Vinnytsya Prison had been monitoring and occasionally withholding his correspondence.

119. The Court will examine this complaint under Article 8 of the Convention, the relevant part of which 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. Admissibility

120. The Court notes that this 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

1. The parties' submissions

121. Referring to the Prison Department's letter of 7 July 2003 (see paragraph 34 above), the applicant noted that he had succeeded in obtaining at least one piece of evidence proving that his correspondence had been censored and occasionally withheld.

122. The Government submitted that the applicant's complaint on this matter was limited to his mother's allegation on one occasion that the prison administration had withheld and destroyed her son's letters containing complaints.

123. The Government observed that the applicant had successfully sent numerous complaints to various authorities, such as prosecutors' offices, national courts, the Ombudsman, and international human rights organisations. The Government therefore expressed doubt that the allegation made by the applicant's mother corresponded to the reality.

124. The Government noted that the applicant's correspondence, with some exceptions, had been monitored in accordance with the Code on the Enforcement of Sentences. However, that practice was in compliance with the applicable domestic legislation and raised no issues under Article 8 of the Convention.

125. Lastly, the Government noted that the applicant had been free to use a telephone to talk with his mother. Accordingly, nothing had prevented him from raising any complaints with her, and it would therefore have been pointless for the administration to have withheld letters addressed to his mother containing complaints.

2. The Court's assessment

126. The Court notes that, although the parties disagreed as to whether some of the applicant's letters had been withheld, there is no dispute between them that his correspondence had been routinely monitored by the prison administration, pursuant to the applicable domestic legislation.

127. The Court considers this a sufficient indication of an interference with the applicant's right to respect for his correspondence under Article 8 of the Convention (see, for example, *Silver and Others v. the United Kingdom*, 25 March 1983, § 84, Series A no. 61, and *Kornakovs v. Latvia*, no. 61005/00, § 158, 15 June 2006). This interference can only be justified if it was in accordance with the law, pursued a legitimate aim and was necessary in a democratic society in order to achieve that aim.

128. The expression "in accordance with the law" does not merely require that the measure have some basis in domestic law but also relates to the quality of that law. The Court has considered the quality of the law to be deficient and thus found a violation of Article 8 § 1 where the domestic system provided for automatic screening of prisoners' correspondence, on the basis that such an approach made no distinction between the different categories of persons with whom the prisoners could correspond and that the relevant provisions did not lay down any principles governing the exercise of the screening. Likewise, the Court has considered that the legal provisions did not comply with the requisite lawfulness requirement where they failed to specify the manner and the time-frame within which the correspondence screening should be effected or where the screening was automatic and the authorities were not obliged to give a reasoned decision specifying grounds on which it had been effected (see, for example, *Onoufriou v. Cyprus*, cited above, § 109, with further references).

129. Turning to the present case, the Court notes that under the domestic law prison officers monitored all the letters sent by prisoners, with very limited exceptions (see paragraphs 45 to 49 above). In particular, until 1 December 2005 the only exception was in respect of letters addressed to the prosecutor and the Ombudsman. After 1 December 2005 the exception was extended to cover letters addressed to the Court and other international organisations. Prisoners' correspondence with their lawyers was not exempted from screening until 2010.

130. The applicable provisions of the domestic law did not draw any further distinctions between the different categories of persons with whom prisoners could correspond, such as law-enforcement and other domestic authorities, relatives and so on. Moreover, as the monitoring was automatic, the authorities were not obliged to give a reasoned decision specifying the grounds on which correspondence had been monitored. Likewise, the law did not specify whether a prisoner was entitled to be informed of any alterations in the contents of his or her outgoing correspondence. Nor did it provide for a specific remedy enabling the prisoner to contest the manner or scope of the application of the statutory screening measures.

131. The Court therefore considers that the applicable domestic law did not offer an appropriate degree of protection against arbitrary interference with a prisoner's right to respect for his correspondence. It follows that the interference complained of was not "in accordance with the law".

132. Moreover, the Court notes that it has already found a violation of Article 8 of the Convention on account of the aforementioned deficiencies of the Ukrainian legislation as regards the monitoring of detainees' correspondence in the context of both pre-trial and post-conviction detention (see, respectively, *Sergey Volosyuk v. Ukraine*, no. 1291/03, §§ 81-86, 12 March 2009, and *Belyaev and Digtyarv. Ukraine*, nos. 16984/04 and 9947/05, §§ 52-56, 16 February 2012). There is nothing in the present case to convince the Court to depart from that conclusion.

133. 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 were complied with, and holds that there has been a violation of that provision.

IV. COMPLAINT CONCERNING THE APPLICANT'S MEDICAL TREATMENT

134. The applicant's mother, acting on his behalf, made some submissions to the Court, which were interpreted as the applicant's complaint of lack of medical assistance for his ingrowing eyelashes (see paragraphs 27 and 28 above).

135. The Court communicated the above complaint to the Government under Articles 3 and 8 of the Convention. It notes, however, that its traditional approach has been to deal with the issue of medical care in detention from the standpoint of Article 3 of the Convention. The Court will therefore examine the applicant's complaint in this case under Article 3 too, which reads as follows:

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

136. The Government submitted that the applicant had been constantly monitored by medical specialists and that prompt and due medical care had been provided to him in respect of his ingrowing eyelashes – namely, he had had the ingrowing eyelashes removed as often as required. The Government further emphasised that this was a simple and inexpensive intervention and that there had been no reasons to refuse it to the applicant.

137. The Government also noted that the Sokal prison doctors had recommended that the applicant undergo treatment in a specialised hospital so that the results could last longer, but that the applicant had declined that offer. They referred in this connection to his refusals of hospitalisation on 30 June 2010 and 6 April 2012 (see paragraph 31 above).

138. In reply to the Government's observations, the applicant submitted that, as confirmed by the extract from his medical file submitted by them, he had had his ingrowing eyelashes removed on only three occasions: in July 2004, August 2005 and January 2008 (see also paragraph 31 above). He observed that the Government had failed to provide the Court with any medical documents in respect of him for 2006, 2007 and 2009.

139. The applicant further contended that the constant monitoring referred to by the Government could not be regarded as equal to proper medical assistance in accordance with his needs.

140. Lastly, the applicant submitted that there had been no ophthalmologist in Vinnytsya Prison and that his "constant examination" by "a regular prison doctor" had not met the requirements of Article 3 of the Convention.

141. The Court emphasises that Article 3 of the Convention imposes an obligation on the State to ensure, given the practical demands of imprisonment, that the health and well-being of a prisoner are adequately secured by, among other things, providing him with the required medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, §§ 93-94, ECHR 2000-XI).

142. In order to establish whether an applicant received the requisite medical assistance while in detention, the Court must determine whether during his detention he needed regular medical care, whether he was deprived of it as he claimed, and if so whether this amounted to inhuman or degrading treatment contrary to Article 3 of the Convention (see *Farbtuhs*

v. Latvia, no. 4672/02, § 53, 2 December 2004, and *Sarban v. Moldova*, no. 3456/05, § 78, 4 October 2005).

143. In establishing the scope of the medical supervision required and provided in each particular case, the Court must have regard to the medical documents submitted by the parties (see *Popov v. Russia*, no. 26853/04, § 211, 13 July 2006). The Court reiterates in this connection that distribution of the burden of proof is intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (for the principle-setting case-law see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII; and, for the application of this principle in the context of complaints on inadequacy of medical care in detention, see *Štrucl and others v. Slovenia*, nos. 5903/10, 6003/10 and 6544/10, § 65, 20 October 2011).

144. The Court notes that information about conditions of detention, including the issue of medical care, falls within the knowledge of the domestic authorities. Accordingly, applicants might experience difficulties in procuring evidence to substantiate a complaint in that connection (see *Vladimir Vasilyev v. Russia*, no. 28370/05, § 66, 10 January 2012). What is expected from applicants in such cases is to submit at least a detailed account of the facts complained of (see *Visloguzov v. Ukraine*, no. 32362/02, § 45, 20 May 2010). The burden of proof is then shifted to the Government to provide explanations and supporting documents.

145. Thus, an ample medical file proving that constant medical supervision and adequate medical care have been provided might refute an applicant's view regarding the medical care at his disposal (see *Pitalev v. Russia*, no. 34393/03, § 55, 30 July 2009). Conversely, the Government's failure to provide pertinent medical documents casts doubts as to the availability of adequate medical supervision of and assistance to the applicant in detention (see *Salakhov and Islyamova v. Ukraine*, no. 28005/08, § 133, 14 March 2013).

146. Turning to the present case, the Court notes that the applicant's initial submissions as regards the medical care provided to him in detention for his ingrowing eyelashes were limited to vaguely worded accusations against the authorities for that condition and a complaint that it had been causing him permanent discomfort (see paragraph 28 above).

147. The Court observes that the applicant failed to provide any factual details, for example, as to how often his ingrowing eyelashes had had to be removed, when and to whom he had applied for such an intervention, how his requests had been treated, and how long he had had to wait. Mindful of the fact that the applicant's correspondence was subject to routine monitoring by the prison administration, on account of which a violation of Article 8 of the Convention has been found (see paragraph 133 above), the Court discerns no indication of any obstacles preventing the applicant from

submitting those details to the Court, either directly or through his mother at any point during the nine-year period in which his application was pending.

148. The Court further observes that the first time the applicant submitted specific arguments substantiating this complaint was in reply to the Government's observations (see paragraphs 138 to 140 above). Those arguments were formulated *post factum* and cannot be regarded as a valid evidential basis.

149. Having assessed the medical documents submitted by the Government, the Court notes that either the medical file is incomplete or the applicant was indeed not provided with medical assistance between August 2005 and January 2008 (see paragraph 31 above). Whichever was the case, the Court cannot speculate, in the absence of any information from the applicant, as to how often he required medical treatment for his condition. Nor does the Court consider that the applicant took any reasonable minimum effort to shift the burden of proof to the Government in this case.

150. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

151. The applicant further complained, under Article 3 of the Convention, that he had been beaten by the police following his arrest in February 2000.

152. He also complained, in general terms and without giving any factual details, that he had been beaten by prison officers following his arrival at Vinnytsya Prison in December 2001.

153. Furthermore, the applicant made some general and confused submissions regarding the conditions of his detention in Vinnytsya Prison no. 1. In order to clarify them, on 29 November 2005 the Registry requested the applicant to specify whether those submissions should be understood as a complaint under Article 3 of the Convention about the conditions of his detention and what exactly he was complaining about. In his reply of 19 July 2005 the applicant stated that he indeed meant to raise a complaint under Article 3 of the Convention and that it concerned the refusals to transfer him to a prison closer to his home.

154. The applicant also claimed that Article 5 of the Convention had been breached but provided no specific information.

155. The applicant complained under Article 6 of the Convention that the criminal proceedings against him had been unfair and that he had been convicted of crimes he had not committed.

156. Lastly, the applicant complained under Article 7 of the Convention that his sentence to life imprisonment had not been lawful, as on the date on

which the murder imputed to him had been committed, the maximum punishment for murder was fifteen years' imprisonment.

157. The Court notes that the applicant's complaint about his allocation to a remote prison has already been examined from the standpoint of Article 8 of the Convention (see paragraphs 60 to 104 above).

158. As regards the other complaints, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

159. 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

160. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

161. The Government contested that claim as unsubstantiated and excessive.

162. Having regard to all the circumstances of the present case, the Court accepts that the applicant suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 12,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to him.

B. Costs and expenses

163. The applicant claimed 52,190.60 Ukrainian hryvnias (UAH) in respect of his legal representation by Mr Kristenko in the proceedings before the Court. To substantiate that claim, he submitted a legal assistance contract of 14 June 2012 indicating an hourly rate of remuneration to Mr Kristenko of UAH 1,540 (equivalent to about EUR 150 at the time). The applicant also submitted a copy of the lawyer's invoice of 26 November 2012, according to which the applicant was to pay him UAH 52,190.60 (about EUR 5,000 at the time) for a total of almost thirty-four hours' work.

164. In addition, the applicant claimed UAH 67.20 for postal expenses in respect of his correspondence with the Court (then equivalent to about EUR 6). He accompanied this claim with copies of the relevant receipts.

165. The Government contested the applicant's claim in respect of his legal representation as excessive. As to the claim for postal expenses, they left it to the discretion of the Court.

166. 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 applicant under this head the sum of EUR 2,550 (equivalent to EUR 3,400 minus EUR 850, the sum received by way of legal aid) in respect of his legal representation, as well as EUR 6 for postal expenses, plus any value-added tax that may be chargeable to him on the above amounts.

C. Default interest

167. 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. *Decides* to join the Government's objection as to the exhaustion of domestic remedies in respect of the applicant's complaint under Article 8 of the Convention concerning his inability to obtain a transfer to a prison closer to his home to the merits of his complaint under Article 13 of the Convention, and dismisses it after having examined the merits of that complaint;

2. *Declares* the complaints under Articles 8 and 13 of the Convention concerning the applicant's inability to obtain a transfer to a prison closer to his home, as well as his complaint under Article 8 of the Convention concerning the monitoring of his correspondence in prison, admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 8 of the Convention on account of the applicant's inability to obtain a transfer to a prison closer to his home;

4. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 8 on account of the aforementioned issue;

5. *Holds* that there has been a violation of Article 8 of the Convention on account of the monitoring of the applicant's correspondence in Vinnytsya Prison;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,556 (two thousand five hundred and fifty six 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;

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

Done in English, and notified in writing on 23 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President