



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

FIFTH SECTION

CASE OF YAROSHOVETS AND OTHERS v. UKRAINE

(Applications nos. 74820/10, 71/11, 76/11, 83/11, and 332/11)

JUDGMENT

STRASBOURG

3 December 2015

FINAL

03/03/2016

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

In the case of Yaroshovets and Others v. Ukraine,

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

Angelika Nußberger, President,

Ganna Yudkivska,

André Potocki,

Faris Vehabović,

Síofra O’Leary,

Carlo Ranzoni,

Mārtiņš Mits, judges,

and Claudia Westerdiek, Section Registrar,

Having deliberated in private on 10 November 2015,

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

PROCEDURE

1. The case originated in five applications (nos. 74820/10, 71/11, 76/11, 83/11, and 332/11) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by five Ukrainian nationals, Mr Danylo Mykolayovych Yaroshovets (“the first applicant”), Mr Vyacheslav Mykolayovych Vorona (“the second applicant”), Mr Oleg Valeriyovych Baltyan (“the third applicant”), Mr Viktor Mykolayovych Pylypchuk (“the fourth applicant”) and Mr Andriy Vasylyovych Romanchuk (“the fifth applicant”), on 12 December 2010.

2. The applicants were represented by lawyers practising in Kyiv. In particular, the first applicant was represented by Mr V. Makhinchuk, the second and fifth applicants by Mr R. Rozmetov, the third applicant by Mr G. Aliyev, and the fourth applicant by Mr M. Dmytruk. The Ukrainian Government (“the Government”) were represented by their Agent, most recently Mr B. Babin, of the Ministry of Justice.

3. The applicants complained under Article 5 §§ 1 (c) and 3 of the Convention of the unlawfulness and length of their detention, and under Article 6 § 1 of the Convention of the excessive duration of the proceedings. Four of the applicants further complained under Article 3 of the Convention about the conditions of their detention, and of inadequate medical treatment and restrictions on family visits while in detention. They also submitted that in violation of Article 5 § 5 of the Convention they had not been provided with an enforceable right to compensation for the violation of their right to liberty. One of the applicants complained under Article 3 of the Convention that he had been ill-treated by the police after his arrest.

4. On 12 September 2011 the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant was born in 1978; the second, third and fourth in 1981; and the fifth in 1982. With the exception of the second applicant who died on 9 March 2014, the applicants currently live in Kyiv. Ms O.P. Vorona, the second applicant's mother, informed the Court of her wish to pursue the application on his behalf.

A. Criminal proceedings against the applicants

6. The applicants, along with two other persons, were co-defendants in criminal proceedings instituted against them in October 2005. The charges against them included a number of counts of ill-treatment, theft, extortion and abuse of power, which the applicants allegedly committed during their service in the police.

7. At about 9 a.m. on 14 October 2005 the applicants, then police officers, were arrested by a special police unit and taken to the Kyiv City Police Department to be questioned by the prosecutors responsible for the investigation. Later that day the prosecutors ordered the applicants' detention under Article 115 of the Code of Criminal Procedure of 1960. During the night of 14 to 15 October 2005 they were taken to police stations in the Shevchenkivskyy and Podilskyy Districts of Kyiv.

8. On 15 October 2005 the applicants were taken back to the Kyiv City Police Department for questioning.

9. The applicants were detained on different police premises until the end of October 2005, when they were placed in the Kyiv Temporary Detention Centre (*слідчий ізолятор* – "SIZO").

10. From 17 October 2005 until the pre-trial investigations were completed and the case was referred to the Desnyanskyy District Court of Kyiv for trial on 12 December 2006, the courts at three levels of jurisdiction ordered the applicants' continued detention. The courts based their decisions mainly on the grounds that the case was complex and the investigations were pending, that the applicants were accused of serious crimes, that they might evade investigation and trial and obstruct the establishment of the truth in the case, and that they might continue committing crimes. No further details were given by the courts. Some of the decisions also contained a statement that the applicants' state of health and family situation

had been duly noted. Between 14 and 23 January 2007 the applicants continued to be detained as the case was awaiting examination by the trial court. There was no decision authorising the applicants' detention during that period.

11. At trial, which started with a preliminary examination of the case on 23 January 2007, the courts refused the applicants' and their lawyers' repeated requests for release. Some of the decisions made reference to the seriousness of the crimes of which the applicants were accused and stated that there were no grounds for changing the preventive measures imposed, while other decisions provided no explanation for the refusal to release the applicants.

12. On 25 May 2007 the District Court ordered the second applicant's release on an undertaking not to abscond.

13. On 28 October 2008 the District Court convicted the applicants and sentenced them to five years' imprisonment with a ban on holding office in a law-enforcement capacity for three years and with confiscation of property. The second applicant's sentence was suspended for three years. The other applicants were ordered to remain in detention pending the entry into force of the judgment.

14. On 14 May 2009 the Court of Appeal quashed the first-instance court's judgment and adopted a new judgment, convicting the applicants and sentencing them to longer periods of imprisonment. It also ordered the second applicant's detention.

15. On 3 November 2009 the Supreme Court quashed the judgment of the Court of Appeal, mainly because of the lower court's incomplete examination of the facts and non-compliance with the rules of procedure, and remitted the appeal against the judgment of 28 October 2008 to the Court of Appeal for reconsideration. The Supreme Court did not examine the applicants' and their lawyers' requests for release.

16. On 24 December 2009 the Court of Appeal quashed the judgment of 28 October 2008, finding that the first-instance court had failed to duly examine the applicants' arguments and evidence, and that the criminal classification of their actions had been incorrect. The case was remitted to the District Court for retrial. The applicants were ordered to remain in detention.

17. In the course of the new examination of the case at first instance the applicants requested the District Court to release them arguing that there was no reason for their further detention and that their state of health was declining. On 15 February 2010 the District Court refused the requests as unsubstantiated.

18. On 13 August 2010 the District Court delivered a new judgment, finding the applicants guilty of a number of counts of torture, extortion, knowingly unlawful searches, and abuse of power. With the exception of the fourth applicant, they were also convicted of theft and forgery. The

applicants were sentenced to five years' imprisonment and banned from holding office in a law-enforcement capacity for three years. The court also ordered the confiscation of the property of some of the applicants. The second applicant was dispensed from serving his sentence and released from detention. The others were ordered to remain in detention pending the entry into force of the judgment. The starting date for the calculation of the duration of their imprisonment was 14 October 2005.

19. The third and fourth applicants and the prosecutor appealed against the judgment. The prosecutor challenged, in particular, the first-instance court's refusal to find that the applicants had committed the crimes as members of an organised group, resulting in the wrong classification of their actions. The prosecutor also argued that the sentence was too lenient.

20. On 14 September 2010 the case was transferred to the Court of Appeal. On 21 October 2010 the Court of Appeal allowed in part the prosecutor's procedural request and decided to examine afresh the evidence concerning the part of the case challenged by the prosecutor.

21. The first, third, fourth and fifth applicants requested the Court of Appeal to release them, arguing that by 14 October 2010 they had had served their sentences and that there were no grounds to suggest that they would avoid further proceedings in their case. The first and fifth applicants also argued that during their detention in the SIZO their state of health was declining.

22. On 8 November 2010 the Court of Appeal refused the applicants' requests for release, holding that they were accused of serious crimes and sentenced to five years' imprisonment, that the judgment of 13 August 2010 did not enter into force and that it was being challenged by the prosecutor and by two of the applicants. On 17 January 2011 the Court of Appeal refused the applicants' repeated requests for release principally for the same reasons, having further noted that the verdict was being challenged *inter alia* for the reason of lenient sentence and that it was being reviewed by that court.

23. In the course of the proceedings before the Court of Appeal, about thirty hearings took place. On 20 September 2011 the Court of Appeal allowed the prosecutor's appeal and quashed the judgment of 13 August 2010. The appeals of the third and fourth applicants were dismissed as unsubstantiated. The Court of Appeal adopted another new judgment, convicting the applicants and sentencing them to longer periods of imprisonment. In particular, the first applicant was sentenced to eight years' imprisonment, the second applicant to six years, the third and fifth applicants to seven and a half years, and the fourth applicant to seven years. It ordered the second applicant's detention. The other applicants were also ordered to remain in detention. The starting date for the calculation of the duration of the first, third, fourth and fifth applicants' imprisonment was 14 October 2005. The Court of Appeal further ruled that the second

applicant's detention between 14 October 2005 and 25 May 2009 and between 14 May 2009 and 13 August 2010 counted towards the duration of his imprisonment, the calculation of which had to start from the date on which the enforcement of the judgment of 20 September 2011 would begin.

24. On 8 May 2012 the Higher Specialised Court for Civil and Criminal Matters quashed the judgment of 20 September 2011 for various procedural violations, including the failure of the Court of Appeal to question the applicants concerning the charges, the unreasoned refusal to examine the material concerning the allegations of police ill-treatment (see paragraphs 28-36 below) and for the court's failure to comply with the instructions contained in the decision of the Supreme Court of 3 November 2009. The case was remitted to the Court of Appeal for fresh examination. The applicants were released from detention on an undertaking not to abscond.

25. On 16 September 2014 the Court of Appeal quashed most of the judgment of 13 August 2010. It found the applicants guilty of seven counts of ill-treatment, extortion and abuse of power. The applicants, excluding the second applicant, were sentenced to four and a half years' imprisonment. The second applicant was not sentenced because he had died in the meantime.

26. In its decision of 16 September 2014, the Court of Appeal held that, in view of the case-file material on which the prosecutors' decision of 16 May 2007 was based, there had been no violation of the applicants' rights at the initial stage of the investigation. While injuries had been discovered on the first applicant's body in October 2005 (see paragraph 30 below), the "possible use of force in the course of his arrest had had no impact on his [defence] position in the case", as he had not confessed to having committed the crimes of which he had been suspected at the pre-trial stage. The Court of Appeal further found that the alleged psychological pressure – allegations made by the applicants at trial though not supported by any evidence – "had had no impact on the [defence] position" of the applicants.

27. According to the fourth applicant, on 16 June 2015 the Higher Specialised Court for Civil and Criminal Matters quashed the judgment of the Court of Appeal of 16 September 2014 and delivered a new judgment. The parties have not provided a copy of that judgment.

B. Alleged ill-treatment of the first applicant

28. According to the first applicant, between 5 p.m. on 14 October 2005 and 2 a.m. on 15 October 2005 he was beaten up and threatened with physical violence by police officer B. for refusing to answer questions relating to the crimes of which he was suspected. In particular, officer B. hit the first applicant in the face, the body and the legs, and also tightened the handcuffs on his wrists, causing him considerable pain. During the same

period several other police officers insulted and threatened the first applicant and his close family members in an attempt to force him to confess to having committed the crimes of which he was eventually charged. Because of the ill-treatment, the first applicant refused to be questioned on 14 October 2005. His refusal was recorded in the case file.

29. On 17 October 2005 the applicant was taken to a police detention unit (*ізолятор тимчасового тримання – “ІТТ”*) in which he was examined by a paramedic who noted that he had bruises on his face and the legs.

30. Further to instructions issued by the prosecutors, on 19 and 26 October 2005 the first applicant was examined by doctors, who noted a number of bruises on his face and legs. They stated that the injuries could have been inflicted by “blunt objects” during the period referred to by the applicant (see paragraph 28 above).

31. On an unspecified date an official inquiry was launched into the first applicant’s allegations of ill-treatment. During the inquiry, the first applicant and his close relatives made detailed submissions, giving the names of some of the alleged offenders and specifying the time-frame and the place of the relevant events.

32. The inquiry initially resulted in a decision of 14 November 2005, by which the prosecutors rejected the complaints as unfounded. Following an appeal lodged by the first applicant, in September 2006 a district court quashed that decision, finding that the inquiry had been incomplete. In particular, the court noted that the prosecutors had not questioned the first applicant and his co-accused, that not all the police officers involved in the events had been questioned, and that the origin of the first applicant’s injuries had not been established. In March 2007 the courts found a further inquiry also incomplete, *inter alia*, because the prosecutors had failed to establish the origin of the first applicant’s injuries. The matter was again remitted to the prosecutors.

33. On 16 May 2007 the prosecutors rejected the complaints as unsubstantiated, finding that there was no evidence that the first applicant’s bruises had been inflicted by police officers. The prosecutors’ decision was principally based on the statements of the police officers who had taken part in the first applicant’s arrest and those who had been in contact with him afterwards. Those police officers stated that the first applicant had not been subjected to “physical or psychological coercion” and that he had not raised any complaints in that regard on 14 or 15 October 2005. They also argued that after his arrest on 14 October 2005 and until his placement in a cell at the Shevchenkivskyi District police station on 15 October 2005, the first applicant had been under the constant supervision of several police officers. At the police station, he had been detained alone in a cell and “without constant supervision” of the police. In his statements, officer B. also suggested that the first applicant had complained about him because the first

applicant had been dissatisfied with the fact that officer B. had recorded all the items found in the car which he and his fellow suspects had used. During the search of that car the first applicant had insulted officer B. The incident had been witnessed by other people.

34. In their decision, the prosecutors also referred to the statements of the doctor who had examined the first applicant on 26 October 2005, obtained during the inquiry. In particular, the doctor stated that, given the location of the first applicant's injuries, it could not be ruled out that they had been inflicted by the first applicant himself or "by a traumatic impact with a blunt object".

35. The prosecutors' decision was eventually upheld by the courts of first and appeal instances on 29 August and 21 November 2007 respectively.

36. Relying on the prosecutors' findings, the District Court and the Court of Appeal dealing with the applicants' criminal case also rejected identical complaints lodged by the first applicant, finding that the "possible use of force in the course of his arrest had had no impact on [his defence] position in the case", as the first applicant had not confessed to having committed the crimes of which he had been suspected at the pre-trial stage (see, in particular, paragraph 26 above).

C. Allegedly inadequate medical assistance to the fourth applicant in the SIZO

37. In April 2006 the fourth applicant was examined by a doctor from the SIZO medical unit and was diagnosed with chronic prostatitis. In September 2006 he was further examined by a doctor and an urologist from the SIZO medical unit, who prescribed specific medication for the treatment of his chronic prostatitis. Subsequently, the fourth applicant underwent a number of medical checks by SIZO doctors in October and December 2006, June 2007, April and May 2008, May 2009, and June 2010, in the course of which it was confirmed that he had a serious urological dysfunction, often diagnosed as chronic prostatitis. He was prescribed specific medication.

38. During that period of time the fourth applicant, his lawyer and members of his family asked the authorities to allow the fourth applicant to be examined at a specialised clinic, but to no avail. Requests for the fourth applicant's release in view of his state of health were also refused. By a letter dated 21 April 2008, the SIZO governor informed the fourth applicant's lawyer that the SIZO medical unit did not have the equipment necessary to make an accurate diagnosis of the fourth applicant's condition.

39. During a court hearing in the applicants' criminal case on 2 February 2011 an ambulance was called for the fourth applicant because he was suffering from acute bladder pain. Doctors noted that he needed urgent catheterisation of the bladder. The judge of the Court of Appeal dealing

with the applicants' criminal case asked the SIZO governor to provide the fourth applicant with adequate medical assistance, transferring him to a civilian hospital if necessary. On the same day, the fourth applicant was examined on the premises of the SIZO by a doctor from a civilian hospital. The doctor diagnosed him with acute chronic prostatitis and chronic cystitis, prescribed an antispasmodic drug and instructed him to undergo a urine test. He found no reason to prescribe urgent hospitalisation. The next day the fourth applicant underwent a urine test, which did not reveal any pathology.

40. On 3 February 2011, following a complaint by the fourth applicant's mother that he had not received the required medical treatment, the judge of the Court of Appeal sent a letter to the SIZO governor requesting him, for the second time, to provide the fourth applicant with adequate medical assistance, transferring him to a civilian hospital if necessary.

41. On 4 February 2011 the fourth applicant was taken to a civilian hospital where he was examined by a urologist, who diagnosed him with chronic prostatitis and chronic cystitis without a urinary disorder. The urologist found that the fourth applicant did not need a catheter or inpatient treatment. He was prescribed special medication.

42. Subsequently, in February and March 2011 the fourth applicant was further examined and treated with medication by a dermatologist from the SIZO medical unit, who eventually noted a certain improvement in his urological problem.

43. On 31 March 2011, following the fourth applicant's request for interim measures under Rule 39 of the Rules of Court, the Court asked the Government to provide information concerning the fourth applicant's state of health.

44. On 5 April 2011 the fourth applicant was examined by a panel of SIZO doctors and diagnosed with chronic prostatitis at the remission stage.

45. On 8 April 2011 a urologist from a civilian hospital examined the fourth applicant. He was diagnosed with urethroprostatitis at the exacerbation stage. Urine and prostatic fluid tests were recommended. Following the tests, the urologist prescribed specific medication.

46. On 4 May 2011, having received updated information concerning the fourth applicant's medical situation from the Government and the fourth applicant himself, the Court decided to refuse his request under Rule 39.

47. Urologists carried out further medical examinations in September and October 2011. They noted that the fourth applicant was suffering from acute chronic prostatitis and chronic cystitis and prescribed him medication, which he received in a parcel from his relatives in October 2011.

48. By a letter of 17 October 2011, the deputy head doctor of a civilian hospital at which the fourth applicant had been examined informed the applicant's lawyer that the treatment initially prescribed had been ineffective and that the fourth applicant needed "physiotherapeutic

treatment along with ethiopathogenetic medication, which could not be made available in the SIZO”.

49. On 10 November 2011 the Court indicated, under Rule 39, that the Government should ensure that the applicant was urgently provided with medical treatment for his health problems in accordance with the doctors’ instructions, including those contained in the aforementioned letter of 17 October 2011. The interim measure was eventually lifted on 5 February 2013.

50. On 16 November 2011 the fourth applicant was examined by a urologist at a civilian hospital. He was diagnosed with chronic prostatitis beyond the stage of active inflammation and it was concluded that he did not require inpatient treatment. There is no information about his medical situation while in detention after that date.

51. After his release from detention on 8 May 2012, the fourth applicant was further examined by various doctors. In particular, on 22 May 2012 he was examined at a private urological clinic; the doctor discovered “congestive inflammatory modification” of his prostate, chronic calculous prostatitis, double-sided vesiculitis (inflammation and infection of the seminal vesicles) and intra-pelvic venous (*інтранельвікальна*) congestion. In June 2012 the fourth applicant underwent surgery on his urethra. In June 2014 he underwent similar surgery.

D. Conditions in which the first, third, fourth and fifth applicants were transported and their detention in transit cells

52. According to the applicants, excluding the second applicant, when they were transported to and from court hearings they were kept for several hours in overcrowded prison vans, with insufficient access to fresh air and no heating. They were thus exposed to high temperatures in summer and freezing temperatures in winter. It took the vans several hours to get to the Desnyanskyy District Court and there were instances where, on returning to the SIZO, the applicants concerned had to wait in the vans for several hours while security checks were carried out.

53. The applicants concerned stated that they had been transported in the above conditions on more than 200 occasions.

54. They further submitted that on court days they had been routinely taken out of their cells at about 8 a.m. and before being taken to a prison van, had been placed in special transit boxes measuring 3.75 square metres with no ventilation for durations ranging from thirty minutes to several hours. Upon their return from court hearings, often at about 8 p.m., the applicants concerned had also had to wait for several hours in the same transit boxes before being escorted to their regular cells.

55. According to the Government, prison vans measured 8 square metres inside and were designed to accommodate twenty-two people in three

compartments (two larger ones, measuring 2.5 square metres and designed for ten passengers each, and one small compartment for two passengers). The vans had no windows, but they were equipped with ventilation grills and benches for sitting on. The Government further submitted that on average it took up to forty minutes to transport prisoners between the SIZO and the Court of Appeal.

E. Family visits in detention

56. During their detention, the applicants, excluding the second applicant, received a certain number of one-hour visits by their close relatives, during which the applicants concerned and their visitors had to communicate via glass partition. No dates of those visits were specified. Nor did the applicants concerned claim that they or their relatives had requested any other visits. The applicants concerned stated that their relatives had had to consent to be questioned as witnesses in order to meet with the applicants concerned in detention.

II. RELEVANT DOMESTIC LAW

A. Code of Criminal Procedure of 1960, repealed as of 19 November 2012

57. The relevant extracts from Chapter 13 (Preventive measures) read, as worded at the material time, as follows:

Article 148. The aim and grounds for the application of preventive measures

“Preventive measures shall be applied in respect of a suspect, accused, defendant or convict with the aim of preventing attempts to abscond from the investigation or trial, to obstruct the establishment of the truth in a criminal case or to pursue criminal activities, and in order to ensure the execution of procedural decisions.

Preventive measures shall be applied if there are sufficient grounds to consider that the suspect, accused, defendant or convict will try to abscond from the investigation or trial, or evade complying with procedural decisions, or obstruct the establishment of the truth in a criminal case, or pursue criminal activities.

If there are not sufficient grounds to apply a preventive measure, the suspect, accused, defendant or convict shall be required to give a written undertaking to appear when summoned by the person conducting the inquiry, the investigator, prosecutor, or the court, and to inform them of any change of his or her place of residence.

...”

Article 149. Preventive measures

“The preventive measures are as follows:

(1) a written undertaking not to abscond;

- (2) a personal guarantee;
 - (3) the guarantee of a public organisation or labour collective;
 - (3-1) bail;
 - (4) detention in custody;
 - (5) supervision by the command of a military unit.
- ...

Article 155. Detention in custody

“The preventive measure of detention in custody shall be applied in cases concerning crimes for which the law envisages a punishment of more than three years’ imprisonment. In exceptional circumstances, this preventive measure may be applied in cases concerning crimes for which the law envisages a punishment of up to three years’ imprisonment.

...”

Article 162. Visiting a detainee

“Visits of relatives or other persons to a detainee can be allowed by a person or an institution that deals with the case. The duration of the visit shall be fixed from one to four hours. The visit can be allowed, as a rule, not more than once a month.”

Article 165. General provisions concerning the procedure on the application, discontinuation and change of a preventive measure

“The preventive measure of detention in custody shall be applied only pursuant to a reasoned decision of a judge or of a court...

...

... While court proceedings are pending, release from detention shall be ordered only by a decision of a judge or of a court.

A preventive measure may be changed or lifted if there is no need for it to be applied.

...”

58. Other relevant provisions of the Code read as follows:

Article 324. Issues to be decided by the court when adopting a judgment

“When adopting a judgment, the court shall decide:

...

- (11) on the preventive measure to be applied to the defendant;

...”

Article 338. Calculation of the duration of serving a sentence

“Calculation of the duration of a prison sentence ... shall start from the moment the judgment is being enforced, where the defendant was not in detention prior to the delivery of the judgment.

Where the convict was detained prior to the delivery of the judgment in the framework of the proceedings in question, the duration of his detention shall count towards his sentence.

...”

Article 342. Release of a defendant from custody following a court judgment

“Following the acquittal of a defendant, or his dispensation from serving a sentence, or the imposition on him of a punishment other than imprisonment, the court shall immediately release the defendant from custody in the courtroom if he or she is in detention.”

Article 343. Application of preventive measures for the period before a court judgment comes into effect

“When adopting a judgment by which a defendant is sentenced to a certain type of punishment, the court should consider whether to apply a preventive measure for the period before the judgment comes into effect, and has the right to apply new preventive measures, or to quash, change, or maintain the preventive measures that have been applied earlier.

The application of such a preventive measure as detention in custody shall be permissible only on the grounds set out in the relevant Articles of Chapter 13 of this Code.”

Article 345. Granting relatives permission to visit a convict

“Prior to entry of the judgment into force, the presiding judge or the president of the relevant court shall be obliged to grant close relatives of a convict, upon their request, permission to visit the detained convict.”

Article 357. Preliminary examination of the case by an appellate court

“If necessary, an appellate court may conduct a preliminary examination of the case.
...”

Article 358. Examination of issues relating to the preparation of the case for appellate proceedings

“During a preliminary examination an appellate court may consider the following issues relating to the preparation of the case for appellate proceedings:

...

(5) to change, to lift or to apply a preventive measure;

...”

Article 401. Entry into force of a court judgment and its enforcement

“A judgment of a local court shall enter into force after the expiry of the time-limit for lodging an appeal if it was not challenged [on appeal], whereas a judgment of an appellate court [shall enter into force] after the expiry of the time-limit for lodging a cassation appeal [if it was not challenged in cassation]. If an appeal, a cassation appeal was lodged, the court’s judgment shall enter into force after the examination of the

case by a court of appellate or cassation instance as relevant, unless it was [eventually] quashed [or] unless the Code provides otherwise.

...

A court judgment convicting [a defendant] shall be enforced once it enters into force.

...”

B. Criminal Code of 2001

59. Article 72 § 5 of the Criminal Code provides, in so far as relevant, as follows:

“When sentencing [a defendant] to imprisonment, the court shall reckon [any time he or she spent in] preliminary detention as counting towards the term of [his or her prison] sentence...”

C. Civil Code of 2003

60. Article 1176 of the Civil Code provides for the right to compensation for damage sustained as a result of unlawful decisions, actions or inactivity by bodies of inquiry, pre-trial investigation authorities, prosecutor’s offices and courts. It further provides that the procedure for claiming compensation for damage inflicted by such bodies “shall be established by the law”.

D. Preliminary Detention Act of 1993

61. The relevant provisions of the Preliminary Detention Act of 30 June 1993 read, as worded at the material time, as follows:

Section 1

“Preliminary detention ... is a preventive measure [which can applied] to an accused, defendant, person suspected of a crime liable to a punishment of imprisonment, and convict in whose respect the judgment has not entered into force.

...”

Section 12

“Visits of relatives or other persons to a detainee can be allowed, as a rule, once a month by the administration of the detention facility with the written approval of an investigator, a body of inquiry or a court dealing with the case. The duration of the visit shall be fixed from one to four hours.

...”

E. Compensation Act of 1994

62. The relevant provisions of the Act of 1 December 1994 on the procedure for claiming compensation for damage caused to citizens by the unlawful acts of bodies of inquiry, pre-trial investigation authorities, prosecutor's offices and courts ("the Compensation Act") read as follows:

Section 1

"Under the provisions of this Act a citizen is entitled to compensation for damage caused by:

(1) unlawful conviction, bringing of charges, arrest, placing and holding in custody, searches, seizures, attachment of property, removal from job, and other procedural actions restricting the citizen's rights;

..."

Section 2

"The right to compensation for damage in the amount and in accordance with the procedure established by this Act shall arise in the event of:

(1) acquittal by a court;

(2) the termination of a criminal case for the reason that no crime has been committed, for the absence of *corpus delicti*, or for lack of evidence of the accused's participation in the commission of the crime;

(3) refusal to initiate criminal proceedings or terminate criminal proceedings on the grounds stipulated in subsection (2) above;

(4) termination of proceedings for an administrative offence.

..."

63. Following amendments to section 2 of the Compensation Act of 1 December 2005, the list of situations in which the right to compensation arose was supplemented with the following subsection:

"(1-1) where ... unlawfulness of remand and holding in custody ... has been established by a conviction or other judgment of a court (except for rulings on the remittal of cases for additional investigation) ..."

III. RELEVANT INTERNATIONAL AND DOMESTIC REPORTS

64. The relevant international and domestic materials concerning conditions of detention and transportation can be found in the judgments of *Yakovenko v. Ukraine* (no. 15825/06, §§ 56-61, 25 October 2007), *Koktysh v. Ukraine* (no. 43707/07, §§ 39-42, 10 December 2009), and *Andrey Yakovenko v. Ukraine* (no. 63727/11, §§ 71-73, 13 March 2014).

65. In its Report to the Ukrainian Government (published on 23 November 2011) on the visit to Ukraine carried out from 9 to 21 September 2009 the European Committee for the Prevention of Torture

and Inhuman and Degrading Treatment and Punishment stated as follows (original emphasis):

“44. The delegation received some complaints from detained persons about transport conditions during transfers between Internal Affairs establishments. At Boryspil Division of Internal Affairs, the delegation had the opportunity to inspect a van used for transporting detained persons. The conditions inside it were unacceptable. The cabin was divided into four individual compartments, measuring some 0.5 m² each. **Such a confined space is unsuitable for transporting a person, no matter how short the duration ...**”

THE LAW

I. JOINDER OF THE APPLICATIONS

66. The Court considers that, pursuant to Rule 42 § 1 of the Rules of Court, the applications should be joined, given their common factual and legal background.

II. AS TO THE *LOCUS STANDI* OF MS O.P. VORONA

67. The Court notes at the outset that the second applicant died while the case was pending before the Court. His mother Ms O.P. Vorona informed the Court that she wished to pursue his application. In a number of cases in which an applicant died in the course of the proceedings the Court has taken into account the statements of the applicant's heirs or of close family members expressing the wish to pursue the proceedings (see, for a recent authority, *Dimitar Krastev v. Bulgaria*, no. 26524/04, § 42, 12 February 2013, with further references). It sees no reason to reach a different conclusion in the present case and therefore accepts that Ms O.P. Vorona can pursue the application initially brought by the second applicant.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. Alleged ill-treatment of the first applicant

68. The first applicant initially complained that he had been beaten up and pressured by the police after his arrest on 14 October 2005. In his submissions of March 2012, he further complained that he had not been given food and warm clothes between 14 and 15 October 2005 and that his handcuffs had not been removed until 2 a.m. on 15 October 2005. He also complained that no effective investigation had been carried out into his

allegations of ill-treatment by the police. He relied on Article 3 of the Convention, which reads as follows:

Article 3

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

1. Admissibility

69. At the outset, the Court notes that the first applicant’s allegations of threats and psychological pressure by the police and of deprivation of food, which he raised at the domestic level, were not sufficiently detailed or supported by any evidence. Nor was there any evidence that he had been made to wear handcuffs for an excessive time. Thus, the Court considers that the first applicant’s complaints in that regard were not “arguable” for the purposes of Article 3 of the Convention so as to require the domestic authorities to carry out an effective investigation. The complaints submitted before this Court also appear to be unsubstantiated. Accordingly, the Court finds that this part of the first applicant’s complaints of ill-treatment by the police, under both the substantive and the procedural limbs of Article 3, should be rejected as manifestly ill-founded pursuant to Article 35 § 3 (a) and 4 of the Convention.

70. By contrast, the Court notes that the first applicant’s allegation that he was injured while in the hands of the police after his arrest on 14 October 2005 is supported by medical reports and by his detailed account of the events (see paragraphs 28-30 above). Accordingly, that complaint was *prima facie* arguable and, given the Court’s settled case-law on the matter, the authorities were required to conduct an effective official investigation (see, for instance, *Kaverzin v. Ukraine*, no. 23893/03, § 106, 15 May 2012).

71. In the light of the foregoing, the Court finds that the first applicant’s complaints under Article 3 of the Convention of his beating by the police and the authorities’ failure to conduct an effective investigation in that regard are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. The Court further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) The parties’ submissions

72. The first applicant complained that he had been beaten up by police officer B. and that there had been no effective investigation into that incident.

73. The Government contended that the first applicant had failed to demonstrate that he had been ill-treated by the police and that his

complaints had been disproved by the police officers' reports and statements. The Government further argued that the medical records of 19 and 26 October 2005 suggested that the first applicant could have inflicted the injuries by himself and that at the time they had been inflicted the first applicant had not been "under the jurisdiction of police officers". According to the Government, the first applicant's submissions before the domestic authorities regarding the alleged ill-treatment had lacked clarity and consistency and had been rejected as unfounded by the prosecutors and the courts. For the Government, the situation in the first applicant's case was comparable to that in *Aleksandr Smirnov v. Ukraine* (no. 38683/06, 15 July 2010). Referring to the Court's finding that there had been no violation of Article 3 of the Convention under its substantive limb in the latter case (see *Aleksandr Smirnov*, cited above, §§ 54-55), the Government argued that in the present case the origin of the first applicant's injuries could not be established.

74. The Government further stated that the first applicant's complaints had been duly investigated at the domestic level – in particular, a number of police officers had been questioned and two medical examinations had been performed – and that there were sufficient grounds for the decision refusing to initiate criminal proceedings against the police officers. The Government opined that there had been no violation of Article 3 of the Convention as regards the first applicant's complaints.

75. The first applicant contested the Government's submissions. In particular, he stated that in the medical records of 19 and 26 October 2005 it was not suggested that he could have inflicted his injuries by himself and that there was sufficient evidence that he had been in the hands of the police when he had been injured. He further argued that his complaints of ill-treatment had been clear, consistent and sufficiently precise, whereas the authorities had failed to establish the exact time and the origin of his injuries.

(b) The Court's assessment

76. The Court observes that the first applicant's complaints under consideration concern both the substantive and the procedural aspects of Article 3 of the Convention. As regards the former aspect, the Court notes that it is common ground between the parties that the first applicant sustained his injuries while in police custody. That was also confirmed by medical reports (see paragraphs 29-30 above). The parties however disagreed as to whether police officers had inflicted those injuries.

77. The Court is sensitive to the subsidiary nature of its task 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. Therefore, the Court considers it appropriate to examine first whether the first applicant's complaint was adequately investigated by

the authorities (see, for example, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, §§ 155 and 181, ECHR 2012; *Kaverzin*, cited above, § 107; *Baklanov v. Ukraine*, no. 44425/08, §§ 70, 71 and 91, 24 October 2013; *Dzhulay v. Ukraine*, no. 24439/06, § 69, 3 April 2014; and *Chinez v. Romania*, no. 2040/12, § 57, 17 March 2015). It will then turn to the question of whether the alleged ill-treatment took place, bearing in mind the relevant domestic findings.

(i) *Alleged failure to investigate the first applicant's complaint of ill-treatment by the police*

78. The Court reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. As with an investigation under Article 2, 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, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

79. The investigation into serious allegations of ill-treatment must be thorough. That 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 to close their investigation or as the basis of their decisions (see, for example, *El-Masri*, cited above, § 183). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *Tanrıku v. Turkey* [GC], no. 23763/94, §§ 104 et seq., ECHR 1999-IV, and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of those responsible will risk falling foul of this standard.

80. Turning to the first applicant's case, the Court notes that his complaint of ill-treatment was investigated principally by way of a prosecutors' inquiry, which was launched within days of the alleged events. During the inquiry, the prosecutors questioned all those who could have witnessed the alleged events and secured medical evidence. The first applicant was also questioned and given the opportunity to present his version of the alleged events. The inquiry resulted in a decision that the police had not injured the first applicant, and his version of the events was

therefore rejected. However, the decision did not provide any explanation or information as to how the applicant had been injured. While it is true that the doctor questioned during the inquiry stated that the hypothesis that the first applicant had injured himself could not be excluded, the prosecutors did not look further into such a scenario or into any other possible cause of the applicant's injuries. Moreover, they did not suggest that the cause of the injuries could not be established in the circumstances. The Government's argument in the latter regard is not supported by any evidence or detailed explanation (see paragraph 73 above). The Court also notes that the failure to establish the cause of the injuries was one of the principal grounds for the domestic courts' decisions requiring the prosecutors to carry out a further inquiry in September 2006 and March 2007 (see paragraph 32 above). It remains unclear why the courts eventually upheld the prosecutors' decision of 16 May 2007, notwithstanding the fact that that aspect of the inquiry had not been duly addressed (see paragraph 35 above). Nor was it addressed in the course of the examination of the first applicant's complaint of ill-treatment during the trial.

81. In the light of the foregoing, the Court finds that the investigation of the first applicant's complaint of ill-treatment was not thorough, as it failed to establish the cause of his injuries. There has therefore been a procedural violation of Article 3 of the Convention in this regard.

(ii) Alleged ill-treatment by the police

82. Turning to the substantive aspect of the applicant's complaint, the Court notes that in assessing evidence in a claim of a violation of Article 3 of the Convention, the standard of proof "beyond reasonable doubt" must be applied (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25, and *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII (extracts)). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita*, cited above, § 121). Where the events at issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

83. As the Court has noted above, it is common ground between the parties that the applicant sustained his injuries while in police custody (see paragraph 76 above). In this regard, the Court reiterates that where an individual is injured in police custody, it is incumbent on the State to provide a plausible explanation of the cause of the injury, failing which a clear issue arises under Article 3 of the Convention (see, among many other

authorities, *Tomasi v. France*, 27 August 1992, §§ 108-11, Series A no. 241-A). In the present case, the Court cannot subscribe to the Government's argument that the first applicant was not "under the jurisdiction of police officers" at the relevant time. At the material time, the first applicant was in police custody and there is nothing to suggest that he was not under the control of the police.

84. The situation in the present case, in so far as it concerns the first applicant's complaints of ill-treatment by the police, differs considerably from that in *Aleksandr Smirnov* (cited above), to which the Government referred in their observations. The applicant in that case first complained of ill-treatment after a substantial delay, notably about ten months after the alleged events had taken place, having been at liberty during that period. Moreover, he submitted contradictory information as regards the time and the origin of his injuries (see *Aleksandr Smirnov*, cited above, §§ 8-13 and 15).

85. In the present case, the first applicant raised his complaints of ill-treatment before the domestic authorities immediately after the alleged events and his submissions in that regard were consistent and contained a detailed account of the events (see paragraphs 28 and 31 above). The authorities and the Government, having contested the first applicant's version of the events, failed to refute it by substantiated arguments. In those circumstances, given the onus on the State to provide a plausible explanation for injuries sustained by a person under the control of the police, the Court concludes that the Government have not satisfactorily established that the first applicant's injuries were wholly caused otherwise than by ill-treatment while in police custody (see *Adnaralov v. Ukraine*, no. 10493/12, § 45, 27 November 2014). Accordingly, there has been a violation of Article 3 of the Convention in that the first applicant was subjected to inhuman and degrading treatment.

B. Alleged lack of medical assistance

86. The applicants, excluding the second applicant, complained under Article 3 of the Convention that the medical assistance given to them in detention had been inadequate.

1. Admissibility

87. The Court notes that three of the applicants concerned, excluding the fourth applicant, did not provide any details in respect of this part of the application. Accordingly, their complaints of inadequate medical assistance should be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

88. According to the medical information submitted by the fourth applicant and by the Government, while in detention he was suffering from

a serious urological dysfunction. The Court considers that his complaint under Article 3 of the Convention in that regard is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

89. The fourth applicant complained that during his detention he had been suffering from a serious urological dysfunction causing him severe pain. Although he was provided with some treatment in the SIZO, it was not effective. In particular, the SIZO medical unit did not have the equipment necessary to establish the correct diagnosis in order to prescribe appropriate treatment. For a long period of time the fourth applicant was not allowed to be examined at a specialised medical institution.

90. The fourth applicant further stated that the inadequacy of the medical assistance with which he had been provided while in detention was demonstrated by the fact that his state of health had deteriorated since his urological problem had first been discovered in April 2006; that he had been further diagnosed with a new disease – chronic cystitis, that the lack of adequate facilities for the treatment of his urological dysfunction had been confirmed by the SIZO governor and civilian doctors (see paragraphs 38 and 48 above), and that he had been treated with unjustified delays. In particular, he referred to the delay between the discovery of his urological dysfunction in April 2006 and the prescription of treatment in that regard in September 2006, and to the two-day delay in February 2011 when he had been in need of urgent medical treatment.

91. The Government contended that the fourth applicant had been given adequate medical assistance for his medical problems and that his state of health had not deteriorated during his detention.

(b) The Court's assessment

92. The Court has emphasised on many occasions that the health of detainees has to be adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI). A lack of appropriate medical care may amount to treatment contrary to Article 3 of the Convention (see *İlhan v. Turkey* [GC], no. 22277/93, § 87, ECHR 2000-VII, and *Sarban v. Moldova*, no. 3456/05, § 90, 4 October 2005).

93. The Court has also held in its case-law that the mere fact that a detainee was seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance provided was adequate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 116, 29 November 2007). The authorities must also ensure that a comprehensive record is kept of the detainee's state of health and his

treatment while in detention (see, for example, *Khudobin v. Russia*, no. 59696/00, § 83, 26 October 2006); that the diagnoses and care are prompt and accurate (see *Hummatov*, cited above, § 115, and *Melnik v. Ukraine*, no. 72286/01, §§ 104-06, 28 March 2006); and that where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy that seeks, to the extent possible, to cure the detainee's diseases or to avoid aggravating them, rather than to address them on a symptomatic basis (see *Hummatov*, cited above, §§ 109 and 114; *Sarban*, cited above, § 79; and *Popo v. Russia*, no. 26853/04, § 211, 13 July 2006). The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through (see *Hummatov*, cited above, § 116, and *Holomiov v. Moldova*, no. 30649/05, § 117, 7 November 2006). At the same time the Court notes that in assessing the adequacy of the treatment it must be guided by the due diligence test, since the State's obligation to cure a seriously ill detainee is one as to means, not as to result (see *Goginashvili v. Georgia*, no. 47729/08, § 71, 4 October 2011).

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

95. Turning to the present case, the Court observes that the fourth applicant's complaints of specific health problems were dealt with by the authorities. On the whole, it cannot be suggested that they addressed them inadequately. The applicant was examined by a number of doctors, including urologists from civilian medical institutions, and underwent various tests on numerous occasions. He remained under their supervision throughout the entire period of his detention. The doctors were best placed to determine the fourth applicant's treatment and, although there were certain conflicting views as regards the treatment he should have been provided with, those discrepancies were eventually adequately addressed and resolved (see paragraphs 39, 41 and 50 above). There is no evidence and it was not persuasively argued that the doctors acted in bad faith or that the treatment provided was ineffective. Nor was it demonstrated that the fact that specific medical equipment was unavailable at the SIZO medical unit or that his treatment was delayed (see paragraphs 37, 38, 39 and 48 above) had negatively affected his medical condition (see *Ivakhnenko v. Russia*, no. 12622/04, § 51, 4 April 2013). He did not claim that the prescribed treatment had not been given to him during his detention.

96. The fourth applicant did not provide any evidence that the alleged deterioration of his health – namely his diagnosis with a new disease, chronic cystitis – had resulted from the alleged inadequacy of the medical

assistance in detention, rather than being the natural course of his medical condition (see *Rudenko v. Ukraine*, no. 5797/05, § 94, 25 November 2010).

97. In the light of the foregoing, the Court finds that the fourth applicant was provided with adequate medical assistance in detention. Accordingly, there has been no violation of Article 3 of the Convention in this regard.

C. Allegedly poor conditions of transportation of the first, third, fourth and fifth applicants and their detention in transit cells

98. The first, third, fourth and fifth applicants complained under Article 3 of the Convention of the poor conditions in which they had been transported to and from court hearings and in which they had been detained in transit cells in the SIZO.

1. Admissibility

99. The Court notes that this part of the application 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

100. The Government contended that there had been no violation of Article 3 of the Convention on account of the conditions in which the applicants concerned had been transported to and from court hearings.

101. The Court reiterates that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, cited above, § 162). Furthermore, in considering whether treatment is “degrading” within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it has adversely affected his or her personality in a manner incompatible with Article 3. Even the absence of such a purpose cannot conclusively rule out a finding of a violation of this provision (see *Peers v. Greece*, no. 28524/95, §§ 67-68 and 74, ECHR 2001-III, and *Valašinas v. Lithuania*, no. 44558/98, § 101, ECHR 2001-VIII).

102. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment

or punishment. Measures depriving a person of his liberty may often involve such an element. In accordance with this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI).

103. The Court also reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt”. However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Salman*, cited above).

104. Turning to the present case, the Court finds that the applicants’ complaints concerning the conditions of their detention in transit cells in the SIZO and their transportation in prison vans to and from court hearings are detailed and consistent (see paragraphs 52-54 above). In view of the size of detainees’ compartments in prison vans and of the transit cells (see paragraphs 54 and 55 above), the high number of the journeys undertaken by the applicants and the amount of time they spent either in prison vans or in transit cells in the SIZO, those complaints raise serious concerns under Article 3. Furthermore, they were not refuted by the Government and are supported by the international and domestic reports examined by the Court in the cases of *Yakovenko* and *Koktysh* both cited above and by the findings of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment during its visit to Ukraine in September 2009 (see paragraphs 64-65 above). Similar conditions of a detainee’s transportation and detention while in transit gave rise to the finding of a violation of Article 3 of the Convention in the Court’s judgment in *Andrey Yakovenko* (cited above, §§ 98-103). The Court does not find any reason to take a different approach in the present case and considers that the conditions to which the first, third, fourth and fifth applicants were subjected were in breach of Article 3 of the Convention.

D. Alleged ill-treatment of the third applicant between 14 and 16 October 2005

105. In his submissions of March 2012, the third applicant complained under Article 3 of the Convention that he had been tortured by the police after his arrest on 14 October 2005 and that during his detention between 14 and 16 October 2005 he had been constantly handcuffed and had not been given food and warm clothes. He further complained that the

authorities had failed to investigate that matter. The third applicant also argued that during his detention in the SIZO he had not been provided with adequate medical assistance.

106. The Court notes that those complaints are not supported by any evidence or detailed arguments. Moreover, the applicant did not provide any document demonstrating that he had raised them in a substantiated way at the domestic level. Accordingly, this part of the case should be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

107. The applicants complained of the unlawfulness and length of their detention pending the investigation and trial. In particular, they alleged that the decisions concerning their detention had lacked reasons and justification and that they had been taken in violation of the domestic law.

108. The applicants, excluding the second applicant, further complained that their continued detention after 14 October 2010 had been arbitrary because by that time they had already been in detention for the period to which they had been sentenced by the judgment of the District Court of 13 August 2010. Those applicants also complained that they had not been provided with an enforceable right to compensation for the violation of their right to liberty.

109. The applicants relied on Article 5 of the Convention, the relevant parts of which read as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

...

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

110. The Court notes that the applicants’ above complaints concern their detention during various stages of the criminal proceedings. According to

long standing and established case-law, Article 5 § 1 (c) and Article 5 § 3 of the Convention apply where a person is being detained “for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence”. In view of the essential link between Article 5 § 3 of the Convention and paragraph 1 (c) of that Article, a person convicted at first instance cannot be regarded as being detained “for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence”, as specified in the latter provision, but is in the position provided for by Article 5 § 1 (a), which authorises deprivation of liberty “after conviction by a competent court” (see, among other authorities, *Wemhoff v. Germany*, 27 June 1968, § 9, Series A no. 7; and *Labita*, cited above, §§ 145 and 147). Consequently, the applicants’ detention before conviction and after conviction should be examined separately.

111. In particular, the pre-conviction detention of the first, third, fourth and fifth applicants consisted of two successive detention terms: (i) from 14 October 2005, when they were arrested, to their conviction on 28 October 2008, and (ii) from 24 December 2009, when that conviction was quashed on appeal, to their subsequent conviction on 13 August 2010. Those applicants were accordingly in post-conviction detention between 28 October 2008 and 24 December 2009 (between 28 October 2008 and 14 May 2009 and between 3 November and 24 December 2009 they were detained as convicted by the judgment of 28 October 2008, whereas between 14 May and 3 November 2009 they were detained as convicted by the judgment of 14 May 2009) and between 13 August 2010 and 8 May 2012, the date on which they were released from detention.

112. The second applicant’s pre-conviction detention lasted from 14 October 2005 until his release on 25 May 2007 and from 24 December 2009 until 13 August 2010, whereas between 14 May 2009 and 24 December 2009 and between 20 September 2011 and 8 May 2012 he was in post-conviction detention.

A. Alleged unlawfulness and unjustified length of the applicants’ pre-conviction detention

1. Admissibility

113. The Government contended that the second applicant’s complaint of the unlawfulness of his pre-conviction detention from 14 October 2005 to 25 May 2007 should be rejected as lodged out of time.

114. The second applicant disagreed.

115. The Court notes that the applicants’ pre-conviction detention consisted of separate periods, some of which ended more than six months before their applications were lodged with the Court on 12 December 2010.

Even though the Government raised an objection based on the six-month rule only as regards the second applicant's case, the Court must nonetheless examine whether it is not precluded, by virtue of this rule, from examining the lawfulness and length of all the applicants' detention during those periods (see, *mutatis mutandis*, *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 29, 29 June 2012). In this regard, the Court reiterates that in circumstances where an accused person's pre-trial detention is broken into several non-consecutive periods and where applicants are free to lodge complaints about pre-trial detention while they are at liberty, the Court considers that those non-consecutive periods should not be assessed as a whole, but separately (see *Idalov v. Russia* [GC], no. 5826/03, § 129, 22 May 2012, with further references).

116. Given that the first, third, fourth and fifth applicants remained in detention in the framework of the same set of criminal proceedings from 14 October 2005 until 8 May 2012, the two periods of their pre-conviction detention (see paragraph 111 above), which formed part of that global period, should be regarded as consecutive and thus examined as a whole, 13 August 2010 (the date of the applicants' conviction) being taken as a starting point for the calculation of the six-month time-limit in so far as this part of the case is concerned (see *Solovey and Zozulya v. Ukraine*, nos. 40774/02 and 4048/03, § 56, 27 November 2008; *Burov v. Ukraine* [Committee], no. 14704/03, §§ 42-43, 17 March 2011; *Samoylovich v. Ukraine*, no. 28969/04, § 71, 16 May 2013; and *Chuprikov v. Russia*, no. 17504/07, §§ 60 and 62, 12 June 2014).

117. However, the second applicant's situation was different. The first period of his pre-conviction detention ended with his release on 25 May 2007 and he remained at liberty for about two years before having been placed in detention on 14 May 2009 (see paragraphs 12, 14 and 112 above). The second period of his pre-conviction detention, which took place after that time, lasted until 13 August 2010. Having regard to its case-law applicable in comparable situations, the Court finds that those two periods of the second applicant's pre-conviction detention were non-consecutive and should be assessed separately (see *Idalov*, cited above, §§ 129-130; *Chuprikov*, cited above, §§ 61-63; and *Osakovskiy v. Ukraine*, no. 13406/06, § 78, 17 July 2014). It notes that the first period of his pre-conviction detention ended more than six months before the introduction of his application (12 December 2010), whereas the second period of his pre-conviction detention ended less than six months before that date. Consequently, the second applicant's complaints of the unlawfulness and length of the first period of his pre-conviction detention between 14 October 2005 and 25 May 2007 were lodged out of time and should be rejected in accordance with Article 35 §§ 1 and 4 of the Convention (see, *mutatis mutandis*, *Idalov*, cited above, §§ 129-130; and *Osakovskiy v. Ukraine*, no. 13406/06, § 78, 17 July 2014).

118. The Court further notes that the first, third, fourth and fifth applicants' complaints under Article 5 §§ 1 (c) and 3 of the Convention in so far as they concern the unlawfulness and length of their detention from 14 October 2005 to 28 October 2008 and from 24 December 2009 to 13 August 2010 and the second applicant's similar complaints concerning his detention from 24 December 2009 to 13 August 2010 are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. They are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

119. The applicants complained under Article 5 §§ 1 (c) and 3 of the Convention that there had been no reason for their pre-conviction detention during the above-mentioned periods (see paragraph 118 above).

120. The Government argued that the applicants' detention had been based on judicial decisions taken in compliance with the domestic law. They further argued that, given the circumstances of the case and particularly the gravity of the charges against the applicants, their detention had been justified.

121. According to the Court's case-law, justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Belchev v. Bulgaria*, no. 39270/98, § 82, 8 April 2004, and *Castravet v. Moldova*, no. 23393/05, § 33, 13 March 2007). The Court has held that a further function of a reasoned decision is to demonstrate to the parties that they have been heard. While Article 5 of the Convention does not impose an obligation on a judge examining an appeal against detention to address every argument contained in the appellant's submissions, its guarantees would be deprived of their substance if the judge, relying on domestic law and practice, could treat as irrelevant, or disregard, concrete facts invoked by the detainee which would be capable of casting doubt on the "lawfulness" of the deprivation of liberty (see *Ignatenco v. Moldova*, no. 36988/07, §§ 77-78, 8 February 2011, with further references).

122. Turning to the present case, the Court notes that its examination is limited to two specific periods of the applicants' pre-conviction detention. In particular, in so far as the first, third, fourth and fifth applicants are concerned, the Court will examine the period from 14 October 2005 to 28 October 2008, whereas, in so far as all the applicants are concerned, it will also examine the period from 24 December 2009 to 13 August 2010 (see paragraphs 111-112 above). However, when assessing the lawfulness and reasonableness of the second applicant's detention during that period, the Court will take into account the fact that he had previously spent time in custody (see *Idalov* and *Osakovskiy*, both cited above).

123. During the first period in question, which lasted for about three years, the applicants concerned were detained on the basis of decisions

which relied essentially on the gravity of the charges and used stereotyped formulae without addressing specific facts or considering alternative preventive measures (see paragraphs 10 and 11 above). A part of that period, notably between 14 and 23 January 2007, was not covered by any decision at all (see paragraph 10 above).

124. During the second period in question, which lasted for about eight months, the applicants were detained principally on the basis of the decision of the Court of Appeal of 24 December 2009, which did not set a time-limit for their detention and did not give any reasons for that measure (see paragraph 16 above). Moreover, by that decision, the second applicant was ordered to remain in detention pending retrial, despite the fact that there was no evidence that he had breached his procedural obligations, having been at liberty for over two years while the proceedings had been pending before the courts at three levels of jurisdiction, that is, between 25 May 2007 and 24 December 2009 (see paragraphs 12-16 above). Nor did the District Court's decision of 15 February 2010 rejecting the applicants' requests for release advance any grounds whatsoever for maintaining their detention (see paragraph 17 above).

125. On the whole, the decisions the Court has examined in the context of this part of the case left the applicants in a state of uncertainty as to the grounds for their continued detention and did not afford the applicants the adequate protection from arbitrariness. The detention of four of the applicants, excluding the second applicant, between 14 and 23 January 2007 without judicial authorisation is also incompatible with the principles of legal certainty and protection from arbitrariness.

126. The Court has frequently found violations of Article 5 §§ 1 (c) and 3 of the Convention in similar situations (see, for example, *Kharchenko v. Ukraine*, no. 40107/02, §§ 70-76 and 80-81, 10 February 2011; and *Tretyakov v. Ukraine*, no. 16698/05, §§ 51-52 and 59-60, 29 September 2011).

127. Assessing the applicants' situation in the present case in the light of the principles developed in its case-law, the Court considers that there is no reason to depart from its previous approach. It finds that the authorities failed to provide sufficient justification for the applicants' detention between 24 December 2009 and 13 August 2010 and for the detention of the first, third, fourth and fifth applicants between 14 October 2005 and 28 October 2008. In these circumstances, the Court does not find it necessary to deal with the applicants' other arguments as regards the unlawfulness or arbitrariness of their detention during those periods.

128. The Court therefore concludes that there has been a violation of Article 5 §§ 1 and 3 of the Convention in this regard.

B. Alleged unlawfulness of the continued detention of the first, third, fourth and fifth applicants after 14 October 2010

1. Admissibility

129. The Court considers that the first, third, fourth and fifth applicants' complaints under Article 5 § 1 of the Convention of the unlawfulness of their continued detention after 14 October 2010 are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. They are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

130. The applicants concerned stated that by 14 October 2010 they had already been in detention for five years, which was the period of imprisonment to which they had been sentenced by the District Court on 13 August 2010. Thus, they complained that their detention after 14 October 2010 had been arbitrary. They further alleged that the Court of Appeal, which had re-examined the case on appeal (see paragraph 23 above), had increased their imprisonment terms in order to justify, retrospectively, their detention pending the appellate proceedings.

131. The Government contended that the applicants' detention after 14 October 2010 had been based on the judgment of the District Court of 13 August 2010 and was justified under Article 5 § 1 (a) of the Convention. Relying on *Monnell and Morris v. the United Kingdom* (2 March 1987, § 47, Series A no. 115), the Government argued that the Contracting States enjoyed discretion in designing "legal machinery" whereby detention "after conviction" may lawfully be ordered. Thus, according to them, it was not contrary to Article 5 § 1 (a) of the Convention that Ukraine's "legal machinery" provided for the possibility of extending an order remanding a person in custody until the verdict became final. They also submitted that the applicants' sentence of 13 August 2010 had not been effective and had been subject to possible increase by the Court of Appeal, which eventually had happened. However, had the sentence of 13 August 2010 been confirmed on appeal, the applicants could have claimed compensation for their detention beyond 14 October 2010 pursuant to the Compensation Act of 1994 (see paragraphs 62-63 above).

132. The Court notes that this part of the case concerns the first, third, fourth and fifth applicants' post-conviction detention consisting of two consecutive periods. The first period lasted from 13 August 2010, that is, from the delivery of the judgment of the District Court by which they were found guilty of various crimes and sentenced to five-year terms of imprisonment, until 20 September 2011, the date on which that judgment was quashed on appeal. The second period lasted from 20 September 2011,

the date on which the Court of Appeal delivered a new judgment sentencing the applicants concerned to longer terms of imprisonment, until 8 May 2012, when the Higher Specialised Court for Civil and Criminal Matters quashed the judgment of 20 September 2011 and remitted the case to the Court of Appeal for fresh examination, having released them from detention.

133. As neither the judgment of 13 August 2010, nor the judgment of 20 September 2011 entered into force, during the periods at issue the applicants concerned were not serving their imprisonment sentences, within the meaning of the domestic law (see paragraphs 58 and 61 above). They were detained pursuant to the orders of the District Court and the Court of Appeal respectively (see paragraphs 18, 22 and 23 above). Under the applicable legal framework, the sentencing court had power to order the continued detention of the convict pending the verdict becoming effective and pending the appellate proceedings, if the verdict was eventually challenged on appeal (see paragraph 58 above).

134. The Court reiterates that the important guarantees of Article 5 of the Convention are not dependent on national legislation (see *Solmaz v. Turkey*, no. 27561/02, § 26, 16 January 2007). Even if the domestic law of a member State provides that a sentence only becomes final on completion of all appeals, pre-trial detention comes to an end for the purposes of the Convention with the finding of guilt and the sentence imposed at first instance. For example, in the case of *Grubić v. Croatia* the applicant, who had been convicted and sentenced to thirty years' imprisonment by a first-instance court, complained of the unlawfulness of several months of his detention after the pronouncement of the judgment at first instance, which was still considered as "pre-trial detention" under the domestic legislation. The Court examined that complaint from the standpoint of Article 5 § 1 (a) of the Convention (see *Grubić v. Croatia*, no. 5384/11, § 35, 30 October 2012). Likewise, in *Ruslan Yakovenko v. Ukraine* the Court held that the applicant's post-conviction detention fell within the exception set out in that provision, even though it was considered as "pre-trial detention" under the domestic legislation (see *Ruslan Yakovenko v. Ukraine*, no. 5425/11, §§ 52-56, 4 June 2015).

135. The Court discerns no reason to apply a different approach in the present case and will therefore examine whether the detention of the applicants concerned from 14 October 2010 to 8 May 2012 was justified under Article 5 § 1 (a) of the Convention and was not arbitrary. It also notes that the Government relied on that provision in their argument that the detention of the applicants concerned had been justified (see paragraph 131 above).

(a) General case-law principles

136. The Court reiterates that Article 5 § 1 (a) permits “the lawful detention of a person after conviction by a competent court”. The word “conviction” (“*condamnation*” in the French text), for the purposes of Article 5 § 1 (a), has to be understood as meaning both a finding of guilt after it has been established in accordance with the law that there has been an offence (see *Guzzardi v. Italy*, 6 November 1980, § 100, Series A no. 39), and the imposition of a penalty or other measure involving deprivation of liberty (see *Van Droogenbroeck v. Belgium*, 24 June 1982, § 35, Series A no. 50; and, for a more recent case-law, *Del Río Prada v. Spain* [GC], no. 42750/09, § 123, ECHR 2013).

137. Furthermore, the word “after” in sub-paragraph (a) does not simply mean that the detention must follow the “conviction” in terms of time: in addition, the “detention” must result from, “follow and depend upon” or occur “by virtue of” the “conviction”. There must be a sufficient causal connection between the two (see *Weeks v. the United Kingdom*, 2 March 1987, § 42, Series A no. 114, § 42; *Stafford v. the United Kingdom* [GC], no. 46295/99, § 64, ECHR 2002-IV; *Kafkaris v. Cyprus* [GC], no. 21906/04, § 117, ECHR 2008; and *M. v. Germany*, no. 19359/04, § 88, ECHR 2009). The purpose of detention must be the execution of a prison sentence imposed by a court (see *Barborski v. Bulgaria*, no. 12811/07, § 39, 26 March 2013).

138. In addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f) of Article 5 § 1, any deprivation of liberty must be “lawful”. Where the “lawfulness” of detention is in issue, including the question whether “a procedure prescribed by law” has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof (see, among many other authorities, *Erkalo v. the Netherlands*, 2 September 1998, § 52, *Reports of Judgments and Decisions* 1998-VI; and *Baranowski v. Poland*, no. 28358/95, § 50, ECHR 2000-III).

139. In assessing whether detention is lawful, the Court must also ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. The “quality of the law” implies that where a national law authorises deprivation of liberty it must be sufficiently accessible, precise and foreseeable in its application to avoid all risk of arbitrariness. The standard of “lawfulness” set by the Convention requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Where deprivation of liberty is concerned, it is essential that the domestic law define clearly the conditions for detention (see *Del Río Prada*, cited above, § 125, with further references).

140. Furthermore, no detention which is arbitrary can be compatible with Article 5 § 1, the notion of “arbitrariness” in this context extending beyond the lack of conformity with national law. As a consequence, a deprivation of liberty which is lawful under domestic law can still be arbitrary and thus contrary to the Convention (see *Mooren v. Germany* [GC], no. 11364/03, § 77, 9 July 2009).

141. The Court has not previously formulated a global definition of what types of conduct on the part of the authorities might constitute “arbitrariness” for the purposes of Article 5 § 1. However, key principles that have been developed on a case-by-case basis demonstrate that the notion of arbitrariness in the context of Article 5 varies to a certain extent depending on the type of detention involved (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 68, ECHR 2008, and *Plesó v. Hungary*, no. 41242/08, § 57, 2 October 2012). One general principle established in the Court’s case-law is that detention will be “arbitrary” where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities or where the domestic authorities neglected to attempt to apply the relevant legislation correctly (see *Mooren*, cited above, § 78).

142. Furthermore, the requirement that detention not be arbitrary implies the need for a relationship of proportionality between the ground of detention relied upon and the detention in question (see *James, Wells and Lee v. the United Kingdom*, nos. 25119/09, 57715/09 and 57877/09, § 195, 18 September 2012). The scope of the proportionality test to be applied in a given case varies depending on the type of detention involved. In the context of detention pursuant to Article 5 § 1 (a), the Court has generally been satisfied that the decision to impose a sentence of detention and the length of that sentence are matters for the national authorities rather than for this Court (see *T. v. the United Kingdom* [GC], no. 24724/94, § 103, ECHR 2000-I; and *Saadi*, cited above, § 71). At the same time, in assessing whether there were indications of arbitrariness in the applicants’ preventive detention not constituting a part of the sentence, but still falling under Article 5 § 1 (a), the Court found it necessary to identify the purpose of their detention under Article 5 § 1 (a) and pursued the proportionality test (see *James, Wells and Lee*, cited above, § 205).

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

143. Turning to the present case, the Court notes that one of the principal arguments the applicants concerned put forward for their complaints falling to be examined under Article 5 § 1 (a) of the Convention is that their detention after conviction on 13 August 2010 should not have exceeded their outstanding imprisonment terms. Accordingly, the Court will start its assessment with the first period of their post-conviction detention

lasting from 13 August 2010 to 20 September 2011 (see paragraph 132 above).

144. The applicants' argument can be understood as stemming from the domestic rule, notably as regulated by Article 338 of the Code of Criminal Procedure of 1960 and Article 72 of the Criminal Code of 2001 read together with Section 1 of the Preliminary Detention Act of 1993, providing that the time the convict spent in custody, including during the period between the delivery of the verdict and its becoming effective, counted towards his or her sentence (see paragraphs 58, 59 and 61 above). Thus, the five-year imprisonment terms, to which the applicants concerned were sentenced on 13 August 2010, had to be calculated as from 14 October 2005, the date of their arrest (see paragraphs 7 and 18 above). As they had been detained during the entire period between 14 October 2005 and 13 August 2010, they would have had to serve about two months of imprisonment, had the judgment of 13 August 2010 become effective. However, it was challenged on appeal and the applicants concerned remained in detention for over thirteen months pending the appellate proceedings, which was eleven months longer than the outstanding imprisonment terms under the judgment of 13 August 2010.

145. For the Court, the fact that a period of detention between the delivery of a verdict and its becoming effective is excluded from the calculation of the term of imprisonment or that such detention actually results in an increase of the overall imprisonment term is not of itself incompatible with Article 5 § 1 (a) of the Convention. There might be special considerations warranting, irrespectively of the duration of the imprisonment sentence, the convict's deprivation of liberty pending an appeal against the verdict (see *Ruslan Yakovenko*, cited above, § 65). Moreover, as long as the detention follows and has a sufficient causal connection with a lawful conviction, the decision to impose a sentence of detention and the length of that sentence are matters for the national authorities rather than for the Court under that provision (see, for instance, *Monnell and Morris*, cited above, § 47; *Saadi*, cited above, § 71; and *Ruslan Yakovenko*, cited above, § 61). However, Article 5 § 1 (a) cannot be construed in a way opening the door to arbitrary or disproportionate detention (see *James, Wells and Lee*, cited above, § 218). The continuing detention after conviction must not only genuinely conform with the purpose of the restriction permitted by that provision, which is the execution of a prison sentence imposed by a court, but also be reasonable in terms of this purpose (see *James, Wells and Lee*, cited above, §§ 193 and 195).

146. In the present case, in so far as it concerns the detention of the applicants concerned from 13 August 2010 to 20 September 2011, it was not demonstrated that their continued detention beyond the outstanding two-month imprisonment terms had served the purpose of execution of their sentences. Having regard to the decisions refusing the applicants' requests

for release during the appellate proceedings (see paragraphs 21-22 above), no assessment was given to this aspect of the case. The Court of Appeal relied on the severity of the charges and the possibility of the applicants' sentence being reversed on appeal. However, these elements alone, in the absence of a serious assessment of the specific situation of the applicants concerned, do not demonstrate that their continued detention for the period exceeding their outstanding imprisonment terms by eleven months was justified.

147. In *Monnell and Morris*, cited above, the Court found that there was a sufficient and legitimate connection between the applicants' conviction and the additional period of imprisonment they underwent as a result of the loss-of-time order made by the Court of Appeal in that case. The Court was satisfied that the power of the Court of Appeal to order loss of time, as it had been actually exercised, was a component of the machinery existing under English law to ensure that criminal appeals were considered within a reasonable time and, in particular, to reduce the time spent in custody by those with meritorious grounds waiting for their appeal to be heard. Exercise of that power so as to order a loss of time was considered to form part of the overall sentencing procedure that followed conviction. It was in particular noted that "[a]s a matter of English law, a sentence of imprisonment passed by a Crown Court [was] to be served subject to any order which the Court of Appeal [might], in the event of an unsuccessful application for leave to appeal, make as to loss of time" (see *Monnell and Morris*, cited above, § 46).

148. Contrary to the Government's submissions (see paragraph 131 above), the present case differs from *Monnell and Morris* (cited above) in many aspects, the principal being that in the present case the resulting increase of the imprisonment terms of the applicants concerned did not depend on the outcome of the appellate proceedings or on their behaviour during those proceedings. It was not argued that the applicants concerned had been responsible for the duration of the impugned appellate proceedings or had caused serious delays therein. The first and fifth applicants did not even challenge the judgment of 13 August 2010 on appeal.

149. In contrast to the situation in *Monnell and Morris* (cited above), in the present case the applicants concerned were arguably left in a state of uncertainty as to the duration of their detention pending the appellate proceedings. The domestic law did not prescribe the maximum permissible duration of such detention (compare and contrast with *Grubić*, cited above, § 39). Nor did it require the sentencing court to review, periodically, the justification for continued detention pending the appellate proceedings. On the whole, under the applicable legal framework during the appellate proceedings the convict could be detained for an unlimited and unpredictable time, irrespective of the outstanding term of imprisonment and of his or her specific situation, like, for instance, the danger the convict

might present to the public. The length of such detention could be considerable; in the present case it lasted for over eleven months.

150. Given all the above considerations, the Court finds that the detention of the applicants concerned during the period beyond their outstanding two-month imprisonment terms under the judgment of 13 August 2010, that is from 14 October 2010 to 20 September 2011, was unjustified.

151. The situation at issue changed on 20 September 2011, when the Court of Appeal quashed the judgment of 13 August 2010 and delivered a new judgment sentencing the applicants concerned to terms of imprisonment clearly exceeding the entire period of their detention during the proceedings in the present case (see paragraph 23 above). The Court discerns no evidence that the revised sentence had not been genuine or that the Court of Appeal had intended thereby to justify, retrospectively, the detention of the applicants concerned pending the appellate proceedings, as was argued by them before the Court. Thus, the detention of the applicants concerned from 20 September 2011 until their release on 8 May 2012 must be regarded as having sufficient causal link with the applicants' new sentence.

152. In the circumstances, there is no call to examine a hypothetical scenario of the applicants concerned having been entitled to claim compensation, had the judgment of 13 August 2010 been confirmed on appeal, as suggested by the Government (see paragraph 131 above).

153. Accordingly, the Court holds that there has been a violation of Article 5 § 1 of the Convention in respect of the first, third, fourth and fifth applicants' detention from 14 October 2010 to 20 September 2011.

154. The Court further finds that there has been no violation of that provision regarding their detention between 20 September 2011 and 8 May 2012.

C. Alleged violation of Article 5 § 5 of the Convention

1. Admissibility

155. The Court considers that the first, third, fourth and fifth applicants' complaints under Article 5 § 5 of the Convention that they had not been provided with an enforceable right to compensation for the violation of their right to liberty are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. The complaints are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

156. The Government submitted that there had been no violation of Article 5 § 5 of the Convention. They maintained that the applicants

concerned could have claimed damages under Article 1176 of the Civil Code and under the Compensation Act of 1994 for the alleged violation of their rights under Article 5 §§ 1 and 3 of the Convention.

157. The Court reiterates that Article 5 § 5 guarantees an enforceable right to compensation to those who have been the victims of arrest or detention in contravention of the other provisions of Article 5 (see *Steel and Others v. the United Kingdom*, 23 September 1998, § 81, *Reports* 1998-VII).

158. In the present case the Court has found a violation of Article 5 §§ 1 and 3, in conjunction with which the present complaints are to be examined. It follows that Article 5 § 5 of the Convention is applicable. The Court must therefore establish whether Ukrainian law afforded the applicants concerned an enforceable right to compensation for the breaches of Article 5 §§ 1 and 3 of the Convention in their case.

159. The Court has already addressed this issue in a number of cases against Ukraine (see, for instance, *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, §§ 229-234, 21 April 2011; *Klishyn v. Ukraine*, no. 30671/04, 23 February 2012; and *Taran v. Ukraine*, no. 31898/06, §§ 88-90, 17 October 2013) and found that the applicants' right to compensation in comparable circumstances had been breached.

160. It has therefore already been established that, as in the present case, neither the Compensation Act, nor the Civil Code provided for an enforceable right to compensation at the material time. Moreover, it does not appear that such a right was or is secured under any other provision of Ukrainian legislation, given the absence of any procedure envisaged by law for bringing proceedings to seek compensation for a deprivation of liberty which this Court has found to be in breach of one of the other paragraphs of Article 5 (see *Kvashko v. Ukraine*, no. 40939/05, § 77, 26 September 2013).

161. The Court concludes that the applicants concerned did not have an enforceable right to compensation for the violation of their rights under Article 5 §§ 1 and 3 of the Convention, as required by Article 5 § 5. There has, therefore, been a violation of that provision.

V. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

162. The applicants complained that the length of the proceedings in their criminal case had been unreasonable. They relied on Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

163. The Government contested the applicants' claim, stating that their case was complex, from both a legal and a factual point of view. In particular, they had been charged with a number of serious crimes. About

twenty victims and more than 100 witnesses had been questioned during the investigation and trial, and more than twenty searches and expert examinations had been carried out. According to the Government, the applicants had contributed to the length of the proceedings in that they had delayed studying the case file at the investigation stage, had submitted numerous requests for release, procedural requests and complaints, had challenged the courts' decisions in the case, and had not pleaded guilty. The Government further submitted that substantial delays had been caused by the non-attendance of certain witnesses, whereas the courts had proceeded with the case with due diligence.

164. The applicants maintained that the authorities had been responsible for the protracted length of the proceedings in their case and that the overall duration of the proceedings had not been justified.

A. Admissibility

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

B. Merits

166. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, and the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

167. The Court observes that the period to be taken into consideration began in October 2005 and ended in June 2015. It has thus lasted for over nine years.

168. The Court appreciates that the criminal proceedings at issue, which concerned seven counts of serious crimes and involved a number of victims and witnesses, were of a certain complexity. The Court is also mindful that, to a certain extent, the applicants might have contributed to their length by lodging various complaints, appeals and procedural requests.

169. However, the case was repeatedly remitted for retrial because the assessment of the relevant evidence and the parties' submissions had been poor and incomplete, and because of procedural violations, for which the courts were responsible (see paragraphs 15, 16 and 24 above). That appears to be the main reason for the delay in the proceedings.

170. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to those in the present case (see

Pélissier and Sassi, cited above, and *Gorbatenko v. Ukraine*, no. 25209/06, §§ 152-56, 28 November 2013).

171. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Besides, the Government's argument that the applicants had contributed to the length of the proceedings as, *inter alia*, they had not pleaded guilty to the offences charged by its nature runs contrary to such important elements of the fair trial concept as freedom from self-incrimination and the presumption of innocence and cannot, in any circumstances, be accepted (see, *mutatis mutandis*, *Lutsenko v. Ukraine*, no. 6492/11, § 72, 3 July 2012). On the whole, having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

172. There has accordingly been a breach of Article 6 § 1 of the Convention.

VI. ALLEGED RESTRICTIONS ON FAMILY VISITS

173. Lastly, the applicants, excluding the second applicant, complained that during their detention the number of visits they could receive from their close relatives at the SIZO and their duration had been limited. As a result, and given the duration of their detention, their ability to communicate with close relatives had been hindered, which had had adverse effects on their family life. The applicants concerned also claimed that, in order for their close relatives to be allowed to meet with them, they had had to consent to be questioned as witnesses in the applicants' case. Although the applicants concerned initially relied on Article 3 of the Convention, eventually they and the Government made submissions on this part of the case under Article 8 of the Convention, which reads as follows:

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

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

174. The Court reiterates that detention or any other measure depriving a person of his liberty entails inherent limitations on his private and family life. However, it is an essential part of a detainee's right to respect for family life that the authorities enable him or, if need be, assist him, in maintaining contact with his close family (see *Khoroshenko v. Russia* [GC], no. 41418/04, § 106, ECHR 2015, and *Trosin v. Ukraine*, no. 39758/05, § 39, 23 February 2012). At the same time, the Contracting States enjoy a

wide margin of appreciation in determining the steps to be taken to ensure compliance with that Convention obligation with due regard to the needs and resources of the community and of individuals (see, for instance, *Dickson v. the United Kingdom* [GC], no. 44362/04, § 81, ECHR 2007-V). The Court has found that Article 8 does not impose a duty to arrange cohabitation visits for the detainees and their spouses (see *Aliev v. Ukraine*, no. 41220/98, § 188, 29 April 2003; *Dickson*, cited above; and *Epnerns-Gefners v. Latvia*, no. 37862/02, § 62, 29 May 2012). It has also found no interference by the State with detainees' Article 8 rights in situations where they failed to provide sufficient evidence that they had solicited family visits which they claimed they had not received (see *Čistiakov v. Latvia*, no. 67275/01, § 86, 8 February 2007; *Savenkovas v. Lithuania*, no. 871/02, § 101, 18 November 2008; and *Epnerns-Gefners*, cited above, § 65).

175. Turning to the facts of the present case, the Court notes that at the material time the domestic law provided for certain restrictions on the number and duration of family visits which the applicants concerned could request (see paragraphs 57, 58 and 61 above). It transpires from the material submitted by the parties that the applicants concerned received a number of visits by their close relatives during their detention. They did not demonstrate that the restrictions on family visits, as imposed by the law, had adversely affected their ability to meet with their close relatives as often as they wished (see, *mutatis mutandis*, *Zinchenko v. Ukraine*, no. 63763/11, §§ 100-01, 13 March 2014, and, by contrast, *Shalimov v. Ukraine*, no. 20808/02, § 88, 4 March 2010). The Court notes that the applicants concerned did not refer to any specific occasion on which their request for a family visit had been refused or remained without a reply. Neither the applicants concerned nor their close relatives complained that they had been denied in their visiting rights. Their allegation that, in order for their close relatives to be allowed to meet with them, they had had to consent to be questioned as witnesses in the applicants' case has not been supported by any evidence. In those circumstances, the Court does not consider it necessary to examine *in abstracto* whether the domestic regulations limiting the number of family visits, as applicable in the applicants' case, satisfied the requirements of Article 8 of the Convention. It finds that this part of the case should be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

176. 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

177. The first applicant claimed 13,000 euros (EUR) in respect of non-pecuniary damage related to his ill-treatment by the police and the lack of an effective investigation into that matter. Additionally, he claimed EUR 3,000 in damages for the poor conditions of his transport, EUR 25,000 for the unlawfulness and length of his detention, and EUR 25,000 for the alleged violation of Article 6 § 1 and Article 8 of the Convention.

178. The second applicant claimed EUR 50,000 in respect of non-pecuniary damage on account of the violation of Articles 5 and 6 of the Convention in his case.

179. The third applicant claimed EUR 13,000 in respect of non-pecuniary damage on account of his alleged ill-treatment by the police and the lack of an effective investigation into that matter. Additionally, he claimed EUR 20,000 in damages for the poor conditions in which he had been transported, EUR 25,000 for the unlawfulness and length of his detention, and EUR 25,000 for the alleged violation of Article 6 § 1 and Article 8 of the Convention.

180. The fourth applicant claimed about EUR 66,000 in respect of pecuniary and non-pecuniary damage, the nature and details of which he did not specify. He sought further compensation amounting to about EUR 3,500 for the medical expenses he had incurred after his release from detention on account of the alleged failure of the authorities to provide him with adequate medical assistance in detention.

181. The fifth applicant claimed EUR 3,000 in damages for the poor conditions in which he had been transported, EUR 25,000 for the unlawfulness and length of his detention, and EUR 25,000 for the alleged violation of Article 6 § 1 and Article 8 of the Convention.

182. The Government contested those claims.

183. The Court reiterates that it can make an award of just satisfaction only if it found that there was a violation of the Convention. Accordingly, it rejects the claims of the first, third, fourth and fifth applicants in so far as they concern their complaints under Article 8 of the Convention, the claims of the third applicant regarding his alleged ill-treatment by the police, and the claims of the third and fourth applicants in respect of the allegedly inadequate medical assistance in detention.

184. The Court does not discern any causal link between the violations found in the applicants' case and the pecuniary damage some of them have alleged; it therefore rejects the claims for pecuniary damage.

185. On the other hand, the Court notes that applicants arguably suffered distress and anxiety on account of the violations it has found in their case.

Judging on an equitable basis, the Court awards the first applicant EUR 20,000, the second applicant EUR 10,000 to be paid to his estate, and the third, fourth and fifth applicants EUR 15,000 each in respect of non-pecuniary damage.

B. Costs and expenses

186. The applicants also claimed various amounts for the costs and expenses they allegedly incurred before the domestic courts and before this Court. The applicants, excluding the third applicant, provided copies of contracts with their lawyers. Some of the applicants also provided copies of several payslips.

187. The Government contested those claims.

188. 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, the applicants did not provide sufficiently detailed and specific information to enable the Court to examine whether their claims satisfied the above criteria (compare and contrast with, for instance, *Rudnichenko v. Ukraine*, no. 2775/07, §§ 132 and 135, 11 July 2013, and *Vintman v. Ukraine*, no. 28403/05, §§ 163 and 166, 23 October 2014). Accordingly, the Court rejects the applicants' claims for costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Holds* that Ms O.P. Vorona has standing to continue the present proceedings in the second applicant's stead;
3. *Declares* the following complaints admissible:
 - (i) the first applicant's complaints under Article 3 of the Convention about his ill-treatment by the police and the lack of effective investigation into that matter;
 - (ii) the fourth applicant's complaint under Article 3 of the Convention of inadequate medical assistance in detention;

- (iii) the first, third, fourth and fifth applicants' complaints under Article 3 of the Convention about the conditions in which they were transported to and from court hearings during their detention;
- (iv) the first, third, fourth and fifth applicants' complaints under Article 5 §§ 1 (c) and 3 of the Convention of the unlawfulness and length of their detention between 14 October 2005 and 28 October 2008;
- (v) the applicants' complaints under Article 5 §§ 1 (c) and 3 of the Convention of the unlawfulness and length of their detention between 24 December 2009 and 13 August 2010;
- (vi) the first, third, fourth and fifth applicants' complaints under Article 5 § 1 of the Convention of the unlawfulness of their continued detention after 14 October 2010;
- (vii) the first, third, fourth and fifth applicants' complaints under Article 5 § 5 of the Convention about the absence of an effective and enforceable right to compensation for their detention, which they alleged had contravened Article 5 §§ 1 and 3 of the Convention;
- (viii) the applicants' complaints under Article 6 § 1 of the Convention about the length of the criminal proceedings against them;

and the remainder of the applications inadmissible;

4. *Holds* that there has been a violation of Article 3 of the Convention in that the first applicant was subjected to ill-treatment by the police and that there was no effective investigation into that matter;
5. *Holds* that there has been no violation of Article 3 of the Convention on account of the fourth applicant's complaint of inadequate medical assistance in detention;
6. *Holds* that there has been a violation of Article 3 of the Convention regarding the first, third, fourth and fifth applicants' complaints about the conditions in which they were transported to and from court hearings during their detention;
7. *Holds* that there has been a violation of Article 5 §§ 1 and 3 of the Convention on account of the unlawfulness and length of the first, third, fourth and fifth applicants' detention between 14 October 2005 and 28 October 2008;
8. *Holds* that there has been a violation of Article 5 §§ 1 and 3 of the Convention on account of the unlawfulness and length of the applicants' detention between 24 December 2009 and 13 August 2010;

9. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the first, third, fourth and fifth applicants' detention between 14 October 2010 and 20 September 2011;
10. *Holds* that there has been no violation of Article 5 § 1 of the Convention on account of the first, third, fourth and fifth applicants' detention between 20 September 2011 and 8 May 2012;
11. *Holds* that there has been a violation of Article 5 § 5 of the Convention as the first, third, fourth and fifth applicants did not have an effective and enforceable right to compensation for their detention in contravention of Article 5 §§ 1 and 3 of the Convention;
12. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the criminal proceedings against the applicants;
13. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts 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:
 - (i) EUR 20,000 (twenty thousand euros) to the first applicant, plus any tax that may be chargeable to him;
 - (ii) EUR 10,000 (ten thousand euros) to the estate of the second applicant, plus any tax that may be chargeable to his estate;
 - (iii) EUR 15,000 (fifteen thousand euros) to each of the third, fourth and fifth applicants, plus any tax that may be chargeable to them;
 - (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;
14. *Dismisses* the remainder of the applicants' claims for just satisfaction.

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

Claudia Westerdiek
Registrar

Angelika Nußberger
President