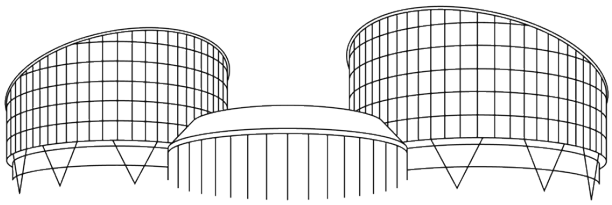

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF GAVULA v. UKRAINE

(Application no. 52652/07)

JUDGMENT

STRASBOURG

16 May 2013

FINAL

07/10/2013

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

In the case of Gavula v. Ukraine,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
André Potocki,
Paul Lemmens,
Aleš Pejchal, *judges,*
Myroslava Antonovych, ad hoc *judge,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 9 April 2013,

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

PROCEDURE

1. The case originated in an application (no. 52652/07) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Vitaliy Vasilyevich Gavula ("the applicant"), on 19 November 2007.

2. The Ukrainian Government ("the Government") were represented by their Agent, most recently, Mr N. Kulchytskyy, of the Ministry of Justice of Ukraine.

3. The applicant alleged, in particular, that his arrest had been unlawful, that the conditions of his detention in the Kyiv Pre-Trial Detention Centre no. 13 (*Київський слідчий ізолятор №13*) (the SIZO) had been inhuman and degrading, and that his pre-trial detention had been excessively lengthy. He relied on Article 3 and Article 5 § 3 of the Convention.

4. On 7 July 2011 the application was communicated to the Government. Mrs G. Yudkivska, the judge elected in respect of Ukraine, was unable to sit in the case (Rule 28 of the Rules of Court). The President of the Chamber decided to appoint Ms Myroslava Antonovych to sit as an ad hoc judge (Rule 29 § 1(b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1977 and lives in the village of Berezhinka, Ukraine.

A. Criminal proceedings against the applicant

6. At 3 p.m. on 6 February 2003 the applicant was arrested in an apartment rented by his acquaintance and alleged accomplice D., and taken to a police station. At the police station he was allegedly handcuffed, beaten and according to the applicant, had his nose broken.

7. On the same day between 9 p.m. and 10 p.m. the applicant was questioned. He admitted to having robbed an apartment.

8. Criminal proceedings for robbery were instituted against the applicant; it is unclear whether this was done before or after his arrest. It was noted that on 6 February 2003 at around 12.20 a.m. the applicant, together with some other individuals, had threatened K. with a knife and taken 12,800 United States dollars (USD) from her.

9. The Government submitted that the applicant was in fact arrested on 7 February 2003.

10. On 10 February 2003 the Dniprovskiy District Court of Kyiv ("the Dniprovskiy Court") ordered that the applicant be placed in pre-trial detention on the grounds that he was accused of committing a serious crime and could abscond or hinder the investigation if at liberty.

11. On 1 April 2003 the same court extended the term of the applicant's detention until 7 June 2003 since "there were no grounds for the applicant's release and his detention was necessary for carrying out further investigations (expert examinations etc.)".

12. Between May 2003 and September 2007 the criminal case against the applicant was presented to the court for consideration but referred back for further investigation on five subsequent occasions (18 June 2004, 11 February and 10 June 2005, and 6 February and 5 September 2007). On the first occasion (18 June 2004) the court decided that the applicant's case could not be considered separately from the cases of Kr. (another alleged accomplice of the applicant) and D., and that further investigative measures such as a reconstruction of events and confrontations between the accused and the witnesses should be carried out. On each occasion the court also decided that the applicant should remain in pre-trial detention.

13. On 11 December 2006 and 15 January 2007 the Dniprovskiy Court denied the applicant's requests for release. The court held, without elaborating further, that the applicant was accused of committing a serious

crime and, if released, could "continue his criminal activity", abscond or hinder the investigation.

14. On 30 May 2008 the same court again referred the case back for further investigation. On 4 September 2008 the Kyiv City Court of Appeal quashed that decision and remitted the case to the first-instance court. The court also decided that the applicant should remain in pre-trial detention.

15. On 18 February 2009 the Dniprovskiy Court rejected the applicant's request to have P. as his legal representative on the basis that he did not hold an advocate's licence. The decision was not subject to appeal.

16. On 3 September 2009 the Dniprovskiy Court, upon a request by the prosecutor, ordered a forensic psychological and psychiatric examination of the applicant. In her request the prosecutor stated that the applicant had behaved aggressively and improperly. The court noted that on numerous occasions the applicant had actively interrupted a court hearing, giving instructions as to who should be cross-examined and what evidence should be considered. When his requests were rejected, he began to shout and swear. The applicant was removed from a courtroom on two occasions.

17. In order to carry out a forensic examination the applicant was allegedly detained in a special ward of a psychiatric hospital. According to an expert report dated 20 October 2009, the applicant had no mental illnesses either at the time of the report or when the crime was allegedly committed.

18. On 1 March 2010 the Dniprovskiy Court sentenced the applicant to eight and a half years' imprisonment for robbery committed together with other persons. The criminal cases against each defendant were considered separately. The applicant was represented by his mother and by a lawyer, Da. In court the applicant denied committing the offence and refused to answer any questions. The court referred to his statements, given at the investigation stage of the proceedings, in which he had made a partial confession. In particular, on 6, 7, 9, 13 and 16 February 2003 the applicant had stated that at the material time he had been working in a flower shop run by D. Kr., who also worked in the shop, had told him that K. (D.'s acquaintance) had been keeping a lot of money at home and that he proposed to rob her. On 6 February 2003 the applicant followed K.'s son home from school. When K. opened the door to let her son in, the applicant threatened her with a knife and took USD 12,800 from her. At that time another witness, T., was also in the apartment. On leaving, the applicant lost a balaclava he was wearing. He joined Kr., who was waiting for him in a car, and they split the money. Kr. gave him USD 4,155 and told him that D. should be given USD 4,000.

19. Some of the statements were given in the presence of the applicant's lawyer, Ka. They were further confirmed by confrontations held between the applicant, D. and other witnesses.

20. In court K.'s statements were read out. T., A. (a woman who saw a man running out of K.'s house and losing his balaclava), M., and Kr.'s wife were all cross-examined as witnesses. A. said that she could not recall the man's face but described his clothes and other features such as age and height. M. gave evidence that at around 3 p.m. on 6 February 2003 the police arrived at the apartment she rented with D. The applicant and D. left together with some police officers. At around 8 p.m. the police officers returned and seized the applicant's bag in which there was the sum of USD 4,155. Kr.'s wife told the court that her husband Kr. was missing and that she did not know of his whereabouts.

21. The court also noted that the applicant had complained of ill-treatment by the police. In particular, the applicant stated that his initial statements had been given under duress and that he had changed them as soon as there was no longer a threat to his life and health. Referring to a decision by the prosecutor of 27 March 2008 and subsequent court judgments (see paragraphs 33-35 below), the court found the applicant's complaints unsubstantiated. The court also noted that the applicant had been provided with appropriate medical assistance whilst in detention.

22. Lastly, the court indicated that on 11 February 2005, 10 June 2005, 6 February 2007 and 5 September 2007 the criminal case had been referred back by the court for further investigation for non-compliance with the court's instructions of 18 June 2004, in particular, the failure to institute criminal proceedings against D. and Kr., who was currently missing. On 23 October 2008 D. had signed an undertaking not to abscond as she was pregnant. The criminal case against D. was under investigation.

23. On 6 August 2010 and 1 November 2011 respectively the Kyiv City Court of Appeal and the Supreme Court of Ukraine upheld the applicant's sentence.

24. On 26 March 2011 the applicant was released on probation.

B. Proceedings following the applicant's complaints of ill-treatment

25. According to the applicant, during the period between August 2003 and April 2004 (December 2004 according to the Government) he complained that police officers had subjected him to physical and psychological abuse and had misappropriated his gold ring, mobile telephone and clothes.

26. On 28 December 2006 the Dniprovskiy District Prosecutor's Office (*прокуратура Дніпровського району в м. Києві*), having considered a complaint by the applicant forwarded to it by the court, refused to institute criminal proceedings against the police officers. Police officers P.A. and P.S. were questioned. They denied any ill-treatment of the applicant.

27. On 26 June 2007 the Dniprovskiy Court, in the applicant's presence, overturned that decision and referred the case back for further examination.

In court, the applicant did not complain of having been ill-treated but said that police officers had stolen his belongings (clothes, mobile telephone and a ring). The court noted that it should be established at what point the applicant's belongings had been seized and under which circumstances.

28. On 12 July 2007 the prosecutor's office again refused to institute criminal proceedings against the police officers.

29. On 30 August 2007 that decision was overturned by the Kyiv City Prosecutor's Office (*прокуратура м. Києва*) which referred the case back for further examination. It was noted that the instructions of the Dniprovskiy Court of 26 June 2007 had not been complied with.

30. On two occasions between September 2007 and January 2008 the prosecutor's office refused to institute criminal proceedings against the police officers but these refusals were set aside by a senior prosecutor.

31. On 30 January 2008 the Dniprovskiy District Prosecutor's Office again refused to institute criminal proceedings. The applicant stated that the police officers "had resorted to violence" and had misappropriated his mobile phone and a revolver. The police officers gave evidence that neither they nor the other police officers had subjected the applicant to ill-treatment. It was noted that there was no medical evidence to suggest that the applicant had sustained any injuries.

32. On 17 March 2008 the Dniprovskiy District Prosecutor's Office reversed its decision of 30 January 2008.

33. On 27 March 2008 the prosecutor's office again rejected complaints by the applicant. It was established that there was no medical evidence in support of his allegations.

34. The applicant appealed against that decision to the Dniprovskiy Court. He complained that there had been no legal right for the police to seize his personal belongings. He also stated that he had been "beaten, tortured and subjected to physical and psychological abuse" without giving any further details.

35. On 3 June 2009 the prosecutor's decision of 27 March 2008 was upheld by the Dniprovskiy Court. The court held that the applicant's complaints had been properly examined and were unsubstantiated. On 2 September 2009 the Kyiv City Court of Appeal upheld the decision of 3 June 2009. On 17 January 2010 the Supreme Court of Ukraine rejected the applicant's request for leave to appeal on points of law since copies of court judgments submitted by the applicant had not been properly certified.

36. The applicant submitted to this Court three undated photographs as part of his evidence. On the first and third photos his nose appears to be straight; on the second one it is bent. The applicant also submitted a medical certificate stating that in April 2011 he had been diagnosed with post-traumatic nasal deformation which impeded his breathing. On 15 April 2011 the applicant had his nasal bones repositioned.

C. Conditions of the applicant's detention

37. Between 26 February 2003 and August 2010 the applicant was detained in the SIZO no. 13. Upon his arrival the applicant was examined by a doctor, to whom he did not mention anything about any injuries.

38. The applicant stated that he had been detained in a cold and damp cell infested by cockroaches. The bedding was dirty and torn, and the toilets and sink were filthy. The applicant submitted photos on which it could be seen that the cell was dirty and that there were dark brown stains on the ceiling and walls.

39. On 19 November 2007 the applicant's mother complained to the head of the SIZO medical ward that the applicant was suffering from headaches and a pain in his right kidney, both of which needed treatment. She also alleged that on 6 February 2003 the applicant had been "tortured and beaten by police officers".

40. On 21 December 2007 the applicant was examined by a urologist. He was diagnosed with chronic pyelonephritis and crystalluria, and was recommended outpatient treatment.

41. In January 2008 the applicant complained about the conditions of his detention to the Ministry of Health of Ukraine.

42. By letter of 12 March 2008 the Kyiv Department of Execution of Sentences informed the applicant that he had been detained in a cell measuring 52.06 square metres with eighteen other people. The cell had a toilet which was separated from the main living area by a one-metre-high partition. The cell was disinfected once a week. The bedding was in a reasonable condition. Insulation had been added to the windows and the cell (no. 10) had been refurbished.

43. On 17 March 2008 the applicant was examined by a general practitioner. It was concluded that his state of health was satisfactory.

44. On 21 May 2008 the applicant was examined by a cardiologist and an ophthalmologist. No pathological conditions were discovered. On 28 May 2008 he was examined by a urologist in Kyiv City Hospital no. 3. It was concluded that the applicant did not need any specialist treatment.

45. On 30 May 2008, following complaints by the applicant, the Department of Execution of Sentences concluded that the conditions of the applicant's detention met the current legal requirements. The applicant was detained together with three other people in cell no. 40, which measured 9.9 square metres. The applicant was permitted to shower once a week. In May 2008 there was a disinfection and clean-up of rodent-infested areas. It was noted that the maximum capacity of the SIZO was 2,850 persons; however, on some days there were nearly 3,200 detainees. The applicant received the requisite medical assistance.

46. In a letter of 2 June 2008, the Kyiv City Prosecutor's Office informed the applicant that he had been detained in cell no. 10 together with sixteen other detainees. The cell measured 49.59 square metres.

47. On 4 June 2008 the applicant, following a letter from the Court, asked the head of the SIZO to provide him with copies of documents from his case file and copies of his medical records.

48. According to the Government, on 17 June 2008 the SIZO sent a copy of the applicant's medical records to his mother. The Government also submitted a copy of a statement written by the applicant dated 17 October 2008 on which he confirmed having received "copies of medical documents (six pages)".

49. On 23 July 2009 the applicant's lawyer, Da., complained to the SIZO administration that the applicant had lost 8-10 kilograms in weight in a two-week period and had severe stomach pains. He requested that the applicant be diagnosed and given appropriate medical treatment. It is unclear whether that complaint was ever addressed.

D. Other events

50. The applicant lodged numerous unsuccessful complaints challenging the decision to institute criminal proceedings against him and requesting that criminal proceedings be instituted against various authorities.

51. By letter of 16 April 2012 the applicant submitted to the Court that police officers and prosecutors had contacted him requesting that he appear as a witness in the criminal proceedings against Kr. and D. The applicant also alleged that police officers had threatened to institute new criminal proceedings against him if he did not withdraw his application to the Court.

II. RELEVANT INTERNATIONAL MATERIALS

52. A visit to Ukraine by a delegation of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment and Punishment ("the CPT") took place from 9 to 21 September 2009, during which the delegation inspected the Kyiv SIZO.

53. The relevant parts of the CPT report read as follows:

> "100. ... With an official capacity of 2,950 places, on 8 September 2009 the establishment was holding 3,440 inmates ...
>
> 101. The vast majority of the cells holding male prisoners were seriously overcrowded (for example, 52 prisoners in a cell measuring some 50 m² and containing 40 beds; 32 prisoners in a cell measuring 33 m² and containing 20 beds). ...
>
> Because of the human mass, ventilation was almost non-existent and the cells were very hot and stuffy. The level of hygiene was also highly unsatisfactory: in some cells the delegation saw cockroaches, and prisoners also referred to the presence of mice

and rats. The in-cell sanitary installations (a partitioned toilet and sink) were generally in a decrepit state and were clearly not sufficient for the numbers of inmates held in the larger cells.

The negative consequences of the deplorable material conditions described above were compounded by the fact that some prisoners had spent lengthy periods of time at the SIZO .... In the CPT's view, the combination of negative factors to which a large number of prisoners were subjected at the Kyiv SIZO (overcrowding, appalling material conditions and levels of hygiene, and practically non-existent activity programmes) could easily be described as inhuman and degrading treatment.

...

106. In the light of the above remarks, the CPT recommends that at the Kyiv SIZO:

...

- strenuous efforts be made to decrease the overcrowding and to distribute prisoners more evenly amongst the available accommodation, the objective being to offer a minimum of 4 m² of living space per prisoner;

- measures be taken to ensure, as a matter of priority, access to natural light and adequate ventilation in prisoner accommodation;

- efforts be made to renovate the prisoner accommodation and ensure an adequate level of hygiene;

- prisoners be guaranteed access to adequate quantities of essential personal hygiene products and cleaning products for their cells ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

54. The applicant complained of his ill-treatment by police officers and the ineffective investigation of his complaints. He relied on Articles 3 and 13 of the Convention.

55. The Court, which is master of the characterisation to be given in law to the facts of the case, finds that these complaints fall to be examined under Article 3 of the Convention only (see, *mutatis mutandis*, *Timur v. Turkey*, no. 29100/03, §§ 35-40, 26 June 2007).

56. The applicant also complained under Article 3 of the Convention that the conditions of his detention had been unsatisfactory and that there was a lack of adequate medical assistance. In particular, the applicant stated

that he had serious kidney problems which were left untreated. Article 3 reads as follows:

Article 3

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

A. Admissibility

57. The Government did not submit any observations as to the admissibility of the applicant's complaints under Article 3 of the Convention.

1. Alleged ill-treatment and effectiveness of subsequent investigation

58. The Court reiterates that applicants are expected to submit at least a detailed account of the facts complained of and provide – to the greatest possible extent – some evidence in support of their complaints (see *Visloguzov v. Ukraine*, no. 32362/02, § 45, 20 May 2010).

59. Turning to the present case, the Court notes that the applicant's complaints of ill-treatment are limited to general statements that he had been beaten. He did not elaborate further on events except for the allegation he had made about his nose being broken. Furthermore, the applicant did not submit any medical evidence in support of his allegations, and the national authorities, when rejecting the applicant's complaints, had also noted the absence of any medical records in this regard (see paragraph 31 above). Equally, there is no evidence about the applicant's state of health at the time of his arrest and, in particular, at the time when his nose was allegedly broken.

60. The Court further notes that until April 2011 the applicant had never complained to a doctor about any of his injuries, including the broken nose. It is also unclear on which precise date the applicant made his initial complaint about the alleged ill-treatment. Even assuming that it was in August 2003, as submitted by the applicant, he did not give any particular reason, apart from general allegations of threats to his life and health, as to why he did not complain of any ill-treatment until six months after the alleged events took place.

61. Although it is accepted that the national authorities did not address the applicant's complaints until late 2006 – according to the Government, two years after the applicant had raised his complaints for the first time – the Court notes that the applicant's allegations at the national level were equally quite general and mainly concerned the alleged misappropriation of his possessions by police officers.

62. In such circumstances it does not appear that the applicant has made out his claim that he was ill-treated by agents of the State (see *Birutis and Others v. Lithuania* (dec.), nos. 47698/99 and 48115/99, 7 November 2000).

63. The Court thus rejects the applicant's complaints of ill-treatment by police officers and the allegedly ineffective investigation as manifestly ill-founded under Article 35 §§ 3 (a) and 4 of the Convention.

2. Medical assistance

64. The Court observes that the applicant did not provide any medical evidence in support of his statement that he had not been provided with adequate medical assistance in detention. In particular, the applicant did not provide any evidence that his condition required any particular medical treatment that he had not been given. There is likewise no evidence to suggest that upon release the applicant ever consulted or tried to consult a doctor about his alleged health problems.

65. In such circumstances, the Court rejects the applicant's complaint about the lack of adequate medical assistance in detention as manifestly ill-founded under Article 35 §§ 3 (a) and 4 of the Convention.

3. Conditions of detention

66. 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

67. The applicant submitted that in the photos of cell no. 40, which he submitted to the Court, it could be seen that each detainee had around 1.40 square metres of living space and that there was mould on the ceiling. The applicant had spent a year and eleven months in the cell in question. Another cell (no. 167) was infested by bedbugs.

68. The Government submitted that the conditions of the applicant's detention had been adequate. He had been detained in twenty-two different cells in the SIZO between 26 February 2003 and 18 August 2010, including cell nos. 10, 40 and 167. Every cell was equipped with a ventilation system, water supply and heating, a toilet, sink, table, bench, and a box for crockery. The applicant's complaints about his conditions of detention had been investigated and found to be unsubstantiated. Each detainee had a place to sleep, there was a weekly disinfection and clean-up of rodent-infested areas, the temperature in the cells was satisfactory, and bedding was in a reasonable condition. Therefore, the applicant's conditions had not caused him suffering exceeding that inevitably caused by a deprivation of liberty.

69. The Court reiterates that, under Article 3 of the Convention, the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, and that the manner and method of execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

70. The Court notes at the outset that overcrowding in the SIZO in 2008 was acknowledged by the national authorities (see paragraph 45 above) and confirmed by the CPT findings of 2009 (see paragraph 53 above).

71. As regards the applicant's particular situation, according to the documents submitted by the Government, on some occasions he was detained in cells providing less than 3 square metres per person (see paragraphs 42, 45 and 46 above). The Government did not specify the duration of the applicant's stay in each particular cell. The applicant stated that he had been detained in cell no. 40 with space of 1.4 square metres per person for almost two years. Although neither of the parties specified the daily amount of time the applicant spent locked up in the cell, it does not appear that he spent more time outside than inside the cell.

72. The Court reiterates that a failure on the Government's part to submit such information which is in their hands without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see, *mutatis mutandis*, *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004). Therefore, the Court accepts the applicant's statement that he was detained in particular cells for the above-mentioned periods of time. It finds that the amount of space per person in the cell was clearly insufficient in view of the relevant standards developed by the CPT (see paragraph 106 of the CPT report cited in paragraph 53 above).

73. As regards other material aspects of the applicant's detention, the Court notes that the applicant's description of the conditions of his detention is corroborated in part by the photos provided by him showing poor sanitary conditions in the cell and by the conclusions of the CPT regarding unsatisfactory hygiene levels and pest infestation.

74. The Court also reiterates that on at least two occasions it has already found a violation of Article 3 of the Convention in respect of conditions of detention in the same pre-trial detention centre (see *Koval v. Ukraine*, no. 65550/01, 19 October 2006 (concerning the period from 3 August 1999 to 6 June 2000), and *Kharchenko v. Ukraine*, no. 40107/02, 10 February 2011 (concerning the period from 20 April 2001 to 4 August 2003)). However, in the three years since the Court's decision in the case of *Koval v. Ukraine*, according to the CPT's findings and the applicant's submissions, there were no changes to the conditions of detention in the Kyiv SIZO.

75. The combination of above-mentioned factors, such as overcrowding and unsatisfactory levels of hygiene which the applicant endured for a significant period of time, are sufficient to enable the Court to conclude that the conditions of his detention in the Kyiv SIZO amounted to inhuman and degrading treatment contrary to the requirements of Article 3 of the Convention. There has accordingly been a violation of that Article.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

76. The applicant complained that his arrest had been unlawful and that the length of his pre-trial detention had been excessive. He relied on Article 5 §§ 1 and 3 of the Convention, which reads, in so far as relevant, as follows:

Article 5

"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;

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial ..."

A. Admissibility

77. The Government did not submit any observations on the admissibility of the applicant's complaints under Article 5 of the Convention.

78. 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. Lawfulness of the applicant's arrest

79. The applicant reiterated that he had been arrested on 6 February 2003.

80. The Government stated that the applicant had actually been arrested on 7 February 2003 in order to bring him before a judge upon suspicion of committing a crime.

81. The Court reiterates that the list of exceptions to the right to liberty secured in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his liberty (see, among other authorities, *Giulia Manzoni v. Italy*, 1 July 1997, § 25, *Reports of Judgments and Decisions* 1997-IV).

82. In this connection, the Court observes that the absence of a custody record must in itself be considered a serious failing, as it has been the Court's settled view that the unacknowledged detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a grave violation of that provision. The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention (see *Fedotov v. Russia*, no. 5140/02, § 78, 25 October 2005).

83. In the present case, it follows from the available evidence that the applicant was arrested at around 3 p.m. on 6 February 2003 (see paragraph 20 above). He was further questioned by the police late in that evening (see paragraph 7 above). Although the decision to institute criminal proceedings against the applicant was taken on 6 February 2003, it is unclear whether it was taken before or after his arrest and questioning, and there was no separate decision to take the applicant into custody. Furthermore, the Government provided no explanation as to the legal grounds of the applicant's arrest on 3 p.m. on 6 February 2003.

84. Therefore, the Court concludes that the applicant was arrested on 6 February 2003 in the absence of any decision in this regard and kept in unacknowledged detention until the next day.

85. The Court therefore considers that there has been a violation of Article 5 § 1 of the Convention.

2. Length of pre-trial detention

86. The applicant stated that there had been no reason to keep him in pre-trial detention and that he had been kept there in order to force him to confess.

87. The Government submitted that the applicant had been in pre-trial detention between 7 February 2003 and 1 March 2010. He was accused of committing crimes requiring thorough investigation. In the applicant's case, eleven witnesses and three suspects were questioned, and ten confrontations and five forensic examinations were held. It took eighty-five days in total to perform forensic examinations. Therefore, there were "relevant" and "sufficient" reasons for keeping the applicant in pre-trial detention and the domestic authorities displayed "special diligence" in handling the investigation.

88. The Court notes that the period of the applicant's pre-trial detention to be taken into account lasted seven years and twenty-five days: from 6 February 2003 (the applicant's arrest) to 1 March 2010 (the applicant's conviction). Such a period is extraordinary long.

89. Examining the present case through the prism of the general principles established in its case-law (see *I.A. v. France*, 23 September 1998, § 102, *Reports* 1998-VII; *Labita* [GC], cited above, § 153; and *Iłowiecki v. Poland*, no. 27504/95, § 61, 4 October 2001), the Court observes that the applicant's initial detention was based on the seriousness of the charges against him and on other reasons such as the likelihood of his absconding and hindering the investigation. Although an applicant's detention may have initially been justified on these grounds, after a certain amount of time had passed the courts are obliged to give more explicit reasons for the continued detention. In the present case, throughout the seven-year period of the applicant's detention, they repeatedly relied on the same grounds without giving any particular details and without analysing whether the applicant's situation had changed, referring to such grounds to justify his continued detention as the need to carry out investigative measures. Moreover, at no point did the courts consider applying any alternative preventive measures. The Court notes, in particular, that seven years' pre-trial detention could not be justified exclusively by the complexity of the case and, in particular, by the need to question fourteen witnesses and suspects, and to hold ten confrontations and five forensic examinations as suggested by the Government.

90. The Court has frequently found violations of Article 5 § 3 of the Convention in similar circumstances (see, among many other authorities, *Yeloyev v. Ukraine*, no. 17283/02, §§ 60-61, 6 November 2008; *Doronin v. Ukraine*, no. 16505/02, §§ 63-64, 19 February 2009; and *Kharchenko*, cited above, §§ 79-81, 99 and 101). It considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. There has accordingly been a breach of Article 5 § 3 of the Convention.

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

91. The applicant further complained that the length of proceedings in his criminal case had been excessive. He relied on Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

Article 6

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

A. Admissibility

92. The Government did not submit any observations on the admissibility of the applicant's complaint about length of criminal proceedings against him under Article 6 of the Convention.

93. 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

94. The applicant submitted that his case had not been complicated and that there was a violation of Article 6 § 1 of the Convention.

95. The Government noted that the applicant's case was a complicated one. Two further persons were accused of committing the crime in question; therefore it was necessary to examine additional evidence, question numerous witnesses, hold confrontations, carry out forensic examinations and take other investigative measures. In particular, eleven witnesses were questioned, some of them more than once. The applicant also lodged numerous complaints (more than eighty-two) which all necessitated additional time for their consideration. The applicant's lawyer had failed to appear in court on eight occasions. As for the State authorities, they had used all possible means to avoid protracting the investigation of the applicant's case and subsequent court proceedings.

96. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). It also reiterates that where a person is held in custody pending the conclusion of the proceedings against him, this is a fact that requires

particular diligence on the part of the authorities dealing with the case to administer justice expeditiously (see, for example, *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 83, ECHR 2003-IX; *Yurtayev v. Ukraine*, no. 11336/02, § 37, 31 January 2006; *Vergelskyy v. Ukraine*, no. 19312/06, § 117, 12 March 2009).

97. Turning to the circumstances of the case, the Court notes that the period to be taken into consideration began on 6 February 2003 and ended on 1 November 2011. It thus lasted eight years, eight months and twenty-six days comprising the investigation stage and hearings at three levels of jurisdiction.

98. The Court considers that the applicant's case was not complex and there is no evidence that he delayed the proceedings to any significant degree. It appears from the material made available to the Court that major delays in the proceedings were caused by numerous remittals of the case for further investigation.

99. The Court reiterates in this connection that the repeated re-examination of the case within one set of proceedings can disclose a serious deficiency in the domestic judicial system (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

100. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi*, cited above).

101. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1.

IV. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

102. The applicant further complained that the authorities had failed to provide him with copies of the documents necessary for lodging his application with the European Court of Human Rights, in particular, the audio recordings of court hearings relating to his case.

103. The Government submitted that the applicant had had all the documents necessary for filing his application to the Court.

104. The Court notes that there is no evidence that the applicant was not provided with any documents he had asked for and which were relevant to his application. There is equally no evidence that the State authorities exercised any pressure on the applicant in order to dissuade him to maintain his application.

105. Consequently there has been nothing to indicate that the State had failed to comply with its obligation under Article 34 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

106. The applicant complained of unfairness in the proceedings in which he had challenged the decision to institute criminal proceedings against him. He also relied on Articles 1 and 13 of the Convention.

107. On 9 January 2012 the applicant submitted numerous complaints under Article 6 of the Convention. In particular, he complained that (i) the first-instance court had refused to allow his case to be examined by a bench of judges; (ii) when deciding on his pre-trial detention the courts had stated that he "could continue his criminal activity" in breach of the presumption of innocence; (iii) the court had refused to allow P. to represent him; (iv) witnesses K., Kr., D. and police officers had not been cross-examined; (v) the applicant had not been present at the appeal hearing of 4 September 2008; and (vi) his conviction was unlawful.

108. The applicant also complained under Articles 3 and 6 of the Convention about his admission to a psychiatric hospital for twenty-eight days for a forensic psychiatric examination.

109. The applicant also complained that for seven and a half years he had had no long-term visits from his common-law wife.

110. Having considered the applicant's submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

111. It follows that this part of the application must be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

112. 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

113. The applicant claimed 35.6 million euros (EUR) in respect of non-pecuniary damage and 67,814[1] Ukrainian hryvnias (UAH) in respect of pecuniary damage (expenses for medication and other items the applicant's mother sent him while in detention). He left it to the Court to determine the amount of compensation for non-pecuniary damage in respect of his complaint about conditions of detention.

114. The Government submitted that the compensation claimed did not concern the alleged violations.

115. The Court does not discern any causal link between the violations found and pecuniary damage alleged; in particular, the applicant did not provide any substantiation of these claims. It therefore rejects this claim. On the other hand, deciding on an equitable basis, it awards the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

116. The applicant did not claim any costs and expenses. The Court, therefore, makes no award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 3 (conditions of detention), Article 5 §§ 1 and 3, and Article 6 § 1 (length of proceedings) of the

1. Approximately EUR 6,310

Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

5. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

6. *Holds* that the State has not failed to comply with its obligations under Article 34 of the Convention;

7. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 16 May 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President