



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

FIFTH SECTION

**CASE OF KORNEYKOVA AND KORNEYKOV v. UKRAINE**

*(Application no. 56660/12)*

JUDGMENT

STRASBOURG

24 March 2016

**FINAL**

**24/06/2016**

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Korneykova and Korneykov v. Ukraine,**

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

Angelika Nußberger, *President*,

Ganna Yudkivska,

André Potocki,

Faris Vehabović,

Síofra O’Leary,

Carlo Ranzoni,

Mārtiņš Mits, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 1 March 2016,

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

**PROCEDURE**

1. The case originated in an application (no. 56660/12) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Ukrainian nationals, Ms Viktoriya Yuryevna Korneykova (“the first applicant”) and her son Mr Denis Yuryevich Korneykov (“the second applicant”), on 31 August 2012.

2. The applicants were represented by Ms Y. Zaikina and Mr G. Tokarev, lawyers practising in Kharkiv. The Ukrainian Government (“the Government”) were represented by their Agent, most recently Mr B. Babin, of the Ministry of Justice.

3. The first applicant alleged that she had been shackled to her bed during her stay in a maternity hospital. She also complained about her placement in a metal cage during court hearings. Lastly, she complained on behalf of herself and the second applicant that the material conditions of their detention and the medical care provided to the second applicant in the Kharkiv Pre-Trial Detention Centre (“the Kharkiv SIZO”) had been inadequate.

4. On 12 October 2012 the President of the Fifth Section decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicants should be kept in conditions suitable for a small child and a nursing mother. It was specified, in particular, that adequate medical supervision and care should be provided to the second applicant for the duration of the proceedings before the Court.

5. On the same date the application was given priority under Rule 41 of the Rules of the Court and it was communicated to the Government.

6. On 22 February 2013 the application of Rules 39 and 41 of the Rules of Court was discontinued at the Government's request as by that time the first applicant had been released (see paragraph 75 below).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

7. The applicants are a mother and child born in 1990 and 2012 respectively.

#### A. Background facts

8. On 16 January 2012 the first applicant, who was in the fifth month of pregnancy, was detained by the police on suspicion of robbery.

9. On 26 January 2012 the Dzerzhynskyy District Court of Kharkiv ("the Dzerzhynskyy Court") ordered her pre-trial detention as a preventive measure pending trial.

10. On the same date she was placed in the Kharkiv SIZO.

#### B. Conditions of the first applicant's stay in the maternity hospital

11. On 22 May 2012 the first applicant was taken to Kharkiv Maternity Hospital no. 7 ("the maternity hospital").

12. On the same date she gave birth to the second applicant. He measured 49 cm and weighed 2.9 kg.

13. Three female security officers guarded the first applicant in the hospital. According to her, they stayed on the ward at all times. The Government submitted that they had left the ward during the delivery.

14. The first applicant alleged she had been continuously shackled to her hospital bed or to a gynaecological examination chair, the only exception being during the delivery when the shackles had been removed. It is not clear from her submissions exactly how she had been shackled; on one occasion, she submitted that after the delivery she had had her foot shackled to the bed. At the same time, she submitted that the guards had only removed the shackles from her wrists for breastfeeding.

15. According to the Government, the first applicant was never handcuffed or shackled in the maternity hospital.

16. On 25 May 2012 the applicants were discharged.

17. On 12 November 2012 the first applicant wrote in a statement for the SIZO administration (see paragraphs 41 and 76) that the maternity hospital staff had treated her well, that she had not been handcuffed or shackled, and

that the two female security officers who had been on her ward had been helping her take care of the baby.

18. In December 2012 and January 2013 the prosecution authorities questioned some maternity hospital staff and the security officers who had guarded the first applicant with a view to verifying her allegations, particularly as regards her shackling (see also paragraphs 76-82 below).

19. On 21 December 2012 the chief doctor of the maternity hospital wrote to the governor of the Kharkiv SIZO, in reply to an enquiry by the latter, to say that during her stay in the maternity hospital the first applicant had been guarded by SIZO officers at all times, that the officers in question had not been on the delivery ward, and that the first applicant had not been handcuffed or shackled during the delivery.

20. On 24 December 2012 the chief obstetrician, Ms Ti., gave a written statement to the prosecution authorities. She submitted that the first applicant had been shackled by the wrists to the gynaecological examination chair during her examinations both in the admissions unit and later in the obstetric unit, and that it was usual practice for detainees to be shackled and guarded by three guards.

21. Two other obstetricians, Ms F. and Ms S., and a nurse, Ms To., made similar statements. Ms F. submitted that she could not remember any details regarding the second applicant's delivery. Ms To. specified that the first applicant had not been shackled during the delivery or subsequently during breastfeeding.

22. The chief doctor of the neonatal unit Ms Vl. also submitted that the first applicant had been shackled to a gynaecological examination chair. Furthermore, she indicated that two guards had been staying on the ward near the applicants, with a third near the door.

23. The security officers who had guarded the first applicant denied that she had been handcuffed or shackled in hospital.

24. The applicant's lawyer enquired with a former nurse, Ms P., about the conditions faced by women in detention during delivery, with reference to her related work experience. On 7 February 2013 Ms P. wrote to him indicating that she had indeed worked as a nurse at Donetsk Regional Childcare and Maternal Health Centre from 1996 to 2005, and that in 2004 or 2005 a detained woman had been shackled to her bed during her baby's delivery there.

### **C. Conditions of detention in the Kharkiv SIZO**

#### *1. Physical conditions of detention*

25. While the first applicant was held in several different cells in the SIZO, her application form referred only to the conditions of her detention with her baby in cell no. 408, in which she had been held from 14 March to

8 November 2012. The summary of facts below therefore only concerns that cell.

**(a) The first applicant's account**

26. The cell, situated in a semi-basement, was cold and damp. There was no hot water and only an irregular supply of cold water. The first applicant therefore rarely had the opportunity to take a shower and bath her new-born son. She also had to store cold water in plastic bottles for her own use. She boiled water on a defective electric cooker in a kettle, which she had to borrow from the administration and which was provided to her for no longer than fifteen minutes each time. The toilet and shower were in a niche not separated from the living area. The toilet was often blocked. There was no baby changing table or cot in the cell.

27. The first applicant was not provided with any baby hygiene products. Nor did she receive nutrition suitable to her needs. On the days of court hearings her only meal was breakfast, which consisted of bread and tea. No packed lunches were provided to her.

28. The applicants were able to have outdoor walks of about ten minutes per day, but not every day, in a communal walking area.

29. Lastly, one of the inmates she shared with was HIV positive.

**(b) The Government's account**

30. Cell no. 408 was a high-comfort cell designed for pregnant women and women with children. It was located on the ground floor, measured fifty-two square metres and could accommodate up to six people. The first applicant shared it with two or sometimes three inmates.

31. The cell had three windows measuring over eight square metres in total. There was hot and cold water, as well as a drinking water cooler with a capacity of ten litres.

32. Furthermore, there were all the necessary furniture and facilities such as air conditioning, a refrigerator, an electric stove, a baby cot and a pram. There was also a supply of nappies and hygiene products. The toilet and shower were separated from the living area.

33. The first applicant was provided with adequate nutrition in accordance with the applicable standards (the total energy value of her daily meals being 3,284 kilocalories). She received three hot meals per day with the exception of hearing days, when she missed lunch. She breastfed her son and refused the baby food provided by the SIZO. There were no restrictions on food or other parcels she received from her relatives.

34. The applicants had a daily two-hour walk in a specially designated area.

35. They never shared a cell with inmates with HIV.

36. The Government provided four colour photographs of cell no. 408, showing a spacious and light room in a visually good state of repair. There

were three large windows with sheer curtains. The cell had a washbasin. There was also a lavatory with a bidet and a shower cubicle, both separated from the living area by opaque glass doors. Also on the photographs were a wardrobe, two beds with bedside cabinets, a cot, a table with two stools, a baby stool, a shelf with some tableware, a microwave, a television and a baby changing table.

37. Another photograph showed a walking area for detained mothers with babies, with a flowerbed and a wall with a nature mural. The first applicant and her baby were on the photograph, as well as another woman with a pram.

**(c) Other detainees' accounts and relevant information**

38. On 1 and 2 February 2012 the local sanitary and epidemiological service inspected the SIZO in the context of an unspecified investigation. It observed that there was a special cell for women with babies, with all the essential amenities. It was noted in the report that there had been no pregnant inmates or inmates with babies in the SIZO at the time of the inspection.

39. On 24 May 2012 the sanitary and epidemiological service also inspected the drinking water in the SIZO to check that it complied with the relevant standards. No irregularities were found.

40. On 22 October 2012 the Kharkiv Regional Prosecutor's Office informed the Agent of the Government that there had been no complaints from the first applicant regarding the conditions of detention or the second applicant's medical care in the SIZO.

41. On 12 November 2012 the first applicant wrote a statement giving a detailed description of her cell in the SIZO similar to that submitted by the Government (see paragraphs 30-37 above). The last paragraph also concerned her stay in the maternity hospital (see paragraph 17 above).

42. On 13 November 2012 one of the SIZO staff wrote to the State Prisons Service to say that the first applicant's statement had been made freely.

43. During her detention in the Kharkiv SIZO the first applicant received about thirty food parcels from her mother, often with basic foodstuffs such as bread, butter, tea, sugar and milk.

44. The first applicant lodged numerous requests for release with the trial court dealing with her criminal case, subject to an undertaking not to abscond (dated 6 July, 6, 26 and 31 August, 3 September and 9 October 2012). She alleged, in particular, that the conditions in the SIZO were not adequate for her baby. The court rejected those requests.

45. The applicants' case received some media coverage. For example, in November 2012 the article "Baby as a victim of inhuman treatment" was published online by the Kharkiv Human Rights Group. In December 2012 a television programme was broadcast, in which the first applicant and the

State authorities gave accounts, particularly as regards the conditions of the applicants' detention in the SIZO. The parties did not submit to the Court a copy of the relevant article or video footage or a transcript of the television programme.

46. On 12 December 2012 one of the detainees, Ms B., wrote a statement addressed to the head of the local department of the State Prisons Service. She submitted that in November 2012 she had been held in the same cell as the first applicant and had been satisfied with the conditions of detention there. It was noted in the statement that there had been large windows in the cell, a shower cubicle with hot and cold water and all the necessary furniture and appliances, including a refrigerator and a television.

47. On 19 December 2012 the Kharkiv Regional Department of the State Prisons Service issued a memorandum stating that the first applicant had not submitted any complaints during her detention in the Kharkiv SIZO.

48. The case file contains three statements by detainee Ms M. concerning the conditions of detention in the SIZO. She wrote two of them while detained there (on an unspecified date and on 25 December 2012), and a third on 30 January 2013 when she had already begun serving her prison sentence elsewhere. In the first two statements Ms M. described the conditions of her detention in cell no. 408 as quite satisfactory and comfortable. Her account was similar to that given by the Government (see paragraphs 30-32 above). The first two statements also contained critical remarks regarding the first applicant claiming, in particular, that she had displayed a careless attitude towards her baby and had acted in bad faith in applying to the Court. In her third statement, Ms M. stated that the food in the SIZO had been poor. More specifically, the bread had been stale and the meat had been tinged blue. She also submitted that there had been no hot water in cell no. 408. Lastly, she submitted that on two occasions she had witnessed the first applicant requesting medical care for her baby when he had had stomachache, but her requests had been ignored.

49. On 28 December 2012 a former detainee, Ms Sa., wrote a statement for the first applicant's lawyer and had it certified by a notary. She stated that she had shared cell no. 408 with the first applicant from an unspecified date in March to 19 April 2012. Ms Sa. had been pregnant at the time. She described the conditions of their detention as follows. The cell was located in a semi-basement and inmates saw practically no daylight. The windows were so high that they could not be opened without the assistance of a guard. There were about seven inmates in the cell, some of them with HIV and some suffering from other illnesses. The toilet was separated from the living area by a waist-high wall and leaked. As a result, there was always a bad smell. The shower also leaked and the cubicle door was broken. It was so humid in the cell that the plaster had fallen off the ceiling and the walls were covered in mould. The cell was infested with mice and lice. There were no household appliances like a kettle or microwave. Nor were there



any beds or bedside cabinets as shown by the State Prisons Service on television (see paragraph 45 above). Ms Sa. specified that in fact none of the detainees had ever been held in the cell presented by the authorities on television. There was no hot water and the pressure in the cold water taps was so low that inmates had to store water for their own use. Furthermore, the SIZO administration did not provide them with any tableware. Their daily walk lasted only twenty minutes and took place in a small walking area covered with bars. Furthermore, according to Ms Sa., the food in the SIZO was neither fresh nor tasty. Lastly, she stated that she had been shackled to her bed when undergoing some treatment in the maternity hospital in Kharkiv while pregnant.

50. On an unspecified date Ms Ve., who had also shared cell no. 408 with the first applicant (the exact period is unknown), wrote a statement about the conditions of detention there. Her description was similar to that given by Ms Sa. as regards the leaking toilet, high humidity levels, lack of hot water and irregular supply of cold water, as well as the duration and conditions of the daily outdoor walks and poor nutrition.

## *2. Medical care for the second applicant*

51. On 25 May 2012 the applicants were discharged from the maternity hospital. The second applicant was found to be in good health.

52. According to a letter from its chief doctor to the first applicant's lawyer dated 12 December 2012, on 25 May 2012 the second applicant was transferred to Children's Hospital no. 19 ("the children's hospital"). All the other relevant documents in the case file indicate that on 25 May 2012 both applicants were taken to the Kharkiv SIZO.

53. As submitted by the first applicant and noted in a letter by the chief doctor of the children's hospital to the first applicant's lawyer dated 6 September 2012, a paediatrician from that hospital had examined the second applicant on 28 May 2012. The baby was found to be in good health but to have phimosis (a condition of the penis where the foreskin cannot be fully retracted).

54. However, according to the second applicant's medical file kept by the SIZO, the first time a paediatrician of the children's hospital examined him was on 31 May 2012. He was found to be in an adaptation period and the first applicant received advice regarding childcare.

55. According to the second applicant's medical file, on 12 June 2012 he was examined again by a paediatrician, who diagnosed him with intestinal colic and recommended Espumisan, massage, feeding on demand and outdoor walks. The doctor also suspected that the boy had a patent (open) foramen ovale (PFO; the foramen ovale allows blood circulation in the fetal heart and closes in most individuals at birth).

56. The second applicant's next medical examination appears to have taken place on 20 July 2012. It was noted in his medical file that the

paediatrician had given advice to the first applicant regarding feeding and care.

57. The first applicant denied that any of the examinations following that on 28 May 2012 had taken place. She alleged that her baby had not been examined by a paediatrician until 10 September 2012. She submitted that the records of her son's earlier examinations in the medical file had been forged. According to her, the first page of that book referred to an examination on 10 September 2012, whereas the records of his earlier examinations had been written on separate pages and subsequently glued into the file. The case file as it stands before the Court contains a separate copy of each page of the file, which makes it impossible to verify the first applicant's allegation.

58. On 28 August 2012 the first applicant's lawyer asked the Kharkiv SIZO administration to provide him with details of when the second applicant had been examined by a paediatrician and whether the conditions of detention had been appropriate for such a small baby. He also requested copies of the relevant documents.

59. On 4 September 2012 the SIZO administration replied that it would be able to provide comprehensive information on the second applicant's health after a complete medical examination in the children's hospital, which was due to take place.

60. On 31 August 2012 the first applicant asked the judge dealing with her case to order a medical examination of her son "given that the SIZO administration [was] ignoring her requests to that effect". It appears that her request was rejected.

61. On 6 September 2012 the chief doctor of the children's hospital wrote to the first applicant's lawyer in reply to an enquiry by him dated 5 September 2012. He said that with no paediatrician at the Kharkiv SIZO, a paediatrician from that hospital monitored babies born there. He also indicated that the second applicant had been examined by the hospital paediatrician on 28 May 2012 (see also paragraph 53 above). In so far as the lawyer enquired about the baby's medical condition at the material time, the chief doctor stated that it was impossible to provide him with such information because the first applicant had not requested any medical care for him until then.

62. On 10 September 2012 a dermatologist, cardiologist, ear, nose and throat specialist, neurologist and paediatrician all examined the second applicant. He was found to have allergic dermatitis, dysplastic cardiomyopathy and phimosis. Furthermore, the patent foramen ovale diagnosis had been called into question (see paragraph 55 above). The doctors concluded that the second applicant did not require any medical treatment, but recommended that the mother follow a hypoallergenic diet.

63. According to the first applicant, the examination was carried out in the context of custody proceedings initiated by the second applicant's

stepfather. She specified that it had been done with her consent so that the second applicant could be taken from the SIZO, where he was not receiving adequate care.

64. On 14 September 2012 the SIZO sent a copy of the second applicant's medical file to the applicants' representative, further to a request made by him on 28 August 2012 (see paragraph 58 above).

65. On 18 October 2012 the chief doctor of the children's hospital wrote to the first applicant's lawyer, in reply to an enquiry made on 10 October 2012, to say that hospital was in charge of the medical supervision of children in the Kharkiv SIZO where needed, subject to the SIZO administration making the relevant application. It was also noted that the second applicant required an additional examination in the regional cardiology centre, and that the children's hospital had already requested the SIZO administration's cooperation in that regard.

66. On 19 October 2012 a paediatrician and a cardiologist examined the second applicant again. He was diagnosed with a patent foramen ovale (a heart condition, see paragraph 55 above for further details) and an additional examination was recommended.

67. On the same date the second applicant underwent an echocardiogram and was found to be healthy.

68. On 14 November 2012 the first applicant refused to allow her son to undergo a paediatrician examination, which she had been offered.

69. The following day the first applicant was released (see also paragraph 75 below).

70. On 30 November 2012 the first applicant's lawyer enquired with the children's hospital whether it had kept a medical file in respect of the second applicant and whether he had been vaccinated during his stay with the first applicant in the SIZO.

71. On 4 December 2012 the chief doctor replied that the children's hospital provided medical care to children residing permanently in its catchment area. As regards children residing there temporarily, a written application by one of the parents was required. The first applicant had never submitted such an application. Accordingly, the hospital had not opened a medical file in respect of the second applicant. At the same time, its doctors had examined him when requested by the SIZO administration. The results of each examination had been reflected in the medical file provided by the SIZO. In so far as the second applicant's vaccinations were concerned, it was noted that he had always been brought for examinations without his mother, and without her consent no vaccinations had been given.

#### **D. The first applicant's placement in a metal cage during court hearings**

72. On 12 April, 17 May, 15 June, 2 and 31 August and 15 November 2012 the first applicant participated in court hearings, during which she was held in a metal cage. Her requests not to be placed in a cage were rejected.

73. On 14 March 2013 the judge of the Dzerzhynskyy Court, who had been in charge of the first applicant's case, wrote to the Agent of the Government, in reply to the latter's request, to say that the first applicant had indeed been held in a metal cage in the courtroom during hearings. The judge emphasised that it was a legal requirement to place criminal defendants in a metal cage and there were no exceptions to this rule. Furthermore, he considered that allowing the first applicant to remain outside the cage in the courtroom would have been equal to her temporary release, contrary to the custodial preventive measure applied.

74. On 15 March 2013 the Ministry of the Interior confirmed once again to the Agent of the Government that the first applicant had been held in a metal cage in the courtroom during hearings. It further specified that the second applicant had remained with the SIZO medical specialist outside the cage and had been passed to her for breastfeeding when requested.

#### **E. The first applicant's complaints after her release and their investigation**

75. On 15 November 2012 the first applicant was released on an undertaking not to abscond.

76. On 25 December 2012 she complained to the Kharkiv Regional Prosecutor's Office that she had been shackled to her bed in the maternity hospital at all times, including during the delivery. She also complained that the conditions of detention and nutrition in the SIZO had been inadequate. Lastly, the first applicant alleged that the statement she had written on 12 November 2012 expressing her satisfaction with the conditions of detention had been made under psychological pressure (see paragraphs 17 and 41 above).

77. On 27 December 2012 the State Prisons Service completed the internal investigation it had undertaken following the media coverage of the applicants' case (see paragraph 45 above). The first applicant's allegations were dismissed as unsubstantiated.

78. On 2 January 2013 the first applicant complained to the Kharkiv Zhovtnevyi District Prosecutor's Office ("the Zhovtnevyi Prosecutor's Office") that she had not been provided with adequate medical care during her pregnancy and the delivery; that she had been shackled by her wrists and feet to a gynaecological examination chair or her bed in the maternity hospital at all times, including during the delivery; that the conditions of her

detention in the Kharkiv SIZO had been poor; and that neither she nor her baby had received adequate medical care there. On the same date her complaint was registered in the Integrated Register of Pre-trial Investigations and the investigation was started.

79. On 18 January 2013 the Zhovtnevyi Prosecutor's Office ordered a forensic medical examination of the case material with a view to establishing: (i) whether the first applicant had any injuries and, if so, how they had been caused; (ii) whether there was any forensic medical evidence that the first applicant had been handcuffed or shackled between 26 January and 15 November 2012; (iii) whether there was any forensic medical evidence that the applicants had not been provided with adequate or sufficient medical care in the Kharkiv SIZO; (iv) whether there was any forensic medical evidence that the applicants had not been provided with adequate or sufficient medical care in the maternity hospital; and (v) if the applicants had not received adequate or sufficient medical care, whether this had had any negative impact on their health.

80. The aforementioned examination continued from 18 January to 26 March 2013. The answers in the report to all five questions were negative.

81. On 1 April 2013 the Zhovtnevyi Prosecutor's Office discontinued the criminal investigation for lack of evidence of a criminal offence.

82. Also in April 2013 the State Prisons Service, following an enquiry by the Government's Agent, undertook an internal investigation as regards the lawfulness of the second applicant's detention in the SIZO. On 22 April 2013 it was completed, with the conclusion that there had been no violation. It was noted in the report that, although in August 2012 the first applicant had verbally expressed her intention to transfer the custody of her baby to her mother, she had later changed her mind as she had been breastfeeding.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

83. Under Article 9 of the Pre-Trial Detention Act 1993, detained women are entitled to keep with them children up to the age of three. As further specified in this provision, all detainees are entitled to a daily outdoor walk for one hour, whereas the duration of such walks for pregnant women and women with children may be extended up to two hours.

84. The Rules on detention in pre-trial detention centres, approved in 2000, reiterate the above provisions (Rules 2.1.5 and 4.1.3). Under Rule 8.1.2, detainees at an advanced stage of pregnancy (over five months) and those with children should be provided with living space of at least 4.5 square metres. Beds for those categories of detainees should be on one level. Cots should also be provided. The annexes to the Rules require that walking areas for pregnant detainees and those with children should have grass, flowers and a children's sandpit.

85. The Clinical Protocol for medical care of children up to the age of three, approved by Order no. 149 of the Ministry of Public Health in 2008, provides for integrated standards in this area. Section 2.1 provides that children under three must have medical examinations. More specifically, these should comprise a general health assessment; an assessment of the child's physical and psychomotor development; an assessment of the child's nutrition; a timely identification of any illnesses and pathologies; vaccinations; consulting the parents regarding childcare, nutrition, development and accident prevention; and defining the tactics of further medical supervision and care.

86. The Clinical Protocol also establishes the following schedule for the mandatory medical examinations (in so far as is relevant for this case): weekly during the first month of life and monthly thereafter until the child is one year old (section 2.2.9).

87. Under Article 27 of the Sanitary and Epidemiological Welfare of the Population Act 1994 (as worded at the material time), vaccinations against tuberculosis, poliomyelitis, diphtheria, pertussis, tetanus and measles are obligatory in Ukraine.

88. The vaccination schedule approved by an order of the Ministry of Public Health in 2011 (as worded at the material time) contains a list of vaccinations and the ages they should be given. A newborn child is supposed to receive twelve vaccinations by the age of six months (including booster injections).

### III. RELEVANT INTERNATIONAL MATERIALS

#### A. United Nations documents

89. The relevant provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (1979) read as follows:

##### **Article 12**

“... States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”

90. The Convention on the Rights of the Child (1989) provides, in so far as relevant:

##### **Preamble**

“... Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23

and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, ‘the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth’,

...”

### **Article 3**

“1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being ...”

91. The relevant parts of the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (2011) read as follows:

*“The General Assembly,*

...

*Recalling further its resolution 58/183 of 22 December 2003, in which it invited Governments, relevant international and regional bodies, national human rights institutions and non-governmental organizations to devote increased attention to the issue of women in prison, including the children of women in prison, with a view to identifying the key problems and the ways in which they can be addressed ...”*

### **Rule 33**

“...

3. Where children are allowed to stay with their mothers in prison, awareness-raising on child development and basic training on the health care of children shall also be provided to prison staff, in order for them to respond appropriately in times of need and emergencies.

...”

### **Rule 48**

“1. Pregnant or breastfeeding women prisoners shall receive advice on their health and diet under a programme to be drawn up and monitored by a qualified health practitioner. Adequate and timely food, a healthy environment and regular exercise opportunities shall be provided free of charge for pregnant women, babies, children and breastfeeding mothers.

2. Women prisoners shall not be discouraged from breastfeeding their children, unless there are specific health reasons to do so.

3. The medical and nutritional needs of women prisoners who have recently given birth, but whose babies are not with them in prison, shall be included in treatment programmes.”

**Rule 49**

“Decisions to allow children to stay with their mothers in prison shall be based on the best interests of the children. Children in prison with their mothers shall never be treated as prisoners.”

**Rule 50**

“Women prisoners whose children are in prison with them shall be provided with the maximum possible opportunities to spend time with their children.”

**Rule 51**

“1. Children living with their mothers in prison shall be provided with ongoing health-care services and their development shall be monitored by specialists, in collaboration with community health services.

2. The environment provided for such children’s upbringing shall be as close as possible to that of a child outside prison.”

92. According to the recommendations of the World Health Organisation (“the WHO”) which were adopted following its Joint Interregional Conference on Appropriate Technology for Birth (Fortaleza, Brazil, 22-26 April 1985), the healthy newborn must remain with the mother whenever both their conditions permit it. The WHO recommendations on postnatal care of the mother and newborn 2013 also state that the mother and baby should not be separated and should stay in the same room 24 hours a day.

**B. Council of Europe documents**

93. The Committee for the Prevention of Torture and Inhuman or Degrading Punishment or Treatment (CPT) Standards (document no. CPT/Inf/E (2002) 1 - Rev. 2015, p. 45) contain the following relevant provisions:

**Health care services in prisons**

*Extract from the 3rd General Report [CPT/Inf (93) 12]*

“64. Certain specific categories of particularly vulnerable prisoners can be identified. Prison health care services should pay especial attention to their needs.

*i) mother and child*

65. It is a generally accepted principle that children should not be born in prison, and the CPT’s experience is that this principle is respected.

66. A mother and child should be allowed to stay together for at least a certain period of time. If the mother and child are together in prison, they should be placed in conditions providing them with the equivalent of a creche and the support of staff specialised in post-natal care and nursery nursing. ...”



## VI. Women deprived of their liberty

*Extract from the 10th General Report [CPT/Inf (2000) 13]*

### Ante natal and post-natal care

“26. Every effort should be made to meet the specific dietary needs of pregnant women prisoners, who should be offered a high protein diet, rich in fresh fruit and vegetables.

27. It is axiomatic that babies should not be born in prison, and the usual practice in Council of Europe member States seems to be, at an appropriate moment, to transfer pregnant women prisoners to outside hospitals.

Nevertheless, from time to time, the CPT encounters examples of pregnant women being shackled or otherwise restrained to beds or other items of furniture during gynaecological examinations and/or delivery. Such an approach is completely unacceptable, and could certainly be qualified as inhuman and degrading treatment. Other means of meeting security needs can and should be found.

28. Many women in prison are primary carers for children or others, whose welfare may be adversely affected by their imprisonment.

One particularly problematic issue in this context is whether - and, if so, for how long - it should be possible for babies and young children to remain in prison with their mothers. This is a difficult question to answer given that, on the one hand, prisons clearly do not provide an appropriate environment for babies and young children while, on the other hand, the forcible separation of mothers and infants is highly undesirable.

29. In the view of the CPT, the governing principle in all cases must be the welfare of the child. This implies in particular that any ante and post-natal care provided in custody should be equivalent to that available in the outside community. Where babies and young children are held in custodial settings, their treatment should be supervised by specialists in social work and child development. The goal should be to produce a child-centred environment, free from the visible trappings of incarceration, such as uniforms and jangling keys.

Arrangements should also be made to ensure that the movement and cognitive skills of babies held in prison develop normally. In particular, they should have adequate play and exercise facilities within the prison and, wherever possible, the opportunity to leave the establishment and experience ordinary life outside its walls.

Facilitating child-minding by family members outside the establishment can also help to ensure that the burden of child-rearing is shared (for example, by the child's father). Where this is not possible, consideration should be given to providing access to creche-type facilities. Such arrangements can enable women prisoners to participate in work and other activities inside the prison to a greater extent than might otherwise be possible.”

94. The Report to the Ukrainian Government on the visit to Ukraine carried out by the CPT from 29 November to 6 December 2011 (CPT/Inf (2012) 30) reads as follows:

“43. The delegation gained a generally positive impression of the material conditions in the units for juveniles at the [SIZO] in ... Kharkiv.

However, conditions of detention were quite simply appalling in many of the other detention units of the [SIZO]. Numerous cells were in a poor state of repair and had only very limited access to natural light. In addition, the CPT is concerned about the severe overcrowding observed in a number of detention units of [the establishment]. At the time of the visit, the [...] Kharkiv SIZO [was accommodating] 3,415 prisoners (official capacity: 2,808 places).”

## THE LAW

### I. SCOPE OF THE CASE

95. In her submissions of 10 February 2013 made in reply to the Government’s observations, the first applicant complained for the first time about the conditions of her detention in cell no. 409, in which she had been held from 27 January to 2 March 2012. More specifically, she alleged that although she had been pregnant, she had had to sleep on the upper level of a bunk bed.

96. The Court considers that this grievance is not an elaboration on the first applicant’s original complaint about the conditions of her detention with her baby from 14 March to 8 November 2012 in cell no. 408. Accordingly, the Court does not find it appropriate to take up this new matter in the context of the present application (see, for example, *Irakli Mindadze v. Georgia*, no. 17012/09, § 25, 11 December 2012, with further references).

### II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE ALLEGED SHACKLING OF THE FIRST APPLICANT IN THE MATERNITY HOSPITAL

97. The first applicant complained that she had been shackled to her bed in the maternity hospital, contrary to Article 3 of the Convention. This provision reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

#### A. Admissibility

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

## **B. Merits**

### *1. The parties' submissions*

99. The first applicant maintained her complaint, relying on her version of events as summarised in paragraph 14 above. She emphasised that her shackling had been grossly unjustified, painful and humiliating given her physical and psychological state.

100. The Government contended that the first applicant had failed to submit any evidence to substantiate her allegation. They considered the statement by former nurse Ms P. relied on by her of no relevance, because it concerned events which had supposedly taken place about seven years earlier in a different region (see paragraph 24 above).

101. Furthermore, they submitted that the first applicant's allegation had been refuted by the statements of the security guards and numerous members of hospital staff.

102. They also observed that the first applicant had not been able to specify exactly how she had been shackled, and that her submissions in that regard had been inconsistent.

103. Lastly, they claimed that there had been a considerable delay in the first applicant raising her complaint in that regard at the domestic level.

104. The first applicant submitted in reply to the Government's observations that, given her condition at the time, she could not have been expected to remember all the factual details regarding her shackling in hospital.

105. She also contested their interpretation of the statements of the hospital staff. In her opinion, they rather confirmed the accuracy of her allegation.

### *2. The Court's assessment*

106. The Court observes at the outset that the parties are in dispute as to whether the impugned measure was applied in respect of the first applicant at all.

107. The only evidence available in the case file relied on by both parties consists of the statements of the maternity hospital staff and the security guards.

108. The Court agrees with the Government in so far as it also considers the statement of former nurse Ms P. irrelevant to the circumstances of the present case.

109. The Court does not, however, share the Government's opinion that the statements of the other witnesses refuted the first applicant's allegation. It observes in this connection that none of the six maternity hospital staff questioned by the domestic authorities in respect of that allegation stated that she had not been subjected to shackling in hospital; on the contrary,

most of them witnessed her being shackled to a gynaecological examination chair or her bed (see paragraphs 20-22 above). It is true that according to several of those witnesses, the first applicant was not shackled during the delivery; however, she has never denied this in her submissions before the Court (see paragraph 14 above). Lastly, the Court takes note of the fact that the application of any security measures to the applicant was the direct responsibility of her security guards. Accordingly, it is not prepared to take at face value their statements denying her handcuffing (see paragraph 23 above).

110. In sum, from the evidence at hand the Court finds it sufficiently established that the first applicant was subjected to continuous shackling in the maternity hospital from 22 to 25 May 2012.

111. The Court notes that handcuffing does not normally give rise to an issue under Article 3 of the Convention where the measure has been applied in connection with lawful detention and does not entail the use of force or public exposure exceeding what is reasonably considered necessary. In this regard, it is important to consider, for instance, the danger of a person absconding or causing injury or damage (see *Raninen v. Finland*, 16 December 1997, § 56, *Reports of Judgments and Decisions* 1997-VIII, and *Henaf v. France*, no. 65436/01, §§ 50-53, ECHR 2003-XI). The Court has also held on many occasions that handcuffing or shackling of an ill or otherwise weak person is disproportionate to the requirements of security and implies an unjustifiable humiliation, whether or not intentional (see, for example, *Okhrimenko v. Ukraine*, no. 53896/07, § 98, 15 October 2009, and *Salakhov and Islyamova v. Ukraine*, no. 28005/08, §§ 155 and 156, 14 March 2013).

112. In the present case, the first applicant was already shackled to a gynaecological examination chair in the hospital admissions unit she had been taken to on the day of her baby's delivery (see paragraph 20 above). Any risk of her behaving violently or attempting to escape would have been hardly imaginable given her condition. In fact, it was never alleged that she had behaved aggressively towards the hospital staff or the police, or that she had attempted to escape or had posed a threat to her own safety.

113. The Court notes that the first applicant's unjustified shackling continued after the delivery, when she was particularly sensitive.

114. The Court also attaches weight to the fact that she was guarded by three guards at all times. This measure appears to have been severe enough to respond to any potential risks.

115. Accordingly, the Court considers that in the circumstances of the present case, where the impugned measure was applied to a woman suffering labour pains and immediately after the delivery, it amounted to inhuman and degrading treatment.

116. There has therefore been a violation of Article 3 of the Convention in this regard.

### III. ALLEGED VIOLATION OF ARTICLE 3 IN RESPECT OF THE CONDITIONS OF THE APPLICANTS' DETENTION

117. The applicants further complained under Article 3 of the Convention that they had been detained in poor conditions in the Kharkiv SIZO (see also paragraphs 25, 95 and 96 above), and that the second applicant had not been provided with adequate medical care.

#### A. Admissibility

118. The Court 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*

###### (a) Physical conditions of detention

119. The parties maintained their accounts as regards the physical conditions of the applicants' detention in the SIZO (see paragraphs 26-37 above).

120. The Government referred to several statements of detainees who had shared the cell with the applicants and had been satisfied with the conditions of their detention (see paragraph 46 and the summary of the first two statements by Ms M. in paragraph 48 above).

121. The first applicant submitted that those detainees had been entirely dependent on the SIZO administration, so their statements could therefore not be relied on. She observed in this connection that Ms M. had changed her statement regarding the conditions of detention in the SIZO once she had been transferred to a prison (see paragraph 48 above). The first applicant, in her turn, referred to the statements of some other cellmates, criticising the conditions of their detention (see paragraphs 49 and 50 above).

122. The first applicant also submitted that cell no. 408 had not been equipped for pregnant women or women with babies. She presumed that the administration had prepared that cell before each inspection. More specifically, she suggested that the refrigerator and other appliances and furniture had been placed in the cell merely for inspections. To support her suspicion, the first applicant submitted, in particular, that the inspection on 1 February 2012 did not report that there had been any pregnant women in the SIZO at the time, whereas her presence there was proof of the opposite (see paragraph 38 above). She also observed that there was no mess or any

other indication that detainees with babies were being held in the cell on the photographs provided by the Government (see paragraph 36 above).

123. As regards the photograph taken of her in the special walking area (see paragraph 37 above), the first applicant submitted that she had been allowed to walk there “only a couple of times”.

124. She did not contest the Government’s submission regarding the considerable number of food parcels from her mother; however, in her opinion, it was rather indicative that the SIZO administration had failed to provide her with adequate nutrition.

125. Lastly, the first applicant referred to the CPT report following its delegation’s visit to the Kharkiv SIZO from 29 November to 6 December 2011 (see paragraph 94 above) which, in her opinion, supported her allegation about poor detention conditions.

#### **(b) Medical care for the second applicant**

126. The first applicant submitted that her newborn son, the second applicant, had not been provided with regular and adequate medical supervision and care. More specifically, she contended that he had not been examined by a paediatrician from 28 May to 10 September 2012. She noted that with no paediatrician in the medical unit of the SIZO, she had been fully dependent on the SIZO administration, who had ignored her requests for examinations of her son or for medical care for him, particularly when he had had stomachache. She also complained that her baby’s health issues, phimosis and a patent foremen ovale (see paragraph 55 above), had not received proper attention from medical specialists. She also submitted that the second applicant had not had any vaccinations, contrary to the applicable regulations. Lastly, she submitted that inadequate records had been kept in respect of his growth, development and health, and that the relevant medical file in the SIZO had been forged (see paragraph 57 above).

127. The Government maintained that the second applicant had been under constant medical supervision and provided with timely and sufficient medical care. They further contended that, even if there had been some minor issues with the child’s health, they could be characterised as a rather normal condition for a newborn and not warranting any medical treatment. Lastly, the Government observed that the first applicant had not raised any complaints in this regard at the domestic level.

### *2. The Court’s assessment*

#### **(a) General considerations**

128. The Court reiterates that in accordance with Article 3 of the Convention, the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or

hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI).

129. As recognised in the applicable international documents, in particular the CPT's standards, it is a particularly problematic issue whether it should be possible for babies and young children to remain in prison with their mothers. The CPT has noted in this connection that "[this] is a difficult question to answer given that, on the one hand, prisons clearly do not provide an appropriate environment for babies and young children while, on the other hand, the forcible separation of mothers and infants is highly undesirable. ... In the view of the CPT, the governing principle in all cases must be the welfare of the child." (see paragraph 93 above). Likewise, the UN Rules for the Treatment of Women Prisoners state that "decisions to allow children to stay with their mothers in prison shall be based on the best interests of the children" (see paragraph 91 above).

130. The principle of the protection of a child's best interests has also been enshrined in the Court's case-law where children have been affected (see, for example, *Kleuver v. Norway* (dec.), no. 45837/99, 30 April 2002), and *X v. Latvia* [GC], no. 27853/09, § 95, ECHR 2013).

131. Furthermore, the Court takes note of the WHO recommendations, according to which a healthy newborn must remain with the mother (see paragraph 92 above). This imposes on the authorities an obligation to create adequate conditions for those requirements to be implemented in practice, including in detention facilities.

132. Turning to the circumstances of the present case, the Court observes that, strictly speaking, only the first applicant was detained, whereas her newborn son, the second applicant, was allowed to stay with her in the SIZO. He could not be separated from her, however, given his particularly young age. Accordingly, he remained under the full control of the authorities and it was their obligation to adequately secure his health and well-being.

**(b) Physical conditions of detention**

133. The Court has held on many occasions that cases concerning allegations of inadequate conditions of detention do not lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), because in such instances only the respondent Government have access to information capable of corroborating or refuting such allegations. Accordingly, applicants might experience certain difficulties in procuring evidence to substantiate a complaint in that connection. Nonetheless, in such cases applicants may well be expected to submit at least a detailed account of the facts complained of and provide – to the greatest possible extent – some evidence

in support of their complaints (see *Visloguzov v. Ukraine*, no. 32362/02, § 45, 20 May 2010). However, after the Court has given notice of the applicant's complaint to the Government, the burden is on the latter to collect and produce the relevant documents. A failure on their part to submit convincing evidence on material conditions of detention may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Gubin v. Russia*, no. 8217/04, § 56, 17 June 2010, and *Khudoyorov v. Russia*, no. 6847/02, § 113, ECHR 2005-X (extracts)).

134. Turning to the present case, the Court notes that the parties disagreed on many aspects concerning the conditions of the applicants' detention. Furthermore, both parties relied on the statements of the first applicant's fellow detainees, which sometimes contradicted each other. It therefore remains to be seen which of the facts as presented in the case file could be regarded as being sufficiently established.

135. The Court notes from the outset that the first applicant's statement of 12 November 2012, given in one month after the Court applied Rule 39, in which she declared that she was entirely satisfied with the conditions in the SIZO (see paragraph 41 above), cannot be taken at face value. As the Court has previously held in a case involving similar statements, the applicant's position might be particularly vulnerable when he or she is held in custody with limited contact with his or her family or the outside world (see *Enache v. Romania*, no. 10662/06, § 68, 1 April 2014).

136. The Court takes note of the photographs provided by the Government as evidence. It further notes that the first applicant, even though she submitted that some of the furniture and appliances had been displayed there merely for reporting purposes, did not contest that the photographs were of the cell in which she had actually been detained. Nor did she say that the cell had been refurbished at any point during her detention. The Court therefore discards the description of that cell by the former detainee Ms Sa., which clearly contradicts what can be seen on the photographs (see paragraphs 36 and 49 above).

137. Accordingly, the Court considers it sufficiently established that the applicants were detained in a light cell in a good state of repair. As can also be seen from the photographs, the toilet was properly separated from the living area, contrary to the first applicant's submission in that regard (see paragraphs 26 and 36 above).

138. The Court further notes that the first applicant did not provide any factual details to substantiate her allegation about inadequate heating or any health-related risks posed by her sharing the cell with other inmates.

139. As regards her allegation about a lack of hot water and an irregular supply of cold water, the Court notes that her account is quite detailed and is corroborated by the statements of several fellow detainees (see paragraphs 26, 48 and 50 above). The Court does not consider that the



Government's generally-worded submission to the contrary rebuts that allegation.

140. The Court has already criticised a detention facility for having an insufficient water supply resulting in a dirty environment arousing in a person feelings of anguish (see, for example, *Vitkovskiy v. Ukraine*, no. 24938/06, §§ 120 and 121, 26 September 2013). In the present case the Court cannot but stress that adequate hygienic conditions are vital for a new-born baby and a nursing mother.

141. The Court further observes that the first applicant's allegation about insufficient and poor quality food in the SIZO is confirmed by the statements of her fellow detainee (see paragraph 48 above). The fact that her mother sent her about thirty parcels, often with the most basic foodstuffs, is another indication that such food was not provided to the first applicant by the SIZO administration (see paragraph 43 above). The Court has already held that where food given to an applicant is clearly insufficient, this in itself raises an issue under Article 3 of the Convention (see *Kadiķis v. Latvia* (no. 2), no. 62393/00, § 55, 4 May 2006, and *Stepuleac v. Moldova*, no. 8207/06, § 55, 6 November 2007). The issue becomes crucial in the case of a breastfeeding mother.

142. Furthermore, it does not escape the Court's attention that, as acknowledged by the respondent Government, on the days of court hearings the first applicant was obliged to miss at least one of her meals and was not provided with a packed lunch instead (see paragraph 33 above).

143. The Court stresses that the absence of any restriction on the number of food parcels from the first applicant's relatives and, possibly, on being allowed to take her own food on hearing days was not a substitute for appropriate catering arrangements, because it is primarily the State that is responsible for the well-being of people deprived of their liberty (see *Vlasov v. Russia*, no. 78146/01, § 96, 12 June 2008).

144. The Court therefore concludes that the first applicant did not receive sufficient and wholesome food corresponding to her needs as a breastfeeding mother in detention.

145. The Court further notes that the Government did not provide convincing evidence to refute the first applicant's complaint regarding the duration and place of her daily outdoor walks with her baby. Moreover, the applicable legal provisions do not clearly establish the duration of daily walks for detained women with children (see paragraph 83 above). As compared to ordinary detainees who are entitled to one-hour daily walk, women with children may have the duration of their outdoor walks extended "up to two hours". In other words, the failure to grant such an extension or a very insignificant extension would not appear to contravene that requirement.

146. It is to be emphasised that when assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well

as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II, and *Idalov v. Russia* [GC], no. 5826/03, § 94, 22 May 2012).

147. The Court considers that in the circumstances of the present case the cumulative effect of malnutrition of the first applicant, inadequate sanitary and hygiene arrangements for her and her newborn son, as well as insufficient outdoor walks, must have been of such an intensity as to induce in her physical suffering and mental anguish amounting to her and her child's inhuman and degrading treatment.

148. Accordingly, there has been a violation of Article 3 of the Convention in respect of the physical conditions of the applicants' detention in the SIZO.

**(c) Medical care for the second applicant**

149. The Court notes that the "adequacy" of medical care in detention remains the most difficult element to determine. The mere fact that a detainee has been seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical care provided was adequate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 116, 29 November 2007). The authorities must also ensure that a comprehensive record is kept of the detainee's state of health and his or her treatment while in detention (see, for example, *Khudobin v. Russia*, no. 59696/00, § 83, ECHR 2006-XII), that the diagnoses and care are prompt and accurate (see *Hummatov*, cited above, § 115, and *Melnik v. Ukraine*, no. 72286/01, §§ 104-106, 28 March 2006), and that where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at curing the detainee's diseases or preventing their aggravation, rather than addressing them on a symptomatic basis (*ibid.*, §§ 109 and 114; *Sarban v. Moldova*, no. 3456/05, § 79, 4 October 2005; and *Popov v. Russia*, no. 26853/04, § 211, 13 July 2006). The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through (see *Hummatov*, cited above, § 116, and *Holomiov v. Moldova*, no. 30649/05, § 117, 7 November 2006).

150. On the whole, the Court reserves sufficient flexibility in defining the required standard of health care, deciding it on a case-by-case basis. That standard should be "compatible with the human dignity" of a detainee, but should also take into account "the practical demands of imprisonment" (see *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008).

151. As the Court has already held (see paragraph 132 above), it was the authorities' obligation in the present case to provide adequate medical supervision and care for the second applicant as a newborn staying with his mother in a detention facility.

152. The Court notes that the second applicant remained in the SIZO for almost six months, starting from the fourth day of his life. As a newborn, he was particularly vulnerable and required close medical monitoring by a specialist; under the applicable regulations of the Ministry of Public Health, he was supposed to be examined by a paediatrician every week during the first month of his life and every month thereafter (see paragraph 86 above). The reality, however, was different.

153. The Court finds plausible the first applicant's allegation that some of the records in her son's medical file kept in the SIZO were inaccurate.

154. It observes in this connection that one such inaccuracy concerns the date of the baby's initial medical examination after his discharge from the maternity hospital. As submitted by the first applicant and confirmed by the chief doctor of the children's hospital, it had taken place on 28 May 2012, whereas the relevant record refers to an examination on 31 May 2012 (see paragraphs 53 and 54 above).

155. The Court also considers that the case material provides a sufficient basis for a factual inference that, as alleged by the first applicant, her son had had no medical examinations between 28 June and 10 September 2012. The Court observes, in particular, that neither the SIZO administration nor the chief doctor of the local children's hospital was able to respond to the first applicant's lawyer's enquiries about the baby's health sent on 28 August and 6 September 2012 respectively. It was only after the complete medical examination (undertaken in an unrelated context – see paragraphs 62 and 63 above) that the SIZO administration sent the baby's medical file to the lawyer. Furthermore, if he had indeed been examined by a paediatrician on 12 June and 20 July 2012 as recorded in that file, it is not clear why the chief doctor of the children's hospital referred only to the examination on 28 May 2012 in his letter of 6 September 2012. The doctor further stated that it was impossible to provide any information on the child's health at the time in the absence of any requests for medical care for him until then (see paragraph 61 above).

156. Another contradiction in the available documents does not escape the Court's attention. According to the chief doctor of the children's hospital, whenever the second applicant was examined by a paediatrician, it was without the first applicant present, whereas the SIZO administration recorded in the baby's medical file that the paediatrician had provided her with advice on childcare (see paragraphs 54, 56 and 71 above).

157. Accordingly, the Court considers it established that the second applicant remained without any monitoring by a paediatrician from 28 May to 10 September 2012. Having particular regard to his young age, the Court considers this circumstance alone sufficient to conclude that adequate health-care standards were not met in the present case, without finding it necessary to analyse all the other factual details (such as the second applicant's health issues and the lack of vaccinations).

158. The Court therefore finds that there has also been a violation of Article 3 of the Convention in this regard.

#### IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE FIRST APPLICANT'S PLACEMENT IN A METAL CAGE DURING COURT HEARINGS

159. The first applicant also complained under Article 3 of the Convention about her placement in a metal cage during court hearings.

##### A. Admissibility

160. The Court 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

161. The first applicant submitted that although she had been suspected of a violent criminal offence, her placement in a metal cage during court hearings had been grossly unjustified and humiliating.

162. The Government maintained that the first applicant had been held behind the metal bars in the courtroom in accordance with the relevant domestic legislation. They explained that the bars were intended to separate defendants upon whom the preventive measure of detention had been imposed from the bench and those present in the courtroom, so that those individuals could be securely guarded during the court hearings.

163. The Government argued that the State authorities had not intended to humiliate or debase the first applicant. She had been held behind the metal bars in the interest of public safety. Furthermore, the measure of holding the first applicant behind metal bars could in no way have caused her distress or humiliation of an intensity exceeding the unavoidable level of suffering or humiliation inherent in detention. The Government also observed that during the court hearing the first applicant's baby had been with a SIZO medical worker outside the cage and that he had been transferred to her every time when requested.

164. The Court has held in its recent judgment of the Grand Chamber in the case of *Svinarenko and Slyadnev v. Russia* that holding a person in a metal cage during a trial constitutes in itself – having regard to its objectively degrading nature which is incompatible with the standards of civilised behaviour that are the hallmark of a democratic society – an affront to human dignity in breach of Article 3 ([GC], nos. 32541/08 and 43441/08, § 138, ECHR 2014 (extracts)).

165. Turning to the present case, the Court notes that the first applicant was held in a metal cage during all the hearings in her case, which took place on 12 April, 17 May, 15 June, 2 and 31 August and 15 November 2012. During the first two hearings she was at a very advanced stage of pregnancy, whereas during the remaining four hearings she was a nursing mother separated from her baby in the courtroom by metal bars. In fact, no justification for such a restraint measure was even considered given the judge's position that the mere placement of the first applicant outside the cage would have been equal to her release, contrary to the custodial preventive measure applied (see paragraph 73 above).

166. The Court therefore finds a violation of Article 3 of the Convention on this account.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

167. 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

168. The applicants claimed 150,000 euros (EUR) in respect of non-pecuniary damage, including EUR 50,000 for the first applicant and EUR 100,000 for the second applicant.

169. The Government contested the above claim as unsubstantiated and exorbitant.

170. The Court considers that the applicants suffered non-pecuniary damage on account of the violations of their rights under Article 3 of the Convention, which cannot be compensated for by the mere finding of a violation of their Convention rights. Having regard to the circumstances of the case and ruling on an equitable basis, as required by Article 41, the Court awards the first applicant EUR 12,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount. The Court also awards the second applicant EUR 7,000 under this head, plus any tax that may be chargeable.

### B. Costs and expenses

171. The applicants also claimed EUR 13,059 in respect of their legal representation, comprising approximately 124 hours of legal work in the domestic proceedings and the proceedings before the Court.

172. The Government contested the above claims.

173. The Court must first establish whether the costs and expenses indicated by the first applicant were actually incurred and, secondly, whether they were necessary (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324).

174. 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 first applicant the sum of EUR 3,000 covering costs under all heads.

### C. Default interest

175. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the first applicant's shackling in the maternity hospital;
3. *Holds* that there has been a violation of Article 3 of the Convention in respect of the physical conditions of the applicants' detention in the Kharkiv SIZO;
4. *Holds* that there has been a violation of Article 3 of the Convention in respect of the medical care provided to the second applicant during his stay with the first applicant in the Kharkiv SIZO;
5. *Holds* that there has been a violation of Article 3 of the Convention on account of the first applicant's placement in a metal cage during court hearings;
6. *Holds*
  - (a) that the respondent State is to pay 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) to the first applicant:
      - (α) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

- (β) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the first applicant, in respect of costs and expenses; and
- (ii) to the second applicant: EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 March 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek  
Registrar

Angelika Nußberger  
President