



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

FIFTH SECTION

CASE OF LUNEV v. UKRAINE

(Application no. 4725/13)

JUDGMENT

STRASBOURG

22 October 2015

FINAL

22/01/2016

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

In the case of Lunev v. Ukraine,

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

Josep Casadevall, *President*,

Ganna Yudkivska,

Vincent A. De Gaetano,

André Potocki,

Helena Jäderblom,

Aleš Pejchal,

Síofra O'Leary, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 29 September 2015,

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

PROCEDURE

1. The case originated in an application (no. 4725/13) 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 Andrey Vladimirovich Lunev ("the applicant"), on 17 January 2013.

2. The applicant, who had been granted legal aid, was represented by Ms O.G. Semenyuk, a lawyer practising in the town of Bryanka, Ukraine, and Ms Y.V. Zaikina, a lawyer practising in Kharkiv, Ukraine. The Ukrainian Government ("the Government") were represented by their Agent, most recently Mr B. Babin, of the Ministry of Justice of Ukraine.

3. The applicant alleged that he had not been provided with adequate medical assistance in detention; that he had been ill-treated in order to discourage him from lodging an application before the Court, and that the authorities had failed to effectively investigate his complaint of ill-treatment.

4. On 3 June 2013 the application was communicated to the Government.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1977. According to the most recently available information, in June 2013 the applicant was placed by a court

under house arrest in the town of Bryanka, Ukraine. The applicant has not informed the Court of his current whereabouts.

A. Medical assistance in detention

6. In January 2012 the applicant was arrested on suspicion of drug trafficking.

7. On 30 January 2012 the applicant was placed in the Starobilsk Pre-Trial Detention Centre (*Старобільський слідчий ізолятор*) (“the SIZO”). On arrival the applicant was examined by a general practitioner, a psychiatrist, a dentist, a tuberculosis specialist and a dermatologist. According to the Government, the applicant was diagnosed with human immunodeficiency virus (“HIV”) (clinical stage 3), chronic bronchitis, toxic encephalopathy and neuropathy caused by prolonged use of drugs, and tuberculosis residual changes. At that time the applicant’s weight was 55 kg. The applicant is 1.78 metres tall.

8. According to the Government, on 1 February 2012 the applicant was offered a CD4+ cell count, which he refused. The case-file material includes a written note dated 7 February 2012 that the applicant refused “a blood test”. It is signed by a member of staff of the SIZO medical unit.

9. According to the Government, between 30 January 2012 and 8 January 2013 the applicant did not ask for any medical assistance in the SIZO. However, it appears from the applicant’s medical file that in September 2012 he was examined by a tuberculosis specialist and underwent an X-ray. According to the medical records provided by the Government, in November 2012, while briefly detained in a different temporary detention facility, the applicant had bronchitis and complained of kidney pain.

10. On 8 January 2013, following the applicant’s complaint of a cough and a fever, he was diagnosed with chronic bronchitis and was prescribed treatment.

11. On 9 January 2013 the applicant was found unconscious in his cell.

12. On the same day the Head of the SIZO requested the Bryankivskyy Local Court to accelerate the proceedings in the applicant’s case or to release him on an undertaking not to abscond, since the applicant needed urgent medical treatment in a specialised hospital.

13. On 10 January 2013 the above court decided that the applicant should remain in pre-trial detention but should be placed either in a specialised prison hospital or in a civilian hospital.

14. According to a medical certificate, between 9 and 11 January 2013 the applicant was in hospital. He was diagnosed with acute serose meningoencephalitis. It was noted that the applicant was “in a soporose state”.

15. On 11 January 2013 the applicant was returned to the SIZO, where he stayed in the medical unit until 15 February 2013. During this period the applicant was also an inmate at least once in the Alchevsk Temporary Detention Facility (“Alchevsk ITT”) (*Алчевський ізолятор тимчасового тримання*).

16. On 17 January 2013 the applicant requested under Rule 39 of the Rules of Court that the respondent Government be asked to place him in a hospital. It was argued that the applicant needed additional examination, in particular by a psychiatrist, in order to be prescribed anti-retroviral therapy (“the ART”), and for the stage of his tuberculosis to be correctly determined and for appropriate treatment to be prescribed, as well for him to be provided with adequate medical assistance in respect of the epilepsy from which the applicant allegedly suffered.

17. According to the applicant’s lawyer, Ms Semenyuk, at the end of January 2013 she received a call from an unknown man who presented himself as an employee of a prosecutor’s office. The person wanted to know whether Ms Semenyuk indeed represented the applicant and whether the applicant had lodged an application to the European Court of Human Rights. Ms Semenyuk replied positively to both questions.

18. On 4 February 2013 the Bryankivsk Medical Unit (*Брянківське територіальне медичне об’єднання*) informed the applicant’s lawyer that since 11 October 2010 the applicant had been registered as receiving regular medical examinations by a doctor of the “Trust” practice based in the Bryanka Central City Polyclinic. He was diagnosed as HIV-positive (clinical stage 2), with chronic bronchitis and toxic encephalopathy. On 27 October 2010 his CD4+ cell count was 374 (18.7%). The applicant refused treatment despite the deterioration of his condition. In 2011 he was diagnosed as HIV-positive at clinical stage 3. The applicant did not take ART, as he had refused the relevant examination. On 8 February 2013 the same information was submitted to the SIZO.

19. The Government submitted that between 11 January and 15 February 2013 the applicant had received treatment for acute serous cerebromeningitis. Moreover, on 5 February 2013 he was X-rayed and seen by a tuberculosis specialist. Following the results of those examinations the applicant was diagnosed with residual changes in the right lung as a result of tuberculosis from which he had already recovered. There was no need for anti-tuberculosis treatment.

20. On 6 February 2013 the applicant was examined by a neuropathologist. He was diagnosed with HIV (clinical stage 3) and toxic encephalopathy.

21. On 19 February 2013 the Bryankivskyy Local Court sentenced the applicant to six and a half years’ imprisonment for drug trafficking.

22. On 26 February 2013 the applicant’s CD4+ cell count was performed with a result of 119 cells (13.1%).

23. By a letter of 7 March 2013 the Government informed the Court that there was no need for the applicant to be hospitalised.

24. On 12 March 2013 the applicant was examined by an infectious diseases specialist and diagnosed with HIV (clinical stage 3), chronic bronchitis, residual effects of tuberculosis, and toxic encephalopathy. ART was recommended. On 14 March 2013 the Lugansk Regional Prisons Department approved the applicant's admission to the Lugansk Temporary Detention Centre No. 17 Hospital (*лікарня при Луганському слідчому ізоляторі №17*).

25. The applicant was in that hospital between 20 and 25 March 2013. In addition to the above diagnosis the applicant was diagnosed with weight loss of more than 10% and chronic hepatitis C. The applicant underwent a full blood count, biochemical blood test, sputum and urine test, X-ray and ultrasonography. The applicant was given medication. On discharge a CD4+ count was recommended, among other things.

26. On 22 March 2013 the Court refused the applicant's request under Rule 39 of the Rules of Court.

27. The applicant was also in the Lugansk Temporary Detention Centre Hospital between 29 March and 5 April and between 12 April and 12 May 2013. On 3 April 2013 he had a CD4+ cell count with a result of 13.5%, or 519 cells. On 16 April 2013 ART was prescribed for the applicant.

28. On 24 May 2013 the Lugansk Regional Court of Appeal quashed the decision of 19 February 2013 in the criminal case against the applicant and remitted the case for a fresh court consideration.

29. On an unknown date the applicant's lawyer applied to the local court for the applicant's release, stating that between 20 January 2012 and 9 January 2013 the applicant had received no medical treatment. After 9 January 2013 the applicant was in hospital for some time, but was not now receiving in-patient care.

30. On 19 June 2013 the Bryankovskyy Town Court released the applicant and placed him under house arrest. The court noted that the case-file materials contained enough evidence to satisfy the applicant's lawyer's request. The court further noted that the applicant required medical treatment which he could not receive in detention.

B. Alleged ill-treatment and subsequent investigation

31. On 25 January 2013 the applicant was placed in the Alchevsk ITT for the duration of the consideration of his case by the court.

32. At 9 a.m. on 30 January 2013 an ambulance was called for the applicant as he had acute pain in the liver. The applicant was examined and it was recommended that he see a gastroenterologist. The applicant was then

taken to Bryanka Central Town Hospital and brought back to the ITT at around 4 p.m.

33. According to the applicant, at around 5.25 p.m. he was beaten up in the ITT by two policemen allegedly from the regional police office. They told him to write that the SIZO had provided him with adequate medical treatment. One of the police officers hit the applicant six or seven times in the liver and the other hit him four times in the kidneys. After that the applicant wrote the statement requested.

34. On 31 January 2013 the applicant's lawyer, S., complained about this matter at a court hearing. An ambulance was called for the applicant and he was diagnosed with a "possible blunt abdominal trauma". He was taken to hospital and examined by a surgeon. The latter noted that the applicant complained of pain in the upper abdomen and weakness, but upon examination the applicant's abdomen was "soft and pain-free". It was concluded that there was no "acute surgical pathology" and that the applicant could be detained in the ITT.

35. On the same day the applicant and his lawyer complained about the beatings to a prosecutor. The applicant stated that on 30 January 2013 at 5.25 p.m. unknown policemen had visited him in the ITT. He was subjected to physical and psychological pressure and forced to withdraw his application about lack of adequate medical assistance. They also forced him to confess to a crime he was charged with.

36. In the course of the investigation the applicant further testified that on 30 January 2013 at around 5.20 p.m. two unknown policemen had questioned him in the ITT. When he refused to write that he had no complaints about the medical treatment in the SIZO, the policemen hit him several times in the abdomen and kidneys. After that the applicant wrote that he had been provided with adequate medical assistance in the SIZO, that he had no complaints, and that there had been no psychological or physical pressure. The policemen took a written statement from him and he was taken to the shower room and then back to his cell.

37. On 14 February 2013 the forensic medical expert, having examined the medical conclusion of the surgeon of 31 January 2013 and the testimonies of the same surgeon given during the investigation, concluded that "when examined by a surgeon on 31 January 2013 the applicant had no injuries".

38. On 25 February 2013 the Alchevsk Town Prosecutor terminated the proceedings for absence of evidence of crime. Police officers and others present in the ITT on 30 January 2013 gave a detailed description of what had happened there that day and stated that nobody had beaten the applicant. In particular, at around 4 p.m. the applicant complained that he wanted a different pillow. The applicant was guided to the room where the bedding was kept. The applicant spent around 15-20 minutes there but did not choose a pillow. Then he was guided to the room where personal

belongings were kept because he wanted something from his bag. After that the applicant wanted to take a shower but was told that there was no hot water. Since he wanted to check this himself an ITT guard guided him to the shower. Later the applicant was placed back in his cell. The surgeon, who examined the applicant on 31 January 2013, testified that the applicant had been brought to him in order to check whether the applicant could be detained in the ITT. The applicant had no injuries. The prosecutor also referred to the conclusion of a forensic medical examination that the applicant had no injuries.

39. The applicant appealed against this decision to a court. On 26 March 2013 the Alchevskyy Town Court quashed this decision. The court questioned the applicant and his cellmate, K., and considered that the investigation had not been thorough, since the applicant's cellmates had not been questioned.

40. On 24 April 2013 the ambulance station informed the Bryanka Prosecutor's Office that on 31 January 2013 the applicant had been examined and diagnosed with "blunt abdominal trauma". He had complained that he had been beaten up in detention. The applicant was taken to hospital for the diagnosis to be confirmed.

41. On 25 April 2013 the proceedings were terminated for absence of evidence of crime. In addition to those previously questioned more evidence was added.

42. In particular, in the course of the investigation the applicant's cellmate K. testified that on 30 January 2013 the applicant had been taken out of the cell. He was absent for approximately 40-60 minutes. Upon return the applicant told him that two unknown policemen had forced him to refuse medical treatment in the SIZO. When the applicant refused to do so he was beaten. After that the applicant agreed to write that he did not need medical assistance. According to K., the applicant had a red cheek and cheekbone as well as a swollen liver. The policeman who brought the applicant back to the cell allegedly said that one of the officers was a certain So. from Perevalsk Correctional Colony No. 15.

43. Another of the applicant's cellmate testified that when he arrived at the ITT he saw the applicant lying on the bed. The applicant told him that policemen had beaten him to force him to confess. The applicant's cellmate P. testified that he had been sleeping and knew nothing, while the applicant's cellmate B. refused to testify at all. A police officer, So., was also questioned and testified that on 30 January 2013 he had been at his work place. It was also noted that the surveillance system in the ITT was not working between 26 January and 4 February 2013.

44. On 3 June 2013 the decision of 25 April 2013 was quashed by the Alchevsk Town Prosecutor. It was noted without any further details that "the decision to terminate criminal proceedings had been premature and

unsubstantiated, and that a number of procedural steps had not been performed”.

45. On 27 June 2013 the criminal proceedings were again terminated for the absence of evidence of crime.

46. On 4 November 2013 the Alchevskyy Town Court quashed the decision of 27 June 2013. The court found that after 3 June 2013 an investigating officer had not properly looked into the applicant’s lawyer’s complaint. It was also not established why it was impossible to hold a confrontation between the applicant and the police officer So.

47. No further information about these proceedings was provided by the parties.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND MATERIALS

48. The relevant domestic law and international and domestic materials can be found in the judgment in the case of *Sergey Antonov v. Ukraine* (no. 40512/13, §§ 40-53 and 55-56, 22 October 2015).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

49. The applicant complained that he had not been provided with adequate medical assistance in detention and that his state of health was not compatible with detention.

50. The applicant also complained that he was ill-treated on 30 January 2013 and that there had been no effective investigation of those events.

51. In respect of the above complaints he relied on Article 3 of the Convention, which reads as follows:

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

A. Alleged lack of adequate medical assistance in detention

1. Admissibility

52. The Government submitted that the applicant had not exhausted available effective remedies in respect of his complaints about lack of adequate medical assistance. In particular, the applicant should have raised

his complaints before the prosecutor's office and he failed to prove that having recourse to that remedy would have been ineffective.

53. The applicant stated that according to the Court's case-law such complaints could not be considered an effective and accessible remedy for the purpose of Article 35 § 1 of the Convention (see *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004, and *Yakovenko v. Ukraine*, no. 15825/06, §§ 74-78, 25 October 2007), therefore, the applicant's complaint about lack of adequate medical assistance should be considered admissible.

54. The Court notes that it has already dismissed similar objections based on non-exhaustion, finding the remedy referred to by the Government ineffective on the grounds that it had not been shown that recourse to such proceedings could have brought about an improvement in the applicants' detention conditions (see *Melnik v. Ukraine*, no. 72286/01, §§ 69, 28 March 2006; more recently, *Buglov v. Ukraine*, no. 28825/02, § 74, 10 July 2014) and sees no reason to depart from that finding in the present case. The Court therefore considers that this complaint cannot be rejected for failure to exhaust domestic remedies.

55. 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.

2. Merits

(a) The parties' submissions

(i) The applicant

56. The applicant stated that he had not refused the CD4+ cell count. According to the applicant, the SIZO medical staff tried to take samples of his blood for a CD4+ cell count. However, this attempt was unsuccessful, since as a former drug user the applicant's veins were collapsed. The applicant did not sign any refusal of HIV-related treatment.

57. The applicant further stated that he had been suffering from other illnesses which also required treatment, but had had no medical examinations in the SIZO for about a year. The applicant believed that the sharp deterioration of his health on 9 January 2013 had been caused by the prolonged absence of any medical assistance in detention. Therefore, in the applicant's view, the circumstances of his medical treatment before arrest were not relevant to the present case.

58. The applicant further submitted that despite the fact he had had an epileptic seizure he had not been examined by a psychiatrist.

59. The applicant also stated that he had not had the opportunity to request release. The applicant and his lawyer unsuccessfully requested the

applicant's release until it was finally granted only on 19 June 2013. However, the applicant's state of health in January-February 2013 was much worse than in June 2013.

60. In view of the above, the applicant maintained that there had been a violation of Article 3 of the Convention in his case.

(ii) The Government

61. The Government submitted that the applicant had been suffering from various diseases since 2010. He was diagnosed HIV-positive in October 2010; however, he refused any treatment despite the deterioration of his condition identified in July 2011.

62. As regards the medical assistance which the applicant received in detention, the Government stated that when the applicant arrived at the SIZO in 2012 he was examined by a number of specialists and was diagnosed.

63. On 7 February 2012 the applicant refused to have a CD4+ cell count and had no complaints about his state of health between 31 January 2012 and 8 January 2013.

64. On 9 January 2013 when the applicant's state of health worsened he was hospitalised and provided with the required treatment. Until 15 February 2013 and on three further occasions (between 20 and 25 March 2013, 29 March and 5 April 2013, and between 12 April and 12 May 2013) the applicant was a patient in the SIZO medical ward or in the Lugansk Temporary Detention Centre Hospital, where he received adequate medical assistance.

65. As regards the applicant's complaint that he did not receive treatment as a patient with HIV, the Government noted that the applicant had refused a CD4+ cell count test and it was impossible to prescribe ART without this test.

66. The Government further noted that the applicant was placed in a civilian hospital once his state of health worsened. As a result of the treatment provided the applicant's health improved.

67. As regards the applicant's epileptic seizure, the Government noted that once it had occurred the applicant had immediately been placed in a civilian hospital for treatment. As regards the applicant's tuberculosis the applicant was diagnosed with residual changes having previously suffered from tuberculosis. He was never diagnosed with active tuberculosis.

68. Therefore, the Government concluded that the aggravation of the applicant's state of health had been caused by his own behaviour, since the applicant had refused the blood test which was essential for further treatment. Moreover, before his arrest the applicant had had no medical treatment, which could have had a negative impact on his state of health.

69. The Government also stated that the applicant's state of health was compatible with detention. He was receiving the necessary treatment and

was under the supervision of medical specialists. Moreover, once the national court concluded that there were no further reasons for the applicant's pre-trial detention, the applicant was released.

70. Therefore, the Government concluded that in the present case the applicant's rights under Article 3 of the Convention had not been breached.

(b) The Court's assessment

71. The Court has emphasised on a number of occasions that the State must ensure that a person is detained in conditions which are compatible with respect for human dignity and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI). A lack of appropriate medical care may thus amount to treatment contrary to Article 3 of the Convention (see, among many authorities, *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, 29 November 2007; *Ukhan v. Ukraine*, no. 30628/02, 18 December 2008; and *Petukhov v. Ukraine*, no. 43374/02, 21 October 2010).

72. Other relevant principles determined by the Court in its case-law as regards Article 3 of the Convention in respect of medical treatment in detention are summarised in the case of *Sergey Antonov v. Ukraine* (cited above, §§ 70-75).

73. The Court notes that in the present case the applicant was diagnosed with a number of serious illnesses when he was placed in a detention facility. In particular, the applicant was diagnosed as HIV-positive (clinical stage 3), with chronic bronchitis, toxic encephalopathy and neuropathy caused by prolonged use of drugs, and tuberculosis residual changes.

74. The Court further notes that despite the applicant being diagnosed with serious illness and HIV no treatment had been provided to the applicant for more than a year.

75. The Government submitted that shortly after being placed in the detention facility the applicant had been offered a CD4+ cell count which he had refused; without the result of this test it was impossible to prescribe him appropriate treatment. The applicant challenged this statement, stating that SIZO medical staff had simply failed to perform the test.

76. The Court notes that the case-file material includes a written note dated 7 February 2012 that the applicant refused "a blood test". There is no evidence that this blood test actually concerned a CD4+ cell count. The Court cannot subscribe to the Government's argument that the applicant, when in detention, had himself made his treatment impossible by refusing the relevant test. The Court further observes that when the applicant did have the CD4+ cell count in April 2013 the ART was prescribed to him within weeks. Thus, even if the applicant initially refused the test, the Government provides no explanation why this test was not carried out for

over one year, given that the applicant was confirmed to be HIV positive and given the importance of the cell count test for the treatment to be prescribed.

77. The applicant was also suffering from a number of other diseases, some being HIV opportunistic infections. Similarly, there was no diagnosis or treatment of those diseases until the applicant's state became critical and after he had lodged a complaint in this respect to the Court.

78. The Court notes that the issues of inadequate medical assistance for people with HIV in Ukrainian detention facilities have already been addressed by the Court in a number of cases (see *Kats and Others v. Ukraine*, no. 29971/04, 18 December 2008, and *Salakhov and Islyamova v. Ukraine*, no. 28005/08, 14 March 2013). The overall situation in respect of treatment for people with HIV in those facilities is also addressed in the case of *Sergey Antonov v. Ukraine* (no. 40512/13, 22 October 2015).

79. In view of the above, the Court considers that the prolonged failure to provide the applicant with adequate medical assistance in respect of his HIV status and other diseases while in detention amounted to inhuman and degrading treatment in breach of Article 3 of the Convention.

B. Alleged ill-treatment and lack of an effective investigation into the applicant's complaints

1. Admissibility

80. The Government stated that the applicant had failed to provide sufficient evidence in support of his statement that he had been ill-treated by the police. In particular, during the investigation at the national level the applicant provided contradictory statements. Thus, on one occasion the applicant stated that the two police officers who had beaten him were from the regional police, and on another he stated that one of the policemen had said that he remembered the applicant from Colony no. 15. Further on, the testimonies of the applicant's cellmates are also contradictory, and despite the applicant's statement that he had been hit several times no bodily injuries were discovered on him the next day. Therefore, the only evidence, namely the diagnosis by the ambulance paramedics, could not serve as proof that the applicant had been ill-treated, since it was a preliminary diagnosis which was not confirmed later. The Government concluded that the applicant's complaints of ill-treatment were wholly unsubstantiated.

81. The Government did not submit any observations regarding the admissibility of the applicant's complaint about the lack of an effective investigation into his alleged ill-treatment.

82. The applicant disagreed with the Government and submitted that his statements about ill-treatment had been detailed. He indicated the number of his attackers, the number of blows he had received, that those blows had

been inflicted with the sharp of the hand, the exact day and time of the events as well as details of his conversation with the police officers. The applicant believed that it was for the national authorities to establish the truth as long as the applicant and the witnesses in the case had provided them with all the information in their possession. In particular, the applicant's cellmates confirmed that he had been beaten on 30 January 2013, and their testimonies complemented the applicant's statements.

83. As regards the applicant's medical examination on 31 January 2013, the applicant submitted that he had been examined by a doctor in the presence of two guards; for this reason he had been afraid to complain about ill-treatment. On the contrary, while in the court, he told the ambulance team about the beatings. Moreover, the medical examination in the hospital was superficial, as it was aimed at finding out whether the applicant could be detained and was limited only to an external examination of the applicant (no ultrasonic examination or anything else to check the diagnosis established by the ambulance team). The subsequent forensic examination was also not reliable, as it was based on the conclusions of the superficial medical examination.

84. The applicant concluded that the above was sufficient evidence that he had been subjected to ill-treatment by the police in the Alchevsk ITT.

85. The Court notes that the applicant's complaint was detailed enough and supported by evidence (the ambulance team diagnosis, the applicant's cellmates' testimonies) to consider it not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. The Court further considers that the applicant's complaints about alleged ill-treatment and lack of an effective investigation are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) Effective investigation

86. The applicant reiterated that the authorities had failed to conduct a thorough and effective investigation following the applicant's complaints, both in person and through his lawyer, about the applicant's ill-treatment. The investigation into the events in question was conducted three times, since the decisions to terminate the investigation were twice quashed, by the court and by the prosecutor, as marked by shortcomings. Despite the instructions given by those authorities, certain investigation steps had still not been taken. In particular, there were no real attempts to hold a confrontation between the applicant and the police officer So. The applicant could have been shown So.'s photograph in order to check whether this person was among those who had allegedly ill-treated the applicant, but this

was not done. So.'s statement that he had been at his workplace on 30 January 2013 was also not checked.

87. The applicant further stated without giving any details that the forensic medical examination in his case had not complied with requirements of the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

88. Finally, the applicant maintained that there had been a violation of the procedural limb of Article 3 of the Convention.

89. The Government stated that the prosecutor's office had conducted an effective investigation into the applicant's complaints of ill-treatment. In particular, the investigation was started immediately after the applicant's lawyer's complaints and a number of important witnesses were questioned, and a forensic medical examination was conducted. Later, more witnesses (the applicant's cellmates) were questioned and additional information was checked. The applicant's complaints of ill-treatment were carefully checked and finally rejected on 27 June 2013 as unsubstantiated. The investigation was full and prompt and all the court's and prosecutor's instructions were followed. Therefore, there was no breach of the applicant's right to an effective investigation under the procedural limb of Article 3 of the Convention.

90. The Court reiterates that where an individual raises an arguable claim that he has been ill-treated by State authorities in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention, requires by implication that there should be an effective official investigation. Such an investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice, and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

91. An investigation into arguable allegations of ill-treatment must also be thorough. This means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions in order to close their investigation or as the basis of their decisions (see *Assenov and Others*, cited above, §§ 103 et seq.). They must take all reasonable steps available to them to obtain evidence concerning the incident, including, *inter alia*, eyewitness statements and forensic evidence (see, *mutatis mutandis*, *Tanrıkulu v. Turkey* [GC], no. 23763/94, §§ 104 et seq., ECHR 1999-IV, and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000).

92. In the present case the applicant complained that he had been beaten and intimidated in order to incite him to abandon his application to the Court and to confess to a crime he had been charged with. On the next day the applicant was diagnosed with a possible blunt abdominal trauma. The Court considers that in such circumstances the applicant's complaints needed to be investigated.

93. The Court notes that the investigation into the applicant's complaints started promptly. However, one month later it was terminated for absence of evidence of crime. This and two subsequent decisions to terminate the proceedings instituted following the applicant's complaint were quashed by a court or by a prosecutor for shortcomings in the investigation. The parties did not inform the Court of the final outcome of the proceedings.

94. The Court observes that apart from the shortcomings noted by the domestic authorities, such as failure to carry out certain procedural actions, it should be noted that the initial medical examination, which later served as a basis for numerous conclusions that the applicant had no bodily injuries, was superficial. Apparently it was aimed at establishing whether the applicant had any urgent health problem which necessitated surgery, and whether he could be detained, but not at establishing whether the applicant had any injuries (see, *mutatis mutandis*, *Kobets v. Ukraine*, no. 16437/04, § 47, 14 February 2008).

95. Given the absence of a final decision, shortcomings identified by the domestic authorities, and failure to secure evidence by not conducting a proper medical examination of the applicant, the Court concludes that in the present case there has been a violation of the procedural limb of Article 3 of the Convention.

(b) Alleged ill-treatment

96. The Government did not submit any observations on the merits of this complaint.

97. The applicant reiterated his arguments which he had submitted in respect of admissibility of this complaint (see paragraphs 82-83 above).

98. As the Court has stated on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances or the victim's behaviour (see, among other authorities, *Labita* [GC], cited above, § 119).

99. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nevertheless, when allegations are made under Article 3 of the Convention, the Court must apply particularly thorough scrutiny, even where domestic proceedings and investigations have already

taken place (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336).

100. The Court further reiterates that in assessing evidence it 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, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.

101. In the present case the applicant submitted that he had been hit by the police officers in the liver and kidneys to discourage him from lodging his application with the Court and to induce him to confess. The Court notes that the Government denied that the applicant had had any injuries. However, the evidence produced in support of this statement was obtained following the corrupted investigation process. As already noted above, the next day the applicant was diagnosed with a possible blunt abdominal trauma. Assuming that those injuries were sufficiently serious to amount to ill-treatment within the meaning of Article 3 of the Convention, it remains to be considered whether the State authorities can be held responsible under Article 3 for inflicting them.

102. The Court notes that in the absence of an effective investigation into the applicant’s complaints crucial issues of the case remain unclear and in the absence of any conclusive evidence as to the exact nature of the injuries in question and their possible cause, the Court cannot establish “beyond reasonable doubt” that it was indeed police officers who inflicted the injuries on the applicant.

103. In such circumstances, the Court cannot but conclude that there has been no violation of the substantive limb of Article 3 of the Convention.

II. ALLEGED HINDRANCE OF THE RIGHT OF INDIVIDUAL PETITION UNDER ARTICLE 34 OF THE CONVENTION

104. The applicant further complained that he had been subjected to pressure in order to dissuade him from maintaining his application before this Court. He relied on Article 34 of the Convention, the relevant part of which reads as follows:

“The Court may receive applications from any person ...The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”.

105. The Government maintained that the applicant’s complaints of ill-treatment were unsubstantiated. His allegations were investigated and rejected. Therefore, the applicant failed to prove that there was a breach of his right to lodge an application with the European Court of Human Rights.

106. The applicant maintained his complaint. He also referred to a statement made by his lawyer, Ms Semenyuk (see paragraph 17 above), and

noted that it confirmed that the State authorities took a heightened interest in his application to this Court.

107. The Court reiterates at the outset that a complaint under Article 34 of the Convention is of a procedural nature, and therefore does not give rise to any issue of admissibility under the Convention (see *Iulian Popescu v. Romania*, no. 24999/04, § 29, 4 June 2013).

108. The Court further reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 105, *Reports of Judgments and Decisions* 1996-IV).

109. The Court notes that in the present case there is no concordant evidence in support of the applicant's allegations. In particular, the failure to properly investigate the applicant's complaint of ill-treatment makes it impossible to conclude that the applicant was indeed intimidated in order to discourage him from lodging an application with the Court.

110. Referring to its above findings in respect of the applicant's complaint under the substantive limb of Article 3 of the Convention, the Court cannot conclude that the State has failed to fulfil its obligation under Article 34 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

111. 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

112. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

113. The Government reiterated that there was no violation of the applicant's rights in the present case, therefore, the applicant's claims for compensation of non-pecuniary damage should be rejected.

114. The Court, ruling on an equitable basis, awards the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

115. The applicant, who had been granted legal aid, did not claim reimbursement of his costs and expenses.

C. Default interest

116. 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 in respect of the failure to provide the applicant with adequate medical assistance in detention;
3. *Holds* that there has been a violation of Article 3 of the Convention in respect of the failure to conduct an effective investigation into the applicant's complaints about ill-treatment;
4. *Holds* that there was no violation of Article 3 of the Convention in respect of the applicant's allegations about ill-treatment;
5. *Holds* that the State has not failed to fulfil its obligation under Article 34 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 22 October 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Josep Casadevall
President