



## Man tortured by Ukrainian police and his complaints not investigated properly

In today's Chamber judgment in the case [Korobov v. Ukraine](#) (application no. 39598/03), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**Two violations of Article 3 (prohibition of torture) and one violation of Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights.**

The case concerned in particular the torture of a man in police detention and the lack of an effective investigation.

### Principal facts

The applicant, Igor Korobov, is an Ukrainian national who was born in 1968 and lives in Mariupol (Ukraine).

According to him, in December 1999, he had lent 3,400 euros (EUR) to a person (S.) who had only partially repayed him. They had agreed to meet on 18 April 2000 for Mr Korobov to collect his dues.

However, on 11 April 2000, criminal proceedings were opened against Mr Koroborov on suspicion of extorting money from S. Several police officers arrested him some time between 3 and 4 p.m. on 18 April 2000 and took him to a police station. According to two witnesses who were passing by at the time, he had tried to run away from the police, and had cursed and threatened them. A report was drawn up in relation to his arrest in which it was indicated that he was arrested only at about 9 p.m. that day.

Mr Korobov submitted that the police beat and tortured him, giving him electric shocks, between 3 p.m. and 9 p.m. on 18 April, and again on 26 April.

On 21 April, the prosecutor authorised his pre-trial detention and a forensic medical examination was carried out in early May 2000. The forensic report recorded numerous bruises on Mr Korobov's chest, back and hips which could have been sustained on 18 April 2000 either by blows from fists or feet, or by him falling down.

In April 2002, Mr Korobov was sentenced to three years' imprisonment for having threatened a person in order to make him repay a debt, and was released on two years' probation. After his conviction was upheld on appeal, the Supreme Court rejected his request for a cassation appeal. Mr Korobov and his lawyer were not informed of the hearing at which the cassation appeal was refused, and were therefore not present. However, the prosecutor took part and addressed the judges.

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<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

In May 2000, following a complaint by Mr Korobov's mother, the prosecutor refused to open criminal proceedings into his ill-treatment. That decision was followed by numerous decisions to resume the investigation, which were preceded by refusals to open criminal proceedings. In July 2005, the prosecutor finally brought criminal proceedings against the policemen who had arrested Mr Korobov, only to have those proceedings terminated on three occasions for lack of evidence. Certain investigative steps were carried out, such as the questioning of witnesses, including police officers. Some of the witnesses testified that no one had beaten Mr Korobov at the time of his arrest; others submitted that the police had used martial arts techniques to prevent him resisting arrest. One officer testified that he had seen Mr Korobov lying on the floor in a police office. Finally, without clarifying the many inconsistencies in the available evidence, the courts upheld in 2008 the last prosecution decision terminating the proceedings. The courts concluded that Mr Korobov had been injured by S. and by the police officers when he had resisted his arrest.

## Complaints, procedure and composition of the Court

Relying on Article 3, Mr Korobov complained that he had been tortured in police custody and his related complaints had not been investigated effectively. He also complained under Article 6 that the proceedings against him had not been fair as, unlike the prosecutor, neither he, nor his lawyer, had participated in the cassation hearing.

The application was lodged with the European Court of Human Rights on 2 November 2003.

Judgment was given by a Chamber of seven, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,  
Elisabet **Fura** (Sweden),  
Boštjan M. **Zupančič** (Slovenia),  
Isabelle **Berro-Lefèvre** (Monaco),  
Ann **Power** (Ireland),  
Ganna **Yudkivska** (Ukraine),  
Angelika **Nußberger** (Germany), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

### Article 3

#### Torture

The Court noted that Mr Korobov had been seriously injured around 18 April 2000. The parties had provided different explanations about how and when exactly he had sustained his injuries. The witness statements and the medical evidence submitted had also been contradictory, and the contradictions, as acknowledged by the national courts in 2008, had not been clarified by the investigation.

The police had not organised a medical examination immediately after Mr Korobov's arrest, despite that being one of the fundamental safeguards against ill-treatment of detained people. Mr Korobov had numerous bruises on his chest, back and hips and had further suffered from various post-traumatic effects such as headaches and difficulties urinating and breathing, which had been reported in several medical documents following his arrest. The Ukrainian Government had not explained convincingly how exactly he had been arrested.

On the basis of all the above, the Court concluded that Mr Korobov had not sustained all of his injuries solely at the time of his arrest. Given that the injuries had been serious, the Court held that Mr Korobov had been tortured in the hands of the police, in violation of Article 3.

## Investigation

The investigation had lasted for more than eight years and during that time – on seven separate occasions – the authorities had refused to open criminal proceedings. Even though the proceedings had finally been opened, and some investigative steps taken, when the courts had terminated them definitively in 2008, the inconsistencies in the testimonies and evidence had not been clarified.

The Court found that the failure of the investigative authorities to establish the actual circumstances had been due to them not having questioned key witnesses at the earliest opportunity after the complaint about Mr Korobov's ill-treatment had been lodged. While that and other flaws had been signalled by the national courts, the prosecution had not redressed them adequately. The Court held that the Ukrainian authorities had not conducted an effective investigation, in violation of Article 3.

## Article 6

The Court recalled that, in principle, if a defendant did not take part in appeal hearings, held not to establish the facts but to interpret the applicable legal rules, no issue arose under the Convention, as long as a public hearing had been held before the first instance court.

However, given that the prosecutor had been heard by the Supreme Court judges, while neither Mr Korobov nor his lawyer had been given the opportunity to address the panel, the Court held that the principle of equality of arms had been breached and, therefore, there had been a violation of Article 6 § 1.

## Just satisfaction (Article 41)

The Court held that Ukraine was to pay Mr Korobov EUR 20,000 in respect of non-pecuniary damage, and EUR 1,000 for costs and expenses.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.