



## Ukraine should reform its system for reviewing whole-life sentences

The case [Petukhov v. Ukraine \(No. 2\)](#) (application no. 41216/13) mainly concerned a prisoner's complaint that Ukrainian law did not provide for release on parole for life prisoners. Mr Petukhov, the applicant, has been serving a life sentence since 2004.

In today's **Chamber judgment**<sup>1</sup> in the case the European Court of Human Rights held, unanimously, that there had been a **violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights because Mr Petukhov had no prospect of release from or possibility of review of his life sentence.

In particular, presidential clemency, the only procedure for mitigating life sentences in Ukraine, was not clearly formulated, nor did it have adequate procedural guarantees against abuse. Furthermore, life prisoners' conditions of detention in Ukraine made it impossible for them to progress towards rehabilitation and for the authorities to therefore carry out a genuine review of their sentence.

Given the systemic nature of the problem, the Court held under **Article 46 (implementation)** that Ukraine should reform its system of reviewing whole-life sentences by examining in every case whether continued detention was justified and by enabling whole-life prisoners to foresee what they had to do to be considered for release and under what conditions.

The Court also held, unanimously, that there had been a **further violation of Article 3** of the European Convention because Mr Petukhov had not been provided with adequate medical care for tuberculosis since July 2010.

### Principal facts

The applicant, Volodymyr Petukhov, is a Ukrainian national who was born in 1973. He is currently serving a sentence of life imprisonment following his conviction in 2004 of a number of serious offences involving organised crime.

Between 2010 and 2014, suffering from tuberculosis, he was regularly examined by doctors and given various screening and laboratory tests. He had a relapse in July 2010 and was transferred to a prison hospital in Kherson specialising in the treatment of TB. He was certified as having a third-degree disability (the mildest) on account of his tuberculosis and some other health conditions. Then his TB spread beyond his lungs and in 2011 he was diagnosed with genito-urinary TB, before being told by doctors in 2013 that he had developed resistance to most anti-TB drugs and was placed under palliative care. His health stabilised and in 2015 he was transferred to the Kyiv Pre-Trial Detention Centre where he is still currently serving his sentence.

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

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

He also made several unsuccessful complaints between 2010 and 2015 to the prison and prosecuting authorities, as well as the Parliamentary Commissioner for Human Rights, about the allegedly appalling conditions of his detention in the prison hospital as well as in another facility in Kherson where he had been detained for a few months in 2014.

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

## Complaints, procedure and composition of the Court

Mr Petukhov complained that his life sentence was not compatible with Article 3 (prohibition of inhuman or degrading treatment) because the only possibility for him to be released was through a procedure of presidential clemency. He alleged that, under that procedure, it was not clear what life prisoners had to do to be considered for release and under what conditions.

He further alleged under Article 3 that the conditions of his detention in the two Kherson prison facilities had been poor and that inadequate medical care in prison had resulted in an irreversible deterioration in his health.

Lastly, under Article 8 (right to respect for private and family life), he complained about restrictions on his wife visiting him in prison.

The application was lodged with the European Court of Human Rights on 11 June 2013.

Judgment was given by a Chamber of seven judges, composed as follows:

Paulo Pinto de Albuquerque (Portugal), *President*,  
Ganna Yudkivska (Ukraine),  
Faris Vehabović (Bosnia and Herzegovina),  
Egidijus Kūris (Lithuania),  
Carlo Ranzoni (Liechtenstein),  
Marko Bošnjak (Slovenia),  
Péter Paczolay (Hungary),

and also Marialena Tsirli, *Section Registrar*.

## Decision of the Court

The Court found that Mr Petukhov had not properly substantiated his complaints concerning the conditions of his detention and rejected them as inadmissible.

### [Article 3 \(medical care in detention\)](#)

The Court disagreed with the Government that Mr Petukhov's health had been satisfactory. On the contrary, his TB had irreversibly deteriorated during his detention and became "incurable" in 2013 when he developed resistance to most anti-TB drugs.

As concerned the prison hospital, the authorities had even acknowledged on several occasions that there had been a shortage of anti-TB medication. Furthermore, he had been administered with the palliative care drug, isoniazid, despite having developed a resistance to it, making it ineffective, even toxic for his body.

As for the facility where he is currently detained, the Government had not shown that any particular medical arrangements had been made there for him.

Bearing in mind a number of other cases against Ukraine in which the Court had already noted inadequate medical care for tuberculosis, it held that there had been a violation of Article 3 on account of the authorities' failure to safeguard Mr Petukhov's health in detention since his transfer to the prison hospital in July 2010.

### Article 3 (whole-life sentences)

The Court noted that, for a life sentence to remain compatible with Article 3, there had to be both a prospect of release and a possibility of review. The only possibility for mitigating life sentences in Ukraine was presidential clemency.

The guidance under that procedure's regulations was that life prisoners "may be granted clemency in exceptional cases and subject to extraordinary circumstances", without any explanation of exactly what those terms meant. Whole-life prisoners did not therefore know from the outset what they had to do in order to be considered for release and under what conditions.

Furthermore, there were inadequate procedural guarantees against abuse under the system. Neither the Clemency Commission nor the President had to give reasons in their decisions regarding clemency requests. Providing reports on the clemency authorities' activities would compensate for that lack of transparency, but, apart from an isolated media briefing in 2016, no such information had been made public in Ukraine. That situation was further aggravated by the lack of any judicial review.

Moreover, for the review of a life sentence to be genuinely capable of leading to its commutation, remission or termination or to conditional release, States had a duty to make it possible for life prisoners to rehabilitate themselves. The Government had, however, failed to explain how life prisoners could progress towards rehabilitation in conditions where they were segregated from other prisoners and spent up to 23 hours per day in their cells, with few organised activities. The Court therefore found that the current regime for life prisoners in Ukraine was incompatible with the aim of rehabilitation.

Indeed, in practice the chances of a life prisoner being granted clemency were negligible. Since the introduction of life imprisonment in 2000 only one clemency request from a life prisoner had been granted.

Given those circumstances, the Court concluded that there had been a violation of Article 3 on account of the fact that Mr Petukhov had no prospect of release from or possibility of review of his life sentence.

### Other Articles

The Court held, by five votes to two, that it had examined the main legal questions raised in the present application, and that it was not necessary to give a separate ruling on the applicant's complaint under Article 8.

### Article 46 (implementation)

The Court held that the case disclosed a systemic problem concerning life imprisonment in Ukraine. There were already over 60 similar applications pending before the Court.

For the proper implementation of the judgment, Ukraine would therefore be required to put in place a reform of the system of review of whole-life sentences to guarantee the examination in every case of whether continued detention was justified on legitimate grounds and to enable whole-life prisoners to foresee what they had to do to be considered for release and under what conditions.

### Article 41 (just satisfaction)

The Court held, by six votes to one, that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Mr Petukhov in relation to his complaint about his life sentence. It held, unanimously, that Ukraine was to pay Mr Petukhov 750 euros (EUR) in respect of pecuniary damage, EUR 10,000 in respect of non-pecuniary damage on account of the inadequate medical care, EUR 10,000 in respect of legal costs to be paid to his lawyer and EUR 20 for postal costs and expenses.

### Separate opinions

Judge Pinto de Albuquerque expressed a partly concurring, partly dissenting opinion and Judge Kūris and Judge Bošnjak each expressed a partly dissenting opinion. These opinions are annexed to the judgment.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.