

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

FIFTH SECTION

CASE OF KOVALENKO v. UKRAINE

(Application no. 21425/18)

JUDGMENT

Art 3 (substantive and procedural) • Inhuman and degrading treatment • Infliction of serious injuries on the applicant by off-duty police officers while acting at least partly in their official capacity • Strong, clear and concordant elements showing police officers acted as representatives of the law-enforcement authorities despite being off duty • Impugned actions, attributable to the respondent State and not constituting lawful use of force that was strictly necessary in the circumstances • Ineffective investigation

Prepared by the Registry. Does not bind the Court.

STRASBOURG

28 May 2026

FINAL

28/08/2026

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



In the case of Kovalenko v. Ukraine,

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

Kateřina Šimáčková*, President*,
Gilberto Felici,
Andreas Zünd,
Diana Sârcu,
Mykola Gnatovskyy,
Sébastien Biancheri,
Nicholas Emiliou*, judges*,

and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 21425/18) 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 Viktor Sergiyovych Kovalenko ("the applicant"), on 27 April 2018;

the decision to give notice to the Ukrainian Government ("the Government") of the complaints concerning alleged ill-treatment of the applicant on 17 February 2008 and alleged lack of an effective investigation into the matter, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 5 May 2026,

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

INTRODUCTION

1. The present case concerns, under Article 3 of the Convention, the alleged ill-treatment of the applicant by off-duty police officers and the lack of effective investigation into the matter.

THE FACTS

2. The applicant was born in 1985 and lives in Bucha. He was represented by Mr G.V. Tokarev, a lawyer practising in Kharkiv.

3. The Government were represented by their Agent, Ms Marharyta Sokorenko, from the Ministry of Justice.

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

I. ALLEGED ILL-TREATMENT OF THE APPLICANT

5. The applicant's version of events is as follows. On 17 February 2008 at around 10 p.m. he, his friend B. and their girlfriends Ya. and S. were heading home towards a multi-storey building ("the building") in which the applicant's flat was located, when a group of young men attacked them near

the main entrance to the building. That group of young men and their girlfriends had been celebrating a birthday in a flat located in the building. Two of the attackers were off-duty police officers from the Irpin police station, investigators M.B. and K. One of them hit the applicant on his head with an expandable metal baton, after which the applicant attempted to protect himself with a pocketknife. The applicant received various injuries, including head trauma. He lost consciousness for a short period of time and subsequently felt unwell. M.B. and K. initiated the arrest of the applicant. They called the police patrol. The police patrol officers detained the applicant and B. and then took them to the Irpin police station. The applicant was forced to sign a statement saying that he and his friend had started the fight for hooligan motives (see paragraph 26 below).

6. The Government's version of events is as follows. On 17 February 2008 at around 9 p.m. the applicant and B. started a fight with the off-duty police officers. The applicant used a penknife, inflicting stab wounds on M.B., a senior investigator at the Irpin police station. He also inflicted bruises on the soft tissues of the right hand, bruises and abrasions and a knife scratch on the left hand of O.B., and a stab wound on the left thigh of B.Ye. Following a call made by a witness, the police arrived. They verified and established the circumstances of the incident. The infliction of bodily injuries on the off-duty police officers was reflected in the forensic medical reports. The applicant, in contrast, sustained light bodily injuries and did not ask for medical assistance. The Government did not provide copies of the forensic medical reports listing and classifying the bodily injuries of M.B., O.B. or B.Ye.

7. On 18 February 2008 at 12.10 a.m. the applicant and B. passed a blood-alcohol test in a hospital, which revealed that they each had a blood-alcohol level of 0.6%. M.B.'s test showed that he was sober. No other person was subjected to an alcohol test.

A. Applicant's medical condition and forensic medical examinations

8. On 20 February 2008, within the framework of a criminal case against the applicant (see paragraph 25 below), forensic medical doctor I. issued a forensic expert report classifying the applicant's injuries (bruises and abrasions on the face, scalp and left ear, haemorrhages on the lips and scratches on the right elbow joint) as minor. With reference to the applicant's complaints about pain in his lower jaw, headache, dizziness, nausia, neck pain and numbness in the fingers, she advised that he be examined by a neurologist.

9. On 22 February 2008 the applicant was admitted to the neurological department of the Irpin Hospital for inpatient treatment. On 3 March 2008 he was discharged for further treatment at a regional hospital with the diagnosis of a closed cerebral head injury, a concussion, a contusion of the cervical spine and a subcutaneous haematoma of his eyelids.

10. On 4 March 2008 the applicant was hospitalised at the neuro-traumatological department of the Kyiv Regional Clinical Hospital. On 5 March 2008 the applicant underwent a computed axial tomography (CT scan) of his brain. A doctor of medical science and assistant in the department of radiology in the Kyiv Regional Clinical Hospital, Go., concluded that the applicant had sustained, among other injuries, a fracture of his parietal bone. On 13 March 2008 the applicant was discharged from the Kyiv Regional Clinical Hospital with a final diagnosis of closed cerebral head injury, fracture of the right parietal bone and contusion of the cervical spine.

11. On 13 April 2009 a consultant radiologist at the Kyiv Regional Bureau of Forensic Medical Examinations, after examining the applicant's medical file, concluded that no data pointed to any skull or brain injuries on the applicant.

12. On 25 April 2009 a neurosurgeon from the National Institute of Neurosurgery, after examining the applicant's medical file, confirmed that the applicant had sustained a closed cerebral injury. However, he could not correlate the applicant's second hospitalisation at the Kyiv Regional Clinical Hospital with the applicant's medical condition, given that the applicant had been discharged from the Irpin Hospital after the regression of neurological symptoms.

13. Another forensic medical examination was carried out on 6 April 2009 (the document was initially dated "6.04.2009", then manually corrected to "06.05.2009"). Forensic doctor I., relying on the conclusion of the radiologist of 13 April 2009 and of the neurosurgeon of 25 April 2009, classified the applicant's injuries (closed head injury in a form of a concussion and the subcutaneous haematomas of both eyelids) as minor and concluded that no objective grounds had existed to justify the applicant's long-term inpatient treatment at the hospitals. She did not comment on the documents from the Kyiv Regional Clinical Hospital diagnosing the - applicant's skull fracture.

14. On 29 July 2009, in reply to a complaint by the applicant that he had been beaten with a baton, an additional forensic medical examination was carried out. Forensic doctor I. stated that the medical file did not contain a description of injuries which could lead to the conclusion that the applicant had been beaten with a baton.

15. On 18 March 2013, following complaints lodged by the applicant and a decision by the Kyiv Regional Court of Appeal of 8 February 2013, the police opened criminal case no. 42013100040000106 against forensic doctor I. under Article 384 § 1 of the Criminal Code of Ukraine on suspicion of issuance of a manifestly untrue expert conclusion.

16. On 17 July 2014, referring to the above-mentioned criminal case, the Irpin police wrote to the Kyiv Regional Bureau of Forensic Medical Examinations, asking it to carry out an additional forensic medical

examination of the applicant's injuries and to verify the correctness of the forensic medical reports of 20 February 2008 and 6 April and 29 July 2009, issued by forensic expert I. The parties did not provide information about the outcome of this request.

17. On 25 April 2016 another forensic medical examination was carried out at the applicant's request. A forensic doctor concluded that the applicant's head injury – a skull fracture – had been serious, as it had been dangerous to his health at the time of its infliction.

18. On 26 April 2021 criminal case no. 42013100040000106 was closed for lack of evidence.

B. Loss of the applicant's medical file

19. On 16 May 2012 the Irpin prosecutor's office wrote to the Kyiv Regional Internal Police Security Department, informing it that the original copy of the applicant's medical file had been lost when it had been transferred from the Irpin Bureau of Forensic Medical Examination ("the Bureau") to the Borodyanka prosecutor's office. On 7 May 2009 Officer I.I. from the Borodyanka police station had received the original of the applicant's medical file together with the forensic medical report at the Bureau, after which the documents had disappeared.

20. On 19 November 2013 an investigator from the Kyiv regional prosecutor's office questioned Officer I.I. as a witness within the framework of criminal case no. 42013100120000104, opened on 10 September 2013, into official negligence. I.I. stated that in 2009 he had received a medical file from the Bureau and had transferred it to the registry of the Borodyanka prosecutor's office.

21. On 26 November 2013 an investigator from the Kyiv regional prosecutor's office questioned Z.K. from the registry of the Borodyanka prosecutor's office as a witness within the framework of the above-mentioned criminal case. With reference to a record book of incoming correspondence, Z.K. stated that in 2009 she had not received the medical file from I.I.

22. On 15 October 2014 criminal case no. 42013100120000104 was merged with other criminal cases (see paragraph 60 below).

II. TWO RELATED CRIMINAL CASES

23. On 17 February 2008 B.M., B.Ye. and B.O. gave their statements to the police, complaining that the applicant had started the fight without any apparent reason. They stated that on that day, at around 5 p.m., they had started celebrating a birthday with their friends. At around 10 p.m., B.Ye. and B.O. had gone outside to buy some juice. B.M. stated, among other things, that when he had come out of the building and had seen that B.Ye. and B.O. had been beaten, one man had hit him with a knife. He further stated that they

had held the applicant and B. while they had waited for the police patrol officers to arrive.

24. On 18 February 2008 M.B. lodged a criminal complaint with the police, complaining that he had been beaten on 17 February 2008.

25. On 18 February 2008 a chief investigator of the Irpin police, G., opened a criminal case against the applicant and B. under Article 296 § 4 of the Criminal Code of Ukraine (hooliganism committed in a group with cold weapons) on grounds of infliction of bodily injuries on B.Ye., B.O. and B.M. on 17 February 2008.

26. On 18 February 2008 at the Irpin police station, the applicant and B. signed written statements admitting that they had initiated a verbal conflict with the off-duty police officers, following which a fight had broken out. Later, the applicant and B. retracted their self-incriminating statements, explaining that they had given them under duress (see paragraphs 38 and 41 below).

27. On 19 February 2008 G. requested that a forensic medical investigation of the applicant's injuries be carried out. He stated in the document that on 17 February 2008 at around 10 p.m. near the building, the applicant and B. had started punching B.Ye. and B.O in the face, after which the applicant had inflicted stab wounds on the legs of B.Ye. and on the torso and head of B.M.

28. On 21 February 2008 the applicant was indicted under Article 296 § 4 of the Criminal Code of Ukraine .

29. On 20 July 2008 the Irpin City Court reversed the above-mentioned decision of 18 February 2008 opening a criminal case against the applicant and B. On 10 September 2008 the Kyiv Regional Court of Appeal upheld the decision of the Irpin City Court. The parties did not provide copies of those decisions.

30. On 15 May 2012 the Irpin police opened a criminal case into acts of hooliganism committed in a group under Article 296 § 2 of the Criminal Code of Ukraine (hooliganism committed in a group). The reasons for the initiation of the criminal case were the unlawful actions of unknown individuals who, on 17 February 2008 at around 10 p.m. near the building, had approached B.O. and B.Ye. and had beaten them for no reason, inflicting injuries on their head and face. One of the perpetrators had used his penknife and had inflicted stab wounds on B.Ye. The grounds for the opening of the criminal case were the direct detection of evidence of a crime by the police.

31. On 24 October 2012 the Borodyanka District Court of the Kyiv Region ("the Borodyanka District Court") reversed the decision of 15 May 2012, holding that the materials submitted did not confirm the existence of any grounds for the initiation of a criminal case. On 23 November 2012 the Kyiv Regional Court of Appeal upheld the decision of the first-instance court with a minor amendment.

III. CRIMINAL INVESTIGATION INTO ILL-TREATMENT OF THE APPLICANT

A. Witness statements given in 2008

32. On 17 February 2008 O.K., who had attended the birthday party, gave her statement to a police inspector. She stated, among other things, that B.M., B.O. and B.Ye. had told her that after buying some juice and cigarettes they had been returning to the building when they had seen two young men lingering near their car. They had made a remark to the young men, asking them not to approach the car and that had been the reason for the subsequent fight.

33. On 18 and 19 February 2008 the applicant's mother lodged two criminal complaints with the Irpin prosecutor's office, stating that she had interfered and stopped the beating of B. and her son, the latter being beaten while lying on the ground. The applicant's mother stated that she had witnessed one person shouting threats at the applicant and B. while wielding a baton. The same person had controlled the actions of the police patrol officers when they had arrived and had shouted that he would investigate the applicant's and B.'s case and that the applicant and B. would "get it to the fullest". He had then shouted that at his home he had two guns and that he would kill the applicant and that, since he was a police officer, no one would find any evidence.

34. On 26 June 2008 a deputy prosecutor of Irpin questioned the applicant's mother. She reiterated her complaints about the applicant's ill-treatment by the off-duty police officers. She maintained that at the scene of the event, K. had acted as the representative of the law-enforcement authorities, as he had shown her his police identification, but that he had been drunk. When the police patrol officers had arrived, K. had ordered them to arrest the applicant and B.

35. On 26 June 2008 M., a neighbour who lived in the same building, gave his statement to a deputy prosecutor of Irpin. He stated that on 17 February 2008 he had been returning home and had witnessed a commotion, accompanied by screams and panic. When he had moved closer, he had seen a group of people who had been beating the applicant, while his mother had tried to protect him. Those people had used obscene language towards the applicant and his mother. He supposed that they had been drunk, as their behaviour had been inappropriate. One individual, who had held a metal baton and had threatened the applicant with it, had declared that he was a police officer. Ten minutes later police patrol officers had arrived and they had obeyed the orders given by the individuals who had beaten the applicant. The police patrol officers had handcuffed the applicant and had put him in a police car.

36. In July 2008 a deputy prosecutor of Irpin questioned Ya. She stated, among other things, that the off-duty police officers had started the fight.

37. In August 2008 a deputy prosecutor of Irpin questioned B., who stated that the off-duty police officers had started the fight. He further stated that when the police patrol officers had arrived, they had greeted the off-duty police officers with a handshake. The off-duty police officers had informed the police patrol officers whom they should arrest.

38. In August 2008 a deputy prosecutor of Irpin questioned the applicant. He stated that the off-duty police officers had started the fight and that he had signed his self-incriminating statements at the Irpin police station under duress and no longer maintained them (see paragraph 26 above).

B. Criminal investigation under the Code of Criminal Procedure of 1960

39. On 13 March, 13 June, 4 July, 15 August, 30 September and 10 October 2008, 20 February, 29 May and 26 October 2009, 28 January, 3 June and 3 November 2010, and 7 June and 3 November 2011 the Irpin prosecutor's office or the Borodyanka prosecutor's office refused to open a criminal case into ill-treatment of the applicant. The reasons for the refusals were mainly based on, among other things: (i) the statements of B.M. and B.O. and B.Ye. that the applicant had started the fight; (ii) the results of the applicant's forensic medical examinations of 6 May and 29 July 2009 (see paragraphs 13-14 above) and the medical certificate from Irpin Hospital of 22 February 2008 (see paragraph 9 above); (iii) a witness statement of Doctor V., who had determined the applicant's blood-alcohol level on the night of the event; (iv) the witness statements of Ba. and Ka., the officers who had been on duty from 17 to 18 February 2008 and who had stated that they had not remembered anything about the event; (v) the witness statements of G., an investigator at the Irpin police department, and L., a deputy head of the Bucha police department, who had questioned the applicant and B. on 18 February 2008, and who had stated that they had acted in accordance with the law and that no physical force had been applied on the applicant; (vi) the witness statement of the owner of the shop which B.O. and B.Ye. had visited on the night of the event allegedly to buy juice, who had stated that he had known nothing about the incident.

40. The applicant appealed against those decisions.

41. On 4 June, 17 June, 21 July, 16 September, 30 September and 31 December 2008, 23 February, 3 July and 4 December 2009, 8 April and 9 August 2010, and 18 March, 21 September and 16 December 2011 respectively, the superior prosecutor, the Irpin City Court or the Borodyanka District Court overturned the above-mentioned decisions as unlawful or premature on the grounds that the investigators had failed to: (i) establish the reasons why the police patrol officers had arrested expressly the applicant and

B. (the material in the case file indicated that the off-duty police officers had ordered the police patrol officers to arrest the applicant and B.); (ii) establish the data on which the police patrol officers had relied to infer that the off-duty police officers had not initiated the fight; (iii) question the police patrol officers who had arrived at the scene of event in order to define which criteria they had used to determine the individuals guilty of initiating the fight (*визначення винних осіб*); (iv) question K. and identify the metal baton he had used during the fight and verify whether it could be classified as a cold weapon; (v) establish the reasons why the other participants of the fight had not been subjected to a blood-alcohol test except B.M.; (vi) adequately assess the unlawful actions of K., B.O., B.M. and B.Ye.; and (vii) verify the applicant's and B.'s complaints that they had been subjected to physical and psychological pressure in order to have self-incriminating statements extracted from them.

C. Criminal investigation under the Code of Criminal Procedure of 2012

42. On 20 November 2012 the new Code of Criminal Procedure entered into force.

43. On 7 June 2013 the Irpin City Court found the inactivity of the prosecutor from the Irpin prosecutor's office unlawful in respect of his failure to create an entry in the Unified Register of Pre-Trial Investigations following the applicant's and his mother's complaints related to the beatings allegedly inflicted by the off-duty police officers on 17 February 2008, and ordered him to create such an entry.

44. On 13 January 2014 a deputy prosecutor wrote to the applicant, informing him that the Irpin prosecutor's office had not received the above-mentioned decision of 7 June 2013 and that, on these grounds, he had not entered information about the applicant's alleged ill-treatment of 17 February 2008 into the Unified Register of Pre-Trial Investigations.

45. On 5 February 2014 the registry of the Irpin City Court wrote to the applicant, stating that on 8 August 2013 the Irpin prosecutor's office had received its decision of 7 June 2013.

46. On 18 July 2014 the Irpin police opened criminal case no. 12014110040001203 under Article 296 § 2 (hooliganism committed in a group) of the Criminal Code of Ukraine into the infliction of injuries on the applicant, B. and Ya. by B.O., B.M., B.Ye. and K.

47. On 7 November 2014 the applicant requested that the Irpin police department and the Irpin prosecutor's office grant him victim status.

48. On 8 December 2014 the Irpin City Court allowed the applicant's complaint and ordered the prosecutor's office to examine the applicant's request for victim status in criminal case no. 12014110040001203.

49. On 30 December 2014, with reference to Articles 216, 218 and Chapter XI of the Transitional Provisions of the Criminal Procedural Code, which provided that crimes committed by the law enforcement officers were to be investigated by the prosecutor's office having territorial jurisdiction, the Irpin prosecutor's office transferred the criminal case to the Kyiv regional prosecutor's office for further investigation. A prosecutor stated, in the resolution related to the transfer of the criminal case, that the Irpin police had been carrying out a pre-trial investigation in criminal case no. 12014110040001203, during which they had established that on 17 February 2008 at around 10 p.m. near the building, for the motives of flagrant disrespect of the community and with exceptional cynicism, B.M., B.O., B.Ye. and K. had inflicted bodily injuries on the applicant and B. The policed had received copies of documents proving the fact that on 17 February 2008 the individuals who had allegedly inflicted the bodily injuries had been the police officers serving at the Irpin police station.

D. Witnesses' statements and victims' statements given in 2015

50. On 30 January 2015 an investigator from the Kyiv regional prosecutor's office questioned the applicant as a victim for the first time. The applicant stated that on 17 February 2008 he, his friend B., and their girlfriends S. and Ya., after drinking some beer, had been heading towards the building when a group of three young men, one of whom had been carrying a bottle of vodka and a plastic bag, had overtaken them. The applicant referred to the inappropriate behaviour of those men and their loud voices, concluding that they had been drunk. Those men had started throwing snowballs at a car parked near an entrance to the building. The applicant had made a remark, asking them to stop throwing the snowballs at the car. Following a verbal altercation, B.O. had hit the applicant in his face and when he had fallen to the ground, B.O. and B.M. had kicked him on his torso and legs. One of them had sat on the applicant's abdomen and had started strangling him. The applicant had groped around and had found a metal object, which had by chance been lying on the ground, and had started defending himself with it. At some point when the applicant had gotten to his feet, a group of people, among which had been B.M. and K., had pushed the applicant to the ground again and had kicked him while he had been lying on the ground. K. had hit the applicant on the head with an expandable baton. When the police patrol had arrived, K. had hit the applicant with the baton on the back side of his legs, ordering the applicant to kneel. He had ordered the police patrol officers to arrest the applicant and B. Then B.M. had threatened the applicant, saying: "You won't live until the court proceedings; hang yourself".

51. On 2 February 2015 B. was questioned for the first time as a victim by an investigator from the Kyiv regional prosecutor's office. He generally

repeated the same version of events given by the applicant, testified about his being beaten and added that the off-duty police officer with the metal baton had ordered the police patrol officers to arrest the applicant and himself.

52. On 2 February 2015 Ya. was questioned for the first time as a victim by an investigator from the Kyiv regional prosecutor's office. She repeated the applicant's version of events and stated that she had also received injuries during the fight between the applicant, B. and the group of young people. She added that she had seen the applicant being kicked and dragged while he had been lying on the ground. Ya. had come back to the scene of the event with her parents and she had seen an emergency vehicle and a police patrol. One man, who had beaten the applicant and B., had ordered the patrol officers to arrest the applicant and B.

53. On 24 April 2015 a prosecutor from the Kyiv regional prosecutor's office questioned M. as a witness, who repeated his statements of 26 June 2008 (see paragraph 35 above) and added that he had seen three men kicking the applicant while he had been lying on the ground. M. had pushed away one man and the others had stopped beating the applicant. All three men had been using obscene language towards the applicant, his mother and M. and had been threatening them. When they had been dragging the applicant on the ground towards one of the entrances to the building, they had paid no attention to the screams of his mother. Then the applicant had been surrounded by the young men. He had been made to kneel down and had received more blows to his body. One man had a baton, which he had repeatedly opened and closed, which had caused a clicking sound. M. concluded that the group of young people had been partying in a flat in the building, as he had heard music, laughter and screams.

54. On 7 May 2015 a prosecutor of Irpin questioned Yu.Ya., the father of Ya., as a witness. He stated that he had seen two men kicking a man lying on the ground. Then he had seen one man dragging B. by his hand. Yu.Ya. interfered and the man had shown his police identification card and had asked: "Do you know who I am?" Yu.Ya. had made a remark to that off-duty police officer about his state of intoxication. Another man of average height, who was around 20 to 25 years old, bold, and the most aggressive in the group, had shown his police identification card to the police patrol officers and had ordered them to arrest the applicant and B.

55. On 7 May 2015 a prosecutor of Irpin questioned I.Ya., the mother of Ya., as a witness. She stated that she had not witnessed the fight, but had seen the applicant covered with blood. She had remembered a young, strongly built man of average height, 25 to 30 years old, with short sandy hair, who, as she had learned later, had been a police officer. When the police patrol officers had arrived, they had obeyed the orders of that police officer and had put the applicant and B. in a police car and had taken them to the police station.

56. On 7 May 2015 a prosecutor of Irpin questioned O.M., a neighbour, who lived in a house next to the building, as a witness. He stated that in 2008 he had given written statements about the incident to the police patrol and he had subsequently given statements to an investigator in Borodyanka. He further testified that he had been at home when he had heard noise and had decided to go outside. In a courtyard he had seen a group of 15 people and the applicant and B., whose faces had been bloody. When police patrol officers had arrived, they had obeyed the orders of a young man in plain clothes and had put the applicant and B. in a police car. As it had turned out later, that young man had been a police officer.

57. On 18 May 2015 a prosecutor of Irpin questioned V.B., the father of B., who had testified that on the night of the event. Ya. had called him and had informed him of the fight. When V.B. had come outside, he had seen a group of about 15 people, among whom had been his son, whose face had been bloody and whose nose had been broken, and the applicant, whose face had been swollen, probably, as a result of a beating. Ya. had told V.B. that the conflict had begun after the applicant had made a remark to the off-duty police officers when they had thrown snowballs at a car, which had resembled that of the applicant's father. V.B. further testified that he had remembered a man holding a telescopic baton, who had hit the applicant's legs several times. When the police patrol had arrived, V.B. had learned that that man had been a police officer. In particular, he had shown the police patrol officers his police identification card and had directed their actions, in that he had pointed to the applicant and B. and had ordered that they be arrested and taken to the police station.

58. On 12 June 2015 a prosecutor from the Kyiv regional prosecutor's office questioned I.K., the applicant's mother. She testified that on the night of the events, her neighbour had informed her that her son had been killed. When I.K. had come outside, she had seen her son lying on the ground with blood covering his swollen face. A man, K., had been standing above him, holding a telescopic baton. I.K. had pushed him away and had told him that the police would arrive and would sort everything out. K. had told her in reply that he was the police and had shown his police identification card. He had been drunk, as his behaviour had been inappropriate, he could not stand still and his breath had smelled strongly of alcohol. K. had constantly closed and opened his telescopic baton, which had made a clicking sound. When I.K. had first been approaching her son, she had witnessed K. kicking the applicant. When the police patrol had arrived, M.B. and K. had greeted the officers with a handshake, had pointed towards the applicant and B. and had said: "Take away this one and this one; tomorrow we will sort it out." The police had handcuffed the applicant and B. Then K. had come alongside the applicant and had ordered him to kneel, hitting him with his telescopic baton on his legs. I.K. had made a remark and had received a rude reply. B.M. had

attempted to attack the applicant, but the applicant's mother had prevented his attempts.

59. The Government submitted that, on 23 April and 3 September 2015 the police had questioned K. and B.M. as witnesses. On 18 September 2015 they had questioned the applicant and K. simultaneously. The Government did not provide copies of the records of those interviews.

E. Further criminal investigation

60. On 31 March 2016 criminal case no. 12014110040001203 was merged with criminal case no. 42013100040000010 (opened on 23 January 2013 in respect of inaction of an investigator of the Irpin prosecutor's office and an assistant prosecutor of Irpin, in relation to their failure to enter information into the Unified Register of Pre-Trial Investigations about the actions of forensic doctor I.). On 15 October 2014 the case was successively merged with criminal cases nos. 42013100120000104, 420131100400000011, 420913100040000121 and 42014110000000338, opened against the employees, investigators and prosecutors from the Kyiv regional prosecutor's office, the Irpin prosecutor's office and the Borodyanka prosecutor's office under Article 364 § 1 of the Criminal Code of Ukraine in respect of alleged abuse of power, under Article 365 § 1 in respect of *ultra vires* acts, under Article 367 § 1 in respect of official negligence, and under Article 382 § 2 in respect of intentional failure to enforce a court decision.

61. On 3 August 2016 the applicant's lawyer provided the Kyiv regional prosecutor's office with the forensic medical report of 25 April 2016 concluding that the applicant's head injury received on 17 February 2008 had been serious (see paragraph 17 above).

62. On 28 May 2019 an investigator from the Kyiv regional prosecutor's office closed the criminal proceedings for lack of evidence. He referred to the witness statements given by the applicant and B. stating that they had started the conflict; the statements of former police officers, including G., who had initiated the criminal case against the applicant and had stated that he had acted in accordance with the law; the statement of a deputy head of the Bucha police station, L., who had testified that on the night of the event an officer on duty had called him and had informed him that an officer from the Bucha police station, B.M., had received a stab injury; and the statement of police officers or investigators from the prosecutor's office who had testified that their decisions not to open criminal cases into ill-treatment of the applicant, allegedly unlawful actions of forensic doctor I. and other complaints had been lawful. In relation to the investigation of complaints into hooliganism under Article 296 § 2 of the Criminal Code of Ukraine, the investigation found no features of gross disturbance of public order as a constituent element of a crime under that article. He also found no constituent elements of the crimes

in respect of complaints about alleged abuse of office or intentional non-enforcement of court decisions, and he therefore closed the criminal case.

63. On 8 August 2023 the Pecherskyi District Court of Kyiv overturned that decision, remitting the case for additional investigation. The parties did not provide a copy of that decision.

64. On 1 March 2024 the criminal proceedings were closed for lack of evidence.

IV. CRIMINAL CASES AGAINST THE ON-DUTY POLICE OFFICERS

65. On 13 March 2015 criminal case no. 42015110000000116 was opened under Articles 371 § 1 (unlawful arrest) and 372 § 1 (prosecution of a knowingly innocent person) of the Criminal Code of Ukraine against the police officers who had detained the applicant on 17 February 2008 and who had opened a criminal case against him in 2008.

66. On 24 March 2015 the two above-mentioned criminal cases were merged into criminal case no. 42015110000000116.

67. On 18 December 2015 criminal case no. 42015110000000116 was closed for lack of evidence.

68. On 8 December 2016 the Pecherskyi District Court of Kyiv overturned the above-mentioned decision and remitted the materials back to the Kyiv regional prosecutor's office for additional investigation.

69. On 12 May 2017 the Kyiv regional prosecutor's office dismissed the applicant's application requesting victim status. On 4 August 2017 the Pecherskyi District Court of Kyiv overturned that decision.

70. On 16 May 2019 the criminal case was closed again for lack of evidence.

71. On 14 July 2023 a deputy head of the administration at the Kyiv regional prosecutor's office wrote to the applicant, informing him of the closure of the criminal case on 16 May 2019. He also informed him of an ongoing internal investigation into the loss of the case file related to criminal case no. 42015110000000116.

72. On 6 September 2023, in the context of the preparation of the Government's observations before the Court, the head of the Kyiv regional prosecutor's office wrote to the Ukraininan Ombudsperson, informing her, among other things, that following the applicant's request to provide him with a copy of the above-mentioned decision of 16 May 2019, it had been discovered that the case file in criminal case no. 42015110000000116 had gone missing and that on 14 July 2023 an internal investigation into the matter had been launched.

RELEVANT LEGAL FRAMEWORK

73. The relevant provisions of the Code of Criminal Procedure of 1960, as in force at the material time, can be found in *Davydov and Others v. Ukraine* (nos. 17674/02 and 39081/02, § 112, 1 July 2010). The relevant provisions of the Code of Criminal Procedure of 2012 can be found in *Vyacheslavova and Others v. Ukraine* (nos. 39553/16 and 6 others, § 234, 13 March 2025).

74. The relevant provision of the Police Act of 20 December 1990, as in force at the material time, read as follows:

Section 10. Main duties of the police

"...

A police officer [who operates] in the territory of Ukraine, irrespective of the position which he or she holds, [his or her] location and the time, in the event of a compliant or a report [submitted] by citizens or officials about events that threaten their personal or public safety, or in the event of the direct detection of such events, [a police officer] shall take measures to prevent and stop offences, rescue people, provide assistance to individuals who need it, identify and detain individuals who have committed a crime, protect the scene of a crime and inform the nearest police department of it ..."

Section 14. Use of special measures of restraint

"...

The complete list of special means, as well as the rules for their use, are established by the Cabinet of Ministers of Ukraine upon the conclusions of the Ministry of Health of Ukraine and the General ... "

75. The relevant provisions of the Rules on application of special measures of restraint for the protection of public order, approved by Resolution no. 49 of the Council of Ministers on 27 February 1991, as in force at the material time, read as follows:

III. Peculiarities of the use of active defence and special operations equipment

"...

6. The decision to use special means shall be made by the official responsible for ensuring public order or by the head of a particular operation. Police officers who act individually make such decisions independently. They shall report the use of these means in writing to their immediate superior, indicating when, where, against whom, and under what circumstances the special means were used and the consequences of their use.

...

14. It is forbidden to strike ... :

– [with] a rubber [truncheon]: on the head, neck ...

– [with] a plastic, "tonfa" type [truncheon]: on the head, neck ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

76. The applicant, relying on Articles 3 and 13 of the Convention, complained that he had been ill-treated by the off-duty police officers and that the authorities had failed to carry out an effective investigation into his ill-treatment. The Court considers that all complaints fall to be examined under Article 3 of the Convention only, which reads as follows:

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

A. Admissibility

77. The Government submitted that, according to the forensic medical report of 20 February 2008 (see paragraph 8 above), the applicant's injuries had been classified as minor and, therefore, they had not reached the minimum level of severity to fall within the ambit of Article 3 of the Convention. They contested the allegation that the State had been responsible for the actions of the off-duty police officers and asked the Court to reject that complaint, raised under the substantive limb of Article 3 of the Convention, as inadmissible.

78. The applicant maintained that his head injury had been classified as serious (see paragraph 17 above) and, therefore, it had been of sufficient severity to fall within the ambit of Article 3 of the Convention. In addition, he argued that the fact that he had confronted the law-enforcement officers, who had resorted to physical actions which had not been strictly necessary in the circumstances and had inflicted various injuries on him, should have been taken into account when deciding whether the treatment had attained the minimum level of severity.

79. The Court reiterates that for the purposes of Article 3, ill-treatment must attain a minimum level of severity. The assessment of this minimum level is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. In respect of a person who is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his or her own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3 (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 86 and 88, ECHR 2015).

80. In relation to the Government's preliminary objection that the actions of the off-duty police officers could not be attributable to the State and that the respective complaint should be rejected as inadmissible *ratione personae* with the provisions of the Convention, the Court considers that this matter is

closely related to the merits of the complaint as it requires an assessment of the totality of the circumstances and of the nature of the conduct in question (see the case-law cited in § 88 below). Accordingly, it joins this issue to the merits.

81. Regarding the Government's other admissibility objection, the Court observes that some of the medical experts recorded that the applicant had sustained a skull fracture, which, given its life-threatening nature at the time of its infliction, had been classified in the medical forensic report of 25 April 2016 as serious (see paragraph 17 above). The Government did not comment on the content of that medical forensic report and the Court sees no reason not to take it into consideration when determining the issue of whether the applicant sustained injuries serious enough to attain the minimum level of severity required under Article 3 of the Convention. While it is true that some other reports referred to the applicant's injuries as "minor" (see paragraphs 8 and 13 above), the Court observes that the domestic authorities never resolved the discrepancies in the conclusions of the forensic medical reports issued in 2008, 2009 and in 2016. In any event, the circumstances of the incident involved serious physical violence against the applicant inflicted by a group of young men, two of whom were off-duty police officers and, possibly, the use of a metal baton.

82. In these circumstances, and regardless of whether the off-duty police officers acted partly in some official capacity, the Court finds that the applicant must have suffered from physical pain and the feelings of fear, anguish and distress of a sufficient degree to attain the minimum level of severity required under Article 3 of the Convention.

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

B. Merits

1. The parties' submissions

84. The applicant maintained that the State had been responsible for the conduct of the off-duty police officers, given that they had started the fight and had refused to stop beating him even after his mother and the bystanders had requested it. Furthermore, K. and B.M. had identified themselves to the witnesses of the event and to the police patrol as police officers, showing them their police identification cards. They had arrested and handcuffed the applicant and B. and had transferred the arrestees to the police patrol officers, ordering them to take the applicant and B. to the police station. While at the police station, the off-duty police officers had continued putting pressure on the applicant and B.

85. In relation to the issue of the effectiveness of investigation, the applicant complained that in February 2008 and June 2013 he had

unsuccessfully sought to have his injuries investigated within the framework of a criminal case. After the opening of the criminal case in July 2014, the police had not investigated it effectively, given that they had not resolved the discrepancies between the witness statements and the conclusions of the expert reports, had not taken any procedural actions during long periods of time, and had successively closed the case for lack of evidence. Furthermore, the applicant's medical file and the material in the case file of the criminal case opened against the police officers had been lost.

86. The Government submitted that the dispute between the applicant and the off-duty police officers had been of a private nature and that the State could not be held liable for the conduct of private individuals. They referred to the fact that the police officers had been off duty, had been dressed in plain clothes and had been celebrating a birthday. During the conflict, the applicant had not known that they were police officers, as they had not acted in a manner appropriate to law-enforcement officials. They had also not acted so when the police patrol had arrived following a call from a witness.

87. Furthermore, they submitted that the investigation had met all the criteria required under Article 3 of the Convention. In particular, the police had questioned witnesses, had examined the applicant's medical file and had obtained forensic medical reports, including the one refuting the applicant's allegation that he had been beaten on his head with a baton. They further submitted that no obvious obstacles in the collection of evidence could have been attributed to the domestic authorities.

2. The Court's assessment

(a) Relevant principles

88. The Court reiterates that 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 *Chernega and Others v. Ukraine*, no. 74768/10, § 125, 18 June 2019). However, a State may also be held responsible even where its agents are acting *ultra vires* or contrary to instructions (see *Burlya and Others v. Ukraine*, no. 3289/10, § 119, 6 November 2018). 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 *Basenko v. Ukraine*, no. 24213/08, § 78, 26 November 2015). The Court has further held 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)). The Court further reiterates that where the unlawful behaviour of the State agent is considered

so far removed from his/her official duties, it does not engage the State's substantive international responsibility (see, in particular, *Enukidze and Girgvliani v. Georgia*, no. 25091/07, § 290, 26 April 2011; *Makuchyan and Minasyan v. Azerbaijan and Hungary*, no. 17247/13, § 119, 26 May 2020; and, *a contrario*, *Basenko*, cited above, §§ 88-89), particularly in the absence of acquiescence/connivance on the part of the authorities (*Reilly v. Ireland* (dec.), no. 51083/09, §§ 55 and 56, 23 September 2014).

89. The general principles concerning the requirement of an effective investigation into alleged ill-treatment can be found in *Bouyid* (cited above, §§ 114-23) and *Labita v. Italy* ([GC], no. 26772/95, § 131, ECHR 2000-IV).

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

90. In the present case, the applicant received serious injuries as a result of a dispute with a group of people, two of whom were police officers B.M. and K.

91. It is undisputed that police officers B.M. and K. had been off duty, had been dressed in plain clothes and, apparently, had been celebrating a birthday at the moment of the altercation. The Court considers that those circumstances are insufficient to exclude State responsibility for the actions of the police officers (see *Voykin and Others v. Ukraine*, no. 47889/08, § 89, 27 March 2018). In accordance with its established case-law, it must examine the totality of circumstances and consider the nature of the impugned conduct, in particular whether that conduct involved the exercise of police authority or was otherwise linked to the officers' official status (see *Sašo Gorgiev*, cited above, § 48). In the present case, it needs to assess, having regard to the nature of the acts complained of, whether they were made possible by the officers' position as police officers, and the manner in which those acts were perceived and responded to by other State authorities (see, for example, *Đurđević v. Croatia*, no. 52442/09, § 75, ECHR 2011 (extracts); *Mižigárová v. Slovakia*, no. 74832/01, § 87, 14 December 2010; and, by contrast, *Çelik v. Turkey (no. 2)*, no. 39326/02, § 33, 27 May 2010).

92. The Court observes that the applicant's mother and Yu.Ya. testified to the police that the off-duty police officers had shown their police identification cards to them or to bystanders (see paragraphs 34, 54 and 58 above), thereby expressly invoking their status as police officers. They or other witnesses also testified that when the police patrol officers had arrived, police officers B.M. and K. had shown them their police identification cards (see paragraphs 54 and 57 above), had greeted them with a handshake (see paragraphs 37 and 58 above) and had given them orders concerning the arrest of the applicant and B. (see paragraphs 34, 50, 51, 52 and 54-56 above). B.M. testified that he and other individuals had held the applicant and B. while they had waited for the police patrol officers to arrive (see paragraph 23 above), conduct falling within the sphere of coercive powers ordinarily exercised by law-enforcement officials. It appears that the officers from the police patrol,

for their part, did not question the authority of the off-duty police officers but acted in accordance with the directions given, thereby treating them as acting in an official capacity. This fact was tacitly confirmed in a superior prosecutor's decision to overturn the refusal of the police to open a criminal case into the applicant's ill-treatment when he ordered that the circumstances be established concerning the way in which the police patrol officers had determined the guilty persons at the scene of events along with the reasons why the police patrol officers had arrested expressly the applicant and B. (see paragraph 41 above).

93. Taking into consideration all of the above, the Court finds that the case file contains evidence that discloses sufficiently strong, clear and concordant elements showing that the police officers, despite being off duty, exercised police authority and acted in a manner made possible by their official status. The Court, therefore, dismisses the Government's preliminary objection, which it has previously joined to the merits (see paragraph 80 above), regarding the compatibility *ratione personae* of the complaint concerning the actions of the off-duty police officers with the provisions of the Convention and finds that the conduct complained of cannot be characterised as purely private but is attributable to the respondent State.

94. Having found that the off-duty police officers had been acting as representatives of the law-enforcement authorities, the Court must examine whether their recourse to physical force was strictly necessary in the circumstances (see, *mutatis mutandis*, *Kuchta and Mętel v. Poland*, no. 76813/16, §§ 70-71, 2 September 2021). In doing so, it must rely on undisputed facts. However, in view of the lack of domestic court decisions establishing the facts of the case and the discrepancies in the accounts of the parties on the matter, the Court must first examine whether the national authorities established the relevant circumstances of the fight and whether they complied with their positive obligation to investigate the incident effectively and efficiently.

95. The Court observes that between 2008 and 2011 the prosecutor's office refused 14 times to open criminal proceedings into the applicant's ill-treatment (see paragraph 39 above), while disregarding the instructions of a superior prosecutor and of the Irpin City Court to additionally verify the material in the case file or to open a criminal case (see paragraph 41 above). When on 7 June 2013 the Irpin City Court ordered that the information about the applicant's ill-treatment of 17 February 2008 be entered into the Unified Register of Pre-Trial Investigations (see paragraph 43 above), the prosecutor's office still did not open the case, stating that they had not received a copy of that decision (see paragraph 44 above). The applicant provided a copy of the letter from the Irpin City Court's registry, which stated that the Irpin prosecutor's office had received a copy of the relevant decision in a timely manner (see paragraph 45 above). Consequently, the criminal case in respect of the applicant's ill-treatment was only opened on 18 July 2014

(see paragraph 46 above). The Court sees no possible explanation for such delays, especially given that the criminal case against the applicant was opened on the day after the event (see paragraph 25 above). The Court finds therefore that the fact that the prosecutor's office refused to open a criminal case into the applicant's ill-treatment for almost six years indicates a failure to act with diligence and promptness (see *Muta v. Ukraine*, no. 37246/06, § 61, 31 July 2012).

96. The Court further emphasises that for an investigation to be effective, those responsible for and carrying out it must be independent and impartial from those targeted by it. This means not only a lack of hierarchical or institutional connection with those implicated in the events but also a practical independence (see, *Bouyid*, cited above, § 118). The Court observes that in 2014 the investigation was eventually entrusted to the Iprin police department, which employed the police officers who had allegedly ill-treated the applicant (see paragraph 46 above). The Court notes that it has already condemned the lack of independence of investigative authorities in cases where the investigation was carried out by the police department which employed the police officers who had allegedly ill-treated the applicant or where the investigation remained the responsibility of the prosecutor's office located in the same town as the police department whose officers the applicant was accusing of ill-treating him (see, for instance, *Vitkovskiy v. Ukraine*, no. 24938/06, § 101, 26 September 2013; *Danilov v. Ukraine*, no. 2585/06, § 70, 13 March 2014; *Kirpichenko v. Ukraine*, no. 38833/03, § 87, 2 April 2015; and *Pomilyayko v. Ukraine*, no. 60426/11, § 55, 11 February 2016). Similarly, the Court concludes that in the present case the investigation was not accompanied by guarantees of independence and impartiality.

97. The Court further observes that in reply to the applicant's complaint that he had been hit with a baton, the police ordered an additional forensic medical examination of the applicant's injuries. However, forensic doctor I., against whom a criminal case was opened on suspicion of issuance of a manifestly untrue expert conclusion (see paragraph 15 above), stated that the medical file did not contain a description of injuries which could lead to the conclusion that the applicant had been beaten with a baton (see paragraph 14 above). That conclusion is not corroborated by the medical documents attesting that the applicant had sustained a skull fracture (see paragraph 10 above) and the witness' statements that Officer K. had repeatedly opened and closed his expandable baton or that he had hit the applicant with it (see paragraphs 35, 53, 57 and 58 above). The Government did not provide copies of the records of the questioning of K. and B.M. (see paragraph 59 above). It is thus unclear whether the investigating authorities followed the instructions of a superior prosecutor ordering them to detect which baton Officer K. had used to hit the applicant on the night of the event (see paragraph 41 above) and to specify which parts of the applicant's body had been hit.

98. Furthermore, it cannot escape the Court's attention that the applicant was granted victim status only on 30 January 2015 and it was on that date when he gave his statements as a victim to the prosecutor's office (see paragraph 50 above). Following the questioning of victims and witnesses in 2015, the prosecutor's office took no further procedural actions, apart from merging the criminal case with the other satellite criminal cases opened against the investigators or employees of prosecutor's offices (see paragraph 60 above), and then closing it for lack of evidence (see paragraph 62 above). Given the facts above, it cannot be said that in the present case the investigating authorities made a serious attempt to find out what had happened or that they relied on reasonable or adequate conclusions to close their investigation (see, for instance, *Zhyzitskyy v. Ukraine*, no. 57980/11, § 48, 19 February 2015).

99. Lastly, the Court observes that the applicant's medical file was lost during its transfer from the Bureau to the Borodyanka prosecutor's office (see paragraphs 19-21 above). Another case file in a criminal case opened against the police officers who had detained the applicant on 17 February 2008 and who had opened a criminal case against him in 2008 was also lost at the prosecutor's office (see paragraphs 71-72 above). The Court cannot conclude that those losses were or were not intentional, but it finds that they impeded the State even further in performing its obligations under Article 3 of the Convention to establish the exact circumstances of the incident and to carry out an effective investigation into the applicant's ill-treatment.

100. The Court further reiterates that in cases where there are differing accounts of the facts, the Court adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. The level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see *A.R.E. v. Greece*, no. 15783/21, § 212, 7 January 2025).

101. The Court notes that it is undisputed between the parties that at around 10 p.m. on the evening of the events, the off-duty police officers, who had been celebrating a birthday, were on their way to buy drinks and cigarettes, when they came across the applicant and his friends, after which the fight broke out. As a result, the applicant received injuries, some of which were serious (see paragraph 17 above).

102. The police failed to establish the motive of the fight, as the witnesses and the injured parties had given directly opposing accounts of it. The police, nevertheless, relied on the statements given by the off-duty police officers and the participants of the birthday party but disregarded the statements given by the applicant, B., Ya. and other witnesses (see paragraph 39 above). In that connection, the Court notes that the testimony by O.K., which contradicted the testimonies given by other participants of the birthday party, and who

stated that she had learned from B.M. that the reason for the fight had been the fact that the applicant had been lingering near the off-duty police officers' car (see paragraph 32 above), was not given adequate attention, as the investigator failed to mention it in the decisions not to open criminal proceedings.

103. The Court further observes that no meaningful explanation has been provided in respect of the fact that except for the applicant, B. and M.B., no other individual who had participated in the fight was subjected to the blood-alcohol test. This omission is particularly noteworthy, considering the fact that the superior prosecutor who had overturned the initial decision not to open a criminal case into the applicant's ill-treatment (see paragraph 41 above) noted that omission and requested explanations, especially in view of the fact that the birthday party had lasted for five hours before the conflict had erupted.

104. It has not been alleged that the applicant's injuries had been inflicted prior to his encounter with the off-duty police officers. The Government argued that those officers had also received injuries, which had been recorded in the relevant forensic medical reports (see paragraph 6 above). However, they failed to provide the Court with those documents. In contrast, numerous witness statements available in the investigation files concur with the applicant's version of the events that he had been beaten by the off-duty police officers, one of whom had struck him with a metal baton.

105. Referring to its findings above regarding the inadequate nature of the investigation, the authorities' repeated and unexplained failure to perform highly relevant investigative activities, and their refusal, over six years, to open a criminal case into the applicant's injuries, the Court considers that negative inferences must be drawn, leading it to find it established that the actions of the off-duty police officers, which resulted in serious injuries to the applicant, did not constitute lawful use of force that was strictly necessary in the circumstances.

106. Having considered all the evidence before it, the Court finds that on the night of the events, the off-duty police officers inflicted grave injuries on the applicant while acting at least partly in their official capacity before and at the time when the patrol police officers arrived. Furthermore, the State failed to investigate effectively the complaints about the applicant's injuries.

107. Accordingly, there has been a violation of both the substantive and the procedural aspects of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

108. 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

109. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

110. The Government argued that the sum was exorbitant and unsubstantiated.

111. The Court awards the applicant EUR 8,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

112. The applicant also claimed EUR 12,862.50 for the costs and expenses incurred before the Court, comprising EUR 3,937.50 for the preparation of the application to the Court and EUR 8,925.00 for the preparation of the applicant's reply to the observations of the Government. The applicant submitted a copy of a legal aid contract and a report of the completed work totalling 160 hours. Section 5.1 of the legal aid contract stated that the applicant was bound to pay the remuneration for legal aid only if the Court awarded it, and in an amount defined by the Court.

113. The Government argued that the sum claimed by the applicant for legal aid was excessive.

114. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,000 covering costs under all heads, plus any tax that may be chargeable to the applicant, to be paid directly into the account of the applicant's representative, Mr G.V. Tokarev.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's preliminary objection in relation to the compatibility *ratione personae* of the complaint concerning the responsibility of the State for the actions of the off-duty police officers with the requirements of the Convention, and *dismisses* it;

2. *Declares* the application admissible;

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

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

5. *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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly into the account of the applicant's representative, Mr G.V. Tokarev;

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

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

Done in English, and notified in writing on 28 May 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Kateřina Šimáčková President