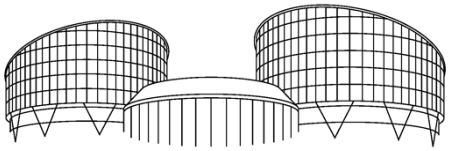

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF VOYKIN AND OTHERS v. UKRAINE

(Application no. 47889/08)

JUDGMENT

STRASBOURG

27 March 2018

FINAL

27/06/2018

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

In the case of Voykin and Others v. Ukraine,

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

Vincent A. De Gaetano, *President,*
Ganna Yudkivska,
Paulo Pinto de Albuquerque,
Faris Vehabović,
Egidijus Kūris,
Iulia Motoc,
Georges Ravarani, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 6 March 2018,

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

PROCEDURE

1. The case originated in an application (no. 47889/08) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Ukrainian nationals, Mr Valeriy Sergeyevich Voykin (the first applicant), Ms Marina Aleksandrovna Voykina (the second applicant), Ms Elleonora Nikolayevna Shupnyak (the third applicant), and Ms Valentina Borisovna Voykina (the fourth applicant). The first and second applicants lodged their applications on 11 November 2008. The third and fourth applicants joined them on 26 November 2008.

The fourth applicant died after lodging her application. The first applicant, her son, expressed the wish to pursue her complaints in her stead.

2. The applicants were represented by Mr Eduard Markov, a lawyer admitted to practice in Odessa. The Ukrainian Government ("the Government") were represented by their Agent, most recently Mr Ivan Lishchyna, of the Ministry of Justice.

3. The applicants raised a number of complaints, in particular under Articles 3, 5, 8 and 13 of the Convention.

4. On 6 January 2014 the application was communicated to the Government.

5. On 10 July 2017 the Vice-President of the Section decided, under Rule 54 § 2 (c) of the Rules of Court, that the parties should be invited to submit further written observations on the admissibility and merits of the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant was born in 1978. At the time of the events he was a district police officer in the Kalyninskyy district police in Horlivka. As of February 2014, he has been serving a prison sentence in Menska prison no. 91. The second applicant is his wife who was born in 1984. She lives in Horlivka with her mother, the third applicant, who was born in 1951. The fourth applicant, the mother of the first applicant, was born in 1948 and died on 5 December 2010. The first applicant expressed wish to pursue his mother's complaints on her behalf.

A. Incident involving the second applicant and its investigation

7. At the night from 18 to 19 June 2008, shortly after midnight, the second applicant had a conflict with a police officer, M., who was a colleague of her husband.

8. The second applicant's account of the events was as follows. When walking in the street with a friend, B., she heard somebody running after them. That person pushed her on the shoulder. Having turned, she saw M., whom she knew. He was wearing plain clothes and appeared to be heavily drunk. When she asked him what the matter was, M. shouted that he would subject her to a body search, without explanation. He snatched her bag from her. Having searched its contents, he threw it on the ground. Then M. grabbed the second applicant by the neck and started strangling her. In reply to her protests, he noted that the local prosecutor was there next to him and that it was pointless to complain. He hit the second applicant twice in the head with something heavy, which, in her opinion, could have been a mobile phone. At that moment the first applicant telephoned his wife's friend B., who was then with her, to find out whether everything was fine (as his wife had not returned home at the expected time and was not answering his telephone calls). Having found out about the incident, the first applicant went there. M. threatened him in a rude manner with dismissal. He let the second applicant go only after two other police officers in plain clothes, who happened to be there, approached them.

9. The second applicant's friend B. supported the above version of events. However, eventually she specified that M. had not been strangling the second applicant, but had simply held her and not let her leave.

10. M.'s version of the events was as follows. He was walking in the street with an acquaintance, P., a businessman, after the celebration of the professional holiday of police inspectors. They met two colleagues of M. and stopped to talk with them. Two women passed by. M. thought that one of them was a certain T., who was under administrative supervision and was

not supposed to be out of her home so late. He went to ask her what she was doing there. However, having approached her, he realised that he had been mistaken. He recognised the second applicant and apologised for his mistake. The second applicant, who appeared to be heavily drunk, started insulting and pushing him. M. submitted that he had not touched her. As regards the possible origin of her injuries, he noted that she had had serious incidents in the past with her husband and that those injuries might have been inflicted by him. As regards the fact that the plastic bag that she had had in her hands had been torn, he explained it by her intense gesticulating.

11. M.'s version was supported by the statements of his friend P. and the two police officers, who had been there.

12. Having come home, the second applicant called an ambulance. She was diagnosed with several bruises on her neck and situational neurosis. She explained that she had been strangled by a police officer. In the presence of an ambulance paramedic, the second applicant called the police. According to the Government, she did not mention that M. was a law-enforcement official. The second applicant contested that submission.

13. In the morning on 19 June 2008 the second applicant was examined by a neuropathologist who diagnosed her with concussion and bruises on her neck, and prescribed outpatient medical treatment.

14. On 28 June 2008 the Kalyninskyy police issued a ruling refusing to institute criminal proceedings in respect of the second applicant's complaint. It noted that she had complained to the police at 1.05 a.m. on 19 June 2008 of having been hit by an acquaintance. As further stated in the ruling, it had been impossible to question her, as she had never been at home when visited by the police.

15. On 9 July 2008 the second applicant complained about the incident to the Horlivka town prosecutor's office ("the Horlivka prosecutor's office"). She requested that the investigation not be entrusted to the Kalyninskyy district prosecutor's office ("the Kalyninskyy prosecutor's office"), given that one of its officials had allegedly been with M. at the time of the events and that M. had referred to that fact as a guarantee of his impunity (see paragraph 8 above). The second applicant submitted that there had been no attempts by the authorities to contact them with a view to hearing their version of the events.

16. On 15 July 2008 the Horlivka prosecutor's office forwarded her complaint to the Kalyninskyy prosecutor.

17. On 25 July 2008 the second applicant gave a written account of the incident to the Kalyninskyy prosecutor's office. On the same date that authority quashed the refusal of 28 June 2008. It noted that the investigation had wrongly been entrusted to the Kalyninskyy police despite the fact that the second applicant's complaint concerned her alleged ill-treatment by one of its officers.

18. On 28 July 2008 the police officer who had been on duty during the night from 18 to 19 June 2008 was disciplined for not having followed up the second applicant's call (see paragraph 12 above).

19. On 1 August 2008 the Kalyninskyy prosecutor's office refused to initiate criminal proceedings against M. under Article 365 § 2 of the Criminal Code (exceeding individual power by engaging in violent or degrading treatment of a victim), having held that there were no constituent elements of a crime discernible in his actions. The prosecutor noted that the second applicant's allegation was supported by the statements of her husband and her friend. However, there were also statements of M. and the witnesses from his side, who denied any ill-treatment of the second applicant. The prosecutor therefore found her allegation to be unsubstantiated. It was also noted in the ruling that at the time of the events M. had been wearing civilian clothes and had not been acting as a law-enforcement official. Lastly, it was observed that the second applicant had ignored numerous summonses for questioning.

20. On 4 August 2008 the Kalyninskyy prosecutor's office annulled its refusal of 1 August 2008 as premature. It noted, in particular, that not all the relevant facts had been established. Furthermore, there had been no forensic medical expert examination of the second applicant.

21. On 14 August 2008 the second applicant underwent such an examination, which documented no visible injuries. Having analysed her medical file, the expert concluded that she had sustained a bruise on her neck and a craniocerebral injury which led to concussion. Those injuries, assessed as insignificant, had resulted from "contact with blunt objects" at the time indicated by the second applicant.

22. On the same day the Kalyninskyy prosecutor's office once again refused to open a criminal case against M. for lack of the constituent elements of a crime in his actions. It relied, in particular, on the witnesses' statements, according to which M. had not ill-treated the second applicant. Furthermore, the prosecutor noted that M. had not acted in his official capacity and that the injuries sustained by the second applicant had been insignificant.

23. On 5 September 2008 a senior official of the same prosecutor's office annulled the above ruling as premature. He noted, in particular, that an additional forensic medical examination was required with a view to verifying the second applicant's allegation that she had been hit in the head with a mobile phone.

24. On 15 September 2008 the prosecutor ordered such an examination of the second applicant with a view to answering the following questions: (1) how exactly could her injuries have been inflicted; (2) whether there were marks on her head possibly resulting from blows with a mobile phone; (3) whether she could have sustained the injuries in question in the

circumstances as she alleged; and (4) when exactly she had sustained the injuries in question.

25. On 9 October 2008 a forensic medical expert examination report was issued. It answered the above questions as follows: (1) the craniocerebral injury and the bruise on the neck had resulted from contact with blunt objects; (2) neither the examination of the second applicant nor the evaluation of the medical file had established any injuries to her head (apparently, implying visible injuries); (3) the second applicant's injuries could have been inflicted on her in the circumstances described; and (4) according to the medical documents, the second applicant could have sustained the injuries on 19 June 2008.

26. On 19 November 2008 the Kalyninskyy prosecutor's office delivered yet another ruling refusing to open a criminal case in respect of the second applicant's complaints. Having relied on the forensic medical examination reports and the witnesses' statements, the prosecutor stated that her allegation had not been sufficiently corroborated.

27. On 20 April 2009 the Donetsk regional prosecutor's office ("the regional prosecutor's office") annulled the above ruling as premature and based on an incomplete investigation.

28. On 5 May 2009 the Kalyninskyy prosecutor's office again refused to institute criminal proceedings against M. It was stated in the ruling that the forensic medical expert evaluations of 14 August and 9 October 2008 refuted the second applicant's allegations. Furthermore, the prosecutor noted that the second applicant had refused to give her account during the additional investigation.

29. The second applicant challenged the above refusal before the Prosecutor General's Office ("the PGO") on at least three occasions (on 20 July and 8 October 2009 and on 4 January 2010). Her complaints were forwarded to the regional prosecutor's office.

30. On 21 February 2010 the regional prosecutor's office wrote to her that it agreed with the lower prosecution authority's decision. As further stated in the letter, it was open for her to challenge that decision before the courts if she so wished.

B. Criminal proceedings against the first applicant

31. In May 2008 the first applicant underwent knee surgery. From 8 August to 2 September 2008 he underwent a follow-up course of outpatient medical treatment in Horlivka Hospital.

32. On an unspecified date (illegible in the available copy) the Kalyninskyy prosecutor's office sent a summons to the first applicant at his registered residence (his mother's home), instructing him to come to the prosecutor's office on 5 September 2008. It is not clear whether it was issued in the context of the criminal investigation in respect of the

complaints by the first applicant's wife (see above) or whether it was rather related to the subsequent criminal proceedings against him.

33. On 10 September 2008 the Kalyninskyy prosecutor's office opened a criminal case against the first applicant on suspicion of abuse of power and forgery committed in his capacity as a law-enforcement official in January 2008. More specifically, on 14 March 2008 the local court had informed the prosecutor of some factual inaccuracies in a report on an administrative (minor) offence, which had been drawn up by the first applicant. The latter was suspected of having forged that report.

34. On the same date the Kalyninskyy prosecutor's office informed the first applicant of the above decision by a letter sent to the address where he was *de facto* living with his wife (separately from their parents). It was also noted in the letter that he had to come to the prosecutor's office to receive a copy of the decision and for questioning.

35. Still on the same date, 10 September 2008, the prosecutor ordered the Kalyninskyy police to ensure the first applicant's presence for investigative measures. On 12 September 2008 the police informed the investigator that it was impossible to comply with the above order given that the first applicant had been found neither at the address of his usual residence nor at his mother's flat. When they had also gone to enquire about his whereabouts with his parents-in-law, the third applicant "had attacked them hysterically", which made the police believe that the first applicant might be hiding there.

36. On 13 September 2008 a judge of the Kalyninskyy Court ordered the first applicant's arrest with a view to bringing him before the court to examine the issue of a preventive measure in his regard.

37. On 19 September 2008 the first applicant was declared wanted by the police.

38. On the same date he wrote to the regional prosecutor's office that, following the incident with his wife, the Kalyninskyy police had been threatening him and his family with his dismissal, criminal prosecution, or even a fatal accident. He therefore sought that the Kalyninskyy prosecutor withdraw from the case. He also submitted that he was scared even to go to the hospital as some suspicious-looking persons had been loitering near his home. The first applicant indicated as his address that of his mother.

39. On 22 September 2008 the investigator visited the first applicant's mother (the fourth applicant) at her home and asked her whether she knew where the first applicant was. She stated that he had been living separately from her for about two years and that she was not aware of his whereabouts.

40. On 24 September 2008 she sent to the investigator the first applicant's request of 23 September 2008 to admit her to the proceedings as his representative and to give her a copy of the ruling of 10 September 2008 initiating the criminal investigation against him. In substantiation of that

request, the first applicant stated that he was restricted in his movement following knee surgery.

41. On 29 September 2008 the chief of medicine of Horlivka Hospital informed the investigator, in reply to the latter's enquiry, that the last time the first applicant had come to the hospital had been 15 September 2008 and that the hospital administration did not know how he could be reached.

42. On 1 October 2008 the internal security unit of the Kalyninskyy police wrote to the prosecutor that it had information that the first applicant had been secretly visiting the flats of his parents and parents-in-law.

43. On 3 October 2008 the Kalyninskyy prosecutor wrote to the first applicant at his mother's address, indicating that the latter could not be admitted in the proceedings as his representative at such an early stage. The prosecutor indicated that the first applicant was on the wanted list and that he needed to show up to receive copies of the rulings in respect of the institution of the criminal proceedings against him and for his questioning.

44. On 31 October 2008 the Kalyninskyy prosecutor sent another letter to the first applicant, informing him that another criminal case had been opened against him on that date on suspicion of abuse of power by a law-enforcement official and forgery in office and that he had to come to the prosecutor's office to get a copy of that decision and for questioning.

45. During the period from October 2008 to January 2010 further eight criminal cases were opened against the first applicant on additional counts of abuse of office, as well as on suspicion of bribe-taking. He was suspected of having committed those offences in order to report better results to his superiors and thus be entitled to additional remuneration and promotions. The first applicant was informed of each such decision by a letter sent to his mother's address.

46. On 25 March 2009 the first applicant complained to the PGO that his numerous requests for the Kalyninskyy prosecutor to withdraw had been ignored. He further submitted that he required protection measures as "a person who had reported a crime". Lastly, the first applicant requested that the prosecutor annul the decision on placing him on the wanted list "so that [he] could defend himself against the criminal charges and continue [his] medical treatment".

47. On 13 May and 26 June 2009 the regional prosecutor's office wrote to the first applicant that his complaints had been dismissed as unsubstantiated.

48. On 29 June 2009 the first applicant was arrested at the address where he lived with his wife. The investigator relied on Articles 106 and 115 of the Code of Criminal Procedure (hereinafter "the CCP", see paragraph 78 below) and substantiated the arrest as follows: the first applicant had been on the wanted list since 19 September 2008, had impeded the establishment of the truth and had committed serious criminal offences. It was also noted in the arrest report that the first applicant was suspected of offences under

Articles 364 § 3 (abuse of power or office by a law-enforcement official), 366 § 1 (forgery in office) and 368 § 2 (bribe-taking) of the Criminal Code. The investigator drew up a report on the explanation to the first applicant of his procedural rights. The first applicant refused to sign it. He also refused to make any submissions as regards the charges against him.

49. On 30 June 2009 the Kalyninskyy Court extended the term of the first applicant's arrest to ten days on the grounds that the case file lacked information about his character. That ruling was not amenable to appeal.

50. On 3 July 2009 the same court ordered the first applicant's pre-trial detention as a preventive measure, "having regard to the seriousness and circumstances of the crimes committed and the character of [the first applicant]", without further details.

51. On 6 July 2009 the first applicant appealed. He submitted that his remand in custody was not based on sufficient and relevant reasons. He noted that he had been arrested at his home, where he had been living for over two years, and that he had not absconded. He noted that the reasoning in support of his pre-trial detention had been overly formalistic. Thus, although the court had referred to his character, it had failed to specify what exactly in his character had justified his detention as the most appropriate preventive measure.

52. On 21 July 2009 the Donetsk Regional Court of Appeal ("the Court of Appeal") quashed the ruling of 3 July 2009 and released the first applicant subject to an undertaking not to leave the town. It found that the first-instance court had not given reasons as to the necessity to choose the strictest preventive measure.

53. On 17 November 2011 the Kalyninskyy Court found the first applicant guilty of fraud, abuse of power in his capacity of a law-enforcement official, forgery causing grave consequences, and bribe-taking, and sentenced him to seven years' imprisonment with a ban to occupy posts in law-enforcement authorities, and confiscation of his personal property.

54. On 6 March 2012 the Court of Appeal quashed the judgment in the part concerning the forgery charge and remitted it to the first-instance court for a fresh examination. It upheld the judgment in the remaining part, having slightly reclassified some of the charges and having reduced the term of the first applicant's imprisonment to six years.

55. On 9 October 2012 the Kalyninskyy Court again found the applicant guilty of forgery causing grave consequences and sentenced him to four years' imprisonment. The final sentence was six years' imprisonment, as the most severe of the applicant's punishments absorbed the more lenient one. In the absence of any appeals, the judgment became final.

56. On 1 August 2013 the Higher Specialised Court for Civil and Criminal Matters quashed the appellate court's ruling of 6 March 2012 in the part concerning the first applicant's conviction (the part concerning the

remittal of the case to the first-instance court remained in force) and remitted the case for fresh appellate examination.

57. On 3 December 2013 the appellate court upheld the judgment of 17 November 2011 in so far as it concerned the first applicant's conviction for abuse of power in his capacity as a law-enforcement official and his sentencing to six years' imprisonment. As regards the other charges (with the exception of that dealt with by the judgment of 9 October 2012 – see paragraph 55 above), they were slightly reclassified and the first applicant had the penalty in respect of that part removed.

58. The case file does not contain any further information as regards the criminal proceedings against the first applicant.

C. Police searches of the flats of the third and fourth applicants and related events

59. On 10 September 2008 the investigator applied to the Kalyninskyy Court for authorisation to search the first applicant's registered residence (the flat of the fourth applicant). It was stated in the application that on 27 January 2008 the first applicant had drawn up a report on an administrative (minor) offence in respect of unauthorised street trading by a private individual. As subsequently established, the information in that report had not been accurate, which had led to the institution of criminal proceedings against the first applicant on suspicion of abuse of power and forgery. The investigator considered that "some items and documents relevant for establishing the truth" in the case could be found in the first applicant's residence.

60. On 11 September 2008 the Kalyninskyy Court in a final ruling, allowed the above application, having reiterated the investigator's reasoning and description of the search's scope. It relied on Article 177 of the CCP (follow the references in paragraph 78 below).

61. On 12 September 2008 the investigator applied to the Kalyninskyy Court for authorisation to search the second applicant's registered residence (the flat of the third applicant). The text of the application was identical to that submitted on 10 September 2008 (see paragraph 59 above).

62. On the same day the police knocked at the third applicant's door. She and her husband were at home, but did not let the police in.

63. The third applicant's account of the events of 12 September 2008 is as follows. A group of nine to ten persons, including police officers and some suspicious-looking persons, came to her flat. They knocked at the entrance door in a violent manner, demanding to be let in. The third applicant's husband went out and asked them for a search warrant or another document authorising their actions, but no such document was produced. The police threatened the third applicant and her husband that they would break in and that they would find a pretext to criminally

prosecute the entire family. They stayed on the stairs and in the yard and shouted for about three hours.

64. According to the Government's version, three police officers went to the third applicant's flat. They informed her about the criminal proceedings against the first applicant and enquired as to his whereabouts. As she and her husband refused to cooperate, the police left.

65. On 13 September 2008 the Kalyninskyy Court allowed the investigator's application of 12 September 2008 (see paragraph 61 above). Its ruling was identical to that delivered on 11 September 2008 (see paragraph 60 above).

66. On the same day the police carried out a search at the flat of the third applicant. According to her, they broke the entrance door using an electric saw. The third applicant further alleged that the police had not shown a search warrant to her. Two attesting witnesses were present. According to the third applicant, they were acquaintances of the police officers.

67. As indicated in the search report, it lasted from 5.20 p.m. to 7.04 p.m. The police seized a number of documents related to the first applicant's work. Furthermore, they seized a mobile telephone, which did not have a SIM card, together with its box. Lastly, they found and seized a package appearing to contain cannabis. According to the third applicant, it had been planted by the police.

68. On 16 September 2008 the police conducted a search of the flat of the fourth applicant. They discovered and seized some documents which were deemed to be related to the criminal investigation in respect of the first applicant. According to the first and fourth applicants, those documents had been brought there by the police themselves the previous day. The fourth applicant submitted that the officers, whom she knew as colleagues of her son, had explained to her that, following an attack on their police station, they had not had a safe place to store the documents, which had been intended in any event for handing over to the first applicant.

69. On 23 September 2008 an expert established that the package discovered in the third applicant's flat on 13 September 2008 contained cannabis. On 2 October 2008 the Kalyninskyy police refused to institute criminal proceedings in that regard, having held that it had been impossible to establish to whom the cannabis might have belonged.

70. On 7 October 2008 the Kalyninskyy Court allowed another application to search the first applicant's registered residence (the flat of the fourth applicant) given that the investigator had information that the first applicant might be hiding there.

71. On 11 February 2009 the police conducted a search of the fourth applicant's flat on the basis of the court ruling of 7 October 2008. As indicated in the search report, the police were searching for "items, valuables and documents related to the criminal activity of [the first

applicant]". The search did not discover anything of interest for the investigation.

72. The third and fourth applicants requested many times that the Kalyninskyy Court provide them with copies of the rulings authorising the searches of their flats. The president of the court replied that the searches had been carried out in compliance with the CCP and that sending a copy of the respective court rulings was not provided for by the legislation.

73. The third and fourth applicants also complained many times to the prosecution authorities of the unlawfulness of the searches. They submitted, in particular, that the police had been rude and intrusive, that the attesting witnesses had not been independent, and that it was not clear what the police had actually been looking for.

74. On 23 December 2008 the Horlivka prosecutor's office refused to open a criminal case in respect of the police officers involved in the operation of 12 September and the searches of 13 and 16 September 2008, with the generally couched reasoning that there had been no violations of law. It appears that the applicants were unaware of that decision.

75. On 17 June 2009, following complaints by the third and fourth applicants, the Kalyninskyy prosecutor's office refused to institute criminal proceedings against the judge of the Kalyninskyy Court in respect of the rulings authorising the searches of their flats.

76. On 20 November 2009 the third applicant got acquainted with the ruling of the Kalyninskyy Court of 13 September 2008 (see paragraph 65 above). It is not known whether, and if so when, the fourth applicant got access to the respective rulings of 11 September and 7 October 2008 (see paragraphs 60 and 70 above).

D. Other facts

77. On 5 June 2006 a local heating company initiated civil proceedings against the first and fourth applicants, who had their registered domicile at the same address, for debt recovery. The domestic courts found against the applicants. On 19 May 2008 the Supreme Court refused to examine an appeal on points of law by the first and fourth applicants on the grounds that they had not paid the court fees.

II. RELEVANT DOMESTIC LAW

78. The relevant provisions of the Code of Criminal Procedure (1960), as in force at the material time, can be found: as regards the obligation to investigate a crime – in *Kaverzin v. Ukraine* (no. 23893/03, § 45, 15 May 2012); as regards arrest of a suspect by the body of inquiry – in *Strogan v. Ukraine* (no. 30198/11, § 45, 6 October 2016); and as regards search of a house or other property – in *Vasylchuk v. Ukraine* (no. 24402/07, §§ 28-30,

13 June 2013) and *Bagiyeva v. Ukraine* (no. 41085/05, §§ 39 and 40, 28 April 2016).

79. The relevant provisions of the Civil Code (2003) and the Compensation Act (1994), as worded at the material time, are quoted in the judgment in the case of *Yaroshovets and Others v. Ukraine* (nos. 74820/10 and 4 others, §§ 60 and 62, 3 December 2015).

THE LAW

I. *LOCUS STANDI* OF THE FIRST APPLICANT TO MAINTAIN THE COMPLAINTS OF THE FOURTH APPLICANT AFTER THE LATTER'S DEATH

80. The fourth applicant complained under Articles 8 and 13 of the Convention about the searches of her flat.

81. After the death of the fourth applicant in December 2010, her son, the first applicant, expressed wish to pursue the above complaints on her behalf.

82. The Government accepted the first applicant's *locus standi*.

83. The Court does not find any reason to hold otherwise (see *Misan v. Russia*, no. 4261/04, §§ 29-31, 2 October 2014).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE SECOND APPLICANT

84. The second applicant complained that she had been ill-treated by a police officer and that there had been no effective domestic investigation into the matter. While the second applicant relied on Articles 3 and 13 of the Convention, the Court considers it appropriate to examine her complaint under Article 3 only, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

1. Compatibility ratione personae

85. The Government submitted that, although M. was a police officer, at the time of the events he had been off duty and had been wearing plain clothes. Accordingly, in their opinion, he had been acting as an ordinary private individual not vested with any official powers and the State had not been responsible for his actions. The Government therefore invited the

Court to declare this complaint incompatible *ratione personae* with the Convention.

86. The second applicant contested the Government's argument. She maintained that M. had relied on his status as a police officer to stop her and subject her to a body search.

87. It is a well-established principle of the Court's case-law that a Contracting State will be responsible under the Convention for violations of human rights caused by acts of its agents carried out in the performance of their duties (see *V.K. v. Russia*, no. 68059/13, § 174, 7 March 2017). However, a State may also be held responsible even where its agents are acting *ultra vires* or contrary to instructions (see *Moldovan and Others v. Romania (no. 2)*, nos. 41138/98 and 64320/01, § 94, ECHR 2005-VII (extracts)). In order to establish whether a State can be held responsible for the unlawful actions of its agents taken outside their official duties, the Court needs to assess the totality of the circumstances and consider the nature and circumstances of the conduct in question (see, for example, *Basenko v. Ukraine*, no. 24213/08, § 78, 26 November 2015).

88. Furthermore, the Court has held in its case-law that the States are expected to set high professional standards within their law-enforcement systems and ensure that the persons serving in these systems meet the requisite criteria (see *Sašo Gorgiev v. the former Yugoslav Republic of Macedonia*, no. 49382/06, § 51, ECHR 2012 (extracts)).

89. The Court observes that in the present case, although the second applicant disagreed with the Government's objection, her account of the events was concordant with their factual observation that during the incident M. had been in plain clothes and off duty. In the Court's opinion, however, this circumstance alone is not sufficient to exclude any responsibility of the State for his actions.

90. According to the second applicant, M., whom she knew as a police officer working with her husband, tried to subject her to a body search in a violent manner. Without assessing the credibility of that statement, the Court notes that it suggests that M. attempted to perform a service-related function. As regards M.'s story, he stated that he had taken the second applicant for a person under administrative supervision, that he had intended to talk to her and that the subsequent conflict between them, once he had realised his mistake, had been limited to a verbal exchange (see paragraphs 8 and 10 above). In other words, he submitted that he had been acting in his capacity as a law-enforcement official.

91. It follows that, although the second applicant and M. gave different accounts of the incident, they both linked his behaviour to his professional activity as a police officer. That being so, the Court cannot subscribe to the Government's argument that he was acting purely as a private individual. It therefore dismisses the Government's objection that this complaint is inadmissible *ratione personae* with the Convention provisions.

2. Exhaustion of domestic remedies

92. The Government further submitted that the second applicant had failed to exhaust the domestic remedies in respect of this complaint as she had not challenged before a higher prosecution authority or a court the ruling of the prosecutor's office of 5 May 2009 refusing to institute criminal proceedings against the police officer concerned (see paragraph 28 above).

93. The Government contended that the circumstances of the present case were different from those in the case of *Kaverzin*, in which the Court had held that that the procedures of appeal to hierarchically superior prosecutors and to the courts had not been proved to be capable of providing adequate redress in respect of complaints of ill-treatment by the police and ineffective investigation (see *Kaverzin v. Ukraine*, no. 23893/03, § 97, 15 May 2012). More specifically, the Government observed that in the *Kaverzin* case the Court had criticised the prosecutors' reluctance to take all reasonable steps, in a prompt and expeditious manner, to establish the facts and circumstances pertinent to complaints of ill-treatment and to secure relevant evidence (§ 175). In the Government's opinion, the present case was different because the prosecution authorities had initiated a criminal investigation into the second applicant's complaint without delay, thus putting in place an appropriate framework for all the necessary investigative measures.

94. The second applicant disagreed. She noted that she had complained many times to the domestic authorities about her ill-treatment by M. However, on every occasion it had been decided not to institute criminal proceedings against him. In her opinion, there was nothing in her case to distinguish it from that of *Kaverzin* (ibid.).

95. The second applicant further argued that she and her family had been threatened with a view to making her drop the complaint against M. She submitted in that connection that the institution of numerous sets of criminal proceedings against her husband had in fact been aimed at dissuading her from pursuing her complaint in respect of the incident with M. Likewise, she interpreted the searches conducted at her parents' home as an implicit threat against their family linked to her complaints against M.

96. The Court notes that the second applicant complained about the incident to various domestic authorities on many occasions and, therefore, can be said to have taken sufficient steps at the domestic level prior to raising her complaint before this Court about the refusal to institute criminal proceedings in connection with her allegations of ill-treatment. The authorities were provided with appropriate opportunities to deal with the alleged ill-treatment at the domestic level.

97. As regards the Government's submission that the prosecution authorities demonstrated willingness to investigate the matter by immediate initiation of criminal proceedings, the Court notes that at no point were such criminal proceedings instituted. Instead, there were five refusals to open a

criminal case following the second applicant's complaint, four of which were annulled as premature and not based on sufficient investigation. Furthermore, contrary to the Government's submissions, the second applicant did try to challenge the fifth such refusal, of 5 May 2009, before higher-level prosecution authorities at least three times, but to no avail (see paragraphs 29 and 30 above).

98. Accordingly, the Court is not convinced by the Government's arguments and dismisses their objection based on the rule of exhaustion of domestic remedies.

3. Otherwise as to admissibility

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

B. Merits

1. Alleged ill-treatment of the second applicant

100. The second applicant maintained her complaint that she had been ill-treated by a police officer, whose violent and abusive actions had subsequently been covered up by the law-enforcement and prosecution authorities.

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

102. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof beyond reasonable doubt. Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *V.K.*, cited above, § 170).

103. Turning to the present case, the Court notes that the relevant facts are in dispute between the parties. At the same time, the Court considers it sufficiently established that shortly after midnight on 19 June 2008 there was a conflict between the second applicant and M. There is no evidence, apart from the parties' conflicting statements, as to the origin and scope of the incident. It is noteworthy, however, that M. admitted that it was him who had approached the second applicant (see paragraph 10 above). Furthermore, it is confirmed by medical documents that shortly after that incident the second applicant was diagnosed with hematomata on her neck, concussion and situational neurosis. Moreover, forensic medical experts stated that those injuries could have been inflicted on her at the time and in

the circumstances she alleged (see paragraphs 21 and 25 above). The Court therefore considers that the circumstances of the present case disclose sufficiently strong, clear and concordant inferences in support of the second applicant's allegation of her ill-treatment by the police officer M. (see paragraph 102 above).

104. This conclusion is sufficient for the Court to find a violation of Article 3 of the Convention under its substantive limb.

2. Effectiveness of the investigation

(a) The parties' submissions

105. The second applicant argued that the domestic authorities had not taken any meaningful efforts to establish the truth in her case and that the investigation into her arguable ill-treatment allegation had been undermined by numerous deficiencies.

106. She drew the Court's attention to the documents indicating that her early complaint to the police in that connection had not received any follow-up (see paragraphs 12 and 18 above).

107. The second applicant next submitted that the investigation could not be regarded as independent and impartial given the close links between the local prosecution authorities and the local police, whose officer she had been accusing of her ill-treatment.

108. Lastly, she observed that there had been no full-scale investigation and that her complaint had been examined by means of "pre-investigation" enquiries only. Under that procedure, the investigator could only collect "explanations" from the persons concerned, for the veracity of which the latter bore no responsibility under criminal law.

109. The Government contended that the domestic investigation had been expedient and diligent. They observed that, following the second applicant's complaint to the police on 19 June 2008 immediate steps had been taken with a view to verifying her allegations. The police had gone to her home, but nobody had opened the door to them. The Government emphasised that at that stage the second applicant had not specified that M. had been a police officer.

110. The Government observed that certain police officers had been disciplined for "an inadequate response" to the second applicant's complaints, which had eventually made it impossible to establish some important facts.

111. The Government also pointed out that the second applicant had complained about the incident to the prosecution authorities for the first time only on 25 July 2008 and that she had not cooperated with the investigation.

(b) The Court's assessment

112. The relevant case-law principles are summarised, in particular, in the Court's judgment in the case of *Savitskyy v. Ukraine* (no. 38773/05, §§ 99-101, 26 July 2012).

113. The Court notes that in the present case the second applicant immediately raised her ill-treatment complaint before the police, which, as admitted by the domestic authorities, failed to give it any follow-up (see paragraphs 12 and 18 above). Furthermore, immediately after the incident she applied for medical assistance.

114. Although the Government referred to 25 July 2008 as the date of her first complaint to the prosecution authorities, the Court notes that, according to the case-file material, the second applicant raised such a complaint on 9 July 2008 (see paragraph 15 above). However, it took the prosecution authorities more than a month to order her forensic medical examination. Once carried out on 14 August 2008, that examination was eventually considered incomplete and another examination followed on 9 October 2008 (see paragraphs 21, 24 and 25 above).

115. The Court notes that the findings of both above-mentioned examination reports were overall concordant with the second applicant's allegations as regards the timing and origin of her injuries. The investigator, however, decided otherwise: that the reports had refuted her allegations, without further explanations. In the Court's opinion, that conclusion contradicted the case-file material and lacked any grounds.

116. The Court further observes that, in dismissing the second applicant's complaint, the investigator also relied on the statements of the police officer whom she had been accusing of ill-treatment, supported by the account of his friend. Although the second applicant and her own friend had given a different account of the events, no efforts were taken to resolve the contradictions, for example, by way of a confrontation between the police officers and the second applicant and a reconstruction of the events. In any event, such a measure would have been impossible without instituting criminal proceedings.

117. The Court notes in this connection that, as pointed out by the second applicant, the prosecutor's office examined her ill-treatment complaints by means of repeated rounds of pre-investigation enquiries; no full-scale criminal investigation was ever initiated. The Court has previously held in various contexts that this investigative procedure does not comply with the principles of an effective remedy, in particular because the enquiring officer can take only a limited number of procedural steps within that procedure and a victim's procedural status is not properly formalised (see, for example, *Serikov v. Ukraine*, no. 42164/09, § 82, 23 July 2015, with numerous further references).

118. The above considerations lead the Court to conclude that there was no effective domestic investigation into the second applicant's allegation of

ill-treatment. That being so, the Court does not consider it necessary to further analyse whether that investigation complied with the requirements of independence and public scrutiny.

119. There has therefore been a violation of Article 3 of the Convention under its procedural limb.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION IN RESPECT OF THE FIRST APPLICANT

120. The first applicant complained that his arrest on 29 June 2009 and his subsequent detention had been unlawful. Although he relied on Article 5 §§ 1 and 3 of the Convention, the Court considers that his complaint falls to be examined under Article 5 § 1 only, which reads as follows in the relevant part:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ..."

A. Admissibility

1. Exhaustion of domestic remedies

(a) The parties' submissions

121. The Government argued that it had been open to the first applicant to claim compensation at the national level in respect of his deprivation of liberty. They observed that by its decision of 21 July 2009 the appellate court had substituted the first applicant's detention with a less intrusive preventive measure, namely an undertaking not to abscond. It was explicitly stated in the decision in question that the first applicant's detention had been unjustified. In the Government's opinion, that provided sufficient grounds for the first applicant to claim compensation under Article 1176 of the Civil Code or section 1 of the Compensation Act (see paragraph 79 above), which he had failed to do. Accordingly, the Government contended that he had not complied with the requirement to exhaust domestic remedies before bringing his case to this Court.

122. The first applicant disagreed. He submitted that, in the absence of an explicit judicial finding of the unlawfulness of his detention, there were no legal preconditions for him to claim compensation at the domestic level in that regard. He further noted that, while the appellate court had criticised

the reasoning of the first-instance court's ruling remanding him in custody starting from 3 July 2009, it had not concerned his detention from 29 June to that date. Lastly, the first applicant observed that the Government had failed to cite any domestic case-law in support of their submission. Accordingly, he argued that he had had no effective domestic remedies to exhaust.

(b) The Court's assessment

123. The Court notes that the rule of exhaustion of domestic remedies is based on the assumption, reflected in Article 13 of the Convention, with which it has close affinity, that the domestic legal system provides an effective remedy which can deal with the substance of an arguable complaint under the Convention and grant appropriate relief. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 93, 10 January 2012, with further references).

124. Where a violation of Article 5 § 1 is in issue, Article 5 §§ 4 and 5 of the Convention constitute *leges speciales* in relation to the more general requirements of Article 13. Accordingly, in order to decide whether an applicant was required to make use of a particular domestic remedy in respect of his or her complaint under Article 5 § 1 of the Convention, the Court must evaluate the effectiveness of that remedy from the standpoint of the aforementioned provisions (see *Ruslan Yakovenko v. Ukraine*, no. 5425/11, § 30, ECHR 2015).

125. Turning to the present case, the Court notes that the Government's objection concerns the applicant's failure to resort to a compensatory remedy only. Accordingly, the existence of such a remedy in compliance with Article 5 § 5 of the Convention is to be examined.

126. The Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 182, ECHR 2012, with further references). The right to compensation set forth in paragraph 5 therefore arises only if a breach of one of its other four paragraphs has been established, directly or in substance, by the Court or by the domestic courts (see, for example, *Svetoslav Dimitrov v. Bulgaria*, no. 55861/00, § 76, 7 February 2008). Furthermore, the effective enjoyment of the right to compensation guaranteed by Article 5 § 5 must be ensured with a sufficient degree of certainty (see *Lobanov v. Russia*, no. 16159/03, § 54, 16 October 2008, with further references).

127. The Court is not convinced by the Government's argument that the appellate court's criticism of the reasoning advanced in justification of the

first applicant's detention could subsequently be regarded by the domestic courts as unambiguous acknowledgment of its unlawfulness within the meaning of section 1 of the Compensation Act (follow the reference in paragraph 79 above). In any event, the Government have not provided any domestic case-law to that effect.

128. In so far as the Government referred, in the alternative, to Article 1176 of the Civil Code as a possible legal basis for the first applicant to claim compensation, the Court has already held in other cases against Ukraine that that provision was worded in quite general terms, neither establishing legal preconditions for claiming compensation nor providing for specific mechanisms or procedures (see, for example, *Ruslan Yakovenko*, cited above, § 37).

129. In such circumstances, the Court cannot accept the Government's argument that the remedies advanced by them were effective and had to be pursued by the applicant. The Court therefore dismisses the Government's objection based on non-exhaustion of domestic remedies.

2. Other considerations as to admissibility

130. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

131. The first applicant submitted that he had been arrested without a reasoned court decision, contrary to the relevant domestic legislation. He further argued that he had not absconded and had been living at his usual address which had been known to the authorities. He observed that he had regularly corresponded with the investigator. At the same time, he admitted that he "had not come to see the investigating authorities out of fear for his life and physical integrity".

132. In so far as his detention from 30 June to 3 July 2009 was concerned, the first applicant contended that the pretext relied on by the authorities for its justification had been entirely artificial as the investigation had had sufficient information about his character.

133. And, lastly, he observed that the absence of any valid reasons for his subsequent detention – from 3 to 21 July 2009 – had been acknowledged by the appellate court in its ruling of that latter date.

134. Accordingly, the first applicant maintained that the entire period of his detention, from 29 June to 21 July 2009, had been contrary to the requirement of lawfulness enshrined in Article 5 § 1 of the Convention.

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

2. The Court's assessment

(a) General case-law principles

136. The Court reiterates that in order to comply with Article 5 § 1, the detention in issue must first of all be "lawful", including the observance of a procedure prescribed by law; in this connection the Convention refers back essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. It requires in addition, however, that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness. Furthermore, the detention of an individual is such a serious measure that it is only justified where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained. That means that it does not suffice that the deprivation of liberty is in conformity with national law; it must also be necessary in the circumstances (see *Hadžimejlić and Others v. Bosnia and Herzegovina*, nos. 3427/13 and 2 others, § 52, 3 November 2015, with further references).

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

(i) Arrest on 29 June 2009

137. The Court notes that one of the main reasons for the first applicant's arrest was the fact that he had been declared wanted by the police.

138. The Court has held in its case-law that the mere fact of being on a "wanted list" does not mean that the person has gone into hiding. The important factor in measuring the risk of absconding is the actual behaviour of the suspect, and not his formal status as a "person on a wanted list" (see *Yevgeniy Gusev v. Russia*, no. 28020/05, § 85, 5 December 2013).

139. The Court cannot accept the first applicant's argument that he had not been hiding from the investigation and that the decision to put him on a wanted list had been unjustified. It is established that he was aware both of the criminal proceedings against him and of the investigator's intention to question him. However, as is apparent from the facts of the case and has been admitted by the first applicant himself (see, in particular, paragraphs 37-47 above), he took efforts not to be seen by the investigating authorities, allegedly fearing for his safety. While he obviously did have some conflicts with his colleagues, his fears turned out not to be fully substantiated. Thus, he did not raise any complaints in that regard after his arrest, there were no incidents with his involvement and he was eventually

released subject to an undertaking not to leave the town (see, in particular, paragraphs 51-52 above). Overall, prior to his arrest, the first applicant had succeeded in "not appearing before the investigator" from 10 September 2008 to 29 June 2009, that is to say for over nine months. In the Court's opinion, the investigating authorities had good reasons to consider such behaviour as absconding.

140. Nor does the Court agree with the first applicant's submission that his arrest lacked prior judicial scrutiny; on 13 September 2008 the Kalyninskyy Court ordered his arrest with a view to bringing him before the court (see paragraph 36 above).

141. Accordingly, having regard to all the circumstances of the present case, the Court does not see any indication of unlawfulness or arbitrariness as regards the applicant's arrest on 29 June 2009.

142. There has therefore been no violation of Article 5 § 1 of the Convention in this regard.

(ii) Detention from 30 June to 3 July 2009

143. The Court notes that, once the first applicant was brought before a court on 30 June 2009, the court held that it was unable to take any decision on the preventive measure for the lack of information about his character. As a result, the first applicant's detention was extended to ten days. His detention under that ruling *de facto* lasted until 3 July 2009.

144. The Court observes that the only reason for extending the first applicant's detention was the absence of information on his character (compare *Barilo v. Ukraine*, no. 9607/06, §§ 88-98, 16 May 2013). Having regard to the fact that the first applicant was a staff member of the police and that the latter had been investigating his case already for about ten months by the time, the Court considers that the investigation had had ample opportunity to collect information about his character. It therefore agrees with the first applicant's argument that his detention during that period was based on an artificial pretext.

145. There has therefore been a violation of Article 5 § 1 of the Convention in respect of the first applicant's detention from 30 June to 3 July 2009.

(iii) Detention from 3 to 21 July 2009

146. The Court notes that the reasoning of the first applicant's pre-trial detention ordered on 3 July 2009 was formalistic and lacked any factual details. That was also the criticism by the Court of Appeal in its ruling of 21 July 2009, by which the first applicant was released.

147. That being so, the Court considers that in the circumstances of the present case the domestic authorities failed to advance comprehensive reasoning to justify the first applicant's deprivation of liberty during the period in question, which therefore cannot be regarded as having been free

from arbitrariness (see *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, §§ 198 and 199, 21 April 2011).

148. Accordingly, the Court finds that there has been a violation of Article 5 § 1 of the Convention on that account as well.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION IN RESPECT OF THE POLICE SEARCHES OF THE THIRD AND FOURTH APPLICANTS' HOMES ON 13 AND 16 SEPTEMBER 2008

149. The third and fourth applicants complained of a violation of their right to respect for their homes as a result of the searches at their flats on 13 and 16 September 2008. They relied on Article 8 of the Convention which reads as follows, in so far as relevant:

> "1. Everyone has the right to respect for his private ... life, his home ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

150. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

151. The third and fourth applicants submitted that the search warrants had been couched in excessively broad terms and that they had not been given access to them in due time. They further argued that the police had acted in a rude and abusive manner and that the attesting witnesses had not been independent. The third applicant also complained that the police had broken the entrance door and had planted drugs in her flat.

152. The Government admitted that the impugned searches had amounted to interference with the third and fourth applicants' right to respect for their homes. They contended, however, that that interference had been lawful and justified, given that it had been based on Article 177 of the CCP and authorised by a court. The Government further submitted that the searches had pursued the legitimate aim of establishing the whereabouts of

the first applicant and uncovering evidence relating to the criminal proceedings against him.

2. The Court's assessment

153. It is common ground between the parties that the searches complained of amounted to interferences with the third and fourth applicants' right to respect for their homes, and the Court finds no reason to hold otherwise.

154. The Court notes that the searches had a legal basis in domestic law, as they were based on Article 177 of the CCP (see paragraphs 60 and 78 above).

155. The Court further observes that the searches at issue were ordered in the context of a criminal investigation of suspected abuse of power and forgery by a law-enforcement official. They therefore served a legitimate aim, namely the prevention of crime. It remains to be examined whether the interferences were "necessary in a democratic society".

156. The Court reiterates that where States consider it necessary to resort to measures such as searches of residential premises in order to obtain evidence of offences it will assess whether the reasons adduced to justify such measures were relevant and sufficient and whether the proportionality principle has been adhered to. The Court will also explore the availability of effective safeguards against abuse or arbitrariness under domestic law and check how those safeguards operated in the specific case under examination. Elements to be taken into consideration in this regard include, but are not limited to, the manner and circumstances in which the order was issued, in particular further evidence available at that time, as well as the content and scope of the order, having particular regard to the safeguards taken in order to confine the impact of the measure to reasonable bounds (see *Buck v. Germany*, no. 41604/98, §§ 44-45, ECHR 2005-IV).

157. Turning to the present case, the Court notes that the searches of the third and fourth applicants' homes were conducted under warrants issued by the Kalyninskyy Court and were therefore subject to judicial scrutiny. However, this mere fact will not in itself necessarily amount to a sufficient safeguard against abuse (see *Cronin v. the United Kingdom* (dec.), no. 15848/03, 6 January 2004). In assessing whether the State's interference was proportionate, the Court must consider the particular circumstances of each case (see, for example, *Camenzind v. Switzerland*, 16 December 1997, § 45, *Reports of Judgments and Decisions* 1997-VIII).

158. The Court notes that, in describing the scope of the proposed search operations in respect of both the third and fourth applicants' homes, the domestic court referred to unspecified "items and documents relevant for establishing the truth" in the criminal investigation in respect of a third person (the first applicant). It is noteworthy that both related rulings, of 11 and 13 September 2008, had identical reasoning. They noted that the

criminal case in question concerned suspected forgery by the first applicant in January 2008 (that is to say eight months earlier) of a report on an episode of unauthorised street trading by a private individual (see paragraphs 59, 60 and 65 above). The court did not provide any details as to the items or documents to be looked for, even though it could have done so given the narrow scope of the criminal case (see and compare with *Bagiyeva v. Ukraine,* no. 41085/05, § 52, 28 April 2016).

159. The Court has criticised on many occasions the vagueness and excessively broad terms of search warrants giving the authority executing them unjustified discretion in determining the real scope of the search have been earlier criticised by the Court (see, among many other authorities, *Iliya Stefanov v. Bulgaria*, no. 65755/01, § 41, 22 May 2008, and *Kolesnichenko v. Russia*, no. 19856/04, § 33, 9 April 2009). Similarly, having regard to the broad terms of the two search warrants in the present case, the Court does not consider that prior judicial authorisation of the searches proved to be an appropriate safeguard against the possible abuses of power during their execution.

160. In the light of the foregoing the Court concludes that there has been a violation of Article 8 of the Convention in respect of both the third and fourth applicants, without considering it necessary to deal with all the other arguments raised by them in support of their complaint under this head.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 8 IN RESPECT OF THE THIRD AND FOURTH APPLICANTS

161. The third and fourth applicants also complained that they had not had an effective domestic remedy in respect of their above complaints under Article 8. Article 13 of the Convention relied on reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

162. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

163. The third and fourth applicants maintained that there had been no meaningful response by the domestic authorities to their numerous

complaints in respect of the impugned searches of 13 and 16 September 2008.

164. The Government contested those arguments. In their opinion, the domestic authorities had examined the applicants' complaints in a diligent manner and the mere fact that they had been dismissed as being without basis could not be interpreted as an indication of the lack of an effective domestic remedy at the applicants' disposal.

165. The Court reiterates that Article 13 requires an effective remedy in domestic law in respect of grievances which can be regarded as "arguable" in terms of the Convention (see, for example, *Keegan v. the United Kingdom*, no. 28867/03, § 40, ECHR 2006-X).

166. In the light of the above finding of a violation of Article 8 (see paragraph 160 above), the Court considers that the third and fourth applicants' complaints were arguable. Accordingly, it must be determined whether the Ukrainian legal system afforded them an "effective" remedy which allowed the competent national authority to both deal with the complaints and grant appropriate relief (see, for example, *Camenzind*, cited above, § 53).

167. It has to be noted at the outset that the search warrants issued by the court were not open to appeal. As regards the possibility of instituting civil proceedings against the police officers, the Court found a violation of Article 13 of the Convention in the case of *Vladimir Polishchuk and Svetlana Polishchuk v. Ukraine* (no. 12451/04, §§ 54 and 55, 30 September 2010), where a civil claim in respect of an unlawful search had not been considered by the domestic courts, mainly because the claimant had not been directly involved in the relevant criminal proceedings.

168. In the present case, the third and fourth applicants were likewise not parties to the criminal proceedings in which the searches were ordered. The Government did not submit any examples of domestic judicial practice which could suggest that they had been in a position to lodge a separate civil claim. The Court concludes therefore that a separate civil action was not sufficiently certain in practice and, accordingly, cannot be regarded as an effective remedy.

169. The Court further notes that the Government did not point to any other avenue which the third and fourth applicants could have used at the domestic level to raise the issues of the unlawful searches and obtain appropriate redress.

170. As regards the third and fourth applicants' attempts to have the officers prosecuted, the Court does not consider that in the circumstances of the instant case the application of criminal-law sanctions was indispensable for the appropriate protection of the applicants' rights against unlawful searches (see *Golovan v. Ukraine*, no. 41716/06, § 72, 5 July 2012). In any event, there is no indication that the applicants' criminal complaints received any meaningful follow-up.

171. The Court thus concludes that the third and fourth applicants did not have an effective remedy in respect of their above complaints under Article 8 of the Convention. There has therefore been a violation of Article 13 of the Convention.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

172. The first applicant also complained under Article 5 § 2 that he had not been informed of the reasons for his arrest and the charges against him. The second applicant complained under Article 5 that M.'s actions had amounted to unlawful deprivation of her liberty. The third applicant complained that the police operation of 12 September 2008 had been in breach of her rights under Article 8 of the Convention. And the fourth applicant complained under Article 8 about the search at her flat of 11 February 2009.

173. Having regard to the facts of the case, the submissions of the parties and its findings under Article 5 in respect of the first applicant (see paragraphs 142, 145 and 148 above), under Article 3 in respect of the second applicant (see paragraphs 104 and 119 above) and under Articles 8 and 13 in respect of the third and fourth applicants (see paragraphs 160 and 171 above), the Court considers that it has examined the main legal questions raised in the present application and that there is no need to give a separate ruling on the admissibility and merits of the above-mentioned additional complaints (see, for example, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

174. The Court observes, however, that the first applicant additionally complained under Article 3 of the Convention that he had been subjected to "psychological torture" by the police. The Court notes that the first applicant did not make any specific allegations showing that he had suffered treatment proscribed by Article 3 of the Convention, and that the mere institution of criminal proceedings against a person and his/her detention do not call that provision into play. Accordingly, this complaint must be dismissed under Article 35 §§ 3 (a) and 4 of the Convention as being manifestly ill-founded.

175. Furthermore, relying of Articles 6 and 7 of the Convention, the first applicant raised a number of complaints about the alleged unfairness of the criminal proceedings against him. He also complained, under Article 8 of the Convention and Article 1 of Protocol No. 1, that, in the course of those proceedings, his medical file, the system block of his computer and the number plate from his car had been seized. The Court notes that the first applicant did not provide the Court with any information about the developments in and the completion of the proceedings in question. It appears from the case-file materials (see, in particular, paragraphs 6 and 55

above) that the verdict in his case was delivered by the first-instance court and became final in the absence of any appeals. Nor did the first applicant provide any information as to whether he had challenged the impugned seizures or whether he had undertaken any steps for the return of the items seized. It follows that this part of the application should be rejected for non-exhaustion of domestic remedies, in compliance with Article 35 §§ 1 and 4 of the Convention.

176. Furthermore, the first and fourth applicants complained that the unrelated civil proceedings initiated by the heating company against them (see paragraph 77 above) had been unfair and lengthy and that they had not had access to the Supreme Court. Given that the applicants had not challenged the lowers courts' decisions before the Supreme Court in compliance with the existing formalities, their complaint about the alleged unfairness of the proceedings should be dismissed for non-exhaustion of domestic remedies under Article 35 §§ 1 and 4 of the Convention. As regards their complaint of the lack of access to the Supreme Court, they did not show that the requirement to pay the court fee had been unreasonable or had imposed a heavy financial burden on them. Accordingly, this complaint should be declared inadmissible as being manifestly ill-founded. The Court dismisses for the same reason the complaint of the first and fourth applicants about the length of the proceedings in question. In particular, it took the domestic courts less than two years for the examination on the merits by the courts of two instances and the examination of procedural issues by the Supreme Court.

177. Lastly, the third applicant complained under Article 8 of the Convention and Article 1 of Protocol No. 1 about the alleged seizure by the police of a mobile telephone belonging to her adult granddaughter. The Court notes that the third applicant did not claim to be a victim of the alleged violations, whereas her adult granddaughter did not complain to the Court. That being so, these complaints should be declared inadmissible under Article 35 §§ 3 (a) and 4 of the Convention as being incompatible *ratione personae* with the provisions of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

178. 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

179. Referring to the approximate estimation of the costs of the second applicant's medical examinations and treatment following the incident of 19 June 2008, as well as the repairs to the entrance door to the third applicant's flat that had allegedly been broken by the police on 13 September 2008, the applicants claimed 1,000 euros (EUR) jointly in respect of pecuniary damage.

180. The applicants also claimed jointly EUR 40,000 in respect of non-pecuniary damage.

181. The Government contested the above claims as exorbitant and unsubstantiated.

182. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim.

183. As regards non-pecuniary damage, having regard to the nature of the violations found in respect of each applicant, the Court awards the following amounts in respect of non-pecuniary damage, plus any tax that may be chargeable: EUR 4,000 to the first applicant, EUR 5,000 to the second applicant, EUR 2,000 to the third applicant, and EUR 2,000 in respect of the violations of the fourth applicant's rights.

B. Costs and expenses

1. Legal costs incurred before the Court

184. The applicants claimed EUR 5,900 for their legal representation in the proceedings before the Court, to be paid into Mr Eduard Markov's bank account. To substantiate that claim they submitted legal assistance contracts signed by the first, second and third applicants with their representative at various dates from January to June 2014, as well as the report by Mr Markov of 15 July 2014 on the work performed. It indicated an hourly rate of EUR 100 and specified that he had worked a total of fifty-eight hours on the case. As also noted in the report, Mr Markov incurred various administrative expenses totalling EUR 100.

185. The Government considered the amounts claimed excessive and unsubstantiated.

186. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to grant the applicants' claim in full and to award them jointly EUR 5,900 under this head, plus any tax that may be chargeable to the applicants. The award is to be paid into Mr Markov's bank account, as indicated by the applicants (see, for example, *Belousov v. Ukraine*, no. 4494/07, §§ 116-17, 7 November 2013).

2. Other expenses

187. The applicants further claimed EUR 1,000 for various expenses incurred at the domestic level.

188. The Government observed that the applicants' claim was supported by documents only in respect of about EUR 50 and left the issue at the discretion of the Court in so far as the claim was limited to that amount. As regards the remainder of the applicants' claim, for EUR 950, the Government invited the Court to reject it as unsubstantiated.

189. Having regard to all the material in its possession, the Court awards the applicants jointly EUR 50 under this head, plus any tax that may be chargeable.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that the first applicant has standing to pursue the complaints raised by his deceased mother, the fourth applicant, in her stead;

2. *Declares* admissible the first applicant's complaint about the alleged unlawfulness of his arrest on 29 June 2009 and his subsequent detention till 21 July 2009, the second applicant's complaint of her alleged ill-treatment by a police officer and the ineffectiveness of the domestic investigation of that incident, and the complaints under Articles 8 and 13 of the Convention by the third and fourth applicants in respect of the police searches of their homes on 13 and 16 September 2008;

3. *Holds* that it is not necessary to examine the admissibility and merits of the first applicant's complaint under Article 5 § 2, the second applicant's complaint under Article 5 § 1, the third applicant's complaint under Articles 8 and 13 of the Convention in respect of the police operation of 12 September 2008, as well as the fourth applicant's complaints under the same provisions in respect of the search of her home of 11 February 2009;

4. *Declares* the remainder of the application inadmissible;

5. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb on account of the second applicant's alleged ill-treatment by a police officer;

6. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb on account of the lack of effective domestic investigation into the second applicant's allegation of her ill-treatment by a police officer;

7. *Holds* that there has been no violation of Article 5 § 1 of the Convention in respect of the first applicant's arrest on 29 June 2009;

8. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the first applicant's detention from 30 June to 3 July 2009;

9. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the first applicant's detention from 3 to 21 July 2009;

10. *Holds* that there has been a violation of Article 8 of the Convention in respect of the police search at the third applicant's home on 13 September 2008;

11. *Holds* that there has been a violation of Article 8 of the Convention in respect of the police search at the fourth applicant's home on 16 September 2008;

12. *Holds* that there has been a violation of Article 13 of the Convention in respect of the third and fourth applicants' complaints under Article 8 regarding the searches of their homes of 13 and 16 September 2008;

13. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be

converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage:

(i) EUR 4,000 (four thousand euros) to the first applicant, Mr Valeriy Sergeyevich Voykin;

(ii) EUR 5,000 (five thousand euros) to the second applicant, Ms Marina Aleksandrovna Voykina;

(iii) EUR 2,000 (two thousand euros) to the third applicant, Ms Elleonora Nikolayevna Shupnyak; and

(iv) EUR 2,000 (two thousand euros) to the estate of the late Ms Valentina Borisovna Voykina, the fourth applicant;

(b) EUR 5,900 (five thousand nine hundred euros) jointly, plus any tax that may be chargeable to the applicants and the estate of the fourth applicant, in respect of legal costs before the Court (the net award to be paid into the bank account of the applicant's lawyer, Mr Markov); and;

(c) EUR 50 (fifty euros) jointly, plus any tax that may be chargeable to the applicants and the estate of the fourth applicant, in respect of other costs and expenses;

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

14. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 27 March 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Registrar

Vincent A. De Gaetano
President