



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

FIFTH SECTION

CASE OF SUSLOV AND BATIKYAN v. UKRAINE

(Applications nos. 56540/14 and 57252/14)

JUDGMENT

*This version was rectified on 16 December 2022
under Rule 81 of the Rules of Court.*

Art 3 (substantive and procedural) • Inhuman and degrading treatment • Allegations of physical ill-treatment and psychological pressure in pre-trial detention not proved beyond reasonable doubt • Ineffective investigation stemming from systemic problem to ensure prompt and thorough investigations into ill-treatment complaints against the police
Art 3 (substantive) • Degrading treatment • Inadequate conditions of detention in pre-trial detention centre
Art 6 § 1 (criminal) • Public hearing • Exclusion of public • Holding trial *in camera* not justified by a reasoned judicial ruling • Appellate review not sufficient to remedy the situation
Art 6 § 1 (criminal) and Art 6 § 3 (b) and (c) • Inadequate facilities for preparing defence undermining fair trial and equality of arms requirement
Art 6 § 1 (criminal) and Art 6 § 3 (c) and (d) • Fair hearing • Removal from courtroom until end of trial due to persistent reprehensible conduct, despite warnings, constituting a waiver of the right to be present at trial • Waiver attended by minimum safeguards given defence through legal assistance
Art 6 § 1 (criminal) and Art 6 § 3 (d) • Failure to justify protection of witnesses' identities and not hearing anonymous witnesses during trial • Insufficient counterbalancing factors for non-attendance of witness whose evidence carried significant weight in conviction
Art 6 § 1 (criminal) and Art 6 § 3 (c) • Cumulative restrictions on right to legal assistance impacting overall fairness of proceedings
Art 6 § 1 (criminal) • Fair hearing • Admission of incriminating witness statements with significant weight in conviction without investigating allegations of duress • Treatment of continued changes in statements risked undermining overall fairness of the trial

STRASBOURG

6 October 2022

FINAL

06/01/2023

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

In the case of Suslov and Batikyan v. Ukraine,

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

Síofra O’Leary, *President*,

Mārtiņš Mits,

Lətif Hüseyinov,

Lado Chanturia,

Arnfinn Bårdsen,

Kateřina Šimáčková,

Mykola Gnatovskyy, *Judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the applications (nos. 56540/14 and 57252/14) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Armenian and Russian national, Mr Merabi Otarovich Suslov (“the first applicant”) and an Armenian national, Mr David Batikovich Batikyan (“the second applicant”), on 7 and 10 August 2014 respectively;

the decision to give notice to the Ukrainian Government (“the Government”) of several complaints under Article 6 §§ 1 and 3 of the Convention concerning the applicants’ trial, the second applicant’s complaints under Article 3 of the Convention concerning his alleged ill-treatment in police custody, the effectiveness of the relevant investigation and the allegedly inadequate conditions of his detention in the Kyiv pre-trial detention centre, as well as the decision to declare inadmissible the remainder of the applications;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the Armenian Government, who made use of their right to intervene in the proceedings as a third party under Article 36 § 1 of the Convention in respect of the first applicant, as well as the absence of any such wish from them in respect of the second applicant;

the decision of the Russian Government not to intervene in the case concerning the first applicant;

Having deliberated in private on 6 September 2022,

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

INTRODUCTION

1. The case concerns criminal proceedings against the applicants, as a result of which they were sentenced to life imprisonment for aggravated murder: the first applicant for ordering a contract killing and acquiring the means to carry it out and the second applicant for its execution. The applicants alleged that their trial had fallen short of many of the requirements of

Article 6 §§ 1 and 3 of the Convention. In particular, they complained that the exclusion of the public from the hearings had not been justified, that they had endured exhausting conditions on hearing days and that they had been prevented from communicating in private with their lawyers owing to inadequate arrangements in the courtroom. Furthermore, they complained that they had been unable to examine many important witnesses and that the witness evidence by R.N., the second applicant's common-law wife, had been obtained by duress. The first applicant additionally complained about his exclusion from the courtroom for a substantial part of the trial. The second applicant also complained under Article 3 of the Convention that he had been ill-treated in police custody and that there had been no effective domestic investigation into the matter. Lastly, he complained of inadequate conditions of detention in the Kyiv pre-trial detention centre ("the Kyiv SIZO").

THE FACTS

2. The applicants were born in 1963 and 1965 respectively. The first applicant was represented by Mr A. Ghazaryan, a lawyer practising in Yerevan, and Ms O. Sapozhnikova, a lawyer practising in Kyiv¹. The second applicant was represented by Mr M. Tarakhkalo, a lawyer practising in Kyiv.

3. The Government were represented by their then Agent, Mr I. Lishchyna, and subsequently by their Acting Agent, Ms O. Davydchuk.

4. The facts of the case may be summarised as follows².

I. BACKGROUND INFORMATION REGARDING THE SECOND APPLICANT'S IDENTITY

5. In certain case material the second applicant is referred to as "Levin David Borisovich", a Russian national. Until December 2009 he identified himself by that name, in accordance with his ID documents. However, a check of his fingerprints through the Russian automated centralised fingerprint identification system, which was undertaken on 14 December 2009, showed a complete match with those of Batikyan David Batikovich, an Armenian national who had been convicted of double murder and sentenced to ten years' imprisonment in Armenia in 1990 and who had escaped from prison in 1992. The investigation established that subsequently the second applicant had unlawfully obtained a Russian passport and had been living in Russia and the United Kingdom. In 2002 he had been convicted of financial fraud and sentenced to nine years' imprisonment in the United Kingdom.

¹ Ms O. Sapozhnikova ceased representing the first applicant after the completion of all the exchanges between the parties. At that point the first applicant appointed Ms L. Hayrapetyan, a lawyer practicing in Erevan, as his second representative.

² The summary of the facts contains numerous references to abbreviated names. To facilitate their reading, the index of abbreviations is provided in the Annex.

II. EVENTS OF 2 OCTOBER 2009

6. On 2 October 2009, at about 2.30 p.m., a shooting broke out at the entrance to the F. shopping centre in Kyiv, during which its co-owner Sh.A. and his two bodyguards were shot dead and one of its employees was wounded.

7. On the same date a criminal investigation was opened into the shooting. According to eyewitnesses, the victims had been shot by two men who had approached the entrance to the shopping centre in a blue car. One of them, wounded by Sh.A.'s bodyguards, had fled in the same car. The other had pursued and kept shooting at Sh.A. as he ran inside the shopping centre. Afterwards, he had also fled in a passing car, after threatening the driver, S.M., with a pistol. S.M. reported the incident to the police as soon as he had left the gunman at the location indicated by him (close to the second applicant's address). One of the cartridges found in the shopping centre was eventually found to bear the second applicant's fingerprints.

8. Later that day a blue Chevrolet with gunshot marks was involved in an accident. The driver, A.O., an Armenian national, had several gunshot wounds, from which he died without regaining consciousness. The police established that A.O. had been sharing a rented flat with the second applicant and the latter's common-law wife, R.N. A pistol and a number of bullets and cartridge cases were seized from the car. Subsequently, ballistic experts traced some of the bullets fired at the entrance to the shopping centre to the gun seized from the car. The gunshot marks in the car and the bullets found in A.O.'s body, in turn, were traced to the gun seized by the police from one of Sh.A.'s killed bodyguards. Furthermore, one of the cartridge cases in the Chevrolet, as eventually established, bore the second applicant's fingerprints.

9. Late on the evening of 2 October 2009, the second applicant and R.N. visited a relative of the latter in Zhytomyr Region, about 100 km from Kyiv.

III. ALLEGED ILL-TREATMENT OF THE SECOND APPLICANT AND HIS COMMON-LAW WIFE AND THE RELEVANT INVESTIGATION

10. On the night of 3 to 4 October 2009 the police arrested the second applicant and R.N. and took them to the Kyievo-Svyatoshynskyy temporary detention facility ("the Kyievo-Svyatoshynskyy ITT") in Boyarka. They both alleged having been subjected to ill-treatment and threats with a view to extracting a confession from the second applicant to the triple murder and coercing R.N. into incriminating him.

A. As regards the second applicant

11. The second applicant was detained in the Kyievo-Svyatoshynskyy ITT for about a month. According to him, throughout his detention, he was subjected to continuous ill-treatment consisting of blows to the head and kidneys, as well as strangulation with a plastic bag. He also alleged that the investigator had threatened him with R.N.'s ill-treatment and criminal prosecution as an accomplice. The Government contested the above allegations as untruthful.

12. On 5 October 2009 the second applicant underwent a forensic medical examination at the Kyievo-Svyatoshynskyy Bureau of Forensic Medical Examinations, with a view to establishing whether he had any injuries and, if so, when and how they had been inflicted. He told the expert that he had not been ill-treated. It was noted in the report that the second applicant had no injuries apart from some old ulcers on his legs and a fresh scar on his left hand from surgery for a finger infection.

13. On 7 October 2009 an ambulance was called for the second applicant, allegedly after he had fainted from being strangled with a plastic bag. According to the ambulance records, the second applicant was diagnosed with drug withdrawal syndrome and provided with assistance.

14. On 15 October 2009 the second applicant confessed to the murder of Sh.A. and his bodyguards (see paragraph 31 below).

15. On 2 November 2009, once transferred from the Kyievo-Svyatoshynskyy ITT to the Kyiv ITT, the second applicant retracted his initial confession and complained that it had been extracted from him by physical ill-treatment and psychological pressure (see also paragraph 36 below).

16. From 8 to 17 November 2009 he was again detained in the Kyievo-Svyatoshynskyy ITT, where he was allegedly subjected to further ill-treatment and threats.

17. On 16 March 2010 the investigator in charge of the case separated the second applicant's allegations of ill-treatment from his case file and sent them to the Kyievo-Svyatoshynskyy district prosecutor's office ("the district prosecutor's office") for investigation. On 23 April 2010 the district prosecutor's office issued a decision refusing to institute criminal proceedings against the police officers concerned, mainly referring to their denial of any coercion of the second applicant. The prosecutor also noted that the Kyievo-Svyatoshynskyy ITT's logbook did not contain any records on the second applicant's complaints or injuries upon his arrival there on 4 October 2009.

18. According to the second applicant, he was not notified of that decision. He reiterated his allegations of ill-treatment in the course of his trial and thereafter, but they were dismissed on the grounds that the matter had already been investigated (see also paragraph 61 below).

B. As regards R.N.

19. R.N. did not lodge any formal complaints of ill-treatment by the police. That said, although R.N. changed her statements many times, alleging pressure either from the second applicant to exculpate him or from the investigator to incriminate the second applicant, she repeatedly submitted that she had been held in unrecorded detention for about a week at the Kyievo-Svyatoshynskyy police station, where the police had kept her seated on a chair while shackled to a radiator, beaten her to the point of dislocating her jaw, pulled her hair and prevented her from resting or eating until she agreed to give the statements expected of her (see paragraphs 48, 50-51, 60 and 69 below). For about two weeks thereafter, R.N. was allegedly held against her will under police guard in some unspecified premises in Bila Tserkva. After that, the investigator allegedly gave her some money and put her on a train to St Petersburg. That was allegedly part of an arrangement between the investigator and the second applicant. Even though R.N. repeatedly stressed that she did not wish to pursue any complaints against the police, the trial court forwarded her allegations to the prosecution authorities for investigation.

20. On 1 July 2012 the district prosecutor's office refused to institute criminal proceedings against the police in that regard, referring to the investigator's statements denying any coercion of R.N., as well as the absence of any complaints from the latter.

IV. CRIMINAL PROCEEDINGS AGAINST THE APPLICANTS**A. Pre-trial investigation**

21. Shortly after the arrest of the second applicant and R.N. on the night of 3 to 4 October 2009, from 4 a.m. to 6 a.m., a search was carried out at his home, in the presence of R.N., on the basis of an urgent search warrant issued by the head of the Kyievo-Svyatoshynskyy police earlier that night. The police seized, in particular, some documents belonging to A.O., numerous packets of SIM cards, several bags and a GPS device.

22. Later on 4 October 2009, at about 5.30 p.m., the police conducted "an inspection of the scene of the events" at the second applicant's home, after making him sign, allegedly under duress, a written permission to that effect. This time, the police found and seized a metal pipe-shaped object (later identified as a pistol silencer) and several items of men's clothing (later identified as worn by the person who had killed Sh.A. and his bodyguards). The inspection was carried out by the investigator in the presence of two "specialists", with no further details being available.

23. The police conducted a personal search on the second applicant the same day, as a result of which it seized seven mobile telephones and thirteen

SIM cards. Furthermore, swabs were taken from his hands, face, ears, hair and nails. As stated in a report of 19 October 2009, a forensic laboratory examination revealed that they contained gunshot residue.

24. The case file contains several conflicting statements made by R.N. on 4 October 2009. When questioned as a witness that morning, she stated that she and the second applicant had moved to Kyiv for his treatment for drug addiction, that his acquaintance A.O., who had stayed with them for some time, had had two occasional visitors, A. and E., with whom he had left on 2 October 2009. R.N. also submitted that the second applicant had come home on the afternoon of 2 October 2009 looking worried and had told her that A.O. had had a car accident and that they had to leave. However, during further questioning as a witness on the evening on 4 October 2009, R.N. submitted that the second applicant and A.O. had been gathering information about Sh.A., that she had seen two pistols in the flat and that, after returning home on the afternoon of 2 October 2009, the second applicant, appearing anxious, had washed his clothes and told her that he had killed Sh.A. and that they had to leave urgently. She also submitted that he had telephoned “Merab from Moscow” (the first applicant) and said: “Everything is fine. The only problem is that the secretary has stayed behind. I’ve got the papers signed and sealed.” R.N. also said that A. and E., whom she had previously mentioned, did not exist and that she had only referred to them upon the second applicant’s instructions. Furthermore, on 4 October 2009 (apparently between the above-mentioned two interviews), R.N. also wrote “a statement of voluntary surrender to the police”, the content of which was similar to that in the second interview mentioned.

25. On the evening of 4 October 2009 a report on the second applicant’s arrest was drawn up. It stated that he was suspected of the murder of three persons, including two police officers³. He wrote that he wished to be represented by a lawyer and that he had not shot anybody. He also reiterated his wish to be legally represented when signing, on 5 October 2009, a report stating that his procedural rights as a suspect had been explained to him.

26. During further questioning as a witness on 6 October 2009, R.N. submitted that the second applicant had told her that the first applicant⁴ had hired him “to do some job”. She also stated that when the second applicant had returned home on the afternoon on 2 October 2009, she had heard some noise which, according to him, had been caused by him throwing the pistol in the waste disposal unit.

27. On 6 October 2009 the investigator, referring to the fact that the criminal offence imputed to the second applicant was potentially punishable by a life sentence, appointed a lawyer, O.V., for him¹. According to the second applicant, he had no confidential meetings with that lawyer without the police

³ The two bodyguards were considered policemen in service.

⁴ She recognised him on a photo as a person whom the second applicant had met in Moscow in July 2009.

being present. During his questioning that day in the lawyer's presence, the second applicant refused to give evidence or answer any questions.

28. On 7 October 2009 an employee of the local public utilities service in charge of cleaning the communal areas of the building in which the second applicant was renting a flat handed over a pistol to the police which, according to her, she had found in the waste disposal unit on 3 October 2009. She explained the delay by the fact that she had initially given the pistol to one of the residents, who was supposed to have taken it to the police but had not had time. Ballistic experts traced numerous bullets fired in the shopping centre to the pistol. Furthermore, an expert conclusion was issued stating that its trigger had contained skin epithelial cells, the genetic characteristics of which matched those of the second applicant. One of the bullets in the magazine bore his fingerprints.

29. On 8 October 2009 an identification parade was carried out, during which S.M. recognised the second applicant as the person who had threatened him with a pistol and to whom he had given a lift (see also paragraph 7 above). According to the second applicant, S.M. was not conclusive in his statements. The case file also contains the identification parade reports of 8 October 2009 stating that two eyewitnesses recognised the second applicant as the person who had shot at Sh.A., whereas another witness recognised him as the person who had been enquiring about Sh.A. and his security arrangements.

30. On 12 October 2009 the second applicant expressed his wish to be represented by L.B., a lawyer hired by his relatives. The following day, however, the investigator rejected that request on the grounds that L.B. was aware of certain information of relevance to the investigation and was to be questioned as a witness. L.B. was, however, never questioned as a witness. Nor was there any indication of how she could be linked to the events under investigation. She was admitted in the proceedings as the second applicant's lawyer more than three months later (see paragraph 39 below).

31. On 15 October 2009 the second applicant was questioned as an accused in the presence of lawyer O.V. He confessed that he and his friend A.O. had shot Sh.A. and his bodyguards. He submitted that the killings had not been premeditated. According to him, A.O. had only intended to scare Sh.A. or even kidnap him⁵ with a view to making him repay a considerable debt to some people in Moscow, and he had agreed to help his friend. The shooting had allegedly been started by Sh.A.'s bodyguards, when he and A.O. had approached them at the entrance to the shopping centre and he had ordered Sh.A. and the bodyguards not to move. He explained that he and A.O. had not expected any armed resistance. However, once the bodyguards had reached for their weapons, he and A.O. had had to shoot. The first applicant's name was not mentioned in the above-mentioned statement.

⁵ It appears that at a certain point later the second applicant modified that statement and submitted that they had been considering kidnapping Sh.A.'s son (see paragraph 43 below).

32. On 16 October 2009 the second applicant reiterated the same version of events during a reconstruction of the crime, which was conducted in the presence of lawyer O.V. This time, he added that he had thrown the gun into the waste disposal unit of his building.

33. On various dates Sh.A.'s relatives informed the police that they suspected the first applicant, who was also their relative, of ordering the murder. They submitted that the first applicant had been in conflict with Sh.A. concerning their joint business and that the former had repeatedly threatened to kill the latter unless he transferred part of his share in the shopping centre to him. After Sh.A.'s death, the first applicant had allegedly reiterated that demand to the family.

34. On 20 October 2009 criminal proceedings were instituted against the first applicant on suspicion of ordering the murder, and a warrant for his arrest was issued.

35. On 22 October 2009 an additional lawyer, O.S., was appointed for the second applicant, with his agreement, because there were numerous investigative measures to be carried out.

36. On 2 November 2009 the investigator conducted further questioning of the second applicant as an accused, in the presence of his new lawyer O.S. This time, he denied his involvement in the shooting and claimed to have only helped his friend A.O. to gather information about Sh.A., since the latter had supposedly had a considerable debt to repay. He replied in the negative to questions asking whether he knew or had ever met the first applicant. He complained that his initial confession (see paragraph 31 above) had been extracted from him through physical ill-treatment and psychological pressure.

37. On 12 November 2009 a forensic psychiatric examination report was issued concerning the second applicant, which had been ordered to assess his mental fitness to stand trial. It stated that he had refused to communicate on the record with the experts on the grounds that he had not been provided with a lawyer of his choice. Likewise, he had refused to state whether he had any complaints. At the same time, he had specified that that should not be interpreted as suggesting that he had none. The expert report found the second applicant fit to stand trial. It contained, *inter alia*, the following remark:

“No clinical signs of drug addiction or alcoholism were detected during the pre-trial investigation.”

38. On 10 December 2009 an additional lawyer started representing the second applicant at his request.

39. On 24 February 2010 lawyer L.B. (see paragraph 30 above) was also admitted as his representative⁶ⁱⁱ.

40. On 25 January 2011 the second applicant refused the services of lawyers O.V. and O.S. (see paragraphs 27 and 35 above).

⁶ In February 2011 the second applicant replaced her by a different lawyer.

41. As confirmed by the visitors' logbooks of the Kyiv and Zhytomyr SIZOs, the investigator visited the second applicant in detention, without his lawyers being present, on at least twenty occasions between November 2009 and April 2011. According to the second applicant, those visits were undocumented and used to put pressure on him.

42. On 12 July 2010 the first applicant was arrested in Russia, and on 18 March 2011 he was extradited to Ukraine. He refused to give evidence, alleging that his arrest, detention and prosecution had been unlawful.

43. The case file contains a written statement by the second applicant of 12 April 2011, in which he submitted that once he found out about the first applicant's extradition to Ukraine, he wished to give statements about the latter's involvement in Sh.A.'s murder and that he did not need his lawyer to be present. According to him, he wrote the statement under pressure from the investigator while he was in solitary confinement. During his questioning as a witness on that date, he submitted that he had contacted the first applicant in July 2009 to seek assistance in recovering a debt from some people. The latter had allegedly asked him in exchange to kidnap Sh.A.'s son with a view to forcing Sh.A. to pay him some money. According to the second applicant, he and A.O. were supposed to collect all the required information in Kyiv and prepare an action plan, after which the first applicant was to send his people there. When everything was ready, two men, A. and E., arrived in Kyiv. About a week before the shooting, the first applicant allegedly told the second applicant that Sh.A. had agreed to pay the money and that the kidnapping was no longer necessary. The second applicant further submitted that, having accidentally picked up A.O.'s telephone on 1 October 2009, he had heard the first applicant shout that Sh.A. had lied and that the first applicant would kill him for it. As regards the events on 2 October 2009, he alleged that A.O., together with A. and E., had left in his car. After the shooting A. and E. had allegedly informed him of what had happened and left.

44. On 29 July 2011 the second applicant, with procedural status as a witness, identified, in particular, the first applicant, A.O. and Sh.A. on the photographs presented by the investigator.

B. Proceedings before the District Court

45. In October 2011 the applicants' criminal cases were joined into one, and the District Court started the trial. It decided to hold the hearings in Russian for the applicants' convenience.

46. On 9 November 2011 Sh.A.'s relatives requested the court to hold the trial *in camera*, "having regard to the fact that [the first applicant's] relatives present in the court [were] constantly threatening [them] with reprisals and that they perceive[d] those threats as real, as well as given that the public hearing could encroach upon [their] commercial secrets and private life". Referring to Article 20 § 2 and Article 52-1 of the Code of Criminal

Procedure (“the CCP”), as well the Law “On Ensuring the Safety of Persons Participating in Criminal Trials” (see paragraph 89 below), the court allowed that request and continued the trial *in camera*. This was recorded in the minutes of the hearing, with no written decision having been issued.

47. During the trial, the first applicant denied all the accusations against him while the second applicant only admitted to having participated in the preparations for kidnapping Sh.A.’s son. The second applicant’s statements in court were similar to those he had made on 12 April 2011 (see paragraph 43 above).

48. On 22 February 2012 R.N. gave evidence at the hearing. She requested to testify either from a different room, by video camera, or without the second applicant being present. R.N. explained that request by “fears for her life and health”. The trial court decided to examine her without the second applicant being present. Nor was the first applicant present. By that time he had been removed from the courtroom, until the end of the hearing, for improper behaviour (see paragraph 58 below). R.N. submitted that the second applicant, together with A.O., had appeared to be monitoring Sh.A.’s son. As regards the events of 2 October 2009, her only submission was that the second applicant had come home looking anxious and told her that A.O. had had a car accident and that they had to leave. According to R.N., she only found out about the shooting from the media. She retracted her earlier statements inculcating the defendants as false and extorted by the investigative authorities by ill-treatment.

49. At 7 p.m. on 22 February 2012 a short break was announced for technical reasons, after which R.N.’s examination continued, apparently in the presence of at least one lawyer from each defendant.

50. R.N. also appeared in court on 23 February 2012. This time, she complained that the second applicant and his lawyer had been putting pressure on her with a view to making her retract the statements incriminating him which she had given during the pre-trial investigation. R.N. alleged that in January 2012 the second applicant had threatened her by telephone that he would find her anywhere if she did not agree to make statements favourable for him. Supposedly, he had dictated her the expected testimonies. R.N. provided their handwritten text to the court. While submitting that she had given those statements of her free will, she mentioned that she had been ill-treated by the police after her apprehension in October 2009 (see paragraph 19 above).

51. On 14 March 2012 R.N. submitted a written statement to the trial court that she wished to “give truthful testimony” in the case, which she had been prevented from doing so until then because of police pressure. More specifically, she alleged that police officers had threatened to change her procedural status from a witness to an accused if she did not cooperate. R.N. requested the court to consider her earlier submissions incriminating the

applicants as invalid. She stated that she would not be opposed to testifying in their presence.

52. On the same day, in the course of the hearing, R.N. felt unwell and said that she was unable to testify. An ambulance was called at her request, and she was taken to the Central Hospital of the Ministry of the Interior. She stayed there until 21 March 2012 for inpatient treatment for hypertension.

53. Also on 14 March 2012 the trial court instructed the district prosecutor's office to investigate R.N.'s allegations of pressure by the police and the second applicant. The outcome of the investigation into the alleged pressure by the investigator is unknown. As regards the investigation into the alleged pressure on R.N. by the second applicant, the relevant information, which is available in the case file, is mentioned in paragraph 56 below).

54. On 16 March 2012 R.N. submitted another written statement to the court suggesting that she had been under pressure from the second applicant to give false exculpatory evidence and that her evidence given at the pre-trial stage had been correct. She alleged that from 10 to 14 March 2012, a friend of the second applicant had held her in a rented flat, taken her mobile telephone and hired two bodyguards to accompany her at all times. R.N. also claimed that the second applicant had telephoned her from the SIZO and threatened her. She asked if her future testimony could be given from different premises.

55. On 21 March 2012 the District Court considered the above-mentioned statement and allowed R.N.'s request to be examined from a different room. It was decided that she would testify by telephone on loudspeaker. The second applicant strongly objected to that arrangement and announced his wish to leave. Although his request was rejected, the trial court eventually decided to remove him from the courtroom for disturbing order (he had been trying to leave the courtroom in spite of the convoy). One of his lawyers also left and another was removed for disobeying the presiding judge's orders. Given the second applicant's absence, R.N. agreed to testify in the courtroom. She made statements incriminating the applicants similar to those of 4⁷ and 6 October 2009 (see paragraphs 24 and 26 above). R.N. also mentioned that she had been ill-treated in police custody. Her allegation was sent to the prosecution authorities for investigation.

56. On 9 April 2012 the Kyiv Regional Prisons Department informed the trial court, apparently in the context of the investigation into possible pressure by the second applicant on R.N. (see paragraph 54 above), that there was no evidence that he had been able to make telephone calls from the SIZO.

57. On 4 May 2012 R.N.'s statements were read out to the second applicant, who was provided with the opportunity to comment on them.

58. On 24 May 2012 the District Court ordered the first applicant to be removed from the courtroom until the end of the trial for repeatedly disrupting

⁷ More specifically, made in the evening of 4 October 2009.

order. Prior to that decision, the presiding judge had reprimanded him at least twenty-five times for improper conduct, including shouting, interrupting speakers, making obscene gestures and disrespectful comments, ignoring the presiding judge's orders and addressing witnesses in the Kurmanji dialect of Kurdish. The first applicant had been repeatedly warned that he might be removed from the courtroom until the end of the proceedings. On two occasions, on 22 February and 21 March 2012, he had been removed temporarily, until the end of the hearing session. In its decision on the first applicant's removal from the courtroom on 24 May 2012, the trial court noted that, despite numerous remarks and warnings, he had made no effort to change his behaviour. It was also noted that during his absence, his defence interests would be assured by the obligatory presence of his lawyer in the courtroom.

59. From 30 July to 30 August 2012 an expert of the Main Bureau of Forensic Medical Examinations of the Ministry of Public Health analysed the video recordings of the shooting and those of various investigation measures involving the second applicant. The expert also examined the second applicant in person, with a view to establishing, on the trial court's instructions, whether the man armed with a pistol pursuing and killing Sh.A. on the video recordings could have been him. In his conclusion of 30 August 2012, the expert held that the quality of the video recordings from the shopping centre was too poor to allow clear identification of the perpetrator's face. The overall facial and body proportions were, however, identifiable. The expert was also able to establish the height of the perpetrator and the length of his limbs. A visual inspection of the second applicant confirmed that his height, facial and body proportions corresponded to those of the person on the video recording of the shooting. Furthermore, they had the same receding hairline and same hairstyle. It was deemed highly plausible that the person on the video recording from the shopping centre was the second applicant. The expert noted that a more precise conclusion was not possible because of the low resolution of the video.

60. In August 2012 R.N. filed two further statements with the trial court indicating that her statements inculcating the second applicant in the shooting were false and had been extorted from her as a result of police ill-treatment and pressure. The statements had been written in the territory of the Russian Federation, one in the presence of a lawyer and the other in the presence of a notary. R.N. explained that she had moved to Russia in order to avoid unlawful influence from the investigative authorities and Sh.A.'s family and that she was ready to provide further testimony, but only on Russian territory. She stated that, in order to extort her first statement in October 2009, the police authorities had held her in unrecorded detention for several weeks and ill-treated her. She further submitted that, when on 14 March 2012 she had wished to give truthful testimony, the investigator and his colleagues had met her in the corridor of the court building and pressured her not to do so.

According to R.N., even when she was in hospital, the investigator visited her and continued to put pressure on her to oblige her to maintain her previous submissions.

61. On 8 November 2012 the District Court found the first applicant guilty of ordering a contract killing and acquiring the means to carry it out and the second applicant, in particular, of its execution. The applicants were sentenced to life imprisonment. In establishing the second applicant's guilt, the trial court referred to his confession statements of 15 and 16 October 2009 (see paragraphs 31 and 32 above), even though he had later retracted them (see paragraph 36 above). While the judgment contained a summary of the second applicant's statements made in court, in which he had incriminated the first applicant and denied his own involvement in the shooting (see paragraph 47 above), it is not clear to what extent the trial court referred to those statements in establishing the first applicant's guilt. The District Court referred, in particular, to R.N.'s statements incriminating the second applicant and, indirectly, the first applicant. It dismissed as unfounded the allegations of ill-treatment of R.N. and the second applicant in police custody, referring to the investigation of the matter by the prosecution authorities.

62. The trial court also referred to statements by Sh.A.'s relatives, who submitted that he had told them many times about receiving threats from the first applicant, as well as statements of Sh.A.'s numerous friends, associates and employees on the existence of a conflict between him and the first applicant. The court also referred, *inter alia*, to pre-trial statements by witnesses A.I., M.A. and A.A.⁸, to whom, as was noted in the verdict, security measures had been applied. They were indicated as the first applicant's acquaintances, who had allegedly refused to confront him in person. They all submitted that there had been a conflict between the victim and the first applicant. M.A. additionally stated that the first applicant had explicitly admitted to him that he had arranged Sh.A.'s killing. The first applicant argued that the statements of those three witnesses had been fabricated. He relied on notarised statements by A.I., M.A. and A.A., who denied ever being questioned or making any statements in the criminal proceedings in question. The first applicant also questioned the authenticity of telegrams supposedly sent to the court by those witnesses with a request that their pre-trial statements be read out, having regard to their identical wording, as well as the fact that they had been sent from the same post office within a one-minute interval. His arguments remained without any assessment.

63. Furthermore, as regards the second applicant's conviction, the District Court referred to the statements of S.M., as well as two eyewitnesses to the shooting, who were examined in court and who had recognised him as one of the perpetrators (see paragraph 29 above). The trial court additionally referred to the statements of three other eyewitnesses, who had recognised the second

⁸ Their full names and surnames were indicated in the judgment.

applicant as one of the perpetrators during the pre-trial investigation, but who did not appear in court. One of them informed the trial court that he was not able to attend the hearings owing to health-related problems. Another witness had changed his residence address and the police had not been able to find him. In so far as the third witness was concerned, the police informed the trial court that security measures had been applied to him, which could be confirmed by relevant documents.

64. The District Court also referred to various ballistic and fingerprint expert reports and material evidence (see paragraphs 7, 8, 22, 28 and 59 above), as well as telephone logs indicating that the applicants had regularly been in contact with one another, including on the day of Sh.A.'s murder shortly after the shooting. It was also noted that the video recordings of some of the investigative measures involving the second applicant had been analysed by experts and that no indication of pressure had been noticed in his behaviour.

65. The first applicant was taken to court for the verdict (see paragraph 58 above). As he immediately started shouting insulting remarks at the court, he received a warning that he would be removed again if he continued to behave improperly. As he continued insulting the court, he was removed from the courtroom and the verdict was read out in his absence.

C. Appellate and cassation proceedings

66. Both applicants challenged the verdict of 8 November 2012 on appeal.

67. The first applicant continued to deny any involvement in the offence, arguing that his conviction was not based on any solid evidence. He stated that the victim had had serious conflicts with some other people, which had not been explored by the investigation⁹. He further observed that Sh.A. had not complained to the police of receiving any threats from him and that, despite the obligation to wear bulletproof vests at all times, the victim's bodyguards had not been wearing any when the shooting had broken out. In the first applicant's view, that undermined the credibility of the allegations that he had been threatening Sh.A. The first applicant also alleged that the statements of the secondⁱⁱⁱ applicant and R.N. incriminating him had been extracted from them under duress. The first applicant further submitted that A.I., M.A. and A.A. were "fake" witnesses with whom he had never been confronted. He observed that the statement by the prosecution that those witnesses were subject to the witness protection programme had been a lie, since the file contained none of the documents ordinarily required for the application of witness protection measures. Moreover, according to the

⁹ The first applicant submitted, in particular, that in 2008 a certain K. had complained to the police of having been seriously ill-treated by Sh.A.'s family, that the outcome of the criminal investigation into the matter had remained unclear, and that the second applicant had served his prison sentence in the United Kingdom in the same prison as K.'s brother.

telegrams read out by the District Court, the individuals presenting themselves as A.I., M.A. and A.A. refused to appear for trial on the grounds of poor health and financial difficulties rather than invoking their status as “protected witnesses”. In addition, the first applicant complained of numerous procedural violations of his rights, in particular that the trial had been held *in camera* without proper justification and that he had had no opportunity to participate in it effectively. He also complained of exhausting conditions on hearing days and about his eventual removal from the courtroom for nearly six months.

68. The second applicant also submitted in his appeal that there was no conclusive evidence of his guilt. He reiterated the allegation concerning his and R.N.’s ill-treatment. Furthermore, he complained that he had been denied access to a lawyer at the early stages of the investigation and that numerous investigative measures had been conducted without his lawyer and even without being documented. He also complained that he had been unable to use the assistance of L.B., the lawyer of his choice. The second applicant further complained that he had been unable to confront a number of important witnesses in the course of the trial and that S.M. had refused to answer some questions of the defence in court.

69. On 29 March 2013 the Kyiv Regional Court of Appeal received a written statement from R.N., in which she reiterated her allegations of ill-treatment in police custody and pressure by the investigator (see paragraphs 19, 48 and 51 above). She also maintained her earlier statements favourable to the applicants (see paragraphs 24, 48, 51 and 60 above).

70. On 22 April 2013, after a public hearing, the Court of Appeal upheld the judgment of the District Court. The appellate review consisted in hearing the oral pleadings by the applicants and their lawyers, as well as those by the prosecutor, examining the case file and studying the arguments raised in the appeals. The Court of Appeal held that the decision of the trial court to hold its hearings *in camera* had had an adequate legal basis and had been justified in the circumstances. Furthermore, it held that the first applicant had been correctly removed from the courtroom in view of his repeated misconduct. It also agreed with the trial court’s finding that the allegations concerning the second applicant’s and R.N.’s ill-treatment had been duly investigated and rightly dismissed as unfounded. Referring to the verbatim records of the hearings before the District Court, the Court of Appeal noted that S.M. had recognised the second applicant as the perpetrator in a court hearing. It also noted the second applicant had been recognised by several eyewitnesses and that at least two of them had confirmed in the course of the trial their pre-trial statements. The appellate court did not comment on the first applicant’s allegation that the pre-trial statements by witnesses A.I., M.A. and A.A. had been fabricated. A general conclusion was made that the applicants’ guilt had been established by a sufficient amount of evidence and that there had been

no breach of their procedural rights susceptible of rendering the whole trial unfair.

71. The applicants and several lawyers acting on their behalf lodged appeals on points of law essentially reiterating their previous arguments.

72. On 13 February 2014 the Higher Specialised Court for Civil and Criminal Matters (“the Higher Specialised Court”), following a hearing during which the applicants, represented by lawyers, were present and gave oral submissions, rejected their appeals on points of law. The Higher Specialised Court reiterated the findings of the Court of Appeal and held, in particular, that, in so far as the appeals on points of law concerned the inability to question certain witnesses in court, there had always been good reasons for their absence. In addition, the majority of the absent witnesses had informed the District Court in writing that they maintained their previous statements given during the pre-trial stage. In any event, all those statements were supported by material and other evidence. As regards the second applicant’s complaint that his right to a defence had been restricted, the Higher Specialised Court noted that a lawyer had been appointed for him immediately after his arrest in compliance with legal requirements. It was also observed that more than thirteen lawyers, both appointed and privately hired, had represented him, with at least two lawyers at any one time.

V. HEARING-DAY ARRANGEMENTS

A. The applicants’ account

73. On the hearing dates the applicants had to wake up at 6 a.m. and, after being taken out of their cells, were locked up for several hours in a small and unfurnished waiting room with several dozen other detainees awaiting transport. The room had no ventilation and was full of cigarette smoke. The applicants were not supplied with any food or drink on the hearing dates.

74. The second applicant provided statements by two detainees of the Kyiv SIZO, who confirmed the above description of the hearing-day transport routine.

75. Sometimes the hearings lasted until 10 or 11 p.m., and by the end of the day the applicants were starving and exhausted.

76. During the court hearings, they remained in handcuffs and were held in a cage or a glass cubicle¹⁰ about four to six metres from their lawyers. The first applicant’s lawyer complained about those arrangements to the Ministry of the Interior. In the latter’s reply of 8 January 2014 it was noted that, under the relevant regulations, persons convicted to life imprisonment had to be held in handcuffs whenever taken outside their cells. Furthermore, the letter indicated that, in order to confer with a lawyer during a hearing, a defendant

¹⁰ The applicants supported that statement by photographs and video records.

had to address a guard, who would normally allow him to do so, with the permission of the presiding judge and usually during a break.

77. According to the second applicant, the hearings were scheduled every day or with a one-day break on several occasions between June and October 2012¹¹.

B. The Government's account

78. The average duration of each hearing was between four and six hours. They were only held on a few occasions beyond working hours: for example, on 1 February 2012 the hearing lasted from 2 p.m. to 10.40 p.m. The Government also submitted, without providing further details, that the hearings on 22 February and 21 March 2012 had lasted beyond normal working hours. A seven-day break followed each such hearing.

79. The Government stated that the applicants had been provided with a food pack on hearing days in compliance with the applicable legal provisions. The Government relied on a letter sent to their Agent by the State Prisons Department on 28 January 2021, according to which the Kyiv SIZO kept a special logbook on distribution of food packs to detainees leaving its premises and each detainee was to sign therein every time he received a food pack. No extracts from the mentioned logbook were, however, provided to the Court.

VI. CONDITIONS OF THE SECOND APPLICANT'S DETENTION IN THE KYIV SIZO

80. The second applicant was detained in the Kyiv SIZO during the following periods:

- from 17 November 2009 to 3 May 2010;
- from 30 April 2011 to 19 June 2013;
- from 26 October 2013 to 24 February 2014¹².

A. The second applicant's account

81. The second applicant was detained in five different cells, each measuring about 8 sq. m and accommodating four inmates. The furniture was limited to two two-tier bunk beds. There was virtually no natural light or ventilation. The only source of artificial light was a dim electric bulb over the door that was on day and night. The toilet was separated from the living area by a one-metre-high partition.

¹¹ Namely: on 6, 8, 13, 14, 15, 20, 21 and 22 June 2012; on 18, 19 and 20 July 2012; on 13, 14, 19, 20, 26, 27 and 28 September 2012; on 10 and 11 October 2012, as well as every day between 17 and 19 October 2012 and between 22 and 26 October 2012.

¹² During the intervening periods he was detained: from 3 May 2010 to 30 April 2011 – in the Zhytomyr SIZO, and from 19 June to 26 October 2013 – in the Kryvyi Rig prison.

82. The second applicant submitted four colour photographs of what he claimed had been his cell in the Kyiv SIZO. All the photographs were taken in daylight from the same angle and showed a small cell with two two-tier bunk beds separated by a space of visibly less than one metre. There was a rather large window in the middle, the lower third of which was covered by a non-transparent screen, while the rest was covered by metal grills letting in light. Against the window, there was a shelf for storing food. As additional space for storing food, the inmates appeared to use one of the four beds, which was apparently unoccupied.

83. The second applicant also submitted statements by his two cellmates confirming his account.

B. The Government's account

84. According to the Government's information, the second applicant was detained in eight different cells measuring from about 7 to 9 sq. m. It was not specified how many inmates those cells accommodated.

85. The cells were equipped with all the required furniture, and the toilet was separated from the living area. There was also good access to natural and artificial light, and an adequate ventilation system. The temperature and humidity corresponded to the established standards. Inmates had access to shower and laundry facilities once a week.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CONDITIONS OF DETENTION

86. The relevant domestic legal provisions concerning material conditions in detention facilities are summarised, in particular, in *Sukachov v. Ukraine* (no. 14057/17, §§ 54-56, 30 January 2020).

87. The 2012 report of the Ukrainian Parliament Commissioner for Human Rights, entitled "Monitoring of custodial settings in Ukraine: current implementation of the national preventive mechanism", criticised the Kyiv SIZO for "improper sanitary conditions for transit prisoners", "poor technical condition of the water supply and sewage systems", "excessive humidity and fungus on the walls", and "cell toilets being in improper condition and having no flushes" (pp. 82-83).

88. The relevant provisions concerning catering for detainees, notably on hearing days, are quoted in *Andrey Yakovenko v. Ukraine* (no. 63727/11, § 69, 13 March 2014).

II. PUBLIC NATURE OF THE TRIAL

89. Some relevant legal provisions in force at the material time can be found in *Shagin v. Ukraine* (no. 20437/05, §§ 40-44, 10 December 2009). In particular, Article 42 of the Code of Criminal Procedure (“the CCP”) provided for a reasoned judicial ruling in case of hearing *in camera*. Furthermore, Article 52-1 of the CCP provided for the application of security measures to a trial participant following a threat to his or her life, health, home or property.

RELEVANT INTERNATIONAL MATERIAL

90. The relevant extracts from the Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the CPT”) from 9 to 21 October 2013 (CPT/Inf (2014) 15) can be found in *Borzykh and Others v. Ukraine* ([Committee], nos. 5353/14 and 2 others, § 12, 25 June 2020).

THE LAW

I. JOINDER OF THE APPLICATIONS

91. Given their similar factual and legal background, the Court decides that the two applications should be joined pursuant to Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE ALLEGED ILL-TREATMENT OF THE SECOND APPLICANT

92. The second applicant alleged that he had been subjected to ill-treatment and psychological duress in police custody and that no effective investigation had been carried out into his complaints in that regard. He relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

93. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The second applicant's alleged ill-treatment*

(a) The parties' arguments

94. The second applicant alleged that during his detention in the Kyievo-Svyatoshynskyy ITT he had been subjected to physical ill-treatment consisting of blows to the head and kidneys and strangulation with a plastic bag. He also submitted that, following his arrest, he had been deprived of legal assistance and had had no other safeguards against the police violence. He contested the credibility of the report on his forensic medical examination of 5 October 2009 (see paragraph 12 above) on the grounds that it had been drawn up by a bureau located in the same area as where the police officers who had allegedly ill-treated him were based. The second applicant also pointed out that an ambulance had been called for him on 7 October 2009 (see paragraph 13 above), allegedly after he had fainted from being strangled with a plastic bag. Relying on the expert report of 12 November 2009 (see paragraph 37 above), he argued that the ambulance records about him having drug withdrawal syndrome had been false.

95. The second applicant further alleged that he had been subjected to constant psychological pressure whilst his common-law wife R.N. was in unrecorded detention without any safeguards to ensure her physical integrity or procedural rights. According to him, the investigator had promised to release her and help her leave Ukraine if he had agreed to give the statements expected of him (see paragraph 19 above).

96. The Government contended that the second applicant had failed to make a credible assertion of ill-treatment and submitted that there was no evidence in support of his allegations.

(b) The Court's assessment

97. The Court refers to the general principles reiterated, *inter alia*, in the case of *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 81-88, ECHR 2015). In particular, allegations of ill-treatment contrary to Article 3 must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.

98. Turning to the present case, the Court notes that the second applicant's allegation of physical ill-treatment was not confirmed by documentary evidence. His forensic medical examination of 5 October 2009 did not reveal any injuries (see paragraph 12 above). Although he criticised the relevant report, he did not specify what findings it should have contained in his view. Accordingly, the Court has no grounds for questioning the conclusion of the aforementioned report that, on 5 October 2009, the second applicant had no

injuries. This conclusion is, however, of little relevance to the assessment of his allegation of continued ill-treatment, which went well beyond the above-mentioned date. Furthermore, as the Court has observed in its case-law, the absence of injuries alone is not enough to undermine the credibility of an allegation of ill-treatment, given that certain methods of applying force do not leave any traces on a victim's body. And, of course, the consequences of any intimidation, or indeed any other form of non-physical abuse, would in any event have left no visible trace (see *Ushakov and Ushakova v. Ukraine*, no. 10705/12, § 80, 18 June 2015, with further references).

99. The Court takes note of the contradiction, pointed out by the second applicant, between the ambulance records of 7 October 2009, according to which he required medical assistance for drug withdrawal syndrome on that date, and the psychiatric expert examination report of 12 November 2009, according to which no clinical signs of drug addiction were detected during the pre-trial investigation (see paragraphs 37 and 94 above). That contradiction, however, does not provide a sufficient basis for drawing any factual inferences, especially given that certain case material suggested that he might have indeed had issues with drug addiction (see paragraph 24 above).

100. The Court is mindful of the undisputed fact that the second applicant's common-law wife R.N. was under the full control of the police for two to three weeks after her and the second applicant's arrest on 4 October 2009 (see paragraphs 10 and 19 above). Although she made no formal complaints, she consistently submitted, even when making statements incriminating the second applicant, that she had been subjected to physical violence by the police (see paragraphs 19, 48, 50-51, 60 and 69 above). There is, however, no sufficient evidence for drawing conclusions on the possible psychological pressure on the second applicant in that regard.

101. In view of the foregoing and applying the standard of proof of "beyond reasonable doubt", the Court finds no violation of the substantive aspect of Article 3 of the Convention.

2. Alleged failure to carry out an effective investigation

(a) The parties' arguments

102. The second applicant submitted that there had been no meaningful attempt to investigate his allegation of ill-treatment and psychological pressure. He observed, in particular, that there had been a delay in opening the investigation: even though he had first raised that complaint on 2 November 2009, the investigation had not been initiated until 14 March 2010. The second applicant also alleged that he had had no access to the investigation file.

103. The Government argued that the domestic authorities had made every reasonable effort to investigate the matter and that the absence of results favourable to the second applicant did not mean that the investigation had been ineffective.

(b) The Court's assessment

104. The Court reiterates that where a person raises an arguable claim or makes a credible assertion that he or she has suffered treatment contrary to Article 3 at the hands of State agents, that provision, read in conjunction with the 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 (see, among many authorities, *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV). Whatever the method of investigation, the authorities must act as soon as an official complaint has been lodged. Even when, strictly speaking, no complaint has been made, an investigation must be started if there are sufficiently clear indications that ill-treatment has been used (see, for example, *Stevan Petrović v. Serbia*, nos. 6097/16 and 28999/19, § 108, 20 April 2021, with further references). The investigation should also be broad enough to permit the investigating authorities to take into consideration not only the actions of the State agents who directly used force, but also all the surrounding circumstances (see, *mutatis mutandis*, *A.P. v. Slovakia*, no. 10465/17, § 71, 28 January 2020).

105. The Court has held that the reluctance of the authorities to ensure a prompt and thorough investigation into ill-treatment complaints lodged against the police constitutes a systemic problem in Ukraine within the meaning of Article 46 of the Convention (see *Kaverzin v. Ukraine*, no. 23893/03, §§ 173-80, 15 May 2012). In view of the circumstances of the second applicant's complaint in the present case and its earlier case-law, the Court considers that this is yet another example of such a failure to ensure a prompt and thorough investigation.

106. The Court notes that the second applicant first complained of ill-treatment on 2 November 2009, that is, as soon as he was transferred from the Kyievo-Svyatoshynskyy ITT to a different detention facility (see paragraph 15 above). It appears that there was no response to that complaint for more than four months until, on 16 March 2010, it was referred to the prosecution authorities (see paragraph 17 above). The domestic investigation that followed mainly consisted of questioning the police officers concerned, whose statements were accepted at face value. At no point was it deemed necessary to question the second applicant himself or conduct any investigative measures with a view to verifying his allegations.

107. The Court therefore considers that there has been a violation of Article 3 of the Convention in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE SECOND APPLICANT'S CONDITIONS OF DETENTION IN THE KYIV SIZO

108. The second applicant also complained that the conditions of his detention in the Kyiv SIZO had been incompatible with Article 3 of the Convention.

A. Admissibility

109. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

110. Referring to his description of the conditions of detention in the Kyiv SIZO (see paragraphs 81-83 above), the second applicant argued that they had been incompatible with the Convention standards.

111. The Government, who maintained their account (see paragraphs 84-85 above), submitted that those conditions had been in compliance with the legal requirements.

112. The Court notes that the relevant principles of its case-law have been set out in, for example, *Muršić v. Croatia* ([GC], no. 7334/13, §§ 137-41, 20 October 2016).

113. In the present case, the Government did not specify how many inmates had actually occupied cells with the second applicant and did not refute his allegations in that respect or in respect of the cells' size (see paragraphs 81 and 84 above). In these circumstances, the Court cannot but give weight to the applicant's submissions and concludes that, during several periods of his detention in the Kyiv SIZO between November 2009 and February 2014, he was confined in a cell providing him with 1.75 sq. m to 2.25 sq. m of personal space, which is below the minimum standard of 3 sq. m in multi-occupancy accommodation (see *Muršić*, cited above, § 110).

114. The Court also observes that it has already found a violation of Article 3 of the Convention on account of the lack of personal space afforded to applicants and other aspects of inappropriate physical conditions of detention in the Kyiv SIZO at around the time the second applicant in the present case was detained there (see the list of cases in the appendix to the judgment in *Sukachov v. Ukraine* (no. 14057/17, 30 January 2020).

115. The Court sees no reason to reach a different conclusion in the present case.

116. It follows that there has been a violation of Article 3 of the Convention on account of the inadequate conditions of detention in the Kyiv SIZO.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE TRIAL BEING HELD *IN CAMERA*

117. The applicants complained that their trial had been held *in camera*, in breach of Article 6 of the Convention, the relevant part of which reads as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. ...”

A. Admissibility

118. The Court notes that this part of the applications is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties' arguments*

119. The applicants submitted that the decision to hold the trial *in camera* had lacked any reasoning or justification. They argued that the allegations of the victim's relatives having received threats had not been based on any evidence and that, in any event, the people concerned had already been under protection. It had not been explained why the exclusion of the public was necessary in the circumstances. Likewise, the relatives' reference to possible encroachment on their commercial secrets and private life had been worded in vague terms and had not called for a trial *in camera*. No sensitive information related to them had ever been examined. The applicants also pointed out that no written decision had been delivered on the exclusion of the public, and that there had been no possibility of challenging it.

120. The Government maintained that the exclusion of the public in the applicants' case had been a necessary and justified measure which had not adversely affected their rights.

2. *The third-party Government's comments in respect of the first applicant*

121. The Government of Armenia submitted that the decision to hold the trial *in camera* had been formalistic and unjustified. They observed that the domestic courts had not considered any alternative, less drastic measures, such as only excluding the public from certain hearing sessions involving the examination of sensitive material.

3. *The Court's assessment*

(a) **General case-law principles**

122. The holding of court hearings in public constitutes a fundamental principle enshrined in Article 6 § 1. By rendering the administration of justice transparent, publicity contributes to fulfilling the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention. The requirement to hold a public hearing is, however, subject to exceptions. Thus, it expressly permits the press and the public to be excluded from all or part of a trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. Furthermore, it may on occasion be necessary under Article 6 to limit the open and public nature of proceedings in order, for example, to protect the safety or privacy of witnesses, or to promote the free exchange of information and opinion in the pursuit of justice. In any event, before excluding the public from criminal proceedings, the national court must make a specific finding that exclusion is necessary to protect a compelling public interest and must limit secrecy to the extent necessary to preserve that interest. It is relevant, when determining whether a decision to hold criminal proceedings *in camera* was compatible with the right to a public hearing under Article 6, whether public interest considerations were balanced with the need for openness, whether all evidence was disclosed to the defence and whether the proceedings as a whole were fair (see *Boshkoski v. North Macedonia*, no. 71034/13, § 39, 4 June 2020, with further case-law references).

123. The Court has also noted in its case-law that, while the overall fairness of the proceedings is the overarching principle under Article 6 of the Convention, the (non-)violation of the defendant's right to a public hearing *vis-à-vis* the exclusion of the public and the press does not necessarily correlate with the existence of any actual damage to the defendant's exercise of his other procedural rights, including those protected under Article 6 § 3 (see *Kilin v. Russia*, no. 10271/12, § 111, 11 May 2021).

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

124. The Court notes that, although Ukrainian law required any departure from the principle of a public trial to be justified by a reasoned judicial ruling (see paragraph 89 above), in the present case the District Court ordered a trial *in camera* without such a ruling having been issued (see paragraph 46 above). It simply granted the victim's relatives' request to exclude the public, which was based on what they claimed to be security and privacy considerations. Firstly, the victim's relatives referred to the presence in the courtroom of some relatives of the first applicant who had allegedly threatened them with reprisals. The trial court could have responded to that concern by bringing the persons in question to order or removing them from the courtroom, rather than closing the trial to the public altogether. Secondly, the victims argued that "the public hearing could encroach upon [their] commercial secrets and private life". That concern for privacy was couched in vague terms. Even assuming that it had had some grounds, it could only be relevant in respect of some specific hearings or procedural measures, not for the whole trial.

125. It follows that, before excluding the public from the trial, the District Court had neither made specific findings that closure was necessary to protect a compelling public interest nor limited secrecy to the extent necessary to preserve such an interest (see *Boshkoski*, cited above, § 50).

126. None of the aforementioned deficiencies were addressed by the appellate court in its ruling upholding the first-instance judgment (see paragraph 70 above). As regards the public examination of the case by the Court of Appeal and the Higher Specialised Court, it was not in itself sufficient to remedy the situation, given that the review at those stages was limited in that no witnesses had been heard in person and no direct investigative measures had been undertaken (see paragraphs 48-50, 53, 59, 63, 70 and 72 and, for the case-law to compare, see *Shagin*, cited above, § 66).

127. The Court therefore concludes that there has been a violation of Article 6 § 1 of the Convention owing to the lack of a public hearing in the applicants' case.

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE TRIAL

128. The applicants also complained that their trial had fallen short of the guarantees of Article 6 §§ 1 and 3 (b), (c) and (d) of the Convention, the relevant parts of which read as follows:

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

...

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

...

- (b) to have adequate time and facilities for the preparation of his defence;
- (c) to defend himself in person ...;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ...”

129. As the requirements of Article 6 § 3 constitute specific aspects of the right to a fair trial guaranteed under Article 6 § 1, the Court will examine, where applicable, the applicants’ complaints under those provisions taken together (see, for example, *Gäfgen v. Germany* [GC], no. 22978/05, § 169, ECHR 2010). The Court’s primary concern under Article 6 § 1 is to evaluate the overall fairness of the criminal proceedings (see, among many other authorities, *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 250, 13 September 2016).

A. The first applicant’s complaints

1. Removal from the courtroom, allegedly inadequate facilities for the defence preparation and absent witnesses

130. The first applicant complained that his removal from the courtroom for a considerable part of the trial had been in breach of his rights under Article 6 §§ 1 and 3 (c) and (d) of the Convention. He further complained under Article 6 §§ 1 and 3 (b) and (c) that he had not been afforded adequate facilities for the preparation of his defence and had been unable to participate in the trial effectively owing to exhausting hearing-day conditions and inadequate arrangements in the courtroom. The first applicant also complained that he had been unable to question numerous witnesses against him, notably A.I., M.A. and A.A., whose pre-trial statements he considered to have been forged.

(a) Admissibility

131. The Court notes that this part of the first applicant’s application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

(b) Merits

(i) Removal from the courtroom (Article 6 §§ 1 and 3 (c) and (d))

(α) The parties’ submissions and the third-party Government’s comments

132. The first applicant submitted that his removal from the courtroom had been unjustified and disproportionate. He argued that the trial court had decided to punish him for what it considered improper behaviour without taking into account the reasons for that behaviour. He submitted, in particular,

that he had often been obliged to raise his voice simply in order to be heard, given the considerable distance between the cage and his lawyers' desk. He also submitted that his emotional behaviour had stemmed from his utter frustration about the allegedly unfounded criminal charges against him.

133. The Government observed that the first applicant's removal from the courtroom had been preceded by several warnings, despite which he had continued behaving improperly.

134. The Government of Armenia made submissions similar to those of the first applicant. They emphasised that, even though the first applicant's behaviour might have appeared to justify his removal from the courtroom, the trial court should have first duly analysed his explanations and arguments.

(β) The Court's assessment

– *General case-law principles*

135. According to the well-established case-law of the Court, neither the letter nor the spirit of Article 6 prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial. However, if it is to be effective for Convention purposes, a waiver of the right to take part in the trial must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance. Furthermore, it must not run counter to any important public interest (see *Sejdovic v. Italy* [GC], no. 56581/00, § 86, ECHR 2006-II).

136. Before an accused can be said to have, through his conduct, waived implicitly an important right under Article 6 of the Convention, it must be shown that he could reasonably have foreseen the consequences of his conduct in this regard (see *Jones v. the United Kingdom* (dec.), no. 30900/02, 9 September 2003).

137. The Court has also held that it is essential for the proper administration of justice that dignity, order and decorum be observed in the courtroom as the hallmarks of judicial proceedings. The flagrant disregard by a defendant of elementary standards of proper conduct neither can, nor should, be tolerated. However, when an applicant's behaviour might be of such a nature as to justify his removal and the continuation of his trial in his absence, it is incumbent on the presiding judge to establish that the applicant could have reasonably foreseen what the consequences of his ongoing conduct would be prior to the decision to order his removal from the courtroom (see *Idalov v. Russia* [GC], no. 5826/03, §§ 176-77, 22 May 2012). Furthermore, the relevant consideration is whether the applicant's lawyer was able to exercise the rights of the defence in the applicant's absence (see *Marguš v. Croatia* [GC], no. 4455/10, § 90, ECHR 2014 (extracts)).

– *Application of the above principles to the present case*

138. The Court considers that the first applicant's behaviour of shouting, making obscene gestures and disrespectful comments, and ignoring the presiding judge's orders (see paragraph 58 above), clearly disturbed order in the courtroom. The trial court could not have been expected to remain passive and allow such behaviour.

139. The Court also notes that the first applicant was reprimanded on at least twenty-five occasions for his improper conduct in the proceedings before the trial court. He was fully and fairly informed that his behaviour was wrong and intolerable and had been warned of the possible consequences. Moreover, prior to ordering the first applicant's removal from the courtroom until the end of the trial, the presiding judge had twice ordered his removal until the end of the hearing session. Despite all those measures, the first applicant did not change his behaviour. Accordingly, for the Court there is no doubt that the first applicant, by persisting in his reprehensible conduct, waived his right to be present at the trial (compare *Idalov v. Russia (no. 2)*, no. 41858/08, § 150, 13 December 2016).

140. It is relevant to note that the first applicant's waiver was attended by minimum safeguards, given that his lawyer took part in the hearings and duly conducted his defence.

141. Therefore, the Court considers that there has been no violation of Article 6 §§ 1 and 3 (c) and (d) of the Convention in this regard.

(ii) *Allegedly inadequate facilities for the preparation of the first applicant's defence (Article 6 §§ 1 and 3 (b) and (c))*

(α) *The parties' submissions and the third-party Government's comments*

142. With reference to his account of events (see paragraphs 73, 75 and 76 above), the first applicant also argued that he had not been afforded adequate facilities for the preparation of his defence and an opportunity to participate in the trial effectively owing to the exhausting conditions that he had had to endure on hearing days, including lack of nutrition and sufficient sleep. He also submitted that his confinement in a metal cage¹³ or glass cubicle¹⁴ at a distance from his lawyers' desk had made it impossible for them to confer in private. Furthermore, the first applicant claimed that he had been unable to take notes, given that he had been permanently handcuffed and there had been no desk in the cage or cubicle in the courtroom.

143. The Government contested the first applicant's arguments in general terms. They further submitted that there was no confirmation of his confinement in a metal cage or glass cubicle during the court hearings.

¹³ Before the trial court.

¹⁴ Before the higher courts.

144. The Government of Armenia agreed with the first applicant's submissions and observed that the respondent Government had not submitted any evidence to refute them.

(β) The Court's assessment

– *General case-law principles*

145. The States' duty under Article 6 § 3 (b) of the Convention to ensure an accused's right to mount a defence in criminal proceedings includes an obligation to organise the proceedings in such a way so as not to prejudice his power to concentrate and apply mental dexterity in defending his position. Where defendants are detained, the conditions of their detention, transport, catering and other similar arrangements are the relevant factors to consider in this regard (see, for example, *Razvozhayev v. Russia and Ukraine and Udaltsov v. Russia*, nos. 75734/12 and 2 others, § 252, 19 November 2019, and the references therein).

146. The Court has also held that an accused's right to communicate with his lawyer without the risk of being overheard by a third party is one of the basic requirements of a fair trial in a democratic society; otherwise legal assistance would lose much of its usefulness. Furthermore, a measure of confinement in the courtroom may affect the fairness of a hearing guaranteed by Article 6 of the Convention; in particular, it may have an impact on the exercise of an accused's rights to participate effectively in the proceedings and to receive practical and effective legal assistance (see, for example, *Khodorkovskiy and Lebedev v. Russia (no. 2)*, nos. 42757/07 and 51111/07, § 464, 14 January 2020, with further case-law references).

– *Application of the above principles to the present case*

147. The Court notes that the Government did not refute, or comment upon, the first applicant's allegation that, before each hearing, he was woken up at about 6 a.m. and had to wait for several hours in poor conditions (see paragraphs 73 and 78-79 above). Under such circumstances, the Court cannot but attach weight to the first applicant's version of events.

148. The Court further observes that the Government's submission about the catering arrangements for the first applicant on hearing days is not supported by any evidence. Although the Government stated that the first applicant had received a food pack every time he had left the detention facility for a court hearing, they did not provide a copy of an extract from the relevant logbook kept at the Kyiv SIZO (see paragraph 79 above), which undermines the credibility of their submission. The Court will therefore proceed on the assumption that the first applicant did not receive any food on hearing days.

149. Having regard to the foregoing, the Court considers, without finding it necessary to analyse the intensity of the court schedule or the

reasonableness of the length of the hearings, that it is very likely that the first applicant was affected by the lack of food and rest.

150. The Court further does not accept the Government's broadly worded submission on the absence of any confirmation of the first applicant's confinement in a metal cage or a glass cubicle during the hearings (see paragraph 143 above), given that that was standard procedure in Ukraine (see, for example, *Lutsenko v. Ukraine* (no. 2), no. 29334/11, § 165, 11 June 2015, and *Korban v. Ukraine*, no. 26744/16, § 132, 4 July 2019) and there was no indication of a departure from that procedure in the present case. Furthermore, it is an established fact that the first applicant was permanently handcuffed during the court hearings (see paragraph 76 above).

151. The Court next takes note of serious restrictions on the first applicant's right to confer with his counsel during hearings. Thus, as confirmed by the Ministry of the Interior, each time he wished to talk to his counsel in the courtroom, he had to address a guard with the relevant request, who, in turn, would seek permission from the presiding judge. Only then, and usually during breaks, was he free to confer with his lawyer.

152. The aforementioned considerations are sufficient for the Court to conclude that the first applicant was not afforded adequate facilities for the preparation of his defence, which undermined the requirements of a fair trial and equality of arms, in violation of Article 6 §§ 1 and 3 (b) and (c) of the Convention.

(iii) Absent witnesses (Article 6 §§ 1 and 3 (d))

(α) The parties' submissions and the third-party Government's comments

153. The first applicant next complained that many prosecution witnesses had not been examined in the courtroom. He submitted that he had never been able to confront witnesses A.I., M.A. and A.A. and alleged that their pre-trial statements had been forged by the investigator. He observed in that connection that his acquaintances under the names mentioned had made notarised statements that they had never been questioned by the police. He therefore considered that the persons indicated as A.I., M.A. and A.A. had been anonymous witnesses unlawfully referred to by the names of his real acquaintances.

154. The first applicant further submitted that both the nature of the security measures in respect of witnesses A.I., M.A. and A.A. and the grounds for those measures had been unclear. He expressed doubts as to whether such measures had been applied at all, given that the persons referred to under the names mentioned had explained their absence from the trial by their poor health and financial difficulties, rather than any security measures. The first applicant also questioned the authenticity of those witnesses' telegrams to the court, having regard to their identical wording and the suspicious coincidence of the place and time they were sent (see paragraph 62 above).

155. The first applicant pointed out that although he had raised all the above arguments before the domestic courts, they had remained without assessment.

156. Lastly, he submitted that the vast majority of the witness evidence against him had been hearsay. The only exception, in his opinion, apart from the second applicant's statements, had been the witness evidence given by M.A., who had alleged that the first applicant had told him in person about having ordered Sh.A.'s killing.

157. The Government submitted that the security measures applicable to witnesses A.I., M.A. and A.A. had constituted a good reason for their non-attendance at the hearings. The Government also contended that the witness evidence in question had not been the sole or decisive basis for the first applicant's conviction.

158. The Government of Armenia's arguments were similar to those of the first applicant.

(β) The Court's assessment

– *General case-law principles*

159. The principles to be applied in cases where a prosecution witness did not attend the trial and statements previously made by him were admitted as evidence were summarised and refined in the case of *Al-Khawaja and Tahery v. the United Kingdom* ([GC], nos. 26766/05 and 22228/06, §§ 118-47, ECHR 2011) and further clarified in *Schatschaschwili v. Germany* ([GC], no. 9154/10, §§ 100-31, ECHR 2015). The application of those principles involves, generally speaking, answering three questions: (i) whether there was a good reason for the non-attendance of the witness and for the admission of the absent witness's statement as evidence; (ii) whether the evidence of the absent witness was the sole or decisive basis for the conviction or whether it carried significant weight; and (iii) whether there were sufficient counterbalancing factors, including strong procedural safeguards, to compensate for the handicaps faced by the defence as a result of the admission of the untested evidence and to ensure that the trial, judged as a whole, was fair. In the latter context, the Court has held that the ability to confront a witness for the prosecution who is absent from trial at the investigation stage is an important procedural safeguard which can compensate for the handicaps faced by the defence on account of absence of such a witness from the trial (see *Schatschaschwili*, cited above, § 130).

– *Application of the above principles to the present case*

160. The Court notes at the outset that it is not clear whether the witnesses referred to as A.I., M.A. and A.A. were indeed anonymous witnesses as submitted by the first applicant, given that those were the real names of his acquaintances (see paragraph 62 above). While it was mentioned in the

domestic proceedings that security measures had been applied to those individuals, their nature was not specified. Nor was it stated that granting anonymity or confidentiality was part of them.

161. It was the trial court's task to elucidate that matter and examine, if relevant, whether there were good reasons justifying the protection of the witnesses' identities (compare *Boshkoski*, cited above, §§ 41-44). No such assessment was, however, carried out. While the prosecutor referred to some unspecified security measures as the reason for the witnesses' absence from the court hearing, the witnesses themselves, in their telegrams addressed to the court, did not even mention any security measures, but rather referred, in broad terms, to their poor health and financial difficulties (see paragraph 62 above). Having regard to the vagueness of those explanations and their lack of consistency, the Court does not consider that there was a valid reason for not hearing witnesses A.I., M.A. and A.A. before the trial court.

162. The Court next notes that the statements by two of those witnesses, A.I. and A.A., were limited to alleging the existence of a conflict between the first applicant and Sh.A. In other words, that evidence was not the sole or decisive basis for the first applicant's conviction. Nor could it be regarded as carrying any significant weight. The situation was different regarding the statement by M.A., who, as rightly pointed out by the first applicant, was the only witness to submit that the first applicant had explicitly admitted to him having arranged Sh.A.'s killing (see paragraph 62 above). While that statement might not have been the sole or decisive evidence for the first applicant's conviction, the Court considers that it carried significant weight and that its admission may have handicapped the defence to an important degree. That being so, the Court will proceed with its review of the existence of sufficient counterbalancing factors (see *Schatschaschwili*, cited above, § 116).

163. The Court notes that the first applicant did not receive a response to any of his specific and pertinent arguments: regarding the identity of witness M.A., the authenticity of his pre-trial witness statements, the existence of any security measures in respect of him, their nature and justification, as well as the authenticity of the telegram supposedly sent by that witness to the court. Under such circumstances, the Court cannot but conclude that there were no sufficient counterbalancing measures permitting a fair and proper assessment of the reliability of the untested evidence in the first applicant's case.

164. There has therefore been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

2. Other complaints

165. The first applicant raised the following additional complaints under Article 6 §§ 1 and 3 (a), (b) and (c) of the Convention. He alleged that the presiding judge of the District Court had acted in the interests of Sh.A.'s family and could not therefore be regarded as impartial. Furthermore, the first

applicant complained that the reasoning of the judicial decisions in his case had been manifestly deficient, given that many valid arguments by the defence had been ignored. He next complained that the fact that the courts had based his conviction on the incriminating statements of the second applicant and R.N., which had allegedly been obtained under duress, had been among the factors rendering his trial unfair. He further complained that he had not had timely and complete access to all the case material and that certain documents had not been translated in Russian. The first applicant also complained about occasional refusals of his requests for a meeting with some of the lawyers and about the removal of two lawyers from the proceedings for their alleged misconduct. Lastly, he complained that not all the defence witnesses had been summoned.

166. Having regard to the facts of the case, the submissions of the parties, and its findings under Article 6 of the Convention (see paragraphs 127, 141, 152 and 164 above), the Court considers that it has examined the main legal questions raised by the first applicant in his application, and that there is no need to give a separate ruling on the admissibility and merits of the above-mentioned complaints (compare *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, and *Moroz v. Ukraine*, no. 5187/07, §§ 110-11, 2 March 2017).

B. The second applicant's complaints

1. Restrictions on the right to legal assistance, admission of witness evidence allegedly obtained by coercion and allegedly inadequate facilities for the defence preparation

167. The second applicant complained under Article 6 §§ 1 and 3 (c) that his right to legal assistance had been restricted on several occasions. He also complained under Article 6 § 1 about the admission into evidence of R.N.'s statements incriminating him, which had allegedly been obtained under duress. Furthermore, he raised a complaint in respect of the facilities afforded to him for the preparation of his defence on the hearing days similar to that of the first applicant (see paragraph 142 above).

(a) Admissibility

168. The Court notes that these complaints are not manifestly ill-founded. Nor are they inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

(b) Merits

(i) Alleged restrictions on the right to legal assistance (Article 6 §§ 1 and 3 (c))

(α) The parties' submissions

169. The second applicant complained that he had not had access to a lawyer at the beginning of the investigation even though he had been suspected of criminal offences potentially punishable by life imprisonment and therefore calling for mandatory legal representation under domestic law. He also submitted that the appointment by the investigator of lawyer O.V., which took place after a two-day delay, had been purely formalistic. He claimed that he had had no confidential meetings with that lawyer and had never received any adequate legal assistance from him.

170. The second applicant further complained that his request to be represented by the lawyer of his choosing, L.B., had been arbitrarily rejected during the period from 12 October 2009 to 24 February 2010.

171. He also alleged that the investigator had visited him on numerous occasions in the pre-trial detention facilities and had conducted numerous undocumented interviews without the second applicant's lawyer being present.

172. The Government submitted that a lawyer had been appointed for the second applicant within forty-eight hours of his arrest and that that delay had not been excessive. They drew the Court's attention to the fact that the second applicant had not given any statements while not legally represented. Accordingly, they maintained that the absence of a lawyer at the very beginning of the investigation had not impaired his right to a defence in any way.

173. The Government also submitted that the second applicant had never expressed any dissatisfaction with his representation by lawyer O.V. appointed for him by the prosecutor and that he had not refused the latter's services until fourteen months later.

174. As to the second applicant's complaint about the refusal to admit L.B. as his lawyer, the Government submitted that the investigator had duly justified that decision by the need to question her as a witness. No such questioning had ever taken place because she had ignored the investigator's calls. In any event, the Government argued that the second applicant had been able to involve numerous other lawyers of his choice.

175. As regards the second applicant's complaint regarding his numerous interviews without his lawyer being present or any procedural documents being drawn up, the Government submitted that "no information from the alleged interviews ... [had been] used during [the] criminal proceedings or court hearings". The only two exceptions, according to the Government, were the second applicant's questioning as a witness on 12 April and 29 July 2011 (see paragraphs 43 and 44 above).

(β) The Court's assessment

176. The general principles with regard to access to a lawyer, the right to remain silent, the privilege against self-incrimination, and the relationship of those rights with the overall fairness of the proceedings under the criminal limb of Article 6 of the Convention can be found in *Beuze v. Belgium* ([GC], no. 71409/10, §§ 119-50, 9 November 2018).

177. The Court notes that the second applicant raised several allegations of restrictions on his right to a defence. It is a well-established principle of the Court's case-law that compliance with the requirements of a fair trial must be examined in each case having regard to the development of the proceedings as a whole and not on the basis of an isolated consideration of one particular aspect or one particular incident (*ibid.*, §§ 121-22). The Court will therefore analyse each of the second applicant's allegations separately and will then proceed with assessing their impact on the overall fairness of the criminal proceedings against him (see, for example, *Zherdev v. Ukraine* (revision), no. 34015/07, § 157, 25 January 2018).

– *Absence of access to a lawyer at the initial stage of the investigation*

178. It is undisputed that at the time of the second applicant's arrest on the night of 3 to 4 October 2009 he was treated as a suspect in the shooting incident. The safeguards under Article 6 of the Convention, including the right of access to a lawyer, were therefore applicable to him. The Court also notes that domestic law provided for mandatory legal representation for those potentially facing life imprisonment, such as the second applicant suspected of aggravated murder. Moreover, the second applicant explicitly expressed his wish to have a lawyer after his arrest, but he did not receive any response to his request (see paragraph 25 above). A lawyer was not appointed for him until 6 October 2009. In his decision to that effect, the investigator referred to the aforementioned domestic legal provision on mandatory legal representation, without explaining why it had not been applied earlier (see paragraph 27 above). It follows that there was a restriction on the second applicant's access to a lawyer, which was not justified by any compelling reasons.

179. The Court considers that the restriction in question did have an impact on the overall fairness of the trial, given that during the initial two-day period when the second applicant was not legally represented the police collected and included in the case file a considerable body of evidence eventually used against him (see paragraphs 21-23 above and contrast *Simeonovi v. Bulgaria* [GC], no. 21980/04, § 136, 12 May 2017).

– *Alleged failure to respect the second applicant's free choice of legal representation*

180. The first question to be answered is whether there were relevant and sufficient grounds for overriding or obstructing the second applicant's wish to be represented by lawyer L.B. Where no such reasons exist, the Court will have regard to various other factors relevant to the overall fairness of the criminal proceedings (see *Dvorski v. Croatia* [GC], no. 25703/11, §§ 81-82, ECHR 2015).

181. The Court notes that on 13 October 2009 the investigator refused to admit L.B., the lawyer hired by the second applicant's relatives, as his legal representative on the grounds that she was to be questioned as a witness within the criminal proceedings in question (see paragraph 30 above). No such questioning ever took place. It is neither mentioned in any case material nor discernible from the circumstances of the case how L.B. could be linked to the criminal offences under investigation. The Government did not provide the Court with copies of summons or any other evidence showing that the investigator had in fact taken any steps to question her as a witness. Nor did they explain why three months later, on 24 February 2010, the investigator had changed his mind and allowed her to represent the second applicant (see paragraph 39 above).

182. It follows that the restriction in question was not based on any relevant and sufficient grounds. Its impact on the overall fairness of the proceedings was however limited, given that from 6 October 2009 the second applicant was already legally represented by lawyer O.V. The Court takes note of the fact that the second applicant was aware of O.V.'s appointment as his legal counsel and that, at the material time, he neither complained about the quality of that lawyer's services nor sought his replacement (see paragraphs 27 and 40 above and contrast *Elif Nazan Şeker v. Turkey*, no. 41954/10, § 55, 8 March 2022).

– *Alleged undocumented interviews of the second applicant in the absence of his lawyer*

183. The Court takes note of the documentary evidence confirming that the investigator visited the second applicant in detention, without the latter's lawyer being present, on at least twenty occasions between November 2009 and April 2011 (see paragraph 41 above). The Government neither disputed that fact nor provided any procedural documents on the investigative measures carried out during those visits. The Court also observes that the Government did not refer to any waivers by the second applicant of his right to a defence on those occasions. Their only argument was that no information from the interviews had been used in the proceedings (see paragraph 175 above).

184. The Court reiterates its well-established case-law that any conversation between a detained criminal suspect and the police must be

treated as formal contact and cannot be characterised as informal questioning or an informal interview (see *Titarenko v. Ukraine*, no. 31720/02, § 87, 20 September 2012, and *Ayetullah Ay v. Turkey*, nos. 29084/07 and 1191/08, § 137, 27 October 2020). Reliance, instead, on an informal practice gives rise to concern about respect for the applicant's rights to a defence and freedom from self-incrimination (see *Martin v. Estonia*, no. 35985/09, § 90, 30 May 2013).

185. The Court considers that every occasion of undocumented communication between the investigator and second applicant without the latter's lawyer being present amounted to an undue restriction of the second applicant's right to legal assistance. It is also relevant to note that there were numerous such occasions. In the Court's opinion, they did have some impact on the overall fairness of the proceedings.

– *Conclusion*

186. The above considerations, taken cumulatively, are sufficient for the Court to conclude that the second applicant's right to legal assistance was not respected in the present case.

187. Accordingly, there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

(ii) *Admission of witness evidence allegedly obtained by coercion (Article 6 § 1)*

(α) *The parties' submissions*

188. The second applicant submitted that his conviction had been based, to a decisive degree, on R.N.'s statements obtained by duress. He referred in that connection to her alleged unrecorded detention and ill-treatment by the police in October 2009 (see paragraph 19 above). Furthermore, the second applicant contended that the investigator had put pressure on R.N. during the judicial proceedings.

189. The Government argued that the trial court had carefully analysed the reliability and probative value of R.N.'s statements and had considered "the circumstances of [the] hearings on 22 February, 14 March and 21 March 2012". They observed that the District Court had duly established, on the basis of the findings of the investigation and the video recordings of R.N.'s participation in various investigative measures, that she had not been subjected to any physical or psychological pressure. As regards the alleged pressure on R.N. by the investigator during the trial, the Government submitted that, because she was a Russian national, after she had gone to Russia the Ukrainian investigation authorities had had no possibility of pressurising her.

(β) The Court's assessment

– *General case-law principles*

190. An issue arises under Article 6 § 1 of the Convention where any submissions obtained in violation of Article 3 of the Convention are used as evidence against a defendant in criminal proceedings, as any statement obtained in breach of Article 3 is inherently unreliable. This is so even if the admission of such evidence was not decisive in securing the conviction. Moreover, even in the absence of an Article 3 complaint, the Court is not precluded from taking into consideration allegations of ill-treatment for the purposes of deciding on compliance with the guarantees of Article 6. While the above principles were initially set in cases primarily concerning situations involving self-incriminating statements by defendants, the Court has held that the same principles naturally apply in respect of any statements obtained in breach of Article 3, including those made not only by defendants themselves but also by witnesses whose testimony is used as incriminating evidence (see *Huseyn and Others v. Azerbaijan*, nos. 35485/05 and 3 others, § 202, 26 July 2011, with further case-law references).

191. The Court has also held that where the domestic judicial authorities are confronted by several conflicting versions of the truth offered by the same person, the final preference for a statement given at the pre-trial stage over one given in open court does not in itself raise an issue as regards the overall fairness of the proceedings where that preference is substantiated and the statement itself was given of the person's own volition (see, for example, *Škerija v. Croatia*, no. 3021/14, § 122, 5 November 2020, and the case-law references therein).

– *Application of the above principles to the present case*

192. The Court notes that witness R.N. changed her statements many times, both during the pre-trial investigation and the trial (see paragraphs 48, 50-51, 54, 60 and 69 above). While her initial statements on 4 October 2009 did not suggest the second applicant's involvement in the shooting, she already later that day gave evidence incriminating him. She confirmed and supplemented them with further details, in particular on 6 October 2009 (see paragraphs 24 and 26 above). During the judicial proceedings R.N. retracted those statements claiming that they had been obtained by ill-treatment (see paragraph 48 above). On several occasions thereafter, however, she changed her position again and alleged that it had been owing to pressure from the second applicant that she had retracted her statements incriminating him (see paragraphs 50 and 54 above). Yet that position was not final: eventually R.N. argued that it had been the investigator who had forced her to accuse the second applicant of putting pressure on her (see paragraphs 54, 60 and 69 above). It is noteworthy that in both cases, when R.N. was either inculcating or exculpating the second applicant, she consistently submitted that,

following her arrest on 4 October 2009, she had been ill-treated in police custody for several weeks. The investigation into that allegation was apparently limited to the questioning of the investigator, who denied coercion of R.N. (see paragraph 20 above).

193. While R.N. is not an applicant before the Court and it cannot be established whether she was subjected to ill-treatment in breach of Article 3 of the Convention, it is undisputed that she was under the full control of the police for several weeks without any safeguards against abuse and that her consistent allegation of ill-treatment was not followed up by any meaningful investigation.

194. The Court also observes that there was no investigation into R.N.'s allegation of pressure by the investigator during the assessment of the conflicting versions of events submitted by her to the courts. As to her occasional allegations of pressure by the second applicant, the matter was investigated and the only known outcome was the conclusion that there was no evidence of his telephone calls to R.N. from the SIZO (see paragraph 56 above).

195. The Court notes that the domestic courts preferred to refer to R.N.'s statements incriminating the second applicant even though her final version of events was in his favour (see paragraphs 60, 61, 69 and 70 above). No reasoning was provided to support that preference. Nor was it established that the version of events preferred by the courts had been given by R.N. of her free will.

196. While R.N.'s witness evidence was not the sole or decisive basis for the second applicant's conviction (see paragraphs 7, 8, 22, 23, 29 and 59 above), it did carry significant weight. The manner in which the continued changes in her statements were treated therefore risked undermining the overall fairness of his trial.

197. Accordingly, there has been a violation of the second applicant's rights under Article 6 § 1 of the Convention in this regard.

(iii) Allegedly inadequate facilities for the defence preparation (Article 6 §§ 1 and 3 (b) and (c))

198. The second applicant's arguments were similar to those raised by the first applicant (see paragraph 142 above).

199. The Government argued that there had been no violation of the second applicant's rights under Article 6 §§ 1 and 3 (b) and (c) of the Convention in respect of the facilities for the preparation of his defence.

200. The Court considers that its findings regarding the admissibility and merits of the similar complaint by the first applicant (see paragraphs 147-152 above) are equally applicable to the second applicant's complaint. It therefore declares this complaint admissible and find that there has also been a violation of Article 6 §§ 1 and 3 (b) and (c) of the Convention in respect of the second applicant.

2. *Other complaints*

201. The second applicant additionally complained under Article 6 § 1 of the Convention that the reasoning of the judgment in his case had been inadequate and that the trial court had lacked impartiality. He also complained under Article 6 §§ 1 and 3 (b) that he had not had sufficient time to study the case file, that not all the case material had been translated in Russian, that his lawyers had not been provided with timely access to all the video recordings and that the lawyers who had started to represent him at the trial stage had not had sufficient time to study the case file. Furthermore, the second applicant complained under Article 6 §§ 1 and 3 (d) that he had been unable to examine a number of prosecution witnesses during the trial, that R.N. had been questioned by the trial court in his absence and that, when questioned in the courtroom, witness S.M. had not duly answered all the questions posed by the defence.

202. Having regard to the facts of the case, the submissions of the parties and its findings under Article 6 of the Convention (see paragraphs 187, 197 and 200 above), the Court considers that it has examined the main legal questions raised by the second applicant in his application, and that there is no need to give a separate ruling on the admissibility and merits of the above-mentioned complaints (compare *Centre for Legal Resources on behalf of Valentin Câmpeanu*, § 156, and *Moroz*, §§ 110-11, both cited above).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

203. 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**

204. The applicants claimed the following amounts in respect of non-pecuniary damage: the first applicant 11,000,000 euros (EUR) and the second applicant EUR 50,000.

205. The Government contested those claims as exorbitant and unsubstantiated.

206. The Court notes that it has found a violation of Article 3 of the Convention as regards the second applicant (see paragraphs 107 and 116 above). It considers that, in the circumstances of the present case, his suffering and frustration cannot be compensated for by the mere finding of a violation. Making its assessment on an equitable basis, the Court awards

the second applicant EUR 2,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

207. The Court has also found a violation of Article 6 of the Convention as regards both applicants (see paragraphs 127, 141, 152, 164, 187, 197 and 200 above). The Court observes that Ukrainian law provides for the right to request a reopening of domestic proceedings, which is, in principle, the most appropriate form of redress in such cases (see *Razvozzhayev*, cited above, § 324, and *Chernika v. Ukraine*, no. 53791/11, § 82, 12 March 2020). The Court therefore considers, in the circumstances of the present case, that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the first applicant.

B. Costs and expenses

208. The first applicant also claimed EUR 34,600 for the costs and expenses incurred before the domestic courts and in the proceedings before this Court. He provided documents¹⁵ indicating that he had paid the following amounts: 260,000 Ukrainian hryvnias (UAH)¹⁶ to Ms Sapozhnikova and 1,200,000 Armenian drams¹⁷ to Mr Ghazaryan for his legal representation before the Court, and UAH 578,000¹⁸ to the lawyers representing him in the domestic proceedings.

209. The second applicant claimed EUR 17,100 for the costs and expenses incurred before the Court, to be paid directly into Mr Tarakhkalo's bank account. In support of his claim, he submitted a legal services contract signed by him and Mr Tarakhkalo on 3 March 2014 indicating an hourly rate of EUR 150. According to the contract, payment was due after completion of the proceedings in Strasbourg and within the limits of the sum awarded by the Court in respect of costs and expenses. The applicant also submitted a report of 18 September 2021 on the work completed under the aforementioned contract. It specified that Mr Tarakhkalo had worked on the case for 114 hours (EUR 17,100).

210. The Government contested the above claims as unsubstantiated in respect of both applicants and exorbitant in respect of the first applicant.

211. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the following amounts covering costs under all heads: EUR 5,000 to the first applicant and EUR 7,000 to the second applicant.

¹⁵ Legal assistance contracts and completed work reports.

¹⁶ Equivalent to about EUR 8,300 at the time.

¹⁷ Equivalent to about EUR 2,100 at the time.

¹⁸ Equivalent to about EUR 18,500 at the time.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the following complaints admissible: the second applicant's complaints under Article 3 of the Convention concerning his alleged ill-treatment in police custody and the effectiveness of the domestic investigation, as well as concerning the allegedly inadequate conditions of his detention in the Kyiv SIZO; both applicants' complaints under Article 6 § 1 of the Convention concerning their trial *in camera* and under Article 6 §§ 1 and 3 (b) and (c) concerning the allegedly inadequate facilities for the defence preparation; the first applicant's complaints under Article 6 §§ 1 and 3 (c) and (d) concerning his removal from the courtroom by the District Court and under Article 6 §§ 1 and 3 (d) of the Convention concerning the inability to examine some prosecution witnesses; and the second applicant's complaints under Article 6 § 1 concerning the admission of witness evidence allegedly obtained by coercion and under Article 6 §§ 1 and 3 (c) of the Convention concerning several alleged restrictions on his right to legal assistance;
3. *Holds* that there has been no violation of the substantive aspect of Article 3 of the Convention in respect of the second applicant on account of his alleged ill-treatment in police custody;
4. *Holds* that there has been a violation of the procedural aspect of Article 3 of the Convention in respect of the second applicant on account of the lack of an effective domestic investigation into his allegation of police ill-treatment;
5. *Holds* that there has been a violation of Article 3 of the Convention in respect of the second applicant on account of the inadequate conditions of his detention in the Kyiv SIZO;
6. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of both applicants on account of their trial being held *in camera*;
7. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (b) and (c) in respect of both applicants on account of inadequate facilities for the defence preparation;
8. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (c) and (d) of the Convention in respect of the first applicant on account of his removal from the courtroom by the District Court;

9. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention in respect of the first applicant on account of his inability to examine prosecution witnesses;
10. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) in respect of the second applicant on account of the breach of his right to legal assistance;
11. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the second applicant on account of the admission of witness evidence allegedly obtained by coercion;
12. *Holds* that it is not necessary to examine the admissibility and merits of the applicants' remaining complaints;
13. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the first applicant;
14. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) in respect of non-pecuniary damage – EUR 2,500 (two thousand five hundred euros) to the second applicant, plus any tax that may be chargeable;
 - (ii) in respect of costs and expenses – EUR 5,000 (five thousand euros) to the first applicant and EUR 7,000 (seven thousand euros) to the second applicant (the latter amount to be paid into the bank account of his lawyer, Mr Tarakhkalo), plus any tax that may be chargeable to the applicants;
 - (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;
15. *Dismisses* the remainder of the applicants' claims for just satisfaction.

SUSLOV AND BATIKYAN v. UKRAINE JUDGMENT

Done in English, and notified in writing on 6 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytschik
Registrar

Síofra O’Leary
President

APPENDIX

Index of abbreviations¹⁹

A. and E.	two individuals who had allegedly occasionally visited the second applicant at home prior to the shooting;
A.O.	the second applicant's acquaintance with whom he had shared a rented flat and who died from gunshot wounds found to be sustained during the shooting in the "F." shopping centre on 2 October 2009; as concluded by the investigation, one of the two perpetrators who killed Sh.A. and his bodyguards;
L.B.	the lawyer hired by the second applicant's relatives; barred from representing him on 13 October 2009, but eventually admitted in the proceedings on 24 February 2010;
O.V.	the lawyer appointed for the second applicant by the investigator on 6 October 2009;
R.N.	the second applicant's common-law wife at the time of the events;
Sh.A.	a co-owner of the "F." shopping centre, who was shot dead, together with his bodyguards, on 2 October 2009;
S.M.	the driver who, threatened with a pistol, gave a lift to one of the perpetrators immediately after the shooting.

ⁱ Rectified on 16 December 2022: the words "offence" and "was" were in plural.

ⁱⁱ Footnote 6 rectified on 16 December 2022: the text was "April."

ⁱⁱⁱ Rectified on 16 December 2022: the word "first" was changed to "second".

¹⁹ In alphabetical order.