



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

FIFTH SECTION

CASE OF YURIY VOLKOV v. UKRAINE

(Application no. 45872/06)

JUDGMENT

STRASBOURG

19 December 2013

FINAL

19/03/2014

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

In the case of Yuriy Volkov v. Ukraine,

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

Mark Villiger, *President*,
Angelika Nußberger,
Boštjan M. Zupančič,
Ganna Yudkivska,
André Potocki,
Paul Lemmens,
Aleš Pejchal, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 26 November 2013,

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

PROCEDURE

1. The case originated in an application (no. 45872/06) 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 Yuriy Valeriyevich Volkov (“the applicant”), on 3 November 2006.

2. The applicant, who had been granted legal aid, was represented by Mr M.O. Tarakhkalo, a lawyer practising in Kharkiv. The Ukrainian Government (“the Government”) were represented by their Agent, most recently Mr Nazar Kulchytskyy.

3. The applicant alleged, in particular, that he had been convicted in violation of Article 6 §§ 1 and 3 (c) of the Convention, on the basis of a confession extracted from him against his will and in the absence of a lawyer. He also complained about the taking of an intravenous blood-sample from him by the investigator.

4. On 21 March 2011 the above complaints were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1978 and is currently serving a prison sentence in Penitentiary no. 72 in Voznesensk.

6. On 16 September 2003 a Ms D. was robbed and murdered in her apartment.

7. On 26 November 2003 the applicant's acquaintance, Mr M., a drug addict who was detained on suspicion of an unrelated offence at the time, stated that the applicant had asked him to sell some gold jewellery and dentures and had admitted that he had robbed and murdered Ms D. Later, during the judicial proceedings, Mr M. would retract that statement (see paragraph 24 below).

8. On 1 December 2003 the investigator of the Yevpatoriya City Prosecutor's Office (hereafter "the Yevpatoriya Prosecutor") ordered the police to ensure the applicant's presence (*здійснити присутність*) for questioning as a suspect.

9. On 6 December 2003 the applicant was taken by the police from a hospital in Mykolayiv, where he was undergoing treatment for drug addiction, to the Yevpatoriya City Police Department. He was held there without his detention being documented from 6 p.m. on 6 December till 11:30 a.m. on 7 December 2003. According to the applicant, during that time he was questioned and subjected to beatings and psychological pressure with a view to extracting a confession.

10. Early in the morning on 7 December 2003 the applicant wrote a "statement of voluntary surrender to the police", in which he confessed to having robbed and murdered Ms D.

11. Thereafter, at 11.30 a.m., the investigator drew up a report on the applicant's detention as a suspect. His "voluntary surrender to the police" and risk of absconding were cited as the grounds for the detention.

12. Also in the morning on 7 December 2003 the applicant's mother signed contracts for his legal representation with two lawyers – Mr A. and Mr K. According to the applicant, the choice of Mr K. had been imposed on them by the investigator.

13. The applicant and the two lawyers signed a record of the explanation of the applicant's procedural rights to him.

14. On 7 December 2003, from 11.45 to 12.40 a.m., the applicant was questioned as a suspect in the presence of his two lawyers. He retracted his initial confession as allegedly obtained under psychological pressure.

15. On the same day, from 2.45 to 4.20 p.m., the applicant was questioned again, this time in the presence of Mr A. alone. He signed a record confirming that the provisions of Article 63 of the Constitution (privilege against self-incrimination and right to legal assistance) had been explained to him. The applicant retracted the statements he had made during the previous questioning and upheld his initial confession. He submitted that he had realised that there was serious evidence against him and that he wished to confess.

16. Thereafter, on 7 December 2003 the investigator conducted a reconstruction of the crime with the participation of the applicant and his

lawyer, Mr A. The applicant gave a detailed account of the robbery and murder.

17. Prior to the applicant's placement in the Yevpatoriya Temporary Detention Facility on the same date, he was physically examined by a police officer in the presence of two attested witnesses, who issued a report stating that no signs of injury had been detected.

18. On 12 December 2003 the Yevpatoriya Prosecutor issued an order for samples of the applicant's blood and saliva to be taken by a forensic medical expert.

19. On 13 December 2003 the applicant and his lawyer, Mr A., signed a record attesting that his procedural rights, including his right to legal assistance, had been explained to him. The applicant was questioned as an accused, in the presence of Mr A. He maintained his confession.

20. On the same day the investigator, in the presence of an attested witness and the lawyer, Mr A., took a blood sample from the applicant intravenously.

21. On 25 May 2004 the applicant refused the services of the lawyers Mr K. and Mr A. and asked to be represented by another lawyer, Mr F. His request was granted.

22. On the same day the charges of violent robbery and murder for profit were officially brought against the applicant. His procedural rights were explained to him again, and he was questioned as an accused in the presence of Mr F. The applicant retracted his confession and denied any involvement in the crime.

23. On an unspecified date the case was sent for trial. However, on 25 June 2004 the Court of Appeal of the Autonomous Republic of Crimea ("the Crimea Court of Appeal"), sitting in first instance, remitted it for additional pre-trial investigation.

24. On 19 November 2004 the Crimea Court of Appeal, sitting as a first-instance trial court, acquitted the applicant, having found that there was insufficient proof of his guilt. The court held that, given the circumstances of the applicant's confessions, they could not be regarded as voluntary. Thus, his initial confession had been given while the applicant was in unreported detention in violation of his procedural rights. The court also questioned the voluntary nature of the confession he had made during his repeated questioning and the reconstruction of the crime conducted on 7 December 2003 in the presence of only one of his lawyers. It was considered suspicious that only two hours after he had already been questioned in accordance with the procedural requirements he had been questioned again unexpectedly, in the absence of one of his lawyers. Furthermore, the applicant's statements of confession were found to contradict the facts of the case. Lastly, the court noted that Mr M. had retracted his incriminating statements against the applicant during the judicial proceedings and had stated that he had been forced to sign blank

sheets while detained in respect of an unrelated offence, in exchange for the investigator's promise to supply him with drugs (see also paragraph 7 above). The applicant was released in the court room.

25. Also on 19 November 2004 the Crimea Court of Appeal issued a separate ruling (see paragraph 42 below) noting that: on 6 December 2003 the applicant had wrongly been taken to the police department instead of the prosecutor's office; he had been unlawfully detained there from 6 p.m. on 6 December till 11:30 a.m. on 7 December 2003 (as confirmed by police records); he had confessed to the crimes he was charged with without his constitutional right not to incriminate himself and his right to legal assistance having been explained to him; and that a police officer, and not a medical expert, had checked him for signs of injury.

26. The court issued another separate ruling noting that the taking of a blood sample by a non-specialist had endangered the applicant's life and health.

27. In both the aforementioned separate rulings the court decided to inform the Prosecutor's Office of the Autonomous Republic of Crimea of the violations in question and to instruct it to take appropriate measures.

28. On 10 March 2005 the Supreme Court, following a hearing which the applicant's lawyer attended, quashed the aforementioned judgment and both separate rulings and remitted the case for additional investigation.

29. On 4 August 2005 the applicant was arrested on suspicion of keeping and selling cannabis. During his questioning on the same day he admitted that he had had some cannabis on him for his own use.

30. On 12 August 2005 the applicant stated that he had not sold any drugs to anybody. He also denied knowing Mr V.K., to whom, according to the police, he had sold a joint.

31. On 15 August 2005 he requested to be represented by the lawyer Mr F., who had already represented him in the proceedings regarding the robbery and murder of Ms D. His request was granted.

32. On the same date the applicant was questioned as a suspect in respect of the drug-related offence, in the presence of Mr F. Relying on Article 63 of the Constitution, he refused to make any statements.

33. During his questioning in the presence of his lawyer on 17 August 2005 the applicant admitted his guilt as regards keeping drugs, but denied having sold any.

34. On 15 September 2005 the applicant was released subject to a commitment not to leave the town.

35. On 16 September 2005 the two criminal cases against the applicant were joined.

36. On 20 September 2005 he was indicted for the robbery and murder of Ms D., as well as for storage and sale of drugs. Relying on Article 63 of the Constitution, he refused to make statements.

37. On 26 January 2006 the Yevpatoriya Prosecutor issued a decision not to open a criminal case in respect of the applicant's allegation of coercion by the police in December 2003, which he had raised in the framework of the criminal proceedings against him. The decision was based on the questioning of the police officers concerned, the findings of an internal enquiry undertaken by the police, and the report of the applicant's examination of 7 December 2003, according to which he had had no visible injuries. The prosecutor also noted that all the investigative measures involving the applicant had been conducted in the presence of his lawyer. Lastly, it was observed that neither the applicant nor his lawyers had ever complained to the prosecution authorities of his ill-treatment in police custody.

38. On 15 February 2006 the Crimea Court of Appeal, sitting in first instance, found the applicant guilty of violent robbery, murder for profit, and storage and distribution of drugs, and sentenced him to twelve years' imprisonment with confiscation of all his personal property. As regards the robbery and murder of Ms D., it relied, *inter alia*, on the applicant's "voluntary surrender to the police" and his subsequent confessions made in the presence of his lawyer. The court also noted that the applicant had admitted to having committed those crimes during his forensic psychiatric examination, when no pressure was alleged to have been put on him. Furthermore, the court relied on the statements witness Mr M. had made during the pre-trial investigation. As to his retraction of those statements in the course of the judicial proceedings, the court noted that Mr M. had explained that by the fact that the applicant had been acquitted and that that had made him doubt his involvement in the robbery and murder of Ms D. The applicant's conviction for storage and distribution of drugs was based, in particular, on his confession and on the statements of several witnesses. As regards the applicant's allegation of ill-treatment, the court dismissed it as unsubstantiated, having relied on the prosecution authorities' findings. It was noted in the judgment that the applicant had been detained for the first time on 7 December 2003. He was remanded in custody pending the entry into force of the judgment.

39. The applicant appealed in cassation, maintaining that he had incriminated himself under duress and in the absence of legal assistance. In substantiation, he noted that, while the police had admitted having taken him to their department at 6 p.m. on 6 December 2003, his detention had remained undocumented till 11:30 a.m. on the following day. According to him, his repeated confession on 7 December 2003 could not be relied on either, as it had been made in the absence of one of his lawyers. The applicant contended that, apart from his confessions, the only evidence against him was the contradictory statement of Mr M. He further argued that the findings of the prosecutorial investigation into his allegation of ill-treatment were superficial and unreliable. He also complained that the

investigator had taken a blood sample from him in the absence of a medical specialist. Lastly, the applicant alleged that the drug-related offence charge had been fabricated.

40. On 11 May 2006 the Supreme Court found against the applicant. It noted that his allegation of a violation of his right to legal assistance did not stand up to scrutiny as the investigative measures had been taken with the participation of his lawyer. The Supreme Court found his allegation of ill-treatment by the police to be equally unsubstantiated, relying on the prosecutor's finding in that regard. It noted that the applicant's confession following his arrest on 7 December 2003 had contained factual details that could only have been known to the person who had committed the robbery and murder in question.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of Ukraine

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

B. Code of Criminal Procedure ("the CCP") of 1960 (no longer in force)

42. Article 23-2 provided that if the court discovered that there had been a violation of law and/or of citizens' rights in the course of a pre-trial enquiry or investigation, or during the examination of a case by a lower-level court, it had to issue a separate ruling by which it drew the attention of the respective authorities to the established facts and directed them to take certain measures to remedy the situation. Failure to take the requisite measures was considered an administrative offence.

43. Article 96 defined a "statement of surrender" to the authorities as a personal voluntary written or verbal statement made by a person, before the institution of criminal proceedings against him or her, to an authority in charge of an enquiry, a police officer, an investigator, a prosecutor, a judge or a court, concerning a crime committed or planned by him or her. Where criminal proceedings had already been instituted, such a statement had to be made before formal charges were brought against the person.

44. Under Article 199, if necessary, an investigator could issue a decision on the taking of samples required for an expert medical examination.

C. Rules on Forensic Medical Examinations

45. According to the Rules on Forensic Medical Examinations in Immunology Departments of the Forensic Medical Bureaus approved by Order of the Public Health Ministry No. 6 of 17 January 1995, samples of the blood of individuals involved in criminal proceedings must, as a general rule, be taken in the above-mentioned departments. Where the procedure takes place elsewhere, it must be performed by a properly qualified specialist.

D. Law of Ukraine “On the Procedure for the Compensation of Damage caused to Citizens by the Unlawful Actions of Bodies in charge of Operational Enquiries, Pre-trial Investigation Authorities, Prosecutors or Courts” (“the Compensation Act”)

46. Article 1 contains a non-exhaustive list of situations (such as, for example, unlawful detention or conviction) where a person is entitled to compensation for damage. It also contains the provision that “other procedural actions restricting [a person’s] rights” give rise to such entitlement (paragraph 1).

47. Pursuant to Article 2, a precondition for the entitlement to compensation is “a finding in a guilty verdict or other judgment of a court of ... procedural actions restricting or infringing [a person’s] rights and freedoms” (paragraph 1-1).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

48. The applicant complained under Article 3 of the Convention that following his arrest on 6 December 2003 he had been subjected to psychological pressure and beatings by the police with a view to extracting his confession to the robbery and murder of Ms D. He also complained about the conditions of his detention in the police station. Namely, he alleged that he been deprived of food, sleep and medication. The provision relied on reads as follows:

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

49. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV). In assessing evidence, the Court has generally

applied the standard of proof “beyond reasonable doubt” (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof to provide a satisfactory and convincing explanation may be regarded as lying with the authorities (see *Ribitsch v. Austria*, 4 December 1995, Series A no. 336, § 34, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

50. However, some proof of the existence of injuries is indispensable (see, for example, *Hristovi v. Bulgaria*, no. 42697/05, §§ 73-78, 11 October 2011, and *Igars v. Latvia* (dec.), no. 11682/03, § 67, 5 February 2013).

51. The Court considers that in the present case there is no indication that the applicant sustained any injuries in police custody. The Court notes in this connection that two lawyers contracted by the applicant’s mother saw him in the morning on 7 December 2003, immediately after the alleged ill-treatment, but made no statement to the effect that he had suffered any injuries. Nor is there any explanation as to why the applicant and his lawyers failed to request a medical examination and to report the injuries if there were any (see *Grinenko v. Ukraine*, no. 33627/06, § 56, 15 November 2012). The Court does not lose sight of the fact that the applicant was examined by a police officer who reported the absence of any visible bodily injuries (see paragraph 17 above). Although the level of expertise and impartiality of that examination are questionable, the Court has no information to show that it was challenged by the applicant or his lawyers.

52. The Court further notes that the applicant did not elaborate on the circumstances in which he was allegedly ill-treated or specify any methods of ill-treatment. Nor did he set out the exact sequence of events on 6 and 7 December 2003, the dates when he was allegedly ill-treated. His complaint consisted merely of short phrases stating that he had been beaten (see, and compare with, *Sergey Afanasyev v. Ukraine*, no. 48057/06, § 40, 15 November 2012).

53. The Court considers that the applicant’s allegation that he was subjected to psychological pressure lacks detail too. Even if it is perceived as comprising his grievances about the conditions of detention in the police station, the Court notes that the applicant failed to specify when and what kind of food he had been offered, for how long he had not been able to sleep and for what reason, what medication he required and whether he asked for it. Accordingly, the Court has insufficient information to conclude that the applicant was subjected to psychological pressure serious enough to amount to ill-treatment prohibited by Article 3 of the Convention (see, and compare with, *Khayrov v. Ukraine*, no. 19157/06, § 52, 15 November 2012).

54. In these circumstances the Court considers that the applicant has not properly substantiated and developed this complaint and rejects it as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 3 (c) OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 6 § 1

55. The applicant complained under Article 6 §§ 1 and 3 (c) that he had been forced to incriminate himself in the absence of legal assistance. The relevant part of the provision relied on reads as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

3. Everyone charged with a criminal offence has the following minimum rights:

... (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.”

A. Admissibility

56. 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

57. The applicant submitted that he had been forced to confess to the robbery and murder of Ms D. during his undocumented detention in the police station from 6 to 7 December 2003 without legal assistance. He pointed out that he had retracted his initial confession as soon as he had been legally represented.

58. The applicant further submitted that, after that first questioning in the presence of his two lawyers, the police had again subjected him to psychological pressure. Namely, they had allegedly told him that if he did not cooperate he would face a lengthy term of imprisonment in appalling conditions. As a result, the applicant had agreed to be questioned again, in the presence of only one of his lawyers, who, according to him, had been chosen by the investigator.

59. The Government submitted that the first questioning of the applicant by the police as a suspect had taken place on 7 December 2003 in the presence of two lawyers of his choice. His subsequent questioning had taken place in the presence of one of the lawyers hired by the applicant's mother. Accordingly, the Government contended that the applicant's right to legal assistance had not been restricted.

2. *The Court's assessment*

(a) **General principles**

60. The Court reiterates that, even if the primary purpose of Article 6 of the Convention, as far as criminal proceedings are concerned, is to ensure a fair trial by a "tribunal" competent to determine "any criminal charge", it does not follow that the Article has no application to pre-trial proceedings. Thus, Article 6 – especially paragraph 3 thereof – may be relevant before a case is sent for trial if and so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with its provisions (see *Imbrioscia v. Switzerland*, 24 November 1993, § 36, Series A no. 275; *Öcalan v. Turkey* [GC], no. 46221/99, § 131, ECHR 2005-IV; and *Salduz v. Turkey* [GC], no. 36391/02, § 50, ECHR 2008). The Court further recalls that the guarantees in paragraph 3 (c) of Article 6 are specific aspects of the right to a fair hearing set forth in paragraph 1 of this provision which must be taken into account in any assessment of the fairness of proceedings (*Martin v. Estonia*, no. 35985/09, § 94, 30 May 2013). In addition, the Court's primary concern under Article 6 § 1 is to evaluate the overall fairness of the criminal proceedings (see, as recent authorities, *Taxquet v. Belgium* [GC], no. 926/05, § 84, ECHR 2010, with further references therein; *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, ECHR 2011; *Martin, ibid.*).

61. The Court emphasises that, although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of a fair trial (see *Krombach v. France*, no. 29731/96, § 89, ECHR 2001-II). As a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right (see *Salduz*, cited above, § 55). The right to defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction (*ibid.*).

62. The Court has consistently viewed early access to a lawyer as a procedural guarantee of the privilege against self-incrimination and a fundamental safeguard against ill-treatment, noting the particular vulnerability of an accused at the early stages of the proceedings, when he is

confronted with both the stress of the situation and the increasingly complex criminal legislation involved. Any exception to the enjoyment of this right should be clearly circumscribed and its application strictly limited in time. These principles are particularly called for in the case of serious charges, for it is in the face of the heaviest penalties that respect for the right to a fair trial is to be ensured to the highest possible degree by democratic societies (see *Salduz*, cited above, § 54).

63. The aforementioned principles of the right to defence and the privilege against self-incrimination are in line with the generally recognised international human rights standards which are at the core of the concept of a fair trial and whose rationale relates in particular to the protection of the accused against abusive coercion on the part of the authorities. They also contribute to the prevention of miscarriages of justice and to the fulfilment of the aims of Article 6, notably equality of arms between the investigating or prosecuting authorities and the accused (see *Salduz*, cited above, § 53; *Bykov v. Russia* [GC], no. 4378/02, § 92, 10 March 2009; and *Pishchalnikov v. Russia*, no. 7025/04, § 68, 24 September 2009). The right not to incriminate oneself, in particular, presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused (see *Jalloh v. Germany* [GC], no. 54810/00, § 100, ECHR 2006-IX, with further references).

(b) Application of the above principles to the present case

64. The Court notes from the outset that, contrary to the applicant's argument, it does not consider that his right to legal assistance was restricted during his questioning in the presence of only one of his lawyers, as, according to the documents in the case file, that lawyer had not been appointed by the investigator, but had been invited by the applicant's mother and the applicant had no objections to being represented by him (for the facts, see paragraph 12 above, and for the contrasting case-law, see *Grinenko*, cited above, § 97, 15 November 2012).

65. The Court does, however, consider that the applicant's rights to freedom against self-incrimination and to legal assistance were restricted earlier, during his initial police questioning.

66. The Court observes that on 1 December 2003 the investigator ordered the police to ensure the applicant's presence for questioning as a suspect in the case of the robbery and murder of Ms D. As a result, on 6 December 2003 he was brought to the police station and was questioned there in respect of those criminal offences. There is no indication that, even before he was questioned, the authorities treated the applicant as anything other than a suspect (see, for comparable examples in the case-law, *Khayrov*, cited above, § 74, and *Zamferesko v. Ukraine*, no. 30075/06, § 61,

15 November 2012, and, for a converse example, *Smolik v. Ukraine*, no. 11778/05, § 54, 19 January 2012).

67. By virtue of the Court's case-law principles, the applicant was entitled to be assisted by a lawyer as from his very first questioning by the police. However, he was questioned and confessed to having committed the crimes without being legally represented. The Court therefore considers that his right to legal assistance was restricted on this account.

68. The Court notes that the applicant's initial confession in the form of the "statement of surrender to the police" formed part of the evidence adduced against him, given that the trial court expressly referred to it when finding the applicant guilty and convicting him (see paragraph 38 above). It should be noted that the inadmissibility of the applicant's complaint in this respect under Article 3 of the Convention does not preclude the Court from examining his related complaint under Article 6 § 1 concerning his alleged self-incrimination (see *Kolu v. Turkey*, no. 35811/97, § 54, 2 August 2005, and *Lopata v. Russia*, no. 72250/01, § 140, 13 July 2010).

69. Even though the circumstances in which the applicant made his initial confession cast doubts on its reliability, they were not elucidated by the domestic courts. The Court observes in this connection that the applicant insisted, throughout his trial, that he had been arrested and questioned on 6 December 2003 and that he had wrongly been held for over seventeen hours following his arrest, without legal assistance, on the premises of the police department instead of the prosecutor's office where he was expected for questioning. His account of events was confirmed by the Crimea Court of Appeal in its separate ruling of 19 November 2004, which, in its turn, relied on the police records. Thereafter the applicant's arguments remained without any assessment or even comment: both the trial court and the Supreme Court confined their reasoning in that regard to the observation that the applicant had been arrested and questioned in a lawyer's presence on 7 December 2003. Accordingly, the Court concludes that the domestic courts failed to establish in a convincing manner that the applicant's initial confession had been made in full freedom.

70. The Court therefore considers that the applicant's right to freedom against self-incrimination and to legal assistance were unduly restricted during his initial questioning by the police, and that this restriction was not remedied in the course of his trial.

71. This suffices for the Court to conclude that there has been a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

72. Relying on Article 3 of the Convention, the applicant complained about the taking of a blood sample from him by the investigator rather than a medical specialist.

73. The Court considers it appropriate to 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 private ... 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

74. The Government submitted that the applicant had not complied with the six-month time-limit. According to them, there had been no effective domestic remedies for the applicant to exhaust in respect of this complaint. He should therefore have raised it before the Court within six months from 13 December 2003, the date on which the blood sample was taken.

75. The applicant disagreed. He referred to Article 2 of the Compensation Act, which provides for entitlement to compensation if a procedural action (by the investigator in his case) infringing his rights had been established in a judicial decision (see paragraph 47 above). The applicant further noted that the delivery of a separate ruling by the trial court on 19 November 2004 in this regard had been a sufficient indication that the court did have the authority to establish the illegality of the taking of the blood sample (see paragraph 24 above).

76. The applicant therefore maintained that he had no reason to consider that there were no effective domestic remedies for him to pursue, and that he had not missed the six-month time-limit, which should be calculated from the date of the final judicial decision in the criminal proceedings against him (that is, on 11 May 2006).

77. The Court notes that, according to its well-established case-law, where no domestic remedy is available, the six-month period runs from the date of the act complained of (see, for example, *Hazar and Others v. Turkey* (dec.), nos. 62566/00 et seq., 10 January 2002). However, special considerations could apply in exceptional cases where an applicant first avails himself or herself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of the circumstances which make that remedy ineffective. In such a situation, the six-month period could be calculated from the time when the applicant becomes aware, or should have become aware, of these circumstances (see *Volokhy v. Ukraine*, no. 23543/02, § 37, 2 November 2006).

78. Turning to the facts of the present case, the Court agrees with the applicant's arguments that, firstly, the domestic legislation allowed him to raise this complaint in the framework of his own trial, and, secondly, the

factual developments (namely, the cited separate ruling of 19 November 2004) showed that it was not a *prima facie* unfeasible venue.

79. In sum, the Court finds no reasons to reproach the applicant for first raising the complaint about the taking of the blood sample before the domestic courts dealing with his case and waiting for the completion of those proceedings before bringing his complaint to this Court.

80. The Court therefore dismisses the Government's objection.

81. It 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

82. The applicant maintained his complaint.

83. The Government did not submit any observations on its merits.

84. The Court reiterates that the physical integrity of a person is covered by the concept of "private life" protected by Article 8 of the Convention (see *X and Y v. the Netherlands*, 26 March 1985, § 22, Series A no. 91). Moreover, a person's body concerns the most intimate aspect of private life, and compulsory medical intervention, even if it is of minor importance, constitutes an interference with this right (see *Y.F. v. Turkey*, no. 24209/94, § 33, ECHR 2003-IX, with further references; and *Solomakhin v. Ukraine*, no. 24429/03, § 33, 15 March 2012).

85. Such an interference gives rise to a breach of Article 8 unless it can be shown that it was "in accordance with the law", pursued one or more legitimate aim or aims as defined in paragraph 2 and was "necessary in a democratic society" to attain them.

86. Under the Court's case-law, the expression "in accordance with the law" in Article 8 § 2 requires, among other things, that the measure in question should have some basis in domestic law (see, for example, *Aleksandra Dmitriyeva v. Russia*, no. 9390/05, § 104, 3 November 2011).

87. Turning to the present case, the Court notes that the applicant's complaint is not about the taking of a blood sample as such (as it was in the case of *Schmidt v. Germany* ((dec.)), no. 32352/02, 5 January 2006), but rather about the fact that that medical intervention was carried out by the investigator, who did not have the necessary medical expertise and skills.

88. The Court observes that the applicable Ukrainian legislation on the matter is clear: a decision on the taking of samples may be issued by an investigator, whereas the sample-taking must be performed only by a properly qualified medical specialist (see paragraphs 44 and 45 above).

89. The Court therefore considers that the domestic legal requirements were not respected in the present case. This suffices for it to conclude that the interference with the applicant's right to respect for his private life was not lawful within the meaning of Article 8 of the Convention.

90. Accordingly, there has been a violation of this provision.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

91. The applicant complained, relying on Article 5 § 1 (b) of the Convention, that he had been arrested on 6 December 2003 without grounds and that his detention thereafter had not been duly documented for about twenty-four hours. He also complained under Article 5 § 2 that he had not been informed of the reasons for his arrest. Relying on Article 5 § 4, he further complained that during his detention in the police station from 6 to 7 December 2003 he had not been able to take *habeas corpus* proceedings.

92. The applicant also raised a number of complaints under Article 6 as regards the criminal proceedings against him on the charges of the robbery and murder of Ms D. He complained under Article 6 § 2 that the police officers had treated him as guilty before his guilt had been established by the courts. He next complained under Article 6 § 3 (a) that he had not been promptly informed of the charges against him. Relying on Article 6 § 3 (b), the applicant complained that the Supreme Court had not handed to him or to his representative a copy of its ruling remitting the case for additional investigation, thus undermining the preparation of his defence.

93. The applicant additionally complained under Article 6 of the Convention that the criminal case against him as regards the drug-related offences had been fabricated.

94. 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.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. 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

96. The applicant claimed a retrial and 30,000 euros (EUR) in respect of non-pecuniary damage.

97. The Government contested this claim as unsubstantiated.

98. 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 4,500 in respect of non-pecuniary damage, plus any tax that may be chargeable to him.

99. Furthermore, the Court notes that where an individual, as in the instant case, has been convicted by a court in proceedings which did not meet the Convention requirement of fairness, a retrial, a reopening or a review of the case, if requested, represents in principle an appropriate way of redressing the violation (see, for example, *Leonid Lazarenko v. Ukraine*, no. 22313/04, § 65, 28 October 2010).

B. Costs and expenses

100. The applicant claimed EUR 3,085 in respect of his legal representation by Mr Tarakhkalo in the proceedings before the Court, which included: EUR 2,755 for 29 hours of legal work (at EUR 95 per hour); EUR 220 for administrative costs and EUR 110 for postal expenses. To substantiate that claim, he submitted a legal assistance contract of 7 September 2011, which stipulated that it would remain valid until the completion of the proceedings in Strasbourg and that payment would be made thereafter and within the limits of the sum awarded by the Court in costs and expenses. The applicant also submitted a work completion statement of 2 November 2011, signed both by himself and Mr Tarakhkalo.

101. The Government contested this claim. They considered its part regarding the legal services to be excessive and the remaining part to be unsubstantiated in the absence of any receipts or vouchers.

102. 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 the sum of EUR 1,905 (which is equal to EUR 2,755 less EUR 850, the sum received by way of legal aid) under this head, plus any value-added tax that may be chargeable to him.

C. Default interest

103. 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 complaint under Article 6 §§ 1 and 3 (c) of the Convention concerning the early restriction of the applicant's rights to legal assistance and to freedom against self-incrimination, and the complaint under Article 8 on the taking of a blood sample from him by the investigator, admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1;
3. *Holds* that there has been a violation of Article 8 of the Convention;
4. *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 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,905 (one thousand nine hundred and five 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 December 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President